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

☒ **ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**
**For the fiscal year ended** December 31, 2020

**OR**

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**
**For the transition period _____ to _____**

**Commission file number: 000-28508**

# AVADEL PHARMACEUTICALS PLC

**(Exact name of registrant as specified in its charter)**

| **Ireland** | **98-1341933** |
|---|---|
| **State or other jurisdiction of incorporation or organization** | **(I.R.S. Employer Identification No.)** |
| **10 Earlsfort Terrace<br>Dublin 2, Ireland<br>D02 T380** | **Not Applicable** |
| **(Address of principal executive offices)** | **(Zip Code)** |

**Registrant's telephone number, including area code: +011-1-485-1200**

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

| Title of each class | Trading Symbol (s) | Name of exchange on which registered |
|---|---|---|
| American Depositary Shares* | AVDL | The Nasdaq Global Market |
| Ordinary Shares, nominal value $0.01 per share** | AVDL | The Nasdaq Global Market |

* American Depositary Shares may be evidenced by American Depository Receipts. Each American Depositary Share represents one (1) Ordinary Share.

** Not for trading, but only in connection with the listing of American Depositary Shares. on The Nasdaq Global Market.

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

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ☐ No ☒

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes ☐ No ☒

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

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

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

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

Indicate by check mark whether the registrant has filed a report on and attestation to its management's assessment of the effectiveness of its internal control over financial reporting under Section 404(b) of the Sarbanes-Oxley Act (15 U.S.C. 7262(b)) by the registered public accounting firm that prepared or issued its audit report. ☒

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

The aggregate market value of voting stock held by non-affiliates of the registrant as of the last business day of the registrant's most recently completed second fiscal quarter was $466,741,289 based on the closing sale price of the registrant's American Depositary Shares as reported by the Nasdaq Global Market on June 30, 2020. Such market value excludes 364,026 ordinary shares, $0.01 per share nominal value, held by each officer and director and by shareholders that the registrant concluded were affiliates of the registrant on that date. Exclusion of such shares should not be construed to indicate that any such person possesses the power, direct or indirect, to direct or cause the direction of the management or policies of the registrant or that such person is controlled by or under common control with the registrant.

The number of the registrant's ordinary shares, $0.01 per share nominal value, outstanding as of March 4, 2021 was 58,465,151.

**DOCUMENTS INCORPORATED BY REFERENCE**

Portions of either (a) a definitive proxy statement involving the election of directors or (b) an amendment to this Form 10-K, either of which will be filed within 120 days after December 31, 2020, are incorporated by reference into Part III of this Form 10-K.

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**SUMMARY OF THE MATERIAL RISKS ASSOCIATED WITH OUR BUSINESS**

Our business is subject to numerous material and other risks and uncertainties, including those described in Part II, Item 1A. “Risk Factors” in this Annual Report on Form 10-K. The principal risks and uncertainties affecting our business include the following:

- Our lead product candidate and future product candidates will generally be subject to regulatory approval. If we or our pharmaceutical and biotechnology company partners do not obtain such approvals, or if such approvals are delayed, our ability to generate future revenues may be adversely affected.
- Our lead product candidate and future product candidates may be subject to continuing regulation, and we on our own, and in conjunction with our pharmaceutical partners, may be subject to adverse consequences if we or they fail to comply with applicable regulations.
- Disruptions at the United States (“U.S.”) Food and Drug Administration (“FDA”), the Drug Enforcement Administration and other government agencies caused by funding shortages or global health concerns, including coronavirus disease (COVID-19), could hinder their ability to hire and retain key leadership and other personnel, prevent new products and services from being developed or commercialized in a timely manner or otherwise prevent those agencies from performing normal business functions on which the operation of our business may rely, which could negatively impact our business.
- We are subject to U.S. federal and state and international laws and regulations prohibiting “kickbacks” and false claims that, if violated, could subject us to substantial penalties, and any challenges to or investigation into our practices under these laws could cause adverse publicity and be costly to respond to, and thus could harm our business.
- We may rely on collaborations with third parties to commercialize certain of our product candidates in development and such strategy involves risks that could impair our prospects for realizing profits from such products.
- We depend on a single provider of certain services related to the development of our product candidate, and any interruption of operations of such provider could significantly delay or have a material adverse effect on our business.
- We depend on a limited number of suppliers for the manufacturing of our product candidate and certain raw materials and any failure of such suppliers to manufacture or supply sufficient quantities of product or these raw materials could have a material adverse effect on our business.
- Clinical development of drugs is costly and time-consuming, and the outcomes are uncertain. A failure to prove that our product candidate and future product candidates are safe and effective in clinical trials could materially and adversely affect our business, financial condition, results of operations and growth prospects.
- We rely on third parties to conduct our clinical trials, and if they do not properly and successfully perform their contractual, legal and regulatory duties, we may not be able to obtain regulatory approvals for or commercialize our product candidate or future product candidates.
- Changes in U.S. or ex-U.S. patent laws could diminish the value of patents in general, thereby impairing our ability to protect our product candidate or future product candidates.
- Third parties may claim that our product candidate or future product candidates infringe their rights, and we may incur significant costs resolving these claims. Additionally, legal proceedings related to such claims could materially delay or otherwise adversely affect commercialization plans related to our product candidate, if approved.
- Obtaining and maintaining our patent protection depends on compliance with various procedural, document submission, fee payment and other requirements imposed by governmental patent agencies, and our patent protection could be reduced or eliminated for non-compliance with these requirements.
- Our future products may not gain market acceptance.
- COVID-19 may materially and adversely affect our business and our financial results.
- We and companies to which we have licensed or will license our future products or drug delivery technologies and subcontractors we engage for services related to the development and manufacturing of our product candidate and future product candidates are subject to extensive regulation by the FDA and other regulatory authorities. Our and their failure to meet strict regulatory requirements could adversely affect our business.

**Cautionary Disclosure Regarding Forward-Looking Statements**

This Annual Report on Form 10-K includes "forward-looking statements" within the meaning of Section 27A of the Securities Act of 1933, as amended (the "Securities Act"), and Section 21E of the Securities Exchange Act of 1934, as amended, or the Exchange Act. Any statements about our expectations, beliefs, plans, objectives, assumptions or future events or performance are not historical facts and may be forward-looking. These statements are often, but are not always, made through the use of words or phrases such as "may," "will," "could," "should," "expects," "intends," "plans," "anticipates," "believes," "estimates," "predicts," "projects," "potential," "continue," and similar expressions, or the negative of these terms, or similar expressions. Accordingly, these statements involve estimates, assumptions, risks and uncertainties which could cause actual results to differ materially from those expressed in them. Any forward-looking statements are qualified in their entirety by reference to the factors discussed throughout this prospectus, and in particular those factors referenced in the section "Risk Factors" in Part I, Item 1A of this Annual Report on Form 10-K.

This Annual Report on Form 10-K contains forward-looking statements that are based on our management's belief and assumptions and on information currently available to our management. These statements relate to future events or our future financial performance, and involve known and unknown risks, uncertainties and other factors that may cause our actual results, levels of activity, performance or achievements to be materially different from any future results, levels of activity, performance or achievements expressed or implied by these forward-looking statements. Forward-looking statements include, but are not limited to, statements about:

- Our reliance on a single lead product candidate, FT218, and our ability to obtain regulatory approval of and successfully commercialize FT218, including any delays in approval related to COVID-19;
- The ability of FT218, if approved, to gain market acceptance;
- Our ability to enter into strategic partnerships for the commercialization, manufacturing and distribution of FT218, if approved;
- Our dependence on a limited number of suppliers for the manufacturing of our lead product candidate and certain raw materials in our lead product candidate and any failure of such suppliers to deliver sufficient quantities of these raw materials, which could have a material adverse effect on our business;
- Our ability to finance our operations on acceptable terms, either through the raising of capital, the incurrence of convertible or other indebtedness or through strategic financing or commercialization partnerships;
- Our expectations about the potential market size and market participation for our product candidate;
- Any further restructuring actions that may be required and our ability to obtain any required consents (including any consents required pursuant to the Indenture governing our exchange notes due 2023, or the 2023 Notes);
- Our ability to continue to service the 2023 Notes, including making the ongoing interest payments on the 2023 Notes, settling exchanges of the 2023 Notes in cash or completing any required repurchases of the 2023 Notes;
- The potential impact of COVID-19 on our business and future operating results;
- Our ability to retain members of our management team and our employees; and
- Competition existing today or that will likely arise in the future.

These forward-looking statements are neither promises nor guarantees of future performance due to a variety of risks and uncertainties and other factors more fully discussed in the "Risk Factors" section in Part I, Item 1A of this Annual Report on Form 10-K and the risk factors and cautionary statements described in other documents that we file from time to time with the SEC. Given these uncertainties, readers should not place undue reliance on our forward-looking statements. These forward-looking statements speak only as of the date on which the statements were made and are not guarantees of future performance. Except as may be required by applicable law, we do not undertake to update any forward-looking statements after the date of this Annual Report or the respective dates of documents incorporated by reference herein or therein that include forward-looking statements.

Except as required by law, we assume no obligation to update these forward-looking statements publicly, or to revise any forward-looking statements to reflect events or developments occurring after the date of this Annual Report, even if new information becomes available in the future.

NOTE REGARDING TRADEMARKS

We own various trademark registrations and applications, and unregistered trademarks, including Avadel®, Micropump®, LiquiTime® and Medusa®. All other trade names, trademarks and service marks of other companies appearing in this Annual Report are the property of their respective holders. Solely for convenience, the trademarks and trade names in this Annual Report may be referred to without the ® and ™ symbols, but such references should not be construed as any indicator that their respective owners will not assert, to the fullest extent under applicable law, their rights thereto. We do not intend to use or

display other companies' trademarks and trade names to imply a relationship with, or endorsement or sponsorship of us by, any other companies.

From time to time, we may use our website, LinkedIn or our Twitter account (@AvadelPharma) to distribute material information. Our financial and other material information is routinely posted to and accessible on the Investors section of our website, available at www.avadelpharmaceuticals.com. Investors are encouraged to review the Investors section of our website because we may post material information on that site that is not otherwise disseminated by us. Information that is contained in and can be accessed through our website or our Twitter posts are not incorporated into, and does not form a part of, this Annual Report.

**PART I**

**Item 1. Business.**

*(Dollar amounts in thousands, except per-share amounts and as otherwise noted)*

**General Overview**

Avadel Pharmaceuticals plc (Nasdaq: AVDL) ("Avadel," the "Company," "we," "our," or "us") is a biopharmaceutical company. Our lead product candidate, FT218, is an investigational once-nightly, extended-release formulation of sodium oxybate for the treatment of excessive daytime sleepiness ("EDS") and cataplexy in adults with narcolepsy. We are primarily focused on the development and potential United States ("U.S.") Food and Drug Administration ("FDA") approval of FT218. In December 2020, the Company submitted a New Drug Application ("NDA") to the FDA for FT218 to treat excessive daytime sleepiness and cataplexy in adults with narcolepsy.The NDA for FT218 was accepted by the FDA in February 2021 and assigned a Prescription Drug User Fee Act ("PDUFA") target action date of October 15, 2021.

Outside of our lead product candidate, we continue to evaluate opportunities to expand our product portfolio. As of December 31, 2020, we do not have any approved and commercialized products in our portfolio.

***FT218***

FT218 is a once-nightly formulation of sodium oxybate that uses our Micropump controlled release drug-delivery technology for the treatment of EDS and cataplexy in adults suffering from narcolepsy. Sodium oxybate is the sodium salt of gamma hydroxybutyrate, an endogenous compound and metabolite of the neurotransmitter gamma-aminobutyric acid. Sodium oxybate is approved in the U.S. for the treatment of EDS and cataplexy in patients with narcolepsy and is approved in Europe for the treatment of cataplexy in patients with narcolepsy. Since 2002, sodium oxybate has only been available as a formulation that must be taken twice nightly, first at bedtime, and then again 2.5 to 4 hours later.

On December 16, 2020, we announced the submission of our NDA to the FDA for FT218. On February 26, 2021, the FDA notified us of formal acceptance of the NDA with an assigned PDUFA target action date of October 15, 2021.

The REST-ON trial was a randomized, double-blind, placebo-controlled study that enrolled 212 patients and was conducted in clinical sites in the U.S., Canada, Western Europe and Australia. The last patient, last visit was completed at the end of the first quarter of 2020 and positive top line data from the REST-ON trial was announced on April 27, 2020. Patients who received 9 g of once-nightly FT218, the highest dose administered in the trial, demonstrated a statistically significant and clinically meaningful improvement compared to placebo across the three co-primary endpoints of the trial: maintenance of wakefulness test, or MWT, clinical global impression-improvement, or CGI-I, and mean weekly cataplexy attacks. The lower doses assessed, 6 g and 7.5 g also demonstrated a statistically significant and clinically meaningful improvement on all three co-primary endpoints compared to placebo. We observed the 9 g dose of once-nightly FT218 to be generally well tolerated. Adverse reactions commonly associated with sodium oxybate were observed in a small number of patients (nausea 1.3%, vomiting 5.2%, decreased appetite 2.6%, dizziness 5.2%, somnolence 3.9%, tremor 1.3% and enuresis 9%), and 3.9% of the patients who received 9 g of FT218 discontinued the trial due to adverse reactions.

In January 2018, the FDA granted FT218 Orphan Drug Designation, which makes the drug eligible for certain development and commercial incentives, including potential U.S. market exclusivity for up to seven years. Additionally, several FT218-related U.S. patents have been issued, and there are additional patent applications currently in development and/or pending at the U.S. Patent and Trademark Office ("USPTO"), as well as foreign patent offices.

In July 2020, we announced that the first patient was dosed initiating an open-label extension ("OLE")/switch study of FT218 as a potential treatment for EDS and cataplexy in patients with narcolepsy. The OLE/switch study is examining the long-term safety and maintenance of efficacy of FT218 in patients with narcolepsy who participated in the REST-ON study, as well as dosing and preference data for patients switching from twice-nightly sodium oxybate to once-nightly FT218 regardless if they participated in REST-ON or not. We anticipate that the study will enroll up to 250 patients, many of which will be enrolled in North American clinical trial sites that participated in the REST-ON study.

We believe FT218 has the potential to demonstrate improved dosing compliance, safety and patient satisfaction over the current standard of care for EDS and cataplexy in patients with narcolepsy, which is a twice-nightly sodium oxybate formulation. If approved, we believe FT218 has the potential to take a significant share of the sodium oxybate market. The current market size for the twice-nightly administration of sodium oxybate is estimated at an annualized revenue run rate of $1.8 billion.

***Micropump Drug-Delivery Technology***

Our Micropump drug-delivery technology allows for the controlled delivery of small molecule drugs taken orally, which has the potential to reduce safety issues and improve a number of things like efficacy, dosing compliance and patient satisfaction. Beyond FT218, we believe there could be other product development opportunities for our Micropump drug-delivery technology, representing either i) life cycle opportunities, whereby additional intellectual property-protected drug delivery technology can be added to a pharmaceutical product to extend the commercial viability of that product, or ii) innovative formulation opportunities for known active pharmaceutical ingredients as well as new chemical entities.

*Previously Approved FDA Products*

On June 30, 2020 (the "Closing Date"), Avadel Legacy Pharmaceuticals, LLC (the "Avadel Seller") announced the sale of the portfolio of sterile injectable drugs used in the hospital setting (the "Hospital Products"), which included our three commercial products, Akovaz, Bloxiverz and Vazculep, as well as Nouress, which was approved by the U.S. FDA to Exela Sterile Medicines LLC ("Exela Buyer") pursuant to an asset purchase agreement by and among the Avadel Seller, Avadel US Holdings, Inc., the Exela Buyer and Exela Holdings, Inc. This sale included the following FDA approved products:

- **Bloxiverz (neostigmine methylsulfate injection)** - Bloxiverz is a drug used intravenously in the operating room to reverse the effects of non-depolarizing neuromuscular blocking agents after surgery.
- **Vazculep (phenylephrine hydrochloride injection)** - Vazculep is indicated for the treatment of clinically important hypotension occurring in the setting of anesthesia.
- **Akovaz (ephedrine sulfate injection)** - Akovaz was the first FDA approved formulation of ephedrine sulfate, an alpha- and beta- adrenergic agonist and a norepinephrine-releasing agent that is indicated for the treatment of clinically important hypotension occurring in the setting of anesthesia.
- **Nouress (cysteine hydrochloride injection)** - Nouress is a sterile injectable product for use in the hospital setting to provide parenteral nutrition to neonates.

**Corporate Information**

We are registered as an Irish public limited company. Our principal place of business is located at 10 Earlsfort Terrace, Dublin 2, Ireland and our phone number is 00 353 1 920 1000. We file annual, quarterly and current reports, proxy statements and other documents with the U.S. Securities and Exchange Commission ("SEC") under the Securities Exchange Act of 1934, as amended (the "Exchange Act"). Our website is www.avadel.com, where we make available free of charge our reports (and any amendments thereto) on Forms 10-K, 10-Q and 8-K as soon as reasonably practicable after they are electronically filed with or furnished to the SEC. These filings are also available to the public at www.sec.gov. We do not incorporate the information on or accessible through our website into this Annual Report on Form 10-K.

We currently have five direct wholly-owned subsidiaries: (a) Avadel US Holdings, Inc., (b) Flamel Ireland Limited is an Irish limited company, which conducts business under the name Avadel Ireland, (c) Avadel Investment Company Limited, (d) Avadel Finance Ireland Designated Activity Company and (e) Avadel France Holding SAS. Avadel US Holdings, Inc., a Delaware corporation, is the holding entity of (i) Avadel Specialty Pharmaceuticals, LLC, (ii) Avadel Legacy Pharmaceuticals, LLC, (iii) Avadel Management Corporation, and (iv) Avadel CNS Pharmaceuticals LLC. Avadel Finance Ireland Designated Activity Company is the holding entity of Avadel Finance Cayman Limited. Avadel France Holding SAS is the holding entity of Avadel Research SAS. A complete list of our subsidiaries can be found in Exhibit 21.1 to this Annual Report on Form 10-K.

**Competition and Market Opportunities**

**Competition**

Competition in the pharmaceutical and biotechnology industry is intense and is expected to increase. We compete with academic laboratories, research institutions, universities, joint ventures, and other pharmaceutical and biotechnology companies, including other companies developing brand or generic specialty pharmaceutical products or drug delivery platforms. Some of these competitors may also be our business partners. There can be no assurance that our competitors will not obtain patent protection or other intellectual property rights that would make it difficult or impossible for us to compete with their products. Furthermore, major technological changes can happen quickly in the pharmaceutical and biotechnology

industries. Such rapid technological change, or the development by our competitors of technologically improved or differentiated products, could render our products, including our drug delivery technologies, obsolete or noncompetitive.

The pharmaceutical industry has dramatically changed in recent years, largely as a function of the growing importance of generic drugs. The growth of generics (typically small molecules) and of large molecules (biosimilars) has been accelerated by the demand for less expensive pharmaceutical products. As a result, the pricing power of pharmaceutical companies will be more tightly controlled in the future.

In addition, consolidation has reduced our pool of potential partners and acquisition opportunities within the biopharmaceutical space.

*Potential competition for FT218*

If FT218 receives FDA approval, it will compete with the currently approved twice-nightly oxybate formulations, as well as a number of daytime wake promoting agents including lisdexamfetamine, detroamphetamine, methylphenidate, amphetamine, modafinil, armodafinil, solriamfetol and pitolisant, which are widely prescribed, or prescribed concomitantly with sodium oxybate. If approved, we anticipate FT218 may face competition from manufacturers of generic twice-nightly sodium oxybate formulations, who have reached settlement agreements with the current marketer, which allows for entry of an authorized generic in 2023. In addition, there are other products in development that may be approved in the future that could have an impact on the sodium oxybate market prior to FT218's potential FDA approval, including, for example, reboxetine, orexin 2 receptor agonists, flecainide / modafinil combination, histamine H3 antagonists/inverse agonists, or $GABA_B$ agonists.

**Market Opportunities**

In today's pharmaceutical market, a drug has to demonstrate significant therapeutic improvements over the current standard of care in order to obtain third party payer coverage. Alternatively, changes in the delivery of a drug must create a demonstrable reduction in costs. Dosing convenience, by itself, is not sufficient to gain reimbursement acceptance. Biopharmaceutical companies must demonstrate, through extensive clinical trials, the therapeutic efficacy of their new formulations. The FDA has encouraged drug companies developing enhanced formulations to use a condensed regulatory pathway: the 505(b)(2) NDA. Many biopharmaceutical companies today are using this approach or the supplemental NDA pathway ("sNDA"). An NDA or sNDA is necessary to market an already approved drug for a new indication, or in a different dosage form or formulation. However, the sNDA approach requires cross-referencing the originator's drug dossier, and eventually an alliance with the originator for commercialization.

**Avadel's Drug Delivery Technologies**

We own drug delivery technologies that address key formulation challenges, potentially allowing the development of differentiated drug products for administration in various forms (e.g., capsules, tablets, sachets or liquid suspensions for oral use; or injectables for subcutaneous administration) that could be applied to a broad range of drugs (novel, already-marketed, or off-patent).

A brief discussion of each of our drug delivery technologies is set forth below.

- Micropump. Our Micropump technology allows for the development of modified release solid, oral dosage formulations of drugs. Micropump-carvedilol and Micropump-aspirin formulations have been approved in the U.S. Further, Micropump technology is being employed in our investigational FT218 product.

- LiquiTime. Our LiquiTime technology allows for development of modified release oral products in a liquid suspension formulation, which may make such formulations particularly well suited for children and/or patients having issues swallowing tablets or capsules. Although we own this technology, we are currently not pursuing any commercial pharmaceutical drug development opportunities using it.

- Medusa. Our Medusa technology allows for the development of modified-release injectable dosage formulations of drugs (e.g., peptides, polypeptides, proteins, and small molecules). Although we own this technology, we are currently not pursuing any commercial pharmaceutical drug development opportunities using it.

**Proprietary Intellectual Property**

Parts of our product pipeline and strategic alliances utilize our drug delivery platforms and related products of which certain features are the subject of patents or patent applications. As a matter of policy, we seek patent protection of our inventions and also rely upon trade secrets, know-how, continuing technological innovations and licensing opportunities to maintain and develop competitive positions.

- FT218 Patents. We have been awarded several FT218-related U.S. patents having expiry dates from mid-2037 to early-2040. We have a number of additional FT218-related patent applications pending at the USPTO as well as at non-U.S. patent offices.

- Drug Delivery Technology Patents. Our drug delivery technologies are the subject of certain patents, including: (i) for Micropump, patents relating to coating technologies that provide for controlled release of an active ingredient (expiring in 2025 in the U.S. and 2022 in non-U.S. jurisdictions); (ii) for LiquiTime, patents relating to film-coated microcapsules and a method comprising orally administering such microcapsules to a patient (expiring in 2023); and (iii) for Medusa, patents relating to an aqueous colloidal suspension of low viscosity based on submicronic particles of water-soluble biodegradable polymer PO (polyolefin) carrying hydrophobic groups (expiring in 2023).

The patent positions of biopharmaceutical companies like us are generally uncertain and involve complex legal, scientific and factual questions. In addition, the coverage claimed in a patent application can be significantly reduced before the patent is issued, and patent scope can be reinterpreted by the courts after issuance. Moreover, many jurisdictions permit third parties to challenge issued patents in administrative proceedings, which may result in further narrowing or even cancellation of patent claims. We cannot predict whether the patent applications we are currently pursuing will issue as patents in any particular jurisdiction or whether the claims of any of our licensed or owned patents will provide sufficient protection from competitors. Any of our licensed or owned patents may be challenged, circumvented, or invalidated by third parties. For more information, please see the information set forth under the caption “Risks Related to Our Intellectual Property – If we cannot adequately protect our intellectual property and proprietary information, we may be unable to effectively compete” in the “Risk Factors” included in Part I, Item 1A of this Annual Report on Form 10-K.

**Supplies and Manufacturing**

We attempt to maintain multiple suppliers in order to mitigate the risk of shortfall and inability to supply market demand. Nevertheless, for FT218, we will rely on a limited number of suppliers for sourcing active pharmaceutical ingredients (“APIs”).

We will outsource the production of FT218 to current good manufacturing practices (“cGMP”) -compliant and FDA-audited contract manufacturing organizations (“CMOs”) pursuant to supply agreements and have no present plans to acquire manufacturing facilities.

**Government Regulation**

The design, testing, manufacturing and marketing of certain new or substantially modified drugs, biological products or medical devices must be approved, cleared or certified by regulatory agencies, regulatory authorities and notified bodies under applicable laws and regulations, the requirements of which may vary from country to country. This regulatory process is lengthy, expensive and uncertain. In the U.S., the FDA regulates such products under various federal statutes, including the Federal Food, Drug, and Cosmetic Act (“FDCA”) and the Public Health Service Act.

***New Drug Product Development and Approval Process***

Regulation by governmental authorities in the U.S. and other countries has a significant impact on the development, manufacture, and marketing of drug products and on ongoing research and product development activities. The products of Avadel’s pharmaceutical partners as well as its own products require regulatory approval by governmental agencies and regulatory authorities prior to commercialization. In particular, these products are subject to stringent manufacturing requirements known as cGMP which are promulgated by the FDA in the U.S. and by other authorities in other jurisdictions, and rigorous, pre-clinical and clinical testing and other pre-market approval requirements by the FDA, the European Commission and regulatory authorities in other countries. In the U.S. and the European Union, various statutes and regulations also govern or influence the manufacturing, safety, labeling, storage, record keeping and marketing of pharmaceutical products. The lengthy process of seeking these approvals, and the subsequent compliance with applicable statutes and regulations, require the expenditure of substantial resources.

Regulatory approval, when and if obtained, may be limited in scope. In particular, regulatory approvals may restrict the marketing of a product to specific uses. Approved drugs, as well as their manufacturers, are subject to ongoing review (including requirements and restrictions related to record keeping and reporting, FDA, European Commission and EU Member States competent authorities' approval of certain changes in manufacturing processes or product labeling, product promotion and advertising, and pharmacovigilance, which includes monitoring and reporting adverse reactions, maintaining safety measures, and conducting dossier reviews for marketing authorization renewal). Discovery of previously unknown problems with these products may result in restrictions on their manufacture, sale or use, or in their withdrawal from the market. Failure to comply with regulatory requirements may result in criminal prosecution, civil penalties, recall or seizure of products, total or partial suspension of production or injunction, as well as other actions affecting the potential products and commercial prospects of Avadel or Avadel's pharmaceutical partners who may utilize Avadel's technologies. Any failure by Avadel or our pharmaceutical partners to comply with current or new and changing regulatory obligations, and any failure to obtain and maintain, or any delay in obtaining, regulatory approvals, could materially adversely affect our business.

The process for new drug product development and approval has many steps, including:

Chemical and Formulation Development. Pharmaceutical formulation taking into account the chemistry and physical characteristics of the drug or biological substance, is the beginning of a new product. If initial laboratory experiments reveal that the concept for a new drug product looks promising, then a variety of further development steps and tests complying with internationally recognized guidance documents will have to be continued, in order to provide for a product ready for testing in animals and, after sufficient animal test results, also in humans.

Concurrent with pre-clinical studies and clinical trials, companies must continue to develop information about the properties of the drug product and finalize a process for manufacturing the product in accordance with cGMP. The manufacturing process must be capable of consistently producing quality batches of the product, and the manufacturer must develop and validate methods for testing the quality, purity and potency of the final products. Additionally, appropriate packaging must be selected and tested, and stability studies must be conducted to demonstrate that the product does not undergo unacceptable deterioration over its shelf-life.

Pre-Clinical Testing. Once a drug candidate is identified for development, the candidate enters the pre-clinical testing stage. This includes laboratory evaluation of product chemistry and formulation, as well as animal studies of pharmacology (mechanism of action, pharmacokinetics) and toxicology which may have to be conducted over lengthy periods of time, to assess the potential safety and efficacy of the product as formulated. Pre-clinical tests must be conducted in compliance with good laboratory practice regulations, the Animal Welfare Act and its regulations in the U.S. and the Clinical Trials Directive and related national laws and guidelines in the EU Member States. Violations of these laws and regulations can, in some cases, lead to invalidation of the studies, then requiring such studies to be replicated. In some cases, long-term pre-clinical studies are conducted while clinical studies are ongoing.

Investigational New Drug Application.

*U.S.* The entire body of chemical or biochemical, pharmaceutical and pre-clinical development work necessary to administer investigational drugs to human volunteers or patients is summarized in an Investigational New Drug ("IND") application to the FDA. The IND becomes effective, if not rejected by the FDA within thirty (30) days after filing. There is no assurance that the submission of an IND will eventually allow a company to commence clinical trials. All clinical trials must be conducted under the supervision of a qualified investigator in accordance with good clinical practice regulations to ensure the quality and integrity of clinical trial results and data. These regulations include the requirement that, with limited exceptions, all subjects provide informed consent. In addition, an institutional review board ("IRB"), composed primarily of physicians and other qualified experts at the hospital or clinic where the proposed studies will be conducted, must review and approve each human study. The IRB also continues to monitor the study and must be kept aware of the study's progress, particularly as to adverse events and changes in the research. Progress reports detailing the results of the clinical trials must be submitted at least annually to the FDA and more frequently if adverse events occur. Failure to adhere to good clinical practices and the protocols, and failure to obtain IRB approval and informed consent, may result in FDA rejection of clinical trial results and data, and may delay or prevent the FDA from approving the drug for commercial use.

*European Union.* The European equivalent to the IND is the Investigational Medicinal Product Dossier ("IMPD") which likewise must contain pharmaceutical, pre-clinical and, if existing, previous clinical information on the drug substance and product. An overall risk-benefit assessment critically analyzing the non-clinical and clinical data in relation to the potential risks and benefits of the proposed trial must also be included. The intended clinical trial must be submitted for authorization by the regulatory authority(ies) of each EU Member States in which the trial is intended to be conducted prior to its commencement. The trial must be conducted in accordance with the protocol as approved by an Ethics Committee(s) in each EU Member State

(EU equivalent to IRBs). Before submitting an application to the competent authority, the sponsor must register the trial in the EudraCT database where in the U.S. it will be provided with a unique EudraCT number.

Clinical Trials. Typically, clinical testing involves the administration of the drug product first to healthy human volunteers and then to patients with conditions needing treatment under the supervision of a qualified principal investigator, usually a physician, pursuant to a 'protocol' or clinical plan reviewed by the FDA and the competent authorities of the EU Member States along with the IRB or Ethics Committee (via the IND or IMPD submission). The protocol details matter such as a description of the condition to be treated, the objectives of the study, a description of the patient population eligible for the study, and the parameters to be used to monitor safety and efficacy.

Clinical trials are time-consuming and costly, and typically are conducted in three sequential phases, which sometimes may overlap. Phase I trials consist of testing the product in a small number of patients or normal volunteers, primarily for safety, in one or more dosages, as well as characterization of a drug's pharmacokinetic and/or pharmacodynamic profile. In Phase 2, in addition to safety, the product is studied in a patient population to evaluate the product's efficacy for the specific, targeted indications and to determine dosage tolerance and optimal dosage. Phase 3 trials typically involve additional testing for safety and clinical efficacy in an expanded patient population at geographically dispersed sites. With limited exceptions, all patients involved in a clinical trial must provide informed consent prior to their participation. Meeting clinical endpoints in early stage clinical trials does not assure success in later stage clinical trials. Phase 1, 2, and 3 testing may not be completed successfully within any specified time period, if at all.

The FDA and the competent authorities of EU Member States monitor the progress of each clinical trial phase conducted under an IND or IMPD and may, at their discretion, reevaluate, alter, suspend or terminate clinical trials at any point in this process for various reasons, including a finding that patients are being exposed to an unacceptable health risk or a determination that it is unethical to continue the study. The FDA, the European Commission and the competent authorities of EU Member States can also request that additional clinical trials be conducted as a condition to product approval. The IRB, the Ethics Committee, and sponsor also may order the temporary or permanent discontinuance of a clinical trial at any time for a variety of reasons, particularly if safety concerns arise. Such holds can cause substantial delay and, in some cases, may require abandonment of product development. These clinical studies must be conducted in conformance with the FDA's bioresearch monitoring regulations, the EU Clinical Trials Directive and/or internationally recognized guidance such as the International Council for Harmonisation of Technical Requirements for Pharmaceuticals for Human Use ("ICH").

New Drug Application. After the completion of the clinical trial phases of development, if the sponsor concludes substantial evidence exists that the drug candidate is effective and that the drug is safe for its intended use, a new Drug Application ("NDA") may be submitted to the FDA. The application must contain all of the information on the drug candidate gathered to that date, including data from the pre-clinical and clinical trials, information pertaining to the preparation of the drug, analytical methods, product formulation, details on the manufacture of finished products, proposed product packaging, labeling and stability (shelf-life). NDAs are often over 100,000 pages in length. If FDA determines that a Risk Evaluation and Mitigation Strategy ("REMS") is necessary to ensure that the benefits of the drug outweigh the risks, a sponsor may be required to include as part of the application a proposed REMS, including a package insert directed to patients, a plan for communication with healthcare providers, restrictions on a drug's distribution, or a medication guide to provide better information to consumers about the drug's risks and benefits. Submission of an NDA does not assure FDA approval for marketing.

The FDA reviews all submitted NDAs before it accepts them for filing (the U.S. prerequisite for dossier review). The FDA may refuse to file the application and request additional information rather than accepting an application for filing. In this event, the application must be resubmitted with the additional information. The resubmitted application is also subject to review before the FDA accepts it for filing. Once the submission is accepted for filing, the FDA begins an in-depth review of the NDA to determine, among other things, whether a product is safe and effective for its intended use. As part of this review, the FDA may refer the application to an appropriate advisory committee, typically a panel of clinicians, for review, evaluation and a recommendation. There is a strong presumption for advisory committee review for any drug containing an active ingredient not previously approved. The FDA is not bound by the recommendation of an advisory committee. Under the Prescription Drug User Fee Act ("PDUFA"), submission of an NDA with clinical data requires payment of a fee. In return, the FDA assigns an action date of 10 months from acceptance of the application to return of a first 'complete response,' in which the FDA may approve the product or request additional information (PDUFA also provides for an expedited, six-month, "priority review" process. There can be no assurance an application will be approved within the performance goal timeframe established under PDUFA, if at all. If the FDA's evaluation of the NDA is not favorable, the FDA usually will outline the deficiencies in the submission and request additional testing or information. Notwithstanding the submission of any requested additional information, or even in lieu of asking for additional information, the FDA may decide the marketing application does not satisfy the regulatory criteria for approval and issue a complete response letter, communicating the Agency's decision not to approve the application.

FDA approval of an NDA will be based, among other factors, on the Agency's review of the pre-clinical and clinical data submitted, a risk/benefit analysis of the product, and an evaluation of the manufacturing processes and facilities. Data obtained from clinical activities are not always conclusive and may be susceptible to varying interpretations, which could delay, limit or prevent regulatory approval. The FDA has substantial discretion in the approval process and may disagree with an applicant's interpretation of the data submitted in its NDA. For instance, FDA may require Avadel to provide data from additional preclinical studies or clinical trials to support approval of certain development steps or the NDA itself. Among the conditions for NDA approval is the requirement that each prospective manufacturer's quality control and manufacturing procedures conform to cGMP standards and requirements. Manufacturing establishments often are subject to Pre-Approval Inspections prior to NDA approval to assure compliance with cGMP manufacturing commitments made in the relevant marketing application.

Patent Restoration and Exclusivity. The Drug Price Competition and Patent Term Restoration Act of 1984, or the Hatch-Waxman Act, establishes two abbreviated approval pathways for drug products that are in some way follow-on versions of already approved products.

*Generic Drugs*. A generic version of an approved drug is approved by means of an Abbreviated New Drug Application ("ANDA"), by which the sponsor demonstrates the proposed product is the same as the approved, brand-name drug, which is referred to as the "Reference Listed Drug" ("RLD"). Generally, an ANDA must contain data and information showing the proposed generic product and RLD (1) have the same active ingredient, in the same strength and dosage form, to be delivered via the same route of administration, (2) are intended for the same uses, and (3) are bioequivalent. This is instead of independently demonstrating the proposed product's safety and effectiveness, which are inferred from the product being the same as the RLD, which the FDA previously found to be safe and effective.

*505(b)(2) NDAs*. If a product is similar, but not identical, to an already approved product, it may be submitted for approval via an NDA under Section 505(b)(2) of the Act. Unlike an ANDA, this does not excuse the sponsor from demonstrating the proposed product's safety and effectiveness. Rather, the sponsor is permitted to rely to some degree on published scientific literature and the FDA's finding that the RLD is safe and effective, and must submit its own data of safety and effectiveness to an extent necessary because of the differences between the products.

*RLD Patents*. An NDA sponsor must advise the FDA about patents that claim the drug substance or drug product or a method of using the drug. When the drug is approved, those patents are among the information about the product that is listed in the FDA publication, Approved Drug Products with Therapeutic Equivalence Evaluations, which is referred to as the "Orange Book". The sponsor of an ANDA or 505(b)(2) application seeking to rely on an approved product as the RLD must make one of several certifications regarding each listed patent. A "Paragraph III" certification is the sponsor's statement that it will wait for the patent to expire before obtaining approval for its product. A "Paragraph IV" certification is a challenge to the patent; it is an assertion that the patent does not block approval of the later product, because the patent is invalid, unenforceable, and/or not infringed by the new product.

Once the FDA accepts for filing an ANDA or 505(b)(2) application containing a Paragraph IV certification, the applicant must within 20 days provide notice to the RLD NDA holder and patent owner that the application with patent challenge has been submitted, and provide the factual and legal basis for the applicant's assertion that the patent is invalid, unenforceable, or not infringed. If the NDA holder or patent owner file suit against the ANDA or 505(b)(2) applicant for patent infringement within 45 days of receiving the Paragraph IV notice, the FDA is prohibited from approving the ANDA or 505(b)(2) application for a period of 30 months from the date of receipt of the notice. If the RLD has new chemical entity ("NCE") exclusivity and the notice is given and suit filed during the fifth year of exclusivity, the 30-month stay does not begin until five years after the RLD approval. The FDA may approve the proposed product before the expiration of the 30-month stay i) if a court finds the patent invalid, unenforceable, or not infringed, ii) if the court shortens the period because the parties have failed to cooperate in expediting the litigation, or iii) if the parties reach a settlement agreement and notify the FDA of same.

As an alternative to Paragraph IV certification, and only with respect to method of use patents, an applicant can 'carve around' a "Patent Use Code" associated with a particular patent in the FDA's Orange Book. A Patent Use Code is supposed to describe an indication/use of the RLD that is i) set forth in the RLD label and ii) covered by the corresponding method of use patent. As such, in lieu of a Paragraph IV certification, an applicant can demonstrate to the FDA that its proposed label does not include the method of use described by the RLD's Patent Use Code for the corresponding method of use patent and, thus, 'carve around' that Patent Use Code. If a 'carve around' is successful, the notice requirement and 30-month stay on FDA approval of the application described above with respect to a Paragraph IV certification for that particular method of use patent does not apply.

*Regulatory Exclusivities*. The Hatch-Waxman Act may provide periods of regulatory exclusivity for products that would serve as RLDs. If a product is a "new chemical entity," or NCE, - generally meaning that the active moiety has never before been approved in any drug - there may be a period of five years from the product's approval during which the FDA may not accept for filing any ANDA or 505(b)(2) application for a drug with the same active moiety. An ANDA or 505(b)(2) application may be submitted after four years, however, if the sponsor makes a Paragraph IV certification challenging a listed patent.

An RLD that is not an NCE may qualify for a three-year period of exclusivity, if the NDA contains clinical data necessary for approval. In that instance, the exclusivity period does not preclude filing or review of the ANDA or 505(b)(2) application; rather, the FDA is precluded from granting final approval to the ANDA or 505(b)(2) application until three years after approval of the RLD. Additionally, the exclusivity applies only to the conditions of approval that required submission of the clinical data. For example, if an NDA is submitted for an RLD that is not an NCE, but that seeks approval for a new indication, and clinical data were required to demonstrate the safety or effectiveness of the RLD for that use, the FDA could not approve an ANDA or 505(b)(2) application for another product with that active moiety for that use. For example, Coreg CR™ received three-year exclusivity for the clinical trials that demonstrated the safety and efficacy of the new, controlled-release dosage form; that exclusivity, which has expired, blocked other controlled-release products.

For a brief discussion of potential marketing exclusivity that could be available under certain conditions with respect to Avadel's lead product candidate FT218, please see the information set forth under the caption "Risks Related to Regulatory and Legal Matters – If FT218 is approved by the FDA, we may not obtain orphan drug marketing exclusivity" in the "Risk Factors" included in Part I, Item 1A of this Annual Report on Form 10-K.

Patent Term Restoration. Under the Hatch-Waxman Act, a portion of the patent term lost during product development and FDA review of an NDA or 505(b)(2) application is restored if approval of the application is the first permitted commercial marketing of a drug containing the active ingredient. The patent term restoration period is generally one-half the time between the effective date of the IND and the date of submission of the NDA, plus the time between the date of submission of the NDA and the date of FDA approval of the product. The maximum period of restoration is five years, and the patent cannot be extended to more than 14 years from the date of FDA approval of the product. Only one patent claiming each approved product is eligible for restoration and the patent holder must apply for restoration within 60 days of approval. The USPTO, in consultation with the FDA, reviews and approves the application for patent term restoration. In the event that Avadel applies for patent term extensions on patents covering Avadel's products, the FDA and the USPTO may not agree with Avadel's assessment of whether such extensions are available, and may refuse to grant extensions to Avadel's patents, or may grant more limited extensions than Avadel requests. Moreover, Avadel may not receive an extension because of, for example, failing to apply within applicable deadlines, failing to apply prior to expiration of relevant patents or otherwise failing to satisfy applicable requirements.

Regulation of Combination Drugs. Medical products containing a combination of drugs, biologic, or device products may be regulated as 'combination products' in the U.S. A combination product generally is defined as a product comprising components from two or more regulatory categories (*e.g.*, drug/device, device/biologic, drug/biologic). Each component of a combination product is subject to the requirements established by the FDA for that type of component, whether a drug, biologic or device.

To determine which FDA center or centers will review a combination product submission, companies may submit a request for assignment to the FDA. Those requests may be handled formally or informally. In some cases, jurisdiction may be determined informally based on FDA experience with similar products. However, informal jurisdictional determinations are not binding on the FDA. Companies also may submit a formal Request for Designation to the FDA Office of Combination Products. The Office of Combination Products will review the request and make its jurisdictional determination within 60 days of receiving a Request for Designation.

In order to facilitate pre-market review of combination products, the FDA designates one of its centers to have primary jurisdiction for the pre-market review and regulation of both components. The determination whether a product is a combination product or two separate products is made by the FDA on a case-by-case basis. It is possible that Avadel's delivery platforms, when coupled with a drug or medical device component, could be considered and regulated by the FDA as a combination product.

If the primary mode of action is determined to be a drug, the product will be reviewed by the Center for Drug Evaluation and Research ("CDER") either in consultation with another center or independently. If the primary mode of action is determined to be a medical device, the product would be reviewed by Center for Devices and Radiological Health ("CDRH") either in consultation with another center, such as CDER, or independently. In addition, FDA could determine that the product is a

biologic and subject to the jurisdiction of the Center for Biologic Evaluation and Research ("CBER"), although it is also possible that a biological product will be regulated by CDER.

Marketing Approval and Reporting Requirements. If the FDA approves an NDA, the product becomes available for physicians to prescribe. The FDA may require post-marketing studies, also known as Phase IV studies, as a condition of approval to develop additional information regarding the safety of a product. These studies may involve continued testing of a product and development of data, including clinical data, about the product's effects in various populations and any side effects associated with long-term use. After approval, the FDA may require post-marketing studies or clinical trials, as well as periodic status reports, if new safety information develops. These post-marketing studies may include clinical trials to investigate known serious risks or signals of serious risks or identify unexpected serious risks. Failure to conduct these studies in a timely manner may result in substantial civil fines and can result in withdrawal of approval. Avadel has several Phase IV obligations with its current approvals.

In addition, the FDA may require distribution to patients of a medication guide such as a Risk Evaluation and Mitigation Strategies ("REMS") for prescription products that the agency determines pose a serious and significant health concern in order to provide information necessary to patients' safe and effective use of such products. We expect our FT218 product, if approved by the FDA will be subject to a REMS program.

In the European Union, the marketing authorization of a medicinal product may be made conditional on the conduct of Phase IV post-marketing studies. Failure to conduct these studies in relation to centrally authorized products can lead to the imposition of substantial fines. Moreover, Phase IV studies are often conducted by companies in order to obtain further information on product efficacy and positioning on the market in view of competitors and to assist in application for pricing and reimbursement.

Other Post-Marketing Obligations. Any products manufactured and/or distributed pursuant to FDA approvals are subject to continuing regulation by the FDA, including recordkeeping requirements, reporting of adverse experiences with the product, submitting other periodic reports, drug sampling and distribution requirements, notifying the FDA and gaining its approval of certain manufacturing or labeling changes, complying with certain electronic records and signature requirements, submitting periodic reports to the FDA, maintaining and providing updated safety and efficacy information to the FDA, and complying with FDA promotion and advertising requirements. For example, the FDA has required Avadel to conduct post-marketing clinical and non-clinical studies for several of its products completed between 2016 and 2019.

Drug manufacturers and their subcontractors are required to register their establishments with the FDA and certain state agencies, and to list their products with the FDA. The FDA periodically inspects manufacturing facilities in the U.S. and elsewhere in order to assure compliance with the applicable cGMP regulations and other requirements. Facilities also are subject to inspections by other U.S. federal, foreign, state or local agencies. In complying with the cGMP regulations, manufacturers must continue to expend time, money and effort in recordkeeping and quality control to assure that the product meets applicable specifications and other post-marketing requirements. Failure of Avadel or its licensees to comply with FDA's cGMP regulations or other requirements could have a significant adverse effect on Avadel's business, financial condition and results of operations.

Also, newly discovered or developed safety or efficacy data may require changes to a product's approved labeling, including the addition of new warnings and contraindications, additional pre-clinical or clinical studies, or even in some instances, revocation or withdrawal of the approval. Violations of regulatory requirements at any stage, including after approval, may result in various adverse consequences, including the FDA's delay in approving or refusal to approve a product, withdrawal or recall of an approved product from the market, other voluntary or FDA-initiated action that could delay or restrict further marketing, and the imposition of civil fines and criminal penalties against the manufacturer and NDA holder. In addition, later discovery of previously unknown problems may result in restrictions on the product, manufacturer or NDA holder, including withdrawal of the product from the market. Furthermore, new government requirements may be established that could delay or prevent regulatory approval of Avadel's products under development, or affect the conditions under which approved products are marketed.

The Food and Drug Administration Amendments Act of 2007 ("FDAAA") provides the FDA with expanded authority over drug products after approval. This legislation enhances the FDA's authority with respect to post-marketing safety surveillance, including, among other things, the authority to require additional post-marketing studies or clinical trials, labeling changes as a result of safety findings, registering clinical trials, and making clinical trial results publicly available.

In the European Union, stringent pharmacovigilance regulations oblige companies to appoint a suitably qualified and experienced Qualified Person resident in the European Economic Area, to prepare and submit to the competent authorities

adverse event reports within specific time lines, prepare Periodic Safety Update Reports ("PSURs") and provide other supplementary information, report to authorities at regular intervals and take adequate safety measures agreed with regulatory agencies as necessary. Failure to undertake these obligations can lead to the imposition of substantial fines.

***Other Regulation***

Controlled Substances Act. Narcotics and other APIs, such as sodium oxybate and ephedrine sulfate are "controlled substances" under the Controlled Substances Act. The U.S. federal "Controlled Substances Act" ("CSA"), Title II of the Comprehensive Drug Abuse Prevention and Control Act of 1970, regulates the manufacture and distribution of narcotics and other controlled substances, including stimulants, depressants and hallucinogens in the U.S. The CSA is administered by the "Drug Enforcement Administration" ("DEA"), a division of the U.S. Department of Justice, and is intended to prevent the abuse or diversion of controlled substances into illicit channels of commerce. Avadel had several products marketed under this Act and have at least one product under development.

Any person or firm that manufactures, distributes, dispenses, imports, or exports any controlled substance (or proposes to do so) must register with the DEA. The applicant must register for a specific business activity related to controlled substances, including manufacturing or distributing, and may engage in only the activity or activities for which it is registered. The DEA conducts periodic inspections of registered establishments that handle controlled substances and allots quotas of controlled drugs to manufacturers and marketers' failure to comply with relevant DEA regulations, particularly as manifested in the loss or diversion of controlled substances, can result in regulatory action including civil penalties, refusal to renew necessary registrations, or proceedings to revoke those registrations. In certain circumstances, violations can lead to criminal prosecution. In addition to these federal statutory and regulatory obligations, there may be state and local laws and regulations relevant to the handling of controlled substances or listed chemicals.

cGMP. Current Good Manufacturing Practices rules apply to the manufacturing of drugs and medical devices. In addition to regulations enforced by the FDA, Avadel is also subject to French, U.S. and other countries' rules and regulations governing permissible laboratory activities, waste disposal, handling of toxic, dangerous or radioactive materials and other matters. Avadel's R&D involves the controlled use of hazardous materials, chemicals, viruses and various radioactive compounds. Although Avadel believes that its safety procedures for handling and disposing of such materials comply with the standards prescribed by French, EU, U.S. and other foreign rules and regulations, the risk of accidental contamination or injury from these materials cannot be completely eliminated.

Health Care Fraud and Abuse. Avadel is subject to a number of federal and state laws pertaining to health care "fraud and abuse," such as anti-kickback and false claims laws. Under anti-kickback laws, it is illegal for a prescription drug manufacturer to solicit, offer, receive, or pay any remuneration in exchange for, or to induce, the referral of business, including the purchase or prescription of a particular drug. Due to the breadth of the statutory provisions and the absence of guidance via regulations and that there are few court decisions addressing industry practices, it is possible that Avadel's practices might be challenged under anti-kickback or similar laws. False claims laws prohibit anyone from knowingly and willingly presenting, or causing to be presented for payment to third-party payors (such as the Medicare and Medicaid programs) claims for reimbursed drugs or services that are false or fraudulent, claims for items or services not provided as claimed, or claims for medically unnecessary items or services. Avadel's sales and marketing activities relating to its products could be subject to scrutiny under these laws. Violations of fraud and abuse laws may be punishable by criminal and/or civil sanctions, including fines and civil monetary penalties, the possibility of exclusion from federal health care programs (including Medicare and Medicaid) and corporate integrity agreements, which impose, among other things, rigorous operational and monitoring requirements on companies. In addition, similar sanctions and penalties can be imposed upon executive officers and employees, including criminal sanctions against executive officers. As a result of the potential penalties that can be imposed on companies and individuals if convicted, allegations of such violations often result in settlements even if the company or individual being investigated admits no wrongdoing. Settlements often include significant civil sanctions, including fines and civil monetary penalties, and corporate integrity agreements. If the U.S. government were to allege or convict Avadel or its executive officers of violating these laws, Avadel's business could be harmed. In addition, private individuals have the ability to bring similar actions. In addition to the reasons noted above, Avadel's activities could be subject to challenge due to the broad scope of these laws and the increasing attention being given to them by law enforcement authorities. There also are an increasing number of U.S. federal and state laws that require manufacturers to make reports to states on pricing, marketing information, and payments and other transfers of value to healthcare providers. Many of these laws contain ambiguities as to what is required to comply with the laws. Given the lack of clarity in laws and their implementation, Avadel's reporting actions could be subject to the penalty provisions of the pertinent authorities.

Healthcare Privacy and Security Laws. Avadel may be subject to, or its marketing activities may be limited by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as amended by the Health Information Technology and

Clinical Health Act and their respective implementing regulations, which established uniform standards for certain "covered entities" (healthcare providers, health plans and healthcare clearinghouses) governing the conduct of certain electronic healthcare transactions and protecting the security and privacy of protected health information. Among other things, HIPAA's privacy and security standards are directly applicable to "business associates" – independent contractors or agents of covered entities that create, receive, maintain or transmit protected health information in connection with providing a service for or on behalf of a covered entity. In addition to possible civil and criminal penalties for violations, state attorney generals are authorized to file civil actions for damages or injunctions in U.S. federal courts to enforce HIPAA and seek attorney's fees and costs associated with pursuing federal civil actions. In addition, state laws govern the privacy and security of health information in certain circumstances, many of which differ from each other in significant ways and may not have the same effect, thus complicating compliance efforts. In the EU/EEA, Directive 95/46/EEC (as amended) or its successor applies to identified or identifiable personal data processed by automated means (*e.g.*, a computer database of customers) and data contained in, or intended to be part of, non-automated filing systems (traditional paper files) as well as transfer of such data to a country outside of the EU/EEA.

"Sunshine" and Marketing Disclosure Laws. There are an increasing number of U.S. federal and state "sunshine" laws that require pharmaceutical manufacturers to make reports to states on pricing and marketing information. Several U.S. states have enacted legislation requiring pharmaceutical companies to, among other things, establish marketing compliance programs, file periodic reports with the state, and make periodic public disclosures on sales and marketing activities, and prohibiting certain other sales and marketing practices. In addition, a similar recently implemented federal requirement requires manufacturers, including pharmaceutical manufacturers, to track and report to the federal government certain payments and other transfers of value made to physicians and other healthcare professionals and teaching hospitals and ownership or investment interests held by physicians and their immediate family members. The U.S. federal government began disclosing the reported information on a publicly available website in 2014. These laws may adversely affect Avadel's sales, marketing, and other activities with respect to its medicines in the U.S. by imposing administrative and compliance burdens on us. If Avadel fails to track and report as required by these laws or otherwise comply with these laws, it could be subject to the penalty provisions of the pertinent U.S. state and federal authorities.

Government Price Reporting. For those marketed medicines which are covered in the U.S. by the Medicaid programs, Avadel has various obligations, including government price reporting and rebate requirements, which generally require medicines be offered at substantial rebates/discounts to Medicaid and certain purchasers (including "covered entities" purchasing under the 340B Drug Discount Program). Avadel is also required to discount such medicines to authorized users of the Federal Supply Schedule of the General Services Administration, under which additional laws and requirements apply. These programs require submission of pricing data and calculation of discounts and rebates pursuant to complex statutory formulas, as well as the entry into government procurement contracts governed by the Federal Acquisition Regulations, and the guidance governing such calculations is not always clear. Compliance with such requirements can require significant investment in personnel, systems and resources, but failure to properly calculate Avadel's prices, or offer required discounts or rebates could subject it to substantial penalties. One component of the rebate and discount calculations under the Medicaid and 340B programs, respectively, is the "additional rebate", a complex calculation which is based, in part, on the rate at which a branded drug price increases over time more than the rate of inflation (based on the CPI-U). This comparison is based on the baseline pricing data for the first full quarter of sales associated with a branded drug's NDA, and baseline data cannot generally be reset, even on transfer of the NDA to another manufacturer. This "additional rebate" calculation can, in some cases where price increases have been relatively high versus the first quarter of sales of the NDA, result in Medicaid rebates up to 100 percent of a drug's "average manufacturer price" and 340B prices of one penny.

***Healthcare Reimbursement***

In both U.S. and non-U.S. markets, sales of Avadel's potential products as well as products of pharmaceutical and biotechnology companies that incorporate Avadel's technology into their products, if any, will depend in part on the availability of reimbursement by third-party payers, such as government health administration authorities, private health insurers and other organizations. The U.S. market for pharmaceutical products is increasingly being shaped by managed care organizations, pharmacy benefit managers, cooperative buying organizations and large drugstore chains. Third-party payers are challenging the price and cost effectiveness of medical products and services. Uncertainty particularly exists as to the reimbursement status of newly approved healthcare products. There can be no assurance reimbursement will be available to enable Avadel to maintain price levels sufficient to realize an appropriate return on our product development investment. Legislation and regulations affecting the pricing of pharmaceuticals may change before Avadel's proposed products are approved for marketing and any such changes could further limit reimbursement for medical products and services.

**Human Capital Resources**

As of December 31, 2020, we had approximately 32 employees, all of which were full-time. None of our employees are subject to a union or other collective bargaining agreement. We believe that our relations with our employees are satisfactory.

At Avadel, the way we work is as important as the results we achieve. Avadel is patient-focused, results-oriented, resilient, and ethical (the "Avadel Values"). In everything we do, we live the Avadel Values. We provide reimbursement to our employees for seminars, conferences and educational and professional training. In alignment with our business strategy, it is our goal to empower all employees to take full advantage of their professional growth opportunities, to lead them to long-term job satisfaction and organizational success. Through professional development, our employees can broaden their skills for their current and future roles.

Our commitment to our employees includes benefit and compensation programs that value the contributions our employees make. We strive to provide pay, benefits, and services that are competitive and create incentives to attract and retain employees. In addition to competitive pay, we offer bonus and stock-based compensation packages for all levels of employees within the organization as well as a company match for employee retirement programs. We also offer competitive health, dental and life insurance and vacation pay, for all employees.

We expect to add employees in 2021 in anticipation of the potential launch of FT218, pending FT218's approval by the FDA.

**Item 1A. Risk Factors.**

*An investment in Avadel involves a high degree of risk. You should carefully consider the risks described below, as well as the other information included or incorporated by reference in this Annual Report on Form 10-K, before making an investment decision. Avadel's business, financial condition, results of operations and cash flows could be materially adversely affected by any of these risks. The market or trading price of Avadel's securities could decline due to any of these risks. In addition, please read "Cautionary Disclosure Regarding Forward-Looking Statements" in this Annual Report on Form 10-K, where we describe additional uncertainties associated with Avadel's business and with the forward-looking statements included or incorporated by reference in this Annual Report on Form 10-K. Please note that additional risks not presently known to us or that we currently deem immaterial may also impair Avadel's business and operations.*

**Risks Related to Our Product Candidate and Future Product Candidates and Clinical Development**

***Our product candidate and future product candidates will generally be subject to regulatory approval. If we or our pharmaceutical and biotechnology company partners do not obtain such approvals, or if such approvals are delayed, our ability to generate future revenues may be adversely affected.***

Our lead product candidate, FT218, as well as product candidates we may wish to market in the future, may not gain regulatory approval and reach the commercial market for a variety of reasons. We submitted a NDA, for FT218 in December 2020. In February 2021, the FDA assigned FT218 a PDUFA target action date of October 15, 2021.

In the U.S., federal, state and local government agencies, primarily the FDA, regulate all pharmaceutical products, including existing products and those under development. Neither we nor our pharmaceutical and biotechnology partners can control whether we obtain regulatory approval for any of these products or, if obtained, the timing thereof. There may be significant delays in expected product releases while attempting to obtain regulatory approval for products incorporating our technologies. If we or our partners are not successful in timely obtaining such approvals, our revenues and profitability may decline.

Applicants for FDA approval often must submit to the FDA extensive clinical and pre-clinical data, as well as information about product manufacturing processes and facilities and other supporting information. Varying interpretations of the data obtained from pre-clinical and clinical testing could delay, limit or prevent regulatory approval of a drug product. The FDA also may require us, or our partners to conduct additional pre-clinical studies or clinical trials.

Similarly, although we anticipate submitting applications for approval for our development products that rely on existing data to demonstrate safety and effectiveness, the FDA may determine that additional studies particular to our product candidate and future product candidates are necessary. If the FDA requires such additional studies, it would impact development plans for those products.

Changes in FDA approval policy during the development period, or changes in regulatory review for each submitted new product application, also may delay an approval or result in rejection of an application. For instance, under the FDAAA, we or our partners may be required to develop REMS to ensure the safe use of our lead product candidate. If the FDA disagrees with such REMS proposals, it may be more difficult and costly to obtain regulatory approval for our lead product candidate. Similarly, FDAAA provisions may make it more likely that the FDA will refer a marketing application for a new product to an advisory committee for review, evaluation and recommendation as to whether the application should be approved. This review may add to the time for approval, and, although the FDA is not bound by the recommendation of an advisory committee, objections or concerns expressed by an advisory committee may cause the FDA to delay or deny approval.

The FDA has substantial discretion in the approval process and may disagree with our or our partners' interpretations of data and information submitted in an application, which also could cause delays of an approval or rejection of an application. Even if the FDA approves a product, the approval may limit the uses or indications for which the product may be marketed, restrict distribution of the product or require further studies.

The FDA may also withdraw product approvals for failure to comply with regulatory requirements or if problems follow initial marketing. In the same way, medicinal products for supply on the EU market are subject to marketing authorization by either the European Commission, following an opinion by the European Medicines Agency ("EMA"), or by the competent authorities of EU Member States. Applicants for marketing authorization must submit extensive technical and clinical data essentially in the form of the ICH Common Technical Document. The data is subject to extensive review by the competent authorities, and after such review the data may be considered inappropriate or insufficient. If applications for marketing authorization by pharmaceutical and biotechnology company partners are delayed or rejected, if the therapeutic indications for which the product is approved are limited, or if conditional marketing authorization imposing post-marketing clinical trials or surveillance is

imposed, our revenues, operating results and liquidity may decline and earnings may be negatively impacted.

***We must invest substantial sums in research and development ("R&D") in order to remain competitive, and we may not fully recover these investments.***

To be successful in the highly-competitive pharmaceutical industry, we must commit substantial resources each year to R&D in order to develop new products and enhance our technologies. In 2020, we spent $20,442 on R&D, the majority of which was on our lead product candidate, FT218. Our ongoing investments in R&D for FT218 as well as possible future products could result in higher costs without a proportionate increase, or any increase, in revenues. The R&D process is lengthy and carries a substantial risk of failure. If our R&D does not yield sufficient products that achieve commercial success, our future operating results will be adversely affected.

**Risks Related to Regulation**

***Our product candidate and future product candidates may not reach the commercial market for a number of reasons.***

Drug development is an inherently uncertain process with a high risk of failure at every stage of development. Successful R&D of pharmaceutical products is difficult, expensive and time consuming. Many product candidates fail to reach the market. Our success will depend on the development and the successful commercialization of new drugs and products that utilize our drug delivery technologies.

Even if our product candidates and current drug delivery technologies appear promising during development, there may not be successful commercial applications developed for them for a number of reasons, including:

- the FDA, the EMA, the competent authority of an EU Member State or an Institutional Review Board ("IRB"), or an Ethics Committee (EU equivalent to IRB), or our partners may delay or halt applicable clinical trials;
- we or our partners may face slower than expected rate of patient recruitment and enrollment in clinical trials, or may devote insufficient funding to the clinical trials;
- our drug delivery technologies and drug products may be found to be ineffective or to cause harmful side effects, or may fail during any stage of pre-clinical testing or clinical trials;
- we or our partners may find that certain products cannot be manufactured on a commercial scale and, therefore, may not be economical or feasible to produce;
- we or our partners may face delays in completing our clinical trials due to circumstances outside of our control, including natural disasters, labor or civil unrest, global health concerns or pandemics or acts of war or terrorism; or
- our product candidate and future product candidates could fail to obtain regulatory approval or, if approved, could fail to achieve market acceptance, could fail to be included within the pricing and reimbursement schemes of the U.S. or EU Member States, or could be precluded from commercialization by proprietary rights of third parties.

***Disruptions at the FDA, the U.S. Drug Enforcement Administration and other government agencies caused by funding shortages or global health concerns could hinder their ability to hire and retain key leadership and other personnel, prevent new products and services from being developed or commercialized in a timely manner or otherwise prevent those agencies from performing normal business functions on which the operation of our business may rely, which could negatively impact our business.***

As of June 23, 2020, the FDA noted it was continuing to ensure timely reviews of applications for medical products during the COVID-19 pandemic in line with its user fee performance goals and conducting mission critical U.S. and non-U.S. inspections to ensure compliance of manufacturing facilities with FDA quality standards. However, the FDA may not be able to maintain this pace and delays or setbacks are possible in the future. On July 10, 2020, the FDA announced its goal of restarting domestic on-site inspections during the week of July 20, but such activities will depend on data about the virus' trajectory in a given state and locality and the rules and guidelines that are put in place by state and local governments. The FDA has developed a rating system to assist in determining when and where it is safest to conduct prioritized domestic inspections. Should the FDA determine that an inspection is necessary for approval and an inspection cannot be completed during the review cycle due to restrictions on travel, the FDA has stated that it generally intends to issue a complete response letter. Further, if there is inadequate information to make a determination on the acceptability of a facility, the FDA may defer action on the application until an inspection can be completed. In 2020, several companies announced receipt of complete response letters due to the FDA's inability to complete required inspections for their applications. Regulatory authorities outside the U.S. may adopt similar restrictions or other policy measures in response to the COVID-19 pandemic and may experience delays in their regulatory activities. We cannot guarantee that the FDA will be able to complete any required inspections or take other necessary actions in respect to our product candidate or future product candidates.

***Our product candidate and future product candidates, if approved by the FDA, may not obtain desired regulatory exclusivities, including orphan drug exclusivity.***

Orphan drug status may be granted by the FDA to certain products intended to treat diseases and conditions that affect fewer than 200,000 individuals in the U.S. or, if they affect more than 200,000 individuals in the U.S., there is no reasonable expectation of recovering the cost of developing and making the product available in the U.S. for the applicable disease or condition.

Our lead product candidate, FT218, obtained orphan drug designation for the treatment of narcolepsy from the FDA in January 2018. Generally, a product with orphan drug designation that subsequently receives the first FDA approval for the disease or condition for which it has such designation will be entitled to certain U.S. marketing exclusivity for a period of seven years. FT218 would not be the first sodium oxybate product with such FDA approval. However, if the FDA concludes that FT218 is clinically superior in that it is shown to be safer, more effective or makes a major contribution to patient care, the FDA could award FT218 with such marketing exclusivity. A designated orphan drug may not however receive orphan drug exclusivity. Among other factors, the FDA will consider the results of our FT218 Phase 3 clinical trial with respect to the efficacy and safety of the previously approved sodium oxybate product. Thus, there can be no assurance that FT218 will receive orphan drug status exclusivity, if approved. In addition, even if such orphan drug marketing exclusivity rights were granted by the FDA, such exclusivity rights may be lost if the FDA later determines that our request for such designation was materially defective or if the manufacturer is unable to assure sufficient quantity of the drug to meet the needs of patients with the rare disease or condition to be treated with the product. Further, even with respect to the indications for which we have received orphan designation, we may not be the first to obtain marketing approval for any particular orphan indication due to the uncertainties associated with developing pharmaceutical products, and thus, for example, approval of our lead product candidate could be blocked for seven years if another company previously obtained approval and orphan drug exclusivity in the U.S. for the same drug and same condition.

***We are subject to U.S. federal and state and international laws and regulations prohibiting "kickbacks" and false claims that, if violated, could subject us to substantial penalties, and any challenges to or investigation into our practices under these laws could cause adverse publicity and be costly to respond to, and thus could harm our business.***

We are subject to extensive and complex U.S. federal and state and international laws and regulations, including but not limited to, healthcare "fraud and abuse" laws, such as anti-kickback and false claims laws and regulations pertaining to government benefit program reimbursement, price reporting and regulations, and sales and marketing practices. These laws and regulations are broad in scope and subject to evolving interpretations, which could require us to incur substantial costs associated with compliance or to alter one or more of our sales or marketing practices. In addition, violations of these laws, or allegations of such violations, could disrupt our business and result in a material adverse effect on our revenues, profitability, and financial condition. In the current environment, there appears to be a greater risk of investigations of possible violations of these laws and regulations. This increased risk is reflected by recent enforcement activity and pronouncements by the US Office of Inspector General of the Department of Health and Human Services that it intends to continue to vigorously pursue fraud and abuse violations by pharmaceutical companies, including through the potential to impose criminal penalties on pharmaceutical company executives. If any such actions are instituted against us, and we are not successful in defending ourselves or asserting our rights, those actions could have a significant impact on our business, including the imposition of significant fines or other sanctions.

***Healthcare reform and restrictions on reimbursements may limit our financial returns.***

Our ability to successfully commercialize our product candidate and future product candidates and technologies, if approved, may depend on the extent to which the government health administration authorities, the health insurance funds in the EU Member States, private health insurers and other third-party payor in the U.S. will reimburse consumers for the cost of these products, which would affect the volume of drug products sold by pharmaceutical and biotechnology companies that incorporate our technology into their products. Third party payor are increasingly challenging both the need for, and the price of, novel therapeutic drugs and uncertainty exists as to the reimbursement status of newly approved therapeutics. The commercial success of our product candidate and future product candidates, if approved, depends in part on the conditions under which products incorporating our technology are reimbursed. Adequate third-party reimbursement may not be available for such drug products to enable us to maintain price levels sufficient to realize an appropriate return on our investments in research and product development, which could materially and adversely affect our business. We cannot predict the effect that changes in the healthcare system, especially cost containment efforts, may have on our business. Any changes or changes due to future legislation governing the pricing and reimbursement of healthcare products in the EU Member States may adversely affect our business.

***Regulatory reforms may adversely affect our ability to sell our future products profitably.***

From time to time, the U.S. Congress, the Council of the European Union and the European Parliament, as well as the legislators of the EU Member States, adopt changes to the statutes that the FDA, the European Commission and the competent authorities of the EU Member States enforce in ways that could significantly affect our business. In addition, the FDA, the European Commission and the competent authorities of the EU Member States often issue new regulations or guidance, or revise or reinterpret their current regulations and guidance in ways that may significantly affect our business and our product candidate and future product candidates. It is impossible to predict whether legislative changes will be enacted or FDA, EU or EU Member State's regulations, guidance or interpretations changed, and what the impact of any such changes may be. Any such changes could have a significant impact on the path to approval of our proposed products or of competing products, and on our obligations and those of our pharmaceutical industry partners.

***Even if we receive marketing approval for our product candidates in the U.S., we may never seek or receive regulatory approval to market our product candidates outside of the U.S., or receive pricing and reimbursement outside the U.S. at acceptable levels. We cannot be certain that we will be able, or willing, to support the submission of a marketing authorization application, or MAA, to the EMA for FT218, or that we will decide to file an MAA with the EMA, or that any such MAA will ever be approved.***

Even if we receive marketing approval for FT218 or any of our other product candidates in the U.S., we may not seek, or may seek but never receive, regulatory approval to market our product candidates outside of the U.S. or in any particular country or region, including in the EU. In order to market any product outside of the U.S., we must establish and comply with the numerous and varying safety, efficacy and other regulatory requirements of other countries. Approval procedures vary among countries and can involve additional non-clinical studies or clinical trials, additional work related to manufacturing and analytical testing on controls, and additional administrative review periods. The time required to obtain approvals in other countries might differ from that required to obtain FDA approval. Marketing approval in one country does not ensure marketing approval in another, but a failure or delay in obtaining marketing approval in one country may have a negative effect on the regulatory process in other countries. The marketing approval processes in other countries may implicate all of the risks detailed above regarding FDA approval in the U.S. as well as other risks. In particular, in many countries outside of the U.S., products must receive pricing and reimbursement approval before the product can be commercialized. Obtaining this approval may require additional studies and data, and can result in substantial delays in bringing products to market in such countries and such investment may not be justified from a business standpoint given the market opportunity or level of required investment. For example, we anticipate having additional discussions with the EMA to further clarify and evaluate what additional data and information would be required and what other requirements would need to be met for a possible MAA submission for FT218 in the EU, and potential post-marketing clinical development obligations if we file an MAA and our application is approved. We may not find an acceptable regulatory path forward for FT218 in the EU. Even if after additional feedback from the EMA, we decide to generate any required additional data and information and meet any other requirements to be able to file an MAA and the MAA is approved, we may have significant post-approval obligations.

Even if we are able to successfully develop our product candidates and obtain marketing approval in a country, we may not be able to obtain pricing and reimbursement approvals in such country at acceptable levels or at all, and any pricing and reimbursement approval we may obtain may be subject to onerous restrictions such as caps or other hurdles or restrictions on reimbursement. Failure to obtain marketing and pricing approval in countries outside the U.S. without onerous restrictions or limitations related to pricing or any delay or other setback in obtaining such approval, would impair our ability to market our product candidates successfully or at all in such foreign markets. Any such impairment would reduce the size of our potential market or revenue potential, which could have a material adverse impact on our business, results of operations and prospects.
Any setback or delay in obtaining regulatory approval for our product candidates or in our ability to commence marketing of our products, if approved, may have a material adverse effect on our business and prospects.

**Risks Related to our Reliance on Third-Parties**

***We may rely on collaborations with third parties to commercialize certain of our product candidates in development and such strategy involves risks that could impair our prospects for realizing profits from such products.***

We expect that the commercialization of some of our products in development, which utilize our drug delivery technologies, may require collaboration with third-party partners involving strategic alliances, licenses, product divestitures or other arrangements. We may not be successful in entering into such collaborations on favorable terms, if at all, or our collaboration partners may not adequately perform under such arrangements, and as a result our ability to commercialize these products will be negatively affected and our prospects will be impaired.

***We depend on a single provider of certain services related to the development of our product candidate and any interruption of operations of such provider could significantly delay or have a material adverse effect on our business.***

Currently, we use a single source provider for the development, supply of clinical materials and potentially the supply of commercial batches for our lead product candidate, FT218. If the supplies of these products or materials were interrupted for any reason, including but not limited to, natural disasters, labor or civil unrest, global health concerns or pandemics or acts of war or terrorism, the manufacturing and supply of certain products could be delayed. If the supplies of these products or materials were interrupted for any reason, our manufacturing of our lead product candidate could be delayed. These delays could be extensive and expensive, especially in situations where a substitution was not readily available or required variations of existing regulatory approvals and certifications or additional regulatory approval. For example, an alternative supplier may be required to pass an inspection by the FDA, EMA or the competent authorities of EU Member States for compliance with current cGMP, requirements before supplying us with product or before we may incorporate that supplier's ingredients into the manufacturing of our product candidate by our contract, development, and manufacturing organizations ("CDMOs"). Failure to obtain adequate supplies in a timely manner could have a material adverse effect on our business, financial condition and results of operations.

***We outsource important activities to consultants, advisors and outside contractors.***

We outsource many key functions of our business and therefore rely on a substantial number of consultants, advisors and outside contractors. If we are unable to effectively manage our outsourced activities or if the quality or accuracy of the services provided by such third parties is compromised for any reason, our development activities may be extended, delayed or terminated which would have an adverse effect on our development program and our business.

***We depend on key personnel to execute our business plan. If we cannot attract and retain key personnel, we may not be able to successfully implement our business plan.***

Our success depends in large part upon our ability to attract and retain highly qualified personnel. During our operating history, we have assigned many key responsibilities within our Company to a relatively small number of individuals, each of whom has played key roles in executing various important components of our business. We do not maintain material key person life insurance for any of our key personnel. If we lose the services of Greg Divis, our Chief Executive Officer, or other members of our senior executive team, we may have difficulty executing our business plan in the manner we currently anticipate. Further, because each of our key personnel is involved in numerous roles in various components of our business, the loss of any one or more of such individuals could have an adverse effect on our business.

***Clinical development of drugs is costly and time-consuming, and the outcomes are uncertain. A failure to prove that our product candidate and future product candidates are safe and effective in clinical trials could materially and adversely affect our business, financial condition, results of operations and growth prospects.***

Clinical trials are expensive and can take many years to complete, and the outcome is uncertain. Failure can occur at any time during the clinical trial process. The results of preclinical studies and early clinical trials of potential medicine candidates may not be predictive of the results of later-stage clinical trials. Drug candidates in later stages of clinical trials may fail to show the desired safety and efficacy traits despite having progressed through preclinical studies and initial clinical testing. For example, we are currently conducting an open-label extension ("OLE")/switch study of FT218 to examine the long-term safety and maintenance of efficacy of FT218 in patients with narcolepsy who participated in our REST-ON trial, as well as dosing and preference data for patients switching from twice-nightly sodium oxybate to once-nightly FT218 regardless if they participated in REST-ON or not. If any participants in the OLE/switch study report any serious adverse events that are deemed to be related to FT218 or if FT218 is not observed to have long-term efficacy, our business, financial condition, results of operations and growth prospects could be material and adversely affected.

In addition to issues relating to the results generated in clinical trials, clinical trials can be delayed or halted for a variety of reasons, including:

- failure in obtaining regulatory approval to commence a trial;
- failure in reaching agreement on acceptable terms with prospective contract research organizations ("CROs") and clinical trial sites, the terms of which can be subject to extensive negotiation and may vary significantly among different CROs and trial sites;
- failure in obtaining institutional review board or ethics committee approval at each site;

- failure in recruiting suitable patients to participate in a trial;
- failure in having patients complete a trial or return for post-treatment follow-up;
- failure in clinical sites dropping out of a trial;
- failure in adding new sites; or
- failure in manufacturing sufficient quantities of medicine candidates for use in clinical trials.

We rely and expect to rely on CROs and clinical trial sites to ensure the proper and timely conduct of our future clinical trials and while we have and intend to have agreements governing their committed activities, we will have limited influence over their actual performance.

***We rely on third parties to conduct our clinical trials, and if they do not properly and successfully perform their contractual, legal and regulatory duties, we may not be able to obtain regulatory approvals for or commercialize our product candidate and future product candidates.***

We rely on CROs and other third parties to assist us in designing, managing, monitoring and otherwise carrying out our clinical trials, including with respect to site selection, contract negotiation and data management. We do not control these third parties and, as a result, they may not treat our clinical studies as a high priority, which could result in delays. We are responsible for confirming that each of our clinical trials is conducted in accordance with its general investigational plan and protocol, as well as the FDA's and non-U.S. regulatory agencies' requirements, commonly referred to as good clinical practices, for conducting, recording and reporting the results of clinical trials to ensure that the data and results are credible and accurate and that the trial participants are adequately protected. The FDA and non-U.S. regulatory agencies enforce good clinical practices through periodic inspections of trial sponsors, principal investigators and trial sites. If we, CROs or other third parties assisting us or our study sites fail to comply with applicable good clinical practices, the clinical data generated in our clinical trials may be deemed unreliable and the FDA or its non-U.S. counterparts may require us to perform additional clinical trials before approving our marketing applications. We cannot assure you that, upon inspection, the FDA or non-U.S. regulatory agencies will determine that any of our clinical trials comply with good clinical practices. In addition, our clinical trials must be conducted with product produced under the FDA's cGMP regulations and similar regulations outside of the U.S. Our failure, or the failure of our product suppliers, to comply with these regulations may require us to repeat or redesign clinical trials, which would delay the regulatory approval process.

If third parties do not successfully carry out their duties under their agreements with us, if the quality or accuracy of the data they obtain is compromised due to failure to adhere to our clinical protocols, including dosing requirements, or regulatory requirements, or if they otherwise fail to comply with clinical trial protocols or meet expected deadlines, our clinical trials may not meet regulatory requirements. If our clinical trials do not meet regulatory requirements or if these third parties need to be replaced, our clinical trials may be extended, delayed, suspended or terminated. If any of these events occur, we may not be able to obtain regulatory approval of our product candidate and future product candidates or succeed in our efforts to create approved line extensions for certain of our existing products or generate additional useful clinical data in support of these products.

If we or our partners, including any CDMOs that we use, fail to comply with these laws and regulations, the FDA, the European Commission, competent authorities of EU Member States, or other regulatory organizations, may take actions that could significantly restrict or prohibit commercial distribution of our product candidate, future product candidates and products that incorporate our technologies. If the FDA, the European Commission or competent authorities of EU Member States determine that we are not in compliance with these laws and regulations, they could, among other things:

- issue warning letters;
- impose fines;
- seize products or request or order recalls;
- issue injunctions to stop future sales of products;
- refuse to permit products to be imported into, or exported out of, the U.S. or the E.U.;
- suspend or limit our production;
- withdraw or vary approval of marketing applications;
- order the competent authorities of EU Member States to withdraw or vary national authorization; and
- initiate criminal prosecutions.

**Risks Related to Our Intellectual Property**

***If we cannot adequately protect our intellectual property and proprietary information, we may be unable to effectively compete.***

Our success depends, in part, on our ability to obtain and enforce patents and other intellectual property rights for our product candidate and future product candidates and technology, including our drug delivery technologies, and to preserve our trade secrets and other proprietary information. If we cannot do so, our competitors may exploit our technologies and deprive us of the ability to realize revenues and profits from our product candidate and future product candidates and technologies.

To the extent any of our product candidate and future product candidates may benefit from protections afforded by patents, we face the risk that patent law relating to the scope of claims in the pharmaceutical and biotechnology fields is continually evolving and can be the subject of uncertainty and may change in a way that would limit protection. Our patents may not be exclusive, valid or enforceable. For example, our patents may not protect us against challenges by companies that submit drug marketing applications to the FDA, or the competent authorities of EU Member States or other jurisdictions in which we may attempt to compete, in particular where such applications rely, at least in part, on safety and efficacy data from our product candidate and future product candidates. In addition, competitors may obtain patents that may have an adverse effect on our ability to conduct business, or they may discover ways to circumvent our patents. The scope of any patent protection may not be sufficiently broad to cover our product candidate and future product candidates or to exclude competing products. Any patent applications we have made or may make relating to our potential products or technologies may not result in patents being issued. Even after issuance, our patents may be challenged in the courts or patent offices in the U.S. and elsewhere. Such challenges may result in loss of exclusivity or in patent claims being narrowed, invalidated or held unenforceable, in whole or in part, which could limit our ability to stop others from using or commercializing similar or identical product candidates, or limit the duration of the patent protection of our product candidate and future product candidates. Further, patent protection once obtained is limited in time, after which competitors may use the covered product or technology without obtaining a license from us. Because of the time required to obtain regulatory marketing approval, the remaining period of effective patent protection for a marketed product is frequently substantially shorter than the full duration of the patent. While a patent term extension can be requested under certain circumstances, the grant of such a request is not guaranteed.

Our partnerships with third parties expose us to risks that they will claim intellectual property rights on our inventions or fail to keep our unpatented products or technology confidential.

***If we are unable to protect the confidentiality of our trade secrets, the value of our technology could be materially adversely affected and our business would be harmed.***

We also rely on trademarks, copyrights, trade secrets and know-how to develop, maintain and strengthen our competitive position.

To protect our product candidate, trade secrets and proprietary technologies, we rely, in part, on confidentiality agreements with our employees, suppliers, consultants, advisors and partners. These agreements may not provide adequate protection for our trade secrets and other proprietary information in the event of any unauthorized use or disclosure, or if others lawfully develop the information. If these agreements are breached, we cannot be certain we will have adequate remedies. Further, we cannot guarantee that third parties will not know, discover or independently develop equivalent proprietary information or technologies, or that they will not gain access to our trade secrets or disclose our trade secrets to the public. Therefore, we cannot guarantee we can maintain and protect unpatented proprietary information and trade secrets. Misappropriation or other loss of our intellectual property would adversely affect our competitive position and may cause us to incur substantial litigation or other costs.

***Changes in U.S. or ex-U.S. patent laws could diminish the value of patents in general, thereby impairing our ability to protect our product candidate and future product candidates.***

Changes in either the patent laws or interpretation thereof in the U.S. or in ex-U.S. jurisdictions could increase uncertainties and costs surrounding the prosecution of patent applications and the enforcement or defense of issued patents. For example, the Leahy-Smith America Invents Act of 2011 (“AIA”), changed the previous U.S. “first-to-invent” system to the current system that awards a patent to the “first-inventor-to-file” for an application for a patentable invention. This change alters the pool of available materials that can be used to challenge patents in the U.S. and limits the ability to rely on prior research to lay claim to patent rights. Under the current system, disputes are resolved through new derivation proceedings, and the AIA includes mechanisms to allow challenges to issued patents in reexamination, *inter partes* review and post grant proceedings. The AIA also includes bases and procedures that may make it easier for competitors to challenge our patents, which could result in

increased competition and have a material adverse effect on our business and results of operations. The AIA may also make it harder to challenge third-party patents and place greater importance on being the first inventor to file a patent application on an invention. The AIA amendments to patent filing and litigation procedures in the U.S. may result in litigation being more complex and expensive and divert the efforts of our technical and management personnel.

In addition, the patent positions of companies in the development and commercialization of pharmaceuticals may be particularly uncertain. Depending on future actions by the U.S. Congress, the U.S. federal courts, and the USPTO, or by similarly legislative, judicial, and regulatory authorities in other jurisdictions, the laws and regulations governing patents could change in unpredictable ways that could have a material adverse effect on our existing patent portfolio and our ability to protect and enforce our intellectual property in the future.

***Third parties may claim that our product candidate or future product candidates infringe their rights, and we may incur significant costs resolving these claims. Additionally, legal proceedings related to such claims could materially delay or otherwise adversely affect commercialization plans related to our product candidate, if approved.***

Third parties may claim infringement of their patents and other intellectual property rights by the manufacture, use, import, offer for sale or sale of our drug delivery technologies or our other products. For example, in connection with us seeking regulatory approval for a product candidate, a third party may allege that our product candidate infringes its patents or other intellectual property rights and file suit to delay/prevent regulatory approval and/or commercialization of such product. In response to any claim of infringement, we may choose or be forced to seek licenses, defend infringement actions or challenge the validity or enforceability of those patent rights in court or administrative proceedings. If we cannot obtain required licenses on commercially reasonably terms, or at all, are found liable for infringement or are not able to have such patent rights declared invalid or unenforceable, our business could be materially harmed. We may be subject to claims (and even held liable) for significant monetary damages (including enhanced damages and/or attorneys' fees), encounter significant delays in bringing products to market or be precluded from the manufacture, use, import, offer for sale or sale of products or methods of drug delivery covered by the patents of others. Even if a license is available, it may not be available on commercially reasonable terms or may be non-exclusive, which could result in our competitors gaining access to the same intellectual property. We may not have identified, or be able to identify in the future, U.S. or non-U.S. patents that pose a risk of potential infringement claims.

In addition to the possibility of intellectual property infringement claims, a third party could submit a citizen's petition to the FDA requesting relief that, if granted, could materially adversely affect the NDA and/or underlying product candidate. For example, such a third-party petition could, if granted, materially adversely affect the likelihood and/or timing of NDA approval, content of final product labeling, and/or resulting regulatory exclusivity (if any) for such product.

Parties making claims against us may be able to sustain the costs of patent litigation more effectively than we can because they have substantially greater resources. In addition, any claims, with or without merit, that our product candidate, future product candidates or drug delivery technologies infringe proprietary rights of third parties could be time-consuming, result in costly litigation or divert the efforts of our technical and management personnel, any of which could disrupt our relationships with our partners and could significantly harm our financial positions and operating results.

***If we or our partners are required to obtain licenses from third parties, our revenues and royalties on any future commercialized products could be reduced.***

The development of certain products based on our drug delivery technologies may require the use of raw materials (*e.g.*, proprietary excipient), active ingredients, drugs (*e.g.*, proprietary proteins) or technologies developed by third parties. The extent to which efforts by other researchers have resulted or will result in patents and the extent to which we or our partners are forced to obtain licenses from others, if available, on commercially reasonable terms is currently unknown. If we or our partners must obtain licenses from third parties, fees may be required for such licenses, which could reduce the net revenues and royalties we receive on any future commercialized products that incorporate our drug delivery technologies.

***Patent terms may be inadequate to protect our competitive position on our product candidate or future product candidates for an adequate amount of time.***

Patents have a limited lifespan. In the U.S., if all maintenance fees are timely paid, the natural expiration of a patent is generally 20 years from its earliest U.S. non-provisional filing date. Various extensions may be available, but the life of a patent, and the protection it affords, is limited. Even if patents covering our product candidate and future product candidates are obtained, once the patent life has expired, we may be open to competition from competitive products, including generics or biosimilars. Given the amount of time required for the development, testing and regulatory review of new product candidates, patents protecting

such candidates might expire before or shortly after such candidates are commercialized. As a result, our owned and licensed patent portfolio may not provide us with sufficient rights to exclude others from commercializing products similar or identical to ours.

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

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

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

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

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

**Risks Related to Acceptance, Sales, Marketing and Competition**

***Our future products may not gain market acceptance.***

Our future products and technologies may not gain market acceptance among physicians, patients, healthcare payor and medical communities. The degree of market acceptance of any product or technology will depend on a number of factors, including, but not limited to:

- the scope of regulatory approvals, including limitations or warnings in a product's regulatory-approved labeling; or other restrictions under a FDA Risk Evaluations and Mitigations Strategies ("REMS"), program;
- in the case of our product candidates that are controlled substances regulated by the U.S. Drug Enforcement Agency ("DEA"), scheduling classification;
- demonstration of the clinical safety and efficacy of the product or technology;
- the absence of evidence of undesirable side effects of the product or technology that delay or extend trials;
- the lack of regulatory delays or other regulatory actions;
- its cost-effectiveness and related access to payor coverage;
- its potential advantage over alternative treatment methods;
- the availability of third-party reimbursement; and

- the marketing and distribution support it receives.

If any of our future products or technologies fail to achieve market acceptance, our ability to generate revenue will be limited, which would have a material adverse effect on our business.

***If our competitors develop and market technologies or products that are safer or more effective than ours, or obtain regulatory approval and market such technologies or products before we do, our commercial opportunity will be diminished or eliminated.***

Competition in the pharmaceutical and biotechnology industry is intense and is expected to increase. We compete with academic laboratories, research institutions, universities, joint ventures and other pharmaceutical and biotechnology companies, including companies developing drug delivery technologies or niche brand or generic specialty pharmaceutical products. Some of these competitors may also be our business partners.

Our drug delivery technologies compete with technologies provided by several other companies. In particular, delivery technologies and products, could be developed that, if successful, could compete against our drug delivery technologies or future products.
Many of our competitors have substantially greater financial, technological, manufacturing, marketing, managerial and R&D resources and experience than we do. Furthermore, acquisitions of competing drug delivery companies by large pharmaceutical companies could enhance our competitors' resources. Accordingly, our competitors may succeed in developing competing technologies and products, obtaining regulatory approval and gaining market share for their products more rapidly than we do.

***Our future revenues may be negatively affected by healthcare reforms and increasing pricing pressures.***

Future prices for our pharmaceutical products, if approved, will be substantially affected by reimbursement policies of third-party payors such as government healthcare programs, private insurance plans and managed care organizations; by our contracts with the drug wholesalers who will distribute our products; and by competitive market forces generally. In recent years, third-party payors have been exerting downward pressure on prices at which products will be reimbursed, and the drug wholesale industry has been undergoing consolidation which gives greater market power to the remaining, larger drug wholesalers. Further, the trend toward increased availability of generic products has contributed to overall pricing pressures in the pharmaceutical industry. In the United States, the Medicare Modernization Act ("MMA"), contains provisions that call for the promulgation of regulations that expand pharmacists' and wholesalers' ability to import cheaper versions of an approved drug and competing products from Canada, where there are government price controls. Further, the MMA provides that these changes to U.S. importation laws will not take effect, unless and until the Secretary of the HHS certifies that the changes will pose no additional risk to the public's health and safety and will result in a significant reduction in the cost of products to consumers. On September 23, 2020, the Secretary of the HHS made such certification to Congress, and on October 1, 2020, FDA published a final rule that allows for the importation of certain prescription drugs from Canada. Under the final rule, States and Indian Tribes, and in certain future circumstances pharmacists and wholesalers, may submit importation program proposals to the FDA for review and authorization. Since the issuance of the final rule, several industry groups have filed federal lawsuits challenging multiple aspects of the final rule, and authorities in Canada have passed rules designed to safeguard the Canadian drug supply from shortages. On September 25, 2020, CMS stated drugs imported by States under this rule will not be eligible for federal rebates under Section 1927 of the Social Security Act and manufacturers would not report these drugs for "best price" or Average Manufacturer Price purposes. Since these drugs are not considered covered outpatient drugs, CMS further stated it will not publish a National Average Drug Acquisition Cost for these drugs. Separately, the FDA also issued a final guidance document outlining a pathway for manufacturers to obtain an additional National Drug Code ("NDC"), for an FDA-approved drug that was originally intended to be marketed in a non-U.S. country and that was authorized for sale in that country. The market implications of the final rule and guidance are unknown at this time. Proponents of drug reimportation may attempt to pass legislation that would directly allow reimportation under certain circumstances. Legislation or regulations allowing the reimportation of drugs, if enacted, could decrease the price we receive for any products that we may develop and adversely affect our future revenues and prospects for profitability. Similarly, any future changes in laws, regulations, practices or policies, in the drug wholesale industry, or in the prevalence of generic products, may adversely affect our financial condition and results of operations.

***If we cannot keep pace with the rapid technological change in our industry, we may lose business, and our product candidates, if approved, and technologies could become obsolete or noncompetitive.***

Our success also depends, in part, on maintaining a competitive position in the development of products and technologies in a rapidly evolving field. Major technological changes can happen quickly in the biotechnology and pharmaceutical industries. If we cannot maintain competitive products and technologies, our competitors may succeed in developing competing technologies

or obtaining regulatory approval for products before us, and the products of our competitors may gain market acceptance more rapidly than our product candidate and future product candidates. Such rapid technological change, or the development by our competitors of technologically improved or different products, could render our product candidate and future product candidates or technologies obsolete or noncompetitive.

***If we are unable to establish effective sales, marketing and distribution capabilities for our product candidate, if approved, or enter into agreements with third parties to market, sell and distribute our product candidate, if approved, or if we are unable to achieve market acceptance for such product candidate, our business, results of operations, financial condition and prospects will be materially adversely affected.***

We are continuing to build the systems, processes, policies, relationships and materials necessary for launch of FT218 in the U.S. for the treatment of cataplexy or EDS in adults with narcolepsy. If we receive regulatory approval to market or sell FT218, but are unable to establish adequate sales, marketing and distribution capabilities, whether independently or with third parties, or if we are unable to do so on commercially reasonable terms, our business, results of operations, financial condition and prospects will be materially adversely affected. We may encounter issues, delays or other challenges in launching or commercializing FT218. For example, our results may be negatively impacted if we have not adequately sized our field teams or if our targeting strategy is inadequate or if we encounter deficiencies or inefficiencies in our infrastructure or processes. We may encounter unexpected limitations in the scope, breadth or amount of reimbursement covering FT218 or other limitations or issues related to the price. Any of these issues could impair our ability to successfully commercialize the product or to generate substantial revenues or profits or to meet our expectations with respect to the amount or timing of revenues or profits. There is no guarantee that we will be successful in our launch or commercialization efforts with respect to FT218, if approved, or with respect to any other product candidate that may be approved in the future.

***Even if we receive marketing approval for our product candidate, we may still face significant post-marketing obligations and future development and regulatory difficulties.***

Even if we receive marketing approval for our product candidates, regulatory authorities may impose significant and potentially costly post-marketing obligations, including post-marketing studies and additional CMC work. For example, we expect to have post-marketing commitments if FT218 is approved by the FDA. Regulatory authorities may also impose significant restrictions on our products, including restrictions on indicated uses or marketing.

Our products, if approved, will also be subject to ongoing FDA requirements governing the labeling, packaging, storage and promotion of the product and record keeping and submission of safety and other post-market information. The FDA has significant post-marketing authority, including, for example, the authority to require labeling changes based on new safety information and to require post-marketing studies or clinical trials to evaluate serious safety risks, safety and efficacy in pediatric populations or alternate doses or dose regimens. The FDA also has the authority to require, as part of an NDA or post-approval, the submission of a REMS. For example, FT218 will require such a REMS, if approved. Any REMS required by the FDA may lead to increased costs to assure compliance with additional post-approval regulatory requirements and potential requirements or restrictions on the sale of approved products, all of which could lead to lower sales volume and revenue.

Manufacturers of drug products and their facilities are subject to continual review and periodic inspections by the FDA and other regulatory authorities for compliance with cGMPs and other regulations. If we or a regulatory agency discover problems with our products, if approved, such as adverse events of unanticipated severity or frequency, or problems with the facility where our products are manufactured or in the manufacturing process, a regulatory agency may impose restrictions on our products, the manufacturer or us, including requiring withdrawal of such products from the market or suspension of manufacturing. If we, our product candidates or approved products, or the manufacturer for our product candidates or products, fail to comply with applicable regulatory requirements, a regulatory agency may, among other things:

- issue warning letters or untitled letters;
- seek an injunction or impose civil or criminal penalties or monetary fines;
- suspend or withdraw marketing approval;
- suspend any ongoing clinical trials;
- refuse to approve pending applications or supplements to applications submitted by us;
- suspend or impose restrictions on operations, including costly new manufacturing requirements; or
- seize or detain products, refuse to permit the import or export of products, or require that we initiate a product recall.

***We will need to develop and expand our company to support the commercial launch of our product candidate, if approved, and we may encounter difficulties in managing this development and expansion, which could disrupt our operations.***

We expect that we will continue to increase our workforce and the scope of our operations, including as we build our commercial sales capabilities. To manage our anticipated development and expansion, we must continue to implement and

improve our managerial, operational and financial systems, expand our facilities and continue to recruit and train additional qualified personnel. Also, our management may need to divert a disproportionate amount of its attention away from its day-to-day activities and devote a substantial amount of time to managing these development activities. Due to our limited resources, we may not be able to effectively manage the expansion of our operations or recruit and train additional qualified personnel. This may result in weaknesses in our infrastructure; or give rise to operational mistakes, loss of business opportunities, loss of employees and reduced productivity among remaining employees. If our management is unable to effectively manage our expected development and expansion, our expenses may increase more than anticipated, our ability to generate or increase our revenue could be reduced and we may not be able to implement our business strategy. Our future financial performance and our ability to commercialize FT218, if approved, and compete effectively will depend, in part, on our ability to effectively manage the future development and expansion of our company.

**Risks Related to Our 2020 Net Income and 2019 Restructuring Plan**

***Our net income and use of cash in operating activities may limit our ability to fully pursue our business strategy.***

We reported net income of $7,028 in 2020, which includes a $45,760 gain from the sale of the Hospital Products. We reported cash used in operating activities of $48,734. Cash and marketable securities as of December 31, 2020 totaled $221,402 driven by the February 2020 Private Placement, the May 2020 Public Offering, and proceeds from the June 30, 2020 sale of the Hospital Products. Our business strategy is to primarily focus on the development and potential FDA approval of FT218 for the treatment of cataplexy or excessive daytime sleepiness ("EDS") in adults with narcolepsy. The successful pursuit of all components of our strategy will require substantial financial resources, and there can be no assurance that our existing cash and marketable securities assets and the cash generated by our operations will be adequate for these purposes. We will likely incur a net loss in 2021 and, if we use existing cash and marketable securities, there is no guarantee that we would be able to generate additional cash through our operations or through financing. Failure to implement any component of our strategy may prevent us from achieving profitability in the future or may otherwise have a material adverse effect on our financial condition and results of operation.

***If we need to take further restructuring actions, necessary third-party consents may not be granted.***

In February 2019, we announced a restructuring plan intended to achieve future cost savings through, among other actions, a reduction of our overall workforce by approximately 50 percent. Our management may determine we need to take further restructuring actions to achieve additional cost savings, to generate additional capital needed for our business strategy, or for other purposes. Certain restructuring scenarios that management consider could require obtaining the consent of third parties, such as holders of our Exchangeable Senior Notes (the "2023 Notes"). For example, the voluntary bankruptcy filing by Avadel Specialty Pharmaceuticals LLC ("Specialty Pharma") required the consent of holders of a majority in principal amount of our 2023 Notes in order to avoid a default under the Indenture governing such 2023 Notes. While we were successful in obtaining that consent, there can be no assurance we will be successful in obtaining additional consents in the future from such holders or from other third parties whose consents may be required. Failure to obtain these third-party consents would prevent us from taking additional restructuring actions, which could have a material adverse effect on our cash flow, financial resources and ability to successfully pursue our business strategy.

**Risks Related to Our Business and Industry**

***COVID-19 may materially and adversely affect our business and our financial results.***

The COVID-19 pandemic has spread globally. The continued spread of COVID-19 could adversely impact our operations, including our ability to fully enroll and complete our OLE/switch study of FT218, initiate and complete any future clinical trials, manufacture sufficient supply of our lead product candidate or to manufacture FT218 at sufficient scale for commercialization, if approved. We submitted our New Drug Application ("NDA") for FT218 in December 2020, and although the FDA noted it is continuing to ensure timely reviews of applications for medical products during the COVID-19 pandemic, the FDA may not be able to continue its current pace and review timelines could be extended, which could adversely affect our ability to obtain regulatory approval for and to commercialize FT218, particularly on our current projected timelines, increase our operating expenses and have a material adverse effect on our business and financial results.

In addition, COVID-19 has resulted in significant governmental measures being implemented to control the spread of the virus, including quarantines, travel restrictions, social distancing and business shutdowns. We have taken temporary precautionary measures intended to help minimize the risk of the virus to our employees, including temporarily allowing employees to work remotely. We have suspended non-essential travel worldwide for our employees and are discouraging employee attendance at large gatherings. These measures could negatively affect our business. For instance, temporarily allowing employees to work

remotely may induce absenteeism, disrupt our operations or increase the risk of a cybersecurity incident. COVID-19 has also caused volatility in the global financial markets and threatened a slowdown in the global economy, which may negatively affect our ability to raise additional capital on attractive terms or at all.

Two vaccines for COVID-19 were granted Emergency Use Authorization by the FDA in late 2020, and more are likely to be authorized in the coming months. The resultant demand for vaccines and potential for manufacturing facilities and materials to be commandeered under the Defense Production Act of 1950, or equivalent foreign legislation, may make it more difficult to obtain materials or manufacturing slots for the products needed for our OLE/switch clinical trial, which could lead to delays in this trial.

The extent to which COVID-19 may impact our business will depend on future developments, which are highly uncertain and cannot be predicted with confidence, such as the duration of the pandemic, the severity of COVID-19 or the effectiveness of actions to contain and treat COVID-19, particularly in the geographies where we or our third party suppliers and contract manufacturers, or contract research organizations operate. We cannot presently predict the scope and severity of any potential business shutdowns or disruptions. If we or any of the third parties with whom we engage, however, were to experience shutdowns or other business disruptions, our ability to conduct our business in the manner and on the timelines presently planned could be materially and negatively affected, which could have a material adverse impact on our business and our results of operations and financial condition.

***We may fail to effectively execute our business strategy.***

Our business strategy is to continue to seek FDA approval for FT218. There can be no assurance that we will be successful in this objective; and failure in could negatively impact our business and operating results.

**Risks Related to Data Security**

***Failure to comply with domestic and international privacy and security laws could result in the imposition of significant civil and criminal penalties.***

The costs of compliance with privacy and security laws, including protecting electronically stored information from cyber-attacks, and potential liability associated with any compliance failures could adversely affect our business, financial condition and results of operations. We are subject to various domestic and international privacy and security regulations, including but not limited to HIPAA and the General Data Protection Regulation (“GDPR”), (Regulation EU 2016/679). HIPAA mandates, among other things, the adoption of uniform standards for the electronic exchange of information in common healthcare transactions, as well as standards relating to the privacy and security of individually identifiable health information, which require the adoption of administrative, physical and technical safeguards to protect such information. In addition, many U.S. states have enacted comparable laws addressing the privacy and security of health information, some of which are more stringent than HIPAA. GDPR requires Avadel to ensure personal data collected by Avadel is gathered legally and under strict conditions and to protect such personal data from misuse and exploitation. If Avadel fails to comply with GDPR, we will face significant fines and penalties that could adversely affect our business, financial condition and results of operations.

***Security breaches and other disruptions could compromise confidential information and expose us to liability and cause our business and reputation to suffer.***

In the ordinary course of our business, we collect and store on our networks various intellectual property including our proprietary business information and that of former customers, suppliers and business partners. The secure maintenance and transmission of this information is critical to our operations and business strategy. Despite our security measures, our information systems and infrastructure may be vulnerable to disruptions such as computer hacking, phishing attacks, ransomware, dissemination of computer viruses, worms and other destructive or disruptive software, attacks by hackers or breached due to employee error, malfeasance or other disruptions. Any such breach could compromise our networks and the information stored there could be accessed, publicly disclosed, lost or stolen. Any such access, disclosure or other loss of information could result in legal claims or proceedings, investigations by regulatory authorities in the U.S. and EU Member States, disruption to our operations and damage to our reputation, any of which could adversely affect our business.

We could suffer financial loss or the loss of valuable confidential information. Although we develop and maintain systems and controls designed to prevent these events from occurring and we have a process to identify and mitigate threats, the development and maintenance of these systems, controls and processes is costly and requires ongoing monitoring and updating as technologies change and efforts to overcome security measures become increasingly sophisticated. Moreover, despite our

efforts, the possibility of these events occurring cannot be eliminated entirely and there can be no assurance that any measures we take will prevent cyber-attacks or security breaches that could adversely affect our business.

**Risks Related to Litigation and Legal Matters**

***We may become involved in lawsuits to protect or enforce our patents or other intellectual property, which could be expensive, time consuming and unsuccessful.***

Competitors may infringe our patents or other intellectual property. If we were to initiate legal proceedings against a third party to enforce a patent covering our product candidate or future product candidates, the defendant could counterclaim that the patent is invalid and/or unenforceable. In patent litigation in the U.S., defendant counterclaims alleging invalidity and/or unenforceability are commonplace. Grounds for a validity challenge could be an alleged failure to meet any of several statutory requirements, including lack of novelty, obviousness, written description or non-enablement. Grounds for an unenforceability assertion could be an allegation that someone connected with prosecution of the patent withheld relevant information from the USPTO, or made a misleading statement, during prosecution. There is risk that a court could rule in favor of the defendant with respect to such a counterclaim of patent invalidity and/or unenforceability.

Interference or derivation proceedings provoked by third parties or brought by us or declared by the USPTO may be necessary to determine the priority of inventions with respect to our patents or patent applications. An unfavorable outcome could require us to cease using the related technology or to attempt to license rights to it from the prevailing party. Our business could be harmed if the prevailing party does not offer us a license on commercially reasonable terms or at all, or if a non-exclusive license is offered and our competitors gain access to the same technology. Our defense of litigation or interference or derivation proceedings may fail and, even if successful, may result in substantial costs and distract our management and other employees. In addition, the uncertainties associated with litigation could have a material adverse effect on our ability to raise the funds necessary to continue our clinical trials, continue our research programs, license necessary technology from third parties, or enter into development partnerships that would help us bring our product candidate and future product candidates to market.

Because of the substantial amount of discovery that can occur in connection with intellectual property-related litigation and/or administrative proceedings, there is a risk that some of our confidential information could be compromised by disclosure during this type of litigation/proceeding. There could also be public announcements of the results of hearings, motions, or other interim proceedings or developments. If securities analysts or investors perceive these results to be negative, it could have a material adverse effect on the price of our common stock.

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

We employ or may employ individuals who were previously employed at universities or other biotechnology or pharmaceutical companies, including our competitors or potential competitors. Although we endeavor to ensure that our employees, consultants and independent contractors do not use the proprietary information or know-how of others in their work for us, we may be subject to claims that we or our employees, consultants or independent contractors have inadvertently or otherwise used or disclosed intellectual property, including trade secrets or other proprietary information, of any of our employee's former employer or other third parties. Litigation may be necessary to defend against these claims. If we fail in defending any such claims, in addition to paying any awarded monetary damages, we may lose valuable intellectual property rights or personnel, which could adversely impact our business. Even if we are successful in defending against such claims, litigation could result in substantial costs and/or be a distraction to management and other employees.

***We and companies to which we have licensed, or will license our future products or drug delivery technologies and subcontractors we engage or may engage for services related to the development and manufacturing of our lead product candidate or future product candidates are subject to extensive regulation by the FDA and other regulatory authorities. Our and their failure to meet strict regulatory requirements could adversely affect our business.***

We, and companies to which we will license our future products or drug delivery technologies, as well as companies acting as subcontractors for our product developments, including but not limited to non-clinical, pre-clinical and clinical studies, and manufacturing, are subject to extensive regulation by the FDA, other U.S. authorities and equivalent non-U.S. regulatory authorities, particularly the European Commission and the competent authorities of EU Member States. Those regulatory authorities may conduct periodic audits or inspections of the applicable facilities to monitor compliance with regulatory standards and we remain responsible for the compliance of our subcontractors. If the FDA or another regulatory authority finds failure to comply with applicable regulations, the authority may institute a wide variety of enforcement actions, including:

- warning letters or untitled letters;
- fines and civil penalties;
- delays in clearing or approving, or refusal to clear or approve, products;
- withdrawal, suspension or variation of approval of products; product recall or seizure;
- orders to the competent authorities of EU Member States to withdraw or vary national authorization;
- orders for physician notification or device repair, replacement or refund;
- interruption of production;
- operating restrictions;
- injunctions; and
- criminal prosecution.

Any adverse action by a competent regulatory agency could lead to unanticipated expenditures to address or defend such action and may impair our ability to produce and market applicable products, which could significantly impact our revenues and royalties that we would be eligible to receive from our potential customers.

***We may face product liability claims related to clinical trials for our product candidate or future product candidates or their misuse.***

The testing, including through clinical trials, manufacturing and marketing, and the use of our product candidate and future product candidates may expose us to potential product liability and other claims. If any such claims against us are successful, we may be required to make significant compensation payments. Any indemnification that we have obtained, or may obtain, from CROs or pharmaceutical and biotechnology companies or hospitals conducting human clinical trials on our behalf may not protect us from product liability claims or from the costs of related litigation. Insurance coverage is expensive and difficult to obtain, and we may be unable to obtain coverage in the future on acceptable terms, if at all. We currently maintain general liability insurance and product liability insurance. We cannot be certain that the coverage limits of our insurance policies or those of our strategic partners will be adequate. If we are unable to obtain sufficient insurance at an acceptable cost, a product liability claim or recall could adversely affect our financial condition.

Similarly, any indemnification we have obtained, or may obtain, from pharmaceutical and biotechnology companies with whom we are developing, or will develop, our future products may not protect us from product liability claims from the consumers of those products or from the costs of related litigation.

***If we use hazardous biological and/or chemical materials in a manner that causes injury, we may be liable for significant damages.***

Our R&D activities involve the controlled use of potentially harmful biological and/or chemical materials, and are subject to U.S., state, EU, national and local laws and regulations governing the use, storage, handling and disposal of those materials and specified waste products. We cannot completely eliminate the risk of accidental contamination or injury from the use, storage, handling or disposal of these materials, including fires and/or explosions, storage tank leaks and ruptures and discharges or releases of toxic or hazardous substances. These operating risks can cause personal injury, property damage and environmental contamination, and may result in the shutdown of affected facilities and the imposition of civil or criminal penalties. The occurrence of any of these events may significantly reduce the productivity and profitability of a particular manufacturing facility and adversely affect our operating results.

We currently maintain property, business interruption and casualty insurance with limits that we believe to be commercially reasonable but may be inadequate to cover any actual liability or damages.

**Risks Related to Ownership of Our Securities**

***The price of ADSs representing our ordinary shares has been volatile and may continue to be volatile.***

The trading price of American Depositary Shares representing our ordinary shares ("ADSs") has been, and is likely to continue to be, highly volatile. The market value of an investment in ADSs may fall sharply at any time due to this volatility. During the year ended December 31, 2020, the closing sale price of ADSs as reported on the Nasdaq Global Market ranged from $4.06 to $11.75. During the year ended December 31, 2019, the closing sale price of ADSs as reported on the Nasdaq Global Market ranged from $1.09 to $7.70. The market prices for securities of drug delivery, specialty pharma, biotechnology and pharmaceutical companies historically have been highly volatile. Factors that could adversely affect our share price include, among others:

- fluctuations in our operating results;
- announcements of technological partnerships, innovations or new products by us or our competitors;
- actions with respect to the acquisition of new or complementary businesses;
- governmental regulations;
- developments in patent or other proprietary rights owned by us or others;
- public concern as to the safety of drug delivery technologies developed by us or drugs developed by others using our platform;
- the results of pre-clinical testing and clinical studies or trials by us or our competitors;
- adverse events related to our product candidate or future product candidates;
- lack of efficacy of our product candidate or future product candidates;
- litigation;
- decisions by our pharmaceutical and biotechnology company partners relating to the products that may incorporate our technologies;
- the perception by the market of specialty pharma, biotechnology, and high technology companies generally;
- general market conditions, including the impact of the current financial environment; and
- the dilutive impact of any new equity or convertible debt securities we may issue or have issued.

***Our largest shareholders own a significant percentage of the share capital and voting rights of the Company.***

As of December 31, 2020, RTW Investments LP. owned approximately 9.3% of Avadel's outstanding shares (in the form of ADSs), Avoro Capital Advisors LLC owned approximately 7.5% of our outstanding shares (in the form of ADSs) and Vivo Opportunity, LLC and certain of its affiliates owned approximately 6.1% of our outstanding shares (in the form of ADSs). To the extent these shareholders continue to hold a large percentage of our share capital and voting rights, they will remain in a position to exert heightened influence in the election of the directors of the Company and in other corporate actions that require shareholder approval, as well as change of control transactions.

**Risks Related to Our Financial Condition**

***We realized net income in 2020 due to the gain on the sale of the Hospital Products, but we will likely incur a net loss in 2021, and if we are not able to regain profitability in the future, the value of our shares may fall.***

We reported net income of $7,028 and a net loss $33,226 for the years ended December 31, 2020 and 2019, respectively. In addition, we will incur substantial expenses to develop our product candidate and we will likely incur a net loss in 2021 as well, the amount of which is not known to us at this time. We cannot predict if we will be able to regain profitability. If we are unable to earn a profit in future periods, the market price of our shares may fall. Our ability to operate profitably depends upon a number of factors, many of which are beyond our direct control. These factors include:

- our ability to develop partnerships and additional commercial applications for our future products;
- our ability to control our costs; and
- general economic conditions.

***We may not be successful in our transition to a commercial company.***

We do not know when, or if, we will generate any revenue from FT218. There can be no guarantee that the FDA will approve our NDA for FT218 by the target action PDUFA date of October 15, 2021, or if at all, and, if approved, there can be no guarantee that we will be able to launch and successfully commercialize FT218.

We do not expect to generate significant revenue, or any revenue at all, unless or until we obtain marketing approval of, and begin to sell, FT218. Our ability to generate revenue depends on a number of factors, including, but not limited to, our ability to:

- obtain marketing approval for FT218;
- set an acceptable price for FT218;
- obtain commercial quantities of FT218 at acceptable cost levels;
- commercialize FT218 in the United States or in other key territories by entering into partnership or co-promotion arrangements with third parties;
- obtain third-party coverage or adequate reimbursement for FT218;
- achieve market acceptance of FT218 in the medical community and with third-party payers, including placement in accepted clinical guidelines for the conditions for which FT218 is intended to target; and
- lawfully prevent/delay the introduction by third parties of competitive once-nightly (e.g., generic) products to FT218.

If FT218 is approved by the FDA and becomes available for commercial sale, we expect to incur significant sales and marketing costs to both prepare for and support its commercialization. Even if we receive marketing approval and expend these costs, FT218 may not be commercially successful. We may not generate revenue from FT218 if approved. If we are unable to generate product revenue, we may be unable to continue operations without continued funding.

***We may require additional financing, which may not be available on favorable terms or at all, and which may result in dilution of the equity interest of the holders of ADSs.***

We may require additional financing to fund the development and possible acquisition of new products and businesses. We may consume available resources more rapidly than currently anticipated, resulting in the need for additional funding. If we cannot obtain financing when needed, or obtain it on favorable terms, we may be required to curtail our plans to continue to develop drug delivery technologies, develop new products, or acquire additional products and businesses. Other factors that will affect future capital requirements and may require us to seek additional financing include:

- the development and acquisition of new products and drug delivery technologies;
- the progress of our research and product development programs; and
- the timing of, and amounts received from, future product sales, product development fees and licensing revenue and royalties.

If adequate funds are not available, we may be required to significantly reduce or refocus our product development efforts, resulting in loss of sales, increased costs and reduced revenues. Alternatively, to obtain needed funds for acquisitions or operations, we may seek to issue additional ADSs representing our ordinary shares, or issue equity-linked debt, or we may choose to issue preferred shares, in either case through public or private financings. Additional funds may not be available on terms that are favorable to us and, in the case of such equity financings, may result in dilution to the holders of ADSs. See also the discussion elsewhere in these Risk Factors under the caption *"Our net income and use of cash in operating activities may limit our ability to fully pursue our business strategy."*

***We have broad discretion in the use of our cash and may not use it effectively.***

Our management has broad discretion in the use of our cash, and may not apply our cash in ways that ultimately increases the value of any investment in our securities. We currently intend to use our cash to fund marketing activities for any future commercialized products, to fund certain clinical trials for product candidates, to fund R&D activities for potential new product candidates, and for working capital, capital expenditures and general corporate purposes. As in the past we expect to invest our excess cash in available-for-sale marketable securities, including corporate bonds, U.S. government securities, other fixed income securities and equities; and these investments may not yield a favorable return. If we do not invest or apply our cash effectively, our financial position and the price of ADSs may decline.

***We currently do not intend to pay dividends and cannot assure the holders of our ADSs that we will make dividend payments in the future.***

We have never declared or paid a cash dividend on any of our ordinary shares or ADSs and do not anticipate declaring cash dividends in the foreseeable future. Declaration of dividends will depend upon, among other things, future earnings, if any, the operating and financial condition of our business, our capital requirements, general business conditions and such other factors as our Board of Directors deems relevant.

***Our effective tax rate could be highly volatile and could adversely affect our operating results.***

Our future effective tax rate may be adversely affected by a number of factors, many of which are outside of our control, including:

- the jurisdictions in which profits are determined to be earned and taxed;
- changes in the valuation of our deferred tax assets and liabilities;
- changes in share-based compensation expense;
- changes in domestic or international tax laws or the interpretation of such tax laws;
- changes in available tax credits;
- adjustments to estimated taxes upon finalization of various tax returns; and
- the resolution of issues arising from tax audits with various tax authorities.

Any significant increase in our future effective tax rates could impact our results of operations for future periods adversely.

***Our ability to use our net operating loss carryforwards and certain other tax attributes may be limited***.

As of December 31, 2020, we had $46,003 of net operating losses in the U.S. Of the $46,003 of net operating losses in the U.S., $10,365 were acquired due to the acquisition of FSC and $35,638 are due to the losses at US Holdings. The portion due to the acquisition of FSC will expire in 2034 through 2035. The U.S. net operating losses acquired as part of the acquisition of FSC are subject to an annual limitation under Internal Revenue Code Section 382 and $1,473 of the $10,365 will not be fully utilized before they expire. The remaining $35,638 of net operating losses do not have an expiration date.

Under U.S. federal tax legislation enacted in 2017, informally titled the Tax Cuts and Jobs Act ("Tax Act"), U.S. federal net operating losses incurred in 2018 and in future years may be carried forward indefinitely, but the deductibility of such U.S. federal net operating losses is limited. Under Sections 382 and 383 of the U.S. Internal Revenue Code of 1986 (the "Code") if a corporation undergoes an "ownership change" (generally defined as a greater than 50 percentage-point cumulative change (by value) in the equity ownership of certain shareholders over a rolling three-year period), the corporation's ability to use its pre-change net operating losses and other pre-change tax attributes to offset its post-change taxable income or taxes may be limited. We may also experience ownership changes as a result of this offering or future issuances of our stock or as a result of subsequent shifts in our stock ownership, some of which are outside our control. We have completed an analysis to determine that no events have been triggered in the past. If any ownership changes are determined to be triggered in the future, our ability to use our current net operating losses to offset post-change taxable income or taxes would be subject to limitation. We will be unable to use our net operating losses if we do not attain profitability sufficient to offset our available net operating losses prior to their expiration.

As of December 31, 2020, we had approximately $118,070 of net operating losses in Ireland that do not have an expiration date. While these losses do not have an expiration date, substantial changes in the activities performed in these jurisdictions could have an impact on our ability to utilize these tax attributes in the future.

**Risks Related to the 2023 Notes**

***Servicing our 2023 Notes may require a significant amount of cash, and we may not have sufficient cash or the ability to raise the funds necessary to settle exchanges of the 2023 Notes in cash, repay the Notes at maturity, or repurchase the 2023 Notes as required following a fundamental change.***

In February 2018, we issued $143,750 aggregate principal amount of our Senior Exchangeable Notes. Prior to February 2023, the 2023 Notes are convertible at the option of the holders only under certain conditions or upon the occurrence of certain events. If holders of the 2023 Notes elect to exchange their 2023 Notes, unless we elect to deliver solely our ADSs to settle such exchanges, we will be required to make cash payments in respect of the 2023 Notes being exchanged. Holders of the 2023 Notes also have the right to require us to repurchase all or a portion of their 2023 Notes upon the occurrence of a fundamental change (as defined in the applicable indenture governing the 2023 Notes) at a repurchase price equal to 100% of the principal amount of the 2023 Notes to be repurchased, plus accrued and unpaid interest. If the 2023 Notes have not previously been exchanged or repurchased, we will be required to repay the 2023 Notes in cash at maturity. Our ability to make cash payments in connection with exchanges of the 2023 Notes, repurchase the 2023 Notes in the event of a fundamental change, or to repay or refinance the 2023 Notes at maturity will depend on market conditions and our future performance, which is subject to economic, financial, competitive, and other factors many of which are beyond our control. We had limited net income in 2020 and we will likely incur a net loss in 2021. As a result, we may not have enough available cash or be able to obtain financing at the time we are required to repurchase or repay the 2023 Notes or in the event we elect to pay cash with respect to 2023 Notes being exchanged.

***The conditional exchange feature of the 2023 Notes, if triggered, may adversely affect our financial condition and operating results.***

In the event the conditional exchange feature of the 2023 Notes is triggered, holders of 2023 Notes will be entitled to exchange the 2023 Notes at any time during specified periods at their option. If one or more holders elect to exchange their 2023 Notes, unless we elect to satisfy our exchange obligation by causing to be delivered solely ADSs (other than paying cash in lieu of any fractional ADSs), we would be required to settle a portion or all of our exchange obligation through the payment of cash, which could adversely affect our liquidity. In addition, even if holders do not elect to exchange their 2023 Notes, we could be required under applicable accounting rules to reclassify all or a portion of the outstanding principal of the 2023 Notes as a current rather than long-term liability, which would result in a material reduction of our net working capital.

***The accounting method for convertible and exchangeable debt securities that may be settled in cash, such as the 2023 Notes, could have a material effect on our reported financial results.***

Under Accounting Standards Codification 470-20, Debt with Conversion and Other Options, which we refer to as ASC 470-20, an entity must separately account for the liability and equity components of the convertible or exchangeable debt instruments (such as the 2023 Notes) that may be settled entirely or partially in cash upon conversion or exchange in a manner that reflects the issuer's economic interest cost. However, entities must first consider the guidance in ASC 815-15, Embedded Derivatives ("ASC 815-15"), to determine if an instrument contains an embedded feature that should be separately accounted for as a derivative. ASC 815 provides for an exception to this rule when convertible notes, as host instruments, are deemed to be conventional, as defined by ASC 815-40. Should this exception apply, the effect of ASC 470-20 on the accounting for the 2023 Notes is that the equity component would be required to be included in the additional paid-in capital section of shareholders' equity on Avadel's consolidated balance sheet, and the value of the equity component would be treated as original issue discount for purposes of accounting for the debt component of the 2023 Notes. As a result, Avadel would be required to record a greater amount of non-cash interest expense in current periods presented as a result of the amortization of the discounted carrying value of the 2023 Notes to their face amount over the term of the 2023 Notes. Avadel would report lower net income in its financial results because ASC 470-20 would require interest to include both the current period's amortization of the debt discount and the instrument's coupon interest, which could adversely affect Avadel's reported or future financial results, the trading price of the ADSs and the trading price of the 2023 Notes.

In addition, under certain circumstances, convertible or exchangeable debt instruments (such as the 2023 Notes) that may be settled entirely or partly in cash are currently accounted for utilizing the treasury stock method, the effect of which is that the ADSs deliverable upon exchange of the 2023 Notes are not included in the calculation of diluted earnings per share except to the extent that the exchange value of the 2023 Notes exceeds their principal amount. Under the treasury stock method, for diluted earnings per share purposes, the transaction is accounted for as if the number of ADSs that would be necessary to settle such excess, if we elected to settle such excess in ADSs, are issued. We cannot be sure that the accounting standards in the future will continue to permit the use of the treasury stock method. If Avadel is unable to use the treasury stock method in

accounting for the ADSs deliverable upon exchange of the 2023 Notes, then Avadel's diluted earnings per share would be adversely affected.

***Exchanges of the 2023 Notes will dilute the ownership interest of Avadel's existing shareholders and holders of the ADSs, including holders who had previously exchanged their 2023 Notes and received ADSs upon exchange, to the extent our exchange obligation includes ADSs.***

The exchange of some or all of the 2023 Notes will dilute the ownership interests of Avadel's existing shareholders and holders of the ADSs to the extent our exchange obligation includes ADSs. Any sales in the public market of the ADSs issuable upon such exchange of the 2023 Notes could adversely affect prevailing market prices of the ADSs and, in turn, the price of the 2023 Notes. In addition, the existence of the 2023 Notes may encourage short selling by market participants because the exchange of the 2023 Notes could depress the price of the ADSs.

***The fundamental change repurchase feature of the 2023 Notes may delay or prevent an otherwise beneficial takeover attempt of Avadel.***

The indenture governing the 2023 Notes will require us to repurchase the 2023 Notes for cash upon the occurrence of a fundamental change and, in certain circumstances, to increase the exchange rate for a holder that exchanges its 2023 Notes in connection with a make-whole fundamental change. A takeover of Avadel may trigger the requirement that we repurchase the 2023 Notes and/or increase the exchange rate, which could make it more costly for a potential acquirer to engage in a combinatory transaction with us or Avadel. Such additional costs may have the effect of delaying or preventing a takeover of Avadel that would otherwise be beneficial to investors.

***If we pay dividends, the dividends may be subject to Irish dividend withholding tax***

In certain circumstances, as an Irish tax resident company, we may be required to deduct Irish dividend withholding tax (currently at the rate of 20%) from dividends paid to its shareholders. Shareholders that are resident in the U.S., EU countries (other than Ireland) or other countries with which Ireland has signed a tax treaty (whether the treaty has been ratified or not) generally should not be subject to Irish withholding tax so long as the shareholder has provided its broker, for onward transmission to our qualifying intermediary or other designated agent (in the case of shares held beneficially), or us or our transfer agent (in the case of shares held directly), with all the necessary documentation by the appropriate due date prior to payment of the dividend. However, some shareholders may be subject to withholding tax, which could adversely affect the price of ordinary shares and the value of their 2023 Notes.

**General Risk Factors**

***Provisions of our articles of association could delay or prevent a third-party's effort to acquire us.***

Our articles of association could delay, defer or prevent a third-party from acquiring us, even where such a transaction would be beneficial to the holders of ADSs, or could otherwise adversely affect the price of ADSs. For example, certain provisions of our articles of association:

- permit our board of directors to issue preferred shares with such rights and preferences as they may designate, subject to applicable law;
- impose advance notice requirements for shareholder proposals and director nominations to be considered at annual shareholder meetings; and
- require the approval of a supermajority of the voting power of our shares entitled to vote at a general meeting of shareholders to amend or repeal any provisions of our articles of association.

We believe these provisions, if implemented in compliance with applicable law, may provide some protection to holders of ADSs from coercive or otherwise unfair takeover tactics. These provisions are not intended to make us immune from takeovers. They will, however, apply even if some holders of ADSs consider an offer to be beneficial and could delay or prevent an acquisition that our Board of Directors determines is in the best interest of the holders of ADSs. Certain of these provisions may also prevent or discourage attempts to remove and replace incumbent directors.

In addition, mandatory provisions of Irish law could prevent or delay an acquisition of the Company by a third party. For example, Irish law does not permit shareholders of an Irish public limited company to take action by written consent with less than unanimous consent. In addition, an effort to acquire us may be subject to various provisions of Irish law relating to

mandatory bids, voluntary bids, requirements to make a cash offer and minimum price requirements, as well as substantial acquisition rules and rules requiring the disclosure of interests in ADSs in certain circumstances.

These provisions may discourage potential takeover attempts or bids for our ordinary shares at a premium over the market price or they may adversely affect the market price of, and the voting and other rights of the holders of, ADSs. These provisions could also discourage proxy contests and make it more difficult for holders of ADSs to elect directors other than the candidates nominated by our board of directors and could depress affect the market price of ADSs.

***Irish law differs from the laws in effect in the U.S. and might afford less protection to the holders of ADSs.***

Holders of ADSs could have more difficulty protecting their interests than would the shareholders of a U.S. corporation. As an Irish company, we are governed by Irish law, including the Irish Companies Act 2014 and the Irish Takeover Rules, which differs in some significant, and possibly material, respects from provisions set forth in various U.S. state laws applicable to U.S. corporations and their shareholders, including provisions relating to interested directors, mergers and acquisitions, takeovers, shareholder lawsuits and indemnification of directors.

The duties of directors and officers of an Irish company are generally owed to the company only. Therefore, under Irish law shareholders of Irish companies do not generally have a right to commence a legal action against directors or officers and may only do so in limited circumstances. Directors of an Irish company must act with due care and skill, honestly and in good faith with a view to the best interests of the company. Directors must not put themselves in a position in which their duties to the company and their personal interests conflict and must disclose any personal interest in any contract or arrangement with the company or any of our subsidiaries. A director or officer can be held personally liable to the company in respect of a breach of duty to the company.

***Judgments of U.S. courts, including those predicated on the civil liability provisions of the federal securities laws of the U.S., may not be enforceable in Irish courts.***

An investor in the U.S. may find it difficult to:

- effect service of process within the U.S. against us and our non-U.S. resident directors and officers;
- enforce U.S. court judgments based upon the civil liability provisions of the U.S. federal securities laws against us and our non-U.S. resident directors and officers in Ireland; or
- bring an original action in an Irish court to enforce liabilities based upon the U.S. federal securities laws against us and our non-U.S. resident directors and officers.

***Judgments of U.S. courts, including those predicated on the civil liability provisions of the federal securities laws of the United States, may not be enforceable in Cayman Islands courts.***

We have been advised by our Cayman Islands legal counsel, Maples and Calder, that the courts of the Cayman Islands are unlikely (i) to recognize or enforce against us or Avadel judgments of courts of the U.S. predicated upon the civil liability provisions of the securities laws of the U.S. or any State; and (ii) in original actions brought in the Cayman Islands, to impose liabilities against us or Avadel predicated upon the civil liability provisions of the securities laws of the U.S. or any State, so far as the liabilities imposed by those provisions are penal in nature. In those circumstances, although there is no statutory enforcement in the Cayman Islands of judgments obtained in the U.S., the courts of the Cayman Islands will recognize and enforce a foreign money judgment of a foreign court of competent jurisdiction without retrial on the merits based on the principle that a judgment of a competent foreign court imposes upon the judgment debtor an obligation to pay the sum for which judgment has been given provided certain conditions are met. For a foreign judgment to be enforced in the Cayman Islands, such judgment must be final and conclusive and for a liquidated sum, and must not be in respect of taxes or a fine or penalty, inconsistent with a Cayman Islands judgment in respect of the same matter, impeachable on the grounds of fraud or obtained in a manner, and or be of a kind the enforcement of which is, contrary to natural justice or the public policy of the Cayman Islands (awards of punitive or multiple damages may well be held to be contrary to public policy). A Cayman Islands Court may stay enforcement proceedings if concurrent proceedings are being brought elsewhere.

***Holders of ADSs have fewer rights than shareholders and have to act through the Depositary to exercise those rights.***

Holders of ADSs do not have the same rights as shareholders and, accordingly, cannot exercise rights of shareholders against us. The Bank of New York Mellon, as depositary (the “Depositary”), is the registered shareholder of the deposited shares underlying the ADSs. Therefore, holders of ADSs will generally have to exercise the rights attached to those shares through the Depositary. We will use reasonable efforts to request that the Depositary notify the holders of ADSs of upcoming votes and ask for voting instructions from them. If a holder fails to return a voting instruction card to the Depositary by the date established

by the Depositary for receipt of such voting instructions, or if the Depositary receives an improperly completed or blank voting instruction card, or if the voting instructions included in the voting instruction card are illegible or unclear, then such holder will be deemed to have instructed the Depositary to vote its shares, and the Depositary shall vote such shares in favor of any resolution proposed or approved by our Board of Directors and against any resolution not so proposed or approved.

***U.S. Holders of ordinary shares or ADSs may suffer adverse U.S. tax consequences if we are classified as a passive foreign investment company.***

Generally, if, for any taxable year, at least 75% of our gross income is passive income, or at least 50% of the value of our assets is attributable to assets that produce passive income or are held for the production of passive income, including cash, we would be characterized as a passive foreign investment company ("PFIC") for U.S. federal income tax purposes. For purposes of these tests, passive income includes dividends, interest, and gains from the sale or exchange of investment property and rents and royalties other than rents and royalties that are received from unrelated parties in connection with the active conduct of a trade or business. Our status as a PFIC depends on the composition of our income and the composition and value of our assets (for which purpose the total value of our assets may be determined in part by the market value of the ordinary shares or ADSs, which are subject to change) from time to time. If we are characterized as a PFIC, U.S. Holders (as defined below under "Material U.S. Federal Income Tax Considerations for U.S. Holders") of ordinary shares or ADSs may suffer materially adverse tax consequences, including having gains realized on the sale of ordinary shares or ADSs treated as ordinary income, rather than capital gain, the loss of the preferential rate applicable to dividends received on ordinary shares or ADSs by individuals who are U.S. Holders, and having interest charges apply to distributions by us and the proceeds of sales of ordinary shares or ADSs. See "Material U.S. Federal Income Tax Considerations for U.S. Holders—PFIC rules."

We believe that we were not a PFIC for the taxable year ending December 31, 2020 and, based on the expected value of our assets, including any goodwill, and the expected nature and composition of our income and assets, we do not anticipate that we will be a PFIC for our current taxable year. However, our status as a PFIC is a fact-intensive determination subject to various uncertainties, and we cannot provide any assurances regarding our PFIC status for the current, prior or future taxable years.

***Certain U.S. Holders that own 10 percent or more of the vote or value of ordinary shares or ADSs may suffer adverse U.S. tax consequences because our non-U.S. subsidiaries are expected to be classified as controlled foreign corporations.***

Each ''Ten Percent Shareholder'' (as defined below) in a non-U.S. corporation that is classified as a ''controlled foreign corporation,'' or a CFC, for U.S. federal income tax purposes generally is required to include in income for U.S. federal tax purposes such Ten Percent Shareholder's pro rata share of the CFC's ''Subpart F income'' and investment of earnings in U.S. property, even if the CFC has made no distributions to its shareholders. Subpart F income generally includes dividends, interest, rents, royalties, ''global intangible low-taxed income,'' gains from the sale of securities and income from certain transactions with related parties. In addition, a Ten Percent Shareholder that realizes gain from the sale or exchange of shares in a CFC may be required to classify a portion of such gain as dividend income rather than capital gain. A non-U.S. corporation generally will be classified as a CFC for U.S. federal income tax purposes if Ten Percent Shareholders own, directly or indirectly, more than 50% of either the total combined voting power of all classes of stock of such corporation entitled to vote or of the total value of the stock of such corporation. A ''Ten Percent Shareholder'' is a U.S. person (as defined by the Code) who owns or is considered to own 10% or more of the total combined voting power of all classes of stock entitled to vote or 10% or more of the total value of all classes of stock of such corporation.

We believe that we were not a CFC in the 2020 taxable year, but that our non-U.S. subsidiaries were CFCs in the 2020 taxable year. We anticipate that our non-U.S. subsidiaries will remain CFCs in the 2021 taxable year, and it is possible that we may become a CFC in the 2021 taxable year or in a subsequent taxable year. The determination of CFC status is complex and includes attribution rules, the application of which is not entirely certain. U.S. Holders should consult their own tax advisors with respect to the potential adverse U.S. tax consequences of becoming a Ten Percent Shareholder in a CFC, including the possibility and consequences of becoming a Ten Percent Shareholder in one or more of our non-U.S. subsidiaries that are anticipated to be treated as CFCs. If we are classified as both a CFC and a PFIC, we generally will not be treated as a PFIC with respect to those U.S. Holders that meet the definition of a Ten Percent Shareholder during the period in which we are a CFC, subject to certain exceptions.

***A transfer of ordinary shares may be subject to Irish stamp duty.***

Transfers of ordinary shares (as opposed to ADSs) could be subject to Irish stamp duty (currently at the rate of 1% of the higher of the price paid or the market value of the shares acquired). Payment of Irish stamp duty is generally a legal obligation of the transferee. Although transfers of ADSs are not subject to Irish stamp duty, the potential for stamp duty to arise on transfers of ordinary shares could adversely affect the price of our ordinary shares or ADSs.

**Item 1B. Unresolved Staff Comments.**

Not applicable.

**Item 2. Properties.**

We have commercial and administrative activities located in Chesterfield, Missouri. Our current office space consists of 24,236 square feet, and the lease expires in 2025. Additionally, we maintained the lease on the former headquarters of FSC Laboratories, Inc. located in Charlotte, North Carolina. This office space consisted of 6,300 square feet and the lease expired on December 31, 2020.

See “Management’s Discussion and Analysis of Financial Condition and Results of Operations” in Part II, Item 7 of this Annual Report on Form 10-K for more information regarding our investment activities and principal capital expenditures over the last two years.

**Item 3. Legal Proceedings.**

While we may be engaged in various claims and legal proceedings in the ordinary course of business, we are not involved (whether as a defendant or otherwise) in, and, we have no knowledge of any threat of, any litigation, arbitration or administrative or other proceeding that management believes will have a material adverse effect on our consolidated financial position or results of operations.

**Item 4. Mine Safety Disclosures.**

Not applicable.

*PART II*

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

**Common Stock Data (per share):**

The principal trading market for our securities in ADSs is the Nasdaq Global Market under the symbol "AVDL". There is no foreign trading market for our ordinary shares, ADSs or any other equity security issued by us. Each ADS represents one ordinary share, nominal value $0.01. Each ADS is evidenced by an ADR. The Bank of New York Mellon is the Depositary for the ADRs.

As of March 4, 2021, there were 58,465,151 ordinary shares outstanding, and our closing stock price was $7.56 per share.

The following table reports the high and low trading prices of the ADSs on the Nasdaq Global Market for the periods indicated:

| | 2020 Price Range | | 2019 Price Range | |
|---|---|---|---|---|
| | High | Low | High | Low |
| First quarter | $ 10.64 | $ 4.06 | $ 3.29 | $ 1.44 |
| Second quarter | 11.75 | 7.25 | 3.19 | 1.09 |
| Third quarter | 8.98 | 5.02 | 4.47 | 1.92 |
| Fourth quarter | 7.95 | 5.03 | 7.70 | 3.34 |

**Holders**

As of March 4, 2021, there were 78 holders of record of our ordinary shares and 65 accounts registered with The Bank of New York Mellon, the Depositary of our ADS program, as holders of ADSs, one of which ADS accounts is registered to the Depositary Trust Corporation (DTC). Because our ADSs are generally held of record by brokers, nominees and other institutions as participants in DTC on behalf of the beneficial owners of such ADSs, we are unable to estimate the total number of beneficial owners of the ADSs held by these record holders.

**Dividends**

We have never declared or paid a cash dividend on any of our shares and do not anticipate declaring cash dividends in the foreseeable future.

**Equity Compensation Plan**

The information required by Item 5 of Form 10-K regarding equity compensation plans is incorporated herein by reference to Item 12 of Part III of this Annual Report on Form 10-K.

**Issuer Purchases of Equity Securities**

We did not repurchase any of our equity securities during the year ended December 31, 2020.

**Recent Sales of Unregistered Securities**

*Securities Purchase Agreement*

On February 21, 2020, we announced that we entered into a definitive agreement for the sale of our ADSs and Series A Non-Voting Convertible Preferred Shares ("Series A Preferred") in a private placement to a group of institutional accredited investors. The private placement resulted in gross proceeds of approximately $65,000 before deducting placement agent and other offering expenses which resulted in net proceeds of $60,570.

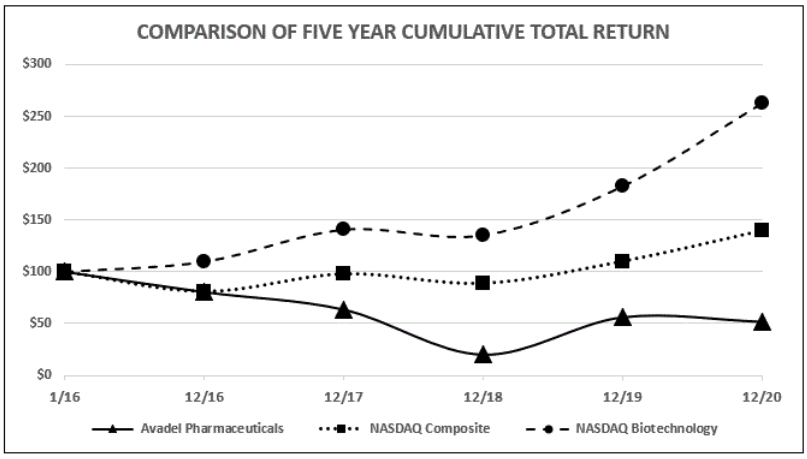
Pursuant to the terms of the private placement, we issued 8,680,225 ADSs and 487,614 shares of Series A Preferred at a price of $7.09 per share, priced at-the-market under Nasdaq rules. Each share of non-voting Series A Preferred is convertible into one ADS, provided that conversion will be prohibited if, as a result, the holder and its affiliates would own more than 9.99% of the

total number of Avadel ADSs outstanding. The closing of the private placement occurred on February 25, 2020. Proceeds from the private placement will be used to fund continued clinical and program development of FT218, including our open-label extension study for REST-ON, a switch study to evaluate patients switching from twice-nightly sodium oxybate to once-nightly FT218, as well as for general corporate purposes.

The private placement was exempt from registration pursuant to Section 4(a)(2) of the Securities Act as a transaction by an issuer not involving a public offering.

**Share Performance Graph**

The following graph compares the cumulative 5-year return provided to shareholders of Avadel's ADSs relative to the cumulative total returns of the Nasdaq Composite Index and the Nasdaq Biotechnology Index. We believe these indices are the most appropriate indices against which the total shareholder return of Avadel should be measured. The Nasdaq Biotechnology Index has been selected because it is an index of U.S. quoted biotechnology and pharmaceutical companies. An investment of $100 (with reinvestment of all dividends) is assumed to have been made in our ADSs and in each of the indexes on January 1, 2016 and our relative performance is tracked through December 31, 2020. The comparisons shown in the graph are based upon historical data and we caution that the stock price performance shown in the graph is not indicative of, or intended to forecast, the potential future performance of our stock.




This performance graph shall not be deemed "filed" for purposes of Section 18 of the Exchange Act. Notwithstanding any statement to the contrary set forth in any of our filings under the Securities Act of 1933 or the Exchange Act that might incorporate future filings, including this Annual Report on Form 10-K, in whole or in part, this performance graph shall not be incorporated by reference into any such filings except as may be expressly set forth by specific reference in any such filing.

**Item 6. Quarterly Financial Data (Unaudited):**

The following tables present certain unaudited consolidated quarterly financial information for each quarter of 2020 and 2019. Year-to-date net income (loss) per share amounts may be different than the sum of the applicable quarters due to differences in weighted average shares outstanding for the respective periods.

| **2020:** | **March 31** | **June 30** | **September 30** | **December 31** |
|---|---|---|---|---|
| Revenues | $ 12,243 | $ 10,091 | $ — | $ — |
| Gross profit [(a)] | 9,786 | 6,806 | — | — |
| Operating (loss) income [(b)] | (6,497) | 40,269 | (13,697) | (14,260) |
| Net (loss) income | (865) | 30,874 | (11,703) | (11,278) |
| Net (loss) income per share - basic | (0.02) | 0.57 | (0.20) | (0.19) |
| Net (loss) income per share - diluted | (0.02) | 0.49 | (0.20) | (0.19) |

| **2019:** | **March 31** | **June 30** | **September 30** | **December 31** |
|---|---|---|---|---|
| Revenues | $ 16,437 | $ 17,554 | $ 14,229 | $ 10,995 |
| Gross profit [(a)] | 13,171 | 13,932 | 11,406 | 8,581 |
| Operating loss | (8,167) | (4,451) | (4,147) | (7,347) |
| Net loss | (13,018) | (8,605) | (8,864) | (2,739) |
| Net loss per share - basic | (0.35) | (0.23) | (0.24) | (0.07) |
| Net loss per share - diluted | (0.35) | (0.23) | (0.24) | (0.07) |

[(a)] Gross profit is computed by subtracting cost of products from total revenues.
[(b)] Operating income for the quarter ended June 30, 2020 includes a gain on the sale of the hospital business of $45,760.

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

**MANAGEMENT'S DISCUSSION AND ANALYSIS**

*(In thousands, except per share data)*

***You should read the discussion and analysis of our financial condition and results of operations set forth in this Item 7 together with our consolidated financial statements and the related notes appearing elsewhere in this Annual Report on Form 10-K. Some of the information contained in this discussion and analysis or set forth elsewhere in this Annual Report on Form 10-K, including information with respect to our plans and strategy for our business and related financing, includes forward-looking statements that involve risks and uncertainties, and reference is made to the "Cautionary Disclosure Regarding Forward-Looking Statements" set forth immediately following the Table of Content of this Annual Report on Form 10-K for further information on the forward looking statements herein. In addition, you should read the "Risk Factors" section of this Annual Report on Form 10-K for a discussion of important factors that could cause actual results to differ materially from the results described in or implied by the forward-looking statements contained in the following discussion and analysis and elsewhere in this Annual Report on Form 10-K.***

*Information pertaining to fiscal year 2018 was included in the Company's Annual Report on Form 10-K for the year-ended December 31, 2019, on pages 42 through 56, under Part II, Item 7, "Management's Discussion and Analysis of Financial Condition and Results of Operations," which was filed with the SEC on March 16, 2020.*

**Overview**

***Nature of Operations***

Avadel Pharmaceuticals plc (Nasdaq: AVDL) (“Avadel,” the “Company,” “we,” “our,” or “us”) is a biopharmaceutical company. Our lead product candidate, FT218, is an investigational once-nightly, extended-release formulation of sodium oxybate for the treatment of excessive daytime sleepiness (“EDS”) and cataplexy in adults with narcolepsy. We are primarily focused on the development and potential United States (“U.S.”) Food and Drug Administration (“FDA”) approval of FT218. In December 2020, the Company submitted a New Drug Application (“NDA”) to the FDA for FT218 to treat excessive daytime sleepiness and cataplexy in adults with narcolepsy.The NDA for FT218 was accepted by the FDA in February 2021 and assigned a Prescription Drug User Fee Act (“PDUFA”) target action date of October 15, 2021.

Outside of our lead product candidate, we continue to evaluate opportunities to expand our product portfolio. As of December 31, 2020, we do not have any approved and commercialized products in our portfolio.

***FT218***

FT218 is a once-nightly formulation of sodium oxybate that uses our Micropump controlled release drug-delivery technology for the treatment of EDS and cataplexy in adults suffering from narcolepsy. Sodium oxybate is the sodium salt of gamma hydroxybutyrate, an endogenous compound and metabolite of the neurotransmitter gamma-aminobutyric acid. Sodium oxybate is approved in the U.S. for the treatment of EDS and cataplexy in patients with narcolepsy and is approved in Europe for the treatment of cataplexy in patients with narcolepsy. Since 2002, sodium oxybate has only been available as a formulation that must be taken twice nightly, first at bedtime, and then again 2.5 to 4 hours later.

On December 16, 2020, we announced the submission of our NDA to the FDA for FT218. On February 26, 2021, the FDA notified us of formal acceptance of the NDA with an assigned PDUFA target action date of October 15, 2021.

The REST-ON trial was a randomized, double-blind, placebo-controlled study that enrolled 212 patients and was conducted in clinical sites in the U.S., Canada, Western Europe and Australia. The last patient, last visit was completed at the end of the first quarter of 2020 and positive top line data from the REST-ON trial was announced on April 27, 2020. Patients who received 9 g of once-nightly FT218, the highest dose administered in the trial, demonstrated a statistically significant and clinically meaningful improvement compared to placebo across the three co-primary endpoints of the trial: maintenance of wakefulness test, or MWT, clinical global impression-improvement, or CGI-I, and mean weekly cataplexy attacks. The lower doses assessed, 6 g and 7.5 g also demonstrated a statistically significant and clinically meaningful improvement on all three co-primary endpoints compared to placebo. We observed the 9 g dose of once-nightly FT218 to be generally well tolerated. Adverse reactions commonly associated with sodium oxybate were observed in a small number of patients (nausea 1.3%, vomiting 5.2%, decreased appetite 2.6%, dizziness 5.2%, somnolence 3.9%, tremor 1.3% and enuresis 9%), and 3.9% of the patients who received 9 g of FT218 discontinued the trial due to adverse reactions.

In January 2018, the FDA granted FT218 Orphan Drug Designation, which makes the drug eligible for certain development and commercial incentives, including potential U.S. market exclusivity for up to seven years. Additionally, several FT218-related U.S. patents have been issued, and there are additional patent applications currently in development and/or pending at the U.S. Patent and Trademark Office (“USPTO”), as well as foreign patent offices.

In July 2020, we announced that the first patient was dosed initiating an open-label extension (“OLE”)/switch study of FT218 as a potential treatment for EDS and cataplexy in patients with narcolepsy. The OLE/switch study is examining the long-term safety and maintenance of efficacy of FT218 in patients with narcolepsy who participated in the REST-ON study, as well as dosing and preference data for patients switching from twice-nightly sodium oxybate to once-nightly FT218 regardless if they participated in REST-ON or not. We anticipate that the study will enroll up to 250 patients, many of which will be enrolled in North American clinical trial sites that participated in the REST-ON study.

We believe FT218 has the potential to demonstrate improved dosing compliance, safety and patient satisfaction over the current standard of care for EDS and cataplexy in patients with narcolepsy, which is a twice-nightly sodium oxybate formulation. If approved, we believe FT218 has the potential to take a significant share of the sodium oxybate market. The current market size for the twice-nightly administration of sodium oxybate is estimated at an annualized revenue run rate of $1.8 billion.

***Micropump Drug-Delivery Technology***

Our Micropump drug-delivery technology allows for the controlled delivery of small molecule drugs taken orally, which has the potential to reduce safety issues and improve a number of things like efficacy, dosing compliance and patient satisfaction. Beyond FT218, we believe there could be other product development opportunities for our Micropump drug-delivery technology, representing either i) life cycle opportunities, whereby additional intellectual property-protected drug delivery technology can be added to a pharmaceutical product to extend the commercial viability of that product, or ii) innovative formulation opportunities for known active pharmaceutical ingredients as well as new chemical entities.

*Previously Approved FDA Products*

On June 30, 2020 (the "Closing Date"), Avadel Legacy Pharmaceuticals, LLC (the "Avadel Seller") announced the sale of the portfolio of sterile injectable drugs used in the hospital setting (the "Hospital Products"), which included our three commercial products, Akovaz, Bloxiverz and Vazculep, as well as Nouress, which was approved by the U.S. FDA to Exela Sterile Medicines LLC ("Exela Buyer") pursuant to an asset purchase agreement by and among the Avadel Seller, Avadel US Holdings, Inc., the Exela Buyer and Exela Holdings, Inc. This sale included the following FDA approved products:

- **Bloxiverz (neostigmine methylsulfate injection) -** Bloxiverz is a drug used intravenously in the operating room to reverse the effects of non-depolarizing neuromuscular blocking agents after surgery.
- **Vazculep (phenylephrine hydrochloride injection) -** Vazculep is indicated for the treatment of clinically important hypotension occurring in the setting of anesthesia.
- **Akovaz (ephedrine sulfate injection) -** Akovaz was the first FDA approved formulation of ephedrine sulfate, an alpha- and beta- adrenergic agonist and a norepinephrine-releasing agent that is indicated for the treatment of clinically important hypotension occurring in the setting of anesthesia.
- **Nouress (cysteine hydrochloride injection) -** Nouress is a sterile injectable product for use in the hospital setting to provide parenteral nutrition to neonates.

***Key Business Trends and Highlights***

In operating our business and monitoring our performance, we consider a number of performance measures, as well as trends affecting our industry as a whole, which include the following:

- **Healthcare and Regulatory Reform**: Various health care reform laws in the U.S. may impact our ability to successfully commercialize our products and technologies. The success of our commercialization efforts may depend on the extent to which the government health administration authorities, the health insurance funds in the E.U. Member States, private health insurers and other third-party payers in the U.S. will reimburse consumers for the cost of healthcare products and services.
- **Competition and Technological Change**: Competition in the pharmaceutical and biotechnology industry continues to be intense and is expected to increase. We compete with academic laboratories, research institutions, universities, joint ventures, and other pharmaceutical and biotechnology companies, including other companies developing niche branded or generic specialty pharmaceutical products or drug delivery platforms. Furthermore, major technological changes can happen quickly in the pharmaceutical and biotechnology industries. Such rapid technological change, or the development by our competitors of technologically improved or differentiated products, could render our drug delivery platforms obsolete or noncompetitive.
- **Pricing Environment for Pharmaceuticals**: The pricing environment continues to be in the political spotlight in the U.S. As a result, the need to obtain and maintain appropriate pricing for our products may become more challenging due to, among other things, the attention being paid to healthcare cost containment and other austerity measures in the U.S. and worldwide.
- **Generics Playing a Larger Role in Healthcare**: Generic pharmaceutical products will continue to play a large role in the U.S. healthcare system. Specifically, we have seen, or likely will see, additional generic competition to our current and future products and we continue to expect generic competition in the future.

- **Access to and Cost of Capital**: The process of raising capital and associated cost of such capital for a company of our financial profile can be difficult and potentially expensive. If the need were to arise to raise additional capital, access to that capital may be difficult and/or expensive and, as a result, could create liquidity challenges for us.

- **Net Loss from Operations in 2021**: We sold our Hospital Products at June 30, 2020 and will no longer generate revenue from sales of these products. We will incur substantial expenses to further the clinical development and prepare for the launch of FT218, if approved, and expect to incur a net loss in 2021, which we are unable to estimate at this time.

***Impact of COVID-19***

Since early 2020, we have seen the profound impact that the novel coronavirus ("COVID-19") is having on human health, the global economy and society at large. We have been actively monitoring the COVID-19 situation and have taken measures to mitigate the potential impacts to our employees and business, such as implementing a work from home policy. We believe the impact of COVID-19 and measures to prevent its spread could impact our business in a number of ways, including: i) possibly delaying any remaining development activities for FT218, the FDA review timeline of FT218, and/or our ongoing RESTORE open-label extension/switch study, ii) disruptions to our supply chain and third parties; and iii) requiring our employees to work from home for an extended period of time. An extended period of global supply chain and economic disruption could materially affect our business, results of operations, access to sources of liquidity and financial condition.

**Financial Highlights**

Highlights of our consolidated results for the year ended December 31, 2020 are as follows:

- Revenue was $22,334 for the year ended December 31, 2020 compared to $59,215 in the same period last year. This year over year decrease was primarily the result of the sale of the Hospital Products on June 30, 2020 and increased competition driving lower prices as noted above in our discussion of *Key Business Trends and Highlights*.

- Operating income was $5,815 for the year ended December 31, 2020 compared to an operating loss of $24,112 for the year ended December 31, 2019. The change from operating loss to operating income was due to the gain on the sale of the Hospital Products of $45,760. R&D expenses decreased in the current year by $12,475 and restructuring expenses decreased by $6,484, which also contributed to the change. Further, there was a decline in gross margin in the current year (i.e., total revenues minus cost of products) of $30,498 due to the June 30, 2020 sale of the Hospital Products.

- Net income was $7,028 for the year ended December 31, 2020 compared to net loss of $33,226 in the same period last year.

- Diluted net income per share was $0.13 for the year ended December 31, 2020 compared to diluted net loss per share of $0.89 in the same period last year.

- Cash and marketable securities increased by $157,244 to $221,402 at December 31, 2020 from $64,158 at December 31, 2019. This increase was largely driven by the February 2020 private placement which resulted in proceeds, net of placement agent and other expenses of approximately $61,000, the May 2020 public offering, which resulted in proceeds, net of expenses and underwriting fees of approximately $117,000, cash proceeds from the disposition of the Hospital Products of $25,500, partially offset by $48,734 use of cash in operations during the year ended December 31, 2020.

**Critical Accounting Estimates**

The preparation of consolidated financial statements in conformity with U.S. GAAP requires management to use judgment in making estimates and assumptions that affect the reported amounts of assets and liabilities, disclosures of contingent assets and liabilities at the date of the consolidated financial statements and the reported amounts of revenues and expenses during the periods presented. Actual results could differ from those estimates under different assumptions or conditions.

The following accounting policies are based on, among other things, judgments and assumptions made by management that include inherent risks and uncertainties. Management's estimates are based on the relevant information available at the end of each period.

***Revenue.*** Prior to June 30, 2020, revenue included sales of pharmaceutical products, licensing fees, and, if any, milestone payments for research and development ("R&D") achievements.

*Product Sales*

Prior to June 30, 2020, we sold products primarily through wholesalers and considered these wholesalers to be our customers. Under ASC 606, revenue from product sales is recognized when the customer obtains control of our product, which occurs typically upon receipt by the customer. Our gross product sales are subject to a variety of price adjustments in arriving at reported net product sales. These adjustments include estimates of product returns, chargebacks, payment discounts, rebates, and other sales allowances and are estimated based on analysis of historical data for the product or comparable products, future expectations for such products and other judgments and analysis.

*License and Milestone Revenue*

From time to time we may enter into out-licensing agreements which are within the scope of ASC 606 under which it licenses to third parties certain rights to its products or intellectual property. The terms of these arrangements typically include payment to us of one or more of the following: non-refundable, upfront license fees; development, regulatory, and commercial milestone payments; and sales-based royalty payments. Each of these payments results in license revenue. During the years ended December 31, 2020 and 2019, we did not recognize any revenue from license agreements.

***Research and Development ("R&D").*** R&D expenses consist primarily of costs related to clinical studies and outside services, personnel expenses, and other R&D expenses. Clinical studies and outside services costs relate primarily to services performed by clinical research organizations and related clinical or development manufacturing costs, materials and supplies, filing fees, regulatory support, and other third-party fees. Personnel expenses relate primarily to salaries, benefits and share-based compensation. Other R&D expenses primarily include overhead allocations consisting of various support and facilities-related costs. R&D expenditures are charged to operations as incurred. Raw materials used in the production of pre-clinical and clinical products are expensed as R&D costs.

We recognize R&D tax credits received from the French and Irish government for spending on innovative R&D as an offset of R&D expenses.

***Share-based Compensation.*** We account for share-based compensation based on the estimated grant-date fair value. The fair value of stock options and warrants is estimated using Black-Scholes option-pricing valuation models ("Black-Scholes model"). As required by the Black-Sholes model, estimates are made of the underlying volatility of AVDL stock, a risk-free rate and an expected term of the option or warrant. We estimated the expected term using a simplified method, as we do not have enough historical exercise data for a majority of such options and warrants upon which to estimate an expected term. We recognize compensation cost, net of an estimated forfeiture rate, using the accelerated method over the requisite service period of the award.

***Income Taxes.*** Our income tax benefit, deferred tax assets and liabilities, and liabilities for unrecognized tax benefits reflect management's best estimate of current and future taxes to be paid. We are subject to income taxes in Ireland, France and the U.S. Significant judgments and estimates are required in the determination of the consolidated income tax benefit.

Deferred income taxes arise from temporary differences between the tax basis of assets and liabilities and their reported amounts in the financial statements, which will result in taxable or deductible amounts in the future. In evaluating our ability to recover our deferred tax assets in the jurisdiction from which they arise, we consider all available positive and negative evidence, including scheduled reversals of deferred tax liabilities, projected future taxable income or loss, tax-planning

strategies, and results of recent operations. The assumptions about future taxable income or loss require the use of significant judgment and are consistent with the plans and estimates we are using to manage the underlying businesses.

The calculation of our tax liabilities involves dealing with uncertainties in the application of complex tax laws and regulations in a multitude of jurisdictions across our global operations. A tax benefit from an uncertain tax position may be recognized when it is more likely than not that the position will be sustained upon examination, including resolutions of any related appeals or litigation processes, on the basis of the technical merits.

We record unrecognized tax benefits as liabilities and adjust these liabilities when our judgment changes as a result of the evaluation of new information not previously available. Because of the complexity of some of these uncertainties, the ultimate resolution may result in a payment that is materially different from our current estimate of the unrecognized tax benefit liabilities. These differences will be reflected as increases or decreases to income tax expense in the period in which new information is available.

We have not recorded a deferred tax liability for any income or withholding taxes that may arise as the result of the distribution of unremitted earnings within our Company. At December 31, 2020, we had unremitted earnings of $3,725 outside of Ireland as measured on a U.S. GAAP basis. Based on our estimates that future domestic cash generation will be sufficient to meet future domestic cash needs along with our specific plans for reinvestment, we have not recorded a deferred tax liability for any income or withholding taxes that may arise from a distribution that would qualify as a dividend for tax purposes. It is not practicable to estimate the amount of deferred tax liability on such remittances, if any.

***Goodwill.*** Goodwill represents the excess of the acquisition consideration over the fair value of assets acquired and liabilities assumed. We have determined that we operate in a single segment and have a single reporting unit associated with the development and commercialization of pharmaceutical products. We test goodwill for impairment annually and when events or changes in circumstances indicate that the carrying value may not be recoverable. We performed our required impairment test of goodwill and have determined that no impairment of goodwill existed at December 31, 2020 and 2019.

***Long-Lived Assets.*** Long-lived assets include fixed assets and intangible assets. Prior to the sale of the Hospital Products on June 30, 2020, intangible assets consisted primarily of purchased licenses and intangible assets recognized as part of the Éclat Pharmaceuticals acquisition. Acquired in-process research and development ("IPR&D") had an indefinite life and was not amortized until completion and development of the project, at which time the IPR&D became an amortizable asset, for which amortization of such intangible assets was computed using the straight-line method over the estimated useful life of the assets.

Long-lived assets are reviewed for impairment whenever conditions indicate that the carrying value of the assets may not be fully recoverable. Such impairment tests are based on a comparison of the pretax undiscounted cash flows expected to be generated by the asset to the recorded value of the asset or other market-based value approaches. If impairment is indicated, the asset value is written down to its market value if readily determinable or its estimated fair value based on discounted cash flows. Any significant changes in business or market conditions that vary from current expectations could have an impact on the fair value of these assets and any potential associated impairment. During the fourth quarter of 2018, we recorded a $66,087 impairment charge to the entire acquired developed technology related to Noctiva. We determined that no impairment existed at December 31, 2019. On June 30, 2020, we transferred our remaining intangible asset to the Exela Buyer as part of the disposition of the Hospital Products. We determined that no impairment existed at December 31, 2020 on our remaining long-lived assets.

***Acquisition-related Contingent Consideration.*** Prior to the sale of the Hospital Products on June 30, 2020, the acquisition-related contingent consideration payables arising from the acquisition of Éclat Pharmaceuticals (i.e., our hospital products) and FSC (our pediatrics products), which was assumed by the buyer as part of the disposition of the pediatrics products on February 16, 2018, were accounted for at fair value (see *Note 13: Contingent Consideration Payable* and *Note 18: Divestiture of the Pediatric Assets*). The fair value of the warrants issued in connection with the Éclat acquisition were estimated using a Black-Scholes model. A portion of these warrants were exercised on February 23, 2018 and the remaining warrants expired on March 12, 2018. See *Note 13: Contingent Consideration Payable*. The fair value of acquisition-related contingent consideration payable is estimated using a discounted cash flow model based on the long-term sales or gross profit forecasts of the specified hospital or pediatric products using an appropriate discount rate. There are a number of estimates used when determining the fair value of these earn-out payments. These estimates include, but are not limited to, the long-term pricing environment, market size, market share the related products are forecast to achieve, the cost of goods related to such products and an appropriate discount rate to use when present valuing the related cash flows. These estimates can and often do change based on changes in current market conditions, competition, management judgment and other factors. Changes to these estimates can have and have had a material impact on our consolidated statements of income (loss) and balance sheets. Changes in fair value

of these liabilities are recorded in the consolidated statements of income (loss) within operating expenses as changes in fair value of contingent consideration.

***Financing-related Royalty Agreements.*** We were previously a party to two royalty agreements in connection with certain financing arrangements. We elected the fair value option for the measurement of the financing-related contingent consideration payable associated with the royalty agreements with certain Deerfield and Broadfin entities (the "Deerfield and Broadfin Royalty Agreements") (see *Note 13: Contingent Consideration Payable*). Prior to the sale of the Hospital Products on June 30, 2020, the fair value of financing-related royalty agreements was estimated using the same components used to determine the fair value of the acquisition-related contingent consideration noted above, with the exception of cost of products sold. Changes to these components can also have a material impact on our consolidated statements of income (loss) and balance sheets. Changes in the fair value of this liability are recorded in the consolidated statements of income (loss) as other (expense) income - changes in fair value of contingent consideration payable. In connection with the disposition of the Hospital Products on June 30, 2020 as discussed in *Note 4: Disposition of the Hospital Products*, the Deerfield and Broadfin Royalty Agreements were assigned to the Exela Buyer and the Exela Buyer assumed and shall pay, perform, satisfy and discharge the liabilities and obligations of the Company under the Deerfield and Broadfin Royalty Agreements.

**Results of Operations**

The following is a summary of our financial results (in thousands, except per share amounts):

| | Years Ended December 31, | | Increase / (Decrease) | |
|---|---|---|---|---|
| **Comparative Statements of Income (Loss):** | **2020** | **2019** | **$** | **%** |
| Product sales | $ 22,334 | $ 59,215 | $ (36,881) | (62.3)% |
| Operating expenses: | | | | |
| Cost of products | 5,742 | 12,125 | (6,383) | (52.6)% |
| Research and development expenses | 20,442 | 32,917 | (12,475) | (37.9)% |
| Selling, general and administrative expenses | 32,405 | 30,183 | 2,222 | 7.4 % |
| Intangible asset amortization | 406 | 816 | (410) | (50.2)% |
| Changes in fair value of contingent consideration | 3,327 | 845 | 2,482 | 293.7 % |
| Gain on sale of Hospital Products | (45,760) | — | (45,760) | (100.0)% |
| Restructuring (income) costs | (43) | 6,441 | (6,484) | (100.7)% |
| Total operating expenses | 16,519 | 83,327 | (66,808) | (80.2)% |
| Operating income (loss) | 5,815 | (24,112) | 29,927 | 124.1 % |
| Investment and other (expense) income, net | (832) | 1,069 | (1,901) | (177.8)% |
| Interest expense | (12,994) | (12,483) | (511) | (4.1)% |
| Gain from release of certain liabilities | 3,364 | — | 3,364 | 100.0 % |
| Loss on deconsolidation of subsidiary | — | (2,678) | 2,678 | 100.0 % |
| Other expense - changes in fair value of contingent consideration payable | (435) | (378) | (57) | (15.1)% |
| Loss before income taxes | (5,082) | (38,582) | 33,500 | 86.8 % |
| Income tax benefit | (12,110) | (5,356) | (6,754) | (126.1)% |
| Net income (loss) | $ 7,028 | $ (33,226) | $ 40,254 | 121.2 % |
| Net income (loss) per share - diluted | $ 0.13 | $ (0.89) | $ 1.02 | 114.6 % |

The product sales for each of our significant products were as follows:

| Product Sales | Years Ended December 31, 2020 | 2019 | Increase / (Decrease) $ | % |
|---|---|---|---|---|
| Bloxiverz | $ 2,201 | $ 7,479 | $ (5,278) | (70.6)% |
| Vazculep | 10,429 | 33,152 | (22,723) | (68.5)% |
| Akovaz | 9,545 | 18,642 | (9,097) | (48.8)% |
| Other | 159 | (58) | 217 | 374.1 % |
| Product sales | 22,334 | 59,215 | (36,881) | (62.3)% |

Total product sales were $22,334 for the year ended December 31, 2020, compared to $59,215 for the same prior year period. The decline in product sales is driven by the sale of the Hospital Products on June 30, 2020 as well as increased competition.

| Cost of Products | Years Ended December 31, 2020 | 2019 | Increase / (Decrease) $ | % |
|---|---|---|---|---|
| Cost of products | $ 5,742 | $ 12,125 | $ (6,383) | (52.6)% |
| Percentage of sales | 25.7 % | 20.5 % | | |

Cost of products decreased by $6,383, or 52.6% during the year ended December 31, 2020 compared to the prior year driven by the June 30, 2020 sale of the Hospital Products.

| Research and Development Expenses | Years Ended December 31, 2020 | 2019 | Increase / (Decrease) $ | % |
|---|---|---|---|---|
| Research and development expenses | $ 20,442 | $ 32,917 | $ (12,475) | (37.9)% |

Research and development (“R&D”) expenses decreased by $12,475 or 37.9% during the year ended December 31, 2020 as compared to the same period in 2019. The decline was driven by lower R&D expenses related to the development of FT218 of approximately $8,700 due to the completion of the Phase 3 clinical study during the first quarter of 2020, as well as lower payroll, benefits and share-based compensation of approximately $3,800 related to the 2019 Corporate and French restructuring plans. See *Note 19: Restructuring Costs*. The Company continues to invest a substantial portion of R&D in its FT218 development program.

| Selling, General and Administrative Expenses | Years Ended December 31, 2020 | 2019 | Increase / (Decrease) $ | % |
|---|---|---|---|---|
| Selling, general and administrative expenses | $ 32,405 | $ 30,183 | $ 2,222 | 7.4 % |

Selling, general and administrative (“SG&A”) expenses increased by $2,222 or 7.4% during the year ended December 31, 2020 as compared to the prior year. This increase was primarily due to an increase in consulting and professional fees, marketing research costs, insurance costs and legal fees totaling approximately $8,800, partially offset by a decrease in payroll and benefits of approximately $2,200 due to the 2019 restructuring plans and a decrease in travel and entertainment costs of approximately $900 due to COVID. In addition, there was a decrease of approximately $2,200 of sales and marketing costs related to the exit of Noctiva during the first quarter 2019 and a decrease of approximately $1,000 related to non-recurring adjustments to certain liabilities related to the Hospital Products.

| Intangibles Asset Amortization | Years Ended December 31, 2020 | 2019 | Increase / (Decrease) $ | % |
|---|---|---|---|---|
| Intangible asset amortization | $ 406 | $ 816 | $ (410) | (50.2)% |

Intangible asset amortization expense for the years ended December 31, 2020 and 2019 relates to the amortization of our acquired developed technology - Vazculep. This intangible asset was written off as a result of the sale of the Hospital Products to the Exela Buyer on June 30, 2020. See *Note 4: Disposition of the Hospital Products.*

| Changes in Fair Value of Contingent Consideration | Years Ended December 31, 2020 | 2019 | Increase / (Decrease) $ | % |
|---|---|---|---|---|
| Changes in fair value of contingent consideration | $ 3,327 | $ 845 | $ 2,482 | 293.7 % |

Prior to the sale of the Hospital Products on June 30, 2020, we computed the fair value of the contingent consideration using several significant assumptions and when these assumptions change, due to underlying market conditions, the fair value of these liabilities change as well. Each of the underlying assumptions used to determine the fair values of these contingent liabilities can, and often do, change based on adjustments in current market conditions, competition and other factors. These changes had a material impact on our consolidated statements of income (loss) and balance sheets. As part of the sale of the Hospital Products on June 30, 2020, the Exela Buyer assumed and will pay, perform, satisfy and discharge the liabilities and obligations of Avadel Legacy and the Company under the Deerfield Royalty Agreement.

As a result of changes in the underlying assumptions used to determine the estimated fair values of our acquisition-related contingent consideration earn-out payments - Éclat, we recorded expense of $3,327 and $845 and increased the fair value of the acquisition-related contingent consideration earn-out payments - Éclat for the years ended December 31, 2020 and 2019, respectively. Subsequent to June 30, 2020, we had no remaining liability.

| Gain on the Sale of the Hospital Products | Years Ended December 31, 2020 | 2019 | Increase / (Decrease) $ | % |
|---|---|---|---|---|
| Gain on the sale of the Hospital Products | $ (45,760) | $ — | $ (45,760) | (100.0)% |

On June 30, 2020, we sold our assets, rights and interests related to Bloxiverz, Vazculep, Akovaz and Nouress to the Exela Buyer pursuant to an asset purchase agreement by and among us and the Exela Buyer. We recognized a net gain of $45,760 on this transaction. See *Note 4: Disposition of the Hospital Products.*

| Restructuring (Income) Costs | Years Ended December 31, 2020 | 2019 | Increase / (Decrease) $ | % |
|---|---|---|---|---|
| Restructuring (income) costs | $ (43) | $ 6,441 | $ (6,484) | (100.7)% |

Restructuring income of $43 and costs of $6,441 were recognized during the years ended December 31, 2020 and 2019, respectively. Restructuring income during the year ended December 31, 2020, was driven by share-based compensation forfeitures as a result of the 2019 Corporate restructuring actions. Restructuring costs for the year ended December 31, 2019 were primarily related to the 2019 French and Corporate restructuring plans and mainly included severance, legal costs. See *Note 19: Restructuring Costs* for further details.

| Investment and Other (Expense) Income, net | Years Ended December 31, 2020 | 2019 | Increase / (Decrease) $ | % |
|---|---|---|---|---|
| Investment and other (expense) income, net | $ (832) | $ 1,069 | $ (1,901) | (177.8)% |

Investment and other expense was $832 for the year ended December 31, 2020 as compared to investment and other income of $1,069 for the year ended December 31, 2019. Expense in the current year was driven by an $800 legal settlement related to a bankruptcy claim, an increase in net unrealized losses and net realized losses on our marketable securities during the current period when compared to the prior period of approximately $2,100, and higher currency remeasurement losses of

approximately $400 due to the weakening of the U.S. dollar during the year ended December 31, 2020, partially offset by a legal settlement of $1,750 which was incurred during the twelve months ended December 31, 2020.

| | Years Ended December 31, | | Increase / (Decrease) | |
|---|---|---|---|---|
| **Interest Expense** | **2020** | **2019** | **$** | **%** |
| Interest expense | $ (12,994) | $ (12,483) | $ (511) | (4.1)% |

Interest expense of $12,994 and $12,483 for the years ended December 31, 2020 and 2019, respectively, is related to interest on the 2023 Notes that were issued in February 2018.

| | Years Ended December 31, | | Increase / (Decrease) | |
|---|---|---|---|---|
| **Gain from release of certain liabilities** | **2020** | **2019** | **$** | **%** |
| Gain from release of certain liabilities | $ 3,364 | $ — | $ 3,364 | 100.0 % |

Subsequent to the finalization of the bankruptcy, we recognized a non-cash gain of $3,364 from the release of certain liabilities that had been retained following the deconsolidation of Specialty Pharma in February 2019.

| | Years Ended December 31, | | Increase / (Decrease) | |
|---|---|---|---|---|
| **Loss on Deconsolidation of Subsidiary** | **2020** | **2019** | **$** | **%** |
| Loss on deconsolidation of subsidiary | $ — | $ (2,678) | $ 2,678 | 100.0 % |

As a result of Specialty Pharma's bankruptcy filing on February 6, 2019, we concluded that we no longer controlled its operations and accordingly deconsolidated this subsidiary. We recorded a loss during the year ended December 31, 2019 on the deconsolidation as a result of removing the net assets and certain liabilities of this subsidiary from our consolidated financial statements. See *Note 3: Subsidiary Bankruptcy and Deconsolidation* for more discussion.

| | Years Ended December 31, | | Increase / (Decrease) | |
|---|---|---|---|---|
| **Other Expense - Changes in Fair Value of Contingent Consideration Payable** | **2020** | **2019** | **$** | **%** |
| Other expense - changes in fair value of contingent consideration payable | $ (435) | $ (378) | $ (57) | (15.1)% |

We recorded expense of $435 and $378 to increase the fair value of these liabilities during the years ended December 31, 2020 and 2019, respectively, due to the same reasons associated with changes in certain underlying market conditions as described in the section "Changes in Fair Value of Contingent Consideration" for these periods.

| | Years Ended December 31, | | Increase / (Decrease) | |
|---|---|---|---|---|
| **Income Taxes** | **2020** | **2019** | **$** | **%** |
| Income tax benefit | $ (12,110) | $ (5,356) | $ (6,754) | (126.1)% |
| Percentage of income (loss) before income taxes | 238.3 % | 13.9 % | | |

In 2020, the income tax benefit increased by $6,754 when compared to the same period in 2019. The increase in the income tax benefit in 2020 was primarily driven by the tax benefits from the sale of our hospital products and passage of the Coronavirus Aid, Relief and Economic Security Act (the "CARES Act") in the U.S. The Company recorded additional tax benefit in 2020 from the Orphan Drug and R&D tax credit in the U.S. Tax benefit from the intercompany asset transfer recorded in 2019 did not recur, resulting in a partial offset of tax benefits described above. See *Note 14: Income Taxes* for more discussion.

**Liquidity and Capital Resources**

Our cash flows from operating, investing and financing activities, as reflected in the consolidated statements of cash flows, are summarized in the following table:

| | Years Ended December 31, | | Increase / (Decrease) | |
|---|---|---|---|---|
| **Net Cash (Used In) Provided By** | **2020** | **2019** | **$** | **%** |
| Operating activities | $ (48,734) | $ (38,325) | $ (10,409) | (27.2)% |
| Investing activities | (69,721) | 38,723 | (108,444) | (280.1)% |
| Financing activities | 179,683 | (27) | 179,710 | 665,592.6 % |

***Operating Activities***

Net cash used in operating activities of $48,734 for the year ended December 31, 2020 increased from net cash used in operating activities of $38,325 in the prior year. This increase in cash used in operating activities is due to the decrease in accounts payable and accrued expenses of $21,012, partially offset by lower earn-out and royalty payments of $6,547 related to our contingent consideration liabilities due to the sale of the Hospital Products and increased cash provided by accounts receivable of $5,810 due to the collection of all outstanding accounts receivable balances during the year ended December 31, 2020.

***Investing Activities***

Cash used in investing activities was $69,721 for the year ended December 31, 2020 compared to cash provided by investing activities of $38,723 in the same prior year period. In 2020, we had net purchases of marketable securities of $95,123, partially offset by proceeds of $25,500 received from the sale of the Hospital Products. In 2019, we had net proceeds of $38,598 for the sale of marketable securities

***Financing Activities***

Cash provided by financing activities was $179,683 for the year ended December 31, 2020 compared to cash used in financing activities of $27 for the same prior year period. Cash provided by financing activities for the year ended December 31, 2020 was driven by the May public offering that resulted in net proceeds of $116,924, the February private placement that resulted in net proceeds of $60,570, and proceeds from the issuance of ordinary shares of $2,189.

***Liquidity and Risk Management***

The adequacy of our cash resources depends on the outcome of certain business conditions including the cost of our FT218 clinical development plan, our cost structure, and other factors set forth in “Risk Factors” within Part I, Item 1A of this Annual Report on Form 10-K. To complete the FT218 clinical development plan we will need to commit substantial resources, which could result in future losses or otherwise limit our opportunities or affect our ability to operate our business. Our assumptions concerning the outcome of certain business conditions may prove to be wrong or other factors may adversely affect our business, and as a result we could exhaust or significantly decrease our available cash and marketable securities balances which could, among other things, force us to raise additional funds and/or force us to reduce our expenses, either of which could have a material adverse effect on our business. Additionally, we are unable to estimate the near or long term impact that COVID-19, which may have a material adverse impact on our business.

In February 2020, we announced that we had entered into a definitive agreement for the sale of our ADSs and Series A Non-Voting Convertible Preferred Shares (“Series A Preferred”) in a private placement to a group of institutional accredited investors. The private placement resulted in gross proceeds of approximately $65,000 before deducting placement agent and other offering expenses, which resulted in net proceeds of $60,570.

Also, in February 2020, we filed a shelf registration statement on Form S-3 (the “2020 Shelf Registration Statement”) that allows issuance and sale by us, from time to time, of :

- up to $250,000 in aggregate of ordinary shares, nominal value US$0.01 per share, each of which may be represented by ADSs, preferred shares, nominal value US$0.01 per share, debt securities, warrants to purchase ordinary shares, ADSs, preferred shares and/or debt securities, and/or units consisting of ordinary shares, ADSs, preferred shares, one or more debt securities or warrants in one or more series, in any combination, pursuant to the terms of the 2020 Shelf

Registration Statement, the base prospectus contained in the 2020 Shelf Registration Statement (the "Base Prospectus"), and any amendments or supplements thereto (together, the "Securities"); including

- up to $50,000 of ADSs that may be issued and sold from time to time pursuant to the terms of an Open Market Sale Agreement[SM], entered into with Jefferies LLC on February 4, 2020, the 2020 Shelf Registration Statement, the Base Prospectus and the terms of the sales agreement prospectus contained in the 2020 Shelf Registration Statement.

On April 28, 2020, we announced the pricing of an underwritten public offering of 11,630 ordinary shares, in the form of ADSs at a price to the public of $10.75 per ADS. Each ADS represents the right to receive one ordinary share. All of the ADSs were being offered by Avadel. The gross proceeds to us from the offering were approximately $125,000, before deducting underwriting discounts and commissions and estimated offering expenses, which resulted in net proceeds of $116,924.

If available to us, raising additional capital may be accomplished through one or more public or private debt or equity financings, collaborations or partnering arrangements. Any equity financing would be dilutive to our shareholders.

Cash, cash equivalent and marketable security balances as of December 31, 2020 and unused financing sources are expected to provide the Company with the flexibility to meet its liquidity needs in 2021, including its operating requirements related to the development of FT218.

**Other Matters**

***Litigation***

We are subject to potential liabilities generally incidental to our business arising out of present and future lawsuits and claims related to product liability, personal injury, contract, commercial, intellectual property, tax, employment, compliance and other matters that arise in the ordinary course of business. We accrue for potential liabilities when it is probable that future costs (including legal fees and expenses) will be incurred and such costs can be reasonably estimated. At December 31, 2020 and December 31, 2019, there were no contingent liabilities with respect to any litigation, arbitration or administrative or other proceeding that are reasonably likely to have a material adverse effect on our consolidated financial position, results of operations, cash flows or liquidity.

***Material Commitments***

At December 31, 2020, we have one commitment with a contract manufacturer related to facility upgrades and the purchase and validation of equipment to be used in the manufacture of FT218. The total cost of this commitment is estimated to be approximately $4,000 and is expected to be started and completed during the year ending December 31, 2021.

The Company also has a commitment with a contract manufacturer related to the construction and preparation of a production suite at the contract manufacturer's facility, which is substantially complete at December 31, 2020. Subsequent to the initial build and preparation of the production suite, this commitment also includes annual fees which would commence at the start of production of validation batches and continue thereafter for five years.

We and our subsidiaries lease office facilities under non-cancellable operating leases expiring at various dates. See *Note 11: Leases*.

***Aggregate Contractual Obligations***

The following table presents our contractual obligations at December 31, 2020:

| | | Payments Due by Period | | | |
|---|---|---|---|---|---|
| **Contractual Obligations:** | **Total** | **Less than 1 Year** | **1 to 3 Years** | **3 to 5 Years** | **More than 5 Years** |
| Long-term debt and interest | $ 159,922 | $ 6,469 | $ 153,453 | $ — | $ — |
| Purchase commitments | 4,000 | 4,000 | — | — | — |
| Operating leases | 2,590 | 578 | 1,192 | 820 | — |
| Total contractual cash obligations | $ 166,512 | $ 11,047 | $ 154,645 | $ 820 | $ — |

See *Note 12: Long-Term Debt* to our consolidated financial statements contained in Item 8 – Financial Statements for obligations with respect to the respective items within the above table.

***Off-Balance Sheet Arrangements***

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

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

**Interest Rate Risk**

We are subject to interest rate risk as a result of our portfolio of marketable securities. The primary objectives of our investment policy are as follows: safety and preservation of principal and diversification of risk; liquidity of investments sufficient to meet cash flow requirements; and competitive yield. Although our investments are subject to market risk, our investment policy specifies credit quality standards for our investments and limits the amount of credit exposure from any single issue, issuer or certain types of investment. Our investment policy allows us to maintain a portfolio of cash equivalents and marketable securities in a variety of instruments, including U.S. federal government and federal agency securities, European Government bonds, corporate bonds or commercial paper issued by U.S. or European corporations, money market instruments, certain qualifying money market mutual funds, certain repurchase agreements, tax-exempt obligations of states, agencies, and municipalities in the U.S and Europe, and equities.

**Foreign Exchange Risk**

We are exposed to foreign currency exchange risk as the functional currency financial statements of a non-U.S. subsidiary is translated to U.S. dollars. The assets and liabilities of this non-U.S. subsidiary having a functional currency other than the U.S. dollar is translated into U.S. dollars at the exchange rate prevailing at the balance sheet date, and at the average exchange rate for the reporting period for revenue and expense accounts. The cumulative foreign currency translation adjustment is recorded as a component of accumulated other comprehensive loss in shareholders' equity. The reported results of this non-U.S. subsidiary will be influenced by their translation into U.S. dollars by currency movements against the U.S. dollar. Our primary currency translation exposure is related to one subsidiary that has functional currencies denominated in euro. A 10% strengthening/weakening in the rates used to translate the results of our non-U.S. subsidiaries that have functional currencies denominated in euro as of December 31, 2020 would have had an immaterial impact on net income for the year ended December 31, 2020.

Transactional exposure arises where transactions occur in currencies other than the functional currency. Transactions in foreign currencies are recorded at the exchange rate prevailing at the date of the transaction. The resulting monetary assets and liabilities are translated into the appropriate functional currency at exchange rates prevailing at the balance sheet date and the resulting gains and losses are reported in investment and other (expense) income, net in the consolidated statements of income (loss). As of December 31, 2020, our primary exposure is to transaction risk related to euro net monetary assets and liabilities held by subsidiaries with a U.S. dollar functional currency. Realized and unrealized foreign exchange gains resulting from transactional exposure were immaterial for the year ended December 31, 2020.

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

**AVADEL PHARMACEUTICALS PLC**
**CONSOLIDATED STATEMENTS OF INCOME (LOSS)**
*(In thousands, except per share data)*

| | Years ended December 31, | | |
|---|---|---|---|
| | **2020** | **2019** | **2018** |
| Revenues: | | | |
| Product sales | $ 22,334 | $ 59,215 | $ 101,423 |
| License revenue | — | — | 1,846 |
| Total revenues | 22,334 | 59,215 | 103,269 |
| Operating expenses: | | | |
| Cost of products | 5,742 | 12,125 | 17,516 |
| Research and development expenses | 20,442 | 32,917 | 39,329 |
| Selling, general and administrative expenses | 32,405 | 30,183 | 100,359 |
| Intangible asset amortization | 406 | 816 | 6,619 |
| Changes in fair value of contingent consideration | 3,327 | 845 | (22,731) |
| Gain on sale of Hospital Products | (45,760) | — | — |
| Impairment of intangible asset | — | — | 66,087 |
| Restructuring (income) costs | (43) | 6,441 | 1,016 |
| Total operating expenses | 16,519 | 83,327 | 208,195 |
| Operating income (loss) | 5,815 | (24,112) | (104,926) |
| Investment and other (expense) income, net | (832) | 1,069 | 452 |
| Interest expense | (12,994) | (12,483) | (10,622) |
| Gain from release of certain liabilities | 3,364 | — | — |
| Loss on deconsolidation of subsidiary | — | (2,678) | — |
| Other (expense) income - changes in fair value of contingent consideration payable | (435) | (378) | 1,899 |
| Loss before income taxes | (5,082) | (38,582) | (113,197) |
| Income tax benefit | (12,110) | (5,356) | (17,893) |
| Net income (loss) | $ 7,028 | $ (33,226) | $ (95,304) |
| | | | |
| Net income (loss) per share - basic | $ 0.13 | $ (0.89) | $ (2.55) |
| Net income (loss) per share - diluted | $ 0.13 | $ (0.89) | $ (2.55) |
| | | | |
| Weighted average number of shares outstanding - basic | 52,996 | 37,403 | 37,325 |
| Weighted average number of shares outstanding - diluted | 54,941 | 37,403 | 37,325 |

*See accompanying notes to consolidated financial statements.*

**AVADEL PHARMACEUTICALS PLC**
**CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME (LOSS)**
*(In thousands)*

| | Years ended December 31, | | |
|---|---|---|---|
| | **2020** | **2019** | **2018** |
| Net income (loss) | $ 7,028 | $ (33,226) | $ (95,304) |
| Other comprehensive income (loss), net of tax: | | | |
| Foreign currency translation gain (loss) | 1,111 | (117) | (419) |
| Net other comprehensive income, net of $(202), $(43), $(18) tax, respectively | 644 | 727 | 269 |
| Total other comprehensive income (loss), net of tax | 1,755 | 610 | (150) |
| Total comprehensive income (loss) | $ 8,783 | $ (32,616) | $ (95,454) |

*See accompanying notes to consolidated financial statements.*

**AVADEL PHARMACEUTICALS PLC**
**CONSOLIDATED BALANCE SHEETS**
*(In thousands, except per share data)*

| | December 31, | |
|---|---|---|
| | **2020** | **2019** |
| ASSETS | | |
| Current assets: | | |
| Cash and cash equivalents | $ 71,722 | $ 9,774 |
| Marketable securities | 149,680 | 54,384 |
| Accounts receivable | — | 8,281 |
| Inventories, net | — | 3,570 |
| Research and development tax credit receivable | 3,326 | 2,107 |
| Prepaid expenses and other current assets | 38,726 | 4,264 |
| Total current assets | 263,454 | 82,380 |
| Property and equipment, net | 359 | 544 |
| Operating lease right-of-use assets | 2,604 | 3,612 |
| Goodwill | 16,836 | 18,491 |
| Intangible assets, net | — | 813 |
| Research and development tax credit receivable | 3,445 | 6,322 |
| Other non-current assets | 24,939 | 39,274 |
| Total assets | $ 311,637 | $ 151,436 |
| | | |
| LIABILITIES AND SHAREHOLDERS' EQUITY (DEFICIT) | | |
| Current liabilities: | | |
| Current portion of long-term contingent consideration payable | $ — | $ 5,554 |
| Current portion of operating lease liability | 474 | 645 |
| Accounts payable | 2,934 | 6,100 |
| Accrued expenses | 6,501 | 19,810 |
| Other current liabilities | 5,200 | 3,875 |
| Total current liabilities | 15,109 | 35,984 |
| Long-term debt | 128,210 | 121,686 |
| Long-term contingent consideration payable, less current portion | — | 11,773 |
| Long-term operating lease liability | 1,840 | 2,319 |
| Other non-current liabilities | 4,212 | 8,873 |
| Total liabilities | 149,371 | 180,635 |
| | | |
| Shareholders' equity (deficit): | | |
| Preferred shares, nominal value of $0.01 per share; 50,000 shares authorized; 488 issued and outstanding at December 31, 2020 and 0 issued and outstanding at December 31, 2019 | 5 | — |
| Ordinary shares, nominal value of $0.01 per share; 500,000 shares authorized; 58,396 issued and outstanding at December 31, 2020, and 42,927 issued and 37,520 outstanding at December 31, 2019 | 583 | 429 |
| Treasury shares, at cost, 0 and 5,407 shares held at December 31, 2020 and December 31, 2019, respectively | — | (49,998) |
| Additional paid-in capital | 566,916 | 434,391 |
| Accumulated deficit | (384,187) | (391,215) |
| Accumulated other comprehensive loss | (21,051) | (22,806) |
| Total shareholders' equity (deficit) | 162,266 | (29,199) |
| Total liabilities and shareholders' equity (deficit) | $ 311,637 | $ 151,436 |

*See accompanying notes to consolidated financial statements.*

**AVADEL PHARMACEUTICALS PLC**
**CONSOLIDATED STATEMENTS OF SHAREHOLDERS' EQUITY (DEFICIT)**
*(In thousands)*

| | Ordinary shares | | Preferred shares | | Additional | Accumulated | Accumulated other comprehensive | Treasury Shares | | Total shareholders' |
|---|---|---|---|---|---|---|---|---|---|---|
| | Shares | Amount | Shares | Amount | paid-in capital | deficit | loss | Shares | Amount | equity (deficit) |
| Balance, December 31, 2017 | 41,463 | $ 414 | — | $ — | $ 393,478 | $ (262,685) | $ (23,266) | 2,117 | $ (22,361) | $ 85,580 |
| Net loss | — | — | — | — | — | (95,304) | — | — | — | (95,304) |
| Other comprehensive loss | — | — | — | — | — | — | (150) | — | — | (150) |
| Exercise of stock options | 82 | 1 | — | — | 534 | — | — | — | — | 535 |
| Exercise of warrants | 603 | 6 | — | — | 2,905 | — | — | — | — | 2,911 |
| Expiration of warrants | — | — | — | — | 2,167 | — | — | — | — | 2,167 |
| Vesting of restricted shares | 547 | 6 | — | — | (6) | — | — | — | — | — |
| Employee share purchase plan share issuance | 25 | — | — | — | 127 | — | — | — | — | 127 |
| Share-based compensation expense | — | — | — | — | 7,852 | — | — | — | — | 7,852 |
| Equity component of 2023 Notes | — | — | — | — | 26,699 | — | — | — | — | 26,699 |
| Share repurchases | — | — | — | — | — | — | — | 3,290 | (27,637) | (27,637) |
| Balance, December 31, 2018 | 42,720 | 427 | — | — | 433,756 | (357,989) | (23,416) | 5,407 | (49,998) | 2,780 |
| Net loss | — | — | — | — | — | (33,226) | — | — | — | (33,226) |
| Other comprehensive income | — | — | — | — | — | — | 610 | — | — | 610 |
| Vesting of restricted shares | 153 | 2 | — | — | (2) | — | — | — | — | — |
| Employee share purchase plan share issuance | 54 | — | — | — | 118 | — | — | — | — | 118 |
| Share-based compensation expense | — | — | — | — | 519 | — | — | — | — | 519 |
| Balance, December 31, 2019 | 42,927 | $ 429 | $ — | $ — | $ 434,391 | $ (391,215) | $ (22,806) | 5,407 | $ (49,998) | $ (29,199) |
| Net income | — | — | — | — | — | 7,028 | — | — | — | 7,028 |
| Other comprehensive income | — | — | — | — | — | — | 1,755 | — | — | 1,755 |
| Exercise of stock options | 403 | 4 | — | — | 2,041 | — | — | — | — | 2,045 |
| February 2020 private placement | 8,680 | 87 | 488 | 5 | 60,478 | — | — | — | — | 60,570 |
| May 2020 public offering | 11,630 | 116 | — | — | 116,808 | — | — | — | — | 116,924 |
| Vesting of restricted shares | 114 | 1 | — | — | (1) | — | — | — | — | — |
| Employee share purchase plan share issuance | 49 | — | — | — | 144 | — | — | — | — | 144 |
| Share-based compensation expense | — | — | — | — | 2,999 | — | — | — | — | 2,999 |
| Retirement of treasury shares | (5,407) | (54) | — | — | (49,944) | — | — | (5,407) | 49,998 | — |
| Balance, December 31, 2020 | 58,396 | $ 583 | 488 | $ 5 | $ 566,916 | $ (384,187) | $ (21,051) | — | $ — | $ 162,266 |

*See accompanying notes to consolidated financial statements.*

**AVADEL PHARMACEUTICALS PLC**
**CONSOLIDATED STATEMENTS OF CASH FLOWS**
*(In thousands)*

| | Years ended December 31, | | |
|---|---|---|---|
| | **2020** | **2019** | **2018** |
| **Cash flows from operating activities:** | | | |
| Net income (loss) | $ 7,028 | $ (33,226) | $ (95,304) |
| Adjustments to reconcile net income (loss) to net cash (used in) provided by operating activities: | | | |
| Depreciation and amortization | 1,690 | 2,486 | 7,430 |
| Impairment of intangible asset | — | — | 66,087 |
| Remeasurement of acquisition-related contingent consideration | 3,327 | 845 | (22,731) |
| Remeasurement of financing-related contingent consideration | 435 | 378 | (1,899) |
| Amortization of debt discount and debt issuance costs | 6,524 | 5,995 | 4,830 |
| Changes in deferred tax | (7,431) | (6,334) | (19,152) |
| Share-based compensation expense | 2,999 | 519 | 7,852 |
| Gain on the disposition of the Hospital Products | (45,760) | — | — |
| Loss on deconsolidation of subsidiary | — | 1,750 | — |
| Gain from the release of certain liabilities | (3,364) | — | — |
| Other adjustments | 142 | (254) | 4,188 |
| Net changes in assets and liabilities | | | |
| Accounts receivable | 8,281 | 2,471 | 3,452 |
| Inventories, net | (1,352) | 1,155 | 711 |
| Prepaid expenses and other current assets | 1,863 | (1,187) | 3,577 |
| Research and development tax credit receivable | 2,213 | (1,014) | (2,545) |
| Accounts payable & other current liabilities | (2,788) | 4,641 | (2,032) |
| Deferred revenue | — | (114) | (1,892) |
| Accrued expenses | (13,226) | 357 | (10,640) |
| Earn-out payments for contingent consideration in excess of acquisition-date fair value | (5,323) | (10,988) | (19,468) |
| Royalty payments for contingent consideration payable in excess of original fair value | (866) | (1,748) | (2,838) |
| Other assets and liabilities | (3,126) | (4,057) | (2,342) |
| Net cash used in operating activities | (48,734) | (38,325) | (82,716) |
| **Cash flows from investing activities:** | | | |
| Purchases of property and equipment | (98) | (29) | (178) |
| Proceeds from disposal of property and equipment | — | 154 | — |
| Proceeds from the disposition of the Hospital Products | 25,500 | — | — |
| Purchase of intangible assets | — | — | (20,000) |
| Proceeds from sales of marketable securities | 36,284 | 63,246 | 359,507 |
| Purchases of marketable securities | (131,407) | (24,648) | (376,310) |
| Net cash (used in) provided by investing activities | (69,721) | 38,723 | (36,981) |
| **Cash flows from financing activities:** | | | |
| Proceeds from debt issuance | — | — | 143,750 |
| Payments for debt issuance costs | — | — | (6,190) |
| Exercise of warrants | — | — | 2,911 |
| Proceeds from the February 2020 private placement | 60,570 | — | — |
| Proceeds from the May 2020 public offering | 116,924 | — | — |
| Proceeds from issuance of ordinary shares | 2,189 | 118 | 577 |
| Share repurchases | — | — | (27,637) |
| Other financing activities, net | — | (145) | (752) |
| Net cash provided by (used in) financing activities | 179,683 | (27) | 112,659 |
| Effect of foreign currency exchange rate changes on cash and cash equivalents | 720 | 78 | (201) |
| Net change in cash and cash equivalents | 61,948 | 449 | (7,239) |
| Cash and cash equivalents at January 1 | 9,774 | 9,325 | 16,564 |
| Cash and cash equivalents at December 31 | $ 71,722 | $ 9,774 | $ 9,325 |
| Supplemental disclosures of cash flow information: | | | |
| Income taxes (refund) paid, net | $ (1,701) | $ 140 | $ 776 |
| Interest paid | 6,469 | 6,469 | 3,359 |

*See accompanying notes to consolidated financial statements.*

**NOTE 1: Summary of Significant Accounting Policies**

***Nature of Operations.*** Avadel Pharmaceuticals plc (Nasdaq: AVDL) ("Avadel," the "Company," "we," "our," or "us") is a biopharmaceutical company. Our lead product candidate, FT218, is an investigational once-nightly, extended-release formulation of sodium oxybate for the treatment of excessive daytime sleepiness ("EDS") and cataplexy in adults with narcolepsy. We are primarily focused on the development and potential United States ("U.S.") Food and Drug Administration ("FDA") approval of FT218. In December 2020, the Company submitted a New Drug Application ("NDA") to the FDA for FT218 to treat excessive daytime sleepiness and cataplexy in adults with narcolepsy.The NDA for FT218 was accepted by the FDA in February 2021 and assigned a Prescription Drug User Fee Act ("PDUFA") target action date of October 15, 2021.

Outside of our lead product candidate, we continue to evaluate opportunities to expand our product portfolio. As of December 31, 2020, we do not have any approved and commercialized products in our portfolio.

We are registered as an Irish public limited company. Our headquarters are in Dublin, Ireland and we have operations in St. Louis, Missouri, U.S.

***FT218***

FT218 is a once-nightly formulation of sodium oxybate that uses our Micropump controlled release drug-delivery technology for the treatment of EDS and cataplexy in adults suffering from narcolepsy. Sodium oxybate is the sodium salt of gamma hydroxybutyrate, an endogenous compound and metabolite of the neurotransmitter gamma-aminobutyric acid. Sodium oxybate is approved in the U.S. for the treatment of EDS and cataplexy in patients with narcolepsy and is approved in Europe for the treatment of cataplexy in patients with narcolepsy. Since 2002, sodium oxybate has only been available as a formulation that must be taken twice nightly, first at bedtime, and then again 2.5 to 4 hours later.

On December 16, 2020, we announced the submission of our NDA to the FDA for FT218. On February 26, 2021, the FDA notified us of formal acceptance of the NDA with an assigned PDUFA target action date of October 15, 2021.

The REST-ON trial was a randomized, double-blind, placebo-controlled study that enrolled 212 patients and was conducted in clinical sites in the U.S., Canada, Western Europe and Australia. The last patient, last visit was completed at the end of the first quarter of 2020 and positive top line data from the REST-ON trial was announced on April 27, 2020. Patients who received 9 g of once-nightly FT218, the highest dose administered in the trial, demonstrated a statistically significant and clinically meaningful improvement compared to placebo across the three co-primary endpoints of the trial: maintenance of wakefulness test, or MWT, clinical global impression-improvement, or CGI-I, and mean weekly cataplexy attacks. The lower doses assessed, 6 g and 7.5 g also demonstrated a statistically significant and clinically meaningful improvement on all three co-primary endpoints compared to placebo. We observed the 9 g dose of once-nightly FT218 to be generally well tolerated. Adverse reactions commonly associated with sodium oxybate were observed in a small number of patients (nausea 1.3%, vomiting 5.2%, decreased appetite 2.6%, dizziness 5.2%, somnolence 3.9%, tremor 1.3% and enuresis 9%), and 3.9% of the patients who received 9 g of FT218 discontinued the trial due to adverse reactions.

In January 2018, the FDA granted FT218 Orphan Drug Designation, which makes the drug eligible for certain development and commercial incentives, including potential U.S. market exclusivity for up to seven years. Additionally, several FT218-related U.S. patents have been issued, and there are additional patent applications currently in development and/or pending at the U.S. Patent and Trademark Office ("USPTO"), as well as foreign patent offices.

In July 2020, we announced that the first patient was dosed initiating an open-label extension ("OLE")/switch study of FT218 as a potential treatment for EDS and cataplexy in patients with narcolepsy. The OLE/switch study is examining the long-term safety and maintenance of efficacy of FT218 in patients with narcolepsy who participated in the REST-ON study, as well as dosing and preference data for patients switching from twice-nightly sodium oxybate to once-nightly FT218 regardless if they participated in REST-ON or not. We anticipate that the study will enroll up to 250 patients, many of which will be enrolled in North American clinical trial sites that participated in the REST-ON study.

*Previously Approved FDA Products*

On June 30, 2020 (the "Closing Date"), Avadel Legacy Pharmaceuticals, LLC (the "Avadel Seller") announced the sale of the portfolio of sterile injectable drugs used in the hospital setting (the "Hospital Products"), which included our three commercial products, Akovaz, Bloxiverz and Vazculep, as well as Nouress, which was approved by the U.S. FDA to Exela Sterile Medicines LLC ("Exela Buyer") pursuant to an asset purchase agreement by and among the Avadel Seller, Avadel US Holdings, Inc., the Exela Buyer and Exela Holdings, Inc. This sale included the following FDA approved products:

- **Bloxiverz (neostigmine methylsulfate injection)** - Bloxiverz is a drug used intravenously in the operating room to reverse the effects of non-depolarizing neuromuscular blocking agents after surgery.
- **Vazculep (phenylephrine hydrochloride injection)** - Vazculep is indicated for the treatment of clinically important hypotension occurring in the setting of anesthesia.
- **Akovaz (ephedrine sulfate injection)** - Akovaz was the first FDA approved formulation of ephedrine sulfate, an alpha- and beta- adrenergic agonist and a norepinephrine-releasing agent that is indicated for the treatment of clinically important hypotension occurring in the setting of anesthesia.
- **Nouress (cysteine hydrochloride injection)** - Nouress is a sterile injectable product for use in the hospital setting to provide parenteral nutrition to neonates.

See *Note 4: Disposition of the Hospital Products.*

***Basis of Presentation.*** These consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the U.S. (U.S. GAAP). The consolidated financial statements include the accounts of the Company and all subsidiaries. All intercompany accounts and transactions have been eliminated.

Our results of operations for the period January 1, 2019 through February 6, 2019 and for year ended December 31, 2018 include the results of Avadel Specialty Pharmaceuticals, LLC ("Specialty Pharma") prior to its February 6, 2019 voluntary petition for reorganization under Chapter 11 of the U.S. Bankruptcy Code. See *Note 3: Subsidiary Bankruptcy and Deconsolidation.*

Our results of operations for the period January 1, 2018 through February 16, 2018 include the results of FSC Therapeutics and FSC Laboratories, Inc., (collectively "FSC"), prior to its February 16, 2018 disposition date. See *Note 18: Divestiture of the Pediatric Assets*, for additional information.

*Reclassifications*

Certain reclassifications are made to prior year amounts whenever necessary to conform with the current year presentation. Certain adjustments have been made to the Consolidated Statements of Cash Flows for the fiscal year ended December 31, 2020 and balances within *Note 16: Other Assets and Liabilities* for the year ended December 31, 2019 to condense line items of the same nature into a single line. This change does not affect previously reported net cash flows used in operating activities in the Consolidated Statements of Cash Flows. We made certain reclassifications within *Note 10: Goodwill and Intangible Assets*, to the gross value and total accumulated amortization balances of the Vazculep intangible asset as of December 31, 2019. We made certain adjustments to *Note 24: Company Operations by Product, Customer, and Geographic Area* to include comparable information for customers that became significant for the year ended December 31, 2020.

***Revenue.*** Prior to June 30, 2020, revenue included sales of pharmaceutical products, licensing fees, and, if any, milestone payments for research and development ("R&D") achievements.

Effective January 1, 2018, the Company adopted Accounting Standards Codification ("ASC") Topic 606, "Revenue from Contracts with Customers" ("ASC 606") using the modified retrospective transition method applied to all open contracts as at December 31, 2017. The adoption of the new standard did not have a material effect on the overall timing or amount of revenue recognized when compared to prior accounting standards. See *Note 5: Revenue Recognition.*

ASC 606 applies to all contracts with customers, except for contracts that are within the scope of other standards, such as leases, insurance, collaboration arrangements and financial instruments. Under ASC 606, an entity recognizes revenue when the performance obligations to the customer have been satisfied through the transfer of control of the goods or services. To determine the appropriate revenue recognition for arrangements that the Company believes are within the scope of ASC 606,

we perform the following five steps: (i) Identify the contract(s) with a customer; (ii) Identify the performance obligations in the contract; (iii) Determine the transaction price; (iv) Allocate the transaction price to the performance obligations in the contract; and (v) Recognize revenue when (or as) the entity satisfies a performance obligation. The Company applies the five-step model to contracts only when the Company and its customer's rights and obligations under the contract can be determined, the contract has commercial substance, and it is probable that the Company will collect the consideration it is entitled to in exchange for the goods or services it transfers to the customer. For contracts that are determined to be within the scope of ASC 606, the Company identifies the promised goods or services in the contract to determine if they are separate performance obligations or if they should be bundled with other goods and services into a single performance obligation. The Company then recognizes as revenue the amount of the transaction price that is allocated to the respective performance obligation when (or as) the performance obligation is satisfied.

*Product Sales*

Prior to June 30, 2020, we sold products primarily through wholesalers and considered these wholesalers to be our customers. Under ASC 606, revenue from product sales is recognized when the customer obtains control of our product, which occurs typically upon receipt by the customer. Our gross product sales are subject to a variety of price adjustments in arriving at reported net product sales. These adjustments include estimates of product returns, chargebacks, payment discounts, rebates, and other sales allowances and are estimated based on analysis of historical data for the product or comparable products, future expectations for such products and other judgments and analysis.

*License and Milestone Revenue*

From time to time we may enter into out-licensing agreements which are within the scope of ASC 606 under which it licenses to third parties certain rights to its products or intellectual property. The terms of these arrangements typically include payment to us of one or more of the following: non-refundable, upfront license fees; development, regulatory, and commercial milestone payments; and sales-based royalty payments. Each of these payments results in license revenue.

For a complete discussion of the accounting for net product revenue and license revenues, see *Note 5: Revenue Recognition*.

***Research and Development ("R&D").*** R&D expenses consist primarily of costs related to clinical studies and outside services, personnel expenses, and other R&D expenses. Clinical studies and outside services costs relate primarily to services performed by clinical research organizations and related clinical or development manufacturing costs, materials and supplies, filing fees, regulatory support, and other third-party fees. Personnel expenses relate primarily to salaries, benefits and share-based compensation. Other R&D expenses primarily include overhead allocations consisting of various support and facilities-related costs. R&D expenditures are charged to operations as incurred. Raw materials used in the production of pre-clinical and clinical products are expensed as R&D costs.

We recognize R&D tax credits received from the French and Irish government for spending on innovative R&D as an offset of R&D expenses.

***Advertising Expenses.*** We expense the costs of advertising as incurred. Advertising expenses were $312, $372 and $17,562 for the years ended December 31, 2020, 2019 and 2018, respectively. The decrease in advertising for the years ended December 31, 2020 and 2019 is due to Specialty Pharma's bankruptcy and deconsolidation. See *Note 3: Subsidiary Bankruptcy and Deconsolidation*.

***Share-based Compensation.*** We account for share-based compensation based on the estimated grant-date fair value. The fair value of stock options and warrants is estimated using Black-Scholes option-pricing valuation models ("Black-Scholes model"). As required by the Black-Sholes model, estimates are made of the underlying volatility of AVDL stock, a risk-free rate and an expected term of the option or warrant. We estimated the expected term using a simplified method, as we do not have enough historical exercise data for a majority of such options and warrants upon which to estimate an expected term. We recognize compensation cost, net of an estimated forfeiture rate, using the accelerated method over the requisite service period of the award.

***Income Taxes.*** We account for income taxes under the asset and liability method, which requires the recognition of deferred tax assets and liabilities for the expected future tax consequences of events that have been included in the financial statements. Under this method, we determine deferred tax assets and liabilities on the basis of the differences between the financial statement and tax bases of assets and liabilities by using enacted tax rates in effect for the year in which the differences are expected to reverse. The effect of a change in tax rates on deferred tax assets and liabilities is recognized in income in the period that includes the enactment date.

We recognize deferred tax assets to the extent that we believe that these assets are more likely than not to be realized. In making such a determination, we consider all available positive and negative evidence, including future reversals of existing taxable temporary differences, projected future taxable income, tax-planning strategies, and results of recent operations. If we determine that we would be able to realize our deferred tax assets in the future in excess of their net recorded amount, we would make an adjustment to the deferred tax asset valuation allowance, which would reduce the provision for income taxes.

We record uncertain tax positions in accordance with ASC 740 on the basis of a two-step process in which (1) we determine whether it is more likely than not that the tax positions will be sustained on the basis of the technical merits of the position and (2) for those tax positions that meet the more-likely-than-not recognition threshold, we recognize the largest amount of tax benefit that is more than 50 percent likely to be realized upon ultimate settlement with the related tax authority.

We recognize interest and penalties related to unrecognized tax benefits in the income tax expense line in the accompanying consolidated statements of income (loss). Accrued interest and penalties are included on the related tax liability line in the consolidated balance sheets.

***Cash and Cash Equivalents.*** Cash and cash equivalents consist of cash on hand, cash on deposit and fixed term deposits which are highly liquid investments with original maturities of less than three months.

***Marketable Securities.*** The Company's marketable securities are considered to be available for sale and are carried at fair value, with unrealized gains and losses, net of taxes, reported as a component of accumulated other comprehensive (loss) income ("AOCI") in shareholders' equity, with the exception of unrealized gains and losses on equity instruments and unrealized losses believed to be other-than-temporary, if any, which are reported in earnings in the current period. The cost of securities sold is based upon the specific identification method.

***Accounts Receivable.*** Prior to the sale of the Hospital Products on June 30, 2020, accounts receivable were stated at amounts invoiced net of allowances for credit losses and certain other gross to net variable consideration deductions. An allowance for credit losses is established based on expected losses. Expected losses are estimated by reviewing individual accounts, considering aging, financial condition of the debtor, payment history, current and forecast economic conditions and other relevant factors. A majority of our accounts receivable were due from four significant customers.

***Inventories.*** Prior to the sale of the Hospital Products on June 30, 2020, inventories consisted of raw materials and finished products, which were stated at lower of cost or net realizable value, using the first-in, first-out ("FIFO") method. The Company established reserves for inventory estimated to be obsolete, unmarketable or slow-moving on a case by case basis.

***Property and Equipment.*** Property and equipment is stated at historical cost less accumulated depreciation. Depreciation and amortization are computed using the straight-line method over the following estimated useful lives:

| | |
|---|---|
| Software, office and computer equipment | 3 years |
| Leasehold improvements, furniture, fixtures and fittings | 5-10 years |

***Goodwill.*** Goodwill represents the excess of the acquisition consideration over the fair value of assets acquired and liabilities assumed. We have determined that we operate in a single segment and have a single reporting unit associated with the development and commercialization of pharmaceutical products. We test goodwill for impairment annually and when events or changes in circumstances indicate that the carrying value may not be recoverable. We performed our required impairment test of goodwill and have determined that no impairment of goodwill existed at December 31, 2020 and 2019.

***Long-Lived Assets.*** Long-lived assets include fixed assets and intangible assets. Prior to the sale of the Hospital Products on June 30, 2020, intangible assets consisted primarily of purchased licenses and intangible assets recognized as part of the Éclat Pharmaceuticals acquisition. Acquired in-process research and development ("IPR&D") had an indefinite life and was not amortized until completion and development of the project, at which time the IPR&D became an amortizable asset, for which amortization of such intangible assets was computed using the straight-line method over the estimated useful life of the assets.

Long-lived assets are reviewed for impairment whenever conditions indicate that the carrying value of the assets may not be fully recoverable. Such impairment tests are based on a comparison of the pretax undiscounted cash flows expected to be generated by the asset to the recorded value of the asset or other market-based value approaches. If impairment is indicated, the asset value is written down to its market value if readily determinable or its estimated fair value based on discounted cash flows. Any significant changes in business or market conditions that vary from current expectations could have an impact on the fair value of these assets and any potential associated impairment. During the fourth quarter of 2018, we recorded a $66,087 impairment charge to the entire acquired developed technology related to Noctiva. We determined that no impairment existed

at December 31, 2019. On June 30, 2020, we transferred our remaining intangible asset to the Exela Buyer as part of the disposition of the Hospital Products. We determined that no impairment existed at December 31, 2020 on our remaining long-lived assets.

***Lease Obligations.*** On January 1, 2019, the Company adopted ASU 2016-02, "*Leases*" which supersedes ASC 840 "Leases" and creates a new topic, ASC 842 "*Leases*". The Company adopted ASU 2016-02 using the modified retrospective transition approach and elected the transition option to recognize the adjustment in the period of adoption rather than in the earliest period presented. Results and disclosure requirements for reporting periods beginning after January 1, 2019 are presented under Topic 842, while prior period amounts have not been adjusted and continue to be reported in accordance with our historical accounting under Topic 840. Upon adoption, we recognized total ROU assets of $5,046, with corresponding lease liabilities of $5,131 on the consolidated balance sheets. The adoption did not impact our beginning retained earnings, or our prior year consolidated statements of income (loss) and statements of cash flows.

The Company elected the package of practical expedients permitted under the transition guidance, which allowed us to carryforward our historical lease classification, our assessment on whether a contract was or contains a lease, and our initial direct costs for any leases that existed prior to January 1, 2019. The Company also elected to combine our lease and non-lease components and to keep leases with an initial term of 12 months or less off the balance sheet and recognize the associated lease payments in the consolidated statements of income (loss) on a straight-line basis over the lease term.

Under ASU 2016-02, the Company determines if a contract is a lease at the inception of the arrangement. Right-of-use assets and operating lease liabilities are recognized at commencement date based on the present value of remaining lease payments over the lease term. For this purpose, the Company considers only payments that are fixed and determinable at the time of commencement. The Company reviews all options to extend, terminate, or purchase its right-of-use assets at the inception of the lease and will include these options in the lease term when they are reasonably certain of being exercised. The Company's lease contracts do not provide a readily determinable implicit rate. The Company's estimated incremental borrowing rate is based on information available at the inception of the lease. Our lease agreements may contain variable costs such as common area maintenance, insurance, real estate taxes or other costs. Variable lease costs are expensed as incurred on the consolidated statements of income (loss).

***Acquisition-related Contingent Consideration.*** Prior to the sale of the Hospital Products on June 30, 2020, the acquisition-related contingent consideration payables arising from the acquisition of Éclat Pharmaceuticals (i.e., our hospital products) and FSC (our pediatrics products), which was assumed by the buyer as part of the disposition of the pediatrics products on February 16, 2018, were accounted for at fair value (see *Note 13: Contingent Consideration Payable* and *Note 18: Divestiture of the Pediatric Assets*). The fair value of the warrants issued in connection with the Éclat acquisition were estimated using a Black-Scholes model. A portion of these warrants were exercised on February 23, 2018 and the remaining warrants expired on March 12, 2018. See *Note 13: Contingent Consideration Payable*. The fair value of acquisition-related contingent consideration payable is estimated using a discounted cash flow model based on the long-term sales or gross profit forecasts of the specified hospital or pediatric products using an appropriate discount rate. There are a number of estimates used when determining the fair value of these earn-out payments. These estimates include, but are not limited to, the long-term pricing environment, market size, market share the related products are forecast to achieve, the cost of goods related to such products and an appropriate discount rate to use when present valuing the related cash flows. These estimates can and often do change based on changes in current market conditions, competition, management judgment and other factors. Changes to these estimates can have and have had a material impact on our consolidated statements of income (loss) and balance sheets. Changes in fair value of these liabilities are recorded in the consolidated statements of income (loss) within operating expenses as changes in fair value of contingent consideration.

***Financing-related Royalty Agreements.*** We were previously a party to two royalty agreements in connection with certain financing arrangements. We elected the fair value option for the measurement of the financing-related contingent consideration payable associated with the royalty agreements with certain Deerfield and Broadfin entities (the "Deerfield and Broadfin Royalty Agreements") (see *Note 13: Contingent Consideration Payable*). Prior to the sale of the Hospital Products on June 30, 2020, the fair value of financing-related royalty agreements was estimated using the same components used to determine the fair value of the acquisition-related contingent consideration noted above, with the exception of cost of products sold. Changes to these components can also have a material impact on our consolidated statements of income (loss) and balance sheets. Changes in the fair value of this liability are recorded in the consolidated statements of income (loss) as other (expense) income - changes in fair value of contingent consideration payable. In connection with the disposition of the Hospital Products on June 30, 2020 as discussed in *Note 4: Disposition of the Hospital Products*, the Deerfield and Broadfin Royalty Agreements were assigned to the Exela Buyer and the Exela Buyer assumed and shall pay, perform, satisfy and discharge the liabilities and obligations of the Company under the Deerfield and Broadfin Royalty Agreements.

***Use of Estimates.*** The preparation of consolidated financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, including marketable securities and contingent liabilities at the date of the consolidated financial statements and the reported amounts of sales and expenses during the periods presented. These estimates and assumptions are based on the best information available to management at the balance sheet dates and depending on the nature of the estimate can require significant judgments. Changes to these estimates and judgments can have and have had a material impact on our consolidated statements of income (loss) and balance sheets. Actual results could differ from those estimates under different assumptions or conditions.

**NOTE 2: Newly Issued Accounting Standards**

***Recently Adopted Accounting Guidance***

In August 2018, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") 2018-13, "*Fair Value Measurement (Topic 820): Disclosure Framework— Changes to the Disclosure Requirement for Fair Value Measurement*" which amends certain disclosure requirements over Level 1, Level 2 and Level 3 fair value measurements. The amendments in ASU 2018-13 are effective for fiscal years beginning after December 15, 2019, with early adoption permitted. We adopted ASU 2018-13 in the first quarter of 2020.

In June 2016, the FASB issued ASU No. 2016-13, "*Financial Instruments - Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments* ("ASU 2016-13")." This standard requires entities to measure all expected credit losses for financial assets held at the reporting date based on historical experience, current conditions and reasonable and supportable forecasts. ASU 2016-13 will be effective for the Company for fiscal years beginning on or after January 1, 2020, including interim periods within those annual reporting periods and early adoption is permitted. We adopted the provisions of ASU 2016-13 in the first quarter of 2020. Adoption of the new standard did not have any impact on our consolidated financial statements.

***Recent Accounting Guidance Not Yet Adopted***

In December 2019, the FASB issued ASU 2019-12, *Income Taxes (Topic 740): Simplifying the Accounting for Income Taxes*, as part of its overall simplification initiative to reduce costs and complexity of applying accounting standards while maintaining or improving the usefulness of the information provided to users of financial statements. The FASB's amendments primarily impact ASC 740, *Income Taxes*, and may impact both interim and annual reporting periods. ASU 2019-12 will be effective for fiscal years beginning after December 15, 2020, and interim periods within those fiscal years and early adoption is permitted. We are currently evaluating the impact of adopting ASU 2019-12; however, the impact is expected to be immaterial to our consolidated financial statements.

In August 2020, the FASB issued ASU 2020-06, *Debt with Conversion and Other Options (Subtopic 470-20) and Derivatives and Hedging- Contracts in Entity's Own Equity (Subtopic 815-40)*, to reduce the complexity associated with applying U.S. GAAP principles for certain financial instruments with characteristics of liabilities and equity. The amendments in this ASU reduce the number of accounting models for convertible instruments and expand the existing disclosure requirements over earnings per share as it relates to convertible instruments. This ASU will be effective for our fiscal year beginning January 1, 2022 and interim periods therein. Early adoption is permitted, but no earlier than fiscal years beginning after December 15, 2020. The amendments may be adopted through either a modified retrospective method, or a fully retrospective method. We are currently evaluating the impact of adopting ASU 2020-06.

**NOTE 3: Subsidiary Bankruptcy and Deconsolidation**

*Bankruptcy Filing and Deconsolidation*

As a result of Specialty Pharma's bankruptcy filing on February 6, 2019, Avadel ceded authority for managing the business to the Bankruptcy Court, and Avadel management could not carry on Specialty Pharma's activities in the ordinary course of business without Bankruptcy Court approval. Prior to Bankruptcy Court approval, Avadel managed the day-to-day operations of Specialty Pharma but did not have discretion to make significant capital or operating budgetary changes or decisions and purchase or sell significant assets, as Specialty Pharma's material decisions were subject to review by the Bankruptcy Court. For these reasons, we concluded that Avadel had lost control of Specialty Pharma, and no longer had significant influence over Specialty Pharma during the pendency of the bankruptcy. Therefore, we deconsolidated Specialty Pharma effective with the filing of the Chapter 11 bankruptcy in February 2019.

In order to deconsolidate Specialty Pharma, the carrying values of the assets and certain liabilities of Specialty Pharma were removed from our unaudited condensed consolidated balance sheet as of February 5, 2019, and we recorded our investment in Specialty Pharma at its estimated fair value of $0. As the estimated fair value of our investment in Specialty Pharma was lower than its net book value immediately prior to the deconsolidation, we recorded a non-cash charge of approximately $2,678 for the year ended December 31, 2019 associated with the deconsolidation of Specialty Pharma. Subsequent to the deconsolidation of Specialty Pharma, we are accounting for our investment in Specialty Pharma using the cost method of accounting because Avadel does not exercise significant influence over the operations of Specialty Pharma due to the Chapter 11 filing.

On April 26, 2019, Specialty Pharma sold its intangible assets and remaining inventory to an unaffiliated third party in exchange for aggregate cash proceeds of approximately $250, pursuant to an order approving such sale which was issued by the Bankruptcy Court on April 15, 2019. As a result of such sale, Specialty Pharma has completed its divestment of the assets of the Noctiva business.

On July 2, 2019, Specialty Pharma was made aware of a $50,695 claim made by the Internal Revenue Service (“IRS”) as part of the bankruptcy claims process against Specialty Pharma. On October 2, 2019 the IRS amended the original claim filed in July, reducing the claim to $9,302. Specialty Pharma filed its U.S. federal tax return as a member of the Company’s consolidated U.S. tax group. As such, the IRS claim was filed against Specialty Pharma in the bankruptcy proceedings due to IRS tax law requirements for joint and several liability of all members in a consolidated U.S. tax group. On November 19, 2019, Specialty Pharma and the IRS resolved their dispute, subject to the Bankruptcy Court’s approval of Specialty Pharma's Chapter 11 plan, and without prejudice to the claims, rights and defenses of the IRS and other Avadel entities outside of the bankruptcy case. The resolution provided for allowance of the IRS claim as a priority claim but for the IRS to receive a distribution of 50% of the proceeds, but in no event less than $125 from Specialty Pharma following confirmation of its disclosure statement and Chapter 11 plan of liquidation.

On July 24, 2020, Specialty Pharma sought bankruptcy court approval of a settlement agreement by and between it, Avadel US Holdings, Inc. and Serenity Pharmaceuticals, LLC (“Serenity”) (the “Serenity Settlement Agreement”). Before the commencement of Specialty Pharma's bankruptcy case, Serenity asserted claims against Specialty Pharma and Avadel US Holdings collectively in an amount no less than $50,000, and after the commencement of the bankruptcy case, Serenity asserted a $3,096 claim against Specialty Pharma and voted to reject its Chapter 11 plan of liquidation. The Serenity Settlement Agreement provides for a global resolution of these disputes by way of an $800 payment from Avadel US Holdings to Serenity, a mutual exchange of general releases, and the withdrawal of Serenity's claim and vote in Specialty Pharma's bankruptcy case. The Serenity Settlement Agreement was approved by order of the Bankruptcy Court on August 12, 2020.

At a hearing conducted on October 6, 2020, the Bankruptcy Court granted final approval of Specialty Pharma’s disclosure statement and confirmed its Chapter 11 plan of liquidation. Pursuant to the plan, the appointment of a Plan Administrator was also approved. The Plan Administrator will be responsible for making distributions to creditors, managing the final windup and dissolution of Specialty Pharma, and taking other steps in accordance with the plan of liquidation. The plan of liquidation became effective on October 21, 2020. Subsequent to the finalization of the bankruptcy, we recognized a non-cash gain of $3,364 from the release of certain liabilities that had been retained following the deconsolidation of Specialty Pharma. This gain is including in "Gain from release of certain liabilities" within non-operating income (loss) for the year ended December 31, 2020.

*Debtor in Possession (“DIP”) Financing – Related Party Relationship*

In connection with the bankruptcy filing, Specialty Pharma entered into a Debtor in Possession Credit and Security Agreement with Avadel US Holdings (“DIP Credit Agreement”) dated as of February 8, 2019, in an aggregate amount of up to $2,700, of which the funds are to be used by Specialty Pharma solely to fund operations through February 6, 2020. During the year ended December 31, 2019, the Company funded $407 under the DIP Credit Agreement. As the Company assessed that it is unlikely that Specialty Pharma will pay back the loan to Avadel, the $407 was recorded as part of the loss on deconsolidation of subsidiary within the consolidated statements of income (loss) during the year ended December 31, 2019. No amounts were funded under the DIP Credit Agreement during the year ended December 31, 2020. We do not expect any additional further liabilities from the DIP Credit Agreement.

**NOTE 4: Disposition of the Hospital Products**

On June 30, 2020 (the "Closing date"), we announced the sale of our Hospital Products to the Exela Buyer pursuant to the Purchase Agreement (the "Transaction").

Pursuant to the Purchase Agreement, the Exela Buyer agreed to pay a total aggregate consideration amount of $42,000, of which $14,500 was paid on the Closing Date and an additional $27,500 is to be paid in ten equal monthly installments. During the year ended December 31, 2020, we collected four installment payments, totaling $11,000. Subsequent to the year ended December 31, 2020 but prior to the filing of this Annual Report, we collected an additional $5,500 in installment payments. In connection with the sale of the Hospital Products, the parties also agreed to cause the dismissal of the pending civil litigation related to Nouress in the District Court for the District of Delaware.

We were party to a Membership Interest Purchase Agreement, dated March 13, 2012, by and among us, Avadel Legacy, Breaking Stick Holdings, LLC, Deerfield Private Design International II, L.P. ("Deerfield International"), Deerfield Private Design Fund II, L.P. ("Deerfield Fund") and Horizon Santé FLML, Sarl ("Horizon") (the "Deerfield MIPA") and a Royalty Agreement, dated February 4, 2013, by and among us, Avadel Legacy, the Deerfield Fund and Horizon (the "Deerfield Royalty Agreement"). In connection with the closing of the sale of the Hospital Products, the Deerfield MIPA (with respect to certain sections thereof) and the Royalty Agreement were assigned to the Exela Buyer. Pursuant to the Purchase Agreement, the Exela Buyer assumed and will pay, perform, satisfy and discharge the liabilities and obligations of Avadel Legacy under the Deerfield Royalty Agreement for obligations that arise after the Closing date.

We were also party to a Royalty Agreement, dated December 3, 2013, by and between us, Avadel Legacy and Broadfin Healthcare Master Fund, Ltd. (the "Broadfin Royalty Agreement"). In connection with the closing of the sale of the Hospital Products, the Broadfin Royalty Agreement was assigned to the Exela Buyer and the Exela Buyer assumed and shall pay, perform, satisfy and discharge the liabilities and obligations of Avadel Legacy under the Broadfin Royalty Agreement for obligations that arise after the Closing Date.

We recorded a net gain on the sale of the Hospital Products of $45,760 during the year ended December 31, 2020 which has been recorded on the consolidated statement of income (loss). The $45,760 gain represents the aggregate consideration of $42,000, less transaction fees of $2,928, plus the assets and liabilities either transferred to the Exela Buyer or eliminated by us due to the sale of the Hospital Products, which are listed below.

| | December 31, 2020 |
|---|---|
| Prepaid expenses and other current assets | $ (134) |
| Inventories | (4,922) |
| Goodwill | (1,654) |
| Intangible assets, net | (407) |
| Other non-current assets | (1,095) |
| Total long-term contingent consideration payable | 14,900 |
| **Net liabilities disposed of** | 6,688 |
| Aggregate consideration | 42,000 |
| Less transaction fees | (2,928) |
| **Net gain on the sale of the Hospital Products** | $ 45,760 |

Subsequent to the disposition of the Hospital Products, the Company entered into a separate and distinct agreement with the Exela Buyer, whereby the Exela Buyer assumed all future returns of the Hospital Products in exchange for cash consideration paid by the Company. The Company recorded a $518 gain from this transaction, which is recorded in "Selling, general and administrative expenses" for the year ended December 31, 2020.

We evaluated various qualitative and quantitative factors related to the disposition of the Hospital Products and determined that it did not meet the criteria for presentation as a discontinued operation.

The unaudited pro forma condensed combined financial statements included below are being provided for information purposes only and are not necessarily indicative of the results of operations or financial position that would have resulted if the Transaction had actually occurred on the date indicated. The pro forma adjustments are based on available information and assumptions that the Company believes are attributable to the sale.

| | Unaudited Pro Forma Condensed Combined Balance Sheet | | | |
|---|---|---|---|---|
| | As of December 31, 2019 | | | |
| | As Reported | Pro Forma Adjustments | Notes | Pro Forma |
| **ASSETS** | | | | |
| Cash and cash equivalents | $ 9,774 | $ 12,935 | (a) | $ 22,709 |
| Inventories | 3,570 | (3,570) | (b) | — |
| Prepaid expenses and other current assets | 4,264 | 27,500 | (c) | 31,764 |
| Goodwill | 18,491 | (1,654) | (d) | 16,837 |
| Intangible assets, net | 813 | (813) | (e) | — |
| Other non-current assets | 39,274 | (9,702) | (f) | 29,572 |
| Total assets | $ 151,436 | $ 24,696 | | $ 176,132 |
| | | | | |
| **LIABILITIES AND SHAREHOLDERS' EQUITY (DEFICIT)** | | | | |
| Current portion of long-term contingent consideration payable | $ 5,554 | $ (5,054) | (g) | $ 500 |
| Accrued expenses | 19,810 | 2,800 | (h) | 22,610 |
| Long-term contingent consideration payable, less current portion | 11,773 | (11,773) | (g) | — |
| Total liabilities | 180,635 | (14,027) | | 166,608 |
| | | | | |
| Shareholders' equity (deficit): | | | | |
| Accumulated deficit | (391,215) | 38,723 | (i) | (352,492) |
| Total shareholders' (deficit) equity | (29,199) | 38,723 | | 9,524 |
| Total liabilities and shareholders' equity (deficit) | $ 151,436 | $ 24,696 | | $ 176,132 |

***Adjustments to the pro forma unaudited condensed combined balance sheet***

(a) This adjustment represents the receipt of $14,500 cash consideration from the Exela Buyer at the closing of the Transaction less $1,565 placed into escrow for the estimated earn outs and royalties payable to Breaking Stick Holdings L.L.C., Horizon Santé FLML, Sarl, Deerfield Private Design Fund II, L.P., all affiliates of Deerfield Capital L.P. ("Deerfield") and Broadfin Healthcare Master Fund ("Broadfin") for the current year ended.

(b) This adjustment reflects the elimination of Inventories that were purchased as part of the Transaction.

(c) This adjustment reflects the Transaction consideration in the form of ten monthly installment payments of $2,750 (totaling $27,500) beginning 90 days from the Closing date.

(d) This adjustment reflects the elimination of $1,654 of Goodwill based on the relative fair value of the Hospital Products as a portion of the overall value of the Company.

(e) This adjustment reflects the elimination of the unamortized balance of the Intangible asset on acquired developed technology for Vazculep.

(f) This adjustment reflects the elimination of $1,228 of other long-term assets and $8,474 of deferred tax assets at December 31, 2019. The eliminated deferred tax assets are tax attributes of the Hospital Products.

(g) This adjustment reflects the elimination of short and long term related party payables, less the expected amounts due to Deerfield and Broadfin after taking into consideration the escrow discussed in Note (a). As part of the Transaction, the buyer

agreed to assume the quarterly earn-out and royalty payments for periods after the close of the Transaction. The Company will no longer be responsible for these payments.

(h) This adjustment reflects the estimated transaction fees payable related to the Transaction.

(i) This adjustment reflects the estimated gain of $38,723 arising from the Transaction for the year ended December 31, 2019. This estimated gain has not been reflected in the pro forma unaudited condensed combined statements of loss as it is considered to be nonrecurring in nature. No adjustment has been made to the sale proceeds to give effect to any potential post-closing adjustments under the terms of the Purchase Agreement.

| | Unaudited Pro Forma Condensed Combined Statement of Income (Loss) | | | |
|---|---|---|---|---|
| | Year Ended December 31, 2020 | | | |
| | As Reported | Pro Forma Adjustments | Notes | Pro Forma |
| Product sales | $ 22,334 | $ (22,175) | (j) | $ 159 |
| Total operating expense | 16,519 | (8,392) | (k) | 8,127 |
| Operating income (loss) | 5,815 | (13,783) | | (7,968) |
| Loss before income taxes | $ (5,082) | $ (13,348) | (l) | $ (18,430) |

| | Unaudited Pro Forma Condensed Combined Statement of Income (Loss) | | | |
|---|---|---|---|---|
| | Year Ended December 31, 2019 | | | |
| | As Reported | Pro Forma Adjustments | Notes | Pro Forma |
| Product sales | $ 59,215 | $ (59,273) | (j) | $ (58) |
| Total operating expense | 83,327 | (16,092) | (m) | 67,235 |
| Operating income (loss) | (24,112) | (43,181) | | (67,293) |
| Loss before income taxes | $ (38,582) | $ (42,803) | (n) | $ (81,385) |

***Adjustments to the pro forma unaudited condensed combined statements of income (loss)***

(j) This adjustment reflects Product sales attributable to the Hospital Products.

(k) This adjustment reflects the following estimated expenses attributable to the Hospital Products:

- Cost of products of $3,540.
- R&D expenses of $322.
- Selling, general and administrative expenses of $797.
- Intangible asset amortization on acquired development technology for Vazculep of $406.
- Changes in fair value of related party contingent consideration of $3,327. The Company will no longer be responsible for these payments.

(l) This amount reflects the adjustments noted in (j) and (k) above, as well as estimated Changes in fair value of related party payable of $435 attributable to the Hospital Products. The Company will no longer be responsible for these payments.

(m) This adjustment reflects the following estimated expenses attributable to the Hospital Products:

- Cost of products of $11,368.
- R&D expenses of $1,960.
- Selling, general and administrative expenses of $1,102.
- Intangible asset amortization on acquired development technology for Vazculep of $816.
- Changes in fair value of related party contingent consideration of $845. The Company will no longer be responsible for these payments.

(n) This amount reflects the adjustments noted in (j) and (m) above, as well as the reversal of estimated Changes in fair value of related party payable of $378 attributable to the Hospital Products. The Company will no longer be responsible for these payments.

**NOTE 5: Revenue Recognition**

Prior to June 30, 2020, the Company generated revenue primarily from the sale of pharmaceutical products to customers. On June 30, 2020, the Company sold the Hospital Products. See *Note 4: Disposition of the Hospital Products*.

***Product Sales and Services***

Prior to June 30, 2020, we sold products primarily through wholesalers and considered these wholesalers to be our customers. Revenue from product sales was recognized when the customer obtained control of our product and our performance obligations were met, which occurred typically upon receipt of delivery to the customer. As is customary in the pharmaceutical industry, our gross product sales were subject to a variety of price adjustments in arriving at reported net product sales. These adjustments included estimates for product returns, chargebacks, payment discounts, rebates, and other sales allowances and were estimated when the product is delivered based on analysis of historical data for the product or comparable products, as well as future expectations for such products.

*Reserves to reduce Gross Revenues to Net Revenues*

Revenues from product sales were recorded at the net selling price, which included estimated reserves to reduce gross product sales to net product sales resulting from product returns, chargebacks, payment discounts, rebates, and other sales allowances that are offered within contracts between the Company and its customers and end users. These reserves were based on the amounts earned or to be claimed on the related sales and were classified as reductions of accounts receivable if the amount is payable to the customer, except in the case of the estimated reserve for future expired product returns, which are classified as a liability. The reserves are classified as a liability if the amount is payable to a party other than a customer. Where appropriate, these estimated reserves take into consideration relevant factors such as the Company's historical experience, current contractual and statutory requirements, specific known market events and trends, industry data and forecasted customer buying and payment patterns. Overall, these reserves reflect the Company's best estimates to reduce gross selling price to net selling price to which it expects to be entitled based on the terms of its contracts. The actual selling price ultimately received may differ from the Company's estimates. If actual results in the future vary from the Company's estimates, the Company adjusts these estimates, which would affect earnings in the period such variances become known.

*Product Returns*

Consistent with industry practice, the Company maintains a returns policy that generally offers customers a right of return for product that has been purchased from the Company. The Company estimated the amount of product returns and records this estimate as a reduction of revenue in the period the related product revenue is recognized. The Company estimated product return liabilities based on analysis of historical data for the product or comparable products, as well as future expectations for such products and other judgments and analysis.

*Chargebacks, Discounts and Rebates*

Chargebacks, discounts and rebates represent the estimated obligations resulting from contractual commitments to sell products to its customers or end users at prices lower than the list prices charged to our wholesale customers. Customers charge the Company for the difference between the gross selling price they pay for the product and the ultimate contractual price agreed to between the Company and these end users. These reserves are established in the same period that the related revenue is recognized, resulting in a reduction of product revenue and accounts receivable. Chargebacks, discounts and rebates are estimated at the time of sale to the customer.

***Revenue from licensing arrangements***

The terms of the Company's licensing agreements may contain multiple performance obligations, including certain R&D activities. The terms of these arrangements typically include payment to the Company of one or more of the following: non-refundable, up-front license fees; development, regulatory and commercial milestone payments. Each of these payments are recorded as license revenues. The Company did not have any license revenue during the years ended December 31, 2020 and 2019. License revenue during the year ended December 31, 2018 was $1,846.

*License of Intellectual Property*

If the license to the Company's intellectual property is determined to be distinct from the other performance obligations identified in the arrangement, we recognize revenues from non-refundable, up-front fees allocated to the license when the

license is transferred to the customer and the customer is able to use and benefit from the license. For licenses that are bundled with other promises, the Company utilizes judgment to assess the nature of the combined performance obligation to determine whether the combined performance obligation is satisfied over time or at a point in time and, if over time, the appropriate method of measuring progress for purposes of recognizing revenue from non-refundable, up-front fees. The Company evaluates the measure of progress each reporting period and, if necessary, adjusts the measure of performance and related revenue recognition.

***Disaggregation of revenue***

The Company's primary source of revenue was from the sale of pharmaceutical products, which are equally affected by the same economic factors as it relates to the nature, amount, timing, and uncertainty of revenue and cash flows. For further detail about the Company's revenues by product, see *Note 24: Company Operations by Product, Customer and Geography.*

***Contract Balances***

The Company does not recognize revenue in advance of invoicing its customers and therefore has no related contract assets.

A receivable is recognized in the period the Company sells its products and when the Company's right to consideration is unconditional.

There were no material deferred contract costs at December 31, 2020 and 2019.

***Transaction Price Allocated to the Remaining Performance Obligation***

For product sales, the Company generally satisfies its performance obligations within the same period the product is delivered. Product sales recognized in 2020 from performance obligations satisfied (or partially satisfied) in previous periods were immaterial.

For certain licenses of intellectual property, specifically those with performance obligations satisfied over time, the Company allocates a portion of the transaction price to that performance obligation and recognizes revenue using an appropriate measure of progress towards development of the product. In December 2018, we reached an agreement to exit a contract and our remaining performance obligations and recognized the remaining $1,600 of deferred revenue, which represented the unsatisfied performance obligations associated with a license agreement. At December 31, 2020 and 2019, the deferred revenue balance related to this obligation is $0.

The Company has elected certain of the practical expedients from the disclosure requirement for remaining performance obligations for specific situations in which an entity need not estimate variable consideration to recognize revenue. Accordingly, the Company applies the practical expedient in ASC 606 to its stand-alone contracts and does not disclose information about variable consideration from remaining performance obligations for which we recognize revenue.

**NOTE 6: Fair Value Measurements**

The Company is required to measure certain assets and liabilities at fair value, either upon initial recognition or for subsequent accounting or reporting. For example, we use fair value extensively when accounting for and reporting certain financial instruments, when measuring certain contingent consideration liabilities and in the initial recognition of net assets acquired in a business combination. Fair value is estimated by applying the hierarchy described below, which prioritizes the inputs used to measure fair value into three levels and bases the categorization within the hierarchy upon the lowest level of input that is available and significant to the fair value measurement.

ASC 820, "Fair Value Measurements and Disclosures," defines fair value as a market-based measurement that should be determined based on the assumptions that marketplace participants would use in pricing an asset or liability. When estimating fair value, depending on the nature and complexity of the asset or liability, we may generally use one or each of the following techniques:

- Income approach, which is based on the present value of a future stream of net cash flows.
- Market approach, which is based on market prices and other information from market transactions involving identical or comparable assets or liabilities.

As a basis for considering the assumptions used in these techniques, the standard establishes a three-tier fair value hierarchy which prioritizes the inputs used in measuring fair value as follows:

- Level 1 - Quoted prices for identical assets or liabilities in active markets.
- Level 2 - Quoted prices for similar assets or liabilities in active markets, or quoted prices for identical or similar assets or liabilities in markets that are not active, or inputs other than quoted prices that are directly or indirectly observable, or inputs that are derived principally from, or corroborated by, observable market data by correlation or other means.
- Level 3 - Unobservable inputs that reflect estimates and assumptions.

The following table summarizes the financial instruments measured at fair value on a recurring basis classified in the fair value hierarchy (Level 1, 2 or 3) based on the inputs used for valuation in the accompanying consolidated balance sheets:

| | As of December 31, 2020 | | | As of December 31, 2019 | | |
|---|---|---|---|---|---|---|
| **Fair Value Measurements:** | **Level 1** | **Level 2** | **Level 3** | **Level 1** | **Level 2** | **Level 3** |
| Marketable securities (see *Note 7)* | | | | | | |
| Equity securities | $ — | $ — | $ — | $ 4,404 | $ — | $ — |
| Money market and mutual funds | 104,672 | — | — | 38,799 | — | — |
| Corporate bonds | — | 22,155 | — | — | 4,098 | — |
| Government securities - U.S. | — | 18,999 | — | — | 5,446 | — |
| Other fixed-income securities | — | 3,854 | — | — | 1,637 | — |
| Total assets | $ 104,672 | $ 45,008 | $ — | $ 43,203 | $ 11,181 | $ — |
| | | | | | | |
| Contingent consideration payable (see *Note 13)* | — | — | — | — | — | 17,327 |
| Total liabilities | $ — | $ — | $ — | $ — | $ — | $ 17,327 |

A review of fair value hierarchy classifications is conducted on a quarterly basis. Changes in the observability of valuation inputs may result in a reclassification for certain financial assets or liabilities. During the fiscal year ended December 31, 2020, there were no transfers in and out of Level 1, 2, or 3. During the twelve months ended December 31, 2020, 2019 and 2018, we did not recognize any other-than-temporary impairment loss.

Some of the Company's financial instruments, such as cash and cash equivalents, accounts receivable and accounts payable, are reflected in the balance sheet at carrying value, which approximates fair value due to their short-term nature.

*Debt*

We estimate the fair value of our $143,750 aggregate principal amount of 4.50% exchangeable senior notes due 2023 (the "2023 Notes"), a Level 2 input, based on interest rates that would be currently available to the Company for issuance of similar types of debt instruments with similar terms and remaining maturities or recent trading prices obtained from brokers. The estimated fair value of the 2023 Notes at December 31, 2020 is $128,210, which is the same as book value.

See *Note 12: Long-Term Debt* for additional information regarding our debt obligations.

**NOTE 7: Marketable Securities**

The Company has investments in equity and available-for-sale debt securities which are recorded at fair market value. The change in the fair value of equity investments is recognized in our consolidated statements of income (loss) and the change in the fair value of available-for-sale debt investments is recorded as other comprehensive income (loss) in shareholders' equity (deficit), net of income tax effects. As of December 31, 2020, we considered any decreases in fair value on our marketable securities to be driven by factors other than credit risk, including market risk.

The following tables show the Company's available-for-sale securities' adjusted cost, gross unrealized gains, gross unrealized losses and fair value by significant investment category as of December 31, 2020 and 2019, respectively:

| | 2020 | | | |
|---|---|---|---|---|
| **Marketable Securities:** | **Adjusted Cost** | **Unrealized Gains** | **Unrealized Losses** | **Fair Value** |
| Money market and mutual funds | $ 103,404 | $ 1,288 | $ (20) | $ 104,672 |
| Corporate bonds | 21,811 | 350 | (6) | 22,155 |
| Government securities - U.S. | 18,849 | 155 | (5) | 18,999 |
| Other fixed-income securities | 3,839 | 22 | (7) | 3,854 |
| Total | $ 147,903 | $ 1,815 | $ (38) | $ 149,680 |

| | 2019 | | | |
|---|---|---|---|---|
| **Marketable Securities:** | **Adjusted Cost** | **Unrealized Gains** | **Unrealized Losses** | **Fair Value** |
| Equity securities | $ 4,234 | $ 170 | $ — | $ 4,404 |
| Money market and mutual funds | 38,028 | 771 | — | 38,799 |
| Corporate bonds | 4,021 | 77 | — | 4,098 |
| Government securities - U.S. | 5,341 | 110 | (5) | 5,446 |
| Other fixed-income securities | 1,614 | 23 | — | 1,637 |
| Total | $ 53,238 | $ 1,151 | $ (5) | $ 54,384 |

We determine realized gains or losses on the sale of marketable securities on a specific identification method. We reflect these gains and losses as a component of investment and other income in the accompanying consolidated statements of income (loss).

We recognized gross realized gains of $474, $483, and $317 for the twelve months ended December 31, 2020, 2019, and 2018, respectively. These realized gains were offset by realized losses of $912, $151, and $565 for the twelve-months ended December 31, 2020, 2019, and 2018, respectively.

The following table summarizes the estimated fair value of our investments in marketable debt securities, accounted for as available-for-sale securities and classified by the contractual maturity date of the securities as of December 31, 2020:

| | Maturities | | | | |
|---|---|---|---|---|---|
| **Marketable Debt Securities:** | **Less than 1 Year** | **1-5 Years** | **5-10 Years** | **Greater than 10 Years** | **Total** |
| Corporate bonds | $ 6,054 | $ 14,468 | $ 1,633 | $ — | $ 22,155 |
| Government securities - U.S. | — | 13,827 | 2,038 | 3,134 | 18,999 |
| Other fixed-income securities | 1,017 | 2,837 | — | — | 3,854 |
| Total | $ 7,071 | $ 31,132 | $ 3,671 | $ 3,134 | $ 45,008 |

We have classified our investment in available-for-sale marketable securities as current assets in the consolidated balance sheets as the securities need to be available for use, if required, to fund current operations. There are no restrictions on the sale of any securities in our investment portfolio.

Total gross unrealized losses of our available-for-sale debt securities at December 31, 2020 were immaterial. The unrealized losses are driven by factors other than credit risk and have been in a unrealized loss position for less than one year. We do not intend to sell the investments and it is not more likely than not that we will be required to sell the investments before recovery of their amortized cost bases.

**NOTE 8: Inventories**

The principal categories of inventories, net of reserves of $0 and $914 at December 31, 2020 and 2019, respectively, are comprised of the following:

| Inventory: | 2020 | 2019 |
|---|---|---|
| Finished goods | $ — | $ 3,020 |
| Raw materials | — | 550 |
| Total | $ — | $ 3,570 |

The decrease in inventory at December 31, 2020 is a result of the June 30, 2020 disposition of the Hospital Products. See *Note 4: Disposition of the Hospital Products*.

**NOTE 9: Property and Equipment, net**

The principal categories of property and equipment, net at December 31, 2020 and 2019, respectively, are as follows:

| Property and Equipment, net: | 2020 | 2019 |
|---|---|---|
| Software, office and computer equipment | $ 1,443 | $ 1,258 |
| Furniture, fixtures and fittings | 300 | 300 |
| Less - accumulated depreciation | (1,384) | (1,014) |
| Total | $ 359 | $ 544 |

Depreciation expense for the years ended December 31, 2020, 2019 and 2018 was $287, $459 and $811, respectively.

**NOTE 10: Goodwill and Intangible Assets**

The Company's amortizable and unamortizable intangible assets at December 31, 2020 and 2019, respectively, are as follows:

| | 2020 | | | 2019 | | |
|---|---|---|---|---|---|---|
| Goodwill and Intangible Assets: | Gross Value | Accumulated Amortization | Net Carrying Amount | Gross Value | Accumulated Amortization | Net Carrying Amount |
| Acquired developed technology - Vazculep [1] | $ — | $ — | $ — | $ 12,061 | $ (11,248) | $ 813 |
| Unamortizable intangible assets - Goodwill [2] | $ 16,836 | $ — | $ 16,836 | $ 18,491 | $ — | $ 18,491 |

[1] This intangible asset was assumed by the Exela Buyer as part of the disposition of the Hospital Products on June 30, 2020. See *Note 4: Disposition of the Hospital Products.*

[2] In connection with the disposition of the Hospital Products (see *Note 4: Disposition of the Hospital Products*), the Company allocated goodwill of $1,655 on a relative fair value basis to the Hospital Products and included this amount in the net gain on the disposition of the Hospital Products on the consolidated statement of income (loss) during the year ended December 31, 2020.

The Company recorded amortization expense related to amortizable intangible assets of $406, $816 and $6,619 for the years ended December 31, 2020, 2019 and 2018, respectively.

No impairment loss related to goodwill or intangible assets was recognized during the years ended December 31, 2020 or 2019.

**NOTE 11: Leases**

On January 1, 2019, the Company adopted ASU 2016-02, "*Leases*", using the modified retrospective transition approach and elected the transition option to recognize the adjustment in the period of adoption rather than in the earliest period presented. At December 31, 2020, the balances of the operating lease right-of-use asset and total operating lease liability were $2,604 and $2,314, respectively, of which $474 of the operating lease liability is classified as a current liability.

All of the Company's office spaces are leased. The Company also leases a production suite. All leased facilities are classified as operating leases with remaining lease terms between one and five years. The Company determines if a contract is a lease at the inception of the arrangement. The Company reviews all options to extend, terminate, or purchase its right-of-use assets at the inception of the lease and will include these options in the lease term when they are reasonably certain of being exercised. For all of the Company's leases, lease and non-lease components are accounted for as a single lease component, as all non-lease components are immaterial.

The components of lease costs, which are included in selling, general and administrative expenses in the consolidated statements of income (loss) of years ended December 31, 2020 and 2019 were as follows:

| **Lease cost:** | **2020** | **2019** |
|---|---|---|
| Operating lease costs [1] | $ 1,133 | $ 1,515 |
| Sublease income [2] | (336) | (276) |
| Total lease cost | $ 797 | $ 1,239 |

[1] Variable lease costs were immaterial for the years ended December 31, 2020 and 2019.
[2] Represents sublease income received for various office leases.

During the years ended December 31, 2020 and 2019, the Company reduced its operating lease liabilities by $769 and $1,480 for cash paid. During the year ended December 31, 2020, there were no new operating or finance leases entered into. As of December 31, 2020, the Company is aware of one additional potential embedded lease that has not yet commenced and will not commence until certain conditions are met. If these conditions are met and the start date is determined, annual fees would commence and at that time an operating lease right-of-use asset and corresponding operating lease liability will be recorded.

As of December 31, 2020, our operating leases have a weighted-average remaining lease term of 4.3 years and a weighted-average discount rate of 5.3%. Avadel's lease contracts do not provide a readily determinable implicit rate. Avadel's estimated incremental borrowing rate is based on information available at the inception of the lease.

Maturities of the Company's operating lease liabilities were as follows:

| **Maturities:** | **Operating Leases** |
|---|---|
| 2021 | $ 578 |
| 2022 | 590 |
| 2023 | 602 |
| 2024 | 614 |
| 2025 | 206 |
| Thereafter | — |
| Total lease payments | 2,590 |
| Less: interest | 276 |
| Present value of lease liabilities | $ 2,314 |

**NOTE 12: Long-Term Debt**

Long-term debt is summarized as follows:

| | December 31, 2020 | December 31, 2019 |
|---|---|---|
| Principal amount of 4.50% exchangeable senior notes due 2023 | $ 143,750 | $ 143,750 |
| Less: unamortized debt discount and issuance costs, net | (15,540) | (22,064) |
| Net carrying amount of liability component | 128,210 | 121,686 |
| Less: current maturities | — | — |
| Long-term debt | $ 128,210 | $ 121,686 |
| | | |
| Equity component: | | |
| Equity component of exchangeable notes, net of issuance costs | $ (26,699) | $ (26,699) |

*2023 Notes*

On February 16, 2018, Avadel Finance Cayman Limited, a Cayman Islands exempted company (the "Issuer") and an indirect wholly-owned subsidiary of the Company, issued $125,000 aggregate principal amount of 4.50% exchangeable senior notes due 2023 (the "2023 Notes") in a private placement (the "Offering") to qualified institutional buyers pursuant to Rule 144A under the Securities Act. In connection with the Offering, the Issuer granted the initial purchasers of the 2023 Notes a 30-day option to purchase up to an additional $18,750 aggregate principal amount of the 2023 Notes, which was fully exercised on February 16, 2018. Net proceeds received by the Company, after issuance costs and discounts, were approximately $137,560. The 2023 Notes are the Company's senior unsecured obligations and rank equally in right of payment with all of the Company's existing and future senior unsecured indebtedness and effectively junior to any of the Company's existing and future secured indebtedness, to the extent of the value of the assets securing such indebtedness.

The 2023 Notes will be exchangeable at the option of the holders at an initial exchange rate of 92.6956 ADSs per $1 principal amount of 2023 Notes, which is equivalent to an initial exchange price of approximately $10.79 per ADS. Such initial exchange price represents a premium of approximately 20% to the $8.99 per ADS closing price on The Nasdaq Global Market on February 13, 2018. Upon the exchange of any 2023 Notes, the Issuer will pay or cause to be delivered, as the case may be, cash, ADSs or a combination of cash and ADSs, at the Issuer's election. Holders of the 2023 Notes may convert their 2023 Notes, at their option, only under the following circumstances prior to the close of business on the business day immediately preceding August 1, 2022, under the circumstances and during the periods set forth below and regardless of the conditions described below, on or after August 1, 2022 and prior to the close of business on the business day immediately preceding the maturity date:

- Prior to the close of business on the business day immediately preceding August 1, 2022, a holder of the 2023 Notes may surrender all or any portion of its 2023 Notes for exchange at any time during the five business day period immediately after any five consecutive trading day period (the "Measurement Period") in which the trading price per $1 principal amount of 2023 Notes, as determined following a request by a holder of the 2023 Notes, for each trading day of the measurement period was less than 98% of the product of the last reported sale price of the ADSs and the exchange rate on each such trading day.

- If a transaction or event that constitutes a fundamental change or a make-whole fundamental change occurs prior to the close of business on the business day immediately preceding August 1, 2022, regardless of whether a holder of the 2023 Notes has the right to require the Company to repurchase the 2023 Notes, or if Avadel is a party to a merger event that occurs prior to the close of business on the business day immediately preceding August 1, 2022, all or any portion of a the holder's 2023 Notes may be surrendered for exchange at any time from or after the date that is 95 scheduled trading days prior to the anticipated effective date of the transaction (or, if later, the earlier of (x) the business day after the Company gives notice of such transaction and (y) the actual effective date of such transaction) until 35 trading days after the actual effective date of such transaction or, if such transaction also constitutes a fundamental change, until the related fundamental change repurchase date.

- Prior to the close of business on the business day immediately preceding August 1, 2022, a holder of the 2023 Notes may surrender all or any portion of its 2023 Notes for exchange at any time during any calendar quarter commencing after the calendar quarter ending on June 30, 2018 (and only during such calendar quarter), if the last reported sale

price of the ADSs for at least 20 trading days (whether or not consecutive) during the period of 30 consecutive trading days ending on, and including, the last trading day of the immediately preceding calendar quarter is greater than or equal to 130% of the exchange price on each applicable trading day.

- If the Company calls the 2023 Notes for redemption pursuant to Article 16 to the Indenture prior to the close of business on the business day immediately preceding August 1, 2022, then a holder of the 2023 Notes may surrender all or any portion of its 2023 Notes for exchange at any time prior to the close of business on the second business day prior to the redemption date, even if the 2023 Notes are not otherwise exchangeable at such time. After that time, the right to exchange shall expire, unless the Company defaults in the payment of the redemption price, in which case a holder of the 2023 Notes may exchange its 2023 Notes until the redemption price has been paid or duly provided for.

We considered the guidance in ASC 815-15, Embedded Derivatives, to determine if this instrument contains an embedded feature that should be separately accounted for as a derivative. ASC 815 provides for an exception to this rule when convertible notes, as host instruments, are deemed to be conventional, as defined by ASC 815-40. We determined that this exception applies due, in part, to our ability to settle the 2023 Notes in cash, ADSs or a combination of cash and ADSs, at our option. We have therefore applied the guidance provided by ASC 470-20, Debt with Conversion and Other Options which requires that the 2023 Notes be separated into debt and equity components at issuance and a value be assigned to each. The carrying amount of the liability component was calculated by measuring the fair value of a similar liability that does not have an associated convertible feature. The allocation was performed in a manner that reflected our non-convertible debt borrowing rate for similar debt. The equity component of the 2023 Notes was recognized as a debt discount and represents the difference between the proceeds from the issuance of the 2023 Notes and the fair value of the liability of the 2023 Notes on its issuance date. The excess of the principal amount of the liability component over its carrying amount (the "Debt Discount") is amortized to interest expense using the effective interest method over the term of the 2023 Notes. The equity component is not remeasured as long as it continues to meet the conditions for equity classification.

**NOTE 13: Contingent Consideration Payable**

Contingent consideration payable and related activity are reported at fair value and consist of the following at December 31, 2020 and 2019, respectively:

| | | Activity during the Twelve Months Ended December 31, 2020 | | | | |
|---|---|---|---|---|---|---|
| | | | Changes in Fair Value of Contingent Consideration Payable | | | |
| | Balance, December 31, 2019 | Payments | Operating Expense | Other Expense | Disposition of the Hospital Products | Balance, December 31, 2020 |
| Acquisition-related contingent consideration: | | | | | | |
| Earn-out payments - Éclat Pharmaceuticals [(a)] [(d)] | $ 15,472 | $ (5,323) | $ 3,327 | $ — | $ (13,476) | $ — |
| Financing-related: | | | | | | |
| Royalty agreement - Deerfield [(b)] [(d)] | 1,251 | (587) | — | 272 | (936) | — |
| Royalty agreement - Broadfin [(c)] [(d)] | 604 | (279) | — | 163 | (488) | — |
| Total contingent consideration payable | 17,327 | $ (6,189) | $ 3,327 | $ 435 | $ (14,900) | — |
| Less: current portion | (5,554) | | | | | — |
| Total long-term contingent consideration payable | $ 11,773 | | | | | $ — |

(a) In March 2012, the Company acquired all of the membership interests of Éclat from Breaking Stick Holdings, L.L.C. ("Breaking Stick", formerly Éclat Holdings), an affiliate of Deerfield. Breaking Stick is majority owned by Deerfield, with a minority interest owned by the Company's former CEO, and certain other current and former employees. As part of the consideration, the Company committed to provide quarterly earn-out payments equal to 20% of any gross profit generated by certain Éclat products. These payments will continue in perpetuity, to the extent gross profit of the related products also continue in perpetuity. In connection with the disposition of the Hospital Products on June 30, 2020 as discussed in *Note 4: Disposition of the Hospital Products*, the Deerfield MIPA (with respect to certain sections thereof) and the Royalty Agreement were assigned to the Exela Buyer. Pursuant to the Purchase Agreement, the Exela Buyer assumed and will pay, perform, satisfy and discharge the liabilities and obligations of Avadel Legacy and the Company under the Deerfield Royalty Agreement.

(b) As part of a February 2013 debt financing transaction conducted with Deerfield, the Company received cash of $2,600 in exchange for entering into a royalty agreement whereby the Company shall pay quarterly a 1.75% royalty on the net sales of certain Éclat products until December 31, 2024. In connection with such debt financing transaction, the Company granted Deerfield a security interest in the product registration rights of the Éclat Pharmaceuticals products. In connection with the disposition of the Hospital Products on June 30, 2020 as discussed in *Note 4: Disposition of the Hospital Products*, the Deerfield MIPA (with respect to certain sections thereof) and the Royalty Agreement were assigned to the Exela Buyer. Pursuant to the Purchase Agreement, the Exela Buyer assumed and will pay, perform, satisfy and discharge the liabilities and obligations of Avadel Legacy and the Company under the Deerfield Royalty Agreement.

(c) As part of a December 2013 debt financing transaction conducted with Broadfin Healthcare Master Fund, a former related party and shareholder, the Company received cash of $2,200 in exchange for entering into a royalty agreement whereby the Company shall pay quarterly a 0.834% royalty on the net sales of certain Éclat products until December 31, 2024. In connection with the disposition of the Hospital Products on June 30, 2020 as discussed in *Note 4: Disposition of the Hospital Products*, the Broadfin Royalty Agreement was assigned to the Exela Buyer and the Exela Buyer assumed and shall pay, perform, satisfy and discharge the liabilities and obligations of the Company under the Broadfin Royalty Agreement.

(d) Deerfield and Broadfin Healthcare Master Trust disposed of their 2023 Notes and ordinary shares in the Company during the year ended December 31, 2020 and are no longer considered related parties.

Prior to the sale of the Hospital Products on June 30, 2020, the fair value of each contingent consideration payable listed in (a), (b) and (c) above was estimated using a discounted cash flow model based on estimated and projected annual net revenues or gross profit, as appropriate, of each of the specified Éclat products using an appropriate risk-adjusted discount rate of 14%. These fair value measurements are based on significant inputs not observable in the market and thus represent a level 3 measurement as defined in ASC 820. Subsequent changes in the fair value of the acquisition-related contingent consideration payables, resulting primarily from management's revision of key assumptions, will be recorded in the consolidated statements of income (loss) in the line items entitled "Changes in fair value of contingent consideration" for items noted in (b) above and in "Other (expense) income - changes in fair value of contingent consideration payable" for items (b) and (c) above. See *Note 1: Summary of Significant Accounting Policies* under the caption Acquisition-related Contingent Consideration and Financing-related Royalty Agreements for more information on key assumptions used to determine the fair value of these liabilities.

Prior to June 30, 2020, the Company chose to make a fair value election pursuant to ASC 825, "Financial Instruments" for its royalty agreements detailed in items (b) and (c) above. These financing-related liabilities were recorded at fair market value on the consolidated balance sheets and the periodic change in fair market value is recorded as a component of "Other expense – change in fair value of contingent consideration payable" on the consolidated statements of income (loss).

The following table summarizes changes to the contingent consideration payables, a recurring Level 3 measurement, for the twelve-month periods ended December 31, 2020, 2019 and 2018:

| Contingent Consideration Payable: | Balance |
|---|---|
| Balance at December 31, 2017 | $ 98,925 |
| Payments of related party payable | (22,951) |
| Fair value adjustments [1] | (24,630) |
| Expiration of warrants | (2,167) |
| Disposition of the pediatrics assets | (20,337) |
| Balance at December 31, 2018 | 28,840 |
| Payments of related party payable | (12,736) |
| Fair value adjustments [1] | 1,223 |
| Balance at December 31, 2019 | 17,327 |
| Payments of contingent consideration payable | (6,189) |
| Fair value adjustments [1] | 3,762 |
| Disposition of the Hospital Products | (14,900) |
| Balance at December 31, 2020 | $ — |

[1] Fair value adjustments are reported as changes in fair value of contingent consideration and other expense - changes in fair value of contingent consideration payable in the consolidated statements of income (loss).

**NOTE 14: Income Taxes**

The components of (loss) income before income taxes for the years ended twelve months ended December 31, are as follows:

| (Loss) Income Before Income Taxes: | 2020 | 2019 | 2018 |
|---|---|---|---|
| Ireland | $ (27,205) | $ (50,134) | $ (42,604) |
| U.S. | 22,335 | 10,401 | (70,340) |
| France | (212) | 1,151 | (253) |
| Total loss before income taxes | $ (5,082) | $ (38,582) | $ (113,197) |

The income tax (benefit) provision consists of the following for the years ended December 31:

| Income Tax (Benefit) Provision: | 2020 | 2019 | 2018 |
|---|---|---|---|
| Current: | | | |
| U.S. - Federal | $ (12,810) | $ — | $ — |
| U.S. - State | 20 | 97 | 330 |
| Total current | (12,790) | 97 | 330 |
| | | | |
| Deferred: | | | |
| Ireland | — | (1,256) | — |
| U.S. - Federal | 680 | (4,093) | (19,503) |
| U.S. - State | — | (104) | 1,280 |
| Total deferred | 680 | (5,453) | (18,223) |
| | | | |
| Income tax benefit | $ (12,110) | $ (5,356) | $ (17,893) |

The reconciliation between income taxes at the statutory rate and the Company's benefit for income taxes is as follows for the years ended December 31:

| Reconciliation to Effective Income Tax Rate: | 2020 | 2019 | 2018 |
|---|---|---|---|
| Statutory tax rate | 12.5 % | 12.5 % | 12.5 % |
| Differences in international tax rates | (34.5)% | 3.2 % | 8.0 % |
| Nondeductible changes in fair value of contingent consideration | (19.4)% | (0.3)% | 4.0 % |
| Intercompany asset transfer | — % | 21.2 % | — % |
| Change in valuation allowances | (83.3)% | (19.1)% | (5.3)% |
| Nondeductible stock-based compensation | (20.9)% | (2.7)% | (1.3)% |
| Hospital Products sale | 183.5 % | — % | — % |
| Unrealized tax benefits | 5.4 % | 0.7 % | (1.3)% |
| State and local taxes (net of federal) | (0.4)% | — % | (0.3)% |
| Change in U.S. tax law | 179.5 % | — % | (0.2)% |
| Nondeductible interest expense | (34.0)% | (2.5)% | (1.1)% |
| Orphan drug and R&D tax credit | 55.0 % | — % | — % |
| Other | (5.1)% | 0.9 % | 0.7 % |
| Effective income tax rate | 238.3 % | 13.9 % | 15.7 % |
| | | | |
| Income tax benefit - at statutory tax rate | $ (636) | $ (4,823) | $ (14,149) |
| Differences in international tax rates | 1,755 | (1,218) | (9,039) |
| Nondeductible changes in fair value of contingent consideration | 988 | 121 | (4,559) |
| Intercompany asset transfer | — | (8,190) | — |
| Change in valuation allowances | 4,231 | 7,379 | 5,998 |
| Nondeductible stock-based compensation | 1,060 | 1,039 | 1,499 |
| Hospital Products sale | (9,328) | — | — |
| Unrecognized tax benefits | (274) | (261) | 1,440 |
| State and local taxes (net of federal) | 20 | (7) | 299 |
| Change in U.S. tax law | (9,124) | — | 274 |
| Nondeductible interest expense | 1,728 | 982 | 1,269 |
| Orphan drug and R&D tax credit | (2,793) | — | — |
| Other | 263 | (378) | (925) |
| Income tax benefit - at effective income tax rate | $ (12,110) | $ (5,356) | $ (17,893) |

In 2020, the income tax benefit increased by $6,754 when compared to the same period in 2019. The increase in the income tax benefit in 2020 was primarily driven by the tax benefits from the sale of our hospital products and passage of the Coronavirus Aid, Relief and Economic Security Act (the "CARES Act") in the U.S. The Company recorded additional tax benefit in 2020 from the Orphan Drug and R&D tax credit in the U.S. Tax benefit from the intercompany asset transfer recorded in 2019 did not recur, resulting in a partial offset of tax benefits described above.

In 2019, the income tax benefit decreased by $12,537 when compared to the same period in 2018. The decrease in the income tax benefit in 2019 was primarily driven by the impairment of the Noctiva intangible asset in 2018, which did not recur in 2019. In addition to the non-recurring impairment, an increase in the valuation allowance in 2019, when compared to the same period in 2018 also contributed to the decrease in tax benefit recorded in 2019. As a part of a corporate reorganization, the Company entered into an internal sale transaction in December 2019. The internal sale transaction included transfer of intangible assets from an Irish entity to a U.S. entity. The internal sale transaction resulted in a decrease of $5,536 to Irish deferred tax asset with corresponding decrease of $5,536 to valuation allowance, an increase of $8,190 to U.S. deferred tax asset associated with amortization of intangible assets, and a $8,190 deferred tax benefit.

***Unrecognized Tax Benefits***

The Company or one of its subsidiaries files income tax returns in Ireland, France, U.S. and various states. The Company is no longer subject to Irish, French, U.S. Federal, and state and local examinations for years before 2016. During 2020, the Company completed the 2015 through 2017 U.S. Federal Tax Audit. Completion of the audit resulted in an assessment of $1,937 for the 2015 through 2017 U.S. Federal Tax Returns compared to the IRS Claims of $50,695 made on July 2, 2019 and the updated IRS Claims of $9,302 on October 2, 2019 made as part of the Specialty Pharma bankruptcy proceedings, which at this time does not include interest and penalties. The Company settled the $1,937 assessment. The French tax authority completed an examination of the Company's French tax returns for 2017 and 2018 during 2020, noting no change.

The following table summarizes the activity related to the Company's unrecognized tax benefits for the twelve months ended December 31:

| **Unrecognized Tax Benefit Activity** | **2020** | **2019** | **2018** |
|---|---|---|---|
| Balance at January 1: | $ 6,465 | $ 5,315 | $ 3,954 |
| Additions based on tax positions related to the current year | — | — | 1,087 |
| Increases for tax positions of prior years | — | 2,416 | 274 |
| Statute of limitations expiration | — | (1,266) | — |
| Settlements | (3,322) | — | — |
| Balance at December 31: | $ 3,143 | $ 6,465 | $ 5,315 |

The Company expects that within the next twelve months the unrecognized tax benefits could decrease by an immaterial amount and the interest could increase by an immaterial amount.

At December 31, 2020, 2019 and 2018, there are $2,483, $3,806 and $4,597 of unrecognized tax benefits that if recognized would affect the annual effective tax rate.

The Company recognizes interest and penalties accrued related to unrecognized tax benefits in income tax expense. During the years ended December 31, 2020, 2019 and 2018, the Company recognized approximately $203, $555 and $725 in interest and penalties. The Company had approximately $1,475 and $1,612 for the payment of interest and penalties accrued at December 31, 2020 and 2019, respectively.

***Deferred Tax Assets (Liabilities)***

Deferred income tax provisions reflect the effect of temporary differences between consolidated financial statement and tax reporting of income and expense items. The net deferred tax assets (liabilities) at December 31, 2020 and 2019 resulted from the following temporary differences:

| **Net Deferred Tax Assets and Liabilities:** | **2020** | **2019** |
|---|---|---|
| Deferred tax assets: | | |
| Net operating loss carryforwards | $ 31,302 | $ 30,275 |
| Amortization | 3,701 | 11,602 |
| Stock based compensation | 2,626 | 3,577 |
| Accounts receivable | — | 53 |
| Fair value contingent consideration | — | 264 |
| Orphan drug and R&D tax credit | 2,793 | — |
| Other | 423 | 901 |
| Gross deferred tax assets | 40,845 | 46,672 |
| | | |
| Deferred tax liabilities: | | |
| Amortization | — | (172) |
| Prepaid expenses | (75) | (35) |
| Other | (890) | — |
| Gross deferred tax liabilities | (965) | (207) |
| | | |
| Less: valuation allowances | (21,624) | (17,038) |
| | | |
| Net deferred tax assets | $ 18,256 | $ 29,427 |

At December 31, 2020, the Company had $118,070 of net operating losses in Ireland that do not have an expiration date and $46,003 of net operating losses in the U.S. Of the $46,003 of net operating losses in the U.S., $10,365 were acquired due to the acquisition of FSC and $35,638 are due to the losses at US Holdings. The portion due to the acquisition of FSC will expire in 2034 through 2035. The Company also has $2,793 of U.S. tax credits available to reduce future income tax payable that have no expiration date. A valuation allowance is recorded if, based on the weight of available evidence, it is more likely than not that a deferred tax asset will not be realized. This assessment is based on an evaluation of the level of historical taxable income and projections for future taxable income. For the year ended December 31, 2020, the Company recorded $4,171 of valuation allowances related to Irish net operating losses and $60 of valuation allowances related French net operating losses. The U.S. net operating losses are subject to an annual limitation as a result of the FSC acquisition under Internal Revenue Code Section 382 and will not be fully utilized before they expire.

We recorded a valuation allowance against all of our net operating losses in Ireland and France as of December 31, 2020, and all of our net operating losses in Ireland as of December 31, 2019. We intend to continue maintaining a full valuation allowance on the Irish net operating losses until there is sufficient evidence to support the reversal of all or some portion of these allowances. In 2019, the Company removed $3,259 of French net operating losses and the corresponding valuation allowance as a result of the 2019 restructuring activities in France. See *Note 19: Restructuring Costs*.

While the Company believes it is more likely than not that it will be able to realize the deferred tax assets in the U.S., the Company continues to monitor any unfavorable changes that could ultimately impact our assessment of the realizability of our U.S. deferred tax assets. If the Company experiences an ownership change under Internal Revenue Code Section 382, the U.S. net operating losses could also be limited in their utilization.

At December 31, 2020, the Company has unremitted earnings of $3,725 outside of Ireland as measured on a U.S. GAAP basis. Whereas the measure of earnings for purposes of taxation of a distribution may be different for tax purposes, these earnings, which are considered to be invested indefinitely, would become subject to income tax if they were remitted as dividends or if we were to sell our stock in the subsidiaries, net of any prior income taxes paid. It is not practicable to estimate the amount of deferred tax liability on such earnings, if any.

***R&D Tax Credits Receivable***

The French and Irish governments provide tax credits to companies for spending on innovative R&D. These credits are recorded as an offset of R&D expenses and are credited against income taxes payable in years after being incurred or, if not so utilized, are recoverable in cash after a specified period of time, which may differ depending on the tax credit regime. As of December 31, 2020, our net research tax credit receivable amounts to $6,771 and represents a French gross research tax credit of $6,396 and an Irish gross research tax credit of $375. As of December 31, 2019, our net Research tax credit receivable amounts to $8,429 and represents a French gross research tax credit of $7,608 and an Irish gross research tax credit of $821.

In 2020, the Company recorded $2,793 for the U.S. Orphan Drug Tax Credit and the U.S. Research & Development Tax Credit. These credits are recorded as an income tax benefit in the year and are currently recorded as deferred tax assets because the credits are not recoverable in cash.

***2020 CARES Act***

The Coronavirus Aid, Relief and Economic Security Act (the "CARES Act"), enacted on March 27, 2020, includes significant business tax provisions. In particular, the CARES Act modified the rules associated with net operating losses ("NOLs"). Under the temporary provisions of the CARES Act, NOL carryforwards and carrybacks may offset 100% of taxable income for taxable years beginning before 2021. In addition, NOLs arising in 2018, 2019 and 2020 taxable years may be carried back to each of the preceding five years to generate a refund. During the twelve months ended December 31, 2020, the income tax benefit includes a discrete tax benefit of $9,124 as a result of our ability under the CARES Act to carry back NOLs incurred to periods when the statutory U.S. Federal tax rate was 35% versus our current U.S. Federal tax rate of 21%. During the twelve months ended December 31, 2020, the Company received $3,351 in cash tax refunds from carryback claims related to the CARES Act from the carryback of 2018 tax losses. The Company filed refund claims for $18,753 associated with the carryback of 2019 tax losses and estimates it will file refund claims associated with the carryback of 2020 tax losses.

***2017 Tax Cuts and Jobs Act***

On December 22, 2017, the U.S. government enacted the Tax Cuts and Jobs Act (the "Tax Act"). The Tax Act includes significant changes to the U.S. corporate income tax system including: a federal corporate rate reduction from 35% to 21%; limitations on the deductibility of interest expense and executive compensation; creation of the base erosion anti-abuse tax ("BEAT") and a new minimum tax. As a result of the Tax Act being signed into law, we recognized a provisional charge of $274 in 2018 related to the re-measurement of its U.S. net deferred tax assets and certain unrecognized tax benefits at the lower enacted corporate tax rates. A majority of the provisions in the Tax Act were effective January 1, 2018.

**NOTE 15: Post-Retirement Benefit Plans**

***Retirement Indemnity Obligation – France***

French law requires the Company to provide for the payment of a lump sum retirement indemnity to French employees based upon years of service and compensation at retirement. The retirement indemnity has been actuarially calculated on the assumption of voluntary retirement at a government-defined retirement age. Benefits do not vest prior to retirement. Any actuarial gains or losses are recognized in the Company's consolidated statements of income (loss) in the periods in which they occur.

During the second quarter of 2019, the Company initiated a plan to substantially reduce all of its workforce at its Vénissieux, France site ("2019 French Restructuring"). As a result of this decision, the Company reversed the French retirement indemnity obligation and recorded a curtailment gain of $1,000 during the year ended December 31, 2019. At December 31, 2020, there are no future expected retirement indemnity benefits to be paid. See *Note 19: Restructuring Costs*.

**NOTE 16: Other Assets and Liabilities**

Various other assets and liabilities are summarized for the years ended December 31, as follows:

| **Prepaid Expenses and Other Current Assets:** | **2020** | **2019** |
|---|---|---|
| Valued-added tax recoverable | $ 341 | $ 1,051 |
| Prepaid and other expenses | 1,018 | 2,116 |
| Guarantee from Armistice | 318 | 454 |
| Income tax receivable (see *Note 14*) | 18,615 | 536 |
| Receivable from Exela (see *Note 4*) | 16,500 | — |
| Short-term deposit | 1,477 | — |
| Other | 457 | 107 |
| Total | $ 38,726 | $ 4,264 |

| **Other Non-Current Assets:** | **2020** | **2019** |
|---|---|---|
| Deferred tax assets | $ 18,256 | $ 29,427 |
| Long-term deposits | — | 1,477 |
| Guarantee from Armistice | 1,050 | 1,367 |
| Right of use assets at contract manufacturing organizations | 5,201 | 6,428 |
| Other | 432 | 575 |
| Total | $ 24,939 | $ 39,274 |

| **Accrued Expenses:** | **2020** | **2019** |
|---|---|---|
| Accrued compensation | $ 1,697 | $ 3,944 |
| Accrued restructuring (see *Note 19*) | 520 | 2,949 |
| Customer allowances | 1,030 | 6,470 |
| Accrued outsourced contract costs | 473 | 2,833 |
| Other | 2,781 | 3,614 |
| Total | $ 6,501 | $ 19,810 |

| **Other Current Liabilities:** | **2020** | **2019** |
|---|---|---|
| Accrued interest | $ 2,695 | $ 2,695 |
| Due to Exela | 2,026 | — |
| Guarantee to Deerfield | 319 | 455 |
| Other | 160 | 725 |
| Total | $ 5,200 | $ 3,875 |

| **Other Non-Current Liabilities:** | **2020** | **2019** |
|---|---|---|
| Customer allowances | $ — | $ 981 |
| Unrecognized tax benefits | 3,143 | 6,465 |
| Guarantee to Deerfield | 1,053 | 1,372 |
| Other | 16 | 55 |
| Total | $ 4,212 | $ 8,873 |

**NOTE 17: Contingent Liabilities and Commitments**

***Litigation***

The Company is subject to potential liabilities generally incidental to our business arising out of present and future lawsuits and claims related to product liability, personal injury, contract, commercial, intellectual property, tax, employment, compliance and other matters that arise in the ordinary course of business. The Company accrues for potential liabilities when it is probable that future costs (including legal fees and expenses) will be incurred and such costs can be reasonably estimated. At December 31, 2020, there were no contingent liabilities with respect to any litigation, arbitration or administrative or other proceeding that are reasonably likely to have a material adverse effect on the Company's consolidated financial position, results of operations, cash flows or liquidity.

*Subsidiary Bankruptcy and Deconsolidation*

There is currently no pending or threatened litigation or disputes to which Specialty Pharma is or would be a party. All prior litigation and disputes involving Specialty Pharma have been dismissed or resolved. See *Note 3: Subsidiary Bankruptcy and Deconsolidation.*

***Material Commitments***

At December 31, 2020, we have one commitment with a contract manufacturer related to facility upgrades and the purchase and validation of equipment to be used in the manufacture of FT218. The total cost of this commitment is estimated to be approximately $4,000 and is expected to be started and completed during the year ending December 31, 2021.

The Company also has a commitment with a contract manufacturer related to the construction and preparation of a production suite at the contract manufacturer's facility, which is substantially complete at December 31, 2020. Subsequent to the initial build and preparation of the production suite, this commitment also includes annual fees which would commence at the start of production of validation batches and continue thereafter for five years.

**NOTE 18: Divestiture of the Pediatric Assets**

On February 12, 2018, the Company, together with its subsidiaries Avadel Pharmaceuticals (USA), Inc., Avadel Pediatrics, Inc., FSC Therapeutics, LLC ("FSC Therapeutics"), and Avadel US Holdings, Inc. ("Holdings"), as the "Sellers," entered into an asset purchase agreement (the "Purchase Agreement") with Cerecor, Inc. ("Cerecor"). The transaction closed on February 16, 2018 wherein Cerecor purchased from the Sellers four pediatric commercial stage assets – Karbinal™ ER, Cefaclor, Flexichamber™ and AcipHex® Sprinkle™, together with certain associated business assets – which were held by FSC. The Company acquired FSC in February 2016 from Deerfield and certain of its affiliates. Pursuant to the Purchase Agreement, Cerecor assumed the Company's remaining payment obligations to Deerfield under the Membership Interest Purchase Agreement, dated as of February 5, 2016, between Holdings, Flamel Technologies SA (the predecessor of the Company) and Deerfield and certain of its affiliates, which payment obligations consisted of the following (collectively, the "Assumed Obligations"): (i) a quarterly payment of $263 beginning in July 2018 and ending in October 2020, amounting to an aggregate payment obligation of $2,625; (ii) a payment in January 2021 of $15,263; and (iii) a quarterly royalty payment of 15% on net sales of the FSC products through February 5, 2026 ("FSC Product Royalties"), in an aggregate amount of up to approximately $10,300. Cerecor also assumed certain contracts and other obligations related to the acquired assets, and in that connection Holdings agreed to pay Cerecor certain make-whole payments associated with obligations Cerecor is assuming related to a certain supply contract related to Karbinal™ ER.

In conjunction with the divestiture, the Company also entered into the following arrangements:

*License and Development Agreement*

Flamel Ireland Limited, an Irish private limited company operating under the trade name of Avadel Ireland and a wholly-owned subsidiary of the Company, and Cerecor entered into a license and development agreement (the "License and Development Agreement") pursuant to which, among other things:

- Avadel Ireland will provide Cerecor with four product formulations utilizing Avadel Ireland's LiquiTime™ technology, and will complete pilot bioequivalence studies for such product formulations within 18 months;

- Cerecor will reimburse Avadel Ireland for development costs of the four LiquiTime™ products in excess of $1,000 in the aggregate;
- Upon transfer of the four product formulations, Cerecor will assume all remaining development costs and responsibilities for the product development, clinical studies, NDA applications and associated filing fees; and
- Upon regulatory approval and commercial launch of any LiquiTime™ products, Cerecor will pay Avadel Ireland quarterly royalties based on a percentage of net sales of any such products in the mid-single digit range.

Effective October 25, 2019, Cerecor and Avadel Ireland agreed to terminate the License and Development Agreement.

*Deerfield Guarantee*

The Company and Holdings provided their guarantee (the "Deerfield Guarantee") in favor of Deerfield. Under the Deerfield Guarantee, the Company and Holdings guaranteed to Deerfield the payment by Cerecor of the Assumed Obligations under the Membership Interest Purchase Agreement between the Company and Deerfield dated February 5, 2016. The Assumed Obligations include (i) a quarterly payment of $263 beginning in July 2018 and ending in October 2020, amounting to an aggregate payment obligation of $2,625; (ii) a payment in January 2021 of $15,263; and (iii) a quarterly royalty payment of 15% on net sales of the FSC products through February 6, 2026 ("FSC Product Royalties"), in an aggregate amount of up to approximately $10,300. In addition, under the Deerfield Guarantee, the Company and Holdings guaranteed that Deerfield would receive certain minimum annual FSC Product Royalties through February 6, 2026 (the "Minimum Royalties"). Given the Company's explicit guarantee to Deerfield, the Company recorded the guarantee in accordance with ASC 460. A valuation was performed, which was based largely on an analysis of the potential timing of each possible cash outflow described above and the likelihood of Cerecor's default on such payments assuming an S&P credit rating of CCC+. The result of this valuation identified a guarantee liability of $6,643. This liability is being amortized proportionately based on undiscounted cash outflows through the remainder of the contract with Deerfield.

On October 10, 2019, Cerecor entered into a purchase and sale agreement with Aytu BioScience, Inc ("Buyer") pursuant to which the Buyer will purchase certain assets from Cerecor and assume certain of Cerecor's liabilities, including all of Cerecor's liabilities assumed as part of the Purchase Agreement noted above. As part of this transaction, on November 1, 2019, Armistice has agreed to deposit $15,000 in an escrow account governed by an escrow agreement between Armistice and Deerfield having the purpose of securing the $15,000 balloon payment due January 2021 as part of the Membership Interest Purchase Agreement. As part of the Cerecor transaction with the buyer, Deerfield contractually acknowledges and agrees that it will seek payment from the escrow funds before requesting payment from the Company pursuant to the Deerfield Guarantee discussed above. Due to the change in circumstances, a new valuation was performed based on an analysis of the possible timing of the updated possible cash flow which excludes the $15,000 that Armistice has deposited in an escrow account. The updated valuation identified an updated guarantee liability of $1,827 at December 31, 2019, which is being amortized proportionately based on undiscounted cash outflows through the remainder of the contract with Deerfield. The balance of this guarantee liability was $1,372 at December 31, 2020.

*Armistice Guarantee*

Armistice Capital Master Fund, Ltd., the majority shareholder of Cerecor, guaranteed to Holdings the payment by Cerecor of the Assumed Obligations, including the Minimum Royalties. A valuation of the guarantee asset was performed in accordance with ASC 460 "*Guarantees*" and a guarantee asset of $6,620 was recorded. This asset is being amortized proportionately based on undiscounted cash outflows through the remainder of the contract with Deerfield noted above.

As discussed above, based on the purchase and asset sale between Cerecor and the Buyer, an updated valuation was performed and identified an updated guarantee asset of $1,821 at December 31, 2019. The balance of this guarantee asset was $1,368 at December 31, 2020.

The fair values of the Avadel guarantee to Deerfield and the guarantee received by Avadel from Armistice largely offset and when combined are not material.

Based on management's review of ASU 2014-08, "*Reporting Discontinued Operations and Disclosures of Disposals of Components of an Entity*", the disposition of our pediatric assets and related liabilities did not qualify for discontinued operations reporting. Our results of operations for the year ended December 31, 2018 includes the results of FSC, prior to its February 16, 2018 disposition date.

The net impact of this transaction was not material to the consolidated statements of income (loss).

**NOTE 19: Restructuring Costs**

*2019 French Restructuring*

During the second quarter of 2019, the Company initiated a plan to substantially reduce all of its workforce at its Vénissieux, France site ("2019 French Restructuring"). This reduction was part of an effort to align the Company's cost structure with our ongoing and future planned projects. The reduction in workforce was completed during the year ended December 31, 2020. Restructuring charges associated with this plan of $172 and $4,855 of were recognized during the years ended December 31, 2020 and 2019, respectively. Included in the 2019 French Restructuring charges of $4,855 were charges for employee severance, benefits and other costs of $4,339, charges related to fixed asset impairment of $629, charges related to the early termination penalty related to the office and copier lease terminations of $887, partially offset by a benefit of $1,000 related to the reversal of the French retirement indemnity obligation. The following table sets forth activities for the Company's cost reduction plan obligations for the years ended December 31, 2020 and 2019:

| **2019 French Restructuring Obligation:** | **2020** | **2019** |
|---|---|---|
| Balance of restructuring accrual at January 1, | $ 1,922 | $ — |
| Charges for employee severance, benefits and other costs | 172 | 4,339 |
| Payments | (1,813) | (2,441) |
| Foreign currency impact | (33) | 24 |
| Balance of restructuring accrual at December 31, | $ 248 | $ 1,922 |

The 2019 French Restructuring liability of $248 is included in the consolidated balance sheet in accrued expenses at December 31, 2020.

*2019 Corporate Restructuring*

During the first quarter of 2019, the Company announced a plan to reduce its Corporate workforce by more than 50% (the "2019 Corporate Restructuring"). The reduction in workforce is primarily a result of the exit of Noctiva during the first quarter of 2019 (see *Note 3: Subsidiary Bankruptcy and Deconsolidation*), as well as an effort to better align the Company's remaining cost structure at our U.S. and Ireland locations with our ongoing and future planned projects. The reduction in workforce was completed during the year ended December 31, 2020. Restructuring income associated with this plan for the year ended December 31, 2020 was $215, which included a benefit of $421 related to share based compensation forfeitures. Restructuring charges associated with this plan of $1,755 were recognized during the year ended December 31, 2019. Included in the 2019 Corporate Restructuring charges of $1,755 for the year ended December 31, 2019 were charges for employee severance, benefit and other costs of $3,406, charges related to the early termination penalty related to the office lease termination of $288, the write-off of $125 of property, plant and equipment, net, partially offset by a benefit of $2,064 related to share based compensation forfeitures related to the employees affected by the global reduction in workforce.

The following table sets forth activities for the Company's cost reduction plan obligations for the years ended December 31, 2020 and 2019:

| **2019 Corporate Restructuring Obligation:** | **2020** | **2019** |
|---|---|---|
| Balance of restructuring accrual at January 1, | $ 1,080 | $ — |
| Charges for employee severance, benefits and other costs | 206 | 3,406 |
| Payments | (1,014) | (2,326) |
| Balance of restructuring accrual at December 31, | $ 272 | $ 1,080 |

The 2019 Corporate Restructuring liability of $272 is included in the consolidated balance sheet in accrued expenses at December 31, 2020.

**NOTE 20: Equity Instruments and Transactions**

***Capital Shares***

We have 500,000 shares of authorized ordinary shares with a nominal value of $0.01 per ordinary share. As of December 31, 2020, we had 58,396 ordinary shares issued and outstanding, respectively. The Board of Directors is authorized to issue preferred shares in series, and with respect to each series, to fix its designation, relative rights (including voting, dividend, conversion, sinking fund, and redemption rights), preferences (including dividends and liquidation) and limitations. We have 50,000 shares of authorized preferred shares, $0.01 nominal value, of which 488 are currently issued and outstanding as of December 31, 2020.

***Shelf Registration Statement on Form S-3***

In February 2020, we filed with the SEC a new shelf registration statement on Form S-3 (the 2020 Shelf Registration Statement) (File No. 333-236258) that allows issuance and sale by us, from time to time, of:

a. up to $250,000 in aggregate of ordinary shares, nominal value US$0.01 per share (the "Ordinary Shares"), each of which may be represented by American Depositary Shares ("ADSs"), preferred shares, nominal value US$0.01 per share (the "Preferred Shares"), debt securities (the "Debt Securities"), warrants to purchase Ordinary Shares, ADSs, Preferred Shares and/or Debt Securities (the "Warrants"), and/or units consisting of Ordinary Shares, ADSs, Preferred Shares, one or more Debt Securities or Warrants in one or more series, in any combination, pursuant to the terms of the 2020 Shelf Registration Statement, the base prospectus contained in the 2020 Shelf Registration Statement (the "Base Prospectus"), and any amendments or supplements thereto (together, the "Securities"); including

b. up to $50,000 of ADSs that may be issued and sold from time to time pursuant to the terms of an Open Market Sale Agreement[SM], entered into with Jefferies LLC on February 4, 2020 (the "Sales Agreement"), the 2020 Shelf Registration Statement, the Base Prospectus and the terms of the sales agreement prospectus contained in the 2020 Shelf Registration Statement.

The transactions costs associated with the 2020 Shelf Registration Statement totaled $428 of which $214 was charged against additional paid-in capital during the twelve months ended December 31, 2020 as a result of the May 2020 Public Offering, discussed below. The remaining costs of $214 are recorded as a prepaid asset at December 31, 2020.

***February 2020 Private Placement***

On February 21, 2020, we announced that we entered into a definitive agreement for the sale of our ADSs and Series A Non-Voting Convertible Preferred Shares ("Series A Preferred") in a private placement to a group of institutional accredited investors. The private placement resulted in gross proceeds of approximately $65,000 before deducting placement agent and other offering expenses, which resulted in net proceeds of $60,570.

Pursuant to the terms of the private placement, we issued 8,680 ADSs and 488 shares of Series A Preferred at a price of $7.09 per share, priced at-the-market under Nasdaq rules. Each share of non-voting Series A Preferred is convertible into one ADS, provided that conversion will be prohibited if, as a result, the holder and its affiliates would own more than 9.99% of the total number of Avadel ADSs outstanding. The closing of the private placement occurred on February 25, 2020.

Issuance costs of $4,430 have been recorded as a reduction of additional paid-in capital.

***May 2020 Public Offering***

In connection with the shelf registration statement described above, on April 28, 2020, we announced the pricing of an underwritten public offering of 11,630 Ordinary Shares, in the form of ADSs at a price to the public of $10.75 per ADS. Each ADS represents the right to receive one Ordinary Share. All of the ADSs were offered by us and the gross proceeds to us from the offering were approximately $125,000, before deducting underwriting discounts and commissions and offering expenses, which resulted in net proceeds of $116,924. The offering closed on May 1, 2020.

***Retirement of Treasury Shares***

In August 2020, the Company retired all of our 5,407 treasury shares, or $49,998 previously repurchased ordinary shares. As a result, we reduced additional paid-in capital by $49,944 and ordinary shares by $54 during the twelve months ended December 31, 2020. The portion allocated to additional paid-in capital is determined pro rata by applying a percentage, determined by dividing the number of shares to be retired by the number of shares issued and outstanding as of the retirement date, to the balance of additional paid-in capital as of the retirement date. Based on this calculation, the entirety of the excess of repurchase price over par of $49,944 was allocated to additional paid-in capital.

**NOTE 21: Share-Based Compensation**

Compensation expense included in the Company's consolidated statements of income (loss) for all share-based compensation arrangements was as follows for the periods ended December 31, 2020, 2019 and 2018, respectively:

| **Share-based Compensation Expense:** | **2020** | **2019** | **2018** |
|---|---|---|---|
| Research and development | $ 139 | $ 429 | $ 880 |
| Selling, general and administrative | 3,281 | 2,154 | 6,972 |
| Restructuring costs | (421) | (2,064) | — |
| Total share-based compensation expense | $ 2,999 | $ 519 | $ 7,852 |

As of December 31, 2020, the Company expects $12,322 of unrecognized expense related to granted, but non-vested share-based compensation arrangements to be incurred in future periods. This expense is expected to be recognized over a weighted average period of 3.4 years.

The excess tax benefit related to share-based compensation recorded by the Company was not material for the years ended December 31, 2020, 2019 and 2018.

Upon exercise of stock options, or upon the issuance of restricted share awards or performance share unit awards, the Company issues new shares.

At December 31, 2020, there were 4,122,315 shares authorized for stock option grants, restricted share award grants, and performance share unit award grants in subsequent periods.

***Determining the Fair Value of Stock Options***

The Company measures the total fair value of stock options on the grant date using the Black-Scholes option-pricing model and recognizes each grant's fair value as compensation expense over the period that the option vests. Options are granted to employees of the Company and become exercisable ratably over four years following the grant date and expire ten years after the grant date. The Company issues stock options to our Board of Directors as compensation for services rendered and generally become exercisable ratably over three years following the grant date, and expire ten years after the grant date.

The weighted-average assumptions under the Black-Scholes option-pricing model for stock option grants as of December 31, 2020, 2019 and 2018, are as follows:

| **Stock Option Assumptions:** | **2020** | **2019** | **2018** |
|---|---|---|---|
| Stock option grants: | | | |
| Expected term (years) | 6.08 | 6.25 | 6.25 |
| Expected volatility | 75.76 % | 56.48 % | 56.59 % |
| Risk-free interest rate | 0.72 % | 2.52 % | 2.68 % |
| Expected dividend yield | — | — | — |

*Expected term*: The expected term of the options represents the period of time between the grant date and the time the options are either exercised or forfeited, including an estimate of future forfeitures for outstanding options. Given the limited historical data, the simplified method has been used to calculate the expected life.

*Expected volatility*: The expected volatility is calculated based on an average of the historical volatility of the Company's stock price for a period approximating the expected term.

*Risk-free interest rate*: The risk-free interest rate is based on the U.S. Treasury yield curve in effect at the time of grant and a maturity that approximates the expected term.

*Expected dividend yield*: We have not distributed any dividends since our inception and have no plan to distribute dividends in the foreseeable future.

***Stock Options***

A summary of the combined stock option activity and other data for the Company's stock option plans for the year ended December 31, 2020 is as follows:

| Stock Option Activity and Other Data: | Number of Stock Options | Weighted Average Exercise Price per Share | Weighted Average Remaining Contractual Life | Aggregate Intrinsic Value |
|---|---|---|---|---|
| Stock options outstanding, January 1, 2020 | 5,121 | $ 7.51 | | |
| Granted | 2,551 | 6.90 | | |
| Exercised | (403) | 5.08 | | |
| Forfeited | (566) | 3.24 | | |
| Expired | (805) | 13.37 | | |
| Stock options outstanding, December 31, 2020 | 5,898 | $ 7.02 | 7.96 years | $ 7,115 |
| Stock options exercisable, December 31, 2020 | 2,172 | $ 9.48 | 5.58 years | $ 1,841 |

The aggregate intrinsic value of options exercisable at December 31, 2020, 2019 and 2018 was $1,841, $572, and $0, respectively.

The weighted average grant date fair value of options granted during the years ended December 31, 2020, 2019 and 2018 was $4.63, $1.24 and $3.60 per share, respectively.

***Warrants***

A summary of the combined warrant activity and other data for the year ended December 31, 2020 is as follows:

| Warrant Activity and Other Data: | Number of Warrants | Weighted Average Exercise Price per Share | Weighted Average Remaining Contractual Life | Aggregate Intrinsic Value |
|---|---|---|---|---|
| Warrants outstanding, January 1, 2020 | 291 | $ 13.59 | | |
| Granted | — | — | | |
| Exercised | — | — | | |
| Forfeited | — | — | | |
| Expired | (291) | 13.59 | | |
| Warrants outstanding, December 31, 2020 | — | $ — | 0.00 years | $ — |
| Warrants exercisable, December 31, 2020 | — | $ — | 0.00 years | $ — |

All outstanding warrants expired in August 2020. Each of the above warrants was convertible into one ordinary share. There was no aggregate intrinsic value of warrants exercised during the years ended December 31, 2020, 2019 and 2018.

There were no warrants granted during the years ended December 31, 2020, 2019 and 2018.

***Restricted Share Awards***

Restricted share awards represent Company shares issued free of charge to employees of the Company as compensation for services rendered. The Company measures the total fair value of restricted share awards on the grant date using the Company's stock price at the time of the grant. Restricted share awards granted during and after 2017 vest over a three-year period; two-thirds (2/3) vesting on the second anniversary of the grant date and the remaining one-third (1/3) vesting on the third anniversary of the grant date. In 2018, the Company issued restricted share awards to our Board of Directors vesting over a three-year period; one-third (1/3) vesting on each of the three anniversaries of the grant date. Compensation expense for such awards granted during and after 2017 is recognized over the applicable vesting period.

A summary of the Company's restricted share awards as of December 31, 2020, and changes during the year then ended, is reflected in the table below.

| Restricted Share Activity and Other Data: | Number of Restricted Share Awards | Weighted Average Grant Date Fair Value |
|---|---|---|
| Non-vested restricted share awards outstanding, January 1, 2020 | 347 | $ 4.73 |
| Granted | 186 | 7.69 |
| Vested | (115) | 6.01 |
| Forfeited | (71) | 4.83 |
| Non-vested restricted share awards outstanding, December 31, 2020 | 347 | $ 5.87 |

The weighted average grant date fair value of restricted share awards granted during the years ended December 31, 2020, 2019 and 2018 was $7.69, $2.47 and $5.87, respectively.

***Performance Share Units Awards***

Performance share units awards ("PSUs") represent Company shares issued free of charge to employees of the Company as compensation for achieving various results. The Company measures the total fair value of performance share unit awards on the grant date using the Company's stock price at the time of the grant. In 2020, the Company granted performance share awards, of which 50% vest upon the achievement of certain regulatory milestones related to FT218 and the other 50% vest one year following achievement of those milestones. The Company has not yet recognized any PSU-related stock-based compensation expense as the regulatory milestones have not yet been met; however, in the event the performance conditions are met before a certain date, approximately 150% of the outstanding shares, or $2,734 of compensation expense will be recognized by the Company for the PSUs outstanding as of December 31, 2020.

A summary of the Company's performance share units awards as of December 31, 2020, and changes during the year then ended, is reflected in the table below.

| Performance Unit Share Activity and Other Data | Number of Performance Share Awards | Weighted Average Grant Date Fair Value |
|---|---|---|
| Non-vested performance share awards outstanding, January 1, 2020 | — | $ — |
| Granted | 257 | 7.09 |
| Vested | — | — |
| Forfeited | — | — |
| Non-vested performance share awards outstanding, December 31, 2020 | 257 | $ 7.09 |

The weighted average grant date fair value of performance share awards granted during the year ended December 31, 2020 was $7.09 per share.

***Employee Share Purchase Plan***

In 2017, the Board of Directors approved of the Avadel Pharmaceuticals plc 2017 Avadel Employee Share Purchase Plan ("ESPP"). The total number of Company ordinary shares, nominal value $0.01 per share, or ADSs representing such ordinary shares (collectively, "Shares") which may be issued under the ESPP is 1,000. The purchase price at which a Share will be issued or sold for a given offering period will be established by the Compensation Committee of the Board ("Committee") (and may differ among participants, as determined by the Committee in its sole discretion) but will in no event be less than 85% of the lesser of: (a) the fair market value of a Share on the offering date; or (b) the fair market value of a Share on the purchase date. During the years ended December 31, 2020 and 2019, the Company issued 49 and 54 ordinary shares to employees, respectively. Expense related to the ESPP for the years ended December 31, 2020, 2019 and 2018 was immaterial.

**NOTE 22: Net Income (Loss) Per Share**

Basic net income (loss) per share is calculated by dividing net income (loss) by the weighted average number of shares outstanding during each period. Diluted net income (loss) per share is calculated by dividing net income (loss) - diluted by the diluted number of shares outstanding during each period. Except where the result would be anti-dilutive to net income (loss), diluted net income (loss) per share would be calculated assuming the impact of the conversion of the 2023 Notes, the

conversion of our preferred shares, the exercise of outstanding equity compensation awards, and ordinary shares expected to be issued under our ESPP.

We have a choice to settle the conversion obligation under the 2023 Notes in cash, shares or any combination of the two. We utilize the if-converted method to reflect the impact of the conversion of the 2023 Notes, unless the result is anti-dilutive. This method assumes the conversion of the 2023 Notes into shares of our ordinary shares and reflects the elimination of the interest expense related to the 2023 Notes.

The dilutive effect of the warrants, stock options, restricted stock units, preferred shares and ordinary shares expected to be issued under or ESPP has been calculated using the treasury stock method. The dilutive effect of the PSUs will be calculated using the treasury stock method, if and when the contingent vesting condition is achieved.

A reconciliation of basic and diluted net income (loss) per share, together with the related shares outstanding in thousands for the years ended December 31, 2020, 2019 and 2018, is as follows:

| **Net Income (Loss) Per Share:** | **2020** | **2019** | **2018** |
|---|---|---|---|
| Net income (loss) | $ 7,028 | $ (33,226) | $ (95,304) |
| | | | |
| Weighted average shares: | | | |
| Basic shares | 52,996 | 37,403 | 37,325 |
| Effect of dilutive securities—employee and director equity awards outstanding | 1,945 | — | — |
| Diluted shares | 54,941 | 37,403 | 37,325 |
| | | | |
| Net income (loss) per share - basic | $ 0.13 | $ (0.89) | $ (2.55) |
| Net income (loss) per share - diluted | $ 0.13 | $ (0.89) | $ (2.55) |

Potential ordinary shares of 14,915, 16,740, and 17,529 were excluded from the calculation of weighted average shares for the years ended December 31, 2020, 2019 and 2018, respectively, because either their effect was considered to be anti-dilutive or they were related to shares from PSUs for which the contingent vesting condition had not been achieved. For the years ended December 31, 2019 and 2018, the effects of dilutive securities were entirely excluded from the calculation of net income (loss) per share as a net loss was reported in these periods.

**NOTE 23: Comprehensive Loss**

The following table shows the components of accumulated other comprehensive loss for the year ended December 31, net of immaterial tax effects:

| **Accumulated Other Comprehensive Loss:** | **2020** | **2019** | **2018** |
|---|---|---|---|
| Foreign currency translation adjustment: | | | |
| Beginning balance | $ (23,738) | $ (23,621) | $ (23,202) |
| Net other comprehensive income (loss) | 1,111 | (117) | (419) |
| Balance at December 31, | $ (22,627) | $ (23,738) | $ (23,621) |
| | | | |
| Unrealized gain (loss) on marketable securities, net | | | |
| Beginning balance | $ 932 | $ 205 | $ (64) |
| Net other comprehensive income, net of $(202), $(43), $(18), tax, respectively | 644 | 727 | 269 |
| Balance at December 31, | $ 1,576 | $ 932 | $ 205 |
| Accumulated other comprehensive loss at December 31, | $ (21,051) | $ (22,806) | $ (23,416) |

**NOTE 24: Company Operations by Product, Customer and Geographic Area**

We have determined that we operate in one segment, the development and commercialization of pharmaceutical products, including controlled-release therapeutic products based on our proprietary polymer based technology. The Company's Chief Operating Decision Maker is the CEO. The CEO reviews profit and loss information on a consolidated basis to assess performance and make overall operating decisions as well as resource allocations. All products are included in one segment because the Company's products have similar economic and other characteristics, including the nature of the products and production processes, type of customers, distribution methods and regulatory environment.

The following table presents a summary of total revenues by these products for the twelve months ended December 31, 2020, 2019, and 2018:

| **Revenue by Product:** | **2020** | **2019** | **2018** |
|---|---|---|---|
| Bloxiverz | $ 2,201 | $ 7,479 | $ 20,850 |
| Vazculep | 10,429 | 33,152 | 42,916 |
| Akovaz | 9,545 | 18,642 | 33,759 |
| Other | 159 | (58) | 3,898 |
| Product sales | 22,334 | 59,215 | 101,423 |
| License revenue | — | — | 1,846 |
| Total revenues | $ 22,334 | $ 59,215 | $ 103,269 |

Concentration of credit risk with respect to accounts receivable is limited due to the high credit quality comprising a significant portion of the Company's customers. Management periodically monitors the creditworthiness of our customers and believes that we have adequately provided for any exposure to potential credit loss.

The following table presents a summary of total revenues by significant customer for the twelve months ended December 31, 2020, 2019, and 2018:

| **Revenue by Significant Customer:** | **2020** | **2019** | **2018** |
|---|---|---|---|
| McKesson Corporation | $ 5,758 | $ 14,900 | $ 26,794 |
| Cardinal Health | 5,155 | 15,088 | 25,413 |
| AmerisourceBergen | 3,155 | 12,059 | 18,620 |
| QuVa Pharma | 3,117 | 3,252 | 2,788 |
| Others | 5,149 | 13,916 | 27,808 |
| Product sales | 22,334 | 59,215 | 101,423 |
| License revenue | — | — | 1,846 |
| Total revenues | $ 22,334 | $ 59,215 | $ 103,269 |

The following table summarizes revenues by geographic region for the twelve months ended December 31, 2020, 2019, and 2018:

| **Revenue by Geographic Region:** | **2020** | **2019** | **2018** |
|---|---|---|---|
| U.S. | $ 22,334 | $ 59,215 | $ 101,423 |
| Ireland | — | — | 1,846 |
| Total revenues | $ 22,334 | $ 59,215 | $ 103,269 |

Currently, we are working with contract manufacturing organizations for the manufacture of FT218. Additionally, we purchase raw materials used in FT218 from a limited number of suppliers, including a single supplier for certain key ingredients.

Non-monetary long-lived assets primarily consist of property and equipment, goodwill, intangible assets and operating right-of use-assets. The following table summarizes non-monetary long-lived assets by geographic region as of December 31, 2020, 2019, and 2018:

| Long-lived Assets by Geographic Region: | 2020 | 2019 | 2018 |
|---|---|---|---|
| U.S. | $ 20,424 | $ 22,254 | $ 27,761 |
| France | 11 | 196 | 1,365 |
| Ireland | 6,047 | 7,244 | 6,028 |
| Total | $ 26,482 | $ 29,694 | $ 35,154 |

**NOTE 25: Related Party Transactions**

As noted in *Note 4: Disposition of the Hospital Products*, we were party to a Membership Interest Purchase Agreement by and among us, Avadel Legacy, Breaking Stick Holdings, LLC, Deerfield Private Design International II, L.P. ("Deerfield International"), Deerfield Private Design Fund II, L.P. ("Deerfield Fund") and Horizon Santé FLML, Sarl ("Horizon") (the "Deerfield MIPA") and a Royalty Agreement by and among us, Avadel Legacy, the Deerfield Fund and Horizon (the "Deerfield Royalty Agreement"). In connection with the closing of the sale of the Hospital Products, the Deerfield MIPA (with respect to certain sections thereof) and the Royalty Agreement were assigned to the Exela Buyer. Pursuant to the Purchase Agreement, the Exela Buyer assumed and will pay, perform, satisfy and discharge the liabilities and obligations of Avadel Legacy under the Deerfield Royalty Agreement for obligations that arise after the Closing date.

We were also party to a Royalty Agreement by and between us, Avadel Legacy and Broadfin Healthcare Master Fund, Ltd. (the "Broadfin Royalty Agreement"). In connection with the closing of the sale of the Hospital Products, the Broadfin Royalty Agreement was assigned to the Exela Buyer and the Exela Buyer assumed and shall pay, perform, satisfy and discharge the liabilities and obligations of Avadel Legacy under the Broadfin Royalty Agreement for obligations that arise after the Closing Date.

Under the terms of the February 5, 2016 acquisition of FSC, which was completed on February 8, 2016, the Company was to pay $1,050 annually for five years with a final payment in January 2021 of $15,000 for a total of $20,250 to Deerfield for all of the equity interests in FSC. The Company would also pay Deerfield a 15% royalty per annum on net sales of the current FSC products, up to $12,500 for a period not exceeding ten years. These obligations were assumed by Cerecor in connection with the divestiture of the Company's pediatric products on February 16, 2018, as noted in *Note 18: Divestiture of the Pediatric Assets.*

Deerfield and Broadfin disposed of their 2023 Notes and ordinary shares in the Company during the year ended December 31, 2020 and are no longer considered related parties.

**REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

To the Shareholders and the Board of Directors of Avadel Pharmaceuticals plc

**Opinion on the Financial Statements**

We have audited the accompanying consolidated balance sheets of Avadel Pharmaceuticals plc (the "Company") as of December 31, 2020 and 2019, the related consolidated statements of income (loss), comprehensive income (loss), shareholders' equity (deficit), and cash flows, for each of the three years in the period ended December 31, 2020, and the related notes and financial statement schedule listed in the Index at Item 15 (collectively referred to as the "financial statements"). In our opinion, the financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2020 and 2019, and the results of its operations and its cash flows for each of the three years in the period ended December 31, 2020, in conformity with accounting principles generally accepted in the United States of America.

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the Company's internal control over financial reporting as of December 31, 2020, based on criteria established in *Internal Control - Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission and our report dated March 9, 2021, expressed an unqualified opinion on the Company's internal control over financial reporting.

**Basis for Opinion**

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

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

**Critical Audit Matter**

The critical audit matter communicated below is a matter arising from the current-period audit of the financial statements that was communicated or required to be communicated to the audit committee and that (1) relates to accounts or disclosures that are material to the financial statements and (2) involved our especially challenging, subjective, or complex judgments. The communication of critical audit matters does not alter in any way our opinion on the financial statements, taken as a whole, and we are not, by communicating the critical audit matter below, providing a separate opinion on the critical audit matter or on the accounts or disclosures to which it relates.

***Presentation of the Gain on Sale of Hospital Products - Refer to Note 4 to the financial statements***

*Critical Audit Matter Description*

On June 30, 2020, the Company announced the sale of its sterile injectable drugs used in the hospital setting (the "Hospital Products"), including its three commercial products, Akovaz, Bloxiverz, and Vazculep, as well as Nouress, which is approved by the FDA to Exela Sterile Medicines LLC (the "Exela Buyer") pursuant to an asset purchase agreement between Avadel U.S. Holdings, Inc, Avadel Legacy Pharmaceuticals, LLC, Exela Holdings Inc., and the Exela Buyer.

We identified the presentation and disclosure of the sale of the Hospital Products as a critical audit matter due to the significant amount of judgement by management when evaluating the quantitative and qualitative factors to determine whether the criteria for presentation and disclosure as a discontinued operation had been met. This required a high degree of auditor judgement, an increased extent of effort, and the use of professionals with specialized skill and knowledge to assist in performing audit procedures to evaluate management's presentation and disclosure of the gain on sale of the Hospital Products.

*How the Critical Audit Matter Was Addressed in the Audit*

Our audit procedures related to the gain on sale of the Hospital Products included the following, among others:

- We tested the effectiveness of controls over management's review of the transaction, including their evaluation of whether the sale met the criteria for discontinued operations.
- With the assistance of professionals with specialized skill and knowledge, we evaluated management's assessment of the discontinued operations criteria, including the quantitative and qualitative factors surrounding the qualification for discontinued operations treatment.
- We evaluated the accuracy and completeness of management's disclosure for the disposition of the Hospital Products.

/s/ Deloitte and Touche LLP
St. Louis, Missouri
March 9, 2021

We have served as the Company's auditor since 2016.

**REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

To the Shareholders and the Board of Directors of Avadel Pharmaceuticals plc

**Opinion on Internal Control over Financial Reporting**

We have audited the internal control over financial reporting of Avadel Pharmaceuticals plc (the "Company") as of December 31, 2020, based on criteria established in *Internal Control - Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). In our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of December 31, 2020, based on criteria established in *Internal Control - Integrated Framework (2013)* issued by COSO.

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the consolidated financial statements as of and for the year ended December 31, 2020, of the Company and our report dated March 9, 2021, expressed an unqualified opinion on those financial statements.

**Basis for Opinion**

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

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

**Definition and Limitations of Internal Control over Financial Reporting**

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

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

/s/ Deloitte and Touche LLP
St. Louis, Missouri
March 9, 2021

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

Not applicable.

**Item 9A. Controls and Procedures.**

**Evaluation of Disclosure Controls and Procedures**

As required by Rule 15d -15(b) of the Exchange Act, we have evaluated, under the supervision and with the participation of our management, including our principal executive officer and principal financial officer, the effectiveness of the design and operation of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act) as of the end of the period covered by this Annual Report. Our disclosure controls and procedures are designed to provide reasonable assurance that the information required to be disclosed by us in reports that we file under the Exchange Act is accumulated and communicated to our management, including our principal executive officer and principal financial officer, as appropriate, to allow timely decisions regarding required disclosure and is recorded, processed, summarized and reported within the time periods specified in the rules and forms of the U.S. Securities and Exchange Commission (the "SEC"). Based on that evaluation, our principal executive officer and principal financial officer concluded that as of the end of the period covered by this report our disclosure controls and procedures were effective.

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

Management of the Company is responsible for establishing and maintaining adequate internal control over financial reporting, as defined in Rules 13a-15(f) and 15d-15(f) under the Securities Exchange Act of 1934, as amended. The Company's internal control over financial reporting is designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements in accordance with U.S. generally accepted accounting principles.

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

The Company's management assessed the effectiveness of the Company's internal control over financial reporting as of December 31, 2020. In making this assessment, the Company's management used the criteria set forth in *Internal Control-Integrated Framework (2013) issued by the Committee of Sponsoring Organizations of the Treadway Commission*. Based on this assessment, management concluded that, as of December 31, 2020, the Company's internal control over financial reporting is effective based on those criteria.

**Changes in Internal Control Over Financial Reporting**

There have been no changes in the Company's internal control over financial reporting (as defined by Rule 13a-15(f)) that occurred during the year ended December 31, 2020 that have materially affected the Company's internal control over financial reporting. We continue to work from home due to the COVID-19 pandemic and will continue to monitor the impact on the design and operating effectiveness of our internal controls.

**Item 9B. Other Information.**

Not applicable.

***PART III***

Certain information required by Part III is omitted from this Annual Report on Form 10-K because we intend to file our definitive proxy statement for our 2021 annual general meeting of shareholders pursuant to Regulation 14A of the Securities Exchange Act of 1934 (our "Definitive 2021 Proxy Statement"), not later than 120 days after the end of the fiscal year covered by this Annual Report on Form 10-K, and certain information to be included in our Definitive 2021 Proxy Statement is incorporated herein by reference.

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

Information regarding Directors, Executive Officers and Corporate Governance is hereby incorporated by reference to our Definitive 2021 Proxy Statement, which we intend to file with the SEC within 120 days after December 31, 2020.

**Item 11. Executive Compensation.**

Information regarding Executive Compensation is hereby incorporated by reference to our Definitive 2021 Proxy Statement, which we intend to file with the SEC within 120 days after December 31, 2020.

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

Information regarding Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters is hereby incorporated by reference to our Definitive 2021 Proxy Statement, which we intend to file with the SEC within 120 days after December 31, 2020.

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

Information regarding Certain Relationships and Related Transactions, and Director Independence is hereby incorporated by reference to our Definitive 2021 Proxy Statement, which we intend to file with the SEC within 120 days after December 31, 2020.

**Item 14. Principal Accountant Fees and Services.**

Information regarding Principal Accountant Fees and Services is hereby incorporated by reference to our Definitive 2021 Proxy Statement, which we intend to file with the SEC within 120 days after December 31, 2020.

*PART IV*

**Item 15. Exhibits and Financial Statement Schedules**

**(a) Documents filed as part of this report:**

**1. *Financial Statements***

See Item 8 - Financial Statements and Supplementary Data of Part II of this Report.

**2. *Financial Statement Schedules***

See below for Schedule II: Valuation and Qualifying Accounts. All other schedules are omitted as they are not applicable, not required or the information is included in the consolidated financial statements or related notes to the consolidated financial statements.

**Schedule II**

**Valuation and Qualifying Accounts**

*(In thousands)*

| Deferred Tax Asset Valuation Allowance: | Balance, Beginning of Period | Additions (a) | Deductions (b) | Other Changes (c) | Balance, End of Period |
|---|---|---|---|---|---|
| 2020 | $ 17,037 | $ 2,805 | $ — | $ 1,782 | $ 21,624 |
| 2019 | $ 21,199 | $ 6,496 | $ (4,762) | $ (5,896) | $ 17,037 |
| 2018 | $ 15,354 | $ 6,089 | $ (75) | $ (169) | $ 21,199 |

a. Additions to the deferred tax asset valuation allowance relate to movements on certain French, Irish and U.S. deferred tax assets where we continue to maintain a valuation allowance until sufficient positive evidence exists to support reversal.

b. Deductions to the deferred tax asset valuation allowance include movements relating to utilization of net operating losses and tax credit carryforwards, release in valuation allowance and other movements including adjustments following finalization of tax returns.

c. Other changes to the deferred tax asset valuation allowance including currency translation adjustments recorded directly in equity, account method changes and the impact of corporate restructuring.

***3. Exhibits required by Item 601 of Regulation S-K***

The information required by this Section (a)(3) of Item 15 is set forth on the exhibit index that follows the Signatures page of this Form 10-K.

**Index to Exhibits**

| Exhibit Number | Exhibit Description |
|---|---|
| **3.1** | Constitution (containing the Memorandum and Articles of Association) of Avadel Pharmaceuticals plc (incorporated by reference to Appendix 15 of Exhibit 2.1 to the registrant's current report on Form 8-K, filed on July 1, 2016) |
| **3.2** | Certificate of Designation of Series A Non-Voting Convertible Preferred Shares of Avadel Pharmaceuticals plc, dated February 20, 2020 (incorporated by reference to Exhibit 3.1 to the registrant's current report on Form 8-K, filed on February 24, 2020) |
| **4.1** | Deposit Agreement dated as of January 3, 2017 among Avadel Pharmaceuticals plc, The Bank of New York, as Depositary, and holders from time to time of American Depositary Shares issued thereunder (including as an exhibit the form of American Depositary Receipt) (incorporated by reference to Exhibit 1.1 to the registrant's current report on Form 8-K12B, filed on January 4, 2017 and amended January 6, 2017) |

| | |
|---|---|
| **4.2** | Indenture, dated as of February 16, 2018, by and between Avadel Finance Cayman Limited, Avadel Pharmaceuticals plc, and The Bank of New York Mellon, as Trustee (including an as exhibit the Form of 4.50% Exchangeable Senior Note due 2023) (incorporated by reference to Exhibit 4.1 to the registrant's current report on Form 8-K, filed on February 16, 2018) |
| **4.3** | First Supplemental Indenture, dated as of February 6, 2019, by and among Avadel Finance Cayman Limited, Avadel Pharmaceuticals plc, and The Bank of New York Mellon, as Trustee (incorporated by reference to Exhibit 4.1 to the registrant's current report on Form 8-K, filed on February 7, 2019) |
| **4.4** | Description of Securities (incorporated by reference to Exhibit 4.6 to the registrants annual report on Form 10-K, filed on March 16, 2020) |
| **10.1*** | Exclusive License Agreement by and between Perrigo Pharma International DAC (f/k/a Elan Pharma International Limited) and Flamel Ireland Limited dated September 30, 2015, as amended by the First Amendment to Exclusive License Agreement dated December 21, 2018 (filed herewith) |
| **10.2** | Office Lease Agreement by and between Grove II LLC and Eclat Pharmaceuticals LLC dated October 5, 2015, as amended (filed herewith) |
| **10.3‡** | December 2015 Stock Option Rules (incorporated by reference to Exhibit 10.25 to the registrant's Annual Report on Form 10-K for the year ended December 31, 2015, filed on March 15, 2016) |
| **10.4‡** | Form of Stock Option Grant Letter (incorporated by reference to Exhibit 10.26 to the registrant's Annual Report on Form 10-K for the year ended December 31, 2015, filed on March 15, 2016) |
| **10.5‡** | Rules Governing the Free Share Plan - August 2016 (incorporated by reference to Exhibit 99.1 to the registrant's Registration Statement (No. 333-213154) on Form S-8, filed on August 16, 2016) |
| **10.6‡** | August 2016 Stock Option Rules (incorporated by reference to Exhibit 99.2 to the registrant's Registration Statement (No. 333-213154) on Form S-8, filed on August 16, 2016) |
| **10.7‡** | August 2016 Stock Warrant Rules (incorporated by reference to Exhibit 99.3 to the registrant's Registration Statement (No. 333-213154) on Form S-8, filed on August 16, 2016) |
| **10.8‡** | Form of stock option grant letter for 2016 Stock Option Rules (incorporated by reference to Exhibit 10.31 to the registrant's Annual Report on Form 10-K for the year ended December 31, 2016, filed on March 28, 2017) |
| **10.9‡** | Amended Employment Agreement dated as of June 3, 2019 between Avadel Management Corporation and Gregory J. Divis (incorporated by reference to Exhibit 10.1 to the registrant's current report on Form 8-K, filed on June 5, 2019) |
| **10.10‡** | Employment Agreement dated as of May 15, 2020 between Avadel Management Corporation and Thomas S. McHugh (incorporated by reference to Exhibit 10.2 to the registrant's current report on Form 10-Q, filed on August 10, 2020) |
| **10.11** | Master Manufacturing Services Agreement by and between Patheon UK Limited and Éclat Pharmaceuticals L.L.C. dated as of November 8, 2012 (incorporated by reference to Exhibit 10.9 to the registrant's Quarterly Report on Form 10-Q for the quarter ended September 30, 2017, filed on November 9, 2017) |
| **10.12*** | Asset Purchase Agreement by and among Cerecor, Inc. and Avadel Pharmaceuticals (USA), Inc., Avadel Pediatrics, Inc., FSC Therapeutics, LLC, Avadel US Holdings, Inc. and Avadel Pharmaceuticals plc dated as of February 12, 2018 (incorporated by reference to Exhibit 10.43 to the registrant's Annual Report on Form 10-K for the year ended December 31, 2017, filed on March 16, 2018) |

| | |
|---|---|
| **10.13*** | Guarantee by Avadel US Holdings, Inc. and Avadel Pharmaceuticals plc in favor of Deerfield CSF, LLC, Peter Steelman and James Flynn dated as of February 16, 2018 (incorporated by reference to Exhibit 10.45 to the registrant's Annual Report on Form 10-K for the year ended December 31, 2017, filed on March 16, 2018) |
| **10.14*** | Guarantee by Armistice Capital Master Fund, Ltd. in favor of Avadel US Holdings, Inc. dated as of February 16, 2018 (incorporated by reference to Exhibit 10.46 to the registrant's Annual Report on Form 10-K for the year ended December 31, 2017, filed on March 16, 2018) |
| **10.15#** | Securities Purchase Agreement, dated February 20, 2020, by and among Avadel Pharmaceuticals plc and the Investors named therein (incorporated by reference to Exhibit 10.1 to the registrant's current report on Form 8-K, filed on February 24, 2020) |
| **10.16** | Registration Rights Agreement, dated February 25, 2020, by and among Avadel Pharmaceuticals plc and the Investors named therein incorporated by reference to Exhibit 10.40 to the registrant's annual report on Form 10-K, filed on March 16, 2020) |
| **10.17*#** | Asset Purchase Agreement, dated as of June 30, 2020, by and between Avadel Seller, Seller Parent, Exela Buyer and Buyer Parent (incorporated by reference to Exhibit 10.1 to the registrant's current report on Form 8-K, filed on July 2, 2020) |
| **10.18‡** | Avadel Pharmaceuticals plc 2017 Omnibus Incentive Compensation Plan and related equity award agreements (filed herewith) |
| **10.19‡** | Avadel Pharmaceuticals plc 2020 Omnibus Incentive Compensation Plan (filed herewith) |
| **14.1** | Code of Business Conduct and Ethics (filed herewith) |
| **14.2** | Financial Integrity Policy (incorporated by reference to Exhibit 14.2 to the registrant's current report on Form 8-K, filed on March 7, 2017) |
| **21.1** | List of Subsidiaries (filed herewith) |
| **23.1** | Consent of Deloitte & Touche LLP (filed herewith) |
| **31.1** | Certification of the Chief Executive Officer pursuant to Rule 13a-14(a)/15d-14(a) of the Securities Exchange Act, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 (filed herewith) |
| **31.2** | Certification of the Principal Financial Officer pursuant to Rule 13a-14(a)/15d-14(a) of the Securities Exchange Act, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 (filed herewith) |
| **32.1** | Certification of the Chief Executive Officer pursuant to USC Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (furnished herewith) |
| **32.2** | Certification of the Principal Financial Officer pursuant to USC Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (furnished herewith) |
| **101.INS** | XBRL Instant Document |
| **101.SCH** | XBRL Taxonomy Extension Schema Document |
| **101.CAL** | XBRL Taxonomy Extension Calculation Linkbase Document |

| | |
|---|---|
| **101.DEF** | XBRL Taxonomy Extension Definition Linkbase Document |
| **101.LAB** | XBRL Taxonomy Extension Labels Linkbase Document |
| **101.PRE** | XBRL Taxonomy Extension Presentation Linkbase Document |

***** Confidential treatment has been requested for the redacted portions of this agreement. A complete copy of the agreement, including the redacted portions, has been filed separately with the Securities and Exchange Commission.

# The representations and warranties contained in this agreement were made only for purposes of the transactions contemplated by the agreement as of specific dates and may have been qualified by certain disclosures between the parties and a contractual standard of materiality different from those generally applicable under securities laws, among other limitations. The representations and warranties were made for purposes of allocating contractual risk between the parties to the agreement and should not be relied upon as a disclosure of factual information relating to the Company, the Investors or the transaction described in the Current Report on Form 8-K.

‡ Management contract or compensatory plan or arrangement filed pursuant to Item 15(b) of Form 10-K.

(1) This certification accompanies the Form 10-K to which it relates, is not deemed filed with the Securities and Exchange Commission and is not to be incorporated by reference into any filing of the registrant under the Securities Act of 1933 or the Securities Exchange Act of 1934 (whether made before or after the date of the Form 10-K), irrespective of any general incorporation language contained in such filing.

**SIGNATURES**

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this Report to be signed on its behalf by the undersigned, thereunto duly authorized.

Avadel Pharmaceuticals plc

Dated: March 9, 2021

By: /s/ Gregory J. Divis
Name: Gregory J. Divis
Title: Chief Executive Officer

Pursuant to the requirements of the Securities Exchange Act of 1934, this Report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

**POWER OF ATTORNEY**

**KNOW ALL PERSONS BY THESE PRESENTS**, that each of Geoffrey M. Glass, Eric J. Ende, Mark A. McCamish, MD, Ph.D., Linda S. Palczuk, and Peter Thornton, by their respective signatures below, irrevocably constitutes and appoints Gregory J. Divis and Thomas S. McHugh, and each of them individually acting alone without the other, his true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, for him and in his name, place and stead, in any and all capacities, to sign any and all amendments to this report, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or either of them, or their or his substitutes or substitute, may lawfully do or cause to be done by virtue hereof.

| Signature | Title | Date |
|---|---|---|
| /s/ Gregory J. Divis<br>Gregory J. Divis | Director, Chief Executive Officer and Principal Executive Officer | March 9, 2021 |
| /s/ Thomas S. McHugh<br>Thomas S. McHugh | Chief Financial Officer and Principal Financial and Accounting Officer | March 9, 2021 |
| /s/ Geoffrey M. Glass<br>Geoffrey M. Glass | Non-Executive Chairman of the Board and Director | March 9, 2021 |
| /s/ Dr. Eric J. Ende<br>Dr. Eric J. Ende | Director | March 9, 2021 |
| /s/ Mark A. McCamish, MD, Ph.D.<br>Mark A. McCamish, MD, Ph.D. | Director | March 9, 2021 |
| /s/ Linda S. Palczuk<br>Linda S. Palczuk | Director | March 9, 2021 |
| /s/ Peter Thornton<br>Peter Thornton | Director | March 9, 2021 |

EXECUTION COPY

# EXCLUSIVE LICENSE AGREEMENT

This Exclusive License Agreement (this "Agreement") is dated as of September 30, 2015 (the "Effective Date"), and is by and between ELAN PHARMA INTERNATIONAL LIMITED, a company organized under the laws of the Republic of Ireland, with offices located at Treasury Building, Lower Grand Canal Street, Dublin 2, Ireland ("Elan") and FLAMEL IRELAND LIMITED, a company organized under the laws of the Republic of Ireland, with offices located at 2nd Floor, Block 10, Unit 1 Blanchardstown Corporate Park, Ballycoolin, Dublin 15 Ireland ("Flamel").

## RECITALS

A. Flamel has technology called LiquiTime® that may be used for developing modified/controlled release oral pharmaceutical products in a liquid suspension formulation.

B. Elan has substantial experience in developing, selling and marketing pharmaceutical products in the over-the counter, non-prescription ("OTC") pharmaceutical markets.

C. Flamel has begun working on developing extended release versions utilizing LiquiTime® of Ibuprofen liquid suspension (the "Ibuprofen Product") and Guaifenesin liquid suspension (the "Guaifenesin Product" and collectively with the Ibuprofen Product, the "Initial Products" and each an "Initial Product").

D. For the Initial Products and certain additional extended release OTC products identified by the Parties in the future, each utilizing LiquiTime® (each an "Additional Product" and collectively the "Additional Products" and collectively with the Initial Products the "Products" and each a "Product"), Flamel will develop and obtain marketing authorizations for the Products, transfer the marketing authorizations for these Products to Elan upon their approval and be paid a royalty by Elan on its sales of the Products; all on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

## 1. Definitions.

As used in this Agreement, the following terms have the meanings indicated below:

"Additional Product" or "Additional Products" has the meaning set forth in the Recitals hereof.

"Additional Product Requirement" has the meaning set forth in Section 5.4 hereof.

"Act" means the United States Federal Food, Drug and Cosmetic Act, as amended from time to time, and the regulations promulgated thereunder.

"Affiliate" means, with respect to any Person, any other Person directly or indirectly controlled by, controlling, or under common control with such Person. For such purposes, the term "control" means, whether used as a noun or a verb, the possession, directly or indirectly, of the power to affirmatively direct, or affirmatively cause the direction of, the management and policies of an entity, whether through the ownership of voting securities, by contract or otherwise (which would include the ownership, directly or indirectly, of more than 50% of the voting stock or equity interest of the subject Person, or such other relations as, in fact, result in the right to direct the management and policies of the subject Person).

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

"cGMP" means those current Good Manufacturing Practices required by the FDA to be followed in connection with the manufacturing, handling, storing and controlling of pharmaceutical products in the United States, as defined from time to time by the Act, as amended, or any successor laws or any regulations related thereto.

"Clinical and Regulatory Activities" has the meaning set forth in Section 4.2 hereof.

"Coated API" has the meaning set forth in Section 5.5 hereof.

"Coated API Agreement" has the meaning set forth in Section 5.5 hereof.

"Commercial Manufacturing Scale-Up Activities" has the meaning set forth in Section 4.3 hereof.

"Commercial Launch Date" means, with respect to each Product, the date of Elan's first sale of such Product to Third Parties on a commercial basis in the Territory, which date shall be no later than (i) sixty (60) days following delivery to Elan of the commercial launch quantities of the Ibuprofen Product; and (ii) sixty (60) days after FDA approval of the Regulatory Filing for the Guaifenesin Product and each Additional Product.

"Competing Product" means, with respect to any Product, any extended release liquid product containing the same active pharmaceutical ingredient, in the same strength as such Product in the case of monotherapy products or the same combination of active pharmaceutical ingredients as such Product in the case of combination therapy products such that such product would reasonably be considered as substitutable for such Product.

"Confidential Information" means all proprietary materials, data or other information (whether or not patentable) regarding a Person's knowhow, products, business information or objectives, that are designated as confidential in writing by the disclosing party, whether by letter or by the use of an appropriate stamp or legend, prior to or at the time any such material, data or other information is disclosed by such Person to the recipient. Notwithstanding the foregoing, materials, data or other information that are disclosed by a Person in writing without an appropriate letter, stamp or legend, or that are orally, electronically or visually disclosed by a Person, also constitute Confidential Information of such Person if (i) within thirty (30) calendar days after such disclosure, such Person delivers to the recipient a written document or documents describing the materials, data or other information indicating that such materials, data or other information constitute Confidential Information, and referencing the place and date of such oral,

visual, electronic or written disclosure and the names of the persons to whom such disclosure was made, or (ii) such materials, data or other information are of the type that are customarily considered to be confidential information by Persons engaged in activities that are substantially similar to the activities being engaged in by the Persons exchanging such information. Confidential Information does not include any information that is (i) already known to the recipient prior to the date of disclosure to the recipient as evidenced by the recipient's written records made prior to such date, (ii) publicly known prior to or after disclosure other than through unauthorized acts or omissions of the recipient, (iii) disclosed in good faith to the recipient by a Third Party lawfully and contractually entitled to make such disclosure or (iv) developed by or for the recipient without the use of any Confidential Information of the disclosing party, as evidenced by the recipient's written records.

"Contract Year" means each one (1) year period during the Term with the first such one (1) year period commencing on the Effective Date and ending on the day immediately preceding the one (1) year anniversary of the Effective Date, and each subsequent one (1) year period commencing on the subsequent anniversary of the Effective Date.

"Damages" has the meaning set forth in Section 7.1 hereof.

"Effective Date" has the meaning set forth in the Preamble hereof.

"Elan" has the meaning set forth in the Preamble hereof.

"Elan Fiscal Quarter" means each of the four (4) fiscal quarters used by Elan for financial reporting purposes.

"Elan Indemnitees" has the meaning set forth in Section 7.1 hereof.

"Elan Net Sales" means, with respect to the aggregate amount of each Product sold by Elan or its Affiliates, the gross sales (for purposes of determining whether a given sale occurs during a computation period, such Product will be considered sold as of the date of shipment by Elan or its Affiliates to its customers), less the sum of the following (to the extent actually incurred or accrued): (i) any and all credits for such Product returns during such period, including, but not limited to, credits for returned, unsold, or short-dated Product, allowances granted or included in the invoice, reasonable cash discounts, customer program accruals (overbills, administrative fees, third party rebates, sales brokerage, and volume rebates), other adjustments and rebates, including but not limited to Medicaid and other state or governmental rebates, charge backs, floor stock adjustments, and similar items that may be estimated in accordance with GAAP to the extent actually incurred or accrued; (ii) shipping costs, sales and excise Taxes, other consumption Taxes, or other governmental charges to the extent actually included in gross sales; and (iii) the amount of any receivables that have been included in gross sales and are deemed to be uncollectible according to Elan's or it Affiliates' internal accounting principles and GAAP, with such bad debt deduction applied against gross sales in the period in which such receivables are written off and shall be exclusive of any bad debt or uncollectible receivables of Elan or its Affiliates unrelated to any such Product sold by Elan or its Affiliates.

"Elan Subcontractor" has the meaning set forth in Section 4.2 hereof.

"FDA" means the United States Food and Drug Administration.

"Field" means the OTC pharmaceutical markets.

"Flamel" has the meaning set forth in the Preamble hereof.

"Flamel Indemnitees" has the meaning set forth in Section 7.2 hereof.

"Flamel Know-How" means all trade secrets, knowledge, technology, specifications, inventions, assays, means, methods, processes, controls, practices, formulas, instructions, skills, techniques, procedures, experiences, ideas, technical assistance, designs, drawings, assembly procedures, computer programs, apparatuses, specifications, manufacturing procedures, test procedures and purification and isolation techniques, quality controls, the identity and amounts of ingredients, (whether or not confidential, proprietary, patented or patentable) in written, electronic or any other form, and all improvements, whether to the foregoing or otherwise, and other discoveries, developments and inventions; in each case, applying or pertaining to (i) Flamel's LiquiTime® technology for developing modified/controlled release oral pharmaceutical products in a liquid suspension formulation; and (ii) the Laboratory Development Activities, the Clinical and Regulatory Activities and the Commercial Manufacturing Scale-Up Activities of Flamel for each Product.

"Flamel Patents" means (i) the issued patent identified as UD 7,906,145 and any extensions, reissues or reexaminations thereof; and (ii) any patent applications throughout the world claiming priority of patent applications identified in US 7,906,145 and any patents that may issue therefrom.

"Flamel Patents Termination Date" means the earlier of (i) the date the Flamel Patents expire in the Territory; or (ii) the date the Flamel Patents are revoked by the United States Patent and Trademark Office.

"Flamel Technology" means, collectively, the Flamel Patents and the Flamel Know-How.

"Force Majeure Event" has the meaning set forth in Section 11.7 hereof.

"GAAP" means generally accepted accounting principles applied in a consistent manner in the United States of America.

"Governmental Body" means any national, state, provincial, or other political subdivision thereof or any governmental or regulatory entity or agency with legal authority to exercise executive, legislative, judicial, regulatory or administrative functions in the Territory or the jurisdiction in which Product is manufactured.

"Guaifenesin Product" has the meaning set forth in the Recitals hereof.

"Ibuprofen Product" has the meaning set forth in the Recitals hereof.

"Indemnified Party" has the meaning set forth in Section 7.3 hereof.

"Indemnifying Party" has the meaning set forth in Section 7.3 hereof.

"Initial Product" or "Initial Products" has the meaning set forth in the Recitals hereof.

"Insolvent" means, with respect to any Person, such Person (i) making an assignment for the benefit of creditors; (ii) filing or having filed against it a petition in bankruptcy; (iii) having a receiver appointed for its assets; or (iv) being dissolved or liquidated.

"Intellectual Property Rights" means, collectively, all of the following intangible legal rights in the Territory, whether or not filed, perfected, registered or recorded and whether now or hereafter existing, filed, issued or acquired: (i) patents, patent disclosures, patent rights, including any and all continuations, continuations-in-part, divisionals, reissues, reexaminations, utility model, industrial designs and design patents or any extensions thereof; (ii) rights associated with works of authorship, including without limitation, copyrights, copyright applications and copyright registrations; (iii) rights in trademarks, trademark registrations and applications therefor, trade names, service marks, service names, logos, or trade dress; (iv) rights relating to the protection of formulae, trade secrets, know-how and Confidential Information; and (v) all other intellectual or proprietary rights in the Territory.

"Laboratory Development Activities" has the meaning set forth in Section 4.1 hereof.

"License Conversion Event" means the earlier to occur of the following: (i) the Flamel Patents Termination Date; or (ii) the termination of this Agreement by Elan pursuant to Section 10.2(a) hereof.

"OTC" has the meaning set forth in the Recitals hereof.

"Party" or "Parties" means, individually or collectively, as the case may be, Elan and Flamel.

"Person" means any natural person, partnership, limited liability, company, trust, joint venture, joint stock company, association, unincorporated organization, government or agency or political subdivision thereof, or other entity, whether acting in an individual, fiduciary or other capacity.

"Product" or "Products" has the meaning set forth in the Recitals hereof.

"Reasonable Commercial Efforts" means, with respect to the subject Party, the level of efforts and resources equivalent to those employed by the subject Party to market and distribute a product of similar market potential at a similar stage in its product life to each Product, taking into account the establishment of such Product in the marketplace, the competitiveness of alternative products in the marketplace, the conditions or prospects of regulatory approval, the profitability of such Product and other relevant factors.

"Regulatory Filing" means a New Drug Application filed pursuant to Section 505(b)(2) of the Act.

"Royalty" means, with respect to each Product, the amount computed under the following royalty rates for that Product:

| Time Period | Marginal Royalty Rate |
|---|---|
| First five (5) years after Commercial Launch Date of Product | 7% of Elan Net Sales |
| Thereafter, until the expiration of the Term | 3.5% of Elan Net Sales |

"Special Damages" has the meaning set forth in Section 7.4 hereof.

"Tax" means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same).

"Tax Deduction" means any deduction or withholding for or on account of a Tax from any payment under this Agreement.

"Technology Transfer" has the meaning set forth in Section 4.4 hereof.

"Term" has the meaning set forth in Section 10.1 hereof.

"Territory" means the United States, including its territories and possessions.

"Third Party" means any Person other than the Parties and their Affiliates.

"UK Rx Markets" has the meaning set forth in Section 2.2 hereof.

"VAT" means (i) the value added Tax as provided for in the Value-Added Tax Consolidation Act 2010 (as amended) of Ireland; (ii) any Tax imposed in compliance with the Council Directive of 28 November 2006 on the common system of value added Tax (EC Directive 2006/112); and (iii) any other Tax of a similar nature, whether imposed in a member state of the European Union in substitution for, or levied in addition to, such Tax referred to in clause (i) and (ii) above, or imposed elsewhere.

**2. Terms of License.**

2.1 Grant of License. During the Term, Flamel hereby grants to Elan, and Elan hereby accepts from Flamel, an exclusive (even as to Flamel except for Flamel, its Affiliates or its subcontractors solely to perform their obligations and duties hereunder or in connection therewith), sublicensable, license solely in the Field in the Territory to use the Flamel Technology, including all Intellectual Property Rights pertaining thereto, to sell and market the Products and otherwise exploit the Regulatory Filings for the Products in the Field in the Territory and after the Flamel Patents Termination Date to also develop and register additional pharmaceutical products in the Field in the Territory. Elan acknowledges and agrees that the exclusivity granted to Elan in this license will, prior to any License Conversion Event, be

contingent on Elan continuing to satisfy the Additional Product Requirement and the Competing Product Requirement.

2.2 Expansion of Field and Territory. Flamel hereby acknowledges Elan's interest in commercializing the Flamel Technology in the Rx markets in the United Kingdom, which markets are outside of the Field and the Territory (the "UK Rx Markets"). Flamel agrees to discuss the UK Rx Markets in good faith with Elan prior to offering this business to any Third Party.

2.3 License Conversion Event. Upon the occurrence of any License Conversion Event, (i) the license to the Flamel Technology will become perpetual, fully-paid and irrevocable in the Field and in the Territory, and (ii) Elan's obligation to pay Royalties will cease; in each case, with respect to each Product impacted by the circumstances giving rise to such License Conversion Event (but not for any Products not so impacted).

## 3. Financial Provisions

The sole and exclusive consideration payable to Flamel by Elan for the license granted above, Flamel's development work described below and all other obligations of Flamel under this Agreement or services performed by Flamel, its Affiliates or subcontractors in connection with the Initial Products is as follows:

3.1 License Fee. Elan shall pay to Flamel a one-time, license fee of Six Million Dollars ($6,000,000) within thirty (30) days after the Effective Date.

3.2 Milestone Payments. With respect to each Initial Product Elan shall pay to Flamel the following milestone Payments within thirty (30) days after the occurrence of each event described below with respect to such Initial Product:

- Five Million Dollars ($5,000,000) – upon submission of the NDA transfer letter by Flamel to the FDA notifying the FDA of the transfer of the Regulatory Filing to Elan after FDA approval of such Initial Product.

- Five Million Dollars ($5,000,000) – upon Commercial Launch Date of such Initial Product.

3.3 Royalty. Within ten (10) days after the end of each Elan Fiscal Quarter, Elan shall provide Flamel with an initial estimate of the Royalties due to Flamel for such Elan Fiscal Quarter. Elan shall pay the Royalty to Flamel in respect of Product sales taking place during that Elan Fiscal Quarter within sixty (60) days after the end of that Elan Fiscal Quarter.

3.4 Recordkeeping and Audit Right. Elan shall maintain complete and accurate records pertaining to its computation of the Royalty payable under this Agreement during Term and for a period of two (2) years after the termination or expiration of this Agreement. On an annual basis or more frequently for good cause shown, during the Term and the retention period noted above, upon reasonable advance notice Flamel may appoint at its own expense an independent public accounting firm to audit the relevant records of Elan supporting its computation of the Royalty. Flamel shall be entitled to any amounts determined by the independent public accounting firm to have been underpaid by Elan, within forty-five (45) calendar days after demand therefor has

been received by Elan, which demand shall include the complete audit report prepared by the independent public accounting firm. The determination by the independent public accounting firm will be binding on the Parties absent manifest error. The fees of the independent public accounting firm shall be borne by Flamel unless the report of the independent public accounting firm shows an underpayment by Elan of more than 10% in which case Elan shall be responsible for payment of the independent public accounting firm's fees.

## 4. Product Development and Technology Transfer.

4.1 Laboratory Development Activities. With respect to each Initial Product and upon mutual agreement of the Parties with respect to the Additional Products, Flamel, or one of its Affiliates or subcontractors, will be responsible for Product formulation, method validation, pilot studies and all other activities necessary to create a lab-scale version of such Product (the "Laboratory Development Activities").

4.2 Clinical and Regulatory Activities. With respect to each Initial Product and upon mutual agreement of the Parties with respect to the Additional Products, Flamel, or one of its Affiliates or subcontractors, will be responsible for performing all clinical studies, including any bio-equivalence studies, and for making the Regulatory Filing and obtaining approval of the Regulatory Filing (collectively, the "Clinical and Regulatory Activities").

4.3 Commercial Manufacturing Scale-Up Activities. With respect to the Initial Products and upon mutual agreement of the Parties with respect to each Additional Product, Flamel, or one of its Affiliates or subcontractors, will also be responsible for scaling up such Product for commercial production, manufacturing exhibit batches for pivotal studies (conducted by Flamel as part of the Clinical and Regulatory Activities) and producing exhibit batches for stability testing (the "Commercial Manufacturing Scale-Up Activities"). Although Flamel will be responsible for all Commercial Manufacturing Scale-Up Activities, it will engage Elan or one of its Affiliates as a subcontractor (the "Elan Subcontractor") to perform the Commercial Manufacturing Scale-Up Activities for each Product (except for the Ibuprofen Product for which Flamel has engaged another subcontractor to perform the Commercial Manufacturing Scale-Up Activities as of the Effective Date). Flamel and the Elan Subcontractor will enter into a separate agreement covering the legal and commercial terms governing the Commercial Manufacturing Scale-Up Activities for each Product; provided that such agreement will provide that Elan's fees for the Commercial Manufacturing Scale-Up Activities for each Product shall be charged to Flamel at Elan's fully-allocated cost and when added together with the cost of the Technology Transfer as described in Section 4.4 below may not exceed One Million Five-Hundred Thousand Dollars ($1,500,000) per Product, provided further, that such agreement will also provide that such limitation to will not apply to any work required due to Product reformulation, test failures, specification changes or any other factor that is not under Elan's reasonable control. Notwithstanding the foregoing, in the event that Elan or the Elan Subcontractor cannot successfully perform the Commercial Manufacturing Scale-Up Activities for a Product within a reasonable period of time, Flamel shall have the right to engage a Third Party to perform such Commercial Manufacturing Scale-Up Activities and to manufacture and supply such Product to Elan on a commercial basis until such time as Elan or the Elan Subcontractor can successfully perform such activities at a price to Elan of no more than cost plus twenty percent (20%).

4.4 Technology Transfer; Commercial Manufacturing - Ibuprofen Product. To effect the transition of the Commercial Manufacturing Scale-Up Activities to Elan, Flamel, or one of its Affiliates or subcontractors, will transfer to Elan all Flamel Know How for that Product obtained in performing the Laboratory Development Activities and the Clinical and Regulatory Activities (the "Technology Transfer"). In the case of the Ibuprofen Product, the Technology Transfer will occur upon FDA approval of the Regulatory Filing for that Product. Furthermore, the Parties acknowledge and agree that in the case of the Ibuprofen Product, Flamel, its Affiliates or its subcontractor will be responsible for the commercial supply of the Ibuprofen Product to Elan at Flamel's cost or Flamel's acquisition cost of the Ibuprofen Product until the completion of the Technology Transfer and Elan or the Elan Subcontractor has received FDA approval to manufacture commercial supplies of the Ibuprofen Product. In the event that Flamel terminates this Agreement pursuant to Section 10.2, Elan shall immediately transfer back to Flamel all of the Flamel Know-How referenced above in this Section 4.4.

4.5 Regulatory Process and Transfer of Regulatory Filing. For each Product, Flamel, or one of its Affiliates or subcontractors, will submit the Regulatory Filing in Flamel's or its Affiliate's name and conduct all communications with the FDA. Elan will provide assistance to Flamel in connection with preparing, and obtaining approval of, the Regulatory Filing, provided that any such assistance will be performed on a time and materials basis unless within the scope of the Commercial Manufacturing Scale-Up Activities. Flamel, or one its Affiliates or subcontractors, will transfer the Regulatory Filing to Elan upon the earlier of the approval of the applicable Regulatory Filing or the termination of this Agreement; provided that Flamel shall have a right to reference and use any data (clinical or otherwise) with respect to the Products; and provided further that in the event of a termination of the Agreement by Flamel pursuant to Section 10.2, Elan shall immediately transfer the Regulatory Filing and any related data, back to Flamel.

4.6 Intellectual Property Rights. Subject to the license granted by Flamel to Elan under Section 2.1, all Intellectual Property Rights and intellectual property, arising as a result of the activities and services performed by Flamel under this Agreement shall be the sole and exclusive property of Flamel. Additionally, Elan agrees that Flamel shall have a royalty free, fully paid up, sublicensable license to any intellectual property and Intellectual Property Rights developed by Elan, the Elan Subcontractor or its Affiliates derived from the Flamel Technology.

## 5. Elan's Marketing, Sale and Distribution of Product.

5.1 Elan's Responsibilities. Elan shall use Reasonable Commercial Efforts to market and sell Product to customers that are located in the Field in the Territory. Under this Agreement, Elan shall not be permitted to (i) sell Product to, or solicit orders for sale of Product from, any existing or prospective customer located outside the Territory, (ii) deliver or tender (or cause to be delivered or tendered) Product outside the Territory, (iii) sell Product to, or solicit any sale of Product from, a customer in the Territory for which Elan knows or has reason to know intends to resell Product outside the Territory; or (iv) prior to any License Conversion Event, bundle any Product with another product of Elan or one of its Affiliates where such bundling results in any discount applied to such Product being proportionally greater than the discount applied to any other products.

5.2 Expenses. Elan is responsible for paying all its expenses in performing its sales and marketing obligations set forth in this Article 5.

5.3 Elan's Selling Price of Product. Subject to Section 5.1(iv) above, Elan has sole discretion over establishing the price at which it sells Product and is responsible for invoicing customers.

5.4 Exclusivity; Additional Product Requirement; Competing Product Requirement. Elan will be the exclusive licensee for the Flamel Technology in the Field in the Territory. Further, Flamel agrees that it will not, on its own or through an Affiliate, use the Flamel Technology in the Field in the Territory for any commercial purpose other than to perform its obligations and duties under this Agreement. The exclusivity granted by Flamel to Elan in this Section 5.4 will terminate in the event that Elan fails to satisfy the Additional Product Requirement or the Competing Product Requirement (as each is defined below). Elan will designate an Additional Product to be developed by Flamel during each of the first five (5) Contract Years on terms and conditions reasonably acceptable to the Parties (the "Additional Product Requirement"). In the event that the Parties cannot agree on the terms and conditions to satisfy the Additional Product Requirement, then, at Elan's option and decision, Flamel or its Affiliates or subcontractors shall either (A) develop the Additional Product for Elan and Elan shall pay Flamel, when due and payable, Flamel's or its Affiliates' fully-allocated cost (including the costs associated with any activities performed by any subcontractor) associated with performing the services) plus twenty percent (20%) and Elan shall pay Flamel (i) milestone payments of: (x) $3,000,000 upon submission of the Regulatory Filing transfer letter to FDA notifying the FDA of the transfer of the of the Regulatory Filing to Elan after FDA approval of such Additional Product and (y) $3,000,000 upon commercial launch of such Additional Product and (ii) the same Royalty as the Royalty paid for the Initial Products; or (B) develop and commercialize such Additional Product with a Third Party on commercial terms no less favorable to Flamel than the commercial terms set forth in clause (A) above. Elan acknowledges and agrees that in the case of clause (B) in the preceding sentence where such Additional Product is developed by a Third Party, Elan shall still have the obligation to designate a replacement Product for such Contract Year. Furthermore, as an additional condition to retaining the exclusivity set forth in this Section 5.4, during the Term, Elan agrees that it shall not directly or through an Affiliate or with a Third Party, manufacture, sale, market or distribute a Competing Product. Elan further agrees and acknowledges that Elan in addition to forgoing the exclusivity by selling a Competing Product, Elan shall pay Flamel, a royalty (in the same percentage and for the same time period) that is equal to the Royalty on the Products as set forth herein for any Competing Product sold.

5.5 Key Commercial Terms. Not later than six (6) months prior to the expected date of approval of the Regulatory Filing for each Product, the Parties will enter a commercial agreement for the supply by Flamel or one of its Affiliates or subcontractors to Elan of the extended release active pharmaceutical ingredient for such Product, coated by Flamel or one of its Affiliates or subcontractors with extended-release beads using the Technology ("Coated API"). The commercial agreement for Flamel's or one of its Affiliates' or subcontractors' supply of Coated API to Elan (the "Coated API Agreement") will include the terms set forth in **Schedule 5.5** attached hereto and other terms agreed upon by the Parties.

## 6. Representations and Warranties.

Each Party represents and warrants to the other Party that (i) it is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization, (ii) the execution, delivery and performance of this Agreement by such Party has been duly authorized, and this Agreement is a valid and binding obligation of such Party enforceable against such Party in accordance with its terms, (iii) the execution, delivery and performance of this Agreement by such Party will not result in any breach of its organizational documents or any breach or violation of any agreement or instrument to which it is a party or bound or of any law, regulation, order or decree to which it is subject or by which its assets are bound, (iv) such Party has full power and authority to perform its obligations and grant the rights it has granted to the other Party as provided in this Agreement, (iv) none of its employees, officers, directors, or agents has been: (a) debarred, or convicted of a crime for which a Person can be debarred, under Section 306(a) of the United States Federal Generic Drug Enforcement Act of 1992, as amended, or (b) to the best of its knowledge, have been threatened with debarment or indictment for such a crime by a Governmental Body. If any debarment or conviction occurs while this Agreement is in force and effect, the Party involved with such debarment or conviction shall promptly provide notification to the other Party.

EXCEPT AS PROVIDED IN THIS ARTICLE 6, NEITHER PARTY MAKES ANY OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY AS TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT.

## 7. Patent Indemnification and Excluded Damages.

7.1 Patent Indemnification. Except in the case of Elan's gross negligence or willful misconduct, Flamel shall defend, indemnify and hold Elan, including its Affiliates and their respective directors, officers, shareholders, employees, servants and agents harmless (the "Elan Indemnitees") from and against any and all losses, liabilities, damages, costs and expenses, including reasonable attorneys' fees and disbursements in connection with any and all Third-Party suits, investigations, claims or demands (collectively, "Damages"); in each case, resulting from or in connection with the Flamel Patents, except, in each case, for those Damages for which Elan has an obligation to indemnify the Flamel Indemnitees pursuant to Section 7.2, as to which Damages each Party shall indemnify the other Party to the extent of its respective liability for such Liabilities.

7.2 Commercialization Indemnification. Except in the case of Flamel's gross negligence or willful misconduct, Elan shall defend, indemnify and hold Flamel, including its Affiliates and their respective directors, officers, shareholders, employees, servants and agents harmless (the "Flamel Indemnitees") from and against any Damages from or in connection with Elan's manufacturing, sale, marketing and distribution of the Products; except, in each case, for those Damages for which Flamel has an obligation to indemnify the Elan Indemnitees pursuant to Section 7.1, as to which Damages each Party shall indemnify the other Party to the extent of its respective liability for such Damages.

7.3 Indemnification Procedures. Upon the occurrence of any event giving rise to a right to seek indemnification hereunder, Elan or Flamel, as the case may be (the "Indemnified Party") shall give notice of such claim, action or proceeding to the other Party (the "Indemnifying Party") within ten (10) calendar days after it becomes known to Elan, except that the failure to give such notice shall not relieve the Indemnifying Party of its obligations to indemnify unless such failure materially and adversely affects the defense of such action or increases the liability of the Indemnifying Party. Within ten (10) calendar days after receipt of such notice, the Indemnifying Party shall notify the Indemnified Party as to whether or not the Indemnifying Party wishes to take over the defense of such action, and if the Indemnifying Party fails to provide such notice, the Indemnified Party shall be entitled to take over the defense of the action. Upon proper notification by the Indemnifying Party of its intention to defend the claim, the Indemnifying Party shall engage counsel reasonably satisfactory to the Indemnified Party to assume the investigation and defense of the claim and shall keep the Indemnified Party and its counsel currently informed as to all material aspects of the claim and its investigation and defense. The Indemnified Party may, in such case, engage counsel to assist in the investigation and defense of the claim but shall not be entitled to reimbursement for any expenses related to the engagement of such counsel. If the Indemnifying Party elects not to assume the investigation and defense of the claim, or fails to make any election within the time period herein provided, or if in the reasonable opinion of counsel to the Indemnified Party, the Indemnified Party has available to it defenses that are contrary to the interests of the Indemnifying Party in any such action, then the Indemnified Party may engage its own counsel for such investigation and defense and shall be entitled to full indemnification for the costs thereof.

7.4 Excluded Damages. EXCEPT IN THE CASE OF A PARTY'S GROSS NEGLIGENCE, WILLFUL MISCONDUCT OR A BREACH OF SECTION 9.1, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR OTHER SIMILAR DAMAGES, INCLUDING WITHOUT LIMITATION LOSS OF REVENUE OR LOSS OF PROFITS ("COLLECTIVELY, "SPECIAL DAMAGES"), EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH SPECIAL DAMAGES, PROVIDED THAT EITHER PARTY WILL BE LIABLE FOR SUCH SPECIAL DAMAGES TO THE EXTENT IT IS OBLIGATED TO INDEMNIFY THE OTHER PARTY UNDER THIS AGREEMENT IN RESPECT OF A THIRD-PARTY CLAIM AGAINST THE OTHER PARTY THAT INCLUDES SUCH SPECIAL DAMAGES.

## 8. Insurance.

8.1 General Requirements. Each of Flamel and Elan shall obtain and maintain at its expense during the Term and for a period of at least five (5) years after the termination or expiration of this Agreement, all insurance coverage required by law as well as appropriate insurance coverage to protect against any and all claims or liabilities that may arise directly or indirectly as a result of its performance of its obligations under this Agreement. Insurance shall be placed with a carrier with an A.M. Best rating of at least A- for financial strength and a size rating of at least VIII. Coverage shall be occurrence based, unless occurrence coverage is unavailable, in which case "claims made" coverage is acceptable, provided retroactive coverage is provided prior to the inception of the business relationship between Elan and Flamel. None of the requirements contained herein as to coverage types or limits of insurance required to be

maintained by the Parties shall be construed to limit in any manner the liability of either Party to the other Party hereunder.

8.2 Proof of Insurance. Each Party shall deliver to the other Party, within thirty (30) calendar days after the execution of this Agreement, Certificates of Insurance evidencing the following: (i) the effective and expiration dates of the policies; (ii) for each of the policies, the limits of liability per occurrence and in the aggregate; (iii) that the other Party has been named as an additional insured under products liability and excess liability policies; and (iv) that the other Party shall be given thirty (30) calendar days advance notice prior to any cancellation, non-renewal or material change of any of the policies. Each Party shall provide to the other Party current Certificates of Insurance evidencing renewal of insurance throughout the Term promptly after any change or renewal of the policies.

8.3 Specific Minimum Coverages. At a minimum, each Party shall keep the following policies in place during the term of this Agreement:

Required Coverages and Minimum Policy Limit

| Required Coverage | Policy Limit |
|---|---|
| Worker's Compensation | Statutory |
| General Liability: Bodily Injury & Property Damage | $5,000,000 (U.S. Combined Single Limit, per occurrence) |
| Product Liability | $10,000,000 |
| Excess Liability | $5,000,000 |

## 9. Confidentiality.

9.1 Obligations of Confidentiality. Neither Party will use or disclose to Third Parties any Confidential Information of the other Party (except to comply with its obligations under this Agreement), except that each Party may disclose such Confidential Information to such of its managers, officers, directors, employees and agents (and to such of the managers, officers, directors, employees and agents of its Affiliates) as reasonably required it in connection with this Agreement and who agree in writing to be bound by confidentiality obligations not less restrictive than those contained in this Agreement, and each Party shall ensure that such managers, officers, directors, employees and agents comply with such obligations and shall be responsible for their failure to do so. Notwithstanding the foregoing, such information may be (i) disclosed to any Governmental Body where such Confidential Information may be required to be included in regulatory filings permitted under the terms of this Agreement or in patent applications filed within the United States Patent and Trademark Office or corresponding international patent offices, (ii) provided to a Party's employees, advisors and consultants under appropriate terms and conditions including confidentiality provisions substantially equivalent to those in this Agreement, for the purpose of such Party performing its obligations under this

Agreement, (iii) published, if and to the extent such publication has been approved by disclosing Party, or (iv) disclosed to the extent required by applicable laws or regulations or as ordered by a court or other Governmental Body having competent jurisdiction. In each of the foregoing cases, the recipient shall use its reasonable commercial efforts to limit the disclosure and maintain confidentiality to the extent possible. In the case of a required disclosure under clause (iv) above, the Party required to make the disclosure shall promptly notify the original disclosing Party and shall provide reasonable assistance, if requested by the original disclosing party, to assist the original disclosing Party in its attempts to prevent or limit the disclosure at the original disclosing Party's cost and expense. If a Party is required by law or court order to provide a copy of this Agreement or any related document to any Third Party (except in confidence as permitted by this Agreement), such Party shall redact Confidential Information from such document, except as otherwise required by law. Each Party shall have the right to review and approve each redacted document prior to its submission to a Third Party. The reviewing Party shall have a period of ten (10) calendar days to review the redacted document, except that in the case of the order of a court or regulatory agency, the reviewing Party shall have the maximum reasonable amount of time.

9.2 Termination of Agreement. Upon the expiration or termination of this Agreement, each Party shall return to the disclosing Party or destroy all Confidential Information of the disclosing Party in tangible form in its possession; provided, that (i) the receiving Party may retain one (1) copy of Confidential Information of the disclosing Party in its legal files solely for the purpose of demonstrating the satisfaction of its continuing obligations of confidentiality under this Agreement, and (ii) if a License Conversion Event has occurred, Elan may retain any documents needed to continue to exercise its rights under its license.

9.3 Injunctive Relief. Each Party acknowledges that if it breaches any of the provisions of this Article 9, the other Party may not have an adequate remedy at law and may suffer irreparable damage and injury and that, in addition to any other available rights and remedies, the other Party shall be entitled to seek an injunction restricting the breaching Party from committing or continuing any violation of such provisions.

## 10. Term and Termination.

10.1 Term. This Agreement commences of on the Effective Date and will remain in effect, unless earlier terminated as set forth herein, with respect to each Product, until the Flamel Patents Termination Date (the "Term").

10.2 Termination.

(a) Either Party may terminate this Agreement or a particular Product from this Agreement by written notice to the other Party if the other Party materially breaches this Agreement and fails to cure the material breach within forty-five (45) calendar days after written notice of the material breach has been given to the breaching Party.

(b) Either Party may terminate this Agreement upon written notice to the other Party if the other Party becomes Insolvent.

(c) Either Party may terminate this Agreement upon thirty (30) days written notice in connection with a Force Majeure Event pursuant to Section 11.7 hereof.

10.3 Actions Upon Termination. Upon termination or expiration of this Agreement for any reason, Elan may sell Product in its inventory as of the date of termination, and, prior to any License Conversion Event, Elan shall pay to Flamel the Royalty for such sales in accordance with Section 3.3 hereof.

## 11. Miscellaneous.

11.1 Each Party Pays Own Costs. Except as expressly stated otherwise herein, each Party shall be responsible for the costs it incurs in performing its obligations under this Agreement.

11.2 Currency. All financial calculations and payments made by Elan to Flamel under this Agreement shall be made in U.S. Dollars. All other references to "dollars" or "$" shall indicate U.S. Dollars.

11.3 Taxes. All sums required to be paid under or in connection with this Agreement for Flamel Technology are to be treated as exclusive of VAT, and Elan shall pay to Flamel an amount in respect of VAT properly chargeable on any amounts due under this Agreement in addition to the sums otherwise payable. Flamel shall issue a valid VAT invoice in accordance with law. Elan shall make all payments to be made by it without any Tax Deduction, unless a Tax Deduction is required by law.

11.4 Independent Contractor. The relationship between Elan and Flamel is that of independent contractors, and nothing contained in this Agreement or otherwise shall be deemed to create any other relationship, including employment, partnership, agency or joint venture, between them. Neither Party shall have any authority to employ any Person as agent or employee for or on behalf of the other Party, or to bind, or attempt to bind, the other Party to any obligation with any Third Party. Each Party has and retains full control and supervision over the performance of its obligations hereunder and over the employment, direction, compensation and discharge of all employees, agents and subcontractors it utilizes in the performance of such obligations. Each Party is responsible for its acts and omissions and those of its employees, agents and subcontractors.

11.5 Advertising and Publicity. Neither Party shall use the name or any trademark, trade name, logo or symbol of the other Party or the other Party's Affiliates, or disclose any matters relating to this Agreement, in any advertising, promotion, press/publicity releases, written articles or communications without the prior consent of the other Party.

11.6 Cooperation. The Parties agree to meet regularly and keep one another updated with respect to the activities set forth in Article 4 and Article 5 and the development, manufacturing, marketing and sale of the Products.

11.7 Force Majeure. Neither Party shall be liable for delays in performance or nonperformance in whole or in part due to any causes that are beyond its reasonable control and not due to its acts or omissions, such as acts of God, fire, strikes, embargo, acts of the

government, or other similar causes, but not acts that could be anticipated, such as raw material price increases, shortages of raw material or an increase in demand for Product (each a "Force Majeure Event"), provided that if any Force Majeure Event shall continue for a period of six (6) months or longer, then the Party whose performance has not been impacted by such Force Majeure Event shall have the right to terminate this Agreement without liability upon notice to the Party whose performance has been so impacted. Upon the occurrence of a Force Majeure Event, the Party delayed shall promptly give notice to the other Party.

11.8 Assignment and Subcontracting. Other than to one of its Affiliates and to subcontractors with respect to Article 4 and Section 5.4 hereof, neither Party may assign this Agreement or subcontract any of its obligations under this Agreement, in whole or in part, to any other Person without the prior consent of the other Party, which consent shall not be unreasonably withheld, delayed or conditioned. Notwithstanding any permitted assignment under this Section 11.8, the assigning party will remain jointly and severally liable for the obligations assigned.

11.9 Notices. Any notice, communication, consent, approval, request, demand or statement required or permitted to be given hereunder shall be in writing and deemed to have been sufficiently given when delivered in person or by registered or certified mail, postage prepaid, return receipt requested or by overnight courier service, addressed as follows:

To Flamel:

Flamel Ireland Limited
c/o Flamel Technologies, SA
702 Spirit 40 Park Drive, Suite 108
Chesterfield, Missouri 63005
Attention: Legal Department
Facsimile: +16364991850

To Elan:

Elan Pharma International Limited
c/o L. Perrigo Company
515 Eastern Avenue
Allegan, Michigan 49010
Attn: General Counsel
Facsimile: +12696731386

Any Party may, by notice to the other, change the addresses and names given above.

11.10 Non-Waiver. The failure of a Party to strictly enforce any of the terms or conditions of this Agreement shall not be considered as a waiver of any right hereunder nor shall it deprive that Party of the right at some other time to insist upon strict adherence to that term or condition or to any other terms or conditions.

11.11 Severability. If any article, section, subsection, sentence or clause of this Agreement shall be adjudged illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect the legality, validity or enforceability of this Agreement as a whole or of any article, subsection, sentence or clause hereof not so adjudged, and the remaining terms and provisions of this Agreement will remain unimpaired and in full force and effect.

11.12 Section Headings. All section headings herein are for convenience only and are not to be construed as a limitation of the scope of the particular sections to which they refer.

11.13 Governing Law and Jurisdiction. The validity, interpretation and performance of this Agreement shall be governed by and construed in accordance with the laws of the State of New York without regard to its principles of conflicts of law.

11.14 Successors and Assigns. This Agreement will apply to, inure to the benefit of and be binding upon the Parties hereto and upon their respective successors and permitted assigns.

11.15 Survival of Obligations. The termination or expiration of this Agreement shall not affect the survival and continuing validity of Section 2.3 (License Conversion Event); Article 3 (Financial Provisions); Article 7 (Indemnification and Excluded Damages); Article 8 (Insurance); Article 9 (Confidentiality); Section 10.3 (Actions Upon Termination); and Article 11 (Miscellaneous) or of any other provision that is expressly or by implication intended to continue in force after such termination or expiration.

11.16 Amendments. No modification, alteration or amendment of this Agreement shall be binding upon the Parties unless contained in a writing signed by a duly authorized agent for each respective Party and specifically referring hereto or thereto, as the case may be.

11.17 Entire Agreement. This Agreement, together with any documents attached hereto, constitutes the entire agreement of the Parties with respect to its subject matter and merges and supersedes all prior discussions and writings with respect thereto, including but not limited to the Mutual Confidential Disclosure Agreement between Flamel and Perrigo Company plc dated as of December 3, 2014.

ELAN PHARMA INTERNATIONAL LIMITED

By: /S/ Conor Walsh
Name: Conor Walsh
Title: Director

FLAMEL IRELAND LIMITED

By: _____
Name: _____
Title: _____

ELAN PHARMA INTERNATIONAL LIMITED

By: _____
Name: _____
Title: _____

FLAMEL IRELAND LIMITED

By: /S/ Dhiren D.Silva
Name: Dhiren D'Silva
Title: VP Irish and European Operations

## SCHEDULE 5.5

## KEY COMMERCIAL TERMS FOR COATED API AGREEMENT

| Subject Matter | Term |
|---|---|
| Price for Coated API | Fully-allocated cost of Flamel to supply Coated API until the termination of Royalty payments under Agreement; thereafter, plus an agreed-upon percentage mark-up. |
| Indemnification | Elan would defend, indemnify and hold Flamel harmless for any Product defects not caused by defects with Coated API, Flamel Technology or Flamel's breach of its obligations under Coated API Agreement. |
| Term and Termination | May be terminated only upon termination of License and Development Agreement or due to either Party's material breach (which in the case of Elan would be limited to non-payment). |
| Exclusions on Damages | Except in the case of a Party's gross negligence or willful misconduct, in no event will either Party be liable to the other party for any special, indirect, incidental, consequential, punitive or other similar damages, including without limitation loss of revenue or loss of profits. |
| Responsibility For API Defects | Elan will source and be responsible for any defects with immediate release API; Flamel will source and be responsible for any defects with extended release API. |
| Warranties | Flamel will perform the API coating in accordance with cGMP and in a professional and workmanlike manner. |
| Governing Law | New York |
| Shipping Terms | FCA (Incoterms 2010) Allegan, Michigan. |
| Payment Terms | MSN 3 |
| Recall Expenses | Each Party will be responsible for recalls to |

| | |
|---|---|
| | the extent of its fault. |

## FIRST AMENDMENT TO EXCLUSIVE LICENSE AGREEMENT

This First Amendment to the Exclusive License Agreement (the "Amendment") is dated as of December 21, 2018 (the "Effective Date"), and is by and between PERRIGO PHARMA INTERNATIONAL DAC (f/k/a ELAN PHARMA INTERNATIONAL LIMITED), a designated activity company organized under the laws of the Republic of Ireland, with offices located at Treasury Building, Lower Grand Canal Street, Dublin 2, Ireland ("Perrigo") and FLAMEL IRELAND LIMITED, a company organized under the laws of the Republic of Ireland, with offices located at 2nd Floor, Block 10, Unit 1 Blanchardstown Corporate Park, Ballycoolin, Dublin 15 Ireland and doing business as AVADEL IRELAND ("Avadel").

### RECITALS

A. Pursuant to that certain Exclusive License Agreement ("Agreement") dated as of September 30, 2015 by and between Perrigo and Flamel Ireland Limited (now doing business as Avadel Ireland), the Parties set forth the framework under which they would jointly develop and commercialize certain extended release versions of Ibuprofen liquid suspension and Guaifenesin liquid suspension products, utilizing Avadel's proprietary LiquiTime® technology (the "License Agreement"). Capitalized terms used but not defined in this Agreement have the meanings set forth in the License Agreement.

B. Under the License Agreement, upon the completion by Avadel of the Laboratory Development Activities for each Product, Avadel was responsible for scaling up such Product for commercial production, manufacturing exhibit batches for pivotal studies and producing exhibit batches for stability testing (collectively, the "Commercial Manufacturing Scale-Up Activities").

C. Avadel wishes to engage Perrigo to perform certain of the Development Activities and Commercial Manufacturing and Scale-Up Activities for the Guaifenesin Product and Perrigo wishes to be so engaged; in each case subject to the terms and conditions of the Agreement, as amended by this Amendment.

D. Perrigo and Avadel desire to amend and restate each Party's respective rights and responsibilities, and the associated financial obligations and project milestones under the Agreement solely with respect to the Guaifenesin Product. The Parties agree that this Amendment is part of, and shall be incorporated into, the Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. The Parties agree that the milestone payments described in Section 3.2 of the Agreement ("Milestone Payments") shall not apply to the Guaifenesin Product. For the avoidance of doubt, no additional milestone payments shall be payable by Perrigo with respect to the Guaifenesin Product.

2. With respect to the Guaifenesin Product, neither the provisions of Section 3.3 of the Agreement or the Royalty table in Section 1 shall apply. For the avoidance of

doubt, no royalty payments shall be payable by Perrigo with respect to the Guaifenesin Product.

3. Responsibilities of the Parties.

A. Avadel Responsibilities

i. With respect to the Guaifenesin Product, Avadel shall have no further responsibilities or obligations to Perrigo under Sections 4.1, 4.2, 4.3, 4.5 and 5.5 of the Agreement.

ii. Avadel agrees to provide Perrigo with a complete list of all currently available materials related to the Product, including without limitation, raw materials and intermediates, whether in the possession of Avadel or at a contract research organization ("CRO") or contract manufacturing organization ("CMO") utilized by Avadel ("Materials List"), and to preserve such materials until further advised by Perrigo. Perrigo shall have thirty (30) days from the date the Material List is provided by Avadel to advise Avadel on which listed materials it wishes to have transferred to Perrigo. Avadel will promptly transfer the selected materials to Perrigo. At the expiration of the thirty-day review period, Avadel is free to destroy any materials not selected for transfer by Perrigo.

iii. Avadel shall provide Perrigo access to historical product development reports in a mutually accessible, secure electronic site within thirty (30) days of the Effective Date of this Amendment. Such development reports will include all development history for the Product development to date including the beads and the suspension formulation(s) from ideation to the development hand-off to Perrigo. This information should include any development work related to beads and suspension composition that was executed by or on behalf of Avadel, including work with CMO(s), CRO(s), clinical batches, clinical pilot studies, composition and manufacturing process evaluations, stability studies and scale-up development activities. The Parties acknowledge and agree that the material in the development reports is essential to, and will be cited in, the development report that will be submitted to FDA by Perrigo in the New Drug Application filing for the Product. All analytical reports and raw chromatographic data referenced in the development reports will be timely provided to Perrigo by Avadel in conjunction with providing access to the development reports. Upon granting access to the development reports by Avadel to Perrigo, Perrigo will review and Avadel will provide up to forty (40) hours of technical support to address any questions Perrigo may have. Additionally, within three (3) months of the Effective Date of this Amendment, Avadel shall generate and provide to Perrigo a historical

development overview of the development of the Product in the form of a written report that includes all development history of the Product development to date including the beads and the suspension formulation(s) from ideation to the development hand-off to Perrigo. This information shall include any development work related to beads and suspension composition that was executed by or on behalf of Avadel, including work with CMO(s), CRO(s), clinical batches, clinical pilot studies, composition and manufacturing process evaluations, stability studies and scale-up development activities ("Development Overview"). The Parties acknowledge and agree that the material in the Development Overview is essential to, and will be cited in, the development report that will be submitted to FDA by Perrigo in the New Drug Application filing for the Product.

iv. Avadel will reasonably support the knowledge sharing and technology transfer of the Guaifenesin Product activities to Perrigo and/or its designee. Such transfer support shall include sixteen (16) hours of support which is in addition to and does not include Avadel technical support required under section 3(A)(iii). Thereafter, Avadel will charge Perrigo at 160€/hour/FTE for any additional support requested by Perrigo above and beyond the support commitments outline in this Section 3. Additionally, all reasonable and documented direct costs (travel, third-party fees, etc...) will be passed through to Perrigo; provided that such costs are approved in advance by Perrigo.

v. Avadel shall promptly provide all documents related to executed clinical studies including raw data, pk modeling and finalized clinical study reports suitable for regulatory submission.

vi. Within thirty (30) days of the Effective Date of this Amendment, Avadel shall notify all CROs and CMOs utilized by Avadel for previous development activities for the Guaifenesin Product, of the transfer to Perrigo, to allow Perrigo access to any relevant information held by the CRO and CMO. Avadel shall work in good faith with such CRO(s) and CMO(s) to provide Perrigo access to such information within three (3) months of execution of this Amendment.

B. Perrigo Responsibilities

i. Perrigo at its own cost will be responsible for all activities set forth under Sections 4.1, 4.2, 4.3, 4.5 and 5.5 of the Agreement with respect to the Guaifenesin Product.

ii. For the avoidance of doubt, Perrigo shall be responsible for all clinical studies required for the Guaifenesin Product; and Perrigo, at its own expense and in its own name, shall prepare and submit the required FDA regulatory

submissions for registration of the Guaifenesin Product, and shall be responsible for any activities required to maintain the approved Guaifenesin Product registration.

4. Exclusive License Rights

Avadel hereby grants to Perrigo an exclusive (even as to Avadel), fully paid, irrevocable, sublicensable license to the Flamel Technology solely for purposes of developing, manufacturing and selling the Guaifenesin Product in the Territory. For the avoidance of doubt, Perrigo's license rights under this Section 4 extend only to the development, manufacture, and sale of the Guaifenesin Product.

The Parties agree Perrigo shall have the right to file patent applications to establish additional Intellectual Property Rights in the Territory with respect to and arising from the further development of the Guaifenesin Product by Perrigo, at its own cost and expense, and in its own name, and shall hold full right and title to any such additional Intellectual Property Rights in the Territory.

5. Other Provisions

The Parties agree that Perrigo is hereby granted the right to terminate the Agreement in its entirety without further obligation to Avadel in the event that Perrigo is unable, in its sole discretion, to achieve, in a commercially reasonable manner, technical and regulatory success with the Guaifenesin Product. The Parties further agree that Perrigo shall have no obligation to pursue or progress Additional Products under the Agreement until such time as the Guaifenesin Product registration is approved by the FDA.

6. Relationship to License Agreement

For the avoidance of doubt, the terms and conditions set forth in this Amendment hereby modify and amend the provisions of the Exclusive License Agreement, as stated herein, solely with respect to the Guaifenesin Product. Except as specifically modified in this Amendment, all other terms and conditions in the Agreement will remain in full force and effect. All terms not specifically defined in this Amendment shall have the meaning ascribed to them in the Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed in duplicate by their respective duly authorized officers and representatives.

PERRIGO PHARMA INTERNATIONAL DAC

By: /s/ Grainne Quinn
Name: Grainne Quinn
Title: EVP, Chief Medical Officer
Date: 10 Jan 2019

By: /s/ Dhiren D'Silva
Name: Dhiren D'Silva
Title: VP Irish/European Operations
Date: *17/Jan/2019*

# OFFICE LEASE

THIS OFFICE LEASE is made and entered into as of October 5, 2015, by and between GROVE II LLC, a Missouri limited liability company ("Landlord"), and ECLAT PHARMACEUTICALS LLC, a Delaware limited liability company ("Tenant").

## ARTICLE 1 - LEASE OF PREMISES

Section 1.01. Basic Lease Provisions and Definitions.

(a) Leased Premises (shown outlined on **Exhibit A** attached hereto): Suite 200 of the building located at 16640 Chesterfield Grove Road, Chesterfield, Missouri 63005 (the "Building").

(b) Rentable Area: approximately 12,000 rentable square feet. The Rentable Area includes the square footage within the Leased Premises plus a pro rata portion of the square footage of the common areas within the Building, as reasonably determined by Landlord.

(c) Tenant's Proportionate Share: 35.39%.

(d) Lease Term: Five (5) years.

(e) Target Commencement Date: November 2, 2015

(f) Minimum Annual Rent & Monthly Rental Installment:

| Period | Minimum Annual Rent/RSF | Monthly Rental Installment |
|---|---|---|
| Year 1 | $23.50/RSF | $23,500.00 |
| Year 2 | $24.00/RSF | $24,000.00 |
| Year 3 | $24.50/RSF | $24,500.00 |
| Year 4 | $25.00/RSF | $25,000.00 |
| Year 5 | $25.50/RSF | $25,500.00 |

(g) Base Year (for Operating Expenses): Calendar Year 2016.

(h) Security Deposit: $47,000.00.

(i) Permitted Use: General office purposes.

(j) Broker(s): Steve Rees, Jamestown Development, Inc., representing Tenant and none representing Landlord.

(k) Address for notices and payments are as follows:

Landlord: Grove II LLC
540 Maryville Centre Drive, Suite 340
St. Louis, MO 63141

Tenant: (prior to occupancy) Eclat Pharmaceuticals LLC
702 Spirit 40 Park Dr #108
Chesterfield, Missouri 63005

| | | |
|---|---|---|
| | Tenant:<br>(following occupancy) | Eclat Pharmaceuticals LLC<br>16640 Chesterfield Grove Road, Suite 200<br>Chesterfield, Missouri 63005 |
| (l) | Guarantor: | Flamel Technologies SA<br>16640 Chesterfield Grove Road, Suite 200<br>Chesterfield, Missouri 63005 |

**EXHIBITS**
Exhibit A - Leased Premises
Exhibit B - Tenant Improvements
Exhibit C - Letter of Understanding
Exhibit D - Rules and Regulations

Section 1.02. Lease of Premises. Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the Leased Premises, under the terms and conditions herein, together with a non-exclusive right, in common with others, to use the following (collectively, the "Common Areas"): the areas of the Building and the underlying land and improvements thereto that are designed for use in common by all tenants of the Building and their respective employees, agents, customers, invitees and others.

## ARTICLE 2 - TERM AND POSSESSION

Section 2.01. Term. The Lease Term shall commence as of the date (the "Commencement Date") that Substantial Completion (as defined in **Exhibit B** hereto) of the Tenant Improvements (as defined in Section 2.02 below) occurs.

Section 2.02. Construction of Tenant Improvements. Landlord, at Landlord's cost, shall construct and install all leasehold improvements to the Leased Premises (collectively, the "Tenant Improvements") in accordance with **Exhibit B** attached hereto and made a part hereof.

Section 2.03. Surrender of the Premises. Upon the expiration or earlier termination of this Lease, Tenant shall, at its sole cost and expense, immediately (a) surrender the Leased Premises to Landlord in broom-clean condition and in good order, condition and repair, (b) remove from the Leased Premises (i) Tenant's Property (as defined in Section 8.01 below), and (ii) any alterations required to be removed pursuant to Section 7.03 below, and (c) repair any damage caused by any such removal and restore the Leased Premises to the condition existing upon the Commencement Date, reasonable wear and tear excepted. All of Tenant's Property that is not removed within ten (10) days following Landlord's written demand therefor shall be conclusively deemed to have been abandoned and Landlord shall be entitled to dispose of such property at Tenant's cost without incurring any liability to Tenant. This Section 2.03 shall survive the expiration or any earlier termination of this Lease.

Section 2.04. Holding Over. If Tenant retains possession of the Leased Premises after the expiration or earlier termination of this Lease, Tenant shall be a tenant at sufferance at two hundred percent (200%) of the Monthly Rental Installment and Annual Rental Adjustment (as hereinafter defined) for the Leased Premises in effect upon the date of such expiration or earlier termination, and otherwise upon the terms, covenants and conditions herein specified, so far as applicable. Acceptance by Landlord of rent after such expiration or earlier termination shall not result in a renewal of this Lease, nor shall such acceptance create a month-to-month tenancy. In the event a month-to-month tenancy is created by operation of law, either party shall have the right to terminate such month-to-month tenancy upon thirty (30) days' prior written notice to the other, whether or not said notice is given on the rent paying date.

This Section 2.04 shall in no way constitute a consent by Landlord to any holding over by Tenant upon the expiration or earlier termination of this Lease, nor limit Landlord's remedies in such event.

## ARTICLE 3 - RENT

Section 3.01. Base Rent. Tenant shall pay to Landlord the Minimum Annual Rent in the Monthly Rental Installments in advance, without demand, deduction or offset, on the Commencement Date and on or before the first day of each and every calendar month thereafter during the Lease Term. The Monthly Rental Installments for partial calendar months shall be prorated.

Section 3.02. Annual Rental Adjustment Definitions.

(a) "Annual Rental Adjustment" shall mean the amount of Tenant's Proportionate Share of Operating Expenses for a particular calendar year.

(b) "Operating Expenses" shall mean the amount of all of Landlord's costs and expenses paid or incurred in operating, repairing, replacing and maintaining the Building and the Common Areas in good condition and repair for a particular calendar year (including all additional costs and expenses that Landlord reasonably determines that it would have paid or incurred during such year if the Building had been fully occupied), including by way of illustration and not limitation, the following: all property taxes (real and personal), ad valorem taxes, and non-ad valorem taxes; all assessment (including levy district assessments) related to the Building and underlying property; insurance premiums and deductibles; water, sewer, electrical, gas and other utility charges other than the separately billed electrical and other charges paid by Tenant or other tenants in the Building; capital improvements to the extent necessary to comply with applicable law or which reduce any component cost of the Operating Expenses; service and other charges incurred in the repair, replacement, operation and maintenance of the elevators and the heating, ventilation and air-conditioning system; costs associated with providing fitness and/or conference facilities, if any; cleaning and other janitorial services; tools and supplies; repair costs; landscape maintenance costs; access patrols; license, permit and inspection fees; management fees; administrative fees (not to exceed 10% of the Operating Expense excluding such fee); supplies, costs, wages and related employee benefits payable for the management, maintenance and operation of the Building; maintenance, repair and replacement of the driveways, parking and sidewalk areas (including snow and ice removal), landscaped areas, and lighting; maintenance and repair costs, dues, fees and assessments incurred under any covenants, trust indentures or charged by any owners association; and expenses incurred by Landlord related to disputes of any of the foregoing. The cost of any Operating Expenses that are capital in nature shall be amortized over the useful life of the improvement (as reasonably determined by Landlord), and only the amortized portion shall be included in Operating Expenses.

(c) "Tenant's Proportionate Share of Operating Expenses" shall mean an amount equal to the product of Tenant's Proportionate Share multiplied by the difference of the Operating Expenses for the applicable calendar year minus the Operating Expenses for the Base Year; provided that such amount shall not be less than zero. All Operating Expenses shall be calculated by Landlord in accordance with generally accepted accounting principles, consistently applied.

Section 3.03. Payment of Additional Rent.

(a) Any amount required to be paid by Tenant hereunder (in addition to Minimum Annual Rent) and any charges or expenses incurred by Landlord on behalf of Tenant under the terms of this Lease, except for the Tenant Improvements set forth in Section 2.02, shall be considered "Additional Rent" payable in the same manner and upon the same terms and conditions as the Minimum Annual Rent reserved hereunder, except as set forth herein to the contrary. Any failure on the part of Tenant to pay

such Additional Rent when and as the same shall become due shall entitle Landlord to the remedies available to it for non-payment of Minimum Annual Rent.

(b) In addition to the Minimum Annual Rent specified in this Lease, commencing on January 1, 2017, Tenant shall pay to Landlord as Additional Rent for the Leased Premises, in each calendar year or partial calendar year thereafter during the Lease Term, an amount equal to the Annual Rental Adjustment for such calendar year. Landlord shall estimate the Annual Rental Adjustment annually, and written notice thereof shall be given to Tenant prior to the beginning of each calendar year. Tenant shall pay to Landlord each month, at the same time the Monthly Rental Installment is due, an amount equal to one-twelfth (1/12) of the estimated Annual Rental Adjustment. If Operating Expenses increase during a calendar year, Landlord may increase the estimated Annual Rental Adjustment during such year by giving Tenant written notice to that effect, and thereafter Tenant shall pay to Landlord, in each of the remaining months of such year, an amount equal to the amount of such increase in the estimated Annual Rental Adjustment divided by the number of months remaining in such year. Within a reasonable time after the end of each calendar year, Landlord shall prepare and deliver to Tenant a statement showing the actual Annual Rental Adjustment. Within thirty (30) days after receipt of the aforementioned statement, Tenant shall pay to Landlord, or Landlord shall credit against the next rent payment or payments due from Tenant, as the case may be, the difference between the actual Annual Rental Adjustment for the preceding calendar year and the estimated amount paid by Tenant during such year. This Section 3.03 shall survive the expiration or any earlier termination of this Lease.

Section 3.04. Late Charges. Tenant acknowledges that Landlord will incur certain additional unanticipated administrative and legal costs and expenses if Tenant fails to pay timely any payment required hereunder. Therefore, in addition to the other remedies available to Landlord hereunder, if any payment required to be paid by Tenant to Landlord hereunder shall become overdue, such unpaid amount shall bear interest from the due date thereof to the date of payment at the prime rate of interest, as reported in the Wall Street Journal (the "Prime Rate") plus six percent (6%) per annum.

## ARTICLE 4 - SECURITY DEPOSIT

Upon execution and delivery of this Lease by Tenant, Tenant shall deposit the Security Deposit with Landlord as security for the performance by Tenant of all of Tenant's obligations contained in this Lease. In the event of a Default by Tenant, Landlord may apply all or any part of the Security Deposit to cure all or any part of such Default; provided, however, that any such application by Landlord shall not be or be deemed to be an election of remedies by Landlord or considered or deemed to be liquidated damages. Tenant agrees promptly, upon demand, to deposit such additional sum with Landlord as may be required to maintain the full amount of the Security Deposit. All sums held by Landlord pursuant to this Article 4 shall be without interest and may be commingled by Landlord. At the end of the Lease Term, provided that there is then no uncured default or any repairs required to be made by Tenant pursuant to Section 2.03 above or Section 7.03 below, Landlord shall return the Security Deposit to Tenant within thirty (30) days following the end of the Lease Term. If any amounts are deducted from the Security Deposit due to repairs performed by Landlord, an accounting of such repairs and copies of any related invoices shall be provided to Tenant within thirty (30) days of the termination of this Lease.

## ARTICLE 5 - OCCUPANCY AND USE

Section 5.01. Use. Tenant shall use the Leased Premises for the Permitted Use and for no other purpose without the prior written consent of Landlord.

Section 5.02. Covenants of Tenant Regarding Use.

(a) Tenant shall (i) use and maintain the Leased Premises and conduct its business thereon in a safe, careful, reputable and lawful manner, (ii) comply with all covenants that encumber the Building and all laws, rules, regulations, orders, ordinances, directions and requirements of any governmental authority or agency, now in force or which may hereafter be in force, including, without limitation, those which shall impose upon Landlord or Tenant any duty with respect to or triggered by a change in the use or occupation of, or any improvement or alteration to, the Leased Premises, and (iii) comply with and obey all reasonable directions, rules and regulations of Landlord, including the Building Rules and Regulations attached hereto as **Exhibit D** and made a part hereof, as may be modified from time to time by Landlord on reasonable notice to Tenant.

(b) Tenant shall not do or permit anything to be done in or about the Leased Premises that will in any way cause a nuisance, obstruct or interfere with the rights of other tenants or occupants of the Building or injure or annoy them. Landlord shall not be responsible to Tenant for the non-performance by any other tenant or occupant of the Building of any of Landlord's directions, rules and regulations, but agrees that any enforcement thereof shall be done uniformly. Tenant shall not use the Leased Premises, nor allow the Leased Premises to be used, for any purpose or in any manner that would (i) invalidate any policy of insurance now or hereafter carried by Landlord on the Building, or (ii) increase the rate of premiums payable on any such insurance policy unless Tenant reimburses Landlord for any increase in premium charged.

Section 5.03. Parking. Tenant may utilize up to a maximum of 36 parking spaces in the parking lot adjacent to the Building at no additional cost to Tenant. Only one (1) vehicle shall be parked in each space at any one time.

Section 5.04. Landlord's Rights Regarding Use. Without limiting any of Landlord's rights specified elsewhere in this Lease (a) Landlord shall have the right at any time, without notice to Tenant, to control, change or otherwise alter the Common Areas in such manner as it deems necessary or proper, so long as Tenant at all times has reasonable rights of access to the Demised Premises, and (b) Landlord, its agents, employees and contractors and any mortgagee of the Building shall have the right to enter any part of the Leased Premises at reasonable times upon reasonable notice (except in the event of an emergency where no notice shall be required) for the purposes of examining or inspecting the same (including, without limitation, testing to confirm Tenant's compliance with this Lease), showing the same to prospective purchasers, mortgagees or tenants (but, with respect to prospective tenants, only during the last year of the Lease Term), and making such repairs, alterations or improvements to the Leased Premises or the Building as Landlord may deem necessary or desirable, provided, however, that any such repairs, alterations or improvements shall be performed in a manner calculated to minimize, to the extent practical, the impact on Tenant's business operations. Landlord shall incur no liability to Tenant for such entry, nor shall such entry constitute an eviction of Tenant or a termination of this Lease, or entitle Tenant to any abatement of rent therefor.

## ARTICLE 6 - UTILITIES AND OTHER BUILDING SERVICES

Section 6.01. Services to be Provided. Provided Tenant is not in default, Landlord shall furnish to Tenant, except as noted below, the following utilities and other services to the extent reasonably necessary for Tenant's use of the Leased Premises for the Permitted Use, or as may be required by law or directed by governmental authority:

(a) Electricity, heating, ventilation and air-conditioning between the hours of 7:00 a.m. and 6:00 p.m. Monday through Friday and 7:00 a.m. to 1:00 p.m. on Saturday of each week except on legal holidays;

(b) Elevator service;

(c) Water in the Common Areas for lavatory and drinking purposes;

(d) Cleaning and janitorial service in the Leased Premises and Common Areas on Monday through Friday of each week except legal holidays; provided, however, Tenant shall be responsible for carpet cleaning other than routine vacuuming; and

(e) Maintenance of the Common Areas.

Section 6.02. Additional Services.

(a) If Tenant requests utilities or building services in addition to those identified above, or if (i) Tenant uses any of the above utilities or services in frequency, scope, quality or quantity substantially greater than that which Landlord determines is used by other commercial office tenants in the Building (measured proportionately based on space), and (ii) Landlord provides written notice thereof to Tenant, then Landlord shall use reasonable efforts to attempt to furnish Tenant with such additional utilities or services. In the event Landlord is able to and does furnish such additional utilities or services, the costs thereof (which shall be deemed to mean the cost that Tenant would have incurred had Tenant contracted directly with the utility company or service provider) shall be borne by Tenant, who shall reimburse Landlord monthly for the same as Additional Rent. Landlord shall also have the right to submeter or separately meter the Leased Premises at Tenant's sole cost, and Tenant shall pay such utilities based on the submeter or separate meter; provided, however, no such additional submeter or separate meter shall be installed if the costs of installation thereof exceeds $1,000.00 unless the Tenant has provided its prior written consent to such installation.

(b) If any lights, density of staff, machines or equipment used by Tenant in the Leased Premises materially affect the temperature otherwise maintained by the Building's air-conditioning system or generate substantially more heat in the Leased Premises than that which would normally be generated by commercial office tenants in the Building using comparable sized space, then Landlord shall have the right to install any machinery or equipment that Landlord considers reasonably necessary in order to restore the temperature balance between the Leased Premises and the rest of the Building, including, without limitation, equipment that modifies the Building's air-conditioning system. All costs expended by Landlord to install any such machinery and equipment and any additional costs of operation and maintenance in connection therewith shall be borne by Tenant, who shall reimburse Landlord for the same as provided in this Section 6.02. Prior to installing any such machinery or equipment, Landlord must provide Tenant with written notice of its intent to install such equipment, and a period not less than thirty (30) days in which Tenant may attempt to cure the deficient temperature balance.

(c) If Tenant uses the HVAC outside of those hours listed in Section 6.01, Landlord shall bill Tenant monthly for "After Hours" use of HVAC at the rate of $100.00 per hour of usage.

Section 6.03. Interruption of Services. No interruption or malfunction of any of the services to be furnished by Landlord hereunder shall constitute an eviction or disturbance of Tenant's use and possession of Leased Premises, or a breech by Landlord of any of its obligations hereunder, or render Landlord liable for damages or entitle Tenant to be relieved of any of its obligations hereunder (including obligation to pay Rent) or grant Tenant any right of set-off or recoupment. In the event of any such interruption or malfunction of such services, however, Landlord agrees to use reasonable diligence to restore such service.

## ARTICLE 7 - REPAIRS, MAINTENANCE AND ALTERATIONS

Section 7.01. Repair and Maintenance of Building. Landlord shall make all necessary repairs and replacements to the roof, exterior walls, exterior doors, windows, corridors and other Common Areas, and Landlord shall keep the Building in a clean and neat condition and use reasonable efforts to keep all equipment used in common with other tenants in good condition and repair. The cost of such repairs, replacements and maintenance shall be included in Operating Expenses to the extent provided in Section 3.02; provided however, to the extent any such repairs, replacements or maintenance are required because of the negligence, misuse or default of Tenant, its employees, agents, contractors, customers or invitees, Landlord shall make such repairs at Tenant's sole expense.

Section 7.02. Repair and Maintenance of Leased Premises. Landlord shall keep and maintain the Leased Premises in good condition and repair. The cost of such repairs and maintenance to the Leased Premises shall be included in Operating Expenses; provided however, to the extent any repairs or maintenance are required in the Leased Premises because of the negligence, misuse or default of Tenant, its employees, agents, contractors, customers or invitees or are made at the specific request of Tenant, Landlord shall make such repairs or perform such maintenance at Tenant's sole expense. Notwithstanding the above, Tenant shall be solely responsible for any repair or replacement with respect to Tenant's Property (as defined in Section 8.01 below) located in the Leased Premises. Nothing in this Article 7 shall obligate Landlord or Tenant to repair normal wear and tear to any paint, wall covering or carpet in the Leased Premises.

Section 7.03. Alterations. Tenant shall not permit alterations in or to the Leased Premises unless and until Landlord has approved the plans therefor in writing. As a condition of such approval, Landlord may require Tenant to remove the alterations and restore the Leased Premises upon termination of this Lease; otherwise, all such alterations shall at Landlord's option become a part of the realty and the property of Landlord, and shall not be removed by Tenant. Tenant shall ensure that all alterations shall be made in accordance with all applicable laws, regulations and building codes, in a good and workmanlike manner and of quality equal to or better than the original construction of the Building. No person shall be entitled to any lien derived through or under Tenant for any labor or material furnished to the Leased Premises, and nothing in this Lease shall be construed to constitute Landlord's consent to the creation of any lien. If any lien is filed against the Leased Premises for work claimed to have been done for or material claimed to have been furnished to Tenant, Tenant shall cause such lien to be discharged of record within thirty (30) days after filing; provided, however, that Tenant may in good faith contest the same by appropriate legal proceedings so long as a bond or other security covering the amount of the lien is furnished to Landlord. Tenant shall indemnify Landlord from all costs, losses, expenses and reasonable attorneys' fees in connection with any construction or alteration and any related lien; provided, however, that the foregoing indemnity shall not apply to with respect to the construction of the Tenant Improvements.

## ARTICLE 8 - INDEMNITY AND INSURANCE

Section 8.01. Release. All of Tenant's trade fixtures, equipment, inventory and all other personal property in or about the Leased Premises, the Building or the Common Areas, which is deemed to include the trade fixtures, equipment, inventory and personal property of others located in or about the Leased Premises or Common Areas at the invitation or direction of Tenant (all of which property shall be referred to herein, collectively, as "Tenant's Property"), shall be and remain at Tenant's sole risk. Landlord shall not be liable to Tenant or to any other person for, and Tenant hereby releases Landlord from (a) any and all liability for theft or damage to Tenant's Property (except to the extent of the contributory negligence or willful misconduct of Landlord, its agents, employees or contractors), and (b) any and all liability for any injury to Tenant or its employees, agents, contractors, guests and invitees in or about the Leased Premises, the Building or the Common Areas, except to the extent caused directly by the negligence or willful misconduct of Landlord, its agents, employees or contractors. Nothing contained in this Section 8.01 shall limit (or be deemed to limit) the waivers contained in Section 8.06 below. In the event of any conflict between the provisions of Section 8.06 below and this Section 8.01, the provisions of Section 8.06 shall prevail. This Section 8.01 shall survive the expiration or earlier termination of this Lease.

Section 8.02. Indemnification by Tenant. Tenant shall protect, defend, indemnify and hold Landlord, its agents, employees and contractors harmless from and against any and all claims, damages, demands, penalties, costs, liabilities, losses, and expenses (including reasonable attorneys' fees and expenses at the trial and appellate levels) to the extent (a) arising out of or relating to any act, omission, negligence, or willful misconduct of Tenant or Tenant's agents, employees, contractors, customers or invitees in or about the Leased Premises, the Building or the Common Areas, (b) arising out of or relating to any of Tenant's Property, or (c) arising out of any other act or occurrence within the Leased Premises, in all such cases except to the extent caused directly by the negligence or willful misconduct of Landlord, its agents, employees or contractors. This Section 8.02 shall survive the expiration or earlier termination of this Lease.

Section 8.03. Indemnification by Landlord. Landlord shall protect, defend, indemnify and hold Tenant, its agents, employees and contractors harmless from and against any and all claims, damages, demands, penalties, costs, liabilities, losses and expenses (including reasonable attorneys' fees and expenses at the trial and appellate levels) to the extent arising out of or relating to any act, omission, negligence or willful misconduct of Landlord or Landlord's agents, employees or contractors, customers or invitees in or about the Leased Premises, the Building or the Common Areas. This Section 8.03 shall survive the expiration or earlier termination of this Lease.

Section 8.04. Tenant's Insurance. During the Lease Term (and any period of early entry or occupancy or holding over by Tenant, if applicable), Tenant shall maintain the following types of insurance, in the amounts specified below:

(a) Liability Insurance. Commercial General Liability Insurance (which insurance shall not exclude blanket contractual liability, broad form property damage, personal injury, or fire damage coverage) covering the Leased Premises and Tenant's use thereof against claims for bodily injury or death and property damage, which insurance shall provide coverage on an occurrence basis with a per occurrence limit of not less than $1,000,000, for each policy year, which limits may be satisfied by any combination of primary and excess or umbrella per occurrence policies.

(b) Property Insurance. Special Form Insurance (which insurance shall not exclude flood or earthquake) in the amount of the full replacement cost of Tenant's Property and betterments (including alterations or additions performed by Tenant pursuant hereto, but excluding those improvements, if any,

made pursuant to Section 2.02 above), which insurance shall include an agreed amount endorsement waiving coinsurance limitations.

(c) Worker's Compensation Insurance. Worker's Compensation insurance in amounts required by applicable law.

All insurance required by Tenant hereunder shall (i) be issued by one or more insurance companies reasonably acceptable to Landlord, licensed to do business in the State in which the Leased Premises is located and having an AM Best's rating of A IX or better, and (ii) provide that said insurance shall not be materially changed, canceled or permitted to lapse on less than thirty (30) days' prior written notice to Landlord. In addition, Tenant's insurance shall protect Tenant and Landlord as their interests may appear, naming Landlord, Landlord's managing agent, and any mortgagee requested by Landlord, as additional insureds under its commercial general liability policies. On or before the Commencement Date (or the date of any earlier entry or occupancy by Tenant), and thereafter, within thirty (30) days prior to the expiration of each such policy, Tenant shall furnish Landlord with certificates of insurance in the form of ACORD 25 or ACORD 25-S (or other evidence of insurance reasonably acceptable to Landlord), evidencing all required coverages, together with a copy of the endorsement(s) to Tenant's commercial general liability policy evidencing primary and non-contributory coverage afforded to the appropriate additional insureds. Upon Tenant's receipt of a request from Landlord, Tenant shall provide Landlord with copies of all insurance policies, including all endorsements, evidencing the coverages required hereunder. If Tenant fails to carry such insurance and furnish Landlord with such certificates of insurance or copies of insurance policies (if applicable), after not less than ten (10) days prior written notice to Tenant, Landlord may obtain such insurance on Tenant's behalf and Tenant shall reimburse Landlord upon demand for the cost thereof as Additional Rent. Landlord reserves the right from time to time to require Tenant to obtain higher minimum amounts or different types of insurance if it becomes customary for other landlords of similar buildings in the area to require similar sized tenants in similar industries to carry insurance of such higher minimum amounts or of such different types.

## ARTICLE 9 - CASUALTY

In the event of total or partial destruction of the Building or the Leased Premises by fire or other casualty, Landlord agrees promptly to restore and repair same; provided, however, Landlord's obligation hereunder with respect to the Leased Premises shall be limited to the reconstruction of such of the leasehold improvements as were originally required to be made by Landlord pursuant to Section 2.02 above, if any. Rent shall proportionately abate during the time that the Leased Premises or part thereof are unusable because of any such damage. Notwithstanding the foregoing, if the Leased Premises are (a) so destroyed that they cannot be repaired or rebuilt within six (6) months from the casualty date; or (b) destroyed by a casualty that is not covered by insurance or, if covered, such insurance proceeds are not released by any mortgagee entitled thereto or are insufficient to rebuild the Building and the Leased Premises; then, Landlord or Tenant may, upon thirty (30) days' written notice to Tenant, terminate this Lease with respect to matters thereafter accruing. Tenant waives any right under applicable laws inconsistent with the terms of this paragraph.

## ARTICLE 10 - EMINENT DOMAIN

If all or any substantial part of the Building or Common Areas shall be acquired by the exercise of eminent domain, Landlord may terminate this Lease by giving written notice to Tenant on or before the date possession thereof is so taken. If all or any part of the Leased Premises shall be acquired by the exercise of eminent domain so that the Leased Premises shall become impractical for Tenant to use for the Permitted Use, Tenant may terminate this Lease by giving written notice to Landlord as of the date

possession thereof is so taken. All damages awarded shall belong to Landlord; provided, however, that Tenant may claim dislocation damages if such amount is not subtracted from Landlord's award.

## ARTICLE 11 - ASSIGNMENT AND SUBLEASE

Tenant shall not assign this Lease or sublet the Leased Premises in whole or in part without Landlord's prior written consent, which consent shall not be unreasonably withheld. In the event of any permitted assignment or subletting, Tenant shall remain primarily liable hereunder, and any extension, expansion, rights of first offer, rights of first refusal or other options granted to Tenant under this Lease shall be rendered void and of no further force or effect. The acceptance of rent from any other person shall not be deemed to be a waiver of any of the provisions of this Lease or to be consent to the assignment of this Lease or the subletting of the Leased Premises. Any assignment or sublease consented to by Landlord shall not relieve Tenant (or its assignee) from obtaining Landlord's consent to any subsequent assignment or sublease.

## ARTICLE 12 - TRANSFERS BY LANDLORD

Section 12.01. Sale of the Building. Landlord shall have the right to sell the Building at any time during the Lease Term, subject only to the rights of Tenant hereunder; and such sale shall operate to release Landlord from liability hereunder after the date of such conveyance; provided that the purchaser shall have assumed and agreed to carry out any and all of the covenants and obligations of the Landlord under this Lease.

Section 12.02. Estoppel Certificate. Within ten (10) days following receipt of a written request from Landlord, Tenant shall execute and deliver to Landlord, without cost to Landlord, an estoppel certificate in such form as Landlord may reasonably request certifying (a) that this Lease is in full force and effect and unmodified or stating the nature of any modification, (b) the date to which rent has been paid, (c) that there are not, to Tenant's knowledge, any uncured defaults or specifying such defaults if any are claimed, and (d) any other matters or state of facts reasonably required respecting this Lease. Such estoppel may be relied upon by Landlord and by any purchaser or mortgagee of the Building.

Section 12.03. Subordination. Landlord shall have the right to subordinate this Lease to any mortgage, deed to secure debt, deed of trust or other instrument in the nature thereof, and any amendments or modifications thereto (collectively, a "Mortgage") presently existing or hereafter encumbering the Building by so declaring in such Mortgage. Within ten (10) days following receipt of a written request from Landlord or mortgagee, Tenant shall execute and deliver to Landlord or mortgagee, without cost, any instrument that Landlord deems reasonably necessary or desirable to confirm the subordination of this Lease. Notwithstanding the foregoing, if the holder of the Mortgage shall take title to the Leased Premises through foreclosure or deed in lieu of foreclosure, Tenant shall be allowed to continue in possession of the Leased Premises as provided for in this Lease so long as Tenant is not in Default.

## ARTICLE 13 - DEFAULT AND REMEDY

Section 13.01. Default. The occurrence of any of the following shall be a "Default":

(a) Tenant fails to pay any Monthly Rental Installments or Additional Rent within ten (10) days after the same is due;

(b) Tenant fails to perform or observe any other term, condition, covenant or obligation required under this Lease for a period of thirty (30) days after written notice thereof from Landlord;

provided, however, that if the nature of Tenant's default is such that more than thirty (30) days are reasonably required to cure, then such default shall be deemed to have been cured if Tenant commences such performance within said thirty (30) day period and thereafter diligently completes the required action within a reasonable time;

(c) Tenant shall vacate or abandon the Leased Premises, or fail to occupy the Leased Premises or any substantial portion thereof for a period of not less than thirty consecutive (30) days;

(d) Tenant shall assign or sublet all or a portion of the Leased Premises in contravention of the provisions of Article 11 of this Lease; or

(e) All or substantially all of Tenant's assets in the Leased Premises or Tenant's interest in this Lease are attached or levied under execution (and Tenant does not discharge the same within sixty (60) days thereafter); a petition in bankruptcy, insolvency or for reorganization or arrangement is filed by or against Tenant (and Tenant fails to secure a stay or discharge thereof within sixty (60) days thereafter); Tenant is insolvent and unable to pay its debts as they become due; Tenant makes a general assignment for the benefit of creditors; Tenant files a petition to declare bankruptcy or seeking a plan of reorganization; the appointment of a receiver or trustee in bankruptcy for Tenant or its assets if such receivership has not been vacated or set aside within sixty (60) days thereafter; or, dissolution or other termination of Tenant's corporate charter if Tenant is a corporation.

Section 13.02. Remedies. Upon the occurrence of any Default, Landlord shall have the following rights and remedies, in addition to those stated elsewhere in this Lease and those allowed by law or in equity, any one or more of which may be exercised without further notice to Tenant:

(a) Landlord may re-enter the Leased Premises and cure any Default of Tenant, and Tenant shall reimburse Landlord as Additional Rent for any costs and expenses which Landlord thereby incurs; and Landlord shall not be liable to Tenant for any loss or damage which Tenant may sustain by reason of Landlord's action.

(b) Without terminating this Lease, Landlord may terminate Tenant's right to possession of the Leased Premises, and thereafter, neither Tenant nor any person claiming under or through Tenant shall be entitled to possession of the Leased Premises, and Tenant shall immediately surrender the Leased Premises to Landlord, and Landlord may re-enter the Leased Premises and dispossess Tenant and any other occupants of the Leased Premises by any lawful means and may remove their effects, without prejudice to any other remedy that Landlord may have. Upon termination of possession, Landlord may (i) re-let all or any part thereof for a term different from that which would otherwise have constituted the balance of the Lease Term and for rent and on terms and conditions different from those contained herein, whereupon Tenant shall be immediately obligated to pay to Landlord an amount equal to the present value (discounted at the Prime Rate) of the difference between the rent provided for herein and that provided for in any lease covering a subsequent re-letting of the Leased Premises, for the period which would otherwise have constituted the balance of the Lease Term (the "Accelerated Rent Difference"), or (ii) without re-letting, declare the present value (discounted at the Prime Rate) of all rent which would have been due under this Lease for the balance of the Lease Term to be immediately due and payable as liquidated damages (the "Accelerated Rent"). Upon termination of possession, Tenant shall be obligated to pay to Landlord (A) the Accelerated Rent Difference or the Accelerated Rent, whichever is applicable, (B) all loss or damage that Landlord may sustain by reason of Tenant's Default ("Default Damages"), which shall include, without limitation, expenses of preparing the Leased Premises for re-letting, demolition, repairs, tenant finish improvements, brokers' commissions and attorneys' fees, and (C) all unpaid Minimum Annual Rent and Additional Rent that accrued prior to the date of termination of possession, plus any interest and late fees due hereunder (the "Prior Obligations").

(c) Landlord may terminate this Lease and declare the Accelerated Rent to be immediately due and payable, whereupon Tenant shall be obligated to pay to Landlord (i) the Accelerated Rent, (ii) all of Landlord's Default Damages, and (iii) all Prior Obligations. It is expressly agreed and understood that all of Tenant's liabilities and obligations set forth in this subsection (c) shall survive termination.

(d) Landlord and Tenant acknowledge and agree that the payment of the Accelerated Rent Difference or the Accelerated Rent as set above shall not be deemed a penalty, but merely shall constitute payment of liquidated damages, it being understood that actual damages to Landlord are extremely difficult, if not impossible, to ascertain. Neither the filing of a dispossessory proceeding nor an eviction of personalty in the Leased Premises shall be deemed to terminate this Lease.

(e) Landlord may sue for injunctive relief or to recover damages for any loss resulting from the Default.

Section 13.03. Landlord's Default and Tenant's Remedies. Landlord shall be in default if it fails to perform any term, condition, covenant or obligation required under this Lease for a period of thirty (30) days after written notice thereof from Tenant to Landlord; provided, however, that if the term, condition, covenant or obligation to be performed by Landlord is such that it cannot reasonably be performed within thirty (30) days, such default shall be deemed to have been cured if Landlord commences such performance within said thirty-day period and thereafter diligently undertakes to complete the same. Upon the occurrence of any such default, Tenant may sue for injunctive relief or to recover damages for any loss directly resulting from the breach, but Tenant shall not be entitled to terminate this Lease or withhold, offset or abate any sums due hereunder.

Section 13.04. Nonwaiver of Defaults. Neither party's failure or delay in exercising any of its rights or remedies or other provisions of this Lease shall constitute a waiver thereof or affect its right thereafter to exercise or enforce such right or remedy or other provision. No waiver of any default shall be deemed to be a waiver of any other default. Landlord's receipt of less than the full rent due shall not be construed to be other than a payment on account of rent then due, nor shall any statement on Tenant's check or any letter accompanying Tenant's check be deemed an accord and satisfaction. No act or omission by Landlord or its employees or agents during the Lease Term shall be deemed an acceptance of a surrender of the Leased Premises, and no agreement to accept such a surrender shall be valid unless in writing and signed by Landlord.

Section 13.06. Attorneys' Fees. If either party defaults in the performance or observance of any of the terms, conditions, covenants or obligations contained in this Lease and the non-defaulting party obtains a judgment against the defaulting party, then the defaulting party agrees to reimburse the non-defaulting party for reasonable attorneys' fees incurred in connection therewith. In addition, if a monetary Default shall occur and Landlord engages outside counsel to exercise its remedies hereunder, and then Tenant cures such monetary Default, Tenant shall pay to Landlord, on demand, all expenses incurred by Landlord as a result thereof, including reasonable attorneys' fees, court costs and expenses actually incurred.

## ARTICLE 14 - RESERVED

Reserved.

## ARTICLE 15 - TENANT'S RESPONSIBILITY REGARDING ENVIRONMENTAL LAWS AND HAZARDOUS SUBSTANCES

Section 15.01. Environmental Definitions.

(a) "Environmental Laws" shall mean all present or future federal, state and municipal laws, ordinances, rules and regulations applicable to the environmental and ecological condition of the Leased Premises, and the rules and regulations of the Federal Environmental Protection Agency and any other federal, state or municipal agency or governmental board or entity having jurisdiction over the Leased Premises.

(b) "Hazardous Substances" shall mean those substances included within the definitions of "hazardous substances," "hazardous materials," "toxic substances" "solid waste" or "infectious waste" under Environmental Laws and petroleum products.

Section 15.02. Restrictions on Tenant. Tenant shall not cause or permit the use, generation, release, manufacture, refining, production, processing, storage or disposal of any Hazardous Substances on, under or about the Leased Premises, or the transportation to or from the Leased Premises of any Hazardous Substances, except as necessary and appropriate for its Permitted Use in which case the use, storage or disposal of such Hazardous Substances shall be performed in compliance with the Environmental Laws and the highest standards prevailing in the industry.

Section 15.03. Notices, Affidavits, Etc. Tenant shall immediately (a) notify Landlord of (i) any violation by Tenant, its employees, agents, representatives, customers, invitees or contractors of any Environmental Laws on, under or about the Leased Premises, or (ii) the presence or suspected presence of any Hazardous Substances on, under or about the Leased Premises, and (b) deliver to Landlord any notice received by Tenant relating to (a)(i) and (a)(ii) above from any source. Tenant shall execute affidavits, representations and the like within five (5) days of Landlord's request therefor concerning Tenant's best knowledge and belief regarding the presence of any Hazardous Substances on, under or about the Leased Premises.

Section 15.04. Tenant's Indemnification. Tenant shall indemnify Landlord from any and all claims, losses, liabilities, costs, expenses and damages, including attorneys' fees, costs of testing and remediation costs, incurred by Landlord in connection with any breach by Tenant of its obligations under this Article 15. The covenants and obligations under this Article 15 shall survive the expiration or earlier termination of this Lease.

Section 15.05. Existing Conditions. Notwithstanding anything contained in this Article 15 to the contrary, Tenant shall not have any liability to Landlord under this Article 15 resulting from any conditions existing, or events occurring, or any Hazardous Substances existing, generated or released, at, in, on, under or in connection with the Leased Premises prior to the Commencement Date of this Lease (or any earlier occupancy of the Leased Premises by Tenant) except to the extent Tenant materially exacerbates the same. Landlord shall indemnify Tenant, its agents, employees and contractors from any and all claims, losses, liabilities, costs, expenses and damages, including attorneys' fees, costs of testing and remediation costs, incurred by Tenant in connection with any Hazardous Substances existing, generated or released, at, in, on, under or in connection with the Leased Premises prior to the Commencement Date of this Lease.

## ARTICLE 16 - MISCELLANEOUS

Section 16.01. Benefit of Landlord and Tenant. This Lease shall inure to the benefit of and be binding upon Landlord and Tenant and their respective successors and assigns.

Section 16.02. Governing Law. This Lease shall be governed in accordance with the laws of the State of Missouri.

Section 16.03. Force Majeure. Landlord and Tenant (except with respect to the payment of any monetary obligation) shall be excused for the period of any delay in the performance of any obligation hereunder when such delay is occasioned by causes beyond its control, including but not limited to work stoppages, boycotts, slowdowns or strikes; shortages of materials, equipment, labor or energy; unusual weather conditions; or acts or omissions of governmental or political bodies.

Section 16.04. Examination of Lease. Submission of this instrument by Landlord to Tenant for examination or signature does not constitute an offer by Landlord to lease the Leased Premises. This Lease shall become effective, if at all, only upon the execution by and delivery to both Landlord and Tenant. Execution and delivery of this Lease by Tenant to Landlord constitutes an offer to lease the Leased Premises on the terms contained herein. The offer by Tenant will be irrevocable until 6:00 p.m. EST, fifteen (15) days after the date Landlord receives the Lease executed by Tenant.

Section 16.05. Indemnification for Leasing Commissions. The parties hereby represent and warrant that the only real estate brokers involved in the negotiation and execution of this Lease are the Brokers and that no other party is entitled, as a result of the actions of the respective party, to a commission or other fee resulting from the execution of this Lease. Each party shall indemnify the other from any and all liability for the breach of this representation and warranty on its part and shall pay any compensation to any other broker or person who may be entitled thereto. Landlord, at its own cost, shall pay any commissions due Brokers based on this Lease pursuant to separate agreements between Landlord and Brokers.

Section 16.06. Notices. Any notice required or permitted to be given under this Lease or by law shall be deemed to have been given if it is written and delivered in person or by overnight courier or mailed by certified mail, postage prepaid, to the party who is to receive such notice at the address specified in Section 1.01(l). If sent by overnight courier, the notice shall be deemed to have been given one (1) day after sending. If mailed, the notice shall be deemed to have been given on the date that is three (3) business days following mailing. Either party may change its address by giving written notice thereof to the other party.

Section 16.07. Partial Invalidity; Complete Agreement. If any provision of this Lease shall be held to be invalid, void or unenforceable, the remaining provisions shall remain in full force and effect. This Lease represents the entire agreement between Landlord and Tenant covering everything agreed upon or understood in this transaction. There are no oral promises, conditions, representations, understandings, interpretations or terms of any kind as conditions or inducements to the execution hereof or in effect between the parties. No change or addition shall be made to this Lease except by a written agreement executed by Landlord and Tenant.

Section 16.08. Financial Statements. During the Lease Term and any extensions thereof, Tenant shall provide to Landlord on an annual basis, within ninety (90) days following the end of Tenant's fiscal year, a copy of Tenant's most recent financial statements prepared as of the end of Tenant's fiscal year. Such financial statements shall be signed by Tenant or an officer of Tenant, if applicable, who shall attest to the truth and accuracy of the information set forth in such statements. All financial statements

provided by Tenant to Landlord hereunder shall be prepared in conformity with generally accepted accounting principles, consistently applied.

Section 16.09. Representations and Warranties.

(a) Tenant hereby represents and warrants that (i) Tenant is duly organized, validly existing and in good standing (if applicable) in accordance with the laws of the State under which it was organized; (ii) Tenant is authorized to do business in the State where the Building is located; and (iii) the individual(s) executing and delivering this Lease on behalf of Tenant has been properly authorized to do so, and such execution and delivery shall bind Tenant to its terms.

(b) Landlord hereby represents and warrants that (i) Landlord is duly organized, validly existing and in good standing (if applicable) in accordance with the laws of the State under which it was organized; (ii) Landlord is authorized to do business in the State where the Building is located; and (iii) the individual(s) executing and delivering this Lease on behalf of Landlord has been properly authorized to do so, and such execution and delivery shall bind Landlord to its terms.

Section 16.10. Signage. Landlord, at its cost and expense, shall provide Tenant with Building standard signage on the main Building directory. Landlord may install such other signs, advertisements, notices or tenant identification information on the Building directory, tenant access doors or other areas of the Building, as it shall deem necessary or proper. Tenant shall not place any exterior signs on the Leased Premises or interior signs visible from the exterior of the Leased Premises without the prior written consent of Landlord. Notwithstanding any other provision of this Lease to the contrary, Landlord may immediately remove any sign(s) placed by Tenant in violation of this Section.

Section 16.11. Consent. Where the consent of a party is required, such consent will not be unreasonably withheld.

Section 16.12. Time. Time is of the essence of each term and provision of this Lease.

Section 16.13. Patriot Act. Each of Landlord and Tenant, each as to itself, hereby represents its compliance with all applicable anti-money laundering laws, including, without limitation, the USA Patriot Act, and the laws administered by the United States Treasury Department's Office of Foreign Assets Control, including, without limitation, Executive Order 13224 ("Executive Order"). Each of Landlord and Tenant further represents (i) that it is not, and it is not owned or controlled directly or indirectly by any person or entity, on the SDN List published by the United States Treasury Department's Office of Foreign Assets Control and (ii) that it is not a person otherwise identified by government or legal authority as a person with whom a U.S. Person is prohibited from transacting business. As of the date hereof, a list of such designations and the text of the Executive Order are published under the internet website address www.ustreas.gov/offices/enforcement/ofac.

Section 16.14. Option to Extend.

(a) Grant and Exercise of Option. Provided that (i) no Default by Tenant has occurred and is then continuing, (ii) the creditworthiness of Tenant is then reasonably acceptable to Landlord and (iii) Tenant originally named herein or its Permitted Transferee remains in possession of and has been continuously operating in the entire Leased Premises throughout the Lease Term, Tenant shall have one (1) option to extend the Lease Term for one (1) additional period of five (5) years (the "Extension Term"). The Extension Term shall be upon the same terms and conditions contained in the Lease except (x) Tenant shall not have any further option to extend, (y) any improvement allowances or other concessions applicable to the Leased Premises under the Lease shall not apply to the Extension Term, and (z) the

Minimum Annual Rent shall be adjusted as set forth herein ("Rent Adjustment"). Tenant shall exercise such option by delivering to Landlord, no later than nine (9) months prior to the expiration of the current Lease Term, written notice of Tenant's desire to extend the Lease Term. Tenant's failure to properly exercise such option shall be deemed a waiver of such option. If Tenant properly exercises its option to extend, Landlord shall notify Tenant of the Rent Adjustment no later than ninety (90) days prior to the commencement of the Extension Term. Tenant shall be deemed to have accepted the Rent Adjustment if it fails to deliver to Landlord a written objection thereto within ten (10) business days after receipt thereof. If Tenant properly exercises its option to extend, Landlord and Tenant shall execute an amendment to the Lease (or, at Landlord's option, a new lease in the same form as this Lease) reflecting the terms and conditions of the Extension Term within thirty (30) days after Tenant's acceptance (or deemed acceptance) of the Rent Adjustment.

(b) Rent Adjustment. The Minimum Annual Rent for the Extension Term shall be an amount equal to the prevailing market rate for space of comparable size and quality in the Chesterfield, Missouri submarket; provided, however, that in no event shall the Minimum Annual Rent during the Extension Term be less than an amount equal to $24.00 per rentable square foot. The Monthly Rental Installments shall be an amount equal to one-twelfth (1/12) of the Minimum Annual Rent for the Extension Term and shall be paid at the same time and in the same manner as provided in this Lease.

Section 16.15. Furniture. Tenant shall be permitted to use certain furniture currently in the Leased Premises. The specific furniture shall be agreed upon by Landlord and Tenant prior to the Commencement Date and an inventory thereof shall be prepared and signed by Landlord and Tenant. The furniture shall remain the property of Landlord and upon termination of this Lease all such furniture shall remain in the Leased Premises. Reasonable care shall be taken with all furniture and Landlord shall not be responsible for repairs and maintenance of furniture.

***[SIGNATURES CONTAINED ON THE FOLLOWING PAGE]***

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the day and year first above written.

LANDLORD:

GROVE II LLC,
a Missouri limited liability company

By: /s/ John Niemi
Name John Niemi-
Title: Authorized Rep

STATE OF MISSOURI )
) SS:
CITY OF ST. LOUIS )

Before me, a Notary Public in and for said City and State, personally appeared John Niemi, by me known and by me known to be the AUTHORIZED REP. of Grove II LLC, who acknowledged the execution of the foregoing instrument on behalf of said limited liability company as its free act and deed.

WITNESS my hand and Notarial Seal this 7th day of October, 2015.

DANIEL J. PATTERSON
Notary Public - Notary Seal
State of Missouri
Commissioned for St. Louis City
My Commission Expires: March 03, 2018
Commission Number: 14588040

/S/ Daniel J. Paterson
(Printed Signature)

*[SIGNATURES CONTINUED ON THE FOLLOWING PAGE]*

TENANT:

ECLAT PHARMACEUTICALS LLC,
a Delaware limited liability company

By: /s/ Scott Macke
Name: Scott Macke
Title: VP, Supply Chain & Operations

STATE OF MISSOURI )
) SS:
COUNTY OF ST. LOUIS )

Before me, a Notary Public in and for said County and State, personally appeared Scott Macke, by me known to be the VP, Supply Chain & Operations of Eclat Pharmaceuticals LLC, who acknowledged the execution of the foregoing instrument on behalf of said limited liability company as its free act and deed.

WITNESS my hand and Notarial Seal this 6th day of OCTOBER 2015.

/S/ Linda Horodenski
Notary Public

Linda Horodenski (Printed Signature)

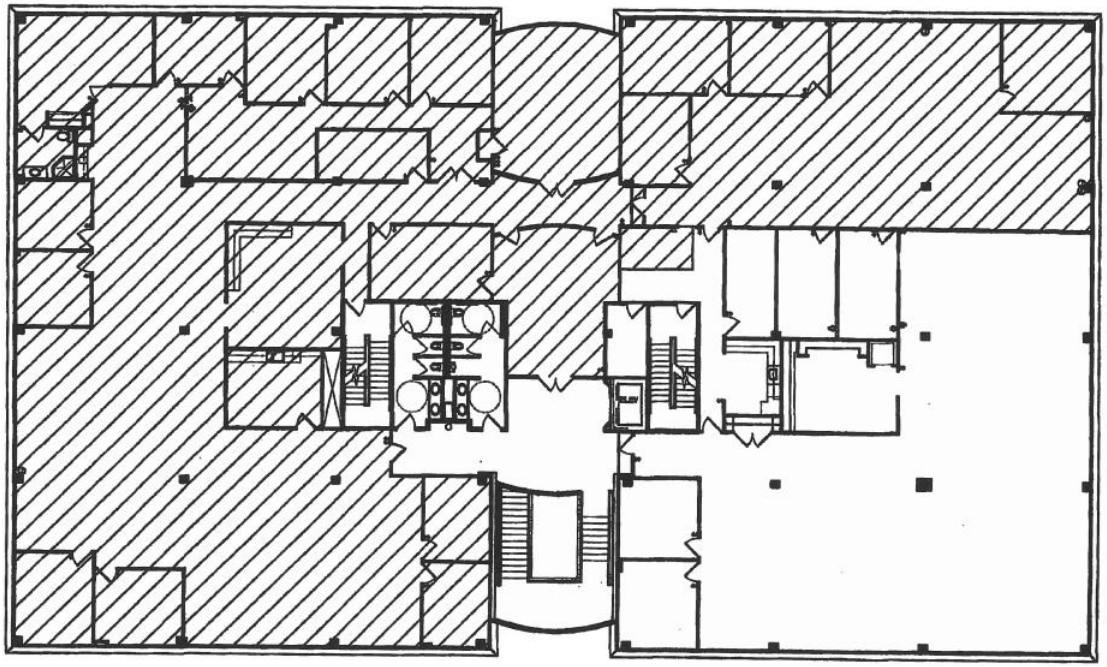
LINDA HORODE
Notary Public, Not
State of Misso
St. Louis Coun
Commission # 15o3o
My Commission Expires June 0

LINDA HORODENSKI
Notary Public, Notary Seal
State of Missouri
St. Louis County
Commission # 15636066
My Commission Expires June 09, 2019

**EXHIBIT A**

**ILLUSTRATION OF LEASED PREMISES**

[DRAWING ATTACHED]



Suite 200
Premises Shown Hatched
12,000 RSF

## 2nd Floor Plan

Not to Scale
1.0885 LOAD FACTOR

# 16640 Chesterfield Grove
## Chesterfield, Missouri

**EXHIBIT B**

**TENANT IMPROVEMENTS**

1. Landlord's Obligations. Tenant has personally inspected the Leased Premises and accepts the same **"AS IS"** without representation or warranty by Landlord of any kind and with the understanding that Landlord shall have no responsibility with respect thereto except to construct and install within the Leased Premises, in a good and workmanlike manner, the Tenant Improvements, in accordance with this **Exhibit B**, and to deliver the Leased Premises to Tenant "broom clean" and in good condition and repair on the date of Substantial Completion. "Substantial Completion" (or any grammatical variation thereof) shall mean completion of construction of the Tenant Improvements, subject only to punch-list items to be identified by Landlord and Tenant in a joint inspection of the Leased Premises prior to Tenant's occupancy

2. Scope of Work. Landlord shall complete the following work prior to the date of Substantial Completion:

- Construct new demising walls where indicated in the attached drawing.
- Install four (4) new offices where indicated in the attached drawing.
- Install/remove doorways where indicated in the attached drawing.
- Replace carpet in Leased Premises, excluding reception area, conference room and kitchen.
- Replace carpet in kitchen with tile.
- Paint existing and new drywall surfaces.

3. Schedule and Early Occupancy. Landlord shall provide Tenant with a proposed schedule for the construction and installation of the Tenant Improvements and shall notify Tenant of any material changes to said schedule. Tenant agrees to coordinate with Landlord regarding the installation of Tenant's phone/data wiring and any other trade related fixtures that will need to be installed in the Leased Premises prior to Substantial Completion. In addition, if and to the extent permitted by applicable laws, rules and ordinances, Landlord will give Tenant access to the Leased Premises prior to the scheduled date for Substantial Completion (as may be modified from time to time) in order to install fixtures, equipment and phone/data wiring and otherwise prepare the Leased Premises for occupancy, which right shall expressly exclude making any structural modifications. During any entry prior to the Commencement Date, Tenant shall: (a) comply with all terms and conditions of this Lease other than the obligation to pay rent, (b) not interfere with Landlord's completion of the Tenant Improvements, (c) cause its personnel and contractors to comply with the terms and conditions of Landlord's rules of conduct (which Landlord agrees to furnish to Tenant upon request), and (d) not begin operation of its business therein. Tenant acknowledges that Tenant shall be responsible for obtaining all applicable permits and inspections relating to any such entry by Tenant.

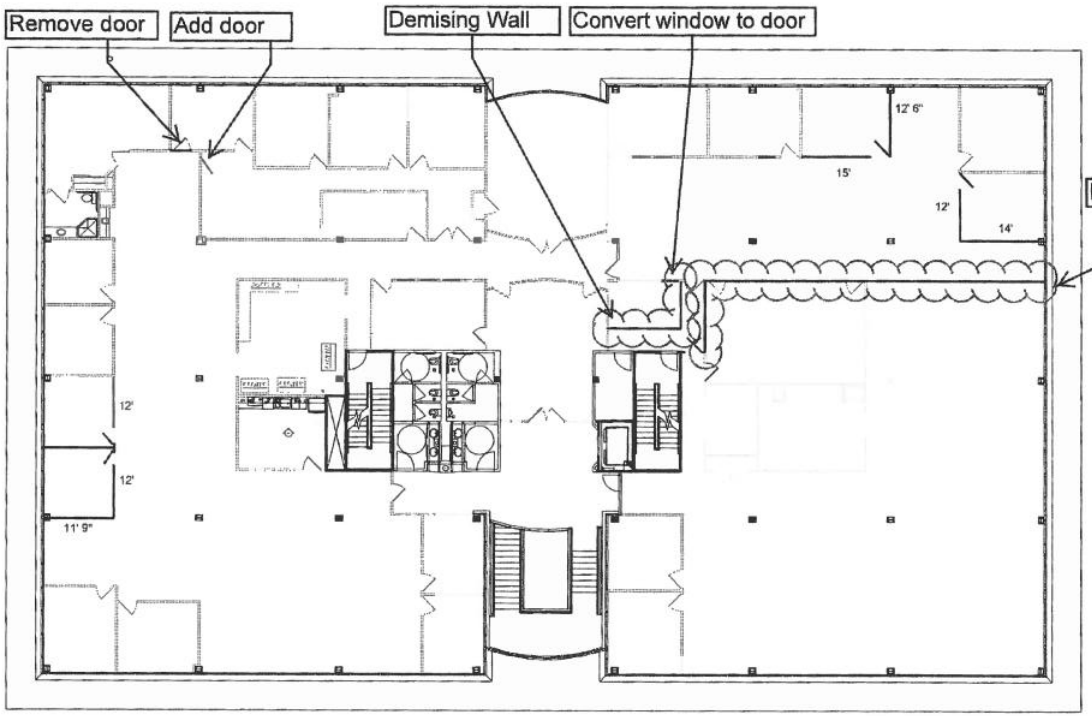
4. Tenant Delay. Notwithstanding anything to the contrary contained in the Lease, if Substantial Completion of the Tenant Improvements is delayed beyond the Target Commencement Date as a result of Tenant Delay (as hereinafter defined), then, for purposes of determining the Commencement Date, Substantial Completion of the Tenant Improvements shall be deemed to have occurred on the date that Substantial Completion of the Tenant Improvements would have occurred but for such Tenant Delay. Without limiting the foregoing, Landlord shall use commercially reasonable speed and diligence to Substantially Complete the Tenant Improvements on or before the Target Commencement Date. "Tenant Delay" shall mean any delay in the completion of the Tenant Improvements attributable to Tenant, including, without limitation (i) Tenant's failure to meet any time deadlines specified herein, (ii) changes

to the Tenant Improvements requested by Tenant after the date hereof, (iii) the performance of any other work in the Leased Premises by any person, firm or corporation employed by or on behalf of Tenant, or any failure to complete or delay in completion of such work, (iv) Landlord's inability to obtain an occupancy permit for the Leased Premises because of the need for completion of all or a portion of improvements being installed in the Leased Premises directly by Tenant, and (v) any other act or omission of Tenant.

5. Letter of Understanding. Promptly following the Commencement Date, Tenant shall execute Landlord's Letter of Understanding in substantially the form attached hereto as **Exhibit C** and made a part hereof, acknowledging (a) the Commencement Date of this Lease, and (b) except for any punchlist items, that Tenant has accepted the Leased Premises. If Tenant takes possession of and occupies the Leased Premises, Tenant shall be deemed to have accepted the Leased Premises and that the condition of the Leased Premises and the Building was at the time satisfactory and in conformity with the provisions of this Lease in all respects, subject to any punch-list items.

[DRAWING ATTACHED]

# SUITE 200 - 12,000 RSF




FLOOR PLAN

16640 Chesterfield Grove Rd.
Chesterfield, Missouri 63005

**EXHIBIT C**

**LETTER OF UNDERSTANDING**

Grove II LLC
540 Maryville Centre Drive, Suite 340
St. Louis, MO 63141

RE: Office Lease dated as of _____ ____, 2015 between Grove II LLC ("Landlord") and Eclat Pharmaceuticals LLC ("Tenant"), for 16640 Chesterfield Grove Road, Suite 200, Chesterfield, Missouri 63005 (the "Leased Premises").

Dear _____:

The undersigned, on behalf of Tenant, certifies to Landlord as follows:

1. The Commencement Date under the Lease is _____.

2. The rent commencement date is _____.

3. The expiration date of the Lease (subject to extension as provided therein) is _____.

4. The Lease (including amendments or guaranty, if any) is the entire agreement between Landlord and Tenant as to the leasing of the Leased Premises and is in full force and effect.

5. The Landlord has completed the Tenant Improvements and Tenant has accepted the Leased Premises as of the Commencement Date.

6. To the best of the undersigned's knowledge, there are no uncured events of default by either Tenant or Landlord under the Lease.

IN WITNESS WHEREOF, the undersigned has caused this Letter of Understanding to be executed this ____ day of _____, 20___.

ECLAT PHARMACEUTICALS LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

**EXHIBIT D**

**RULES AND REGULATIONS**

OFFICE RULES AND REGULATIONS

1. Tenant shall not display, inscribe, paint or affix any sign, picture, showcase, advertisement or notice on any part of the outside or inside of the Building, or on or about the Leased Premises, without the prior written consent of Landlord, and then only of such color, size, style and material as approved by Landlord. Landlord reserves the right to remove such items placed in the lobbies or corridors or in front of the Building, other than those above provided for, without notice, and at Tenant's expense.

2. All informational signs to be placed on Tenant's access door must be specified by Landlord or someone designated by it, and the actual cost (including installation) thereof shall be paid by the Tenant. Tenant shall not install or cause to be installed, without Landlord's consent, any shades, blinds, awnings and screens. Tenant shall remove all such signs, shades, blinds, awnings and screens from the Building and the Leased Premises at the end of its tenancy or Landlord may cause the removal to be done at Tenant's expense.

3. Tenant shall not make any additions to, or alterations in, any part of the Building or Leased Premise by putting up or changing any partition, doors, windows, nor shall there be any nailing, boring, or screwing into the woodwork or walls, nor painting done without the prior written consent of Landlord in each instance. Any and all additions and alterations to the Leased Premises shall be at Tenant's expense.

4. All glass, locks and trimmings in or about the doors or windows, and all electric globes and shades belonging to the Building or Leased Premises shall be kept whole and, whenever broken by any Tenant, shall be immediately replaced or repaired and put in order by such Tenant to the satisfaction of Landlord.

5. Tenant shall not place additional locks upon any door of the Leased Premises, nor permit any duplicate keys to be made, but if more than two keys for any door are desired, the additional number must be procured from Landlord and paid for by Tenant. Tenant shall surrender all keys to the Leased Premises and Building at the end of its tenancy.

6. If Tenant desires telegraph, telephone or data connections, Landlord will direct the electricians (whether hired by Landlord or Tenant) as to where the wires are to be introduced at Tenant's expense, and without such direction no boring or cutting for wires shall be permitted.

7. Landlord reserves the right to prescribe the weight and proper position of safes and mechanical equipment. All safes, furniture, boxes and bulky articles and packages and any items similar to the foregoing (all of the foregoing being referred to as the "Items") shall be moved into or out of the Building or from one part of the Building to another under the supervision of Landlord and at such times and according to such regulations as may be designated from time to time by Landlord. The Items shall be carried up or down only in the elevator and at the entrance designated by Landlord. Tenant shall be responsible for all damage to the walls, floors or other parts of the Building caused by or connected with any moving, or caused by and Item while in the Building. Tenant shall not place any engine, boiler or other machinery upon the Leased Premises.

8. Tenant shall not do or permit anything to be done in the Leased Premises, or bring or keep anything therein which will in any way increase the rate of insurance on the Building, or on property kept

therein; or anything which will be dangerous to life, or limb, or which will lend to create a nuisance or injure the reputation of the Building; or use flammable liquid, camphene, alcohol, kerosene or anything except steam, gas or electricity in lighting or heating the Leased Premises; or bring into the Leased Premises or keep therein any heating or lighting apparatus, except floor and desk lamps, other than that provided by Landlord; or install any air conditioning or air-cooling apparatus without the written consent of Landlord; or obstruct or interfere with the rights of other tenants or Landlord; or in any way injure or annoy them, or conflict with the laws relating to fires, or with the regulations of the Fire Department, or with any insurance policy upon the Building or any part thereof; or conflict with any of the laws, rules or regulations of any governmental agency or municipality having jurisdiction.

9. Tenant shall not use the Leased Premises for an illegal or immoral purpose. Tenant shall not sell or distribute beer, wine or intoxicating liquor in the Building without the written consent of Landlord in each instance.

10. Tenant shall not occupy or use any room or rooms as sleeping or lodging apartments.

11. The sidewalk, passages, lobbies, corridors, elevator and stairways shall not be obstructed by Tenant, or used except for ingress and egress to the Leased Premises.

12. The doors, skylights, windows and transoms that reflect or admit light into passageways or any areas in the Building, shall not be covered or obstructed by Tenant. Nothing shall be thrown by the Tenant, its agents, employees, invitees and guests, out of the windows or door, or down the passages or skylights of the Building.

13. Tenant, its agents, employees, invitees and guests shall not make noise, cause disturbances or vibrations or use or operate any electrical or electronic devices or any other devices that emit sounds or disturbances, or create odors that interfere or annoy in any way the other tenants, their agents, employees, invitees and guests. Tenant shall not conduct auctions in the Leased Premises nor make any room-to-room canvass to solicit business from other tenants in the Building.

14. Tenant shall not cause or allow to be caused any waste or misuse of water or other utilities. Building equipment and utilities shall not be used for any purpose other than those for which they were constructed, and any damage resulting to them from misuse shall be borne by the tenant causing same.

15. Tenant shall, when leaving the Leased Premises at close of business, or when the Leased Premises are unoccupied at any time, lock doors, and in the event of any default or carelessness in this respect, shall be liable for all injury sustained by other tenants, by Landlord, or by either of them, for damages resulting from such default or carelessness.

16. Tenant shall not allow any animals or birds in any part of the Building without the consent of Landlord.

17. Any person or persons, other than the janitorial staff of Landlord, who shall be employed for the purpose of cleaning the Leased Premises, shall be employed at Tenant's expense, and Landlord shall be in no way responsible for any loss of property on or from the Leased Premises, however occurring, or any damage done to the furniture or other effects of any tenant, by any cleaning contractor furnished by Tenant or anyone under him. Tenant will report any lack of attention in service of the Building to Landlord.

18. Landlord shall have the right, with pass key or otherwise, to enter any Leased Premises at any time with 24 hours' notice or in case of emergency, or times to examine the same or to make such repairs

or alterations as it shall deem necessary for the safety, preservation or improvement of the Building or the Leased Premises, or for the purpose of cleaning, watching or inspecting same and, during the last six (6) months of the term of the Lease, may show the premises to prospective tenants and put up customary "For Rent" signs.

19. Tenant shall not accumulate or store in the Leased Premises any waste paper, discarded records, books, paper, files, rubbish or other combustible matter.

20. The Landlord reserves the right to exclude from the Building all drunken and disorderly persons, solicitors, persons creating a disturbance and persons entering in crowds or in such unusual numbers as to cause inconvenience to the tenants of the Building.

21. Landlord reserves the rights to vending services in the Building.

22. Building hours are as follows:

| | |
|---|---|
| Monday through Friday | 7:00 A.:M. - 6:00 P.M. |
| Saturday | 7:00 A.M. - 1:00 P.M. |
| Sunday and Legal Holidays | None |

23. All smoking of cigarettes, cigars, pipes, etc., is prohibited within the Building or within fifty (50') feet of any entrance thereto.

It is Landlord's desire to maintain in the Building and Common Areas the highest standard of dignity and good taste consistent with comfort and convenience for tenants. Any action or condition not meeting this high standard should be reported directly to Landlord. The Landlord reserves the right to make such other and further rules and regulations as in its judgment may from time to time be necessary for the safety, care and cleanliness of the Building and Common Areas, and for the preservation of good order therein.

**FIRST AMENDMENT TO OFFICE LEASE**

THIS FIRST AMENDMENT TO OFFICE LEASE (this "**First Amendment**") is made and entered into as of March 8, 2016 ("**Effective Date**") by and between GROVE II LLC, a Missouri limited liability company ("**Landlord**"), and ECLAT PHARMACEUTICALS LLC, a Delaware limited liability company ("**Tenant**").

WHEREAS, Landlord and Tenant entered into that certain Office Lease dated October 5, 2015 (the "**Lease**"); and

WHEREAS, Landlord and Tenant desire to amend certain provisions of the Lease;

NOW, THEREFORE, in consideration of the foregoing premises, the mutual covenants herein contained and each act performed hereunder by the parties, Landlord and Tenant hereby agree and the Lease is hereby further amended by entering into this First Amendment.

1. Defined Terms. Capitalized terms used and not otherwise defined herein shall have the meaning given to them in the Lease.

2. Amendments to the Lease.

(a) Subsections (a) through (f) and (h) of Section 1.01 are hereby amended and restated as follows:

(a) Leased Premises: (shown outlined on Exhibit A attached hereto): Suite 200 of the building located at 16640 Chesterfield Grove Road, Chesterfield, Missouri 63005 (the "Building"). The Leased Premises is comprised of 12,000 rentable square feet within the Building leased effective November 1, 2015 (the "Original Leased Premises") and 5,065 rentable square feet within the Building added thereto pursuant to the First Amendment to Office Lease (the "Additional Leased Premises").

(b) Rentable Area: 17,065 rentable square feet. The Rentable Area includes the square footage within the Leased Premises plus a pro rata portion of the square footage of the common areas within the Building, as reasonably determined by Landlord.

(c) Tenant's Proportionate Share: 50.33%

(d) Lease Term: Seven (7) years following the Commencement Date for the Additional Leased Premises.

(e) Commencement Date: November 1, 2015 with respect to the Original Leased Premises and May 1, 2016 with respect to the Additional Leased Premises.

(f) Minimum Annual Rent & Monthly Rental Installment:

| Period* | Minimum Annual Rent/RSF | Monthly Rental Installment |
|---|---|---|
| Year 1 | $23.50/RSF | $33,418.96 |
| Year 2 | $24.00/RSF | $34,130.00 |
| Year 3 | $24.50/RSF | $34,841.04 |
| Year 4 | $25.00/RSF | $35,552.08 |
| Year 5 | $25.50/RSF | $36,263.13 |

| | | |
|---|---|---|
| Year 6 | $26.00/RSF | $36,974.17 |
| Year 7 | $26.50/RSF | $37,685.21 |

*Year 1 and each subsequent year listed above shall commence on the Commencement Date applicable to the Additional Leased Premises (May 1st) and terminate immediately prior to each anniversary thereof (April 30th).

(h) Security Deposit: $66,837.92 ($47,000.00 paid upon execution of the Office Lease and $19,837.92 paid upon execution of the First Amendment to Office Lease).

(b) Section 2.01 is hereby amended and restated as follows:

Section 2.01. Term. The Lease Term shall commence as of November 1, 2015 with respect to the Original Leased Premises and as of May 1, 2016 with respect to the Additional Leased Premises.

(c) Section 5.03 is hereby amended and restated as follows:

Section 5.03. Parking. Tenant may utilize up to a maximum of 52 parking spaces in the parking lot adjacent to the Building at no additional cost to Tenant. Only one (1) vehicle shall be parked in each space at any one time.

(d) Exhibit A to the Lease is hereby deleted and replaced with Exhibit A attached hereto.

(e) Section 2 of Exhibit B to the Lease is hereby amended and restated as follows:

2. Scope of Work. Landlord and Tenant agree and acknowledge that the work to be completed in the Original Leased Premises has been completed. With respect to the Additional Leased Premises, Landlord shall complete the following work prior to the date of Substantial Completion applicable to the Additional Leased Premises:

- Install eight (8) new offices where indicated in the attached drawing.
- Install one (1) new break area (with sink and refrigerator) where indicated in the attached drawing.
- Install one (1) new conference room (with one glass sidelight) where indicated in the attached drawing.
- Replace carpet in Additional Leased Premises.
- Install vinyl composite tile in the break area.
- Paint existing and new drywall surfaces in Additional Leased Premises.

- All work related to any data and voice lines and connections in the Additional Leased Premises shall be completed by Tenant at its sole cost and expense.

3. Brokerage Commissions. Landlord and Tenant hereby represent and warrant to each other that it has not dealt with any broker or agent in connection with the negotiation of this transaction and that no brokerage commissions would be due as a result of the execution of this First Amendment. Landlord and Tenant shall indemnify, defend and hold the other from any and all

liability for the breach of this representation and warranty on its part and shall pay any compensation to any broker or person who may be entitled thereto in connection with this First Amendment.

4. Tenant's Representations. The undersigned represents to Landlord that (i) Tenant is duly organized, validly existing and in good standing in accordance with the laws of the state under which it was organized; (ii) all action necessary to authorize the execution of this First Amendment has been taken by Tenant; and (iii) the individual executing and delivering this First Amendment on behalf of Tenant has been authorized to do so, and such execution and delivery shall bind Tenant.

5. Incorporation. This First Amendment shall be incorporated into and made a part of the Lease, and all provisions of the Lease not expressly modified or amended hereby shall remain in full force and effect.

6. Governing Law. This First Amendment shall be governed in accordance with the laws of the State of Missouri.

7. Electronic Signatures and Counterparts. For purposes of executing this First Amendment, a document (or signature page thereto) signed and transmitted by facsimile machine or other electronic format is to be treated as an original document. The signature of any party thereon, for purposes hereof, is to be considered as an original signature, and the documents transmitted is to be considered to have the same binding effect as an original signature on an original document. This Agreement may be executed by the parties on any number of separate counterparts, and all such counterparts so executed constitute one agreement binding on all the parties notwithstanding that all the parties are not signatories to the same counterpart.

*[SIGNATURE PAGE FOLLOWS]*

IN WITNESS WHEREOF, the parties have caused this First Amendment to be executed on the day and year first written above.

LANDLORD:

GROVE II LLC,
a Missouri limited liability company

By: /s/ Christopher Pelligreen
Name: Christopher Pelligreen
Title: Autorized Signor

STATE OF MISSOURI )
) SS:
CITY OF ST. LOUIS )

Before me, a Notary Public in and for said City and State, personally appeared Christopher Pelligreen, by me known and by me known to be the Authorized Signatory of Grove II LLC, d the execution of the foregoing instrument on behalf of said limited liability company as its free act and deed.

WITNESS my hand and Notarial Seal this 8th day of March, 2016.

Notary Public
/s/ Daniel J. Patterson

(Printed Signature)

DANIEL J. PATTERSON
Notary Public - Notary Seal
State of Missouri
Commissioned for St. Louis City
My Commission Expires: March 03, 2018
Commission Number: 14588040

LANDLORD SIGNATURE PAGE TO FIRST AMENDMENT TO LEASE

TENANT:

ECLAT PHARMACEUTICALS LLC,
a Delaware limited liability company

By: /s/ Michael J. Anderson
Name: Michael J. Anderson
Title: CEO

STATE OF MISSOURI )
) SS:
COUNTY OF ST. LOUIS )

Before me, a Notary Public in and for said County and State, personally appeared Mike Anderson, known to me to be the CEO of Eclat Pharmaceuticals LLC, who acknowledged the execution of the foregoing instrument on behalf of said limited liability company as its free act and deed.

WITNESS my hand and Notarial Seal this 7 day of March, 2016.

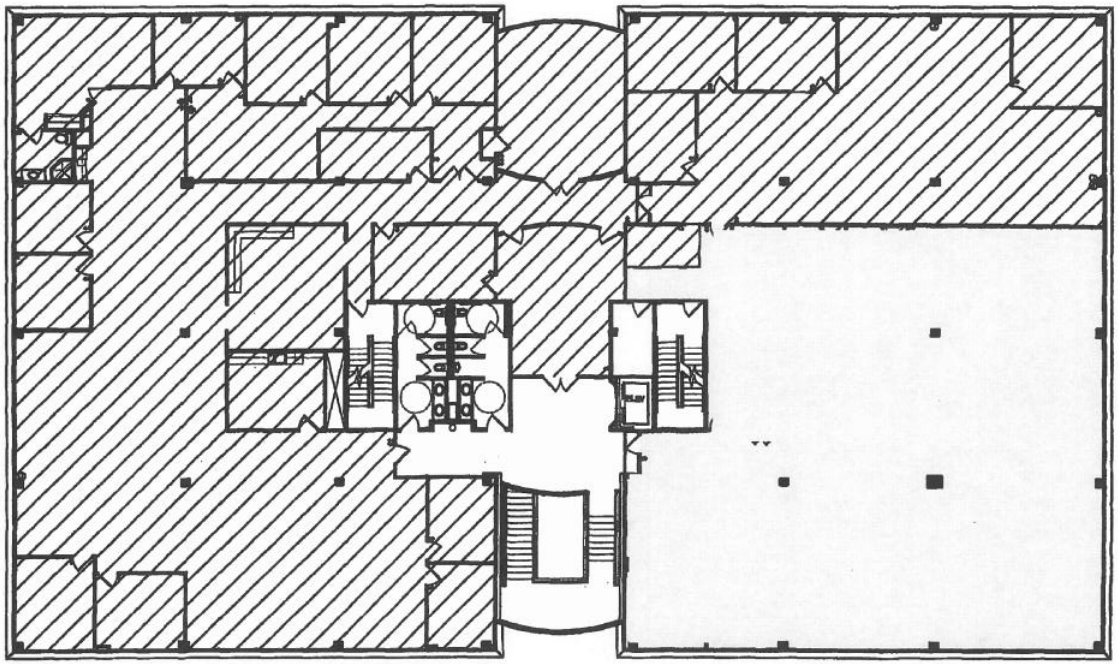
/s/ Linda Horodenski-

Notary Public

*Linda Horodenski* (Printed Signature)

LINDA HORODENSKI
Notary Public, Notary Seal
State of Missouri
St. Louis County
Commission # 15636066
My Commission Expires June 09, 2019

# Exhibit A



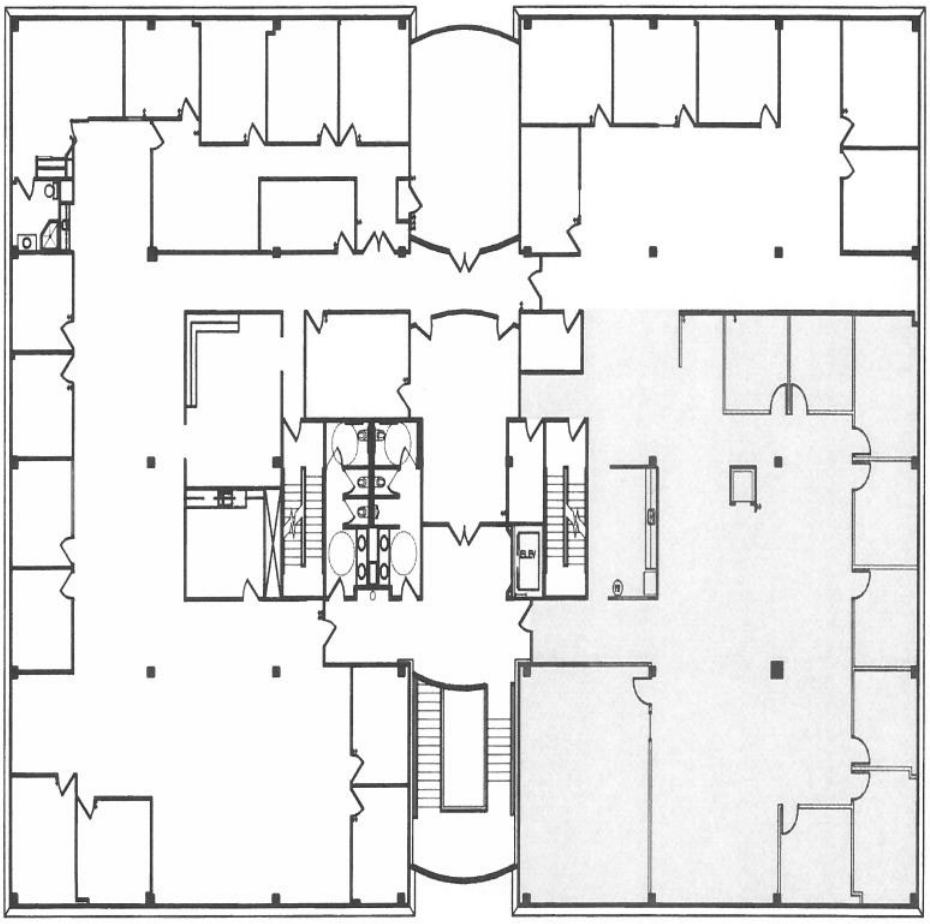
2nd Floor Plan

Not to Scale
1.0885 LOAD FACTOR

## 16640 Chesterfield Grove
### Chesterfield, Missouri

Suite 200 - "Leased Premises" - 17,065 RSF
"Original Leased Premises" Shown Hatched
"Additional Leased Premises" Shown Shaded

# Attachment to Exhibit B



2nd Floor Plan

Not to Scale

= Additional Leased Premises

## 16640 Chesterfield Grove

Chesterfield, Missouri

March 3, 2016

**AFFIRMATION OF LEASE GUARANTY**

THIS AFFIRMATION OF LEASE GUARANTY (this "Affirmation") is executed as of March 8, 2016 in favor of GROVE II LLC, a Missouri limited liability company ("Landlord").

WHEREAS, ECLAT PHARMACEUTICALS LLC, a Delaware limited liability company ("Tenant"), and Landlord have entered into an Office Lease dated as of October 5, 2015 (as amended or otherwise modified from time to time, the "Lease"; terms used but not defined herein are used as defined in the Lease), for certain office space located at 16640 Chesterfield Grove Road, Suite 200, Chesterfield, Missouri 63005;

WHEREAS, the undersigned ("Guarantor") executed a Lease Guaranty dated as of October 5, 2015, guarantying the Obligations (as defined in the defined) of Tenant under the Lease; and

WHEREAS, Tenant and Landlord now desire to amend the Lease pursuant to that certain First Amendment to Office Lease dated as of the date hereof (the "First Amendment").

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Guarantor hereby unconditionally and irrevocably, affirms and ratifies in all respects the Guaranty and acknowledges and agrees that "Lease" as defined in the Guaranty means the Lease as amended by the First Amendment and any other amendment or modification entered into from time to time. The Guaranty shall remain in full force and effect and shall continue to constitute the valid and binding obligation of Guarantor, enforceable in accordance with its terms and shall secure any additional obligations incurred or undertaken by Tenant pursuant to the First Amendment.

This Affirmation shall be binding upon the undersigned and the successors and assigns of the undersigned; and to the extent the Tenant or the undersigned is a partnership, corporation, limited liability company or other entity, all references herein to the Tenant and to the undersigned, respectively, shall be deemed to include any successor or successors, whether immediate or remote, to such entity.

This Affirmation shall be governed by and construed in accordance with the laws of the State of Missouri applicable to contracts made and to be fully performed in such State. Wherever possible, each provision of this Affirmation shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Affirmation shall be prohibited by or invalid under such law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Affirmation.

**ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AFFIRMATION, SHALL BE BROUGHT AND MAINTAINED EXCLUSIVELY IN THE COURTS OF THE STATE OF MISSOURI OR IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MISSOURI. THE UNDERSIGNED AND (BY ACCEPTING THE BENEFITS HEREOF) LANDLORD HEREBY EXPRESSLY AND IRREVOCABLY SUBMIT TO THE JURISDICTION OF THE COURTS OF THE STATE OF MISSOURI AND OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MISSOURI FOR THE PURPOSE OF ANY SUCH LITIGATION AS SET FORTH ABOVE. THE UNDERSIGNED AND LANDLORD HEREBY EXPRESSLY AND IRREVOCABLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION THAT SUCH PERSON MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUCH LITIGATION BROUGHT IN ANY SUCH COURT REFERRED TO ABOVE AND ANY CLAIM THAT ANY SUCH LITIGATION HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.**

**THE UNDERSIGNED AND (BY ACCEPTING THE BENEFITS HEREOF) LANDLORD HEREBY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS AFFIRMATION AND ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION HEREWITH OR THEREWITH.**

**IN NO EVENT SHALL THE GUARANTOR OR LANDLORD BE RESPONSIBLE FOR ANY INDIRECT, PUNITIVE, CONSEQUENTIAL OR SPECIAL DAMAGES, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**

*[Signature Page Follows]*

IN WITNESS WHEREOF, this Affirmation has been duly executed and delivered as of the date first above written.

*Flamel Technologies, SA*
*By: /s/ Phil Thompson*
*Name: Phil Thompson*
*Title: General Counsel*

Address for Notices:
33 Avenue du Dr. Georges Levy
69693 Venissieux Cedex, France
Facsimile No.: (33)4-72-78-34-35

STATE OF MO )
) SS:
COUNTY OF MISSOURI )

Before me, a Notary Public in and for said County and State, personally appeared Phil Thompson, by me known to be the General Counsel of Flamel Technologies, SA, who acknowledged the execution of the foregoing instrument on behalf of said Fl Technologies as its free act and deed.

WITNESS my hand and Notarial Seal this 7 day of March, 2016.

/S/ *Linda Horodenski*
Notary Public

*Linda Horodenski*
(Printed Signature)

LINDA HORODENSKI
Notary Public, Notary Seal
State of Missouri
St. Louis County
Commission # 15636066
My Commission Expires June 09, 2019

# OFFICE LEASE

THIS OFFICE LEASE is made and entered into as of October 5, 2015, by and between GROVE II LLC, a Missouri limited liability company ("Landlord"), and ECLAT PHARMACEUTICALS LLC, a Delaware limited liability company ("Tenant").

## ARTICLE 1 - LEASE OF PREMISES

Section 1.01. Basic Lease Provisions and Definitions.

(a) Leased Premises (shown outlined on **Exhibit A** attached hereto): Suite 200 of the building located at 16640 Chesterfield Grove Road, Chesterfield, Missouri 63005 (the "Building").

(b) Rentable Area: approximately 12,000 rentable square feet. The Rentable Area includes the square footage within the Leased Premises plus a pro rata portion of the square footage of the common areas within the Building, as reasonably determined by Landlord.

(c) Tenant's Proportionate Share: 35.39%.

(d) Lease Term: Five (5) years.

(e) Target Commencement Date: November 2, 2015

(f) Minimum Annual Rent & Monthly Rental Installment:

| Period | Minimum Annual Rent/RSF | Monthly Rental Installment |
|---|---|---|
| Year 1 | $23.50/RSF | $23,500.00 |
| Year 2 | $24.00/RSF | $24,000.00 |
| Year 3 | $24.50/RSF | $24,500.00 |
| Year 4 | $25.00/RSF | $25,000.00 |
| Year 5 | $25.50/RSF | $25,500.00 |

(g) Base Year (for Operating Expenses): Calendar Year 2016.

(h) Security Deposit: $47,000.00.

(i) Permitted Use: General office purposes.

(j) Broker(s): Steve Rees, Jamestown Development, Inc., representing Tenant and none representing Landlord.

(k) Address for notices and payments are as follows:

Landlord: Grove II LLC
540 Maryville Centre Drive, Suite 340
St. Louis, MO 63141

Tenant: (prior to occupancy) Eclat Pharmaceuticals LLC
702 Spirit 40 Park Dr #108
Chesterfield, Missouri 63005

| | | |
|---|---|---|
| | Tenant:<br>(following occupancy) | Eclat Pharmaceuticals LLC<br>16640 Chesterfield Grove Road, Suite 200<br>Chesterfield, Missouri 63005 |
| (l) | Guarantor: | Flamel Technologies SA<br>16640 Chesterfield Grove Road, Suite 200<br>Chesterfield, Missouri 63005 |

**EXHIBITS**
Exhibit A - Leased Premises
Exhibit B - Tenant Improvements
Exhibit C - Letter of Understanding
Exhibit D - Rules and Regulations

Section 1.02. Lease of Premises. Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the Leased Premises, under the terms and conditions herein, together with a non-exclusive right, in common with others, to use the following (collectively, the "Common Areas"): the areas of the Building and the underlying land and improvements thereto that are designed for use in common by all tenants of the Building and their respective employees, agents, customers, invitees and others.

## ARTICLE 2 - TERM AND POSSESSION

Section 2.01. Term. The Lease Term shall commence as of the date (the "Commencement Date") that Substantial Completion (as defined in **Exhibit B** hereto) of the Tenant Improvements (as defined in Section 2.02 below) occurs.

Section 2.02. Construction of Tenant Improvements. Landlord, at Landlord's cost, shall construct and install all leasehold improvements to the Leased Premises (collectively, the "Tenant Improvements") in accordance with **Exhibit B** attached hereto and made a part hereof.

Section 2.03. Surrender of the Premises. Upon the expiration or earlier termination of this Lease, Tenant shall, at its sole cost and expense, immediately (a) surrender the Leased Premises to Landlord in broom-clean condition and in good order, condition and repair, (b) remove from the Leased Premises (i) Tenant's Property (as defined in Section 8.01 below), and (ii) any alterations required to be removed pursuant to Section 7.03 below, and (c) repair any damage caused by any such removal and restore the Leased Premises to the condition existing upon the Commencement Date, reasonable wear and tear excepted. All of Tenant's Property that is not removed within ten (10) days following Landlord's written demand therefor shall be conclusively deemed to have been abandoned and Landlord shall be entitled to dispose of such property at Tenant's cost without incurring any liability to Tenant. This Section 2.03 shall survive the expiration or any earlier termination of this Lease.

Section 2.04. Holding Over. If Tenant retains possession of the Leased Premises after the expiration or earlier termination of this Lease, Tenant shall be a tenant at sufferance at two hundred percent (200%) of the Monthly Rental Installment and Annual Rental Adjustment (as hereinafter defined) for the Leased Premises in effect upon the date of such expiration or earlier termination, and otherwise upon the terms, covenants and conditions herein specified, so far as applicable. Acceptance by Landlord of rent after such expiration or earlier termination shall not result in a renewal of this Lease, nor shall such acceptance create a month-to-month tenancy. In the event a month-to-month tenancy is created by operation of law, either party shall have the right to terminate such month-to-month tenancy upon thirty (30) days' prior written notice to the other, whether or not said notice is given on the rent paying date.

This Section 2.04 shall in no way constitute a consent by Landlord to any holding over by Tenant upon the expiration or earlier termination of this Lease, nor limit Landlord's remedies in such event.

## ARTICLE 3 - RENT

Section 3.01. Base Rent. Tenant shall pay to Landlord the Minimum Annual Rent in the Monthly Rental Installments in advance, without demand, deduction or offset, on the Commencement Date and on or before the first day of each and every calendar month thereafter during the Lease Term. The Monthly Rental Installments for partial calendar months shall be prorated.

Section 3.02. Annual Rental Adjustment Definitions.

(a) "Annual Rental Adjustment" shall mean the amount of Tenant's Proportionate Share of Operating Expenses for a particular calendar year.

(b) "Operating Expenses" shall mean the amount of all of Landlord's costs and expenses paid or incurred in operating, repairing, replacing and maintaining the Building and the Common Areas in good condition and repair for a particular calendar year (including all additional costs and expenses that Landlord reasonably determines that it would have paid or incurred during such year if the Building had been fully occupied), including by way of illustration and not limitation, the following: all property taxes (real and personal), ad valorem taxes, and non-ad valorem taxes; all assessment (including levy district assessments) related to the Building and underlying property; insurance premiums and deductibles; water, sewer, electrical, gas and other utility charges other than the separately billed electrical and other charges paid by Tenant or other tenants in the Building; capital improvements to the extent necessary to comply with applicable law or which reduce any component cost of the Operating Expenses; service and other charges incurred in the repair, replacement, operation and maintenance of the elevators and the heating, ventilation and air-conditioning system; costs associated with providing fitness and/or conference facilities, if any; cleaning and other janitorial services; tools and supplies; repair costs; landscape maintenance costs; access patrols; license, permit and inspection fees; management fees; administrative fees (not to exceed 10% of the Operating Expense excluding such fee); supplies, costs, wages and related employee benefits payable for the management, maintenance and operation of the Building; maintenance, repair and replacement of the driveways, parking and sidewalk areas (including snow and ice removal), landscaped areas, and lighting; maintenance and repair costs, dues, fees and assessments incurred under any covenants, trust indentures or charged by any owners association; and expenses incurred by Landlord related to disputes of any of the foregoing. The cost of any Operating Expenses that are capital in nature shall be amortized over the useful life of the improvement (as reasonably determined by Landlord), and only the amortized portion shall be included in Operating Expenses.

(c) "Tenant's Proportionate Share of Operating Expenses" shall mean an amount equal to the product of Tenant's Proportionate Share multiplied by the difference of the Operating Expenses for the applicable calendar year minus the Operating Expenses for the Base Year; provided that such amount shall not be less than zero. All Operating Expenses shall be calculated by Landlord in accordance with generally accepted accounting principles, consistently applied.

Section 3.03. Payment of Additional Rent.

(a) Any amount required to be paid by Tenant hereunder (in addition to Minimum Annual Rent) and any charges or expenses incurred by Landlord on behalf of Tenant under the terms of this Lease, except for the Tenant Improvements set forth in Section 2.02, shall be considered "Additional Rent" payable in the same manner and upon the same terms and conditions as the Minimum Annual Rent reserved hereunder, except as set forth herein to the contrary. Any failure on the part of Tenant to pay

such Additional Rent when and as the same shall become due shall entitle Landlord to the remedies available to it for non-payment of Minimum Annual Rent.

(b) In addition to the Minimum Annual Rent specified in this Lease, commencing on January 1, 2017, Tenant shall pay to Landlord as Additional Rent for the Leased Premises, in each calendar year or partial calendar year thereafter during the Lease Term, an amount equal to the Annual Rental Adjustment for such calendar year. Landlord shall estimate the Annual Rental Adjustment annually, and written notice thereof shall be given to Tenant prior to the beginning of each calendar year. Tenant shall pay to Landlord each month, at the same time the Monthly Rental Installment is due, an amount equal to one-twelfth (1/12) of the estimated Annual Rental Adjustment. If Operating Expenses increase during a calendar year, Landlord may increase the estimated Annual Rental Adjustment during such year by giving Tenant written notice to that effect, and thereafter Tenant shall pay to Landlord, in each of the remaining months of such year, an amount equal to the amount of such increase in the estimated Annual Rental Adjustment divided by the number of months remaining in such year. Within a reasonable time after the end of each calendar year, Landlord shall prepare and deliver to Tenant a statement showing the actual Annual Rental Adjustment. Within thirty (30) days after receipt of the aforementioned statement, Tenant shall pay to Landlord, or Landlord shall credit against the next rent payment or payments due from Tenant, as the case may be, the difference between the actual Annual Rental Adjustment for the preceding calendar year and the estimated amount paid by Tenant during such year. This Section 3.03 shall survive the expiration or any earlier termination of this Lease.

Section 3.04. Late Charges. Tenant acknowledges that Landlord will incur certain additional unanticipated administrative and legal costs and expenses if Tenant fails to pay timely any payment required hereunder. Therefore, in addition to the other remedies available to Landlord hereunder, if any payment required to be paid by Tenant to Landlord hereunder shall become overdue, such unpaid amount shall bear interest from the due date thereof to the date of payment at the prime rate of interest, as reported in the Wall Street Journal (the "Prime Rate") plus six percent (6%) per annum.

## ARTICLE 4 - SECURITY DEPOSIT

Upon execution and delivery of this Lease by Tenant, Tenant shall deposit the Security Deposit with Landlord as security for the performance by Tenant of all of Tenant's obligations contained in this Lease. In the event of a Default by Tenant, Landlord may apply all or any part of the Security Deposit to cure all or any part of such Default; provided, however, that any such application by Landlord shall not be or be deemed to be an election of remedies by Landlord or considered or deemed to be liquidated damages. Tenant agrees promptly, upon demand, to deposit such additional sum with Landlord as may be required to maintain the full amount of the Security Deposit. All sums held by Landlord pursuant to this Article 4 shall be without interest and may be commingled by Landlord. At the end of the Lease Term, provided that there is then no uncured default or any repairs required to be made by Tenant pursuant to Section 2.03 above or Section 7.03 below, Landlord shall return the Security Deposit to Tenant within thirty (30) days following the end of the Lease Term. If any amounts are deducted from the Security Deposit due to repairs performed by Landlord, an accounting of such repairs and copies of any related invoices shall be provided to Tenant within thirty (30) days of the termination of this Lease.

## ARTICLE 5 - OCCUPANCY AND USE

Section 5.01. Use. Tenant shall use the Leased Premises for the Permitted Use and for no other purpose without the prior written consent of Landlord.

Section 5.02. Covenants of Tenant Regarding Use.

(a) Tenant shall (i) use and maintain the Leased Premises and conduct its business thereon in a safe, careful, reputable and lawful manner, (ii) comply with all covenants that encumber the Building and all laws, rules, regulations, orders, ordinances, directions and requirements of any governmental authority or agency, now in force or which may hereafter be in force, including, without limitation, those which shall impose upon Landlord or Tenant any duty with respect to or triggered by a change in the use or occupation of, or any improvement or alteration to, the Leased Premises, and (iii) comply with and obey all reasonable directions, rules and regulations of Landlord, including the Building Rules and Regulations attached hereto as **Exhibit D** and made a part hereof, as may be modified from time to time by Landlord on reasonable notice to Tenant.

(b) Tenant shall not do or permit anything to be done in or about the Leased Premises that will in any way cause a nuisance, obstruct or interfere with the rights of other tenants or occupants of the Building or injure or annoy them. Landlord shall not be responsible to Tenant for the non-performance by any other tenant or occupant of the Building of any of Landlord's directions, rules and regulations, but agrees that any enforcement thereof shall be done uniformly. Tenant shall not use the Leased Premises, nor allow the Leased Premises to be used, for any purpose or in any manner that would (i) invalidate any policy of insurance now or hereafter carried by Landlord on the Building, or (ii) increase the rate of premiums payable on any such insurance policy unless Tenant reimburses Landlord for any increase in premium charged.

Section 5.03. Parking. Tenant may utilize up to a maximum of 36 parking spaces in the parking lot adjacent to the Building at no additional cost to Tenant. Only one (1) vehicle shall be parked in each space at any one time.

Section 5.04. Landlord's Rights Regarding Use. Without limiting any of Landlord's rights specified elsewhere in this Lease (a) Landlord shall have the right at any time, without notice to Tenant, to control, change or otherwise alter the Common Areas in such manner as it deems necessary or proper, so long as Tenant at all times has reasonable rights of access to the Demised Premises, and (b) Landlord, its agents, employees and contractors and any mortgagee of the Building shall have the right to enter any part of the Leased Premises at reasonable times upon reasonable notice (except in the event of an emergency where no notice shall be required) for the purposes of examining or inspecting the same (including, without limitation, testing to confirm Tenant's compliance with this Lease), showing the same to prospective purchasers, mortgagees or tenants (but, with respect to prospective tenants, only during the last year of the Lease Term), and making such repairs, alterations or improvements to the Leased Premises or the Building as Landlord may deem necessary or desirable, provided, however, that any such repairs, alterations or improvements shall be performed in a manner calculated to minimize, to the extent practical, the impact on Tenant's business operations. Landlord shall incur no liability to Tenant for such entry, nor shall such entry constitute an eviction of Tenant or a termination of this Lease, or entitle Tenant to any abatement of rent therefor.

## ARTICLE 6 - UTILITIES AND OTHER BUILDING SERVICES

Section 6.01. Services to be Provided. Provided Tenant is not in default, Landlord shall furnish to Tenant, except as noted below, the following utilities and other services to the extent reasonably necessary for Tenant's use of the Leased Premises for the Permitted Use, or as may be required by law or directed by governmental authority:

(a) Electricity, heating, ventilation and air-conditioning between the hours of 7:00 a.m. and 6:00 p.m. Monday through Friday and 7:00 a.m. to 1:00 p.m. on Saturday of each week except on legal holidays;

(b) Elevator service;

(c) Water in the Common Areas for lavatory and drinking purposes;

(d) Cleaning and janitorial service in the Leased Premises and Common Areas on Monday through Friday of each week except legal holidays; provided, however, Tenant shall be responsible for carpet cleaning other than routine vacuuming; and

(e) Maintenance of the Common Areas.

Section 6.02. Additional Services.

(a) If Tenant requests utilities or building services in addition to those identified above, or if (i) Tenant uses any of the above utilities or services in frequency, scope, quality or quantity substantially greater than that which Landlord determines is used by other commercial office tenants in the Building (measured proportionately based on space), and (ii) Landlord provides written notice thereof to Tenant, then Landlord shall use reasonable efforts to attempt to furnish Tenant with such additional utilities or services. In the event Landlord is able to and does furnish such additional utilities or services, the costs thereof (which shall be deemed to mean the cost that Tenant would have incurred had Tenant contracted directly with the utility company or service provider) shall be borne by Tenant, who shall reimburse Landlord monthly for the same as Additional Rent. Landlord shall also have the right to submeter or separately meter the Leased Premises at Tenant's sole cost, and Tenant shall pay such utilities based on the submeter or separate meter; provided, however, no such additional submeter or separate meter shall be installed if the costs of installation thereof exceeds $1,000.00 unless the Tenant has provided its prior written consent to such installation.

(b) If any lights, density of staff, machines or equipment used by Tenant in the Leased Premises materially affect the temperature otherwise maintained by the Building's air-conditioning system or generate substantially more heat in the Leased Premises than that which would normally be generated by commercial office tenants in the Building using comparable sized space, then Landlord shall have the right to install any machinery or equipment that Landlord considers reasonably necessary in order to restore the temperature balance between the Leased Premises and the rest of the Building, including, without limitation, equipment that modifies the Building's air-conditioning system. All costs expended by Landlord to install any such machinery and equipment and any additional costs of operation and maintenance in connection therewith shall be borne by Tenant, who shall reimburse Landlord for the same as provided in this Section 6.02. Prior to installing any such machinery or equipment, Landlord must provide Tenant with written notice of its intent to install such equipment, and a period not less than thirty (30) days in which Tenant may attempt to cure the deficient temperature balance.

(c) If Tenant uses the HVAC outside of those hours listed in Section 6.01, Landlord shall bill Tenant monthly for "After Hours" use of HVAC at the rate of $100.00 per hour of usage.

Section 6.03. Interruption of Services. No interruption or malfunction of any of the services to be furnished by Landlord hereunder shall constitute an eviction or disturbance of Tenant's use and possession of Leased Premises, or a breech by Landlord of any of its obligations hereunder, or render Landlord liable for damages or entitle Tenant to be relieved of any of its obligations hereunder (including obligation to pay Rent) or grant Tenant any right of set-off or recoupment. In the event of any such interruption or malfunction of such services, however, Landlord agrees to use reasonable diligence to restore such service.

## ARTICLE 7 - REPAIRS, MAINTENANCE AND ALTERATIONS

Section 7.01. Repair and Maintenance of Building. Landlord shall make all necessary repairs and replacements to the roof, exterior walls, exterior doors, windows, corridors and other Common Areas, and Landlord shall keep the Building in a clean and neat condition and use reasonable efforts to keep all equipment used in common with other tenants in good condition and repair. The cost of such repairs, replacements and maintenance shall be included in Operating Expenses to the extent provided in Section 3.02; provided however, to the extent any such repairs, replacements or maintenance are required because of the negligence, misuse or default of Tenant, its employees, agents, contractors, customers or invitees, Landlord shall make such repairs at Tenant's sole expense.

Section 7.02. Repair and Maintenance of Leased Premises. Landlord shall keep and maintain the Leased Premises in good condition and repair. The cost of such repairs and maintenance to the Leased Premises shall be included in Operating Expenses; provided however, to the extent any repairs or maintenance are required in the Leased Premises because of the negligence, misuse or default of Tenant, its employees, agents, contractors, customers or invitees or are made at the specific request of Tenant, Landlord shall make such repairs or perform such maintenance at Tenant's sole expense. Notwithstanding the above, Tenant shall be solely responsible for any repair or replacement with respect to Tenant's Property (as defined in Section 8.01 below) located in the Leased Premises. Nothing in this Article 7 shall obligate Landlord or Tenant to repair normal wear and tear to any paint, wall covering or carpet in the Leased Premises.

Section 7.03. Alterations. Tenant shall not permit alterations in or to the Leased Premises unless and until Landlord has approved the plans therefor in writing. As a condition of such approval, Landlord may require Tenant to remove the alterations and restore the Leased Premises upon termination of this Lease; otherwise, all such alterations shall at Landlord's option become a part of the realty and the property of Landlord, and shall not be removed by Tenant. Tenant shall ensure that all alterations shall be made in accordance with all applicable laws, regulations and building codes, in a good and workmanlike manner and of quality equal to or better than the original construction of the Building. No person shall be entitled to any lien derived through or under Tenant for any labor or material furnished to the Leased Premises, and nothing in this Lease shall be construed to constitute Landlord's consent to the creation of any lien. If any lien is filed against the Leased Premises for work claimed to have been done for or material claimed to have been furnished to Tenant, Tenant shall cause such lien to be discharged of record within thirty (30) days after filing; provided, however, that Tenant may in good faith contest the same by appropriate legal proceedings so long as a bond or other security covering the amount of the lien is furnished to Landlord. Tenant shall indemnify Landlord from all costs, losses, expenses and reasonable attorneys' fees in connection with any construction or alteration and any related lien; provided, however, that the foregoing indemnity shall not apply to with respect to the construction of the Tenant Improvements.

## ARTICLE 8 - INDEMNITY AND INSURANCE

Section 8.01. Release. All of Tenant's trade fixtures, equipment, inventory and all other personal property in or about the Leased Premises, the Building or the Common Areas, which is deemed to include the trade fixtures, equipment, inventory and personal property of others located in or about the Leased Premises or Common Areas at the invitation or direction of Tenant (all of which property shall be referred to herein, collectively, as "Tenant's Property"), shall be and remain at Tenant's sole risk. Landlord shall not be liable to Tenant or to any other person for, and Tenant hereby releases Landlord from (a) any and all liability for theft or damage to Tenant's Property (except to the extent of the contributory negligence or willful misconduct of Landlord, its agents, employees or contractors), and (b) any and all liability for any injury to Tenant or its employees, agents, contractors, guests and invitees in or about the Leased Premises, the Building or the Common Areas, except to the extent caused directly by the negligence or willful misconduct of Landlord, its agents, employees or contractors. Nothing contained in this Section 8.01 shall limit (or be deemed to limit) the waivers contained in Section 8.06 below. In the event of any conflict between the provisions of Section 8.06 below and this Section 8.01, the provisions of Section 8.06 shall prevail. This Section 8.01 shall survive the expiration or earlier termination of this Lease.

Section 8.02. Indemnification by Tenant. Tenant shall protect, defend, indemnify and hold Landlord, its agents, employees and contractors harmless from and against any and all claims, damages, demands, penalties, costs, liabilities, losses, and expenses (including reasonable attorneys' fees and expenses at the trial and appellate levels) to the extent (a) arising out of or relating to any act, omission, negligence, or willful misconduct of Tenant or Tenant's agents, employees, contractors, customers or invitees in or about the Leased Premises, the Building or the Common Areas, (b) arising out of or relating to any of Tenant's Property, or (c) arising out of any other act or occurrence within the Leased Premises, in all such cases except to the extent caused directly by the negligence or willful misconduct of Landlord, its agents, employees or contractors. This Section 8.02 shall survive the expiration or earlier termination of this Lease.

Section 8.03. Indemnification by Landlord. Landlord shall protect, defend, indemnify and hold Tenant, its agents, employees and contractors harmless from and against any and all claims, damages, demands, penalties, costs, liabilities, losses and expenses (including reasonable attorneys' fees and expenses at the trial and appellate levels) to the extent arising out of or relating to any act, omission, negligence or willful misconduct of Landlord or Landlord's agents, employees or contractors, customers or invitees in or about the Leased Premises, the Building or the Common Areas. This Section 8.03 shall survive the expiration or earlier termination of this Lease.

Section 8.04. Tenant's Insurance. During the Lease Term (and any period of early entry or occupancy or holding over by Tenant, if applicable), Tenant shall maintain the following types of insurance, in the amounts specified below:

(a) Liability Insurance. Commercial General Liability Insurance (which insurance shall not exclude blanket contractual liability, broad form property damage, personal injury, or fire damage coverage) covering the Leased Premises and Tenant's use thereof against claims for bodily injury or death and property damage, which insurance shall provide coverage on an occurrence basis with a per occurrence limit of not less than $1,000,000, for each policy year, which limits may be satisfied by any combination of primary and excess or umbrella per occurrence policies.

(b) Property Insurance. Special Form Insurance (which insurance shall not exclude flood or earthquake) in the amount of the full replacement cost of Tenant's Property and betterments (including alterations or additions performed by Tenant pursuant hereto, but excluding those improvements, if any,

made pursuant to Section 2.02 above), which insurance shall include an agreed amount endorsement waiving coinsurance limitations.

(c) Worker's Compensation Insurance. Worker's Compensation insurance in amounts required by applicable law.

All insurance required by Tenant hereunder shall (i) be issued by one or more insurance companies reasonably acceptable to Landlord, licensed to do business in the State in which the Leased Premises is located and having an AM Best's rating of A IX or better, and (ii) provide that said insurance shall not be materially changed, canceled or permitted to lapse on less than thirty (30) days' prior written notice to Landlord. In addition, Tenant's insurance shall protect Tenant and Landlord as their interests may appear, naming Landlord, Landlord's managing agent, and any mortgagee requested by Landlord, as additional insureds under its commercial general liability policies. On or before the Commencement Date (or the date of any earlier entry or occupancy by Tenant), and thereafter, within thirty (30) days prior to the expiration of each such policy, Tenant shall furnish Landlord with certificates of insurance in the form of ACORD 25 or ACORD 25-S (or other evidence of insurance reasonably acceptable to Landlord), evidencing all required coverages, together with a copy of the endorsement(s) to Tenant's commercial general liability policy evidencing primary and non-contributory coverage afforded to the appropriate additional insureds. Upon Tenant's receipt of a request from Landlord, Tenant shall provide Landlord with copies of all insurance policies, including all endorsements, evidencing the coverages required hereunder. If Tenant fails to carry such insurance and furnish Landlord with such certificates of insurance or copies of insurance policies (if applicable), after not less than ten (10) days prior written notice to Tenant, Landlord may obtain such insurance on Tenant's behalf and Tenant shall reimburse Landlord upon demand for the cost thereof as Additional Rent. Landlord reserves the right from time to time to require Tenant to obtain higher minimum amounts or different types of insurance if it becomes customary for other landlords of similar buildings in the area to require similar sized tenants in similar industries to carry insurance of such higher minimum amounts or of such different types.

## ARTICLE 9 - CASUALTY

In the event of total or partial destruction of the Building or the Leased Premises by fire or other casualty, Landlord agrees promptly to restore and repair same; provided, however, Landlord's obligation hereunder with respect to the Leased Premises shall be limited to the reconstruction of such of the leasehold improvements as were originally required to be made by Landlord pursuant to Section 2.02 above, if any. Rent shall proportionately abate during the time that the Leased Premises or part thereof are unusable because of any such damage. Notwithstanding the foregoing, if the Leased Premises are (a) so destroyed that they cannot be repaired or rebuilt within six (6) months from the casualty date; or (b) destroyed by a casualty that is not covered by insurance or, if covered, such insurance proceeds are not released by any mortgagee entitled thereto or are insufficient to rebuild the Building and the Leased Premises; then, Landlord or Tenant may, upon thirty (30) days' written notice to Tenant, terminate this Lease with respect to matters thereafter accruing. Tenant waives any right under applicable laws inconsistent with the terms of this paragraph.

## ARTICLE 10 - EMINENT DOMAIN

If all or any substantial part of the Building or Common Areas shall be acquired by the exercise of eminent domain, Landlord may terminate this Lease by giving written notice to Tenant on or before the date possession thereof is so taken. If all or any part of the Leased Premises shall be acquired by the exercise of eminent domain so that the Leased Premises shall become impractical for Tenant to use for the Permitted Use, Tenant may terminate this Lease by giving written notice to Landlord as of the date

possession thereof is so taken. All damages awarded shall belong to Landlord; provided, however, that Tenant may claim dislocation damages if such amount is not subtracted from Landlord's award.

## ARTICLE 11 - ASSIGNMENT AND SUBLEASE

Tenant shall not assign this Lease or sublet the Leased Premises in whole or in part without Landlord's prior written consent, which consent shall not be unreasonably withheld. In the event of any permitted assignment or subletting, Tenant shall remain primarily liable hereunder, and any extension, expansion, rights of first offer, rights of first refusal or other options granted to Tenant under this Lease shall be rendered void and of no further force or effect. The acceptance of rent from any other person shall not be deemed to be a waiver of any of the provisions of this Lease or to be consent to the assignment of this Lease or the subletting of the Leased Premises. Any assignment or sublease consented to by Landlord shall not relieve Tenant (or its assignee) from obtaining Landlord's consent to any subsequent assignment or sublease.

## ARTICLE 12 - TRANSFERS BY LANDLORD

Section 12.01. Sale of the Building. Landlord shall have the right to sell the Building at any time during the Lease Term, subject only to the rights of Tenant hereunder; and such sale shall operate to release Landlord from liability hereunder after the date of such conveyance; provided that the purchaser shall have assumed and agreed to carry out any and all of the covenants and obligations of the Landlord under this Lease.

Section 12.02. Estoppel Certificate. Within ten (10) days following receipt of a written request from Landlord, Tenant shall execute and deliver to Landlord, without cost to Landlord, an estoppel certificate in such form as Landlord may reasonably request certifying (a) that this Lease is in full force and effect and unmodified or stating the nature of any modification, (b) the date to which rent has been paid, (c) that there are not, to Tenant's knowledge, any uncured defaults or specifying such defaults if any are claimed, and (d) any other matters or state of facts reasonably required respecting this Lease. Such estoppel may be relied upon by Landlord and by any purchaser or mortgagee of the Building.

Section 12.03. Subordination. Landlord shall have the right to subordinate this Lease to any mortgage, deed to secure debt, deed of trust or other instrument in the nature thereof, and any amendments or modifications thereto (collectively, a "Mortgage") presently existing or hereafter encumbering the Building by so declaring in such Mortgage. Within ten (10) days following receipt of a written request from Landlord or mortgagee, Tenant shall execute and deliver to Landlord or mortgagee, without cost, any instrument that Landlord deems reasonably necessary or desirable to confirm the subordination of this Lease. Notwithstanding the foregoing, if the holder of the Mortgage shall take title to the Leased Premises through foreclosure or deed in lieu of foreclosure, Tenant shall be allowed to continue in possession of the Leased Premises as provided for in this Lease so long as Tenant is not in Default.

## ARTICLE 13 - DEFAULT AND REMEDY

Section 13.01. Default. The occurrence of any of the following shall be a "Default":

(a) Tenant fails to pay any Monthly Rental Installments or Additional Rent within ten (10) days after the same is due;

(b) Tenant fails to perform or observe any other term, condition, covenant or obligation required under this Lease for a period of thirty (30) days after written notice thereof from Landlord;

provided, however, that if the nature of Tenant's default is such that more than thirty (30) days are reasonably required to cure, then such default shall be deemed to have been cured if Tenant commences such performance within said thirty (30) day period and thereafter diligently completes the required action within a reasonable time;

(c) Tenant shall vacate or abandon the Leased Premises, or fail to occupy the Leased Premises or any substantial portion thereof for a period of not less than thirty consecutive (30) days;

(d) Tenant shall assign or sublet all or a portion of the Leased Premises in contravention of the provisions of Article 11 of this Lease; or

(e) All or substantially all of Tenant's assets in the Leased Premises or Tenant's interest in this Lease are attached or levied under execution (and Tenant does not discharge the same within sixty (60) days thereafter); a petition in bankruptcy, insolvency or for reorganization or arrangement is filed by or against Tenant (and Tenant fails to secure a stay or discharge thereof within sixty (60) days thereafter); Tenant is insolvent and unable to pay its debts as they become due; Tenant makes a general assignment for the benefit of creditors; Tenant files a petition to declare bankruptcy or seeking a plan of reorganization; the appointment of a receiver or trustee in bankruptcy for Tenant or its assets if such receivership has not been vacated or set aside within sixty (60) days thereafter; or, dissolution or other termination of Tenant's corporate charter if Tenant is a corporation.

Section 13.02. Remedies. Upon the occurrence of any Default, Landlord shall have the following rights and remedies, in addition to those stated elsewhere in this Lease and those allowed by law or in equity, any one or more of which may be exercised without further notice to Tenant:

(a) Landlord may re-enter the Leased Premises and cure any Default of Tenant, and Tenant shall reimburse Landlord as Additional Rent for any costs and expenses which Landlord thereby incurs; and Landlord shall not be liable to Tenant for any loss or damage which Tenant may sustain by reason of Landlord's action.

(b) Without terminating this Lease, Landlord may terminate Tenant's right to possession of the Leased Premises, and thereafter, neither Tenant nor any person claiming under or through Tenant shall be entitled to possession of the Leased Premises, and Tenant shall immediately surrender the Leased Premises to Landlord, and Landlord may re-enter the Leased Premises and dispossess Tenant and any other occupants of the Leased Premises by any lawful means and may remove their effects, without prejudice to any other remedy that Landlord may have. Upon termination of possession, Landlord may (i) re-let all or any part thereof for a term different from that which would otherwise have constituted the balance of the Lease Term and for rent and on terms and conditions different from those contained herein, whereupon Tenant shall be immediately obligated to pay to Landlord an amount equal to the present value (discounted at the Prime Rate) of the difference between the rent provided for herein and that provided for in any lease covering a subsequent re-letting of the Leased Premises, for the period which would otherwise have constituted the balance of the Lease Term (the "Accelerated Rent Difference"), or (ii) without re-letting, declare the present value (discounted at the Prime Rate) of all rent which would have been due under this Lease for the balance of the Lease Term to be immediately due and payable as liquidated damages (the "Accelerated Rent"). Upon termination of possession, Tenant shall be obligated to pay to Landlord (A) the Accelerated Rent Difference or the Accelerated Rent, whichever is applicable, (B) all loss or damage that Landlord may sustain by reason of Tenant's Default ("Default Damages"), which shall include, without limitation, expenses of preparing the Leased Premises for re-letting, demolition, repairs, tenant finish improvements, brokers' commissions and attorneys' fees, and (C) all unpaid Minimum Annual Rent and Additional Rent that accrued prior to the date of termination of possession, plus any interest and late fees due hereunder (the "Prior Obligations").

(c) Landlord may terminate this Lease and declare the Accelerated Rent to be immediately due and payable, whereupon Tenant shall be obligated to pay to Landlord (i) the Accelerated Rent, (ii) all of Landlord's Default Damages, and (iii) all Prior Obligations. It is expressly agreed and understood that all of Tenant's liabilities and obligations set forth in this subsection (c) shall survive termination.

(d) Landlord and Tenant acknowledge and agree that the payment of the Accelerated Rent Difference or the Accelerated Rent as set above shall not be deemed a penalty, but merely shall constitute payment of liquidated damages, it being understood that actual damages to Landlord are extremely difficult, if not impossible, to ascertain. Neither the filing of a dispossessory proceeding nor an eviction of personalty in the Leased Premises shall be deemed to terminate this Lease.

(e) Landlord may sue for injunctive relief or to recover damages for any loss resulting from the Default.

Section 13.03. Landlord's Default and Tenant's Remedies. Landlord shall be in default if it fails to perform any term, condition, covenant or obligation required under this Lease for a period of thirty (30) days after written notice thereof from Tenant to Landlord; provided, however, that if the term, condition, covenant or obligation to be performed by Landlord is such that it cannot reasonably be performed within thirty (30) days, such default shall be deemed to have been cured if Landlord commences such performance within said thirty-day period and thereafter diligently undertakes to complete the same. Upon the occurrence of any such default, Tenant may sue for injunctive relief or to recover damages for any loss directly resulting from the breach, but Tenant shall not be entitled to terminate this Lease or withhold, offset or abate any sums due hereunder.

Section 13.04. Nonwaiver of Defaults. Neither party's failure or delay in exercising any of its rights or remedies or other provisions of this Lease shall constitute a waiver thereof or affect its right thereafter to exercise or enforce such right or remedy or other provision. No waiver of any default shall be deemed to be a waiver of any other default. Landlord's receipt of less than the full rent due shall not be construed to be other than a payment on account of rent then due, nor shall any statement on Tenant's check or any letter accompanying Tenant's check be deemed an accord and satisfaction. No act or omission by Landlord or its employees or agents during the Lease Term shall be deemed an acceptance of a surrender of the Leased Premises, and no agreement to accept such a surrender shall be valid unless in writing and signed by Landlord.

Section 13.06. Attorneys' Fees. If either party defaults in the performance or observance of any of the terms, conditions, covenants or obligations contained in this Lease and the non-defaulting party obtains a judgment against the defaulting party, then the defaulting party agrees to reimburse the non-defaulting party for reasonable attorneys' fees incurred in connection therewith. In addition, if a monetary Default shall occur and Landlord engages outside counsel to exercise its remedies hereunder, and then Tenant cures such monetary Default, Tenant shall pay to Landlord, on demand, all expenses incurred by Landlord as a result thereof, including reasonable attorneys' fees, court costs and expenses actually incurred.

## ARTICLE 14 - RESERVED

Reserved.

## ARTICLE 15 - TENANT'S RESPONSIBILITY REGARDING ENVIRONMENTAL LAWS AND HAZARDOUS SUBSTANCES

Section 15.01. Environmental Definitions.

(a) "Environmental Laws" shall mean all present or future federal, state and municipal laws, ordinances, rules and regulations applicable to the environmental and ecological condition of the Leased Premises, and the rules and regulations of the Federal Environmental Protection Agency and any other federal, state or municipal agency or governmental board or entity having jurisdiction over the Leased Premises.

(b) "Hazardous Substances" shall mean those substances included within the definitions of "hazardous substances," "hazardous materials," "toxic substances" "solid waste" or "infectious waste" under Environmental Laws and petroleum products.

Section 15.02. Restrictions on Tenant. Tenant shall not cause or permit the use, generation, release, manufacture, refining, production, processing, storage or disposal of any Hazardous Substances on, under or about the Leased Premises, or the transportation to or from the Leased Premises of any Hazardous Substances, except as necessary and appropriate for its Permitted Use in which case the use, storage or disposal of such Hazardous Substances shall be performed in compliance with the Environmental Laws and the highest standards prevailing in the industry.

Section 15.03. Notices, Affidavits, Etc. Tenant shall immediately (a) notify Landlord of (i) any violation by Tenant, its employees, agents, representatives, customers, invitees or contractors of any Environmental Laws on, under or about the Leased Premises, or (ii) the presence or suspected presence of any Hazardous Substances on, under or about the Leased Premises, and (b) deliver to Landlord any notice received by Tenant relating to (a)(i) and (a)(ii) above from any source. Tenant shall execute affidavits, representations and the like within five (5) days of Landlord's request therefor concerning Tenant's best knowledge and belief regarding the presence of any Hazardous Substances on, under or about the Leased Premises.

Section 15.04. Tenant's Indemnification. Tenant shall indemnify Landlord from any and all claims, losses, liabilities, costs, expenses and damages, including attorneys' fees, costs of testing and remediation costs, incurred by Landlord in connection with any breach by Tenant of its obligations under this Article 15. The covenants and obligations under this Article 15 shall survive the expiration or earlier termination of this Lease.

Section 15.05. Existing Conditions. Notwithstanding anything contained in this Article 15 to the contrary, Tenant shall not have any liability to Landlord under this Article 15 resulting from any conditions existing, or events occurring, or any Hazardous Substances existing, generated or released, at, in, on, under or in connection with the Leased Premises prior to the Commencement Date of this Lease (or any earlier occupancy of the Leased Premises by Tenant) except to the extent Tenant materially exacerbates the same. Landlord shall indemnify Tenant, its agents, employees and contractors from any and all claims, losses, liabilities, costs, expenses and damages, including attorneys' fees, costs of testing and remediation costs, incurred by Tenant in connection with any Hazardous Substances existing, generated or released, at, in, on, under or in connection with the Leased Premises prior to the Commencement Date of this Lease.

## ARTICLE 16 - MISCELLANEOUS

Section 16.01. Benefit of Landlord and Tenant. This Lease shall inure to the benefit of and be binding upon Landlord and Tenant and their respective successors and assigns.

Section 16.02. Governing Law. This Lease shall be governed in accordance with the laws of the State of Missouri.

Section 16.03. Force Majeure. Landlord and Tenant (except with respect to the payment of any monetary obligation) shall be excused for the period of any delay in the performance of any obligation hereunder when such delay is occasioned by causes beyond its control, including but not limited to work stoppages, boycotts, slowdowns or strikes; shortages of materials, equipment, labor or energy; unusual weather conditions; or acts or omissions of governmental or political bodies.

Section 16.04. Examination of Lease. Submission of this instrument by Landlord to Tenant for examination or signature does not constitute an offer by Landlord to lease the Leased Premises. This Lease shall become effective, if at all, only upon the execution by and delivery to both Landlord and Tenant. Execution and delivery of this Lease by Tenant to Landlord constitutes an offer to lease the Leased Premises on the terms contained herein. The offer by Tenant will be irrevocable until 6:00 p.m. EST, fifteen (15) days after the date Landlord receives the Lease executed by Tenant.

Section 16.05. Indemnification for Leasing Commissions. The parties hereby represent and warrant that the only real estate brokers involved in the negotiation and execution of this Lease are the Brokers and that no other party is entitled, as a result of the actions of the respective party, to a commission or other fee resulting from the execution of this Lease. Each party shall indemnify the other from any and all liability for the breach of this representation and warranty on its part and shall pay any compensation to any other broker or person who may be entitled thereto. Landlord, at its own cost, shall pay any commissions due Brokers based on this Lease pursuant to separate agreements between Landlord and Brokers.

Section 16.06. Notices. Any notice required or permitted to be given under this Lease or by law shall be deemed to have been given if it is written and delivered in person or by overnight courier or mailed by certified mail, postage prepaid, to the party who is to receive such notice at the address specified in Section 1.01(l). If sent by overnight courier, the notice shall be deemed to have been given one (1) day after sending. If mailed, the notice shall be deemed to have been given on the date that is three (3) business days following mailing. Either party may change its address by giving written notice thereof to the other party.

Section 16.07. Partial Invalidity; Complete Agreement. If any provision of this Lease shall be held to be invalid, void or unenforceable, the remaining provisions shall remain in full force and effect. This Lease represents the entire agreement between Landlord and Tenant covering everything agreed upon or understood in this transaction. There are no oral promises, conditions, representations, understandings, interpretations or terms of any kind as conditions or inducements to the execution hereof or in effect between the parties. No change or addition shall be made to this Lease except by a written agreement executed by Landlord and Tenant.

Section 16.08. Financial Statements. During the Lease Term and any extensions thereof, Tenant shall provide to Landlord on an annual basis, within ninety (90) days following the end of Tenant's fiscal year, a copy of Tenant's most recent financial statements prepared as of the end of Tenant's fiscal year. Such financial statements shall be signed by Tenant or an officer of Tenant, if applicable, who shall attest to the truth and accuracy of the information set forth in such statements. All financial statements

provided by Tenant to Landlord hereunder shall be prepared in conformity with generally accepted accounting principles, consistently applied.

Section 16.09. Representations and Warranties.

(a) Tenant hereby represents and warrants that (i) Tenant is duly organized, validly existing and in good standing (if applicable) in accordance with the laws of the State under which it was organized; (ii) Tenant is authorized to do business in the State where the Building is located; and (iii) the individual(s) executing and delivering this Lease on behalf of Tenant has been properly authorized to do so, and such execution and delivery shall bind Tenant to its terms.

(b) Landlord hereby represents and warrants that (i) Landlord is duly organized, validly existing and in good standing (if applicable) in accordance with the laws of the State under which it was organized; (ii) Landlord is authorized to do business in the State where the Building is located; and (iii) the individual(s) executing and delivering this Lease on behalf of Landlord has been properly authorized to do so, and such execution and delivery shall bind Landlord to its terms.

Section 16.10. Signage. Landlord, at its cost and expense, shall provide Tenant with Building standard signage on the main Building directory. Landlord may install such other signs, advertisements, notices or tenant identification information on the Building directory, tenant access doors or other areas of the Building, as it shall deem necessary or proper. Tenant shall not place any exterior signs on the Leased Premises or interior signs visible from the exterior of the Leased Premises without the prior written consent of Landlord. Notwithstanding any other provision of this Lease to the contrary, Landlord may immediately remove any sign(s) placed by Tenant in violation of this Section.

Section 16.11. Consent. Where the consent of a party is required, such consent will not be unreasonably withheld.

Section 16.12. Time. Time is of the essence of each term and provision of this Lease.

Section 16.13. Patriot Act. Each of Landlord and Tenant, each as to itself, hereby represents its compliance with all applicable anti-money laundering laws, including, without limitation, the USA Patriot Act, and the laws administered by the United States Treasury Department's Office of Foreign Assets Control, including, without limitation, Executive Order 13224 ("Executive Order"). Each of Landlord and Tenant further represents (i) that it is not, and it is not owned or controlled directly or indirectly by any person or entity, on the SDN List published by the United States Treasury Department's Office of Foreign Assets Control and (ii) that it is not a person otherwise identified by government or legal authority as a person with whom a U.S. Person is prohibited from transacting business. As of the date hereof, a list of such designations and the text of the Executive Order are published under the internet website address www.ustreas.gov/offices/enforcement/ofac.

Section 16.14. Option to Extend.

(a) Grant and Exercise of Option. Provided that (i) no Default by Tenant has occurred and is then continuing, (ii) the creditworthiness of Tenant is then reasonably acceptable to Landlord and (iii) Tenant originally named herein or its Permitted Transferee remains in possession of and has been continuously operating in the entire Leased Premises throughout the Lease Term, Tenant shall have one (1) option to extend the Lease Term for one (1) additional period of five (5) years (the "Extension Term"). The Extension Term shall be upon the same terms and conditions contained in the Lease except (x) Tenant shall not have any further option to extend, (y) any improvement allowances or other concessions applicable to the Leased Premises under the Lease shall not apply to the Extension Term, and (z) the

Minimum Annual Rent shall be adjusted as set forth herein ("Rent Adjustment"). Tenant shall exercise such option by delivering to Landlord, no later than nine (9) months prior to the expiration of the current Lease Term, written notice of Tenant's desire to extend the Lease Term. Tenant's failure to properly exercise such option shall be deemed a waiver of such option. If Tenant properly exercises its option to extend, Landlord shall notify Tenant of the Rent Adjustment no later than ninety (90) days prior to the commencement of the Extension Term. Tenant shall be deemed to have accepted the Rent Adjustment if it fails to deliver to Landlord a written objection thereto within ten (10) business days after receipt thereof. If Tenant properly exercises its option to extend, Landlord and Tenant shall execute an amendment to the Lease (or, at Landlord's option, a new lease in the same form as this Lease) reflecting the terms and conditions of the Extension Term within thirty (30) days after Tenant's acceptance (or deemed acceptance) of the Rent Adjustment.

(b) Rent Adjustment. The Minimum Annual Rent for the Extension Term shall be an amount equal to the prevailing market rate for space of comparable size and quality in the Chesterfield, Missouri submarket; provided, however, that in no event shall the Minimum Annual Rent during the Extension Term be less than an amount equal to $24.00 per rentable square foot. The Monthly Rental Installments shall be an amount equal to one-twelfth (1/12) of the Minimum Annual Rent for the Extension Term and shall be paid at the same time and in the same manner as provided in this Lease.

Section 16.15. Furniture. Tenant shall be permitted to use certain furniture currently in the Leased Premises. The specific furniture shall be agreed upon by Landlord and Tenant prior to the Commencement Date and an inventory thereof shall be prepared and signed by Landlord and Tenant. The furniture shall remain the property of Landlord and upon termination of this Lease all such furniture shall remain in the Leased Premises. Reasonable care shall be taken with all furniture and Landlord shall not be responsible for repairs and maintenance of furniture.

***[SIGNATURES CONTAINED ON THE FOLLOWING PAGE]***

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the day and year first above written.

LANDLORD:

GROVE II LLC,
a Missouri limited liability company

By:/S/ John Niemi
Name John Niemi
Title: Authorized Rep.

STATE OF MISSOURI )
) SS:
CITY OF ST. LOUIS )

Before me, a Notary Public in and for said City and State, personally appeared John Niemi, by me known and by me known to be the Authorized Rep. of Grove II LLC, who acknowledged the execution of the foregoing instrument on behalf of said limited liability company as its free act and deed.

WITNESS my hand and Notarial Seal this 7th day of October, 2015.

DANIEL J. PATTERSON
Notary Public - Notary Seal
State of Missouri
Commissioned for St. Louis City
My Commission Expires: March 03, 2018
Commission Number: 14588040

/s/ Daniel J. Patterson
(Printed Signature)

*[SIGNATURES CONTINUED ON THE FOLLOWING PAGE]*

TENANT:

ECLAT PHARMACEUTICALS LLC,
a Delaware limited liability company

By: Scott A. Macke
Name: SCOTT A MACKE
Title: VP, SUPPLY CHAIN & OPERATIONS

STATE OF MISSOURI )
) SS:
COUNTY OF ST. LOUIS )

Before me, a Notary Public in and for said County and State, personally appeared Scott Macke, by me known to be the VP, Supply Chain & Operations of Eclat Pharmaceuticals LLC, who acknowledged the execution of the foregoing instrument on behalf of said limited liability company as its free act and deed.

WITNESS my hand and Notarial Seal this 6th day of OCTOBER, 2015.

Notary Public
*Linda Horondenski* (Printed Signature)

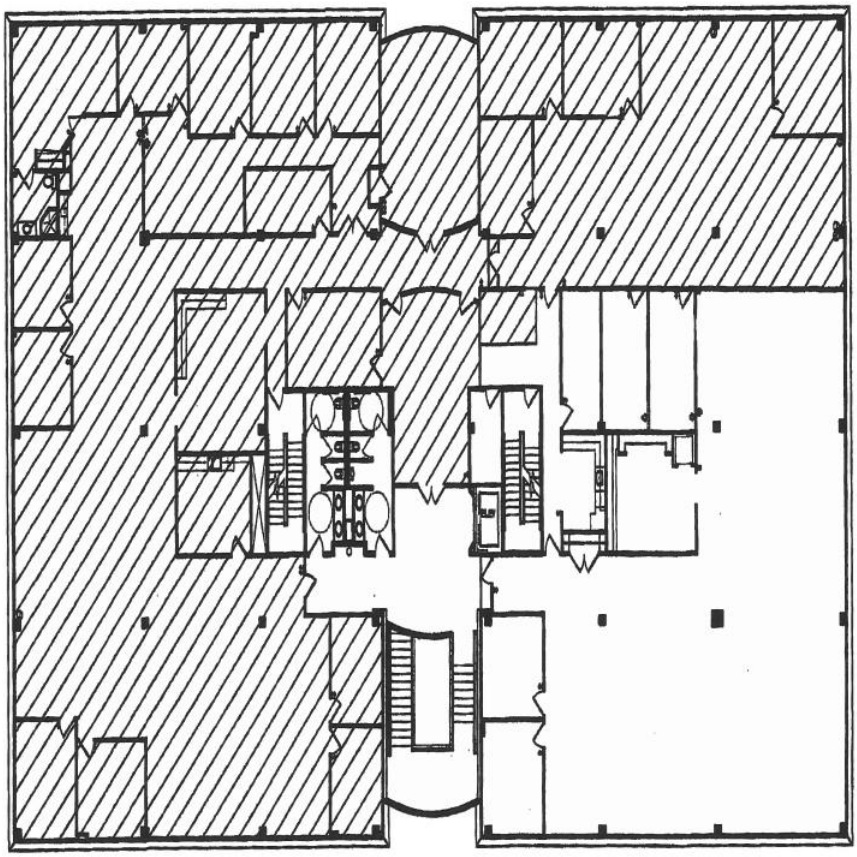
LINDA HORODE
Notary Public, Not
State of Misso
St. Louis Coun
Commission # 15o3o
My Commission Expires June 0

LINDA HORODENSKI
Notary Public, Notary Seal
State of Missouri
St. Louis County
Commission # 15636066
My Commission Expires June 09, 2019

**EXHIBIT A**

**ILLUSTRATION OF LEASED PREMISES**

[DRAWING ATTACHED]



Suite 200
Premises Shown Hatched
12,000 RSF

## 2nd Floor Plan

Not to Scale
1.0885 LOAD FACTOR

# 16640 Chesterfield Grove
## Chesterfield, Missouri

**EXHIBIT B**

**TENANT IMPROVEMENTS**

1. Landlord's Obligations. Tenant has personally inspected the Leased Premises and accepts the same **"AS IS"** without representation or warranty by Landlord of any kind and with the understanding that Landlord shall have no responsibility with respect thereto except to construct and install within the Leased Premises, in a good and workmanlike manner, the Tenant Improvements, in accordance with this **Exhibit B**, and to deliver the Leased Premises to Tenant "broom clean" and in good condition and repair on the date of Substantial Completion. "Substantial Completion" (or any grammatical variation thereof) shall mean completion of construction of the Tenant Improvements, subject only to punch-list items to be identified by Landlord and Tenant in a joint inspection of the Leased Premises prior to Tenant's occupancy

2. Scope of Work. Landlord shall complete the following work prior to the date of Substantial Completion:

- Construct new demising walls where indicated in the attached drawing.
- Install four (4) new offices where indicated in the attached drawing.
- Install/remove doorways where indicated in the attached drawing.
- Replace carpet in Leased Premises, excluding reception area, conference room and kitchen.
- Replace carpet in kitchen with tile.
- Paint existing and new drywall surfaces.

3. Schedule and Early Occupancy. Landlord shall provide Tenant with a proposed schedule for the construction and installation of the Tenant Improvements and shall notify Tenant of any material changes to said schedule. Tenant agrees to coordinate with Landlord regarding the installation of Tenant's phone/data wiring and any other trade related fixtures that will need to be installed in the Leased Premises prior to Substantial Completion. In addition, if and to the extent permitted by applicable laws, rules and ordinances, Landlord will give Tenant access to the Leased Premises prior to the scheduled date for Substantial Completion (as may be modified from time to time) in order to install fixtures, equipment and phone/data wiring and otherwise prepare the Leased Premises for occupancy, which right shall expressly exclude making any structural modifications. During any entry prior to the Commencement Date, Tenant shall: (a) comply with all terms and conditions of this Lease other than the obligation to pay rent, (b) not interfere with Landlord's completion of the Tenant Improvements, (c) cause its personnel and contractors to comply with the terms and conditions of Landlord's rules of conduct (which Landlord agrees to furnish to Tenant upon request), and (d) not begin operation of its business therein. Tenant acknowledges that Tenant shall be responsible for obtaining all applicable permits and inspections relating to any such entry by Tenant.

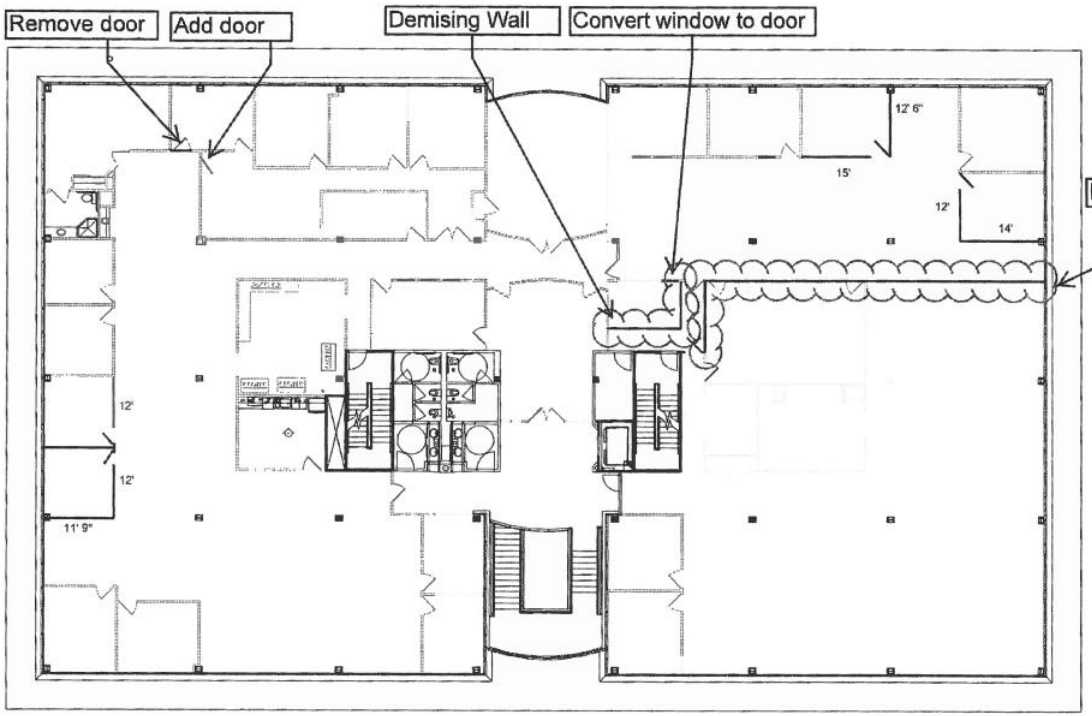
4. Tenant Delay. Notwithstanding anything to the contrary contained in the Lease, if Substantial Completion of the Tenant Improvements is delayed beyond the Target Commencement Date as a result of Tenant Delay (as hereinafter defined), then, for purposes of determining the Commencement Date, Substantial Completion of the Tenant Improvements shall be deemed to have occurred on the date that Substantial Completion of the Tenant Improvements would have occurred but for such Tenant Delay. Without limiting the foregoing, Landlord shall use commercially reasonable speed and diligence to Substantially Complete the Tenant Improvements on or before the Target Commencement Date. "Tenant Delay" shall mean any delay in the completion of the Tenant Improvements attributable to Tenant, including, without limitation (i) Tenant's failure to meet any time deadlines specified herein, (ii) changes

to the Tenant Improvements requested by Tenant after the date hereof, (iii) the performance of any other work in the Leased Premises by any person, firm or corporation employed by or on behalf of Tenant, or any failure to complete or delay in completion of such work, (iv) Landlord's inability to obtain an occupancy permit for the Leased Premises because of the need for completion of all or a portion of improvements being installed in the Leased Premises directly by Tenant, and (v) any other act or omission of Tenant.

5. Letter of Understanding. Promptly following the Commencement Date, Tenant shall execute Landlord's Letter of Understanding in substantially the form attached hereto as **Exhibit C** and made a part hereof, acknowledging (a) the Commencement Date of this Lease, and (b) except for any punchlist items, that Tenant has accepted the Leased Premises. If Tenant takes possession of and occupies the Leased Premises, Tenant shall be deemed to have accepted the Leased Premises and that the condition of the Leased Premises and the Building was at the time satisfactory and in conformity with the provisions of this Lease in all respects, subject to any punch-list items.

[DRAWING ATTACHED]

# SUITE 200 - 12,000 RSF




FLOOR PLAN

16640 Chesterfield Grove Rd.
Chesterfield, Missouri 63005

**EXHIBIT C**

**LETTER OF UNDERSTANDING**

Grove II LLC
540 Maryville Centre Drive, Suite 340
St. Louis, MO 63141

RE: Office Lease dated as of _____ ____, 2015 between Grove II LLC ("Landlord") and Eclat Pharmaceuticals LLC ("Tenant"), for 16640 Chesterfield Grove Road, Suite 200, Chesterfield, Missouri 63005 (the "Leased Premises").

Dear _____:

The undersigned, on behalf of Tenant, certifies to Landlord as follows:

1. The Commencement Date under the Lease is _____.

2. The rent commencement date is _____.

3. The expiration date of the Lease (subject to extension as provided therein) is _____.

4. The Lease (including amendments or guaranty, if any) is the entire agreement between Landlord and Tenant as to the leasing of the Leased Premises and is in full force and effect.

5. The Landlord has completed the Tenant Improvements and Tenant has accepted the Leased Premises as of the Commencement Date.

6. To the best of the undersigned's knowledge, there are no uncured events of default by either Tenant or Landlord under the Lease.

IN WITNESS WHEREOF, the undersigned has caused this Letter of Understanding to be executed this ____ day of _____, 20___.

ECLAT PHARMACEUTICALS LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

**EXHIBIT D**

**RULES AND REGULATIONS**

OFFICE RULES AND REGULATIONS

1. Tenant shall not display, inscribe, paint or affix any sign, picture, showcase, advertisement or notice on any part of the outside or inside of the Building, or on or about the Leased Premises, without the prior written consent of Landlord, and then only of such color, size, style and material as approved by Landlord. Landlord reserves the right to remove such items placed in the lobbies or corridors or in front of the Building, other than those above provided for, without notice, and at Tenant's expense.

2. All informational signs to be placed on Tenant's access door must be specified by Landlord or someone designated by it, and the actual cost (including installation) thereof shall be paid by the Tenant. Tenant shall not install or cause to be installed, without Landlord's consent, any shades, blinds, awnings and screens. Tenant shall remove all such signs, shades, blinds, awnings and screens from the Building and the Leased Premises at the end of its tenancy or Landlord may cause the removal to be done at Tenant's expense.

3. Tenant shall not make any additions to, or alterations in, any part of the Building or Leased Premise by putting up or changing any partition, doors, windows, nor shall there be any nailing, boring, or screwing into the woodwork or walls, nor painting done without the prior written consent of Landlord in each instance. Any and all additions and alterations to the Leased Premises shall be at Tenant's expense.

4. All glass, locks and trimmings in or about the doors or windows, and all electric globes and shades belonging to the Building or Leased Premises shall be kept whole and, whenever broken by any Tenant, shall be immediately replaced or repaired and put in order by such Tenant to the satisfaction of Landlord.

5. Tenant shall not place additional locks upon any door of the Leased Premises, nor permit any duplicate keys to be made, but if more than two keys for any door are desired, the additional number must be procured from Landlord and paid for by Tenant. Tenant shall surrender all keys to the Leased Premises and Building at the end of its tenancy.

6. If Tenant desires telegraph, telephone or data connections, Landlord will direct the electricians (whether hired by Landlord or Tenant) as to where the wires are to be introduced at Tenant's expense, and without such direction no boring or cutting for wires shall be permitted.

7. Landlord reserves the right to prescribe the weight and proper position of safes and mechanical equipment. All safes, furniture, boxes and bulky articles and packages and any items similar to the foregoing (all of the foregoing being referred to as the "Items") shall be moved into or out of the Building or from one part of the Building to another under the supervision of Landlord and at such times and according to such regulations as may be designated from time to time by Landlord. The Items shall be carried up or down only in the elevator and at the entrance designated by Landlord. Tenant shall be responsible for all damage to the walls, floors or other parts of the Building caused by or connected with any moving, or caused by and Item while in the Building. Tenant shall not place any engine, boiler or other machinery upon the Leased Premises.

8. Tenant shall not do or permit anything to be done in the Leased Premises, or bring or keep anything therein which will in any way increase the rate of insurance on the Building, or on property kept

therein; or anything which will be dangerous to life, or limb, or which will lend to create a nuisance or injure the reputation of the Building; or use flammable liquid, camphene, alcohol, kerosene or anything except steam, gas or electricity in lighting or heating the Leased Premises; or bring into the Leased Premises or keep therein any heating or lighting apparatus, except floor and desk lamps, other than that provided by Landlord; or install any air conditioning or air-cooling apparatus without the written consent of Landlord; or obstruct or interfere with the rights of other tenants or Landlord; or in any way injure or annoy them, or conflict with the laws relating to fires, or with the regulations of the Fire Department, or with any insurance policy upon the Building or any part thereof; or conflict with any of the laws, rules or regulations of any governmental agency or municipality having jurisdiction.

9. Tenant shall not use the Leased Premises for an illegal or immoral purpose. Tenant shall not sell or distribute beer, wine or intoxicating liquor in the Building without the written consent of Landlord in each instance.

10. Tenant shall not occupy or use any room or rooms as sleeping or lodging apartments.

11. The sidewalk, passages, lobbies, corridors, elevator and stairways shall not be obstructed by Tenant, or used except for ingress and egress to the Leased Premises.

12. The doors, skylights, windows and transoms that reflect or admit light into passageways or any areas in the Building, shall not be covered or obstructed by Tenant. Nothing shall be thrown by the Tenant, its agents, employees, invitees and guests, out of the windows or door, or down the passages or skylights of the Building.

13. Tenant, its agents, employees, invitees and guests shall not make noise, cause disturbances or vibrations or use or operate any electrical or electronic devices or any other devices that emit sounds or disturbances, or create odors that interfere or annoy in any way the other tenants, their agents, employees, invitees and guests. Tenant shall not conduct auctions in the Leased Premises nor make any room-to-room canvass to solicit business from other tenants in the Building.

14. Tenant shall not cause or allow to be caused any waste or misuse of water or other utilities. Building equipment and utilities shall not be used for any purpose other than those for which they were constructed, and any damage resulting to them from misuse shall be borne by the tenant causing same.

15. Tenant shall, when leaving the Leased Premises at close of business, or when the Leased Premises are unoccupied at any time, lock doors, and in the event of any default or carelessness in this respect, shall be liable for all injury sustained by other tenants, by Landlord, or by either of them, for damages resulting from such default or carelessness.

16. Tenant shall not allow any animals or birds in any part of the Building without the consent of Landlord.

17. Any person or persons, other than the janitorial staff of Landlord, who shall be employed for the purpose of cleaning the Leased Premises, shall be employed at Tenant's expense, and Landlord shall be in no way responsible for any loss of property on or from the Leased Premises, however occurring, or any damage done to the furniture or other effects of any tenant, by any cleaning contractor furnished by Tenant or anyone under him. Tenant will report any lack of attention in service of the Building to Landlord.

18. Landlord shall have the right, with pass key or otherwise, to enter any Leased Premises at any time with 24 hours' notice or in case of emergency, or times to examine the same or to make such repairs

or alterations as it shall deem necessary for the safety, preservation or improvement of the Building or the Leased Premises, or for the purpose of cleaning, watching or inspecting same and, during the last six (6) months of the term of the Lease, may show the premises to prospective tenants and put up customary "For Rent" signs.

19. Tenant shall not accumulate or store in the Leased Premises any waste paper, discarded records, books, paper, files, rubbish or other combustible matter.

20. The Landlord reserves the right to exclude from the Building all drunken and disorderly persons, solicitors, persons creating a disturbance and persons entering in crowds or in such unusual numbers as to cause inconvenience to the tenants of the Building.

21. Landlord reserves the rights to vending services in the Building.

22. Building hours are as follows:

| | |
|---|---|
| Monday through Friday | 7:00 A.:M. - 6:00 P.M. |
| Saturday | 7:00 A.M. - 1:00 P.M. |
| Sunday and Legal Holidays | None |

23. All smoking of cigarettes, cigars, pipes, etc., is prohibited within the Building or within fifty (50') feet of any entrance thereto.

It is Landlord's desire to maintain in the Building and Common Areas the highest standard of dignity and good taste consistent with comfort and convenience for tenants. Any action or condition not meeting this high standard should be reported directly to Landlord. The Landlord reserves the right to make such other and further rules and regulations as in its judgment may from time to time be necessary for the safety, care and cleanliness of the Building and Common Areas, and for the preservation of good order therein.

**FIRST AMENDMENT TO OFFICE LEASE**

THIS FIRST AMENDMENT TO OFFICE LEASE (this "**First Amendment**") is made and entered into as of March 8, 2016 ("**Effective Date**") by and between GROVE II LLC, a Missouri limited liability company ("**Landlord**"), and ECLAT PHARMACEUTICALS LLC, a Delaware limited liability company ("**Tenant**").

WHEREAS, Landlord and Tenant entered into that certain Office Lease dated October 5, 2015 (the "**Lease**"); and

WHEREAS, Landlord and Tenant desire to amend certain provisions of the Lease;

NOW, THEREFORE, in consideration of the foregoing premises, the mutual covenants herein contained and each act performed hereunder by the parties, Landlord and Tenant hereby agree and the Lease is hereby further amended by entering into this First Amendment.

1. Defined Terms. Capitalized terms used and not otherwise defined herein shall have the meaning given to them in the Lease.

2. Amendments to the Lease.

(a) Subsections (a) through (f) and (h) of Section 1.01 are hereby amended and restated as follows:

(a) Leased Premises: (shown outlined on Exhibit A attached hereto): Suite 200 of the building located at 16640 Chesterfield Grove Road, Chesterfield, Missouri 63005 (the "Building"). The Leased Premises is comprised of 12,000 rentable square feet within the Building leased effective November 1, 2015 (the "Original Leased Premises") and 5,065 rentable square feet within the Building added thereto pursuant to the First Amendment to Office Lease (the "Additional Leased Premises").

(b) Rentable Area: 17,065 rentable square feet. The Rentable Area includes the square footage within the Leased Premises plus a pro rata portion of the square footage of the common areas within the Building, as reasonably determined by Landlord.

(c) Tenant's Proportionate Share: 50.33%

(d) Lease Term: Seven (7) years following the Commencement Date for the Additional Leased Premises.

(e) Commencement Date: November 1, 2015 with respect to the Original Leased Premises and May 1, 2016 with respect to the Additional Leased Premises.

(f) Minimum Annual Rent & Monthly Rental Installment:

| Period* | Minimum Annual Rent/RSF | Monthly Rental Installment |
|---|---|---|
| Year 1 | $23.50/RSF | $33,418.96 |
| Year 2 | $24.00/RSF | $34,130.00 |
| Year 3 | $24.50/RSF | $34,841.04 |
| Year 4 | $25.00/RSF | $35,552.08 |
| Year 5 | $25.50/RSF | $36,263.13 |

| | | |
|---|---|---|
| Year 6 | $26.00/RSF | $36,974.17 |
| Year 7 | $26.50/RSF | $37,685.21 |

*Year 1 and each subsequent year listed above shall commence on the Commencement Date applicable to the Additional Leased Premises (May 1st) and terminate immediately prior to each anniversary thereof (April 30th).

(h) Security Deposit: $66,837.92 ($47,000.00 paid upon execution of the Office Lease and $19,837.92 paid upon execution of the First Amendment to Office Lease).

(b) Section 2.01 is hereby amended and restated as follows:

Section 2.01. Term. The Lease Term shall commence as of November 1, 2015 with respect to the Original Leased Premises and as of May 1, 2016 with respect to the Additional Leased Premises.

(c) Section 5.03 is hereby amended and restated as follows:

Section 5.03. Parking. Tenant may utilize up to a maximum of 52 parking spaces in the parking lot adjacent to the Building at no additional cost to Tenant. Only one (1) vehicle shall be parked in each space at any one time.

(d) Exhibit A to the Lease is hereby deleted and replaced with Exhibit A attached hereto.

(e) Section 2 of Exhibit B to the Lease is hereby amended and restated as follows:

2. Scope of Work. Landlord and Tenant agree and acknowledge that the work to be completed in the Original Leased Premises has been completed. With respect to the Additional Leased Premises, Landlord shall complete the following work prior to the date of Substantial Completion applicable to the Additional Leased Premises:

- Install eight (8) new offices where indicated in the attached drawing.
- Install one (1) new break area (with sink and refrigerator) where indicated in the attached drawing.
- Install one (1) new conference room (with one glass sidelight) where indicated in the attached drawing.
- Replace carpet in Additional Leased Premises.
- Install vinyl composite tile in the break area.
- Paint existing and new drywall surfaces in Additional Leased Premises.

- All work related to any data and voice lines and connections in the Additional Leased Premises shall be completed by Tenant at its sole cost and expense.

3. Brokerage Commissions. Landlord and Tenant hereby represent and warrant to each other that it has not dealt with any broker or agent in connection with the negotiation of this transaction and that no brokerage commissions would be due as a result of the execution of this First Amendment. Landlord and Tenant shall indemnify, defend and hold the other from any and all

liability for the breach of this representation and warranty on its part and shall pay any compensation to any broker or person who may be entitled thereto in connection with this First Amendment.

4. Tenant's Representations. The undersigned represents to Landlord that (i) Tenant is duly organized, validly existing and in good standing in accordance with the laws of the state under which it was organized; (ii) all action necessary to authorize the execution of this First Amendment has been taken by Tenant; and (iii) the individual executing and delivering this First Amendment on behalf of Tenant has been authorized to do so, and such execution and delivery shall bind Tenant.

5. Incorporation. This First Amendment shall be incorporated into and made a part of the Lease, and all provisions of the Lease not expressly modified or amended hereby shall remain in full force and effect.

6. Governing Law. This First Amendment shall be governed in accordance with the laws of the State of Missouri.

7. Electronic Signatures and Counterparts. For purposes of executing this First Amendment, a document (or signature page thereto) signed and transmitted by facsimile machine or other electronic format is to be treated as an original document. The signature of any party thereon, for purposes hereof, is to be considered as an original signature, and the documents transmitted is to be considered to have the same binding effect as an original signature on an original document. This Agreement may be executed by the parties on any number of separate counterparts, and all such counterparts so executed constitute one agreement binding on all the parties notwithstanding that all the parties are not signatories to the same counterpart.

*[SIGNATURE PAGE FOLLOWS]*

IN WITNESS WHEREOF, the parties have caused this First Amendment to be executed on the day and year first written above.

LANDLORD:

GROVE II LLC,
a Missouri limited liability company

By: /s/ Christopher Pelligreen
Name: Christopher Pelligreen
Title: Authorized Signor

STATE OF MISSOURI )
) SS:
CITY OF ST. LOUIS )

Before me, a Notary Public in and for said City and State, personally appeared Christopher Pelligreen, by me known and by me known to be the Authorized Signatory of Grove II LLC, who acknowledged the execution of the foregoing instrument on behalf of said limited liability company as its free act and deed.

WITNESS my hand and Notarial Seal this 8th day of March, 2016.

Notary Public
/s/ Daniel Patterson

(Printed Signature)

DANIEL J. PATTERSON
Notary Public - Notary Seal
State of Missouri
Commissioned for St. Louis City
My Commission Expires: March 03, 2018
Commission Number: 14588040

LANDLORD SIGNATURE PAGE TO FIRST AMENDMENT TO LEASE

TENANT:

ECLAT PHARMACEUTICALS LLC,
a Delaware limited liability company

*By: /s/ Michael Anderson*
*Name: Michael J. Anderson*
*Title: CEO*

STATE OF MISSOURI )
) SS:
COUNTY OF ST. LOUIS )

Public in and for said County and State, personally appeared Michael Anderson known to be the CEO of Eclat Pharmaceuticals LLC, who acknowledged the execution of the foregoing instrument on behalf of said limited liability company as its free act and deed.

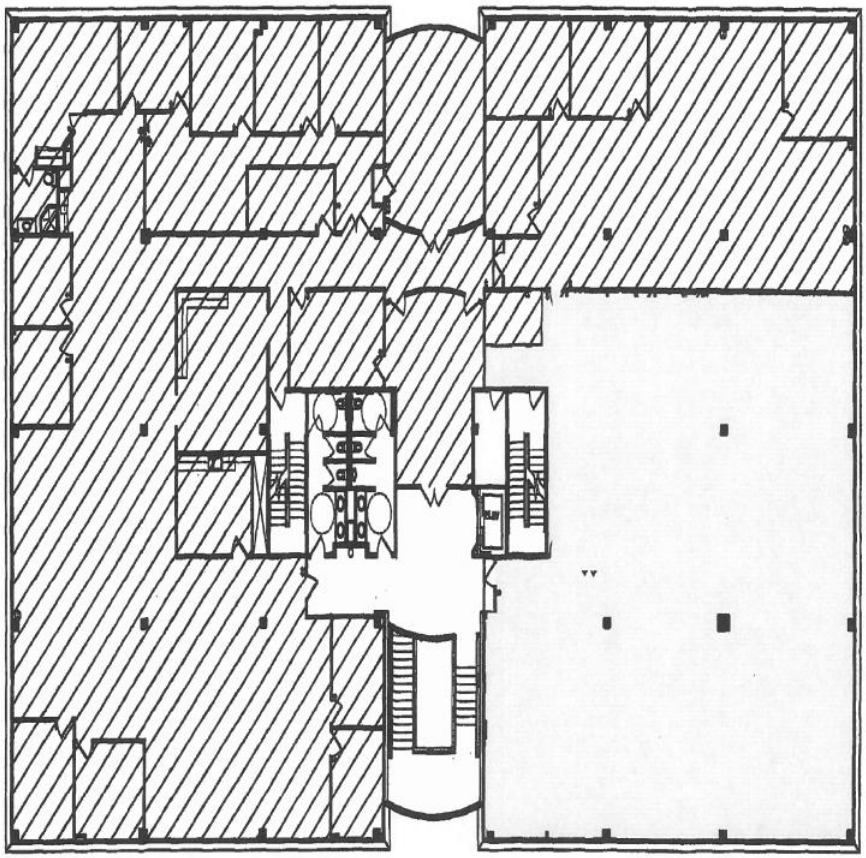
WITNESS my hand and Notarial Seal this 7 day of March, 2016.

/s/ Linda Horodenski
Notary Public

*Linda Horodenski* (Printed Signature)

LINDA HORODENSKI
Notary Public, Notary Seal
State of Missouri
St. Louis County
Commission # 15636066
My Commission Expires June 09, 2019

# Exhibit A



2nd Floor Plan

Not to Scale

1.0885 LOAD FACTOR

## 16640 Chesterfield Grove

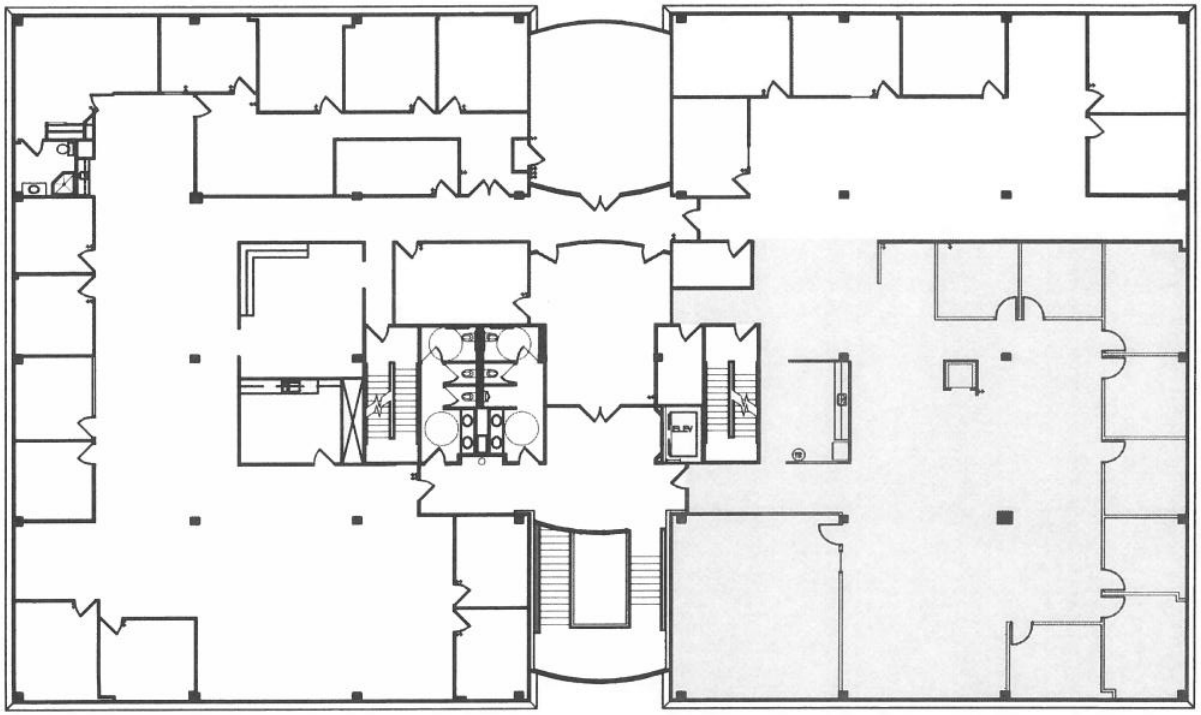
### Chesterfield, Missouri

Suite 200 - "Leased Premises" - 17,065 RSF

"Original Leased Premises" Shown Hatched

"Additional Leased Premises" Shown Shaded

Attachment to Exhibit B



2nd Floor Plan

Not to Scale

= Additional Leased Premises

# 16640 Chesterfield Grove

## Chesterfield, Missouri

March 3, 2016

**AFFIRMATION OF LEASE GUARANTY**

THIS AFFIRMATION OF LEASE GUARANTY (this "Affirmation") is executed as of March 8, 2016 in favor of GROVE II LLC, a Missouri limited liability company ("Landlord").

WHEREAS, ECLAT PHARMACEUTICALS LLC, a Delaware limited liability company ("Tenant"), and Landlord have entered into an Office Lease dated as of October 5, 2015 (as amended or otherwise modified from time to time, the "Lease"; terms used but not defined herein are used as defined in the Lease), for certain office space located at 16640 Chesterfield Grove Road, Suite 200, Chesterfield, Missouri 63005;

WHEREAS, the undersigned ("Guarantor") executed a Lease Guaranty dated as of October 5, 2015, guarantying the Obligations (as defined in the defined) of Tenant under the Lease; and

WHEREAS, Tenant and Landlord now desire to amend the Lease pursuant to that certain First Amendment to Office Lease dated as of the date hereof (the "First Amendment").

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Guarantor hereby unconditionally and irrevocably, affirms and ratifies in all respects the Guaranty and acknowledges and agrees that "Lease" as defined in the Guaranty means the Lease as amended by the First Amendment and any other amendment or modification entered into from time to time. The Guaranty shall remain in full force and effect and shall continue to constitute the valid and binding obligation of Guarantor, enforceable in accordance with its terms and shall secure any additional obligations incurred or undertaken by Tenant pursuant to the First Amendment.

This Affirmation shall be binding upon the undersigned and the successors and assigns of the undersigned; and to the extent the Tenant or the undersigned is a partnership, corporation, limited liability company or other entity, all references herein to the Tenant and to the undersigned, respectively, shall be deemed to include any successor or successors, whether immediate or remote, to such entity.

This Affirmation shall be governed by and construed in accordance with the laws of the State of Missouri applicable to contracts made and to be fully performed in such State. Wherever possible, each provision of this Affirmation shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Affirmation shall be prohibited by or invalid under such law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Affirmation.

**ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AFFIRMATION, SHALL BE BROUGHT AND MAINTAINED EXCLUSIVELY IN THE COURTS OF THE STATE OF MISSOURI OR IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MISSOURI. THE UNDERSIGNED AND (BY ACCEPTING THE BENEFITS HEREOF) LANDLORD HEREBY EXPRESSLY AND IRREVOCABLY SUBMIT TO THE JURISDICTION OF THE COURTS OF THE STATE OF MISSOURI AND OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MISSOURI FOR THE PURPOSE OF ANY SUCH LITIGATION AS SET FORTH ABOVE. THE UNDERSIGNED AND LANDLORD HEREBY EXPRESSLY AND IRREVOCABLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION THAT SUCH PERSON MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUCH LITIGATION BROUGHT IN ANY SUCH COURT REFERRED TO ABOVE AND ANY CLAIM THAT ANY SUCH LITIGATION HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.**

**THE UNDERSIGNED AND (BY ACCEPTING THE BENEFITS HEREOF) LANDLORD HEREBY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS AFFIRMATION AND ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION HEREWITH OR THEREWITH.**

**IN NO EVENT SHALL THE GUARANTOR OR LANDLORD BE RESPONSIBLE FOR ANY INDIRECT, PUNITIVE, CONSEQUENTIAL OR SPECIAL DAMAGES, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**

*[Signature Page Follows]*

IN WITNESS WHEREOF, this Affirmation has been duly executed and delivered as of the date first above written.

FLAMEL TECHNOLOGIES, SA
By: /s/ Phil Thompson
Name: Phil Thompson
Title: General Counsel

Address for Notices:
33 Avenue du Dr. Georges Levy
69693 Venissieux Cedex, France
Facsimile No.: (33)4-72-78-34-35

STATE OF MO )
) SS:
COUNTY OF MISSOURI )

Before me, a Notary Public in and for said County and State, personally appeared Phil Thompson, by me known to be the General Counsel of Flamel Technologies, SA, who acknowledged the execution of the foregoing instrument on behalf of said Flamel Technologies as its free act and deed.

WITNESS my hand and Notarial Seal this 7 day of March, 2016.

/s/ Linda Horodenski
Notary Public

Linda Horodenski
(Printed Signature)

LINDA HORODENSKI
Notary Public, Notary Seal
State of Missouri
St. Louis County
Commission # 15636066
My Commission Expires June 09, 2019

**SECOND AMENDMENT TO OFFICE LEASE**

THIS SECOND AMENDMENT TO OFFICE LEASE (this "**Second Amendment**") is made and entered into as of May 5th, 2017 ("**Effective Date**") by and between GROVE II LLC, a Missouri limited liability company ("**Landlord**"), and AVADEL LEGACY PHARMACEUTICALS, LLC, a Delaware limited liability company ("**Tenant**").

WHEREAS, Landlord and Tenant entered into that certain Office Lease dated October 5, 2015 and that certain First Amendment to Office Lease dated March 8, 2016 (collectively, the "**Lease**");

WHEREAS, On February 2, 2017, Tenant changed its name from Eclat Pharmaceuticals LLC to Avadel Legacy Pharmaceuticals, LLC; and

WHEREAS, Landlord and Tenant desire to amend certain provisions of the Lease;

NOW, THEREFORE, in consideration of the foregoing premises, the mutual covenants herein contained and each act performed hereunder by the parties, Landlord and Tenant hereby agree and the Lease is hereby further amended by entering into this Second Amendment.

1. Defined Terms. Capitalized terms used and not otherwise defined herein shall have the meaning given to them in the Lease.

2. Amendments to the Lease.

(a) Subsections (a) through (f) and (h) of Section 1.01 are hereby amended and restated as follows:

(a) Leased Premises: (shown outlined on Exhibit A attached hereto): Suite 200 and Suite 190 of the building located at 16640 Chesterfield Grove Road, Chesterfield, Missouri 63005 (the "Building"). The Leased Premises is comprised of 12,000 rentable square feet within the Building leased effective November 1, 2015 (the "Original Leased Premises"), 5,065 rentable square feet within the Building leased effective May 1, 2016 pursuant to the First Amendment to Office Lease (the "Additional Leased Premises") and 4,164 rentable square feet within the Building (known as Suite 190) added thereto pursuant to the Second Amendment to Office Lease ("Suite 190").

(b) Rentable Area: 21,229 rentable square feet. The Rentable Area includes the square footage within the Leased Premises plus a pro rata portion of the square footage of the common areas within the Building, as reasonably determined by Landlord.

(c) Tenant's Proportionate Share: 62.61%

(d) Lease Term: The period from the Commencement Date (as applicable) to and including April 30, 2023, unless sooner terminated or otherwise extended, in each event, pursuant to the terms and conditions of this Lease.

(e) Commencement Date: November 1, 2015 with respect to the Original Leased Premises, May 1, 2016 with respect to the Additional Leased Premises and June 1, 2017 with respect to Suite 190

(f) Minimum Annual Rent & Monthly Rental Installment:

| Period* | Minimum Annual Rent/RSF | Monthly Rental Installment |
|---|---|---|
| Year 1** | $23.50/RSF | $33,418.96 |
| Year 2** | $24.00/RSF | $42,458.00 |
| Year 3 | $24.50/RSF | $43,342.54 |
| Year 4 | $25.00/RSF | $44,227.08 |
| Year 5 | $25.50/RSF | $45,111.63 |
| Year 6 | $26.00/RSF | $45,996.17 |
| Year 7 | $26.50/RSF | $46,880.71 |

*Year 1 and each subsequent year listed above shall commence on May 1 and terminate immediately prior to each anniversary thereof (April 30).

** The Monthly Rental Installment for Year 1 shown above excludes Suite 190, which was leased after the conclusion of Year 1. The Monthly Rental Installment for Year 2 shown above includes Suite 190; the Monthly Rental Installment for the period of Year 2 prior to the Commencement Date applicable to Suite 190 shall be $34,130.00

(h) Security Deposit: $66,837.92 ($47,000.00 paid upon execution of the Office Lease and $19,837.92 paid upon execution of the First Amendment to Office Lease). The Security Deposit shall apply to the entirety of the Leased Premises.

(b) The following is hereby inserted as Section 1.03:

Section 1.03. Lease of Storage Space. Effective on the Commencement Date applicable to Suite 190 for the remainder of the Lease Term, Tenant does hereby lease Storage Room 9 on the third floor of the Building (the "Storage Room"). Landlord's obligations under the Lease shall not apply to the Storage Room and the Storage Room is delivered and accepted by Tenant in "as is," "where is" condition and Landlord makes no representations or warranties with respect thereto. Tenant shall assume all maintenance, upkeep and regulatory requirements related thereto (including permitting and inspections of the dumb waiter) at Tenant's sole cost and expense.

(c) Section 2.01 is hereby amended and restated as follows:

Section 2.01. Term. The Lease Term shall commence as of November 1, 2015 with respect to the Original Leased Premises, as of May 1, 2016 with respect to the Additional Leased Premises and as of June 1, 2017 with respect to Suite 190.

(d) Section 5.03 is hereby amended and restated as follows:

Section 5.03. Parking. Tenant may utilize up to a maximum of 65 parking spaces in the parking lot adjacent to the Building at no additional cost to Tenant. Only one (1) vehicle shall be parked in each space at any one time.

(e) Exhibit A to the Lease is hereby deleted and replaced with Exhibit A attached hereto.

(f) Section 2 of Exhibit B to the Lease is hereby amended and restated as follows:

2. Scope of Work. Landlord and Tenant agree and acknowledge that the work to be completed in the Original Leased Premises and the Additional Leased Premises has been completed. With respect to Suite 190, Landlord shall complete the following work:

- Install key fob system at the lobby door to Suite 190 compatible with the existing system of the Original Leased Premises.
- Eliminate 1 office (shown as "K" the drawing provided to Tenant on April 27, 2017) by removing 2 existing walls adjacent thereto.
- Replace carpet in Suite 190.
- Clean tile in break area.
- Patch and paint existing and new drywall surfaces in Suite 190.

- All work related to any security fencing, separate card access or security system or data and voice lines and connections in Suite 190 shall be completed by Tenant at its sole cost and expense.

3. Brokerage Commissions. Landlord and Tenant hereby represent and warrant to each other that it has not dealt with any broker or agent in connection with the negotiation of this transaction and that no brokerage commissions would be due as a result of the execution of this Second Amendment. Landlord and Tenant shall indemnify, defend and hold the other from any and all liability for the breach of this representation and warranty on its part and shall pay any compensation to any broker or person who may be entitled thereto in connection with this Second Amendment.

4. Tenant's Representations. The undersigned represents to Landlord that (i) Tenant is duly organized, validly existing and in good standing in accordance with the laws of the state under which it was organized; (ii) all action necessary to authorize the execution of this Second Amendment has been taken by Tenant; and (iii) the individual executing and delivering this Second Amendment on behalf of Tenant has been authorized to do so, and such execution and delivery shall bind Tenant.

5. Incorporation. This Second Amendment shall be incorporated into and made a part of the Lease, and all provisions of the Lease not expressly modified or amended hereby shall remain in full force and effect.

6. Governing Law. This Second Amendment shall be governed in accordance with the laws of the State of Missouri.

7. Electronic Signatures and Counterparts. For purposes of executing this Second Amendment, a document (or signature page thereto) signed and transmitted by facsimile machine or other electronic format is to be treated as an original document. The signature of any party thereon, for purposes hereof, is to be considered as an original signature, and the documents transmitted is to be considered to have the same binding effect as an original signature on an original document. This Agreement may be executed by the parties on any number of separate counterparts, and all such counterparts so executed constitute one agreement binding on all the parties notwithstanding that all the parties are not signatories to the same counterpart.

[*SIGNATURE PAGE FOLLOWS*]

IN WITNESS WHEREOF, the parties have caused this Second Amendment to be executed on the day and year Second written above.

LANDLORD:

GROVE II LLC,
a Missouri limited liability company

By: /s/ John Niemi
Name: John Niemi
Title: Authorized Rep.

STATE OF MISSOURI )
) SS:
CITY OF ST. LOUIS )

Before me, a Notary Public in and for said City and State, personally appeared John Niemi, by me known and by me known to be the Authorized Rep. of Grove II LLC, who acknowledged the execution of the foregoing instrument on behalf of said limited liability company as its free act and deed.

WITNESS my hand and Notarial Seal this 5th day of May, 2017.

Daniel J. Patterson
Notary Public

/s/ Daniel Patterson

(Printed Signature)

DANIEL J. PATTERSON
Notary Public - Notary Seal
State of Missouri
Commissioned for St. Louis City
My Commission Expires: March 03, 2018
Commission Number: 14588040

TENANT:

AVADEL LEGACY PHARMACEUTICALS, LLC

By: /s/ Phil Thompson
Name: Phil Thompson
Title: SVP, General Counsel

STATE OF MISSOURI )
) SS:
COUNTY OF ST. LOUIS )

Before me, a Notary Public in and for said County and State, personally appeared Phil Thompson, by me known to be the General Counsel of Avadel Legacy Pharmaceuticals, LLC, who acknowledged the execution of the foregoing instrument on behalf of said corporation as its free act and deed.

WITNESS my hand and Notarial Seal this 5th day May, 2017

/s/ Linda Horodenski

Notary Public

Linda Horodenski

(Printed Signature)

LINDA HORODENSKI
Notary Public, Notary Seal
State of Missouri
St. Louis County
Commission # 15636066
My Commission Expires June 09, 2019

**THIRD AMENDMENT TO OFFICE LEASE**

THIS THIRD AMENDMENT TO OFFICE LEASE (this "**Third Amendment**") is made and entered into as of March 22, 2018 ("**Effective Date**") by and between GROVE II LLC, a Missouri limited liability company ("**Landlord**"), and AVADEL MANAGEMENT CORPORATION, a Delaware corporation.

WHEREAS, Landlord and Eclat Pharmaceuticals, LLC entered into that certain Office Lease ("Office Lease") dated October 5, 2015 and that certain First Amendment to Office Lease dated March 8, 2016 ("First Amendment");

WHEREAS, On February 2, 2017, Eclat Pharmaceuticals LLC changed its name from Eclat Pharmaceuticals LLC to Avadel Legacy Pharmaceuticals, LLC;

WHEREAS, on May 5, 2017, Landlord and Avadel Legacy Pharmaceuticals, LLC entered into that Second Amendment to Office Lease dated May 5, 2017 ("Second Amendment") (The Office Lease, First Amendment and Second Amendment are, collectively, the "**Lease**");

WHEREAS, Avadel Legacy Pharmaceuticals, LLC, has requested that it be permitted to assign the Lease to a related entity, Avadel Management Corporation ("**Tenant**"), and Landlord has consented to such assignment;

WHEREAS, Landlord and Tenant desire to amend certain provisions of the Lease; and,

NOW, THEREFORE, in consideration of the foregoing premises, the mutual covenants herein contained and each act performed hereunder by the parties, Landlord and Tenant hereby agree and the Lease is hereby further amended by entering into this Third Amendment.

1. Defined Terms. Capitalized terms used and not otherwise defined herein shall have the meaning given to them in the Lease.

2. Amendments to the Lease.

   A. Subsections (a) through (f) and (h) of Section 1.01 are hereby amended and restated as follows:

      (a) Leased Premises: (shown outlined on Exhibit A attached hereto): Suite 200, Suite 190 and Suite 100 of the building located at 16640 Chesterfield Grove Road, Chesterfield, Missouri 63005 (the "Building"). The Leased Premises is comprised of (i) 12,000 rentable square feet within the Building leased effective November 1, 2015 (the "Original Leased Premises"); (ii) 5,065 rentable square feet within the Building leased effective May 1, 2016 pursuant to the First Amendment (the "Additional Leased Premises"); (iii) 4,164 rentable square feet within the Building (known as Suite 190) added thereto pursuant to the Second Amendment ("Suite 190"), and (iv) 3,007 rentable square feet within the building (known as Suite 100) added thereto pursuant to the Third Amendment ("Suite 100").

      (b) Rentable Area: 24,236 rentable square feet. The Rentable Area includes the square footage within the Leased Premises plus a pro rata portion of the square footage of the common areas within the Building, as reasonably determined by Landlord.

(c) Tenant's Proportionate Share: 71.47%

(d) Lease Term: The period from the Commencement Date (as applicable) to and including April 30, 2025, unless sooner terminated or otherwise extended, in each event, pursuant to the terms and conditions of this Lease.

(e) Commencement Date: November 1, 2015 with respect to the Original Leased Premises; May 1, 2016 with respect to the Additional Leased Premises; June 1, 2017 with respect to Suite 190; and May 1, 2018 with respect to Suite 100.

(f) Minimum Annual Rent & Monthly Rental Installment beginning May 1, 2018:

| Period | Minimum Annual Rent/RSF | Monthly Rental Installment |
|---|---|---|
| Year 1<br>(5/1/2018 – 4/30/2019) | $22.50 | $45,442.50 |
| Year 2<br>(5/1/2019 – 4/30/2020) | $23.00 | $46,452.33 |
| Year 3<br>(5/1/2020 – 4/30/2021) | $23.50 | $47,462.17 |
| Year 4<br>(5/1/2021 – 4/30/2022) | $24.00 | $48,472.00 |
| Year 5<br>(5/1/2022 – 4/30/2023) | $24.50 | $49,481.83 |
| Year 6<br>(5/1/2023 – 4/30/2024) | $25.00 | $50,491.67 |
| Year 7<br>(5/1/2024 – 4/30/2025) | $25.50 | $51,501.50 |

(h) Security Deposit: $66,837.92 ($47,000.00 paid upon execution of the Office Lease and $19,837.92 paid upon execution of the First Amendment to Office Lease). The Security Deposit shall apply to the entirety of the Leased Premises.

B. The following is hereby inserted as Section 1.03:

Section 1.03. Lease of Storage Space. Effective on the Commencement Date applicable to Suite 190 for the remainder of the Lease Term, Tenant does hereby lease Storage Room 9 on the third floor of the Building (the "Storage Room"). Landlord's obligations under the Lease shall not apply to the Storage Room and the Storage Room is delivered and accepted by Tenant in "as is," "where is" condition and Landlord makes no representations or warranties with respect thereto. Tenant shall assume all maintenance, upkeep and regulatory requirements related thereto (including permitting and inspections of the dumb waiter) at Tenant's sole cost and expense.

C. Section 2.01 is hereby amended and restated as follows:

Section 2.01. Term. November 1, 2015 with respect to the Original Leased Premises; May 1, 2016 with respect to the Additional Leased Premises; June 1, 2017 with respect to Suite 190; and May 1, 2018 with respect to Suite 100.

D. Section 5.03 is hereby amended and restated as follows:

Section 5.03. Parking. Tenant may utilize up to a maximum of 74 parking spaces in the parking lot adjacent to the Building at no additional cost to Tenant. Only one (1) vehicle shall be parked in each space at any one time.

E. Exhibit A to the Lease is hereby deleted and replaced with Exhibit A attached hereto.

F. Section 2 of Exhibit B to the Lease is hereby amended and restated as follows:

2. Scope of Work. Landlord and Tenant agree and acknowledge that the work to be completed in the Original Leased Premises, the Additional Leased Premises, and Suite 190 has been completed. With respect to Suite 100, Landlord shall complete the following work:

(a) Landlord will provide door access fob system at the suite door in the lobby compatible with the existing system of the Existing Premises ("Fob System");

(b) Tenant will be granted a tenant improvement allowance in the amount of $23,454 ("TI Allowance") toward Tenant Improvements requested in the attached proposal from VSP Construction Services, Inc., dated February 23, 2018 or as may be thereafter amended by mutual agreement of the parties ("VSP Scope of Work");

(c) Other than the Fob System and TI Allowance of $23,454 described above, Tenant will be responsible for the cost of any and all work, Tenant Improvements or expenses relating to the lease of Suite 100, including but not limited to the cost of any items in the VSP Scope of Work in excess of the TI Allowance of $23,454.

(d) Additional conditions for Improvements:

(1) The foregoing shall be subject to modifications by Landlord's architect and subject to approval and inspection by applicable municipal and County authorities.

(2) Landlord's improvements will not include any security fencing, separate card access systems or data/voice cables.

3. Brokerage Commissions. Tenant hereby represents and warrants to Landlord that it has not dealt with any broker or agent in connection with the negotiation of this transaction and that no brokerage commissions would be due on Tenant's behalf as a result of the execution of this Third Amendment. On its part, Landlord shall pay any compensation to any broker or person who may be entitled to the same from Landlord in connection with this Third Amendment. Landlord and Tenant shall indemnify, defend and hold the other from any and all liability for the breach of this representation and warranty.

4. Tenant's Representations. The undersigned represents to Landlord that (i) Tenant is duly organized, validly existing and in good standing in accordance with the laws of the state under which it was organized; (ii) all action necessary to authorize the execution of this Third Amendment has been taken by Tenant; and (iii) the individual executing and delivering this Third Amendment on behalf of Tenant has been authorized to do so, and such execution and delivery shall bind Tenant.

5. Affirmation of Lease Guaranty. Contemporaneously with the execution of this Third Amendment, Avadel Pharmaceuticals plc, shall execute the Affirmation of Lease Guaranty attached hereto and incorporated as Exhibit D to the Lease.

6. Incorporation. This Third Amendment shall be incorporated into and made a part of the Lease, and all provisions of the Lease not expressly modified or amended hereby shall remain in full force and effect.

7. Governing Law. This Third Amendment shall be governed in accordance with the laws of the State of Missouri.

8. Electronic Signatures and Counterparts. For purposes of executing this Third Amendment, a document (or signature page thereto) signed and transmitted by facsimile machine or other electronic format is to be treated as an original document. The signature of any party thereon, for purposes hereof, is to be considered as an original signature, and the documents transmitted is to be considered to have the same binding effect as an original signature on an original document. This Agreement may be executed by the parties on any number of separate counterparts, and all such counterparts so executed constitute one agreement binding on all the parties notwithstanding that all the parties are not signatories to the same counterpart.

*[SIGNATURE PAGE FOLLOWS]*

IN WITNESS WHEREOF, the parties have caused this Third Amendment to be executed on the day and year first written above.

LANDLORD:

GROVE II LLC,
a Missouri limited liability company

*By: /s/ Christopher Pelligreen*
*Name: Christopher W. Pelligreen*
*Title: Authorized Rep.*

STATE OF MISSOURI )
) SS:
CITY OF ST. LOUIS )

Before me, a Notary Public in and for said City and State, personally appeared Chr Pelligreen, by me known and by me known to be the authorized rep, of Grove II LLC, who acknowledged the execution of the foregoing instrument on behalf of said limited liability company as its free act and deed.

WITNESS my hand and Notarial Seal this 26th day of March, 2018.

**/S/ Kameron Murphy**

Kameron Murphy
(Printed Signature)

KAMERON WADE MURPHY
Notary Public – Notary Seal
St. Louis City – State of Missouri
Commission Number 18177250
My Commission Expires Feb 12, 2022

TENANT:

By: /s/ Phillandas Thompson
Name: Phillandas Thompson
Title: SVP, General Counsel

STATE OF MISSOURI )
) SS:
COUNTY OF ST. LOUIS )

Before me, a Notary Public in and for said County and State, personally appeared Mr. Thompson, by me known to be the SVP, GC of Avadel Management Corporation, o acknowledged the execution of the foregoing instrument on behalf of said corporation as its free act and deed.

WITNESS my hand and Notarial Seal this 22 day of March, 2018.

**/s/ Linda Horodenski**
Notary Public
*Linda Horodenski*
(Printed Signature)

LINDA HORODENSKI
Notary Public, Notary Seal
State of Missouri
St. Louis County
Commission # 15636066
My Commission Expires June 09, 2019

**AVADEL PHARMACEUTICALS PLC**

**2017 OMNIBUS INCENTIVE COMPENSATION PLAN**

**Article 1**

**Effective Date, Objectives and Duration**

1.1 Effective Date of the Plan. Avadel Pharmaceuticals Public Limited Company, an Irish public limited company (the "Company"), has adopted the 2017 Omnibus Incentive Compensation Plan (the "Plan") on March 7, 2017 (the "Effective Date"), subject to approval by the shareholders of the Company within twelve (12) months after the Effective Date. The terms of the Plan are set forth herein. Awards other than Restricted Stock, Performance Shares and Bonus Shares may be granted under the Plan after the Effective Date; but, no Award may become vested, exercisable or payable or Shares issued unless and until the Plan is approved by the shareholders of the Company. Restricted Stock, Performance Shares and Bonus Shares may only be granted under the Plan after the shareholders of the Company approve the Plan.

1.2 Objectives of the Plan. The Plan is intended (a) to allow selected employees, officers and Non-Employee Directors of and consultants to the Company and its Subsidiaries to acquire or increase equity ownership in the Company, thereby strengthening their commitment to the success of the Company and stimulating their efforts on behalf of the Company, and to assist the Company and its Subsidiaries in attracting new employees, officers, Non-Employee Directors and consultants and retaining existing employees, officers, Non-Employee Directors and consultants, (b) to provide annual cash incentive compensation opportunities that are competitive with those of peer corporations, (c) to optimize the profitability and growth of the Company and its Subsidiaries through incentives which are consistent with the Company's goals, (d) to provide Grantees with an incentive for excellence in individual performance, (e) to promote teamwork among employees, officers, consultants and Non-Employee Directors, and (f) to attract and retain highly qualified persons to serve as employees, officers, Non-Employee Directors and consultants and to promote ownership by such employees, officers, Non-Employee Directors and consultants of a greater proprietary interest in the Company, thereby aligning such employees', officers', Non-Employee Directors' and consultants' interests more closely with the interests of the Company's shareholders.

1.3 Duration of the Plan. The Plan shall commence on the date of adoption of the Plan by the Board of Directors of the Company (the "Board") (the "Effective Date") and shall remain in effect, subject to the right of the Board to amend or terminate the Plan at any time pursuant to Article 16 hereof, until the earlier of 11:59 p.m. (EST) on March 6, 2027, or the date all Shares subject to the Plan shall have been issued and the restrictions on all Restricted Shares granted under the Plan shall have lapsed, according to the Plan's provisions.

**Article 2**

**Definitions**

Whenever used in the Plan, the following terms shall have the meanings set forth below:

2.1 "ADS" means an American Depositary Share representing one ordinary share of the Company, nominal value $0.01 per share, registered

with the SEC and listed for trading on Nasdaq under the trading symbol “AVDL”; an ADS may be represented by a physical certificate referred to as an American Depositary Receipt, or “ADR.”

2.2 “Affiliate” means any corporation or other entity, including but not limited to partnerships, limited liability companies and joint ventures, with respect to which the Company, directly or indirectly, owns as applicable (a) shares or stock possessing more than fifty percent (50%) of the total combined voting power of all classes of shares or stock entitled to vote, or more than fifty percent (50%) of the total value of all shares of all classes of shares or stock of such corporation, or (b) an aggregate of more than fifty percent (50%) of the profits interest or capital interest of a non-corporate entity. Affiliate includes any corporation or other entity that becomes such on or after the Effective Date.

2.3 “Applicable Law” means the laws of Ireland applicable to the Company, any legal or regulatory requirement relating to the Plan, Awards and/or Shares under applicable U.S. federal, state and local laws, the requirements of Nasdaq and any other stock exchange or automated quotation system upon which the Shares are listed, the Code, and the applicable laws, rules, regulations and requirements of any other country or jurisdiction (in addition to Ireland as provided above) where Awards are or are to be granted, exercised, vested or be settled, as such laws, rules, regulations and requirements shall be in place from time to time;
2.4 “Award” means Options (including non-qualified options and Incentive Stock Options), SARs, Restricted Shares, Performance Units (which may be paid in cash), Performance Shares, Deferred Stock, Restricted Stock Units, Dividend Equivalents, Bonus Shares, Cash Incentive Awards or Other Stock-Based Awards granted under the Plan.

2.5 “Award Agreement” means either (a) a written agreement entered into by the Company and a Grantee setting forth the terms and provisions applicable to an Award granted under this Plan, or (b) a written statement issued by the Company to a Grantee describing the terms and provisions of such Award, including in either case any amendment or modification thereof. The Committee may provide for the use of electronic, internet or other non-paper Award Agreements and the use of electronic, internet or other non-paper means for the acceptance thereof and actions thereunder by the Grantee.

2.6 “Board” means the Board of Directors of the Company.
2.7 “Bonus Shares” means Shares that are awarded to a Grantee with or without cost (save in all events for payment by the Grantee in cash

of the nominal value per Share if required by Applicable Law) and without restrictions either in recognition of past performance (whether determined by reference to another employee benefit plan of the Company or otherwise), as an inducement to become an Eligible Person or, with the consent of the Grantee, as payment in lieu of any cash remuneration otherwise payable to the Grantee.

2.8 “Cash Incentive Award” means an Award granted under Article 15 of the Plan.
2.9 “Cause” shall mean a termination of a Participant’s service to the Company or any of its Subsidiaries due to (i) the continued failure by

such Participant, after written notice, to substantially perform his or her duties with the Company or any of its Subsidiaries (other than any such failure resulting from incapacity due to reasonably documented physical illness or injury or mental illness), (ii) the engagement by such Participant in serious misconduct

that causes, or in the good faith judgment of the Board of Directors may cause, harm (financial or otherwise) to the Company or any of its Subsidiaries including, without limitation, (A) the disclosure of material secret or confidential information of the Company or any of its Subsidiaries, (B) the potential debarment of the Company or any of its Subsidiaries by the U.S. Food and Drug Administration or any successor agency (the "FDA"), or (C) the possibility that the registration of the Company or any of its Subsidiaries with the U.S. Drug Enforcement Administration or any successor agency (the "DEA") could be revoked or an application with the DEA could be denied, (iii) the potential debarment of such Participant by the FDA, or (iv) the material breach by the Participant of any agreement between such Participant, on the one hand, and the Company, on the other hand. Notwithstanding the above, with respect to any Participant who is a party to an employment agreement with the Company, Cause shall have the meaning set forth in such employment agreement.

2.10 "CEO" means the Chief Executive Officer of the Company.

2.11 "Change in Control" shall be deemed to have occurred upon the first occurrence of an event set forth in any one of the following paragraphs:

(a) any Person is or becomes the "Beneficial Owner" (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of securities of the Company (not including in the securities Beneficially Owned by such Person any securities acquired directly from the Company) representing 30% or more of the Company's then outstanding securities, excluding any Person who becomes such a Beneficial Owner in connection with a transaction described in clause (A) of paragraph (iii) below; or

(b) the following individuals cease for any reason to constitute a majority of the number of directors then serving: individuals who, on the Effective Date, constitute the Board of Directors and any new director (other than a director whose initial assumption of office is in connection with an actual or threatened election contest, including but not limited to a consent solicitation, relating to the election of directors of the Company) whose appointment or election by the Board of Directors or nomination for election by the Company's shareholders was approved or recommended by a vote of at least a two-thirds of the directors then still in office who either were directors on the Effective Date or whose appointment, election or nomination for election was previously so approved or recommended; or

(c) there is consummated a merger or consolidation of the Company with any other corporation other than (A) a merger or consolidation which would result in the voting securities of the Company outstanding immediately prior to such merger or consolidation continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity or any parent thereof) at least 50% of the combined voting power of the voting securities of the Company or such surviving entity or any parent thereof outstanding immediately after such merger or consolidation, or (B) a merger or consolidation effected to implement a re-domestication or re-capitalization of the Company (or similar transaction) in which no Person is or becomes the Beneficial Owner, directly or indirectly, of securities of the Company (not including in the securities Beneficially Owned by such Person any securities acquired directly from the Company) representing 30% or more of the combined voting power of the Company's then outstanding securities; or

(d) the complete liquidation or dissolution of the Company or there is consummated an agreement for the sale or disposition by the Company of all or substantially all of the Company's assets, other than a sale or disposition by the Company of all or substantially all of the Company's assets to an entity at least 75% of the combined voting power of the voting securities of which are owned by Persons in substantially the same proportions as their ownership of the Company immediately prior to such sale.

For the avoidance of doubt, any one or more of the above events may be effected pursuant to (A) a compromise or arrangement sanctioned by the court under Chapter 1 of Part 9 of the Companies Act, (B) an acquisition pursuant to Chapter 2 of Part 9 of the Companies Act, or (C) a merger pursuant to the European Communities (Cross-Border Mergers) Regulations 2008. Notwithstanding the foregoing, in the case of any Award that constitutes deferred compensation within the meaning of Section 409A of the Code, there shall not be a Change in Control unless there is a change in the ownership or effective control of the Company, or in a substantial portion of the assets of the Company, within the meaning of Section 409A of the Code where necessary for such Award to comply with Section 409A of the Code.

2.12 “Code” means the Internal Revenue Code of 1986, as amended from time to time. References to a particular section of the Code include references to regulations and rulings thereunder and to successor provisions.

2.13 “Companies Act” means the Ireland Companies Act 2014.
2.14 “Committee” or “Incentive Plan Committee” has the meaning set forth in Section 3.1(a).
2.15 “Compensation Committee” means the compensation committee of the Board.
2.16 “Corporate Transaction” has the meaning set forth in Section 4.2(b).

2.17 “Covered Employee” means a Grantee who, as of the last day of the fiscal year in which the value of an Award is recognizable as income for U.S. federal income tax purposes, is a “covered employee,” within the meaning of Code Section 162(m), with respect to the Company.

2.18 “Deferred Stock” means a right, granted under Article 10, to receive Shares at the end of a specified deferral period.

2.19 “Disability” or “Disabled” means, unless otherwise defined in an Award Agreement, or as otherwise determined under procedures established by the Committee for purposes of the Plan:

(a) Except as provided in (b) below, a disability within the meaning of Section 22(e)(3) of the Code; and

(b) In the case of any Award that constitutes deferred compensation within the meaning of Section 409A of the Code, a disability as defined in regulations under Code Section 409A where necessary for such Award to comply with Section 409A of the Code. For purpose of Code Section 409A, a Grantee will be considered Disabled if:

i) the Grantee is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or can be expected to last for a continuous period of not less than twelve (12) months, or

i) the Grantee is, by reason of any medically determinable physical or mental impairment which can be expected to result in death or can be expected to last for a continuous period of not less than twelve (12) months, receiving income replacement benefits for a period of not less than three (3) months under an accident and health plan covering employees of the Grantee’s employer.

2.20 “Dividend Equivalent” means a right to receive payments equal to dividends or property, if and when paid or distributed, on a specified number of Shares.

2.21 “Effective Date” has the meaning set forth in Section 1.1.

2.22 “Eligible Person” means any employee (including any officer) of, or non-employee consultant to, or Non-Employee Director of, the Company or any Affiliate, or potential employee (including a potential officer) of, or potential non-employee consultant to, the Company or an Affiliate; provided, however, that solely with respect to the grant of an Incentive Stock Option, an Eligible Person shall be any employee (including any officer) of the Company or any Subsidiary Corporation. Solely for purposes of Section 5.6(b), current or former employees or Non-Employee Directors of, or non-employee consultants to, an Acquired Entity who receive Substitute Awards in substitution for Acquired Entity Awards shall be considered Eligible Persons under this Plan with respect to such Substitute Awards.

2.23 “Exchange Act” means the Securities Exchange Act of 1934, as amended from time to time. References to a particular section of the Exchange Act include references to successor provisions.

2.24 “Exercise Price” means (a) with respect to an Option, the price at which a Share may be subscribed for or purchased by a Grantee pursuant to such Option or (b) with respect to an SAR, the price established at the time an SAR is granted pursuant to Article 7, which is used to determine the amount, if any, of the payment due to a Grantee upon exercise of the SAR.

2.25 “Fair Market Value” means a price that is based on the closing price of a Share (represented by ADSs) reported on Nasdaq, or if not Nasdaq, on the established stock exchange which is the principal exchange upon which the Shares or ADSs are traded on the applicable date or, if the Shares are not traded on such date, the immediately preceding trading day. Unless the Committee determines otherwise, if the Shares or ADSs are traded over the counter at the time a determination of its Fair Market Value is required to be made hereunder, Fair Market Value shall be deemed to be equal to the arithmetic mean between the reported high and low or closing bid and asked prices of a Share or ADS on the applicable date, or if no such trades were made that day then the most recent date on which Shares or ADSs were publicly traded. In the event Shares or ADSs are not publicly traded at the time a determination of their value is required to be made hereunder, the determination of their Fair Market Value shall be made by the Committee in such manner as it deems appropriate provided such manner is consistent with Treasury Regulation 1.409A-1(b)(5)(iv)(B). The Fair Market Value that the Committee determines shall be final, binding and conclusive on the Company, any Affiliate and each Participant.

2.26 “FICA” has the meaning set forth in Section 18.1(a).

2.27 “Forfeiture” means, in relation to Restricted Shares, the compulsory transfer of Restricted Shares by the Grantee, in accordance with and on and subject to the terms set out in the Award Agreement to one of the following, at the election of the Company; the Company, subject to Applicable Law and the Constitution of the Company, an employee benefit trust established by the Company, or a third party nominated by the Company. “Forfeiture” means, in relation to any other Award, the termination of the Award without the Award becoming vested, exercisable or payable. “Forfeitable,” “Forfeited” and “non-Forfeitable” shall be construed accordingly;

2.28 “Forfeiture Transferee” means the person to which or whom Restricted Shares are transferred pursuant to Forfeiture;
2.29 “Grant Date” means the date on which an Award is granted or such later date as specified in advance by the Committee.
2.30 “Grantee” means a person who has been granted an Award.
2.31 “Immediate Family” has the meaning set forth in Section 5.4(c).
2.32 “Incentive Committee” has the meaning set forth in Section 3.1(a).
2.33 “Incentive Stock Option” means an Option that is intended to meet the requirements of Section 422 of the Code.
2.34 “including” or “includes” means “including, without limitation,” or “includes, without limitation,” respectively.
2.35 “Irish Takeover Rules” means the takeover rules made from time to time by the Irish Takeover Panel under the powers granted to it by the Irish Takeover Panel Act 1997.
2.36 “Management Committee” has the meaning set forth in Section 3.1(b).
2.37 “Nasdaq” means the Nasdaq Global Market.
2.38 “Non-Employee Director” means a member of the Board who is not an employee of the Company or any Affiliate.
2.39 “Option” means an option granted under Article 6 of the Plan.
2.40 “Ordinary Share” means an Ordinary Share, par value $0.01, in the capital of the Company.

2.41 “Other Stock-Based Award” means a right, granted under Article 13 hereof, that relates to or is valued by reference to Shares or other Awards relating to Shares.

2.42 “Performance-Based Exception” means the performance-based exception from the tax deductibility limitations of Code Section 162(m) contained in Code Section 162(m)(4)(C) (including the special provisions for options thereunder). Notwithstanding the foregoing, nothing in this Plan shall be construed to mean that an Award which does not satisfy the requirements for performance-based compensation under Code Section 162(m) does not constitute performance-based compensation for other purposes, including Code Section 409A.

2.43 “Performance Measures” has the meaning set forth in Section 4.4.

2.44 “Performance Period” means the time period during which performance goals must be met.

2.45 “Performance Share” and “Performance Unit” mean an Award granted as a Performance Share or Performance Unit under Article 9.

2.46 “Period of Restriction” means the period during which Restricted Shares are subject to Forfeiture if the conditions specified in the Award Agreement are not satisfied.

2.47 “Permitted Transferee” has the meaning set forth in Section 5.4(c).

2.48 “Person” means any individual, sole proprietorship, partnership, joint venture, limited liability company, trust, unincorporated organization, association, corporation, institution, public benefit corporation, entity or government instrumentality, division, agency, body or department.

2.49 “Personal Data” has the meaning assigned to that term in Section 2 of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data;

2.50 “Plan” means this Avadel Pharmaceuticals PLC 2017 Omnibus Incentive Compensation Plan, in its current form or as hereafter amended.

2.51 “QDRO” has the meaning set forth in Section 5.4(a).

2.52 “Restricted Shares” means Shares issued under Article 8 that are both subject to Forfeiture and are nontransferable if the Grantee does not satisfy the conditions specified in the Award Agreement applicable to such Shares.

2.53 “Restricted Stock Units” are rights, granted under Article 10, to receive Shares if the Grantee satisfies the conditions specified in the Award Agreement applicable to such rights, and subject always to the Grantee paying the nominal value in cash for each such Share;

2.54 “Returned Shares” has the meaning set forth in Section 4.1.

2.55 “Rule 16b-3” means Rule 16b-3 promulgated by the SEC under the Exchange Act, as amended from time to time, together with any successor rule.

2.56 “SEC” means the United States Securities and Exchange Commission, or any successor thereto.

2.57 “Section 16 Non-Employee Director” means a member of the Board who satisfies the requirements to qualify as a “non-employee director” under Rule 16b-3.

2.58 “Section 16 Person” means a person who is subject to potential liability under Section 16(b) of the Exchange Act with respect to transactions involving equity securities of the Company.

2.59 “Separation from Service” means, with respect to any Award that constitutes deferred compensation within the meaning of Code Section 409A, a “separation from service” as defined in Treasury Regulation Section 1.409A-1(h). For this purpose, a “separation from service” is deemed to occur on the date that the Company and the Grantee reasonably anticipate that the level of bona fide services the Grantee would perform for the Company and/or any Affiliates after that date (whether as an employee, Non-Employee Director or consultant or independent contractor) would permanently decrease to a level that, based on the facts and circumstances, would constitute a separation from service; provided that a decrease to a level that is 50% or more of the average level of bona fide services provided over the prior 36 months shall not be a separation from service, and a decrease to a level that is 20% or less of the average level of such bona fide services shall be a separation from service. The Committee retains the right and discretion to specify, and may specify, whether a separation from service occurs for individuals providing services to the Company or an Affiliate immediately prior to an asset purchase transaction in which the Company or an Affiliate is the seller who provides services to a buyer after and in connection with such asset purchase transaction; provided, such specification is made in accordance with the requirements of Treasury Regulation Section 1.409A-1(h)(4).

2.60 “Share” means an Ordinary Share, and such other securities of the Company, as may be substituted or resubstituted for Shares pursuant to Section 4.2 hereof; unless the context otherwise requires, references herein to “Shares” shall include references to ADSs.

2.61 “Stock Appreciation Right” or “SAR” means an Award granted under Article 7 of the Plan.

2.62 “Subsidiary Corporation” means a corporation other than the Company in an unbroken chain of corporations beginning with the Company if, at the time of granting the Option, each of the corporations other than the last corporation in the unbroken chain owns shares or stock possessing 50% or more of the total combined voting power of all classes of shares or stock in one of the other corporations in such chain.

2.63 “Substitute Awards” has the meaning set forth in Section 5.6(b).

2.64 “Surviving Company” means the surviving corporation in any merger or consolidation, involving the Company, including the Company if the Company is the surviving corporation, or the direct or indirect parent company of the Company or such surviving corporation following a sale of substantially all of the outstanding shares or stock of the Company.

2.65 “Tax Date” has the meaning set forth in Section 18.1(a).
2.66 “Tendered Restricted Shares” has the meaning set forth in Section 6.5.
2.67 “Term” of any Option or SAR means the period beginning on the Grant Date of an Option or SAR and ending on the date such Option

or SAR expires, terminates or is cancelled. No Option or SAR granted under this Plan shall have a Term exceeding 10 years.

2.68 “Termination of Affiliation” occurs on the first day on which an individual is for any reason no longer providing services to the Company or any Affiliate in the capacity of an employee, officer or consultant or with respect to an individual who is an employee or officer of or a consultant to an Affiliate, the first day on which such entity ceases to be an Affiliate of the Company; provided, however, that if an Award constitutes deferred compensation within the meaning of Code Section 409A, Termination of Affiliation with respect to such Award shall mean the Grantee’s Separation from Service.

**Article 3**

**Administration**

3.1 Committee.

(a) Subject to Article 14, and to Section 3.2, the Plan shall be administered by a Committee (the “Incentive Plan Committee” or the “Committee”) appointed by the Board from time to time. Notwithstanding the foregoing, either the Board or the Compensation Committee may at any time and in one or more instances reserve administrative powers to itself as the Committee or exercise any of the administrative powers of the Committee. To the extent the Board or Compensation Committee considers it desirable to comply with Rule 16b-3 or meet the Performance-Based Exception, the Committee shall consist of two or more directors of the Company, all of whom qualify as “outside directors” within the meaning of Code Section 162(m) and Section 16 Non-Employee Directors. The number of members of the Committee shall from time to time be increased or decreased, and shall be subject to such conditions, in each case if and to the extent the Board deems it appropriate to permit transactions in Shares pursuant to the Plan to satisfy such conditions of Rule 16b-3 and the Performance-Based Exception as then in effect.

(b) The Board or the Compensation Committee may appoint and delegate to another committee (“Management Committee”), or to the CEO, any or all of the authority of the Board or the Committee, as applicable, with respect to Awards to Grantees other than Grantees who are executive officers, Non-Employee Directors, or are (or are expected to be) Covered Employees and/or are Section 16 Persons at the time any such delegated authority is exercised.

(c) Unless the context requires otherwise, any references herein to “Committee” include references to the Incentive Plan Committee, the Board or the Compensation Committee to the extent Incentive Plan Committee, the Board or the Compensation Committee, as applicable, has assumed or exercises administrative powers itself as the Committee pursuant to subsection (a), and to the Management Committee or the CEO to the extent either has been delegated authority pursuant to subsection (b), as applicable; provided that (i) for purposes of Awards to Non-

Employee Directors, “Committee” shall include only the full Board, and (ii) for purposes of Awards intended to comply with Rule 16b-3 or meet the Performance-Based Exception, “Committee” shall include only the Incentive Plan Committee or the Compensation Committee.

3.2 Powers of Committee. Subject to and consistent with the provisions of the Plan (including Article 14), the Committee has full and final authority and sole discretion as follows; provided that any such authority or discretion exercised with respect to a specific Non-Employee Director shall be approved by the affirmative vote of a majority of the members of the Board, even if not a quorum, but excluding the Non-Employee Director with respect to whom such authority or discretion is exercised:

(a) to determine when, to whom and in what types and amounts Awards should be granted;

(b) to grant Awards to Eligible Persons in any number and to determine the terms and conditions applicable to each Award (including the number of Shares or the amount of cash or other property to which an Award will relate, any Exercise Price or purchase price, any limitation or restriction, any schedule for or performance conditions relating to the earning of the Award or the lapse of limitations, forfeiture restrictions, restrictions on exercisability or transferability, any performance goals including those relating to the Company and/or an Affiliate and/or any division thereof and/or an individual, and/or vesting based on the passage of time, based in each case on such considerations as the Committee shall determine);

(c) to determine the benefit payable under any Performance Unit, Performance Share, Dividend Equivalent, Other Stock-Based Award or Cash Incentive Award and to determine whether any performance or vesting conditions have been satisfied;

(d) to determine whether or not specific Awards shall be granted in connection with other specific Awards, and if so, whether they shall be exercisable cumulatively with, or alternatively to, such other specific Awards and all other matters to be determined in connection with an Award;

(e) to determine the Term of any Option or SAR;

(f) to determine the amount that a Grantee shall pay for Restricted Shares, which shall be no less than the nominal value per Restricted Share if required by Applicable Law, whether to permit or require the payment of cash dividends thereon to be deferred and the terms related thereto, when Restricted Shares (including Restricted Shares acquired upon the exercise of an Option) shall be Forfeited and whether such shares shall be held in escrow;

(g) to determine whether, to what extent and under what circumstances, subject to Applicable Law and the Company’s Constitution, an Award may be settled in, or the exercise price of an Award may be paid in, cash, Shares, other Awards or other property, or an Award may be accelerated, vested, canceled, forfeited or surrendered or any terms of the Award may be waived, and to accelerate the exercisability of, and to accelerate or waive any or all of the terms and conditions applicable to, any Award or any group of Awards for any reason and at any time;

(h) to determine with respect to Awards granted to Eligible Persons whether, to what extent and under what circumstances cash, Shares, other Awards, other property and other amounts payable with respect to an Award will be deferred, either at the election of the Grantee or if and to the extent specified in the Award Agreement automatically or at the election of the Committee (whether to limit loss of deductions pursuant to Code Section 162(m) or otherwise);

(i) subject to Section 3.3 below, to offer to exchange or buy out any previously granted Award for a payment in cash, Shares or

other Award;

(j) to construe and interpret the Plan and to make all determinations, including factual determinations, necessary or advisable for the administration of the Plan;

(k) to make, amend, suspend, waive and rescind rules and regulations relating to the Plan;

(l) to appoint such agents as the Committee may deem necessary or advisable to administer the Plan;

(m) to determine the terms and conditions of all Award Agreements applicable to Eligible Persons (which need not be identical) and, with the consent of the Grantee, to amend any such Award Agreement at any time, among other things, to permit transfers of such Awards to the extent permitted by the Plan; provided that the consent of the Grantee shall not be required for any amendment (i) which does not adversely affect the rights of the Grantee, or (ii) which is necessary or advisable (as determined by the Committee) to carry out the purpose of the Award as a result of any new Applicable Law or change in an existing Applicable Law, or (iii) to the extent the Award Agreement specifically permits amendment without consent;

(n) subject to Section 3.3, to cancel, with the consent of the Grantee, outstanding Awards and to grant new Awards in substitution

therefor;

(o) to impose such additional terms and conditions upon the grant, exercise or retention of Awards as the Committee may, before or concurrently with the grant thereof, deem appropriate, including limiting the percentage of Awards which may from time to time be exercised by a Grantee;

(p) to make adjustments in the terms and conditions of, and the criteria in, Awards in recognition of unusual or nonrecurring events (including events described in Section 4.2) affecting the Company or an Affiliate or the financial statements of the Company or an Affiliate, or in response to changes in Applicable Laws, regulations or accounting principles; provided, however, that in no event shall such adjustment increase the value of an Award for a person expected to be a Covered Employee for whom the Committee desires to have the Performance-Based Exception apply, unless permitted under Section 162(m) of the Code and the Performance-Based Exception;

(q) adopt rules and/or procedures (including the adoption of any subplan under the Plan) relating to the operation and administration of the Plan to accommodate requirements of local law and procedures;

(r) to correct any defect or supply any omission or reconcile any inconsistency, and to construe and interpret the Plan, the rules and regulations, and Award Agreement or any other instrument entered into or relating to an Award under the Plan;

(s) to determine whether any Award shall pertain to Shares or ADSs; and

(t) to take any other action with respect to any matters relating to the Plan for which it is responsible and to make all other decisions and determinations as may be required under the terms of the Plan or as the Committee may deem necessary or advisable for the administration of the Plan.

Any action of the Committee with respect to the Plan shall be final, conclusive and binding on all persons, including the Company, its Affiliates, any Grantee, any person claiming any rights under the Plan from or through any Grantee, and shareholders, except to the extent the Committee may subsequently modify, or take further action not consistent with, its prior action. If not specified in the Plan, the time at which the Committee must or may make any determination shall be determined by the Committee, and any such determination may thereafter be modified by the Committee. The express grant of any specific power to the Committee, and the taking of any action by the Committee, shall not be construed as limiting any power or authority of the Committee. The Committee may delegate to officers or managers of the Company or any Affiliate the authority, subject to such terms as the Committee shall determine, to perform specified functions under the Plan (subject to Sections 4.3 and 5.7(c)). The Committee may revoke or amend the terms of any delegation at any time but such action shall not invalidate any prior actions of the Committee's delegate or delegates that were consistent with the terms of the Plan and the Committee's prior delegation.

The Company shall bear all expenses of administering the Plan. The Company shall indemnify and hold harmless each person who is or shall have been a member of the Committee acting as administrator of the Plan, or any delegate of such, against and from any cost, liability, loss or expense that may be imposed upon or reasonably incurred by such person in connection with or resulting from any action, claim, suit, or proceeding to which such person may be a party or in which such person may be involved by reason of any action taken or not taken under the Plan and against and from any and all amounts paid by such person in settlement thereof, with the Company's approval, or paid by such person in satisfaction of any judgment in any such action, suit, or proceeding against such person, provided he or she shall give the Company an opportunity, at its own expense, to handle and defend the same before he or she undertakes to handle and defend it on his or her own behalf. Notwithstanding the foregoing, the Company shall not indemnify and hold harmless any such person if (i) applicable law or the Company's governing documents prohibit such indemnification or (ii) such person did not act in good faith and in a manner that such person believed to be consistent with the Plan or (iii) such person's conduct constituted gross negligence or willful misconduct. The foregoing right of indemnification shall not be exclusive of any other rights of indemnification to which such persons may be entitled under the Company's governing documents, as a matter of law or otherwise, or under any other power that the Company may have to indemnify such person or hold him or her harmless. The provisions of the foregoing indemnity shall survive indefinitely the term of this Plan.

Notwithstanding any provision of the Plan to the contrary, in order to comply with the laws in other countries in which Participants are located, or in order to comply with the requirements of any foreign stock exchange, the Committee, in its sole discretion, shall have the power and authority to: (a) determine which Affiliates shall be covered by the Plan; (b) determine which Participants outside the United States are eligible to participate in the Plan; (c) modify the terms and conditions of any Award granted to Participants outside the United States to comply with applicable foreign laws or listing requirements of any such foreign stock exchange; (d) establish subplans and modify exercise procedures and other terms and procedures, to the extent such actions may be necessary or advisable (any such subplans and/or modifications shall be attached to the Plan as appendices); provided, however, that no such subplans and/or modifications shall increase the share limitations contained in Article 4; and (e) take any action, before or after an Award is made, that it deems advisable to obtain approval or comply with any necessary local governmental regulatory exemptions or approvals or listing requirements of any such foreign stock

exchange. Notwithstanding the foregoing, the Committee may not take any actions hereunder, and no Awards shall be granted, that would violate the Exchange Act or any other securities law or governing statute or any other Applicable Law.

3.3 No Repricings. Notwithstanding any provision in Section 3.2 to the contrary, the terms of any outstanding Option or SAR may not be amended to reduce the Exercise Price of such Option or SAR or cancel any outstanding Option or SAR in exchange for other Options or SARs with an Exercise Price that is less than the Exercise Price of the cancelled Option or SAR or for any cash payment (or Shares having with a Fair Market Value) in an amount that exceeds the excess of the Fair Market Value of the Shares underlying such cancelled Option or SAR over the aggregate Exercise Price of such Option or SAR or for any other Award, without shareholder approval; provided, however, that the restrictions set forth in this Section 3.3 shall not apply to any adjustment allowed under to Section

**Article 4**

**Shares Subject to the Plan, Maximum Awards, and 162(m) Compliance**

4.1 Number of Shares Available for Grants. Subject to adjustment as provided in Section 4.2 and except as provided in Section 5.6(b), the maximum number of Shares hereby reserved for delivery under the Plan shall be 4,000,000 including Shares delivered pursuant to the exercise of Incentive Stock Options granted hereunder.

If any Award terminates without the delivery of Shares, whether by lapse, forfeiture, cancellation or otherwise, the Shares subject to such Award, to the extent of any such termination, shall again be available for grant under the Plan. Notwithstanding the foregoing, upon the exercise of any Award granted in tandem with any other Awards, such related Awards shall be cancelled to the extent of the number of shares of Company Stock as to which the Award is exercised and such number of shares shall no longer be available for Awards under the Plan. Subject to Applicable Law, if any Shares subject to an Award granted hereunder are Forfeited or withheld or applied as payment in connection with the exercise of an Award or the withholding or payment of taxes related thereto ("Returned Shares"), such Returned Shares will be treated as having been delivered for purposes of determining the maximum number of Shares available for grant under the Plan and shall not again be treated as available for grant under the Plan. Moreover, the number of Shares available for issuance under the Plan may not be increased through the Company's purchase of Shares on the open market with the proceeds obtained from the exercise of any Options or the purchase of any Awards granted hereunder. Upon settlement of any SAR, the greater of (i) the number of Shares underlying the portion of the SAR that is exercised or (ii) the number of Shares actually issued on exercise will be treated as having been delivered for purposes of determining the maximum number of Shares available for grant under the Plan and shall not again be treated as available for grant under the Plan.

Shares may be allotted and issued pursuant to the Plan from the Company's authorized but unissued share capital, or the reissue of treasury Shares.

Unless otherwise determined by the Committee, all Shares allotted pursuant to this Plan shall rank pari passu from the date of allotment with all other Ordinary Shares in issue as regard all voting and distribution rights notwithstanding that such Shares may not be fully paid at the date of allotment.

All Awards are made of the basis that any scheme of arrangement to be sanctioned under Chapter 1 of Part 9 of the Companies Act shall be binding on the Participants without such Participants having to approve such scheme in a separate meeting from the holders of the Ordinary Shares.

4.2 Adjustments in Authorized Shares and Awards; Liquidation, Dissolution or Change of Control.

(a) Adjustment in Authorized Shares and Awards. In the event that the Committee determines that any dividend or other distribution (excluding any ordinary dividend or distribution) (whether in the form of cash, Shares, or other property), recapitalization, forward or reverse stock split, subdivision, consolidation or reduction of capital, reorganization, merger, consolidation, scheme of arrangement, split-up, spin-off or combination involving the Company or repurchase or exchange of Shares or other securities of the Company or other rights to purchase Shares or other securities of the Company, or other similar corporate transaction or event affects the Shares such that any adjustment is determined by the Committee to be appropriate in order to prevent dilution or enlargement of the benefits or potential benefits intended to be made available under the Plan, then the Committee shall, in such manner as it may deem equitable, adjust any or all of (i) the number and type of Shares (or other securities or property) with respect to which Awards may be granted, (ii) the number and type of Shares (or other securities or property) subject to outstanding Awards, (iii) the Exercise Price with respect to any Award or, if deemed appropriate, make provision for a cash payment to the holder of an outstanding Award, and (iv) the number and kind of Shares of outstanding Restricted Shares, or the Shares underlying any Award of Restricted Stock Units, Deferred Stock or other outstanding Share-based Award. Notwithstanding the foregoing, no such adjustment shall be authorized with respect to any Options or SARs to the extent that such adjustment would cause the Option or SAR (determined as if such Option or SAR was an Incentive Stock Option) to violate Section 424(a) of the Code or with respect to any Awards to the extent such adjustment would subject any Grantee to taxation under Section 409A of the Code; and *provided further* that the number of Shares subject to any Award denominated in Shares shall always be a whole number.

(b) Merger, Consolidation or Similar Corporate Transaction. In the event of a merger or consolidation of the Company with or into another corporation or a sale of substantially all of the shares or stock of the Company, including by way of a court sanctioned compromise or scheme of arrangement or a merger pursuant to the European Communities (Cross-Border Mergers) Regulations 2008 that results in a Change in Control (a “Corporate Transaction”), unless an outstanding Award is assumed by the Surviving Company or replaced with an equivalent Award granted by the Surviving Company in substitution for such outstanding Award, the Committee shall cancel any outstanding Awards that are not vested and nonforfeitable as of the consummation of such Corporate Transaction (unless the Committee in its discretion accelerates the vesting of any such Awards) and with respect to any vested and nonforfeitable Awards, the Committee may either (i) allow all Grantees to exercise such Awards of Options and SARs within a reasonable period prior to the consummation of the Corporate Transaction and cancel any outstanding Options or SARs that remain unexercised upon consummation of the Corporate Transaction, or (ii) cancel any or all of such outstanding Awards in exchange for a payment (in cash and/or in securities and/or other property) in an amount equal to the amount that the Grantee would have received (net of the Exercise Price with respect to any Options or SARs) if such vested Awards were settled or distributed or such vested Options and SARs were exercised immediately prior to the consummation of the Corporate Transaction. Notwithstanding the foregoing, if an Option or SAR is not assumed by the Surviving Company or replaced with an equivalent Award issued by the Surviving Company and the Exercise Price with respect to any outstanding Option or SAR exceeds the amount payable per Share in the Corporation Transaction, such Awards shall be cancelled without any payment to the Grantee.

(c) Liquidation or Dissolution of the Company. In the event of the proposed dissolution or liquidation of the Company, each Award will terminate immediately prior to the consummation of such proposed action, unless otherwise provided by the Committee. Additionally, the Committee may, in the exercise of its sole discretion, cause Awards to be vested and non-forfeitable and cause any conditions on any such Award to lapse, as to all or any part of such Award, including Shares as to which the Award would not otherwise be exercisable or non-forfeitable and allow all Grantees to exercise such Awards of Options and SARs within a reasonable period prior to the consummation of such proposed action. Any Awards that remain unexercised upon consummation of such proposed action shall be cancelled.

(d) Deferred Compensation and Awards Intended to Comply With the Performance-Based Exception. Notwithstanding the forgoing provisions of this Section 4.2,

i. if an Award (other than an Option or SAR) is intended to comply with the Performance-Based Exception, no payment or settlement of such Award shall be made pursuant to Section 4.2(b) or (c) until the earlier (i) the consummation of a change of control of the Company (as determined by the Committee in its sole discretion) or (ii) the attainment of the Performance Measure(s) upon which the Award is conditioned as certified by the Committee; and

i. if an Award constitutes deferred compensation within the meaning of Code Section 409A, no payment or settlement of such Award shall be made pursuant to Section 4.2(b) or (c), unless the Corporate Transaction or the dissolution or liquidation of the Company, as applicable, constitutes a change in ownership or effective control of the Company or a change in ownership of a substantial portion of the assets of the Company as described in Treasury Regulation Section 1.409A-3(i)(5).

4.3 Compliance with Section 162(m) of the Code.

(a) Section 162(m) Compliance. To the extent the Committee determines that compliance with the Performance-Based Exception is desirable with respect to an Award, this Section 4.3(a) shall apply. Each Award that is intended to meet the Performance-Based Exception and is granted to a person the Committee believes is likely to be a Covered Employee at the time such Award is settled shall comply with the requirements of the Performance-Based Exception; provided, however, that to the extent Code Section 162(m) requires periodic shareholder approval of performance measures, such approval shall not be required for the continuation of the Plan or as a condition to grant any Award hereunder after such approval is required. In addition, in the event that changes are made to Code Section 162(m) to permit flexibility with respect to the Award or Awards available under the Plan, the Committee may, subject to this Section 4.3, make any adjustments to such Awards as it deems appropriate.

(b) Annual Individual Limitations. Except as provided in Section 5.6(b), for Awards that are intended to comply with the requirements of the Performance-Based Exception, no Grantee may be granted Awards denoted in Shares as of the date of grant (regardless of whether the Awards will be settled in Shares, cash or other property) with respect to more than 1,500,000 Shares (twice that limit for Awards that are granted to an Eligible Person in the calendar year in which the Eligible Person first commences employment or service) (based on the highest level of performance resulting in the maximum payout) in a single calendar year, subject to adjustment as provided in Section 4.2(a). Except as provided in Section 5.6(b), for Awards that are intended to comply with the requirements of the Performance-Based Exception, no Grantee may be granted Awards denoted in cash or other property (with the property valued as of the date of grant of the Award) ( regardless of whether the Awards will be settled in Shares, cash or other property) with respect to more than $5,000,000 (twice that limit for Awards that are granted

to an Eligible Person in the calendar year in which the Eligible Person first commences employment or service) (based on the highest level of performance resulting in the maximum payout) for all such Awards in any single calendar year. Such annual limitations apply to Dividend Equivalents under Article 11 only if such Dividend Equivalents are granted separately from and not as a feature of another Award (even if that feature is treated as a separate award for other purposes, including Section 409A of the Code).

4.4 Performance-Based Exception Under Section 162(m). Unless and until the Committee proposes for shareholder vote and shareholders approve a change in the general performance measures set forth in this Section 4.4 for Awards (other than Options or SARs) designed to qualify for the Performance-Based Exception, the objective Performance Measure(s) shall be chosen from among the following: the attainment by a Share of a specified Fair Market Value for a specified period of time or within a specified period of time; earnings per Share; earnings per Share from continuing operations; total shareholder return; return on assets; return on equity; return on capital; earnings before or after taxes, interest, depreciation, and/or amortization; return on investment; interest expense; cash flow; cash flow from operations; revenues; sales; costs; assets; debt; expenses; inventory turnover; economic value added; cost of capital; operating margin; gross margin; net income before or after taxes; operating earnings either before or after interest expense and either before or after incentives or asset impairments; attainment of cost reduction goals; revenue per customer; customer turnover rate; asset impairments; financing costs; capital expenditures; working capital; strategic business criteria, consisting of one or more objectives based on meeting specified revenue, market penetration, geographic business expansion goals, objectively identified project milestones, production volume levels, cost targets, and goals relating to acquisitions or divestitures; customer satisfaction, aggregate product price and other product price measures; safety record; service reliability; debt rating; and achievement of business and operational goals, such as market share, new products, and/or business development. Any applicable Performance Measure may be applied on a pre- or post-tax basis. The Committee may, on the Grant Date of an Award intended to comply with the Performance-Based Exception, and in the case of other grants, at any time, provide that the formula for such Award may include or exclude items to measure specific objectives, such as losses from discontinued operations, extraordinary gains or losses, the cumulative effect of accounting changes, acquisitions or divestitures, foreign exchange impacts and any unusual, nonrecurring gain or loss. The levels of performance required with respect to Performance Measures may be expressed in absolute or relative levels and may be based upon a set increase, set positive result, maintenance of the status quo, set decrease or set negative result. Performance Measures may differ for Awards to different Grantees. The Committee shall specify the weighting (which may be the same or different for multiple objectives) to be given to each performance objective for purposes of determining the final amount payable with respect to any such Award. Any one or more of the Performance Measures may apply to the Grantee, a department, unit, division or function within the Company or any one or more Affiliates; and may apply either alone or relative to the performance of other businesses or individuals (including industry or general market indices). For Awards intended to comply with the Performance-Based Exception, (i) the Committee shall set the Performance Measures within the time period prescribed by Section 162(m) of the Code and no later than 90 days after the commencement of the period of service to which the Awards intended to comply with the Performance-Based Exception relate (but in no event after 25 percent of the period of service has elapsed), (ii) the Performance Measures may not include solely the mere continued employment or service of the Participant, but (iii) the Award may be contingent upon the Participant's continued employment or service in addition to the Performance Measures..

If the Committee, on the date of grant, prescribes that an Award shall become exercisable, nonforfeitable and transferable or earned and payable only upon the attainment of any of the above Performance Measures, the Award shall become exercisable, nonforfeitable and transferable or earned and payable only to the extent that the Committee certifies in writing that such conditions have been achieved. An

Award will not satisfy the requirements of the Performance-Based Exception if the facts and circumstances indicate the Award will become exercisable, nonforfeitable and transferable or earned and payable regardless of whether the Performance Measures are attained. However, an Award does not fail to meet the requirements of the Performance-Based Exception merely because the Award would become exercisable, nonforfeitable and transferable or earned and payable upon the Participant's death or disability or upon a Change in Control, although an Award that actually becomes exercisable, nonforfeitable and transferable or earned and payable on account of those events prior to the attainment of the Performance Measures would not satisfy the Performance-Based Exception. In determining if the performance conditions have been achieved, the Committee may adjust the performance targets in the event of any unbudgeted acquisition, divestiture or other unexpected fundamental change in the business of the Company, an Affiliate or business unit or in any product that is material taken as a whole as appropriate to fairly and equitably determine if the Award is to become exercisable, nonforfeitable and transferable or earned and payable pursuant to the conditions set forth in the Award. Additionally, in determining if such performance conditions have been achieved, the Committee also may adjust the performance targets in the event of any

(i) unanticipated asset write-downs or impairment charges, (ii) litigation or claim judgments or settlements thereof, (iii) changes in tax laws, accounting principles or other laws or provisions affecting reported results, (iv) accruals for reorganization or restructuring programs, or extraordinary non-reoccurring items. To the extent any such adjustments affect Awards, the intent is that they shall be in a form that allows the Award to continue to meet the requirements of the Performance-Based Exception.

The Committee shall have the discretion to adjust the determinations of the degree of attainment of the pre-established performance goals; provided, however, that Awards which are designed to qualify for the Performance-Based Exception may not (unless the Committee determines to amend the Award so that it no longer qualifies for the Performance-Based Exception) be adjusted upward unless permitted by Section 162(m) of the Code under the Performance-Based Exception (the Committee shall retain the discretion to adjust such Awards downward). The Committee may not, unless the Committee determines to amend the Award so that it no longer qualifies for the Performance-Based Exception, delegate any responsibility with respect to Awards intended to qualify for the Performance-Based Exception. All determinations by the Committee as to the achievement of the Performance Measure(s) shall be in writing prior to payment of the Award.

In the event that Applicable Laws change to permit Committee discretion to alter the governing performance measures without obtaining shareholder approval of such changes, and still qualify for the Performance-Based Exception, the Committee shall have sole discretion to make such changes without obtaining shareholder approval.

**Article 5**

**Eligibility and General Conditions of Awards**

5.1 Eligibility. The Committee may in its discretion grant Awards to any Eligible Person, whether or not he or she has previously received an Award; provided, however, that all Awards made to Non-Employee Directors shall be determined by the Board in its sole discretion. No Award may be granted at a time when such grant would constitute a breach of Applicable Law or, in the opinion of the Committee, would or may result in the Eligible Person and/or any other parties being obligated under the Irish Takeover Rules to make a general offer to all shareholders of the Company.

5.2 Award Agreement. To the extent not set forth in the Plan, the terms and conditions of each Award shall be set forth in an Award Agreement and, unless the Committee determines otherwise, such Agreement must be signed, acknowledged and returned by the Participant to the Company. Unless the Committee determines otherwise, any failure by the Participant to sign and return the Agreement within such period of time following the granting of the Award as the Committee shall prescribe shall cause such Award to the Participant to be null and void. By accepting an Award or other benefits under the Plan (including participation in the Plan), each Participant shall be conclusively deemed to have indicated acceptance and ratification of, and consented to, all provisions of the Plan and the Agreement.

5.3 General Terms and Termination of Affiliation. The Committee may impose on any Award or the exercise or settlement thereof, at the date of grant or, subject to the provisions of Section 16.2, thereafter, such additional terms and conditions not inconsistent with the provisions of the Plan as the Committee shall determine, including terms requiring forfeiture or transfer, acceleration or pro-rata acceleration of Awards in the event of a Termination of Affiliation by the Grantee. Awards may be granted for no consideration other than prior and future services save that in no event will Shares the subject to Award be allotted and issued unless the nominal value per Share is paid in cash, save to the extent permitted by Applicable Law and the Company's Constitution. Except as otherwise determined by the Committee pursuant to this Section 5.3, all Options that have not been exercised, or any other Awards that remain subject to a risk of forfeiture or which are not otherwise vested, or which have outstanding Performance Periods, at the time of a Termination of Affiliation shall be forfeited to the Company. Other than Awards excluded from these minimum requirements as set forth below, (i) no Award or any portion thereof may be granted that will be eligible to vest earlier than 12 months from the date of grant of the Award and/or have a performance period of less than 12 months, subject to Section 4.2 above, and (ii) any Award whose vesting relates exclusively to the passage of time and continued employment or other service shall have a vesting period of not less than 36 months, with no more than thirty-three and one-third percent (33-1/3%) of the Award vesting every 12 months from the date of the Award, subject to Section 4.2 above. Notwithstanding the foregoing, Awards that result in the issuance of an aggregate of up to 5% of the Shares available pursuant to Article 4 may be granted under the Plan without regard to such minimum requirements. Additionally, no dividends or Dividend Equivalents shall be paid with respect to any Awards that do not become vested, non-forfeitable or payable under the Plan.

5.4 Nontransferability of Awards.

(a) Each Award and each right under any Award shall be exercisable only by the Grantee during the Grantee's lifetime, or, if permissible under Applicable Law, by the Grantee's guardian or legal representative or by a transferee receiving such Award pursuant to a qualified domestic relations order (a "QDRO") as defined in the Code or Title I of the Employee Retirement Income Security Act of 1974, as amended, or the rules thereunder.

(b) No Award (prior to the time, if applicable, Shares are delivered in respect of such Award), and no right under any Award, may be assigned, alienated, pledged, attached, sold or otherwise transferred or encumbered by a Grantee otherwise than by will or by the laws of descent and distribution (or in the case of Restricted Shares, to the Company or other Forfeiture Transferee) or pursuant to a QDRO, and any such purported assignment, alienation, pledge, attachment, sale, transfer or encumbrance shall be void and unenforceable against the Company or any Affiliate; provided that the designation of a beneficiary to receive benefits in the event of the Grantee's death shall not constitute an assignment, alienation, pledge, attachment, sale, transfer or encumbrance.

(c) Notwithstanding subsections (a) and (b) above, to the extent provided in the Award Agreement, Awards (other than Incentive Stock Options and corresponding Awards) may be transferred, without consideration, to a Permitted Transferee. For this purpose, a "Permitted Transferee" in respect of any Grantee means any member of the Immediate Family of such Grantee, any trust of which all of the primary beneficiaries are such Grantee or members of his or her Immediate Family, or any partnership (including limited liability companies and similar entities) of which all of the partners or members are such Grantee or members of his or her Immediate Family; and the "Immediate Family" of a Grantee means the Grantee's spouse, any person sharing the Grantee's household (other than a tenant or employee), children, stepchildren, grandchildren, parents, stepparents, siblings, grandparents, nieces and nephews. Such Award may be exercised by such transferee in accordance with the terms of the Award Agreement. If so determined by the Committee, a Grantee may, in the manner established by the Committee, designate a beneficiary or beneficiaries to exercise the rights of the Grantee, and to receive any distribution with respect to any Award upon the death of the Grantee. A transferee, beneficiary, guardian, legal representative or other person claiming any rights under the Plan from or through any Grantee shall be subject to and consistent with the provisions of the Plan and any applicable Award Agreement, except to the extent the Plan and Award Agreement otherwise provide with respect to such persons, and to any additional restrictions or limitations deemed necessary or appropriate by the Committee.

(d) Nothing herein shall be construed as requiring the Company or any Affiliate to honor a QDRO except to the extent required under Applicable Law.

5.5 Cancellation and Rescission of Awards. Unless the Award Agreement specifies otherwise, the Committee may cancel, rescind, suspend, withhold, or otherwise limit or restrict any unexercised or other Award at any time if the Grantee is not in compliance with all applicable provisions of the Award Agreement and the Plan or if the Grantee has a Termination of Affiliation.

5.6 Stand-Alone, Tandem and Substitute Awards.

(a) Awards granted under the Plan may, in the discretion of the Committee, be granted either alone or in addition to, in tandem with, or in substitution for, any other Award granted under the Plan unless such tandem or substitution Award would subject the Grantee to tax penalties imposed under Section 409A of the Code; provided further that if the stand-alone, tandem or substitute Award is intended to qualify for the Performance-Based Exception, it must separately satisfy the requirements of the Performance-Based Exception. If an Award is granted in substitution for another Award or any non-Plan award or benefit, the Committee shall require the surrender of such other Award or non-Plan award or benefit in consideration for the grant of the new Award. Awards granted in addition to or in tandem with other Awards or non-Plan awards or benefits may be granted either at the same time as or at a different time from the grant of such other Awards or non-Plan awards or benefits; provided, however, that if any SAR is granted in tandem with an Incentive Stock Option, such SAR and Incentive Stock Option must have the same Grant Date, Term and the Exercise Price of the SAR may not be less than the Exercise Price of the Incentive Stock Option.

(b) The Committee may, in its discretion and on such terms and conditions as the Committee considers appropriate in the circumstances, grant Awards under the Plan ("Substitute Awards") in substitution for share or stock and share or stock-based awards ("Acquired Entity Awards") held by current or former employees or non-employee directors of, or consultants to, another corporation or entity who become Eligible Persons as the result of a merger or consolidation of the employing corporation or other entity (the "Acquired Entity") with the Company or an Affiliateor the acquisition by the Company or an Affiliate of property or shares or stock of the Acquired Entity

immediately prior to such merger, consolidation or acquisition in order to preserve for the Grantee the economic value of all or a portion of such Acquired Entity Award at such price as the Committee determines necessary to achieve preservation of economic value. The limitations of Sections 4.1 and 4.3 on the number of Shares reserved or available for grants shall not apply to Substitute Awards granted under this Section 5.6(b).

5.7 Compliance with Rule 16b-3. The provisions of this Section 5.7 will apply to Awards as applicable.

(a) Six-Month Holding Period Advice. Unless a Grantee could otherwise dispose of or exercise a derivative security or dispose of Shares delivered under the Plan without incurring liability under Section 16(b) of the Exchange Act, the Committee may advise or require a Grantee to comply with the following in order to avoid incurring liability under Section 16(b) of the Exchange Act: (i) at least six months must elapse from the date of acquisition of a derivative security under the Plan to the date of disposition of the derivative security (other than upon exercise or conversion) or its underlying equity security, and (ii) Shares granted or awarded under the Plan other than upon exercise or conversion of a derivative security must be held for at least six months from the date of grant of an Award.

(b) Reformation to Comply with Exchange Act Rules. To the extent the Committee determines that a grant or other transaction by a Section 16 Person should comply with applicable provisions of Rule 16b-3 (except for transactions exempted under alternative Exchange Act rules), the Committee shall take such actions as necessary to make such grant or other transaction so comply, and if any provision of this Plan or any Award Agreement relating to a given Award does not comply with the requirements of Rule 16b-3 as then applicable to any such grant or transaction, such provision will be construed or deemed amended, if the Committee so determines, to the extent necessary to conform to the then applicable requirements of Rule 16b-3.

(c) Rule 16b-3 Administration. Any function relating to a Section 16 Person shall be performed solely by the Committee or the Board if necessary to ensure compliance with applicable requirements of Rule 16b-3, to the extent the Committee determines that such compliance is desired. Each member of the Committee or person acting on behalf of the Committee shall be entitled to, in good faith, rely or act upon any report or other information furnished to him by any officer, manager or other employee of the Company or any Affiliate, the Company's independent certified public accountants or any executive compensation consultant or attorney or other professional retained by the Company to assist in the administration of the Plan.

5.8 Deferral of Award Payouts. The Committee may permit a Grantee to defer, or if and to the extent specified in an Award Agreement require the Grantee to defer, receipt of the payment of cash or the delivery of Shares that would otherwise be due by virtue of the lapse or waiver of restrictions with respect to Restricted Stock Units, the satisfaction of any requirements or goals with respect to Performance Units or Performance Shares, the lapse or waiver of the deferral period for Deferred Stock, or the lapse or waiver of restrictions with respect to Other Stock-Based Awards or Cash Incentive Awards. If the Committee permits such deferrals, the Committee shall establish rules and procedures for making such deferral elections and for the payment of such deferrals, which shall conform in form and substance with applicable regulations promulgated under Section 409A of the Code and Article 17 to ensure that the Grantee is not subjected to tax penalties under Section 409A of the Code with respect to such deferrals. Except as otherwise provided in an Award Agreement, any payment or any Shares that are subject to such deferral shall be made or delivered to the Grantee as specified in the Award Agreement or pursuant to the Grantee's deferral election.

**Article 6**

**Stock Options**

6.1 Grant of Options. Subject to and consistent with the provisions of the Plan, Options may be granted to any Eligible Person in such number, and upon such terms, and at any time and from time to time as shall be determined by the Committee.

6.2 Award Agreement. Each Option grant shall be evidenced by an Award Agreement that shall specify the Exercise Price, the Term of the Option, the number of Shares to which the Option pertains, the time or times at which such Option shall be exercisable and such other provisions as the Committee shall determine. No Option shall have a term of more than 10 years after its Grant Date, subject to earlier termination as provided herein or in the applicable Award Agreement. No Option may be exercised at a time when such exercise and/or the issuance of Shares pursuant to such exercise would be in breach of Applicable Law or, in the opinion of the Committee, would or may result in the Eligible Person and/or any other parties being obligated under the Irish Takeover Rules to make a general offer to all shareholders of the Company. No dividend rights or Dividend Equivalents may be granted in conjunction with any grant of Options.

6.3 Option Exercise Price. The Exercise Price of an Option under this Plan shall be determined in the sole discretion of the Committee but may not be less than 100% of the Fair Market Value of a Share on the Grant Date and in no event will be less than the nominal value per Share.

6.4 Grant of Incentive Stock Options. At the time of the grant of any Option, the Committee may in its discretion designate that such Option shall be made subject to additional restrictions to permit it to qualify as an Incentive Stock Option. Any Option designated as an Incentive Stock Option:

i. shall be granted only to an employee of the Company or a Subsidiary Corporation;

i. shall have an Exercise Price of not less than 100% of the Fair Market Value of a Share on the Grant Date, and, if granted to a person who owns capital stock (including stock treated as owned under Section 424(d) of the Code) possessing more than 10% of the total combined voting power of all classes of capital stock of the Company or any Subsidiary Corporation (a "More Than 10% Owner"), have an Exercise Price not less than 110% of the Fair Market Value of a Share on its Grant Date;

i. shall be for a period of not more than 10 years (five years if the Grantee is a More Than 10% Owner) after its Grant Date, and shall be subject to earlier termination as provided herein or in the applicable Award Agreement;

v. shall not have an aggregate Fair Market Value (as of the Grant Date) of the Shares with respect to which Incentive Stock Options (whether granted under the Plan or any other stock option plan of the Grantee's employer or any parent or Subsidiary Corporation ("Other Plans")) are exercisable for the first time by such Grantee during any calendar year ("Current Grant"), determined in accordance with the provisions of Section 422 of the Code, which exceeds $100,000 (the "$100,000 Limit");

v. shall, if the aggregate Fair Market Value of the Shares (determined on the Grant Date) with respect to the Current Grant and all Incentive Stock Options previously granted under the Plan and any Other Plans which are exercisable for the first time during a calendar year ("Prior Grants") would exceed the $100,000 Limit, be, as to the portion in excess of the $100,000 Limit, exercisable as a separate option that is not an Incentive Stock Option at such date or dates as are provided in the Current Grant;

vi. shall require the Grantee to notify the Committee of any disposition of any Shares delivered pursuant to the exercise of the Incentive Stock Option under the circumstances described in Section 421(b) of the Code (relating to holding periods and certain disqualifying dispositions) ("Disqualifying Disposition") within 10 days of such a Disqualifying Disposition;

ii. shall by its terms not be assignable or transferable other than by will or the laws of descent and distribution and may be exercised, during the Grantee's lifetime, only by the Grantee; provided, however, that the Grantee may, to the extent provided in the Plan in any manner specified by the Committee, designate in writing a beneficiary to exercise his or her Incentive Stock Option after the Grantee's death; and

ii. shall, if such Option nevertheless fails to meet the foregoing requirements, or otherwise fails to meet the requirements of Section 422 of the Code for an Incentive Stock Option, be treated for all purposes of this Plan, except as otherwise provided in subsections (d) and

(e) above, as an Option that is not an Incentive Stock Option.

Notwithstanding the foregoing and Section 3.2, the Committee may, without the consent of the Grantee, at any time before the exercise of an Option (whether or not an Incentive Stock Option), take any action necessary to prevent such Option from being treated as an Incentive Stock Option. No Option that is intended to be an Incentive Stock Option shall be invalid for failure to qualify as an Incentive Stock Option.

6.5 Payment of Exercise Price. Except as otherwise provided by the Committee in an Award Agreement, Options shall be exercised by the delivery of a written notice of exercise to the Company, setting forth the number of Shares with respect to which the Option is to be exercised, accompanied by full payment for the Shares made by any one or more of the following means:

(a) cash, personal check, cash equivalent or wire transfer;

(b) subject to Applicable Law and the Company's Constitution and with the approval of the Committee, by delivery of Ordinary Shares owned by the Grantee prior to exercise, valued at their Fair Market Value on the date of exercise;

(c) subject to Applicable Law and the Company's Constitution and with the approval of the Committee, Shares acquired upon the exercise of such Option, such Shares valued at the their Fair Market Value on the date of exercise;

(d) subject to Applicable Law and the Company's Constitution and with the approval of the Committee, Restricted Shares held by the Grantee prior to the exercise of the Option, each such share valued at the Fair Market Value of a Share on the date of exercise; or

(e) subject to Applicable Law (including the prohibited loan provisions of Section 402 of the Sarbanes Oxley Act of 2002), through the sale of the Shares acquired on exercise of the Option through a broker-dealer to whom the Grantee has submitted an irrevocable notice of exercise and irrevocable instructions to deliver promptly to the Company the amount of sale proceeds sufficient to pay for such Shares, together with, if requested by the Company, the amount of federal, state, local or foreign withholding taxes payable by Grantee by reason of such exercise.

The Committee may in its discretion specify that, if any Restricted Shares ("Tendered Restricted Shares") are used to pay the Exercise Price, (x) all the Shares acquired on exercise of the Option shall be subject to the same restrictions as the Tendered Restricted Shares, determined as of the date of exercise of the Option, or (y) a number of Shares acquired on exercise of the Option equal to the number of Tendered Restricted Shares shall be subject to the same restrictions as the Tendered Restricted Shares, determined as of the date of exercise of the Option.

**Article 7**

**Stock Appreciation Rights**

7.1 Issuance. Subject to and consistent with the provisions of the Plan, the Committee, at any time and from time to time, may grant SARs to any Eligible Person either alone or in addition to other Awards granted under the Plan. Such SARs may, but need not, be granted in connection with a specific Option granted under Article 6. The Committee may impose such conditions or restrictions on the exercise of any SAR as it shall deem appropriate. No dividend rights or Dividend Equivalents may be granted in conjunction with any grant of SARs.

7.2 Award Agreements. Each SAR grant shall be evidenced by an Award Agreement in such form as the Committee may approve and shall contain such terms and conditions not inconsistent with other provisions of the Plan as shall be determined from time to time by the Committee.

7.3 SAR Exercise Price. The Exercise Price of a SAR shall be determined by the Committee in its sole discretion; provided that the Exercise Price shall not be less than 100% of the Fair Market Value of a Share on the date of the grant of the SAR.

7.4 Exercise and Payment. Upon the exercise of an SAR, a Grantee shall be entitled to receive payment from the Company in an amount determined by multiplying:

(a) The excess of the Fair Market Value of a Share on the date of exercise over the Exercise Price; by

(b) The number of Shares with respect to which the SAR is exercised.

SARs shall be deemed exercised on the date written notice of exercise in a form acceptable to the Committee is received by the Secretary of the Company. The Company shall make payment in respect of any SAR within five (5) days of the date the SAR is exercised. Any payment by the Company in respect of a SAR may be made in cash, Shares, other property, or any combination thereof, as the Committee, in its sole discretion, shall determine.

7.5 Grant Limitations. The Committee may at any time impose any other limitations upon the exercise of SARs which, in the Committee's sole discretion, are necessary or desirable in order for Grantees to qualify for an exemption from Section 16(b) of the Exchange Act.

**Article 8**

**Restricted Shares**

8.1 Grant of Restricted Shares. Subject to and consistent with the provisions of the Plan, the Committee, at any time and from time to time, may grant Restricted Shares to any Eligible Person in such amounts as the Committee shall determine.

8.2 Award Agreement. Each grant of Restricted Shares shall be evidenced by an Award Agreement that shall specify the Period(s) of Restriction, the number of Restricted Shares granted, and such other provisions as the Committee shall determine. The Committee may impose such conditions and/or restrictions on any Restricted Shares granted pursuant to the

Plan as it may deem advisable, including restrictions based upon the achievement of specific performance goals, time-based restrictions on vesting following the attainment of the performance goals, and/or restrictions under Applicable Law; provided that such conditions and/or restrictions may lapse, if so determined by the Committee, in the event of the Grantee's Termination of Affiliation due to death, Disability, or involuntary termination by the Company or an Affiliate without "cause."

8.3 Consideration for Restricted Shares. The Committee shall determine the amount, if any, that a Grantee shall pay for Restricted Shares provided that it shall be no less than the nominal value per Restricted Share.

8.4 Effect of Forfeiture. If Restricted Shares are Forfeited, and if the Grantee was required to pay for such shares or acquired such Restricted Shares upon the exercise of an Option, the Grantee shall be deemed to have resold such Restricted Shares to the Forfeiture Transferee at a price equal to the lesser of (x) the amount paid by the Grantee for such Restricted Shares, or (y) the Fair Market Value of a Share on the date of such Forfeiture. The Forfeiture Transferee shall pay to the Grantee the deemed sale price as soon as is administratively practical. Such Restricted Shares shall cease to be outstanding and shall no longer confer on the Grantee thereof any rights as a shareholder of the Company, from and after the date of the event causing the Forfeiture, whether or not the Grantee accepts the Company's tender of payment for such Restricted Shares.

8.5 Voting and Dividend Equivalent Rights Attributable to Restricted Shares. A Grantee awarded Restricted Shares will have all voting rights with respect to such Restricted Shares. Unless the Committee determines and sets forth in the Award Agreement that Grantee will not be entitled to receive any dividends with respect to such Restricted Shares, a Grantee will have the right to receive all dividends in respect of such Restricted Shares, which dividends shall be deemed reinvested in additional shares of Restricted Shares, which shall remain subject to the same forfeiture conditions applicable to the Restricted Shares to which such dividends relate, or paid in cash if and at the time the Restricted Shares are no longer subject to forfeiture, as the Committee shall set forth in the Award Agreement. No dividends shall be paid with respect to Restricted Shares that are Forfeited.

8.6 Escrow; Legends. The Committee may provide that the certificates for any Restricted Shares, if certificated, (x) shall be held (together with a stock transfer form executed in blank by the Grantee) in escrow by the Secretary of the Company until such Restricted Shares become non-Forfeitable or are Forfeited and/or (y) shall bear an appropriate legend restricting the transfer of such Restricted Shares under the Plan. If any Restricted Shares become nonforfeitable, the Company shall cause certificates for such shares to be delivered without such legend.

**Article 9**

**Performance Units and Performance Shares**

9.1 Grant of Performance Units and Performance Shares. Subject to and consistent with the provisions of the Plan, Performance Units or Performance Shares may be granted to any Eligible Person in such amounts and upon such terms, and at any time and from time to time, as shall be determined by the Committee.

9.2 Value/Performance Goals. The Committee shall set performance goals in its discretion which, depending on the extent to which they are met, will determine the number or value of Performance Units or Performance Shares that will be paid to the Grantee. With respect to Covered Employees and to the extent the Committee deems it appropriate to comply with Section 162(m) of the Code, all performance goals shall be objective Performance Measures satisfying the requirements for the Performance-Based

Exception and shall be set by the Committee within the time period prescribed by Section 162(m) of the Code and related regulations.

(a) Performance Unit. Each Performance Unit shall have an initial value that is established by the Committee at the time of grant.

(b) Performance Share. Each Performance Share shall have an initial value equal to the Fair Market Value of a Share on the date of

grant.

9.3 Earning of Performance Units and Performance Shares. After the applicable Performance Period has ended, the holder of Performance Units or Performance Shares shall be entitled to payment based on the level of achievement of performance goals set by the Committee. If a Performance Unit or Performance Share Award is intended to comply with the Performance-Based Exception, the Committee shall certify the level of achievement of the performance goals in writing before the Award is settled.

At the discretion of the Committee, the settlement of Performance Units or Performance Shares may be in cash, Shares of equivalent value, or in some combination thereof, as set forth in the Award Agreement provided that if is to be in Shares, issuance of the Shares shall be subject to payment by the Grantee in cash of the nominal value for each Share so issued.

If a Grantee is promoted, demoted or transferred to a different business unit of the Company during a Performance Period, then, to the extent the Committee determines that the Award, the performance goals, or the Performance Period are no longer appropriate, the Committee may adjust, change, eliminate or cancel the Award, the performance goals, or the applicable Performance Period, as it deems appropriate in order to make them appropriate and comparable to the initial Award, the performance goals, or the Performance Period.

Unless the Committee determines and sets forth in the Award Agreement that Grantee will not be entitled to receive any dividends or Dividend Equivalents declared with respect to Shares deliverable in connection with grants of Performance Units or Performance Shares, a Grantee shall have the right to vote the Shares in respect of such Performance Shares and the right to receive any dividends or Dividend Equivalents in respect of such Performance Units and Performance Shares, which dividends and Dividend Equivalents shall be deemed reinvested in additional Shares of Performance Units or Performance Shares, as applicable, which shall remain subject to the same forfeiture conditions applicable to the Performance Units or Performance Shares to which such dividends and Dividend Equivalents relate, or paid in cash if and at the time the Performance Units or Performance Shares are no longer subject to forfeiture and become payable, as the Committee shall set forth in the Award Agreement. No dividends or Dividend equivalents may be paid on Performance Units or Performance Shares that are Forfeited.

**Article 10**

**Deferred Stock and Restricted Stock Units**

10.1 Grant of Deferred Stock and Restricted Stock Units. Subject to and consistent with the provisions of the Plan, the Committee, at any time and from time to time, may grant Deferred Stock and/or Restricted Stock Units to any Eligible Person, in such amount and upon such terms as the Committee shall determine. Deferred Stock must conform in form and substance with applicable regulations promulgated under Section 409A of the Code and with Article 17 to ensure that the Grantee is not subjected to tax penalties under Section 409A of the Code with respect to such Deferred Stock.

10.2 Vesting and Delivery.

(a) Delivery With Respect to Deferred Stock. Delivery of Shares subject to a Deferred Stock grant will occur upon expiration of the deferral period or upon the occurrence of one or more of the distribution events described in Section 409A(a)(2) of the Code as specified by the Committee in the Grantee's Award Agreement for the Award of Deferred Stock. An Award of Deferred Stock may be subject to such substantial risk of forfeiture conditions as the Committee may impose, which conditions may lapse at such times or upon the achievement of such objectives as the Committee shall determine at the time of grant or thereafter. Unless otherwise determined by the Committee, to the extent that the Grantee has a Termination of Affiliation while the Deferred Stock remains subject to a substantial risk of forfeiture, such Deferred Shares shall be forfeited, unless the Committee determines that such substantial risk of forfeiture shall lapse in the event of the Grantee's Termination of Affiliation due to death, Disability, or involuntary termination by the Company or an Affiliate without "cause."

(b) Delivery With Respect to Restricted Stock Units. Delivery of Shares subject to a grant of Restricted Stock Units shall occur no later than the 15th day of the third month following the end of the taxable year of the Grantee or the fiscal year of the Company in which the Grantee's rights under such Restricted Stock Units are no longer subject to a substantial risk of forfeiture as defined in final regulations under Section 409A of the Code. Unless otherwise determined by the Committee, to the extent that the Grantee has a

Termination of Affiliation while the Restricted Stock Units remains subject to a substantial risk of forfeiture, such Restricted Stock Units shall be forfeited, unless the Committee determines that such substantial risk of forfeiture shall lapse in the event of the Grantee's Termination of Affiliation due to death, Disability, or involuntary termination by the Company or an Affiliate without "cause."

10.3 Voting and Dividend Equivalent Rights Attributable to Deferred Stock and Restricted Stock Units. A Grantee awarded Deferred Stock

or Restricted Stock Units will have no voting rights with respect to such Deferred Stock or Restricted Stock Units prior to the delivery of Shares in settlement of such Deferred Stock and/or Restricted Stock Units. Unless the Committee determines and sets forth in the Award Agreement that Grantee will not be entitled to receive any such Dividend Equivalents with respect to such Deferred Stock or Restricted Stock Units, a Grantee will have the rights to receive Dividend Equivalents in respect of Deferred Stock and/or Restricted Stock Units, which Dividend Equivalents shall be either deemed reinvested in additional Shares of Deferred Stock or Restricted Stock Units, as applicable, which shall remain subject to the same forfeiture conditions applicable to the Deferred Stock or Restricted Stock Units to which such Dividend Equivalents relate, or paid in cash if and at the time the Deferred Stock or Restricted Stock Units are no longer subject to forfeiture, as the Committee shall set forth in the Award Agreement. No Dividend Equivalents may be paid on Deferred Stock or Restricted Stock Units that are Forfeited.

**Article 11**

**Dividend Equivalents**

The Committee is authorized to grant Awards of Dividend Equivalents alone or in conjunction with other Awards; provided, however, that no Dividend Equivalents may be granted in conjunction with any grant of Options or SARs, and no Dividend Equivalents granted in connection with any other Awards may be paid if the related Awards are Forfeited. The Committee may provide that Dividend Equivalents not paid in connection with an Award shall either be (i) paid or distributed in cash when the Dividend Equivalents become vested and nonforfeitable or (ii) be deemed to have been reinvested in additional Shares or additional Awards.

**Article 12**

**Bonus Shares**

Subject to the terms of the Plan, including without limitation the repricing restrictions set forth in Section 3.3 and the minimum requirements set forth in Section 5.3, the Committee may grant Bonus Shares to any Eligible Person, in such amount and upon such terms and at any time and from time to time as shall be determined by the Committee.

**Article 13**

**Other Stock-Based Awards**

The Committee is authorized, subject to limitations under Applicable Law, to grant such other Awards that are denominated or payable in, valued in whole or in part by reference to, or otherwise based on, or related to, Shares, as deemed by the Committee to be consistent with the purposes of the Plan, including Shares awarded which are not subject to any restrictions or conditions, convertible or exchangeable debt securities or other rights convertible or exchangeable into Shares, and Awards valued by reference to the value of securities of or the performance of specified Affiliates. Subject to and consistent with the provisions of the Plan, the Committee shall determine the terms and conditions of such Awards. Except as provided by the Committee, Shares delivered pursuant to a purchase right granted under this Article 13 shall be purchased for such consideration, paid for by such methods and in such forms, including cash, Shares, outstanding Awards or other property, as the Committee shall determine.

**Article 14**

**Non-Employee Director Awards**

Subject to the terms of the Plan, the Board may grant Awards to any Non-Employee Director, in such amount and upon such terms and at any time and from time to time as shall be determined by the full Board in its sole discretion. Except as otherwise provided in Section 5.6(b), a Non-Employee Director may not be granted Awards during any single calendar year that, taken together with any cash fees paid to such Non-Employee Director during such calendar year, exceeds $675,000 in total value (calculating the value of any such Awards based on the grant date fair value of such Awards for financial accounting purposes). Notwithstanding the foregoing, the Board may make exceptions to the foregoing limit (up to twice such limit) for a non-executive chair of the Board or, in extraordinary circumstances, for other individual Non-

Employee Directors, as the Committee may determine, provided that the Non-Employee Director receiving such Awards may not participate in the decision to make such Awards.

**Article 15**

**Cash Incentive Awards**

15.1 Cash Incentive Awards. Subject to the terms and provisions of the Plan, the Committee, at any time and from time to time, may grant Cash Incentive Awards to any Eligible Person in such amounts and upon such terms, including the achievement of specific performance goals during the Performance Period, as the Committee may determine. With respect to Covered Employees and to the extent the Committee deems it appropriate to comply with Section 162(m) of the Code, all performance goals shall be objective Performance Measures satisfying the requirements for the Performance-Based Exception and shall be set by the Committee within the time period prescribed by Section 162(m) of the Code and related regulations. An Eligible Person may have more than one Cash Incentive Award outstanding at any time. For instance, the Committee may grant an Eligible Person one Cash Incentive Award with a calendar year or fiscal year Performance Period (an annual incentive bonus) and a separate Cash Incentive Award with a Performance Period that covers more than one calendar or fiscal year (a long-term cash incentive bonus).

15.2 Value of Cash Incentive Awards. Each Cash Incentive Award shall specify a payment amount or payment range as determined by the Committee. The Committee shall establish performance goals applicable to each Cash Incentive

Award in its discretion and the amount that will be paid to the Grantee pursuant to such Cash Incentive Award if the applicable performance goals for the Performance Period are met.

15.3 Payment of Cash Incentive Awards. Payment, if any, with respect to a Cash Incentive Award shall be made in cash in accordance with the terms of the Award Agreement; provided, however, that if the Award Agreement does not specify a payment date with respect to a Cash Incentive Award, payment of the Cash Incentive Award will be made no later than the 15th day of the third month following the end of the taxable year of the Grantee or the fiscal year of the Company during which the Performance Period ends.

15.4 Termination of Affiliation. The Committee shall determine the extent to which a Grantee shall have the right to receive Cash Incentive Awards following his or her Termination of Affiliation. Such provisions shall be determined in the sole discretion of the Committee, such provisions may be included in an Award Agreement entered into with each Grantee, but need not be uniform among all Cash Incentive Awards granted pursuant to the Plan, and may reflect distinctions based on the reasons for termination.

**Article 16**

**Amendment, Modification, and Termination**

16.1 Amendment, Modification, and Termination. Subject to Section 16.2, the Board may, at any time and from time to time, alter, amend, suspend, discontinue or terminate the Plan in whole or in part without the approval of the Company's shareholders, except that (a) any amendment or alteration shall be subject to the approval of the Company's shareholders if such shareholder approval is required by any Applicable Law, and (b) the Board may otherwise, in its discretion, determine to submit other such amendments or alterations to shareholders for approval.

16.2 Awards Previously Granted. Except as otherwise specifically permitted in the Plan or an Award Agreement, no termination, amendment, or modification of the Plan shall adversely affect in any material way any Award previously granted under the Plan, without the written consent of the Grantee of such Award.

**Article 17**

**Compliance with Code Section 409A**

17.1 Awards Subject to Code Section 409A. The provisions of this Article 17 shall apply to any Award or portion thereof that is or becomes

deferred compensation subject to Code Section 409A (a "409A Award"), notwithstanding any provision to the contrary contained in the Plan or the Award Agreement applicable to such Award.

17.2 Deferral and/or Distribution Elections. Except as otherwise permitted or required by Code Section 409A, the following rules shall apply to any deferral and/or elections as to the form or timing of distributions (each, an "Election") that may be permitted or required by the Committee with respect to a 409A Award:

(a) Any Election must be in writing and specify the amount being deferred, and the time and form of distribution (i.e., lump sum or installments) as permitted by this Plan. An Election may but need not specify whether payment will be made in cash, Shares or other property.

(b) Any Election shall become irrevocable as of the deadline specified by the Committee, which shall not be later than December 31 of the year preceding the year in which services relating to the Award commence; provided, however, that if the Award qualifies as "performance-based compensation" for purposes of Code Section 409A and is based on services performed over a period of at least twelve (12) months, then the deadline may be no later than six (6) months prior to the end of such Performance Period.

(c) Unless otherwise provided by the Committee, an Election shall continue in effect until a written election to revoke or change such Election is received by the Committee, prior to the last day for making an Election for the subsequent year.

17.3 Subsequent Elections. Except as otherwise permitted or required by Code Section 409A, any 409A Award which permits a subsequent

Election to further defer the distribution or change the form of distribution shall comply with the following requirements:

(a) No subsequent Election may take effect until at least twelve (12) months after the date on which the subsequent Election is

made;

(b) Each subsequent Election related to a distribution upon separation from service, a specified time, or a change in control as defined in Section 17.4(e) must result in a delay of the distribution for a period of not less than five (5) years from the date such distribution would otherwise have been made; and

(c) No subsequent Election related to a distribution to be made at a specified time or pursuant to a fixed schedule shall be made less than twelve (12) months prior to the date the first scheduled payment would otherwise be made.

17.4 Distributions Pursuant to Deferral Elections. Except as otherwise permitted or required by Code Section 409A, no distribution in settlement of a 409A Award may commence earlier than:

(a) Separation from Service;

(b) The date the Participant becomes Disabled (as defined in Section 2.14(b);

(c) The Participant's death;

(d) A specified time (or pursuant to a fixed schedule) that is either (i) specified by the Committee upon the grant of the Award and set forth in the Award Agreement or (ii) specified by the Grantee in an Election complying with the requirements of Section 17.2 and/or 17.3, as applicable; or

(e) A change in control of the Company within the meaning of Treasury Regulation Section 1.409A-3(h)(5).

17.5 Six Month Delay. Notwithstanding anything herein or in any Award Agreement or Election to the contrary, to the extent that distribution of a 409A Award is triggered by a Grantee's Separation from Service, if the Grantee is then a "specified employee" (as defined in Treasury Regulation Section 1.409A-1(i)), no distribution may be made before the date which is six (6) months after such Grantee's Separation from Service, or, if earlier, the date of the Grantee's death.

17.6 Death or Disability. Unless the Award Agreement otherwise provides, if a Grantee dies or becomes Disabled before complete distribution of amounts payable upon settlement of a 409A Award, such undistributed amounts, to the extent vested, shall be distributed as provided in the Participants Election. If the Participant has made no Election with respect to distributions upon death or Disability, all such distributions shall be paid in a lump sum within 90 days following the date of the Participant's death or Disability.

17.7 No Acceleration of Distributions. This Plan does not permit the acceleration of the time or schedule of any distribution under a 409A Award, except as provided by Code Section 409A and/or applicable regulations or rulings issued thereunder.

**Article 18**

**Withholding**

18.1 Required Withholding.

a. The Committee in its sole discretion may provide that when taxes are to be withheld in connection with the exercise of an Option or SAR, or upon the lapse of restrictions on Restricted Shares, or upon the transfer of Shares, or upon payment of any other benefit or right under this Plan (the date on which such exercise occurs or such restrictions lapse or such payment of any other benefit or right occurs hereinafter referred to as the "Tax Date"), the Grantee may elect to make payment for the withholding of federal, state and local taxes, including Social Security and Medicare ("FICA") taxes and local social insurance contributions and charges (including Universal Social Charge) by one or a combination of the following methods:

i. payment of an amount in cash equal to the amount to be withheld (including cash obtained through the sale of the Shares acquired on exercise of an Option or SAR, upon the lapse of restrictions on Restricted Shares, or upon the transfer of Shares, through a broker-dealer to whom the Grantee has submitted an irrevocable instructions to deliver promptly to the Company, the amount to be withheld);

i. delivering part or all of the amount to be withheld in the form of Ordinary Shares valued at its Fair Market Value on the

Tax Date;

i. requesting the Company to withhold from those Shares that would otherwise be received upon exercise of the Option or SAR, upon the lapse of restrictions on Restricted Stock, or upon the transfer

of Shares, a number of Shares having a Fair Market Value on the Tax Date equal to the amount to be withheld; or

iv. withholding from any compensation otherwise due to the Grantee.

The Committee in its sole discretion may provide that the maximum amount of tax withholding upon exercise of an Option or SARs, upon the lapse of restrictions on Restricted Shares, or upon the transfer of Shares, to be satisfied by withholding Shares upon exercise of such Option or SAR, upon the lapse of restrictions on Restricted Shares, or upon the transfer of Shares, pursuant to clause (iii) above shall not exceed the minimum amount of taxes, including FICA taxes, required to be withheld under federal, state and local law (unless withholding additional amounts will not result in adverse financial accounting consequences with respect to such Awards). An election by Grantee under this subsection is irrevocable. Any fractional share amount and any additional withholding not paid by the withholding or surrender of Shares must be paid in cash. If no timely election is made, the Grantee must deliver cash to satisfy all tax withholding requirements.

i. Any Grantee who makes a Disqualifying Disposition (as defined in Section 6.4(f)) or an election under Section 83(b) of the Code shall remit to the Company an amount sufficient to satisfy all resulting tax withholding requirements in the same manner as set forth in subsection

(a) (other than (a)(iii) above).

18.2 Notification under Code Section 83(b). If the Grantee, in connection with the exercise of any Option, or the grant of Restricted Shares, makes the election permitted under Section 83(b) of the Code to include in such Grantee's gross income in the year of transfer the amounts specified in Section 83(b) of the Code, then such Grantee shall notify the Company of such election within 10 days of filing the notice of the election with the Internal Revenue Service, in addition to any filing and notification required pursuant to regulations issued under Section 83(b) of the Code. The Committee may, in connection with the grant of an Award or at any time thereafter, prohibit a Grantee from making the election described above.

**Article 19**

**Additional Provisions**

19.1 Successors. All obligations of the Company under the Plan with respect to Awards granted hereunder shall be binding on any successor

to the Company, whether the existence of such successor is the result of a direct or indirect purchase, merger, consolidation, or otherwise of all or substantially all of the business and/or assets of the Company.

19.2 Severability. If any part of the Plan is declared by any court or governmental authority to be unlawful or invalid, such unlawfulness or invalidity shall not invalidate any other part of the Plan. Any Section or part of a Section so declared to be unlawful or invalid shall, if possible, be construed in a manner which will give effect to the terms of such Section or part of a Section to the fullest extent possible while remaining lawful and valid.

19.3 Requirements of Law. The granting of Awards and the delivery of Shares under the Plan shall be subject to all Applicable Laws, rules, and regulations, and to such approvals by any governmental agencies or national securities exchanges as may be required. Notwithstanding any provision of the Plan or any Award, Grantees shall not be entitled to exercise, or receive benefits under, any Award, and the Company (and any Affiliate) shall not be obligated to deliver any Shares or deliver benefits to a Grantee, if such

exercise or delivery would constitute a violation by the Grantee or the Company of any Applicable Law or regulation.

19.4 Securities Law Compliance.

(a) If the Committee deems it necessary to comply with any Applicable Law, the Committee may impose any restriction on Awards or Shares acquired pursuant to Awards under the Plan as it may deem advisable. In addition, if requested by the Company and any underwriter engaged by the Company, Shares acquired pursuant to Awards may not be sold or otherwise transferred or disposed of for such period following the effective date of any registration statement of the Company filed under the Securities Act as the Company or such underwriter shall specify reasonably and in good faith, not to exceed 180 days in the case of the Company's initial public offering or 90 days in the case of any other public offering. All certificates for Shares delivered under the Plan pursuant to any Award or the exercise thereof shall be subject to such stop transfer orders and other restrictions as the Committee may deem advisable under the rules, regulations and other requirements of the SEC, any stock exchange upon which Shares are then listed, any applicable securities law, and the Committee may cause a legend or legends to be put on any such certificates to make appropriate reference to such restrictions. If so requested by the Company, the Grantee shall make a written representation to the Company that he or she will not sell or offer to sell any Shares unless a registration statement shall be in effect with respect to such Shares under the Securities Act of 1933, as amended, and any applicable state securities law or

unless he or she shall have furnished to the Company, in form and substance satisfactory to the Company, that such registration is not required.

(b) If the Committee determines that the exercise or nonforfeitability of, or delivery of benefits pursuant to, any Award would violate any Applicable Law, then the Committee may postpone any such exercise, nonforfeitability or delivery, as applicable, but the Company shall use all reasonable efforts to cause such exercise, nonforfeitability or delivery to comply with all such provisions at the earliest practicable date.

19.5 Concert-Party Restrictions under the Irish Takeover Rules. In the event that any individual who is eligible to receive an Award or any Eligible Person is, or is presumed to be, a "person acting in concert" for the purposes of the Irish Takeover Rules, and the grant, exercise, vesting, settlement or any other action in relation to an Award to such individual or Eligible Person may, in the reasonable opinion of the Committee, result in the individual or Eligible Person and/or any person acting, or presumed to be acting, in concert with such individual or the Eligible Person becoming obliged under the Irish Takeover Rules to make an offer for the Company ("a Concert-Party Offer"), such grant, exercise, vesting, settlement or other action in relation to such individual or Participant shall not take effect unless the Company is in receipt of a confirmation, direction or ruling from the Irish Takeover Panel that satisfies the Board that such grant, exercise, vesting, settlement or other action would not result in an obligation to make a Concert-Party Offer. If the Committee determines that the exercise or settlement of any such Award by way of the issuance of Shares is not possible or desirable, it may determine that such Award shall be settled in cash, on such conditions as the Committee may determine.

19.6 Data Protection. As a condition of the grant of an Award, a Grantee consents to the collection, retention, use, processing and transfer of his Personal Data by the Company, any Affiliate, any administrator of the Plan, the Company's registrars, transfer agent, brokers and other agents (whether between themselves or to any third party and including transfer to countries outside the European Economic Area) for the purposes of implementing and operating the Plan.

19.7 Awards Subject to Claw-Back Policies. Notwithstanding any provisions herein to the contrary, all Awards granted hereunder shall be subject to the terms of any recoupment policy currently in effect or subsequently adopted by the Board to implement Section 304 of the Sarbanes-Oxley Act of 2002 ("Sarbanes-Oxley Act") or Section 10D of the Exchange Act (or with any amendment or modification of such recoupment policy adopted by the Board) to the extent that such Award (whether or not previously exercised or settled) or the value of such Award is required to be returned to the Company pursuant to the terms of such recoupment policy.

19.8 No Rights as a Shareholder. No Grantee shall have any rights as a shareholder of the Company with respect to the Shares (other than Restricted Shares) which may be deliverable upon exercise or payment of such Award until such Shares have been delivered to him or her. Restricted Shares, whether held by a Grantee or in escrow by the Secretary of the Company, shall confer on the Grantee all rights of a shareholder of the Company, except as otherwise provided in the Plan or Award Agreement. At the time of a grant of Restricted Shares, the Committee may require the payment of cash dividends thereon to be deferred and, if the Committee so determines, reinvested in additional Restricted Shares. Stock dividends and deferred cash dividends issued with respect to Restricted Shares shall be subject to the same restrictions and other terms as apply to the Restricted Shares with respect to which such dividends are issued. The Committee may in its discretion provide for payment of interest on deferred cash dividends.

19.9 Nature of Payments. Unless otherwise specified in the Award Agreement, Awards shall be special incentive payments to the Grantee and shall not be taken into account in computing the amount of salary or compensation of the Grantee for purposes of determining any pension, retirement, death or other benefit under (a) any pension, retirement, profit sharing, bonus, insurance or other employee benefit plan of the Company or any Affiliate, except as such plan shall otherwise expressly provide, or (b) any agreement between (i) the Company or any Affiliate and (ii) the Grantee, except as such agreement shall otherwise expressly provide.

19.10 Non-Exclusivity of Plan. Neither the adoption of the Plan by the Board nor its submission to the shareholders of the Company for approval shall be construed as creating any limitations on the power of the Board to adopt such other compensatory arrangements for employees or Non-Employee Directors as it may deem desirable.

19.11 Governing Law. The Plan, and all agreements hereunder, shall be construed in accordance with and governed by the laws of the State of Delaware, other than its laws respecting choice of law.

19.12 Unfunded Status of Awards; Creation of Trusts. The Plan is intended to constitute an “unfunded” plan for incentive and deferred compensation. With respect to any payments not yet made to a Grantee pursuant to an Award, nothing contained in the Plan or any Award Agreement shall give any such Grantee any rights that are greater than those of a general creditor of the Company; provided, however, that the Committee may authorize the creation of trusts or make other arrangements

to meet the Company's obligations under the Plan to deliver cash, Shares or other property pursuant to any Award which trusts or other arrangements shall be consistent with the "unfunded" status of the Plan unless the Committee otherwise determines.

19.13 Affiliation. Nothing in the Plan or an Award Agreement shall interfere with or limit in any way the right of the Company or any Affiliate to terminate any Grantee's employment or consulting contract at any time, nor confer upon any Grantee the right to continue in the employ of or as an officer of or as a consultant to the Company or any Affiliate.

19.14 Participation. No employee or officer shall have the right to be selected to receive an Award under this Plan or, having been so selected, to be selected to receive a future Award.

19.15 Military Service. Awards shall be administered in accordance with Section 414(u) of the Code and the Uniformed Services Employment and Reemployment Rights Act of 1994.

19.16 Construction. The following rules of construction will apply to the Plan: (a) the word "or" is disjunctive but not necessarily exclusive, and (b) words in the singular include the plural, words in the plural include the singular, and words in the neuter gender include the masculine and feminine genders and words in the masculine or feminine gender include the other neuter genders.

19.17 Headings. The headings of articles and sections are included solely for convenience of reference, and if there is any conflict between such headings and the text of this Plan, the text shall control.

19.18 Obligations. Unless otherwise specified in the Award Agreement, the obligation to deliver, pay or transfer any amount of money or other property pursuant to Awards under this Plan shall be the sole obligation of a Grantee's employer; provided that the obligation to deliver or transfer any Shares pursuant to Awards under this Plan shall be the sole obligation of the Company.

19.19 No Right to Continue in Service or Employment. Nothing in the Plan or any Award Agreement shall confer upon any Non-Employee Director the right to continue to serve as a director of the Company. Nothing contained in the Plan or any Agreement shall confer upon any Participant any right with respect to the continuation of employment or service by the Company or any Affiliate or interfere in any way with the right of the Company or any Affiliate, subject to the terms of any separate employment agreement to the contrary, at any time to terminate such employment or service or to increase or decrease the compensation of the Participant.

19.20 Employee Status. If the terms of any Award provide that it may be exercised or paid only during employment or continued service or within a specified period of time after termination of employment or continued service, the Committee may decide to what extent leaves of absence for governmental or military service, illness, temporary disability, or other reasons shall not be deemed interruptions of continuous employment or service. For purposes of the Plan, employment and continued service shall be deemed to exist between the Participant and the Company and/or an Affiliate if, at the time of the determination, the Participant is a director, officer, employee, consultant or advisor of the Company or an Affiliate. A Participant on military leave, sick leave or other bona fide leave of absence shall continue to be considered an employee for purposes of the Plan during such leave if the period of leave does not exceed three months (six months to the extent required by Section 409A of the Code), or, if longer, so long as the individual's right to re-employment with the Company or any of its Affiliates is guaranteed either by statute or by contract. If the period of leave exceeds three months (six months to the extent required by Section 409A of the Code), and the individual's right to re-employment is not guaranteed by statute or by

contract, the employment shall be deemed to be terminated on the first day after the end of such three-month (six-month) period. Except as may otherwise be expressly provided in an Agreement, Awards granted to a director, officer, employee, consultant or adviser shall not be affected by any change in the status of the Participant so long as the Participant continues to be a director, officer, employee, consultant or advisor to the Company or any of its Affiliates (regardless of having changed from one to the other or having been transferred from one entity to another). The Participant's employment or continued service shall not be considered interrupted in the event the Committee, in its discretion and as specified at or prior to such occurrence, determines there is no interruption in the case of a spin-off, sale or disposition of the Participant's employer from the Company or an Affiliate, except that if the Committee does not otherwise specify such at or such prior to such occurrence, the Participant will be deemed to have a termination of employment or continuous service to the extent the Affiliate that employs the Participant is no longer the Company or an entity that qualifies as an Affiliate.

19.21 Miscellaneous.

(a) No person shall have any claim or right to receive an Award hereunder. The Committee's granting of an Award to a Participant at any time shall neither require the Committee to grant any other Award to such Participant or other person at any time or preclude the Committee from making subsequent grants to such Participant or any other person.

(b) Agreements evidencing Awards under the Plan shall contain such other terms and conditions, not inconsistent with the Plan, as the Committee may determine in its sole discretion, including penalties for the commission of competitive acts or other actions detrimental to the Company. Notwithstanding any other provision hereof, the Committee shall have the right at any time to deny or delay a Participant's exercise of Options or the settlement of an Award if such Participant is reasonably believed by the Committee (i) to be engaged in material conduct adversely affecting the Company or (ii) to be contemplating such conduct, unless and until the Committee shall have received reasonable assurance that the Participant is not engaged in, and is not contemplating, such material conduct adverse to the interests of the Company.

(c) Participants are and at all times shall remain subject to the securities trading policies adopted by the Company from time to time throughout the period of time during which they may exercise Options, Stock Appreciation Rights or sell shares of Company Stock acquired pursuant to the Plan.

(d) Notwithstanding any other provision of this Plan, (i) the Company shall not be obliged to issue any shares pursuant to an Award unless at least the par value of such newly issued share has been fully paid in advance in accordance with Applicable Law (which requirement may mean the holder of an Award is obliged to make such payment) and (ii) the Company shall not be obliged to issue or deliver any shares in satisfaction of Awards until all legal and regulatory requirements associated with such issue or delivery have been complied with to the satisfaction of the Committee.

(e) Awards shall be subject to any compensation recovery policy adopted by the Company from time to time, including, without limitation, policies adopted to comply with Applicable Law.

(f) By accepting Awards and as a condition to the exercise of Awards and the enjoyment of any benefits of the Plan, including participation therein, each Participant agrees to be bound by and subject to non-competition, confidentiality and invention ownership agreements acceptable to the Committee or any officer or director to whom the Committee elects to delegate such authority.

(g) Notwithstanding any other provision of the Plan or any Agreement to the contrary, a Participant shall forfeit any and all rights under an Award upon receipt of notice from the Company or an Affiliate that the Participant will incur a Termination of Affiliation by the Company or such Affiliate for Cause.

**NON-QUALIFIED OPTION AGREEMENT**

**FOR COMPANY EMPLOYEES**
**UNDER THE AVADEL PHARMACEUTICALS PLC**
**2017 OMNIBUS INCENTIVE COMPENSATION PLAN**

Name of Optionee: _____

Number of Options: _____

Option Exercise Price Per Share: _____
**(FMV on Grant Date)**

Grant Date: _____

Expiration Date: _____

Pursuant to the Avadel Pharmaceuticals plc 2017 Omnibus Incentive Compensation Plan, as amended through the date hereof (the "Plan"), Avadel Pharmaceuticals plc (the "Company") hereby grants to the Grantee named above an option (the "Stock Option") to purchase on or prior to the Expiration Date specified above all or part of the number of ordinary shares, nominal value $0.01 (the "Ordinary Shares") in the capital of the Company specified above at the Option Exercise Price per Share specified above subject to the terms and conditions set forth herein and in the Plan. The Ordinary Shares may be represented by American Depositary Shares ("ADSs"), and each ADS represents one Ordinary Share. References herein to the issuance of Ordinary Shares shall also refer to the issuance of ADSs on the same basis of one ADS for every one Ordinary Share. This Option is not intended to be an "incentive stock option" under Section 422 of the Internal Revenue Code of 1986, as amended.

1. Exercisability Schedule. No portion of this Option may be exercised until such portion shall have become exercisable. Except as set forth below, and subject to the discretion of the Committee (as defined in Section 3.1 of the Plan) to accelerate the exercisability schedule hereunder, this Option shall be exercisable with respect to the following number of Option Shares on the dates indicated so long as Grantee remains an employee of the Company or an Affiliate on such dates:

| Incremental Number of Option Shares Exercisable | | Exercisability Date |
|---|---|---|
| | 25 % | |
| | 25 % | |
| | 25 % | |
| | 25 % | |

Once exercisable, this Option shall continue to be exercisable at any time or times prior to the close of business on the Expiration Date, subject to the provisions hereof and of the Plan.

2. Manner of Exercise.

(a) The Grantee may exercise this Option only in the following manner: from time to time on or prior to the Expiration Date of this Option, the Grantee may give written notice to the Committee of his or her election to purchase some or all of the Option Shares purchasable at the time of such notice. This notice shall specify the number of Option Shares to be purchased.

Payment of the purchase price for the Option Shares may be made by one or more of the following methods: (i) in cash; by wire transfer; by personal, certified or bank check or other instrument acceptable to the Committee; (ii) subject to Applicable Law and the Company's Constitution and with the approval of the Committee, through the delivery (or attestation to the ownership) of Ordinary Shares that have been purchased by the Grantee on the open market or that are beneficially owned by the Grantee and are not then subject to any restrictions under any Company plan and that otherwise satisfy any holding periods as may be required by the Committee; (iii) subject to Applicable Law, by the Grantee delivering to the Company a properly executed exercise notice together with irrevocable instructions to a broker to promptly deliver to the Company cash or a check payable and acceptable to the Company to pay the option purchase price, provided that in the event the Grantee chooses to pay the option purchase price as so provided, the Grantee and the broker shall comply with such procedures and enter into such agreements of indemnity and other agreements as the Committee shall prescribe as a condition of such payment procedure; (iv) subject to Applicable Law and the Company's Constitution and with the approval of the Committee, by a "net exercise" arrangement pursuant to which the Company will reduce the number of Ordinary Shares issuable upon exercise by the largest whole number of shares with a Fair Market Value that does not exceed the aggregate exercise price; (v) subject to Applicable Law and the Company's Constitution and with the approval of the Committee, by the Grantee delivering to the Company Restricted Shares held by the Grantee, each share valued at the Fair Market Value of a share on the date of exercise; or (vi) a combination of (i), (ii), (iii), (iv), and (v) above. Payment instruments will be received subject to collection.

The transfer to the Grantee on the records of the Company or of the transfer agent of the Option Shares will be contingent upon (i) the Company's receipt from the Grantee of the full purchase price for the Option Shares, as set forth above, (ii) the fulfillment of any other requirements contained herein or in the Plan or in any other agreement or provision of laws, and (iii) the receipt by the Company of any agreement, statement or other evidence that the Company may require to satisfy itself that the issuance of Ordinary Shares to be purchased pursuant to the exercise of Options under the Plan and any subsequent resale of the Ordinary Shares will be in compliance with applicable laws and regulations. In the event the Grantee chooses to pay the purchase price by previously-owned Ordinary Shares through the attestation method, the number of Ordinary Shares transferred to the Grantee upon the exercise of the Option shall be net of the Shares attested to.

(b) The Ordinary Shares purchased upon exercise of this Option shall be transferred to the Grantee on the records of the Company or of the transfer agent upon compliance to the satisfaction of the Committee with all requirements under applicable laws or regulations in connection with such transfer and with the requirements hereof and of the Plan. The determination of the Committee as to such compliance shall be final and binding on the Grantee. The Grantee shall not be deemed to be the holder of, or to have any of the rights of a holder with respect to, any Ordinary Shares subject to this Option unless and until this Option shall have been exercised pursuant to the terms hereof, the Company or the transfer agent shall have transferred the shares to the Grantee, and the Grantee's name shall have been entered as the stockholder of record on the books of the Company. Thereupon, the Grantee shall have full voting, dividend and other ownership rights with respect to such Ordinary Shares.

(c) The minimum number of shares with respect to which this Option may be exercised at any one time shall be 100 shares, unless the number of shares with respect to which this Option is being exercised is the total number of shares subject to exercise under this Option at the time.

(d) Notwithstanding any other provision hereof or of the Plan, no portion of this Option shall be exercisable after the Expiration Date hereof.

3. Termination of Employment. If the Grantee's employment with the Company or an Affiliate (as defined in the Plan) terminates, the period within which to exercise the Option may be subject to earlier termination as set forth below.

(a) Termination Due to Death. If the Grantee's employment with the Company or an Affiliate terminates by reason of the Grantee's death, any portion of this Option outstanding on such date, to the extent exercisable on the date of death, may thereafter be exercised by the Grantee's legal representative or legatee for a period of [12] months from the date of death or until the Expiration Date, if earlier. Any portion of this Option that is not exercisable on the date of death shall terminate immediately and be of no further force or effect.

(b) Termination Due to Disability. If the Grantee's employment with the Company or an Affiliate terminates by reason of the Grantee's disability (as determined by the Committee), any portion of this Option outstanding on such date, to the extent exercisable on the date of such termination, may thereafter be exercised by the Grantee for a period of [12] months

from the date of disability or until the Expiration Date, if earlier. Any portion of this Option that is not exercisable on the date of disability shall terminate immediately and be of no further force or effect.

(c) Termination for Cause. If the Grantee's employment with the Company or an Affiliate terminates for Cause, any portion of this Option outstanding on such date shall terminate immediately and be of no further force and effect. For purposes hereof, "Cause" shall mean, unless otherwise provided in an employment or other service agreement between the Company and the Grantee, a determination by the Committee that the Grantee shall be dismissed as a result of (i) any material breach by the Grantee of any agreement between the Grantee and the Company; (ii) the conviction of, indictment for or plea of nolo contendere by the Grantee to a felony or a crime involving moral turpitude; or (iii) any material misconduct or willful and deliberate non-performance (other than by reason of disability) by the Grantee of the Grantee's duties to the Company.

(d) Other Termination. If the Grantee's employment with the Company or an Affiliate terminates for any reason other than the Grantee's death, the Grantee's disability or Cause, and unless otherwise determined by the Committee, any portion of this Option outstanding on such date may be exercised, to the extent exercisable on the date of termination, for a period of three months from the date of termination or until the Expiration Date, if earlier. Any portion of this Option that is not exercisable on the date of termination shall terminate immediately and be of no further force or effect.

The Committee's determination of the reason for termination of the Grantee's employment with the Company or an Affiliate shall be conclusive and binding on the Grantee and his or her representatives or legatees.

4. Incorporation of Plan. Notwithstanding anything herein to the contrary, this Option shall be subject to and governed by all the terms and conditions of the Plan, including the powers of the Committee set forth in Section 3.1 of the Plan. Capitalized terms in this Agreement shall have the meaning specified in the Plan, unless a different meaning is specified herein.

5. Transferability. This Agreement is personal to the Grantee, is non-assignable and is not transferable in any manner, by operation of law or otherwise, other than by will or the laws of descent and distribution. This Option is exercisable, during the Grantee's lifetime, only by the Grantee, and thereafter, only by the Grantee's legal representative or legatee.

6. Tax Withholding. The Grantee shall, not later than the date as of which the exercise of this Option becomes a taxable event for Federal income tax purposes, pay to the Company or make arrangements satisfactory to the Committee for payment of any Federal, state, and local taxes required by law to be withheld on account of such taxable event. The Company shall have the authority to cause the required tax withholding obligation to be satisfied, in whole or in part, by (i) withholding from Ordinary Shares to be issued to the Grantee a number of Ordinary Shares with an aggregate Fair Market Value that would satisfy the withholding amount due; or (ii) causing its transfer agent to sell from the number of Ordinary Shares to be issued to

the Grantee, the number of Ordinary Shares necessary to satisfy the Federal, state and local taxes required by law to be withheld from the Grantee on account of such transfer.

7. No Obligation to Continue Employment. Neither the Company nor any Affiliate is obligated by or as a result of the Plan or this Agreement to continue the Grantee's employment with the Company or an Affiliate and neither the Plan nor this Agreement shall interfere in any way with the right of the Company or any Affiliate to terminate the Grantee's employment with the Company or an Affiliate at any time.

8. Integration. This Agreement constitutes the entire agreement between the parties with respect to this Option and supersedes all prior agreements and discussions between the parties concerning such subject matter.

9. Data Privacy Consent. In order to administer the Plan and this Agreement and to implement or structure future equity grants, the Company, its subsidiaries and affiliates and certain agents thereof (together, the "Relevant Companies") may process any and all personal or professional data, including but not limited to Social Security or other identification number, home address and telephone number, date of birth and other information that is necessary or desirable for the administration of the Plan and/or this Agreement (the "Relevant Information"). By entering into this Agreement, the Grantee (i) authorizes the Company to collect, process, register and transfer to the Relevant Companies all Relevant Information; (ii) waives any privacy rights the Grantee may have with respect to the Relevant Information; (iii) authorizes the Relevant Companies to store and transmit such information in electronic form; and (iv) authorizes the transfer of the Relevant Information to any jurisdiction in which the Relevant Companies consider appropriate. The Grantee shall have access to, and the right to change, the Relevant Information. Relevant Information will only be used in accordance with applicable law.

10. Notices. Notices hereunder shall be mailed or delivered to the Company at its principal place of business and shall be mailed or delivered to the Grantee at the address on file with the Company or, in either case, at such other address as one party may subsequently furnish to the other party in writing.

AVADEL PHARMACEUTICALS PLC

By: __
Title:

The foregoing Agreement is hereby accepted and the terms and conditions thereof hereby agreed to by the undersigned. Electronic acceptance of this Agreement pursuant to the Company's instructions to the Grantee (including through an online acceptance process) is acceptable.

Dated: __ __

Grantee's Signature

Grantee's name and address:

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# RESTRICTED STOCK UNIT AWARD AGREEMENT

**FOR COMPANY EMPLOYEES**
**UNDER THE AVADEL PHARMACEUTICALS PLC**
**2017 Omnibus INCENTIVE COMPENSATION PLAN**

Name of Grantee: __

No. of Restricted Stock Units: __

Grant Date: __

Pursuant to the Avadel Pharmaceuticals plc 2017 Omnibus Incentive Compensation Plan as amended through the date hereof (the "Plan"), Avadel Pharmaceuticals plc (the "Company") hereby grants an award of the number of Restricted Stock Units listed above (an "Award") to the Grantee named above. Each Restricted Stock Unit shall relate to one ordinary share, nominal value $0.01, in the capital of the Company (the "Ordinary Shares"). The Ordinary Shares may be represented by American Depositary Shares ("ADSs"), and each ADS represents one Ordinary Share. References herein to the issuance of Ordinary Shares shall also refer to the issuance of ADSs on the same basis of one ADS for every one Ordinary Share.

1. Restrictions on Transfer of Award. This Award may not be sold, transferred, pledged, assigned or otherwise encumbered or disposed of by the Grantee, and any Ordinary Shares issuable with respect to the Award may not be sold, transferred, pledged, assigned or otherwise encumbered or disposed of until (i) the Restricted Stock Units have vested as provided in Paragraph 2 of this Agreement and (ii) Ordinary Shares have been issued to the Grantee in accordance with the terms of the Plan and this Agreement.

2. Vesting of Restricted Stock Units. The restrictions and conditions of Paragraph 1 of this Agreement shall lapse on the Vesting Date or Dates specified in the following schedule so long as the Grantee remains an employee of the Company or an Affiliate on such Vesting Dates. If a series of Vesting Dates is specified, then the restrictions and conditions in Paragraph 1 shall lapse only with respect to the number of Restricted Stock Units specified as vested on such date.

| Restricted Stock Units Vested | Incremental Number of | Vesting Date |
|---|---|---|
| | _____ (__%) | _____ |
| | _____ (__%) | _____ |
| | _____ (__%) | _____ |
| | _____ (__%) | _____ |
| | _____ (__%) | _____ |

The Committee may at any time accelerate the vesting schedule specified in this Paragraph 2.

3. Termination of Employment. If the Grantee's employment with the Company or an Affiliate terminates for any reason (including death or disability) prior to the satisfaction of the vesting conditions set forth in Paragraph 2 above, any Restricted Stock Units that have not vested as of such date shall automatically and without notice terminate and be forfeited, and neither the Grantee nor any of his or her successors, heirs, assigns, or personal representatives will thereafter have any further rights or interests in such unvested Restricted Stock Units.

4. Issuance of Shares. As soon as practicable following each Vesting Date (but in no event later than the 15th day of the third month following the end of the year in which the Vesting Date occurs), the Company shall issue to the Grantee the number of Ordinary Shares equal to the aggregate number of Restricted Stock Units that have vested pursuant to Paragraph 2 of this Agreement on such date and the Grantee shall thereafter have all the rights of a shareholder of the Company with respect to such shares.

5. Incorporation of Plan. Notwithstanding anything herein to the contrary, this Agreement shall be subject to and governed by all the terms and conditions of the Plan, including the powers of the Committee set forth in Section 3.1 of the Plan. Capitalized terms in this Agreement shall have the meaning specified in the Plan, unless a different meaning is specified herein.

6. Tax Withholding. The Grantee shall, not later than the date as of which the receipt of this Award becomes a taxable event for Federal income tax purposes, pay to the Company or make arrangements satisfactory to the Committee for payment of any Federal, state, and local taxes required by law to be withheld on account of such taxable event. The Company shall have the authority to cause the required tax withholding obligation to be satisfied, in whole or in part, by (i) withholding from Ordinary Shares to be issued to the Grantee a number of Ordinary Shares with an aggregate Fair Market Value that would satisfy the withholding amount due; or (ii) causing its transfer agent to sell from the number of Ordinary Shares to be issued to the Grantee, the number of Ordinary Shares necessary to satisfy the Federal, state and local taxes required by law to be withheld from the Grantee on account of such transfer.

7. Section 409A of the Code. This Agreement shall be interpreted in such a manner that all provisions relating to the settlement of the Award are exempt from the requirements of Section 409A of the Code as "short-term deferrals" as described in Section 409A of the Code.

8. No Obligation to Continue Employment. Neither the Company nor any Affiliate is obligated by or as a result of the Plan or this Agreement to continue the Grantee's employment with the Company or an Affiliate and neither the Plan nor this Agreement shall interfere in any way with the right of the Company or any Affiliate to terminate the Grantee's employment with the Company or an Affiliate at any time.

9. Integration. This Agreement constitutes the entire agreement between the parties with respect to this Award and supersedes all prior agreements and discussions between the parties concerning such subject matter.

10. Data Privacy Consent. In order to administer the Plan and this Agreement and to implement or structure future equity grants, the Company, its subsidiaries and affiliates and

certain agents thereof (together, the "Relevant Companies") may process any and all personal or professional data, including but not limited to Social Security or other identification number, home address and telephone number, date of birth and other information that is necessary or desirable for the administration of the Plan and/or this Agreement (the "Relevant Information"). By entering into this Agreement, the Grantee (i) authorizes the Company to collect, process, register and transfer to the Relevant Companies all Relevant Information; (ii) waives any privacy rights the Grantee may have with respect to the Relevant Information; (iii) authorizes the Relevant Companies to store and transmit such information in electronic form; and (iv) authorizes the transfer of the Relevant Information to any jurisdiction in which the Relevant Companies consider appropriate. The Grantee shall have access to, and the right to change, the Relevant Information. Relevant Information will only be used in accordance with applicable law.

11. Notices. Notices hereunder shall be mailed or delivered to the Company at its principal place of business and shall be mailed or delivered to the Grantee at the address on file with the Company or, in either case, at such other address as one party may subsequently furnish to the other party in writing.

AVADEL PHARMACEUTICALS PLC

By: __
Title:

The foregoing Agreement is hereby accepted and the terms and conditions thereof hereby agreed to by the undersigned. Electronic acceptance of this Agreement pursuant to the Company's instructions to the Grantee (including through an online acceptance process) is acceptable.

Dated: __ __

Grantee's Signature

Grantee's name and address:

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# NON-QUALIFIED OPTION AGREEMENT

**FOR NON-EMPLOYEE DIRECTORS**
**UNDER THE AVADEL PHARMACEUTICALS PLC 2017 OMNIBUS INCENTIVE COMPENSATION PLAN**

Name of Grantee: __

No. of Option Shares: __

Option Exercise Price per Share: $__
**[FMV on Grant Date]**

Grant Date: __

Expiration Date: __
**[No more than 10 years]**

Pursuant to the Avadel Pharmaceuticals plc 2017 Omnibus Incentive Compensation Plan, as amended through the date hereof (the "Plan"), Avadel Pharmaceuticals plc (the "Company") hereby grants to the Grantee named above, who is a Non-Employee Director of the Company but is not an employee of the Company, an option (the "Option") to purchase on or prior to the Expiration Date specified above all or part of the number of ordinary shares, nominal value $0.01, (the "Ordinary Shares"), in the capital of the Company specified above at the Option Exercise Price per Share specified above subject to the terms and conditions set forth herein and in the Plan. The Ordinary Shares may be represented by American Depositary Shares ("ADSs"), and each ADS represents one Ordinary Share. References herein to the issuance of Ordinary Shares shall also refer to the issuance of ADSs on the same basis of one ADS for every one Ordinary Share. This Option is not intended to be an "incentive stock option" under Section 422 of the Internal Revenue Code of 1986, as amended.

1. Exercisability Schedule. No portion of this Option may be exercised until such portion shall have become exercisable. Except as set forth below, and subject to the discretion of the Committee (as defined in Section 3.1 of the Plan) to accelerate the exercisability schedule hereunder, this Option shall be exercisable with respect to the following number of Option Shares on the dates indicated so long as the Grantee remains in service as a member of the Board on such dates:

| Option Shares Exercisable | Incremental Number of | Exercisability Date |
|---|---|---|
| _____ | (___%) | _____ |
| _____ | (___%) | _____ |
| _____ | (___%) | _____ |
| _____ | (___%) | _____ |

Once exercisable, this Option shall continue to be exercisable at any time or times prior to the close of business on the Expiration Date, subject to the provisions hereof and of the Plan.[1] Once exercisable, this Option shall continue to be exercisable at any time or times prior to the close of business on the Expiration Date, subject to the provisions hereof and of the Plan.

2. Manner of Exercise.

(a) The Grantee may exercise this Option only in the following manner: from time to time on or prior to the Expiration Date of this Option, the Grantee may give written notice to the Committee of his or her election to purchase some or all of the Option Shares purchasable at the time of such notice. This notice shall specify the number of Option Shares to be purchased.

Payment of the purchase price for the Option Shares may be made by one or more of the following methods: (i) in cash, by wire transfer; by personal, certified or bank check or other instrument acceptable to the Committee; (ii) subject to Applicable Law and the Company's Constitution and with the approval of the Committee, through the delivery (or attestation to the ownership) of Ordinary Shares that have been purchased by the Grantee on the open market or that are beneficially owned by the Grantee and are not then subject to any restrictions under any Company plan and that otherwise satisfy any holding periods as may be required by the Committee; (iii) subject to Applicable Law, by the Grantee delivering to the Company a properly executed exercise notice together with irrevocable instructions to a broker to promptly deliver to the Company cash or a check payable and acceptable to the Company to pay the option purchase price, provided that in the event the Grantee chooses to pay the option purchase price as so provided, the Grantee and the broker shall comply with such procedures and enter into such agreements of indemnity and other agreements as the Committee shall prescribe as a condition of such payment procedure; (iv) subject to Applicable Law and the Company's Constitution and with the approval of the Committee, by a "net exercise" arrangement pursuant to which the Company will reduce the number of Ordinary Shares issuable upon exercise by the largest whole number of shares with a Fair Market Value that does not exceed the aggregate exercise price; (v) subject to Applicable Law and the Company's Constitution and with the approval of the Committee, by the Grantee delivering to the Company Restricted Shares held by the Grantee, each share valued at the Fair Market Value of a share on the date of exercise; or (vi) a combination of (i), (ii), (iii), (iv), and (v) above. Payment instruments will be received subject to collection.

The transfer to the Grantee on the records of the Company or of the transfer agent of the Option Shares will be contingent upon (i) the Company's receipt from the Grantee of the full purchase price for the Option Shares, as set forth above, (ii) the fulfillment of any other requirements contained herein or in the Plan or in any other agreement or provision of laws, and (iii) the receipt by the Company of any agreement, statement or other evidence that the Company may require to satisfy itself that the issuance of Ordinary Shares to be purchased pursuant to the exercise of Options under the Plan and any subsequent resale of the Ordinary Shares will be in

[1] **Note to Company**: Please advise whether director equity awards have accelerated vesting protection (e.g., on a change in control).

compliance with applicable laws and regulations. In the event the Grantee chooses to pay the purchase price by previously-owned Ordinary Shares through the attestation method, the number of Ordinary Shares transferred to the Grantee upon the exercise of the Option shall be net of the Shares attested to.

(b) The Ordinary Shares purchased upon exercise of this Option shall be transferred to the Grantee on the records of the Company or of the transfer agent upon compliance to the satisfaction of the Committee with all requirements under applicable laws or regulations in connection with such transfer and with the requirements hereof and of the Plan. The determination of the Committee as to such compliance shall be final and binding on the Grantee. The Grantee shall not be deemed to be the holder of, or to have any of the rights of a holder with respect to, any Ordinary Shares subject to this Option unless and until this Option shall have been exercised pursuant to the terms hereof, the Company or the transfer agent shall have transferred the shares to the Grantee, and the Grantee's name shall have been entered as the stockholder of record on the books of the Company. Thereupon, the Grantee shall have full voting, dividend and other ownership rights with respect to such Ordinary Shares.

(c) The minimum number of shares with respect to which this Option may be exercised at any one time shall be 100 shares, unless the number of shares with respect to which this Option is being exercised is the total number of shares subject to exercise under this Option at the time.

(d) Notwithstanding any other provision hereof or of the Plan, no portion of this Option shall be exercisable after the Expiration Date hereof.

3. Termination as Non-Employee Director. If the Grantee ceases to be a Non-Employee Director of the Company, the period within which to exercise the Option may be subject to earlier termination as set forth below.

(a) Termination Due to Death. If the Grantee's service as a Non-Employee Director terminates by reason of the Grantee's death, any portion of this Option outstanding on such date, to the extent exercisable on the date of death, may thereafter be exercised by the Grantee's legal representative or legatee for a period of [12][2] months from the date of death or until the Expiration Date, if earlier. Any portion of this Option that is not exercisable on the date of death shall terminate immediately and be of no further force or effect.

(b) Other Termination. If the Grantee ceases to be a Non-Employee Director for any reason other than the Grantee's death, any portion of this Option outstanding on such date may be exercised, to the extent exercisable on the date the Grantee ceased to be a Non-Employee Director, for a period of [six][3] months from the date the Grantee ceased to be a Non-Employee Director or until the Expiration Date, if earlier. Any portion of this Option that is not exercisable on the date the Grantee ceases to be a Non-Employee Director shall terminate immediately and be of no further force or effect.

[2] **Note to Company**: Please confirm preferred post-termination exercise period.

[3] **Note to Company**: Please confirm preferred post-termination exercise period.

4. Incorporation of Plan. Notwithstanding anything herein to the contrary, this Option shall be subject to and governed by all the terms and conditions of the Plan, including the powers of the Committee set forth in Section 3.1 of the Plan. Capitalized terms in this Agreement shall have the meaning specified in the Plan, unless a different meaning is specified herein.

5. Transferability. This Agreement is personal to the Grantee, is non-assignable and is not transferable in any manner, by operation of law or otherwise, other than by will or the laws of descent and distribution. This Option is exercisable, during the Grantee's lifetime, only by the Grantee, and thereafter, only by the Grantee's legal representative or legatee.

6. No Obligation to Continue as a Non-Employee Director. Neither the Plan nor this Option confers upon the Grantee any rights with respect to continuance as a Non-Employee Director.

7. Integration. This Agreement constitutes the entire agreement between the parties with respect to this Option and supersedes all prior agreements and discussions between the parties concerning such subject matter.

8. Tax Withholding. To the extent applicable, the Grantee shall, not later than the date as of which the receipt of this Award becomes a taxable event for Federal income tax purposes, pay to the Company or make arrangements satisfactory to the Committee for payment of any Federal, state, and local taxes required by law to be withheld on account of such taxable event. The Company shall have the authority to cause the required tax withholding obligation to be satisfied, in whole or in part, by (i) withholding from Ordinary Shares to be issued to the Grantee a number of Ordinary Shares with an aggregate Fair Market Value that would satisfy the withholding amount due; or (ii) causing its transfer agent to sell from the number of Ordinary Shares to be issued to the Grantee, the number of Ordinary Shares necessary to satisfy the Federal, state and local taxes required by law to be withheld from the Grantee on account of such transfer.

9. Data Privacy Consent. In order to administer the Plan and this Agreement and to implement or structure future equity grants, the Company, its subsidiaries and affiliates and certain agents thereof (together, the "Relevant Companies") may process any and all personal or professional data, including but not limited to Social Security or other identification number, home address and telephone number, date of birth and other information that is necessary or desirable for the administration of the Plan and/or this Agreement (the "Relevant Information"). By entering into this Agreement, the Grantee (i) authorizes the Company to collect, process, register and transfer to the Relevant Companies all Relevant Information; (ii) waives any privacy rights the Grantee may have with respect to the Relevant Information; (iii) authorizes the Relevant Companies to store and transmit such information in electronic form; and (iv) authorizes the transfer of the Relevant Information to any jurisdiction in which the Relevant Companies consider appropriate. The Grantee shall have access to, and the right to change, the Relevant Information. Relevant Information will only be used in accordance with applicable law.

10. Notices. Notices hereunder shall be mailed or delivered to the Company at its principal place of business and shall be mailed or delivered to the Grantee at the address on file with the Company or, in either case, at such other address as one party may subsequently furnish to the other party in writing.

AVADEL PHARMACEUTICALS PLC

By: __
Title:

The foregoing Agreement is hereby accepted and the terms and conditions thereof hereby agreed to by the undersigned. Electronic acceptance of this Agreement pursuant to the Company's instructions to the Grantee (including through an online acceptance process) is acceptable.

Dated: __ __

Grantee's Signature

Grantee's name and address:

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# RESTRICTED stock UNIT AWARD AGREEMENT

**FOR NON-EMPLOYEE DIRECTORS**
**UNDER THE AVADEL PHARMACEUTICALS PLC**
**2017 OMNIBUS INCENTIVE COMPENSATION PLAN**

Name of Grantee: __

No. of Restricted Stock Units: __

Grant Date: __

Pursuant to the Avadel Pharmaceuticals plc 2017 Omnibus Incentive Compensation Plan, as amended through the date hereof (the "Plan"), Avadel Pharmaceuticals plc (the "Company") hereby grants an award of the number of Restricted Stock Units listed above (an "Award") to the Grantee named above. Each Restricted Stock Unit shall relate to one ordinary share, nominal value $0.01, in the capital of the Company (the "Ordinary Shares"). The Ordinary Shares may be represented by American Depositary Shares ("ADSs"), and each ADS represents one Ordinary Share. References herein to the issuance of Ordinary Shares shall also refer to the issuance of ADSs on the same basis of one ADS for every one Ordinary Share.

1. Restrictions on Transfer of Award. This Award may not be sold, transferred, pledged, assigned or otherwise encumbered or disposed of by the Grantee, and any Ordinary Shares issuable with respect to the Award may not be sold, transferred, pledged, assigned or otherwise encumbered or disposed of until (i) the Restricted Stock Units have vested as provided in Paragraph 2 of this Agreement and (ii) Ordinary Shares have been issued to the Grantee in accordance with the terms of the Plan and this Agreement.

2. Vesting of Restricted Stock Units. The restrictions and conditions of Paragraph 1 of this Agreement shall lapse on the Vesting Date or Dates specified in the following schedule so long as the Grantee remains in service as a member of the Board on such Vesting Dates. If a series of Vesting Dates is specified, then the restrictions and conditions in Paragraph 1 shall lapse only with respect to the number of Restricted Stock Units specified as vested on such date.

| Restricted Stock Units Vested | Incremental Number of | Vesting Date |
|---|---|---|
| | _____ (___%) | _____ |
| | _____ (___%) | _____ |
| | _____ (___%) | _____ |

The Committee may at any time accelerate the vesting schedule specified in this Paragraph 2.[4]

[4] **Note to Company**: Please advise whether director equity awards have accelerated vesting protection (e.g., on a change in control).

3. Termination of Service as a Non-Employee Director. If the Grantee's service with the Company and its Affiliates as a member of the Board terminates for any reason (including death or disability) prior to the satisfaction of the vesting conditions set forth in Paragraph 2 above, any Restricted Stock Units that have not vested as of such date shall automatically and without notice terminate and be forfeited, and neither the Grantee nor any of his or her successors, heirs, assigns, or personal representatives will thereafter have any further rights or interests in such unvested Restricted Stock Units.

4. Issuance of Shares. As soon as practicable following each Vesting Date (but in no event later than the 15th day of the third month following the end of the year in which the Vesting Date occurs), the Company shall issue to the Grantee the number of Ordinary Shares equal to the aggregate number of Restricted Stock Units that have vested pursuant to Paragraph 2 of this Agreement on such date and the Grantee shall thereafter have all the rights of a stockholder of the Company with respect to such shares.

5. Incorporation of Plan. Notwithstanding anything herein to the contrary, this Agreement shall be subject to and governed by all the terms and conditions of the Plan, including the powers of the Committee set forth in Section 3.1 of the Plan. Capitalized terms in this Agreement shall have the meaning specified in the Plan, unless a different meaning is specified herein.

6. Section 409A of the Code. This Agreement shall be interpreted in such a manner that all provisions relating to the settlement of the Award are exempt from the requirements of Section 409A of the Code as "short-term deferrals" as described in Section 409A of the Code.

7. No Obligation to Continue as a Non-Employee Director. Neither the Plan nor this Award confers upon the Grantee any rights with respect to continuance as a Non-Employee Director.

8. Integration. This Agreement constitutes the entire agreement between the parties with respect to this Award and supersedes all prior agreements and discussions between the parties concerning such subject matter.

9. Tax Withholding. To the extent applicable, the Grantee shall, not later than the date as of which the receipt of this Award becomes a taxable event for Federal income tax purposes, pay to the Company or make arrangements satisfactory to the Committee for payment of any Federal, state, and local taxes required by law to be withheld on account of such taxable event. The Company shall have the authority to cause the required tax withholding obligation to be satisfied, in whole or in part, by (i) withholding from Ordinary Shares to be issued to the Grantee a number of Ordinary Shares with an aggregate Fair Market Value that would satisfy the withholding amount due; or (ii) causing its transfer agent to sell from the number of Ordinary Shares to be issued to the Grantee, the number of Ordinary Shares necessary to satisfy the Federal, state and local taxes required by law to be withheld from the Grantee on account of such transfer.

10. Data Privacy Consent. In order to administer the Plan and this Agreement and to implement or structure future equity grants, the Company, its Affiliates and affiliates and certain

agents thereof (together, the "Relevant Companies") may process any and all personal or professional data, including but not limited to Social Security or other identification number, home address and telephone number, date of birth and other information that is necessary or desirable for the administration of the Plan and/or this Agreement (the "Relevant Information"). By entering into this Agreement, the Grantee (i) authorizes the Company to collect, process, register and transfer to the Relevant Companies all Relevant Information; (ii) waives any privacy rights the Grantee may have with respect to the Relevant Information; (iii) authorizes the Relevant Companies to store and transmit such information in electronic form; and (iv) authorizes the transfer of the Relevant Information to any jurisdiction in which the Relevant Companies consider appropriate. The Grantee shall have access to, and the right to change, the Relevant Information. Relevant Information will only be used in accordance with applicable law.

11. Notices. Notices hereunder shall be mailed or delivered to the Company at its principal place of business and shall be mailed or delivered to the Grantee at the address on file with the Company or, in either case, at such other address as one party may subsequently furnish to the other party in writing.

**AVADEL PHARMACEUTICALS PLC**

By: __
Title:

The foregoing Agreement is hereby accepted and the terms and conditions thereof hereby agreed to by the undersigned. Electronic acceptance of this Agreement pursuant to the Company's instructions to the Grantee (including through an online acceptance process) is acceptable.

Dated: __ __

Grantee's Signature

Grantee's name and address:

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**AVADEL PHARMACEUTICALS PLC**

**2020 OMNIBUS INCENTIVE COMPENSATION PLAN**

SECTION 1. GENERAL PURPOSE OF THE PLAN; DEFINITIONS

The name of the plan is the Avadel Pharmaceuticals plc 2020 Omnibus Incentive Compensation Plan (the "Plan"). The purpose of the Plan is to encourage and enable the officers, employees, Non-Employee Directors and Consultants of Avadel Pharmaceuticals PLC, an Irish public limited company (the "Company") and its Affiliates upon whose judgment, initiative and efforts the Company largely depends for the successful conduct of its business to acquire a proprietary interest in the Company. It is anticipated that providing such persons with a direct stake in the Company's welfare will assure a closer identification of their interests with those of the Company and its shareholders, thereby stimulating their efforts on the Company's behalf and strengthening their desire to remain with the Company.

The following terms shall be defined as set forth below:

*"Act"* means the United States Securities Act of 1933, as amended, and the rules and regulations thereunder.

*"Administrator"* means either the Board or the compensation committee of the Board or a similar committee performing the functions of the compensation committee and which is comprised of not less than two Non Employee Directors who are independent.

*"ADS"* means an American Depositary Share representing one Ordinary Share, registered with the SEC and listed for trading on the Nasdaq Global Market under the trading symbol "AVDL"; an ADS may be represented by a physical certificate referred to as an American Depositary Receipt, or "ADR."

"*Affiliate*" means, at the time of determination, any "parent" or "subsidiary" of the Company as such terms are defined in Rule 405 of the Act. The Board will have the authority to determine the time or times at which "parent" or "subsidiary" status is determined within the foregoing definition.

*"Award"* or *"Awards,"* except where referring to a particular category of grant under the Plan, shall include Incentive Stock Options, Non-Qualified Options, Share Appreciation Rights, Restricted Share Units, Restricted Share Awards, Unrestricted Share Awards, Cash-Based Awards, and Dividend Equivalent Rights.

*"Award Certificate"* means a written or electronic document setting forth the terms and provisions applicable to an Award granted under the Plan. Each Award Certificate is subject to the terms and conditions of the Plan.

"*Board*" means the Board of Directors of the Company.

"*Cash-Based Award*" means an Award entitling the recipient to receive a cash-denominated payment.

"*Code*" means the United States Internal Revenue Code of 1986, as amended, and any successor Code, and related rules, regulations and interpretations.

"*Companies Act*" means the Ireland Companies Act 2014.

"*Consultant*" means a consultant or adviser who provides *bona fide* services to the Company or an Affiliate as an independent contractor and who qualifies as a consultant or advisor under Instruction A.1.(a)(1) of Form S-8 under the Act.

"*Dividend Equivalent Right*" means an Award entitling the grantee to receive credits based on cash dividends that would have been paid on the Shares specified in the Dividend Equivalent Right (or other award to which it relates) if such shares had been issued to and held by the grantee.

"*Effective Date*" means the date on which the Plan becomes effective as set forth in Section 19.

"*Exchange Act*" means the United States Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder.

"*Fair Market Value*" of a Share (represented by ADSs) on any given date means the fair market value of a Share determined in good faith by the Administrator; provided, however, that if the Shares or ADSs are listed on the NASDAQ, The NASDAQ Global Market, The NASDAQ Global Select Market, The New York Stock Exchange or another foreign or national securities exchange or traded on any established market, the determination shall be made by reference to market quotations. If there are no market quotations for such date, the determination shall be made by reference to the last date preceding such date for which there are market quotations.

"*Incentive Stock Option*" means any Option designated and qualified as an "incentive stock option" as defined in Section 422 of the Code.

"*Minimum Vesting Period*" means the one-year period following the date of grant of an Award.

"*Non-Employee Director*" means a member of the Board who is not also an employee of the Company or any Subsidiary.

"*Non-Qualified Option*" means any Option that is not an Incentive Stock Option.

"*Option*" means any option to purchase Shares granted pursuant to Section 5.

"*Ordinary Share*" means an Ordinary Share, par value $0.01, in the capital of the Company.

"*Restricted Shares*" means the Shares underlying a Restricted Share Award that remain subject to a risk of forfeiture or the Company's right of repurchase.

"*Restricted Share Award*" means an Award of Restricted Shares subject to such restrictions and conditions as the Administrator may determine at the time of grant.

"*Restricted Share Units*" means an Award of share units subject to such restrictions and conditions as the Administrator may determine at the time of grant.

"*Sale Event*" shall mean (i) the sale of all or substantially all of the assets of the Company on a consolidated basis to an unrelated person or entity, (ii) the following individuals cease for any reason to constitute a majority of the number of directors then serving on the Board: individuals who, on the Effective Date, constitute the Board and any new director (other than a director whose initial assumption of office is in connection with an actual or threatened election contest, including, but not limited to, a consent solicitation relating to the election of directors of the Company) whose appointment or election by the Board or nomination for election by the Company's shareholders was approved or recommended by a vote of at least a majority of the directors then still in office who either were members of the Board on the Effective Date or whose appointment, election or nomination for election was previously so approved (the "Incumbent Directors"); (iii) a merger, reorganization or consolidation with any other corporation or other entity, other than (A) a merger, reorganization or consolidation pursuant to which the holders of the Company's outstanding voting power and outstanding Shares immediately prior to such transaction continue to own a majority of the outstanding voting power and outstanding Shares or other equity interests of the resulting or successor entity (or its ultimate parent, if applicable) immediately upon completion of such transaction and (B) the Incumbent Directors continuing immediately thereafter to represent at least a majority of the board of directors of the resulting or successor entity (or its ultimate parent, if applicable), (iv) the sale of all of the Shares of the Company to an unrelated person, entity or group thereof acting in concert, or (v) any other transaction in which the owners of the Company's outstanding voting power immediately prior to such transaction do not own at least a majority of the outstanding voting power of the Company or any successor entity immediately upon completion of the transaction other than as a result of the acquisition of securities directly from the Company. For the avoidance of doubt, any one or more of the above events may be effective pursuant to (a) a compromise or arrangement sanctioned by the court under Chapter 1 of Part 9 of the Companies Act, (b) an acquisition pursuant to Chapter 2 of Part 9 of the Companies Act, or (c) a merger pursuant to the European Communities (Cross-Border Mergers) Regulations 2008. Notwithstanding the foregoing, in the case of any Award that constitutes deferred compensation within the meaning of Section 409A of the Code, there shall not be a Change in Control unless there is a change in the ownership or effective control of the Company, or in a substantial portion of the assets of the Company, within the meaning of Section 409A of the Code where necessary for such Award to comply with Section 409A of the Code.

"*Sale Price*" means the value as determined by the Administrator of the consideration payable, or otherwise to be received by shareholders, per Share pursuant to a Sale Event.

"*Section 409A*" means Section 409A of the Code and the regulations and other guidance promulgated thereunder.

"*Service Relationship*" means any relationship as an employee, director or Consultant of the Company or any Affiliate (e.g., a Service Relationship shall be deemed to continue without interruption in the event an individual's status changes from full-time employee to part-time employee or Consultant).

"*Share*" means an Ordinary Shares, subject to adjustment pursuant to Section 3; unless the context otherwise requires, references herein to "Shares" shall include references to ADSs.

"*Share Appreciation Right*" means an Award entitling the recipient to receive Shares (or cash, to the extent explicitly provided for in the applicable Award Certificate) having a value equal to the excess of the Fair Market Value of the Stock on the date of exercise over the exercise price of the Share Appreciation Right multiplied by the number of Shares with respect to which the Share Appreciation Right shall have been exercised.

"*Subsidiary*" means any corporation or other entity (other than the Company) in which the Company has at least a 50 percent interest, either directly or indirectly.

"*Ten Percent Owner*" means an employee who owns or is deemed to own (by reason of the attribution rules of Section 424(d) of the Code) more than 10 percent of the combined voting power of all classes of stock of the Company or any parent or subsidiary corporation.

"*Unrestricted Share Award*" means an Award of Shares free of any restrictions.

SECTION 2. ADMINISTRATION OF PLAN; ADMINISTRATOR AUTHORITY TO SELECT GRANTEES AND DETERMINE AWARDS

(a) Administration of Plan. The Plan shall be administered by the Administrator.

(b) Powers of Administrator. The Administrator shall have the power and authority to grant Awards consistent with the terms of the Plan, including the power and authority:

(i)to select the individuals to whom Awards may from time to time be granted;

(ii)to determine the time or times of grant, and the extent, if any, of Incentive Stock Options, Non-Qualified Options, Share Appreciation Rights, Restricted Share Awards, Restricted Share Units, Unrestricted Share Awards, Cash-Based Awards, and Dividend Equivalent Rights, or any combination of the foregoing, granted to any one or more grantees;

(iii)to determine the number of Shares to be covered by any Award and to determine whether any Award shall pertain to Shares or ADSs;

(iv)to determine and modify from time to time the terms and conditions, including restrictions, not inconsistent with the terms of the Plan, of any Award, which terms and conditions may differ among individual Awards and grantees, and to approve the forms of Award Certificates;

(v)to accelerate at any time the exercisability or vesting of all or any portion of any Award;

(vi)subject to the provisions of Section 5(c), to extend at any time the period in which Options may be exercised; and

(vii)at any time to adopt, alter and repeal such rules, guidelines and practices for administration of the Plan and for its own acts and proceedings as it shall deem advisable; to interpret the terms and provisions of the Plan and any Award (including related written instruments); to make all determinations it deems advisable for the administration of the Plan; to decide all disputes arising in connection with the Plan; and to otherwise supervise the administration of the Plan.

All decisions and interpretations of the Administrator shall be binding on all persons, including the Company and Plan grantees.

(c) Delegation of Authority to Grant Awards. Subject to applicable law, the Administrator, in its discretion, may delegate to a committee consisting of one or more officers of the Company, including the Chief Executive Officer of the Company, all or part of the Administrator's authority and duties with respect to the granting of Awards to individuals who are (i) not subject to the reporting and other provisions of Section 16 of the Exchange Act and (ii) not members of the delegated committee. Any such delegation by the Administrator shall include a limitation as to the amount of Stock underlying Awards that may be granted during the period of the delegation and shall contain guidelines as to the determination of the exercise price and the vesting criteria. The Administrator may revoke or amend the terms of a delegation at any time but such action shall not invalidate any prior actions of the Administrator's delegate or delegates that were consistent with the terms of the Plan.

(d) Award Certificate. Awards under the Plan shall be evidenced by Award Certificates that set forth the terms, conditions and limitations for each Award which may include, without limitation, the term of an Award and the provisions applicable in the event employment or service terminates.

(e) Indemnification. Neither the Board nor the Administrator, nor any member of either or any delegate thereof, shall be liable for any act, omission, interpretation, construction or determination made in good faith in connection with the Plan, and the members of the Board and the Administrator (and any delegate thereof) shall be entitled in all cases to indemnification and reimbursement by the Company in respect of any claim, loss, damage or expense (including, without limitation, reasonable attorneys' fees) arising or resulting therefrom to the fullest extent permitted by law and/or under the Company's articles or bylaws or any directors' and officers'

liability insurance coverage which may be in effect from time to time and/or any indemnification agreement between such individual and the Company.

(f) Foreign Award Recipients. Notwithstanding any provision of the Plan to the contrary, in order to comply with the laws in other countries in which the Company and its Subsidiaries operate or have employees or other individuals eligible for Awards, the Administrator, in its sole discretion, shall have the power and authority to: (i) determine which Subsidiaries shall be covered by the Plan; (ii) determine which individuals outside the United States are eligible to participate in the Plan; (iii) modify the terms and conditions of any Award granted to individuals outside the United States to comply with applicable foreign laws; (iv) establish subplans and modify exercise procedures and other terms and procedures, to the extent the Administrator determines such actions to be necessary or advisable (and such subplans and/or modifications shall be attached to this Plan as appendices); provided, however, that no such subplans and/or modifications shall increase the share limitations contained in Section 3(a) hereof; and (v) take any action, before or after an Award is made, that the Administrator determines to be necessary or advisable to obtain approval or comply with any local governmental regulatory exemptions or approvals. Notwithstanding the foregoing, the Administrator may not take any actions hereunder, and no Awards shall be granted, that would violate the Exchange Act or any other applicable United States securities law, the Code, or any other applicable United States governing statute or law.

(g) Minimum Vesting Period. The vesting period for each Award granted under the Plan must be at least equal to the Minimum Vesting Period; provided, however, nothing in this Section 2(g) shall limit the Administrator's authority to accelerate the vesting of Awards as set forth in Section 2(b)(v) above; and, provided further, notwithstanding the foregoing, up to 5% of the Shares authorized for issuance under the Plan may be utilized for Unrestricted Share Awards or other Awards with a vesting period that is less than the Minimum Vesting Period (each such Award, an "Excepted Award"). Notwithstanding the foregoing, in addition to Excepted Awards, the Administrator may grant Awards that vest (or permit previously granted Awards to vest) within the Minimum Vesting Period (i) if such Awards are granted as substitute Awards in replacement of other Awards (or awards previously granted by an entity being acquired (or assets of which are being acquired)) that were scheduled to vest within the Minimum Vesting Period or (ii) if such Awards are being granted in connection with an elective deferral of cash compensation that, absent a deferral election, otherwise would have been paid to the grantee within the Minimum Vesting Period.

SECTION 3. STOCK ISSUABLE UNDER THE PLAN; MERGERS; SUBSTITUTION

(a) Stock Issuable. The maximum number of Shares reserved and available for issuance under the Plan shall be 6,000,000 Shares, subject to adjustment as provided in this Section 3. For purposes of this limitation, the Shares underlying any awards under the Plan and under the Company's 2017 Omnibus Incentive Compensation Plan that are forfeited, canceled or otherwise terminated (other than by exercise) shall be added back to the Shares available for issuance under the Plan and, to the extent permitted under Section 422 of the Code and the regulations promulgated thereunder, the Shares that may be issued as Incentive Stock Options.

Notwithstanding the foregoing, the following shares shall not be added to the shares authorized for grant under the Plan: (i) Shares tendered or held back upon exercise of an Option or settlement of an Award to cover the exercise price or tax withholding, and (ii) Shares subject to a Share Appreciation Right that are not issued in connection with the share settlement of the Share Appreciation Right upon exercise thereof. In the event the Company repurchases Shares on the open market, such Shares shall not be added to the Shares available for issuance under the Plan. Subject to such overall limitations, Shares may be issued up to such maximum number pursuant to any type or types of Award; provided, however, that no more than 6,000,000 Shares may be issued in the form of Incentive Stock Options. The Shares available for issuance under the Plan may be authorized but unissued Shares or Shares reacquired by the Company.

(b) Changes in Shares. Subject to Section 3(c) hereof, if, as a result of any reorganization, recapitalization, reclassification, share dividend, share split, reverse share split or other similar change in the Company's capital, the outstanding Shares are increased or decreased or are exchanged for a different number or kind of shares or other securities of the Company, or additional shares or new or different shares or other securities of the Company or other non-cash assets are distributed with respect to such Shares or other securities, or, if, as a result of any merger or consolidation, sale of all or substantially all of the assets of the Company, the outstanding Shares are converted into or exchanged for securities of the Company or any successor entity (or a parent or subsidiary thereof), the Administrator shall make an appropriate or proportionate adjustment in (i) the maximum number of Shares reserved for issuance under the Plan, including the maximum number of Shares that may be issued in the form of Incentive Stock Options, (ii) the number and kind of Shares or other securities subject to any then outstanding Awards under the Plan, (iii) the repurchase price, if any, per Share subject to each outstanding Restricted Share Award, and (iv) the exercise price for each Share subject to any then outstanding Options and Share Appreciation Rights under the Plan, without changing the aggregate exercise price (i.e., the exercise price multiplied by the number of shares subject to Options and Share Appreciation Rights) as to which such Options and Share Appreciation Rights remain exercisable. The Administrator shall also make equitable or proportionate adjustments in the number of shares subject to outstanding Awards and the exercise price and the terms of outstanding Awards to take into consideration cash dividends paid other than in the ordinary course or any other extraordinary corporate event. The adjustment by the Administrator shall be final, binding and conclusive. No fractional Shares shall be issued under the Plan resulting from any such adjustment, but the Administrator in its discretion may make a cash payment in lieu of fractional Shares.

(c) Mergers and Other Transactions. In the case of and subject to the consummation of a Sale Event, the parties thereto may cause the assumption or continuation of Awards theretofore granted by the successor entity, or the substitution of such Awards with new Awards of the successor entity or parent thereof, with appropriate adjustment as to the number and kind of shares and, if appropriate, the per share exercise prices, as such parties shall agree. To the extent the parties to such Sale Event do not provide for the assumption, continuation or substitution of Awards, upon the effective time of the Sale Event, the Plan and all outstanding Awards granted hereunder shall terminate. In the event of such termination, (i) the Company shall have the option (in its sole discretion) to make or provide for a payment, in cash or in kind,

to the grantees holding Options and Share Appreciation Rights, in exchange for the cancellation thereof, in an amount equal to the difference between (A) the Sale Price multiplied by the number of Shares subject to outstanding Options and Share Appreciation Rights (to the extent then vested and exercisable at prices not in excess of the Sale Price) and (B) the aggregate exercise price of all such outstanding Options and Share Appreciation Rights (provided that, in the case of an Option or Share Appreciation Right with an exercise price equal to or greater than the Sale Price, such Option or Share Appreciation Right shall be cancelled for no consideration); or (ii) each grantee shall be permitted, within a specified period of time prior to the consummation of the Sale Event as determined by the Administrator, to exercise all outstanding Options and Share Appreciation Rights (to the extent then vested and exercisable) held by such grantee. The Company shall also have the option (in its sole discretion) to make or provide for a payment, in cash or in kind, to the grantees holding other Awards in an amount equal to the Sale Price multiplied by the number of vested Shares under such Awards.

(d) Maximum Awards to Non-Employee Directors. Notwithstanding anything to the contrary in this Plan, the value of all Awards awarded under this Plan and all other cash compensation paid by the Company to any Non-Employee Director in any calendar year shall not exceed $[675,000][1]. For the purpose of this limitation, the value of any Award shall be its grant date fair value, as determined in accordance with ASC 718 or successor provision but excluding the impact of estimated forfeitures related to service-based vesting provisions. Notwithstanding the foregoing, the Board may make exceptions to the foregoing limit (up to twice such limit) for a non-executive chair of the Board or, in extraordinary circumstances, for other individual Non-Employee Directors, as the Administrator may determine, provided that the Non-Employee Director receiving such Awards may not participate in the decision to make such Awards.

SECTION 4. ELIGIBILITY

Grantees under the Plan will be such employees, Non-Employee Directors or Consultants of the Company and its Affiliates as are selected from time to time by the Administrator in its sole discretion; provided that Awards may not be granted to employees, Directors or Consultants who are providing services only to any "parent" of the Company, as such term is defined in Rule 405 of the Act, unless (i) the stock underlying the Awards is treated as "service recipient stock" under Section 409A or (ii) the Company has determined that such Awards are exempt from or otherwise comply with Section 409A.

SECTION 5. OPTIONS

(a) Award of Options. The Administrator may grant Options under the Plan. Any Option granted under the Plan shall be in such form as the Administrator may from time to time approve.

Options granted under the Plan may be either Incentive Stock Options or Non-Qualified Options. Incentive Stock Options may be granted only to employees of the Company or any

[1] Note to Company: Article 13 of 2017 Plan provides for annual $675K limit.

Subsidiary that is a “subsidiary corporation” within the meaning of Section 424(f) of the Code. To the extent that any Option does not qualify as an Incentive Stock Option, it shall be deemed a Non-Qualified Option.

Options granted pursuant to this Section 5 shall be subject to the following terms and conditions and shall contain such additional terms and conditions, not inconsistent with the terms of the Plan, as the Administrator shall deem desirable. If the Administrator so determines, Options may be granted in lieu of cash compensation at the optionee’s election, subject to such terms and conditions as the Administrator may establish.

(b) Exercise Price. The exercise price per Share covered by an Option granted pursuant to this Section 5 shall be determined by the Administrator at the time of grant but shall not be less than 100 percent of the Fair Market Value on the date of grant. In the case of an Incentive Stock Option that is granted to a Ten Percent Owner, the exercise price of such Incentive Stock Option shall be not less than 110 percent of the Fair Market Value on the grant date. Notwithstanding the foregoing, Options may be granted with an exercise price per share that is less than 100 percent of the Fair Market Value on the date of grant (i) pursuant to a transaction described in, and in a manner consistent with, Section 424(a) of the Code, (ii) to individuals who are not subject to U.S. income tax on the date of grant or (iii) the Option is otherwise compliant with Section 409A.

(c) Option Term. The term of each Option shall be fixed by the Administrator, but no Option shall be exercisable more than ten years after the date the Option is granted. In the case of an Incentive Stock Option that is granted to a Ten Percent Owner, the term of such Option shall be no more than five years from the date of grant. Where an Option is granted with an exercise price per share that is less than 100 percent of the Fair Market Value on the date of grant to an individual who is tax resident in Ireland, the Option shall lapse if not exercised within 7 years of the date of grant.

(d) Exercisability; Rights of a Shareholder. Options shall become exercisable at such time or times, whether or not in installments, as shall be determined by the Administrator at or after the grant date. The Administrator may at any time accelerate the exercisability of all or any portion of any Option. An optionee shall have the rights of a shareholder only as to Shares acquired upon the exercise of an Option and not as to unexercised Options.

(e) Method of Exercise. Options may be exercised in whole or in part, by giving written or electronic notice of exercise to the Company, specifying the number of shares to be purchased. Payment of the purchase price may be made by one or more of the following methods except to the extent otherwise provided in the Award Certificate:

(i) In cash, by certified or bank check or other instrument acceptable to the Administrator;

(ii) Through the delivery (or attestation to the ownership following such procedures as the Company may prescribe) of Shares that are not then subject to restrictions under any

Company plan. Such surrendered Shares shall be valued at Fair Market Value on the exercise date;

(iii)By the optionee delivering to the Company a properly executed exercise notice together with irrevocable instructions to a broker to promptly deliver to the Company cash or a check payable and acceptable to the Company for the purchase price; provided that in the event the optionee chooses to pay the purchase price as so provided, the optionee and the broker shall comply with such procedures and enter into such agreements of indemnity and other agreements as the Company shall prescribe as a condition of such payment procedure; or

(iv)With respect to Options that are not Incentive Stock Options, by a "net exercise" arrangement pursuant to which the Company will reduce the number of Shares issuable upon exercise by the largest whole number of Shares with a Fair Market Value that does not exceed the aggregate exercise price. Where newly issued Shares are to be delivered in this way, the Affiliate which employs the grantee, if so agreed with the Company, shall pay to the Company such price as is at least equal to the aggregate nominal value of the Shares issued.

Payment instruments will be received subject to collection. The transfer to the optionee on the records of the Company or of the transfer agent of the Shares to be purchased pursuant to the exercise of an Option will be contingent upon receipt from the optionee (or a purchaser acting in his stead in accordance with the provisions of the Option) by the Company of the full purchase price for such shares and the fulfillment of any other requirements contained in the Award Certificate or applicable provisions of laws (including the satisfaction of any withholding taxes that the Company is obligated to withhold with respect to the optionee). In the event an optionee chooses to pay the purchase price by previously-owned Shares through the attestation method, the number of Shares transferred to the optionee upon the exercise of the Option shall be net of the number of attested Shares. In the event that the Company establishes, for itself or using the services of a third party, an automated system for the exercise of Stock Options, such as a system using an internet website or interactive voice response, then the paperless exercise of Stock Options may be permitted through the use of such an automated system.

(f) Annual Limit on Incentive Stock Options. To the extent required for "incentive stock option" treatment under Section 422 of the Code, the aggregate Fair Market Value (determined as of the time of grant) of the Shares with respect to which Incentive Stock Options granted under this Plan and any other plan of the Company or its parent and subsidiary corporations become exercisable for the first time by an optionee during any calendar year shall not exceed $100,000. To the extent that any Incentive Stock Option exceeds this limit, it shall constitute a Non-Qualified Option.

SECTION 6. SHARE APPRECIATION RIGHTS

(a) Award of Share Appreciation Rights. The Administrator may grant Share Appreciation Rights under the Plan. A Share Appreciation Right is an Award entitling the recipient to receive Shares (or cash, to the extent explicitly provided for in the applicable Award Certificate) having a value equal to the excess of the Fair Market Value of a Share on the date of

exercise over the exercise price of the Share Appreciation Right multiplied by the number of Shares with respect to which the Share Appreciation Right shall have been exercised.

(b) Exercise Price of Share Appreciation Rights. The exercise price of a Share Appreciation Right shall not be less than 100 percent of the Fair Market Value of a Share on the date of grant.

(c) Grant and Exercise of Share Appreciation Rights. Share Appreciation Rights may be granted by the Administrator independently of any Stock Option granted pursuant to Section 5 of the Plan.

(d) Terms and Conditions of Share Appreciation Rights. Share Appreciation Rights shall be subject to such terms and conditions as shall be determined on the date of grant by the Administrator. The term of a Share Appreciation Right may not exceed ten years. The terms and conditions of each such Award shall be determined by the Administrator, and such terms and conditions may differ among individual Awards and grantees.

SECTION 7. RESTRICTED SHARE AWARDS

(a) Nature of Restricted Share Awards. The Administrator may grant Restricted Share Awards under the Plan. A Restricted Share Award is any Award of Restricted Shares subject to such restrictions and conditions as the Administrator may determine at the time of grant. Conditions may be based on continuing employment (or other Service Relationship) and/or achievement of pre-established performance goals and objectives.

(b) Rights as a Shareholder. Upon the grant of the Restricted Share Award and payment of any applicable purchase price, a grantee shall have the rights of a shareholder with respect to the voting of the Restricted Shares and receipt of dividends; provided that any dividends paid by the Company during the vesting period shall accrue and shall not be paid to the grantee until and to the extent the Restricted Shares vest. Unless the Administrator shall otherwise determine, (i) uncertificated Restricted Shares shall be accompanied by a notation on the records of the Company or the transfer agent to the effect that they are subject to forfeiture until such Restricted Shares are vested as provided in Section 7(d) below, and (ii) certificated Restricted Shares shall remain in the possession of the Company until such Restricted Shares are vested as provided in Section 7(d) below, and the grantee shall be required, as a condition of the grant, to deliver to the Company such instruments of transfer as the Administrator may prescribe.

(c) Restrictions. Restricted Shares may not be sold, assigned, transferred, pledged or otherwise encumbered or disposed of except as specifically provided herein or in the Restricted Share Award Certificate. Except as may otherwise be provided by the Administrator either in the Award Certificate or, subject to Section 16 below, in writing after the Award is issued, if a grantee's employment (or other Service Relationship) with the Company and its Subsidiaries terminates for any reason, any Restricted Shares that have not vested at the time of termination shall automatically and without any requirement of notice to such grantee from or other action by or on behalf of, the Company be deemed to have been reacquired by the Company at its original purchase price (if any) from such grantee or such grantee's legal representative simultaneously

with such termination of employment (or other Service Relationship), and thereafter shall cease to represent any ownership of the Company by the grantee or rights of the grantee as a shareholder. Following such deemed reacquisition of Restricted Shares that are represented by physical certificates, a grantee shall surrender such certificates to the Company upon request without consideration.

(d) Vesting and payment of Restricted Shares. The Administrator at the time of grant shall specify the date or dates and/or the attainment of pre-established performance goals, objectives and other conditions on which the non-transferability of the Restricted Shares and the Company's right of repurchase or forfeiture shall lapse. Subsequent to such date or dates and/or the attainment of such pre-established performance goals, objectives and other conditions, the shares on which all restrictions have lapsed shall no longer be Restricted Shares and shall be deemed "vested." Where newly issued Shares are to be delivered on the vesting of a Restricted Share Award, the Affiliate which employs the grantee, if so agreed with the Company, shall pay to the Company such price as is at least equal to the aggregate nominal value of the Shares the subject of the Restricted Share Award.

SECTION 8. RESTRICTED SHARE UNITS

(a) Nature of Restricted Share Units. The Administrator may grant Restricted Share Units under the Plan. A Restricted Share Unit is an Award of stock units that may be settled in Shares (or cash, to the extent explicitly provided for in the Award Certificate) upon the satisfaction of such restrictions and conditions at the time of grant. Conditions may be based on continuing employment (or other Service Relationship) and/or achievement of pre-established performance goals and objectives. The terms and conditions of each such Award shall be determined by the Administrator, and such terms and conditions may differ among individual Awards and grantees. Except in the case of Restricted Share Units with a deferred settlement date that complies with Section 409A, at the end of the vesting period, the Restricted Share Units, to the extent vested, shall be settled in the form of Shares. Restricted Share Units with deferred settlement dates are subject to Section 409A and shall contain such additional terms and conditions as the Administrator shall determine in its sole discretion in order to comply with the requirements of Section 409A.

(b) Election to Receive Restricted Share Units in Lieu of Compensation. The Administrator may, in its sole discretion, permit a grantee to elect to receive a portion of future cash compensation otherwise due to such grantee in the form of an award of Restricted Share Units. Any such election shall be made in writing and shall be delivered to the Company no later than the date specified by the Administrator and in accordance with Section 409A and such other rules and procedures established by the Administrator. Any such future cash compensation that the grantee elects to defer shall be converted to a fixed number of Restricted Share Units based on the Fair Market Value of Stock on the date the compensation would otherwise have been paid to the grantee if such payment had not been deferred as provided herein. The Administrator shall have the sole right to determine whether and under what circumstances to permit such elections and to impose such limitations and other terms and conditions thereon as the Administrator

deems appropriate. Any Restricted Share Units that are elected to be received in lieu of cash compensation shall be fully vested, unless otherwise provided in the Award Certificate.

(c) Rights as a Shareholder. A grantee shall have the rights as a shareholder only as to Shares acquired by the grantee upon settlement of Restricted Share Units; provided, however, that the grantee may be credited with Dividend Equivalent Rights with respect to the stock units underlying his Restricted Share Units, subject to the provisions of Section 11 and such terms and conditions as the Administrator may determine. Where newly issued Shares are to be delivered on the vesting of a Restricted Share Unit, the Affiliate which employs the grantee, if so agreed with the Company, shall pay to the Company such price as is at least equal to the aggregate nominal value of the Shares the subject of the Restricted Share Unit.

(d) Termination. Except as may otherwise be provided by the Administrator either in the Award Certificate or, subject to Section 16 below, in writing after the Award is issued, a grantee's right in all Restricted Share Units that have not vested shall automatically terminate upon the grantee's termination of employment (or cessation of Service Relationship) with the Company and its Subsidiaries for any reason.

SECTION 9. UNRESTRICTED SHARE AWARDS

Grant or Sale of Unrestricted Shares. The Administrator may grant (or sell at par value or such higher purchase price determined by the Administrator) an Unrestricted Share Award under the Plan. An Unrestricted Share Award is an Award pursuant to which the grantee may receive Shares free of any restrictions under the Plan. Unrestricted Share Awards may be granted in respect of past services or other valid consideration, or in lieu of cash compensation due to such grantee.

SECTION 10. CASH-BASED AWARDS

Grant of Cash-Based Awards. The Administrator may grant Cash-Based Awards under the Plan. A Cash-Based Award is an Award that entitles the grantee to a payment in cash upon the attainment of specified performance goals. The Administrator shall determine the maximum duration of the Cash-Based Award, the amount of cash to which the Cash-Based Award pertains, the conditions upon which the Cash-Based Award shall become vested or payable, and such other provisions as the Administrator shall determine. Each Cash-Based Award shall specify a cash-denominated payment amount, formula or payment ranges as determined by the Administrator. Payment, if any, with respect to a Cash-Based Award shall be made in accordance with the terms of the Award and may be made in cash.

SECTION 11. DIVIDEND EQUIVALENT RIGHTS

(a) Dividend Equivalent Rights. The Administrator may grant Dividend Equivalent Rights under the Plan. A Dividend Equivalent Right is an Award entitling the grantee to receive credits based on cash dividends that would have been paid on the Shares specified in the Dividend Equivalent Right (or other Award to which it relates) if such shares had been issued to the grantee. A Dividend Equivalent Right may be granted hereunder to any grantee as a

component of an award of Restricted Share Units or as a freestanding award. The terms and conditions of Dividend Equivalent Rights shall be specified in the Award Certificate. Dividend equivalents credited to the holder of a Dividend Equivalent Right may be paid currently or may be deemed to be reinvested in additional Shares, which may thereafter accrue additional equivalents. Any such reinvestment shall be at Fair Market Value on the date of reinvestment or such other price as may then apply under a dividend reinvestment plan sponsored by the Company, if any. Dividend Equivalent Rights may be settled in cash or Shares or a combination thereof, in a single installment or installments. A Dividend Equivalent Right granted as a component of an Award of Restricted Share Units shall provide that such Dividend Equivalent Right shall be settled only upon settlement or payment of, or lapse of restrictions on, such other Award, and that such Dividend Equivalent Right shall expire or be forfeited or annulled under the same conditions as such other Award.

(b) Termination. Except as may otherwise be provided by the Administrator either in the Award Certificate or, subject to Section 16 below, in writing after the Award is issued, a grantee's rights in all Dividend Equivalent Rights shall automatically terminate upon the grantee's termination of employment (or cessation of Service Relationship) with the Company and its Subsidiaries for any reason.

SECTION 12. Transferability of Awards

(a) Transferability. Except as provided in Section 12(b) below, during a grantee's lifetime, his or her Awards shall be exercisable only by the grantee, or by the grantee's legal representative or guardian in the event of the grantee's incapacity. No Awards shall be sold, assigned, transferred or otherwise encumbered or disposed of by a grantee other than by will or by the laws of descent and distribution or pursuant to a domestic relations order. No Awards shall be subject, in whole or in part, to attachment, execution, or levy of any kind, and any purported transfer in violation hereof shall be null and void.

(b) Administrator Action. Notwithstanding Section 12(a), the Administrator, in its discretion, may provide either in the Award Certificate regarding a given Award or by subsequent written approval that the grantee (who is an employee or director) may transfer his or her Non-Qualified Options to his or her immediate family members, to trusts for the benefit of such family members, or to partnerships in which such family members are the only partners, provided that the transferee agrees in writing with the Company to be bound by all of the terms and conditions of this Plan and the applicable Award. In no event may an Award be transferred by a grantee for value.

(c) Family Member. For purposes of Section 12(b), "family member" shall mean a grantee's child, stepchild, grandchild, parent, stepparent, grandparent, spouse, former spouse, sibling, niece, nephew, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, including adoptive relationships, any person sharing the grantee's household (other than a tenant of the grantee), a trust in which these persons (or the grantee) have more than 50 percent of the beneficial interest, a foundation in which these persons (or the grantee) control the management of assets, and any other entity in which these persons (or the grantee) own more than 50 percent of the voting interests.

(d) Designation of Beneficiary. To the extent permitted by the Company, each grantee to whom an Award has been made under the Plan may designate a beneficiary or beneficiaries to exercise any Award or receive any payment under any Award payable on or after the grantee's death. Any such designation shall be on a form provided for that purpose by the Administrator and shall not be effective until received by the Administrator. If no beneficiary has been designated by a deceased grantee, or if the designated beneficiaries have predeceased the grantee, the beneficiary shall be the grantee's estate.

SECTION 13. TAX WITHHOLDING

(a) Payment by Grantee. Each grantee shall, no later than the date as of which the value of an Award or of any Stock or other amounts received thereunder first becomes includable in the gross income of the grantee for Federal income tax purposes, pay to the Company, or make arrangements satisfactory to the Administrator regarding payment of, any Federal, state, or local taxes of any kind required by law to be withheld by the Company with respect to such income. The Company and its Subsidiaries shall, to the extent permitted by law, have the right to deduct any such taxes from any payment of any kind otherwise due to the grantee. The Company's obligation to deliver evidence of book entry (or stock certificates) to any grantee is subject to and conditioned on tax withholding obligations being satisfied by the grantee.

(b) Payment in Stock. The Administrator may require the Company's tax withholding obligation to be satisfied, in whole or in part, by the Company withholding from Shares to be issued pursuant to any Award a number of Shares with an aggregate Fair Market Value (as of the date the withholding is effected) that would satisfy the withholding amount due; provided, however, that the amount withheld does not exceed the maximum statutory tax rate or such lesser amount as is necessary to avoid liability accounting treatment. For purposes of share withholding, the Fair Market Value of withheld shares shall be determined in the same manner as the value of Shares includible in income of the grantees. The Administrator may also require the Company's tax withholding obligation to be satisfied, in whole or in part, by an arrangement whereby a certain number of Shares issued pursuant to any Award are immediately sold and proceeds from such sale are remitted to the Company in an amount that would satisfy the withholding amount due.

SECTION 14. Section 409A awards

Awards are intended to be exempt from Section 409A to the greatest extent possible and to otherwise comply with Section 409A. The Plan and all Awards shall be interpreted in accordance with such intent. To the extent that any Award is determined to constitute "nonqualified deferred compensation" within the meaning of Section 409A (a "409A Award"), the Award shall be subject to such additional rules and requirements as specified by the Administrator from time to time in order to comply with Section 409A. In this regard, if any amount under a 409A Award is payable upon a "separation from service" (within the meaning of Section 409A) to a grantee who is then considered a "specified employee" (within the meaning of Section 409A), then no such payment shall be made prior to the date that is the earlier of (i) six months and one day after the grantee's separation from service, or (ii) the grantee's death, but only to the extent such delay is necessary to prevent such payment from being subject to interest,

penalties and/or additional tax imposed pursuant to Section 409A. Further, the settlement of any 409A Award may not be accelerated except to the extent permitted by Section 409A.

SECTION 15. TERMINATION OF SERVICE RELATIONSHIP, TRANSFER, LEAVE OF ABSENCE, ETC.

(a) Termination of Service Relationship. If the grantee's Service Relationship is with an Affiliate and such Affiliate ceases to be an Affiliate, the grantee shall be deemed to have terminated his or her Service Relationship for purposes of the Plan.

(b) For purposes of the Plan, the following events shall not be deemed a termination of a Service Relationship:

(i)a transfer to the employment of the Company from an Affiliate or from the Company to an Affiliate, or from one Affiliate to another; or

(ii)an approved leave of absence for military service or sickness, or for any other purpose approved by the Company, if the employee's right to re-employment is guaranteed either by a statute or by contract or under the policy pursuant to which the leave of absence was granted or if the Administrator otherwise so provides in writing.

SECTION 16. AMENDMENTS AND TERMINATION

The Board may, at any time, amend or discontinue the Plan and the Administrator may, at any time, amend or cancel any outstanding Award for the purpose of satisfying changes in law or for any other lawful purpose, but no such action shall materially and adversely affect rights under any outstanding Award without the holder's consent. Except as provided in Section 3(b) or 3(c), without prior shareholder approval, in no event may the Administrator exercise its discretion to reduce the exercise price of outstanding Stock Options or Share Appreciation Rights or effect repricing through cancellation and re-grants or cancellation of Stock Options or Share Appreciation Rights in exchange for cash or other Awards. To the extent required under the rules of any securities exchange or market system on which the Shares are listed, to the extent determined by the Administrator to be required by the Code to ensure that Incentive Stock Options granted under the Plan are qualified under Section 422 of the Code, Plan amendments shall be subject to approval by Company shareholders. Nothing in this Section 16 shall limit the Administrator's authority to take any action permitted pursuant to Section 3(b) or 3(c).

SECTION 17. STATUS OF PLAN

With respect to the portion of any Award that has not been exercised and any payments in cash, Stock or other consideration not received by a grantee, a grantee shall have no rights greater than those of a general creditor of the Company unless the Administrator shall otherwise expressly determine in connection with any Award or Awards. In its sole discretion, the Administrator may authorize the creation of trusts or other arrangements to meet the Company's obligations to deliver Stock or make payments with respect to Awards hereunder, provided that the existence of such trusts or other arrangements is consistent with the foregoing sentence.

SECTION 18. GENERAL PROVISIONS

(a) No Distribution. The Administrator may require each person acquiring Stock pursuant to an Award to represent to and agree with the Company in writing that such person is acquiring the shares without a view to distribution thereof.

(b) Issuance of Stock. To the extent certificated, stock certificates to grantees under this Plan shall be deemed delivered for all purposes when the Company or a stock transfer agent of the Company shall have mailed such certificates in the United States mail, addressed to the grantee, at the grantee's last known address on file with the Company. Uncertificated Stock shall be deemed delivered for all purposes when the Company or a Stock transfer agent of the Company shall have given to the grantee by electronic mail (with proof of receipt) or by United States mail, addressed to the grantee, at the grantee's last known address on file with the Company, notice of issuance and recorded the issuance in its records (which may include electronic "book entry" records). Notwithstanding anything herein to the contrary, the Company shall not be required to issue or deliver any evidence of book entry or certificates evidencing Shares pursuant to the exercise or settlement of any Award, unless and until the Administrator has determined, with advice of counsel (to the extent the Administrator deems such advice necessary or advisable), that the issuance and delivery is in compliance with all applicable laws, regulations of governmental authorities and, if applicable, the requirements of any exchange on which the Shares are listed, quoted or traded. Any Stock issued pursuant to the Plan shall be subject to any stop-transfer orders and other restrictions as the Administrator deems necessary or advisable to comply with federal, state or foreign jurisdiction, securities or other laws, rules and quotation system on which the Shares are listed, quoted or traded. The Administrator may place legends on any Share certificate or notations on any book entry to reference restrictions applicable to the Shares. In addition to the terms and conditions provided herein, the Administrator may require that an individual make such reasonable covenants, agreements, and representations as the Administrator, in its discretion, deems necessary or advisable in order to comply with any such laws, regulations, or requirements. The Administrator shall have the right to require any individual to comply with any timing or other restrictions with respect to the settlement or exercise of any Award, including a window-period limitation, as may be imposed in the discretion of the Administrator.

(c) Shareholder Rights. Until Shares are deemed delivered in accordance with Section 18(b), no right to vote or receive dividends or any other rights of a shareholder will exist with respect to Shares to be issued in connection with an Award, notwithstanding the exercise of an Option or any other action by the grantee with respect to an Award.

(d) Other Compensation Arrangements; No Employment Rights. Nothing contained in this Plan shall prevent the Board from adopting other or additional compensation arrangements, including trusts, and such arrangements may be either generally applicable or applicable only in specific cases. The adoption of this Plan and the grant of Awards do not confer upon any employee any right to continued employment with the Company or any Subsidiary.

(e) Trading Policy Restrictions. Option exercises and other Awards under the Plan shall be subject to the Company's insider trading policies and procedures, as in effect from time to time.

(f) Clawback Policy. Awards under the Plan shall be subject to the Company's clawback policy, as in effect from time to time.

(g) Concert-Party Restrictions under the Irish Takeover Rules. In the event that any individual who is eligible to receive an Award is, or is presumed to be, a "person acting in concert" for the purposes of the Irish Takeover Rules, and the grant, exercise, vesting, settlement or any other action in relation to an Award to such individual may, in the reasonable opinion of the Administrator, result in the individual and/or any person acting, or presumed to be acting, in concert with such individual becoming obliged under the Irish Takeover Rules to make an offer for the Company under Rule 9 of the Irish Takeover Rules ("a Concert-Party Offer"), the Administrator may decide that either (i) such grant, exercise, vesting, settlement or other action in relation to such individual or Participant shall not take effect unless the Company is in receipt of a confirmation, direction or ruling from the Irish Takeover Panel that satisfies the Board that such grant, exercise, vesting, settlement or other action would not result in an obligation to make a Concert-Party Offer; or the Shares which are to be delivered on the vesting or settlement of the relevant Award shall not have any voting rights. If the Administrator determines that the exercise or settlement of any such Award by way of the issuance of Shares is not possible or desirable, it may determine that such Award shall be settled in cash, on such conditions as the Administrator may determine.

SECTION 19. EFFECTIVE DATE OF PLAN

This Plan shall become effective upon shareholder approval in accordance with applicable law, the Company's Constitution, and applicable stock exchange rules. No grants of Options and other Awards may be made hereunder after the tenth anniversary of the Effective Date and no grants of Incentive Stock Options may be made hereunder after the tenth anniversary of the date the Plan is approved by the Board.

SECTION 20. GOVERNING LAW

This Plan and all Awards and actions taken thereunder shall be governed by, and construed in accordance with, the General Corporation Law of the State of Delaware as to matters within the scope thereof, and as to all other matters shall be governed by and construed in accordance with the internal laws of the State of Delaware, applied without regard to conflict of law principles.

DATE APPROVED BY BOARD OF DIRECTORS: 13 April 2020

DATE APPROVED BY SHAREHOLDERS: 5 August 2020

**NON-QUALIFIED OPTION AGREEMENT**

**FOR COMPANY EMPLOYEES**
**UNDER THE AVADEL PHARMACEUTICALS PLC**
**2020 OMNIBUS INCENTIVE COMPENSATION PLAN**

Name of Optionee: _____

Number of Options: _____

Option Exercise Price Per Share: _____
**(FMV on Grant Date)**

Grant Date: _____

Expiration Date: _____

Pursuant to the Avadel Pharmaceuticals plc 2020 Omnibus Incentive Compensation Plan, as amended through the date hereof (the "Plan"), Avadel Pharmaceuticals plc (the "Company") hereby grants to the Optionee named above an option (the "Stock Option") to purchase on or prior to the Expiration Date specified above all or part of the number of ordinary shares, nominal value $0.01 (the "Ordinary Shares") in the capital of the Company specified above at the Option Exercise Price per Share specified above subject to the terms and conditions set forth herein and in the Plan. The Ordinary Shares may be represented by American Depositary Shares ("ADSs"), and each ADS represents one Ordinary Share. References herein to the issuance of Ordinary Shares shall also refer to the issuance of ADSs on the same basis of one ADS for every one Ordinary Share. This Option is not intended to be an "incentive stock option" under Section 422 of the Internal Revenue Code of 1986, as amended.

1. Exercisability Schedule. No portion of this Option may be exercised until such portion shall have become exercisable. Except as set forth below, and subject to the discretion of the Administrator (as defined in Section 2 of the Plan) to accelerate the exercisability schedule hereunder, this Option shall be exercisable with respect to the following number of Option Shares on the dates indicated so long as Optionee remains an employee of the Company or a Subsidiary on such dates:

| Incremental Number of Option Shares Exercisable | | Exercisability Date |
|---|---|---|
| | 25 % | |
| | 25 % | |
| | 25 % | |
| | 25 % | |

Once exercisable, this Option shall continue to be exercisable at any time or times prior to the close of business on the Expiration Date, subject to the provisions hereof and of the Plan.

2. Manner of Exercise.

(a) The Optionee may exercise this Option only in the following manner: from time to time on or prior to the Expiration Date of this Option, the Optionee may give written notice to the Administrator of his or her election to purchase some or all of the Option Shares purchasable at the time of such notice. This notice shall specify the number of Option Shares to be purchased.

Payment of the purchase price for the Option Shares may be made by one or more of the following methods: (i) in cash, by certified or bank check or other instrument acceptable to the Administrator; (ii) through the delivery (or attestation to the ownership) of Ordinary Shares that have been purchased by the Optionee on the open market or that are beneficially owned by the Optionee and are not then subject to any restrictions under any Company plan and that otherwise satisfy any holding periods as may be required by the Administrator; (iii) by the Optionee delivering to the Company a properly executed exercise notice together with irrevocable instructions to a broker to promptly deliver to the Company cash or a check payable and acceptable to the Company to pay the option purchase price, provided that in the event the Optionee chooses to pay the option purchase price as so provided, the Optionee and the broker shall comply with such procedures and enter into such agreements of indemnity and other agreements as the Administrator shall prescribe as a condition of such payment procedure; (iv) by a "net exercise" arrangement pursuant to which the Company will reduce the number of Ordinary Shares issuable upon exercise by the largest whole number of shares with a Fair Market Value that does not exceed the aggregate exercise price; or (v) a combination of (i), (ii), (iii) and (iv) above. Payment instruments will be received subject to collection.

The transfer to the Optionee on the records of the Company or of the transfer agent of the Option Shares will be contingent upon (i) the Company's receipt from the Optionee of the full purchase price for the Option Shares, as set forth above, (ii) the fulfillment of any other requirements contained herein or in the Plan or in any other agreement or provision of laws, and (iii) the receipt by the Company of any agreement, statement or other evidence that the Company may require to satisfy itself that the issuance of Ordinary Shares to be purchased pursuant to the

exercise of Options under the Plan and any subsequent resale of the Ordinary Shares will be in compliance with applicable laws and regulations. In the event the Optionee chooses to pay the purchase price by previously-owned Ordinary Shares through the attestation method, the number of Ordinary Shares transferred to the Optionee upon the exercise of the Option shall be net of the Shares attested to.

(b) The Ordinary Shares purchased upon exercise of this Option shall be transferred to the Optionee on the records of the Company or of the transfer agent upon compliance to the satisfaction of the Administrator with all requirements under applicable laws or regulations in connection with such transfer and with the requirements hereof and of the Plan. The determination of the Administrator as to such compliance shall be final and binding on the Optionee. The Optionee shall not be deemed to be the holder of, or to have any of the rights of a holder with respect to, any Ordinary Shares subject to this Option unless and until this Option shall have been exercised pursuant to the terms hereof, the Company or the transfer agent shall have transferred the shares to the Optionee, and the Optionee's name shall have been entered as the stockholder of record on the books of the Company. Thereupon, the Optionee shall have full voting, dividend and other ownership rights with respect to such Ordinary Shares.

(c) The minimum number of shares with respect to which this Option may be exercised at any one time shall be 100 shares, unless the number of shares with respect to which this Option is being exercised is the total number of shares subject to exercise under this Option at the time.

(d) Notwithstanding any other provision hereof or of the Plan, no portion of this Option shall be exercisable after the Expiration Date hereof.

3. Termination of Employment. If the Optionee's employment with the Company or a Subsidiary (as defined in the Plan) terminates, the period within which to exercise the Option may be subject to earlier termination as set forth below.

(a) Termination Due to Death. If the Optionee's employment with the Company or a Subsidiary terminates by reason of the Optionee's death, any portion of this Option outstanding on such date, to the extent exercisable on the date of death, may thereafter be exercised by the Optionee's legal representative or legatee for a period of [12] months from the date of death or until the Expiration Date, if earlier. Any portion of this Option that is not exercisable on the date of death shall terminate immediately and be of no further force or effect.

(b) Termination Due to Disability. If the Optionee's employment with the Company or a Subsidiary terminates by reason of the Optionee's disability (as determined by the Administrator), any portion of this Option outstanding on such date, to the extent exercisable on the date of such termination, may thereafter be exercised by the Optionee for a period of [12] months from the date of disability or until the Expiration Date, if earlier. Any portion of this Option that is not exercisable on the date of disability shall terminate immediately and be of no further force or effect.

(c) Termination for Cause. If the Optionee's employment with the Company or a Subsidiary terminates for Cause, any portion of this Option outstanding on such date shall

terminate immediately and be of no further force and effect. For purposes hereof, "Cause" shall mean, unless otherwise provided in an employment or other service agreement between the Company and the Optionee, a determination by the Administrator that the Optionee shall be dismissed as a result of (i) any material breach by the Optionee of any agreement between the Optionee and the Company; (ii) the conviction of, indictment for or plea of nolo contendere by the Optionee to a felony or a crime involving moral turpitude; or (iii) any material misconduct or willful and deliberate non-performance (other than by reason of disability) by the Optionee of the Optionee's duties to the Company.

(d) Other Termination. If the Optionee's employment with the Company or a Subsidiary terminates for any reason other than the Optionee's death, the Optionee's disability or Cause, and unless otherwise determined by the Administrator, any portion of this Option outstanding on such date may be exercised, to the extent exercisable on the date of termination, for a period of three months from the date of termination or until the Expiration Date, if earlier. Any portion of this Option that is not exercisable on the date of termination shall terminate immediately and be of no further force or effect.

The Administrator's determination of the reason for termination of the Optionee's employment with the Company or a Subsidiary shall be conclusive and binding on the Optionee and his or her representatives or legatees.

4. Incorporation of Plan. Notwithstanding anything herein to the contrary, this Option shall be subject to and governed by all the terms and conditions of the Plan, including the powers of the Administrator set forth in Section 2(b) of the Plan. Capitalized terms in this Agreement shall have the meaning specified in the Plan, unless a different meaning is specified herein.

5. Transferability. This Agreement is personal to the Optionee, is non-assignable and is not transferable in any manner, by operation of law or otherwise, other than by will or the laws of descent and distribution. This Option is exercisable, during the Optionee's lifetime, only by the Optionee, and thereafter, only by the Optionee's legal representative or legatee.

6. Tax Withholding. The Optionee shall, not later than the date as of which the exercise of this Option becomes a taxable event for Federal income tax purposes, pay to the Company or make arrangements satisfactory to the Administrator for payment of any Federal, state, and local taxes required by law to be withheld on account of such taxable event. The Company shall have the authority to cause the required tax withholding obligation to be satisfied, in whole or in part, by (i) withholding from Ordinary Shares to be issued to the Optionee a number of Ordinary Shares with an aggregate Fair Market Value that would satisfy the withholding amount due; or (ii) causing its transfer agent to sell from the number of Ordinary Shares to be issued to the Optionee, the number of Ordinary Shares necessary to satisfy the Federal, state and local taxes required by law to be withheld from the Optionee on account of such transfer.

7. No Obligation to Continue Employment. Neither the Company nor any Subsidiary is obligated by or as a result of the Plan or this Agreement to continue the Optionee's employment with the Company or a Subsidiary and neither the Plan nor this Agreement shall

interfere in any way with the right of the Company or any Subsidiary to terminate the Optionee's employment with the Company or a Subsidiary at any time.

8. Integration. This Agreement constitutes the entire agreement between the parties with respect to this Option and supersedes all prior agreements and discussions between the parties concerning such subject matter.

9. Data Privacy Consent. In order to administer the Plan and this Agreement and to implement or structure future equity grants, the Company, its subsidiaries and affiliates and certain agents thereof (together, the "Relevant Companies") may process any and all personal or professional data, including but not limited to Social Security or other identification number, home address and telephone number, date of birth and other information that is necessary or desirable for the administration of the Plan and/or this Agreement (the "Relevant Information"). By entering into this Agreement, the Optionee (i) authorizes the Company to collect, process, register and transfer to the Relevant Companies all Relevant Information; (ii) waives any privacy rights the Optionee may have with respect to the Relevant Information; (iii) authorizes the Relevant Companies to store and transmit such information in electronic form; and (iv) authorizes the transfer of the Relevant Information to any jurisdiction in which the Relevant Companies consider appropriate. The Optionee shall have access to, and the right to change, the Relevant Information. Relevant Information will only be used in accordance with applicable law.

10. Notices. Notices hereunder shall be mailed or delivered to the Company at its principal place of business and shall be mailed or delivered to the Optionee at the address on file with the Company or, in either case, at such other address as one party may subsequently furnish to the other party in writing.

AVADEL PHARMACEUTICALS PLC

By: __
Title:

The foregoing Agreement is hereby accepted, and the terms and conditions thereof hereby agreed to by the undersigned. Electronic acceptance of this Agreement pursuant to the Company's instructions to the Optionee (including through an online acceptance process) is acceptable.

Dated: __ __

Optionee's Signature

Optionee's name and address:

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**RESTRICTED SHARE UNIT AWARD AGREEMENT**

**FOR COMPANY EMPLOYEES**
**UNDER THE AVADEL PHARMACEUTICALS PLC**
**2020 OMNIBUS INCENTIVE COMPENSATION PLAN**

Name of Grantee: __

No. of Restricted Share Units: __

Grant Date: __

Pursuant to the Avadel Pharmaceuticals plc 2020 Omnibus Incentive Compensation Plan as amended through the date hereof (the "Plan"), Avadel Pharmaceuticals plc (the "Company") hereby grants an award of the number of Restricted Share Units listed above (an "Award") to the Grantee named above. Each Restricted Share Unit shall relate to one ordinary share, nominal value $0.01, in the capital of the Company (the "Ordinary Shares"). The Ordinary Shares may be represented by American Depositary Shares ("ADSs"), and each ADS represents one Ordinary Share. References herein to the issuance of Ordinary Shares shall also refer to the issuance of ADSs on the same basis of one ADS for every one Ordinary Share.

1. Restrictions on Transfer of Award. This Award may not be sold, transferred, pledged, assigned or otherwise encumbered or disposed of by the Grantee, and any Ordinary Shares issuable with respect to the Award may not be sold, transferred, pledged, assigned or otherwise encumbered or disposed of until (i) the Restricted Share Units have vested as provided in Paragraph 2 of this Agreement and (ii) Ordinary Shares have been issued to the Grantee in accordance with the terms of the Plan and this Agreement.

2. Vesting of Restricted Share Units. The restrictions and conditions of Paragraph 1 of this Agreement shall lapse on the Vesting Date or Dates specified in the following schedule so long as the Grantee remains an employee[2] of the Company or a Subsidiary on such Vesting Dates. If a series of Vesting Dates is specified, then the restrictions and conditions in Paragraph 1 shall lapse only with respect to the number of Restricted Share Units specified as vested on such date.

| Restricted Share Units Vested | Incremental Number of | Vesting Date |
|---|---|---|
| | _____ (__%) | _____ |
| | _____ (__%) | _____ |
| | _____ (__%) | _____ |
| | _____ (__%) | _____ |
| | _____ (__%) | _____ |

[2] **Note to Company:** Please confirm whether vesting is contingent on continued employment or whether it should be based on a broader "Service Relationship" concept.

The Administrator may at any time accelerate the vesting schedule specified in this Paragraph 2.

3. Termination of Employment. If the Grantee's employment with the Company or a Subsidiary terminates for any reason (including death or disability) prior to the satisfaction of the vesting conditions set forth in Paragraph 2 above, any Restricted Share Units that have not vested as of such date shall automatically and without notice terminate and be forfeited, and neither the Grantee nor any of his or her successors, heirs, assigns, or personal representatives will thereafter have any further rights or interests in such unvested Restricted Share Units.

4. Issuance of Shares. As soon as practicable following each Vesting Date (but in no event later than two and one-half months after the end of the year in which the Vesting Date occurs), the Company shall issue to the Grantee the number of Ordinary Shares equal to the aggregate number of Restricted Share Units that have vested pursuant to Paragraph 2 of this Agreement on such date and the Grantee shall thereafter have all the rights of a shareholder of the Company with respect to such shares.

5. Incorporation of Plan. Notwithstanding anything herein to the contrary, this Agreement shall be subject to and governed by all the terms and conditions of the Plan, including the powers of the Administrator set forth in Section 2(b) of the Plan. Capitalized terms in this Agreement shall have the meaning specified in the Plan, unless a different meaning is specified herein.

6. Tax Withholding. The Grantee shall, not later than the date as of which the receipt of this Award becomes a taxable event for Federal income tax purposes, pay to the Company or make arrangements satisfactory to the Administrator for payment of any Federal, state, and local taxes required by law to be withheld on account of such taxable event. The Company shall have the authority to cause the required tax withholding obligation to be satisfied, in whole or in part, by (i) withholding from Ordinary Shares to be issued to the Grantee a number of Ordinary Shares with an aggregate Fair Market Value that would satisfy the withholding amount due; or (ii) causing its transfer agent to sell from the number of Ordinary Shares to be issued to the Grantee, the number of Ordinary Shares necessary to satisfy the Federal, state and local taxes required by law to be withheld from the Grantee on account of such transfer.

7. Section 409A of the Code. This Agreement shall be interpreted in such a manner that all provisions relating to the settlement of the Award are exempt from the requirements of Section 409A of the Code as "short-term deferrals" as described in Section 409A of the Code.

8. No Obligation to Continue Employment. Neither the Company nor any Subsidiary is obligated by or as a result of the Plan or this Agreement to continue the Grantee's employment with the Company or a Subsidiary and neither the Plan nor this Agreement shall interfere in any way with the right of the Company or any Subsidiary to terminate the Grantee's employment with the Company or a Subsidiary at any time.

9. Integration. This Agreement constitutes the entire agreement between the parties with respect to this Award and supersedes all prior agreements and discussions between the parties concerning such subject matter.

10. Data Privacy Consent. In order to administer the Plan and this Agreement and to implement or structure future equity grants, the Company, its subsidiaries and affiliates and certain agents thereof (together, the "Relevant Companies") may process any and all personal or professional data, including but not limited to Social Security or other identification number, home address and telephone number, date of birth and other information that is necessary or desirable for the administration of the Plan and/or this Agreement (the "Relevant Information"). By entering into this Agreement, the Grantee (i) authorizes the Company to collect, process, register and transfer to the Relevant Companies all Relevant Information; (ii) waives any privacy rights the Grantee may have with respect to the Relevant Information; (iii) authorizes the Relevant Companies to store and transmit such information in electronic form; and (iv) authorizes the transfer of the Relevant Information to any jurisdiction in which the Relevant Companies consider appropriate. The Grantee shall have access to, and the right to change, the Relevant Information. Relevant Information will only be used in accordance with applicable law.

11. Notices. Notices hereunder shall be mailed or delivered to the Company at its principal place of business and shall be mailed or delivered to the Grantee at the address on file with the Company or, in either case, at such other address as one party may subsequently furnish to the other party in writing.

AVADEL PHARMACEUTICALS PLC

By: __
Title:

The foregoing Agreement is hereby accepted and the terms and conditions thereof hereby agreed to by the undersigned. Electronic acceptance of this Agreement pursuant to the Company's instructions to the Grantee (including through an online acceptance process) is acceptable.

Dated: __ __

Grantee's Signature

Grantee's name and address:

__

__

__

**NON-QUALIFIED OPTION AGREEMENT**

**FOR NON-EMPLOYEE DIRECTORS**
**UNDER THE AVADEL PHARMACEUTICALS PLC 2020 OMNIBUS INCENTIVE COMPENSATION PLAN**

Name of Optionee: __

No. of Option Shares: __

Option Exercise Price per Share: $__
**[FMV on Grant Date]**

Grant Date: __

Expiration Date: __
**[No more than 10 years]**

Pursuant to the Avadel Pharmaceuticals plc 2020 Omnibus Incentive Compensation Plan, as amended through the date hereof (the "Plan"), Avadel Pharmaceuticals plc (the "Company") hereby grants to the Optionee named above, who is a Non-Employee Director of the Company but is not an employee of the Company, an option (the "Option") to purchase on or prior to the Expiration Date specified above all or part of the number of ordinary shares, nominal value $0.01, (the "Ordinary Shares"), in the capital of the Company specified above at the Option Exercise Price per Share specified above subject to the terms and conditions set forth herein and in the Plan. The Ordinary Shares may be represented by American Depositary Shares ("ADSs"), and each ADS represents one Ordinary Share. References herein to the issuance of Ordinary Shares shall also refer to the issuance of ADSs on the same basis of one ADS for every one Ordinary Share. This Option is not intended to be an "incentive stock option" under Section 422 of the Internal Revenue Code of 1986, as amended.

1. Exercisability Schedule. No portion of this Option may be exercised until such portion shall have become exercisable. Except as set forth below, and subject to the discretion of the Administrator (as defined in Section 2 of the Plan) to accelerate the exercisability schedule hereunder, this Option shall be exercisable with respect to the following number of Option Shares on the dates indicated so long as the Optionee remains in service as a member of the Board[3] on such dates:

[3] **Note to Company**: Please confirm whether vesting is contingent on board service or whether the language should be expanded to allow for vesting in connection with other forms of service.

| Option Shares Exercisable | Incremental Number of | Exercisability Date |
|---|---|---|
| | _____ (___%) | _____ |
| | _____ (___%) | _____ |
| | _____ (___%) | _____ |
| | _____ (___%) | _____ |

Once exercisable, this Option shall continue to be exercisable at any time or times prior to the close of business on the Expiration Date, subject to the provisions hereof and of the Plan.[4] Once exercisable, this Option shall continue to be exercisable at any time or times prior to the close of business on the Expiration Date, subject to the provisions hereof and of the Plan.

2. Manner of Exercise.

(a) The Optionee may exercise this Option only in the following manner: from time to time on or prior to the Expiration Date of this Option, the Optionee may give written notice to the Administrator of his or her election to purchase some or all of the Option Shares purchasable at the time of such notice. This notice shall specify the number of Option Shares to be purchased.

Payment of the purchase price for the Option Shares may be made by one or more of the following methods: (i) in cash, by certified or bank check or other instrument acceptable to the Administrator; (ii) through the delivery (or attestation to the ownership) of Ordinary Shares that have been purchased by the Optionee on the open market or that are beneficially owned by the Optionee and are not then subject to any restrictions under any Company plan and that otherwise satisfy any holding periods as may be required by the Administrator; (iii) by the Optionee delivering to the Company a properly executed exercise notice together with irrevocable instructions to a broker to promptly deliver to the Company cash or a check payable and acceptable to the Company to pay the option purchase price, provided that in the event the Optionee chooses to pay the option purchase price as so provided, the Optionee and the broker shall comply with such procedures and enter into such agreements of indemnity and other agreements as the Administrator shall prescribe as a condition of such payment procedure; (iv) by a "net exercise" arrangement pursuant to which the Company will reduce the number of Ordinary Shares issuable upon exercise by the largest whole number of shares with a Fair Market Value that does not exceed the aggregate exercise price; or (v) a combination of (i), (ii), (iii) and (iv) above. Payment instruments will be received subject to collection.

The transfer to the Optionee on the records of the Company or of the transfer agent of the Option Shares will be contingent upon (i) the Company's receipt from the Optionee of the full purchase price for the Option Shares, as set forth above, (ii) the fulfillment of any other requirements contained herein or in the Plan or in any other agreement or provision of laws, and (iii) the receipt by the Company of any agreement, statement or other evidence that the Company may require to satisfy itself that the issuance of Ordinary Shares to be purchased pursuant to the

[4] **Note to Company**: Please advise whether director equity awards have accelerated vesting protection (e.g., on a change in control).

exercise of Options under the Plan and any subsequent resale of the Ordinary Shares will be in compliance with applicable laws and regulations. In the event the Optionee chooses to pay the purchase price by previously-owned Ordinary Shares through the attestation method, the number of Ordinary Shares transferred to the Optionee upon the exercise of the Option shall be net of the Shares attested to.

(b) The Ordinary Shares purchased upon exercise of this Option shall be transferred to the Optionee on the records of the Company or of the transfer agent upon compliance to the satisfaction of the Administrator with all requirements under applicable laws or regulations in connection with such transfer and with the requirements hereof and of the Plan. The determination of the Administrator as to such compliance shall be final and binding on the Optionee. The Optionee shall not be deemed to be the holder of, or to have any of the rights of a holder with respect to, any Ordinary Shares subject to this Option unless and until this Option shall have been exercised pursuant to the terms hereof, the Company or the transfer agent shall have transferred the shares to the Optionee, and the Optionee's name shall have been entered as the stockholder of record on the books of the Company. Thereupon, the Optionee shall have full voting, dividend and other ownership rights with respect to such Ordinary Shares.

(c) The minimum number of shares with respect to which this Option may be exercised at any one time shall be 100 shares, unless the number of shares with respect to which this Option is being exercised is the total number of shares subject to exercise under this Option at the time.

(d) Notwithstanding any other provision hereof or of the Plan, no portion of this Option shall be exercisable after the Expiration Date hereof.

3. Termination as Non-Employee Director. If the Optionee ceases to be a Non-Employee Director of the Company, the period within which to exercise the Option may be subject to earlier termination as set forth below.

(a) Termination Due to Death. If the Optionee's service as a Non-Employee Director terminates by reason of the Optionee's death, any portion of this Option outstanding on such date, to the extent exercisable on the date of death, may thereafter be exercised by the Optionee's legal representative or legatee for a period of [12][5] months from the date of death or until the Expiration Date, if earlier. Any portion of this Option that is not exercisable on the date of death shall terminate immediately and be of no further force or effect.

(b) Other Termination. If the Optionee ceases to be a Non-Employee Director for any reason other than the Optionee's death, any portion of this Option outstanding on such date may be exercised, to the extent exercisable on the date the Optionee ceased to be a Non-Employee Director, for a period of [six][6] months from the date the Optionee ceased to be a Non-Employee Director or until the Expiration Date, if earlier. Any portion of this Option that is not

[5] **Note to Company**: Please confirm preferred post-termination exercise period.

[6] **Note to Company**: Please confirm preferred post-termination exercise period.

exercisable on the date the Optionee ceases to be a Non-Employee Director shall terminate immediately and be of no further force or effect.

4. Incorporation of Plan. Notwithstanding anything herein to the contrary, this Option shall be subject to and governed by all the terms and conditions of the Plan, including the powers of the Administrator set forth in Section 2(b) of the Plan. Capitalized terms in this Agreement shall have the meaning specified in the Plan, unless a different meaning is specified herein.

5. Transferability. This Agreement is personal to the Optionee, is non-assignable and is not transferable in any manner, by operation of law or otherwise, other than by will or the laws of descent and distribution. This Option is exercisable, during the Optionee's lifetime, only by the Optionee, and thereafter, only by the Optionee's legal representative or legatee.

6. No Obligation to Continue as a Non-Employee Director. Neither the Plan nor this Option confers upon the Optionee any rights with respect to continuance as a Non-Employee Director.

7. Integration. This Agreement constitutes the entire agreement between the parties with respect to this Option and supersedes all prior agreements and discussions between the parties concerning such subject matter.

8. Tax Withholding. To the extent applicable, the Optionee shall, not later than the date as of which the receipt of this Award becomes a taxable event for Federal income tax purposes, pay to the Company or make arrangements satisfactory to the Administrator for payment of any Federal, state, and local taxes required by law to be withheld on account of such taxable event. The Company shall have the authority to cause the required tax withholding obligation to be satisfied, in whole or in part, by (i) withholding from Ordinary Shares to be issued to the Optionee a number of Ordinary Shares with an aggregate Fair Market Value that would satisfy the withholding amount due; or (ii) causing its transfer agent to sell from the number of Ordinary Shares to be issued to the Optionee, the number of Ordinary Shares necessary to satisfy the Federal, state and local taxes required by law to be withheld from the Optionee on account of such transfer.

9. Data Privacy Consent. In order to administer the Plan and this Agreement and to implement or structure future equity grants, the Company, its subsidiaries and affiliates and certain agents thereof (together, the "Relevant Companies") may process any and all personal or professional data, including but not limited to Social Security or other identification number, home address and telephone number, date of birth and other information that is necessary or desirable for the administration of the Plan and/or this Agreement (the "Relevant Information"). By entering into this Agreement, the Optionee (i) authorizes the Company to collect, process, register and transfer to the Relevant Companies all Relevant Information; (ii) waives any privacy rights the Optionee may have with respect to the Relevant Information; (iii) authorizes the Relevant Companies to store and transmit such information in electronic form; and (iv) authorizes the transfer of the Relevant Information to any jurisdiction in which the Relevant Companies consider appropriate. The Optionee shall have access to, and the right to change, the

Relevant Information. Relevant Information will only be used in accordance with applicable law.

10. Notices. Notices hereunder shall be mailed or delivered to the Company at its principal place of business and shall be mailed or delivered to the Optionee at the address on file with the Company or, in either case, at such other address as one party may subsequently furnish to the other party in writing.

AVADEL PHARMACEUTICALS PLC

By: __
Title:

The foregoing Agreement is hereby accepted and the terms and conditions thereof hereby agreed to by the undersigned. Electronic acceptance of this Agreement pursuant to the Company's instructions to the Optionee (including through an online acceptance process) is acceptable.

Dated: __ __

Optionee's Signature

Optionee's name and address:

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**RESTRICTED SHARE UNIT AWARD AGREEMENT**

**FOR NON-EMPLOYEE DIRECTORS**
**UNDER THE AVADEL PHARMACEUTICALS PLC**
**2020 OMNIBUS INCENTIVE COMPENSATION PLAN**

Name of Grantee: __

No. of Restricted Share Units: __

Grant Date: __

Pursuant to the Avadel Pharmaceuticals plc 2020 Omnibus Incentive Compensation Plan, as amended through the date hereof (the "Plan"), Avadel Pharmaceuticals plc (the "Company") hereby grants an award of the number of Restricted Share Units listed above (an "Award") to the Grantee named above. Each Restricted Share Unit shall relate to one ordinary share, nominal value $0.01, in the capital of the Company (the "Ordinary Shares"). The Ordinary Shares may be represented by American Depositary Shares ("ADSs"), and each ADS represents one Ordinary Share. References herein to the issuance of Ordinary Shares shall also refer to the issuance of ADSs on the same basis of one ADS for every one Ordinary Share.

1. Restrictions on Transfer of Award. This Award may not be sold, transferred, pledged, assigned or otherwise encumbered or disposed of by the Grantee, and any Ordinary Shares issuable with respect to the Award may not be sold, transferred, pledged, assigned or otherwise encumbered or disposed of until (i) the Restricted Share Units have vested as provided in Paragraph 2 of this Agreement and (ii) Ordinary Shares have been issued to the Grantee in accordance with the terms of the Plan and this Agreement.

2. Vesting of Restricted Share Units. The restrictions and conditions of Paragraph 1 of this Agreement shall lapse on the Vesting Date or Dates specified in the following schedule so long as the Grantee remains in service as a member of the Board[7] on such Vesting Dates. If a series of Vesting Dates is specified, then the restrictions and conditions in Paragraph 1 shall lapse only with respect to the number of Restricted Share Units specified as vested on such date.

| Restricted Share Units Vested | Incremental Number of | Vesting Date |
|---|---|---|
| | _____ (___%) | _____ |
| | _____ (___%) | _____ |
| | _____ (___%) | _____ |

[7] **Note to Company**: Please confirm whether vesting is contingent on board service or whether the language should be expanded to allow for vesting in connection with other forms of service.

The Administrator may at any time accelerate the vesting schedule specified in this Paragraph 2.[8]

3. Termination of Service as a Non-Employee Director. If the Grantee's service with the Company and its Subsidiaries as a member of the Board terminates for any reason (including death or disability) prior to the satisfaction of the vesting conditions set forth in Paragraph 2 above, any Restricted Share Units that have not vested as of such date shall automatically and without notice terminate and be forfeited, and neither the Grantee nor any of his or her successors, heirs, assigns, or personal representatives will thereafter have any further rights or interests in such unvested Restricted Share Units.

4. Issuance of Shares. As soon as practicable following each Vesting Date (but in no event later than two and one-half months after the end of the year in which the Vesting Date occurs), the Company shall issue to the Grantee the number of Ordinary Shares equal to the aggregate number of Restricted Share Units that have vested pursuant to Paragraph 2 of this Agreement on such date and the Grantee shall thereafter have all the rights of a stockholder of the Company with respect to such shares.

5. Incorporation of Plan. Notwithstanding anything herein to the contrary, this Agreement shall be subject to and governed by all the terms and conditions of the Plan, including the powers of the Administrator set forth in Section 2(b) of the Plan. Capitalized terms in this Agreement shall have the meaning specified in the Plan, unless a different meaning is specified herein.

6. Section 409A of the Code. This Agreement shall be interpreted in such a manner that all provisions relating to the settlement of the Award are exempt from the requirements of Section 409A of the Code as "short-term deferrals" as described in Section 409A of the Code.

7. No Obligation to Continue as a Non-Employee Director. Neither the Plan nor this Award confers upon the Grantee any rights with respect to continuance as a Non-Employee Director.

8. Integration. This Agreement constitutes the entire agreement between the parties with respect to this Award and supersedes all prior agreements and discussions between the parties concerning such subject matter.

9. Tax Withholding. To the extent applicable, the Grantee shall, not later than the date as of which the receipt of this Award becomes a taxable event for Federal income tax purposes, pay to the Company or make arrangements satisfactory to the Administrator for payment of any Federal, state, and local taxes required by law to be withheld on account of such taxable event. The Company shall have the authority to cause the required tax withholding obligation to be satisfied, in whole or in part, by (i) withholding from Ordinary Shares to be issued to the Grantee a number of Ordinary Shares with an aggregate Fair Market Value that would satisfy the withholding amount due; or (ii) causing its transfer agent to sell from the number of Ordinary Shares to be issued to the Grantee, the number of Ordinary Shares necessary

[8] **Note to Company**: Please advise whether director equity awards have accelerated vesting protection (e.g., on a change in control).

to satisfy the Federal, state and local taxes required by law to be withheld from the Grantee on account of such transfer.

10. Data Privacy Consent. In order to administer the Plan and this Agreement and to implement or structure future equity grants, the Company, its subsidiaries and affiliates and certain agents thereof (together, the "Relevant Companies") may process any and all personal or professional data, including but not limited to Social Security or other identification number, home address and telephone number, date of birth and other information that is necessary or desirable for the administration of the Plan and/or this Agreement (the "Relevant Information"). By entering into this Agreement, the Grantee (i) authorizes the Company to collect, process, register and transfer to the Relevant Companies all Relevant Information; (ii) waives any privacy rights the Grantee may have with respect to the Relevant Information; (iii) authorizes the Relevant Companies to store and transmit such information in electronic form; and (iv) authorizes the transfer of the Relevant Information to any jurisdiction in which the Relevant Companies consider appropriate. The Grantee shall have access to, and the right to change, the Relevant Information. Relevant Information will only be used in accordance with applicable law.

11. Notices. Notices hereunder shall be mailed or delivered to the Company at its principal place of business and shall be mailed or delivered to the Grantee at the address on file with the Company or, in either case, at such other address as one party may subsequently furnish to the other party in writing.

**AVADEL PHARMACEUTICALS PLC**

By: __
Title:

The foregoing Agreement is hereby accepted and the terms and conditions thereof hereby agreed to by the undersigned. Electronic acceptance of this Agreement pursuant to the Company's instructions to the Grantee (including through an online acceptance process) is acceptable.

Dated: __ __

Grantee's Signature

Grantee's name and address:

__

__

__

*Live the* **Avadel Values**

Ava

## At Avadel, the way we work is as important as the results we achieve. In everything we do, we live the Avadel Values. Avadel is:

### Patient Focused

We serve our patients by placing them and their needs at the center of our strategy and the focus of our work everyday.

### Results Oriented

We are a resourceful and innovative team working collaboratively to accomplish our goals. We deliver high-quality results and solutions that create value for patients, employees and shareholders.

### Resilient

We are a persistent and agile team that embraces change and continuously improves as we relentlessly pursue our goals.

### Ethical

We hold ourselves to the highest ethical standards everyday. We work with integrity, trust and respect, and are accountable to each other to do the right thing.

### A Message from Our Legal Department

*Dear Colleagues,*

*At Avadel, the way we do business is as important as the results we achieve. In everythi we do, we must live the Avadel Values. Avadel is Patient Focused, Results Oriented, Resi and Ethical. Our continued success depends upon every one of us living the Avadel Valu and acting with the best interests of our patients, customers, stakeholders and the publ foremost in mind.*

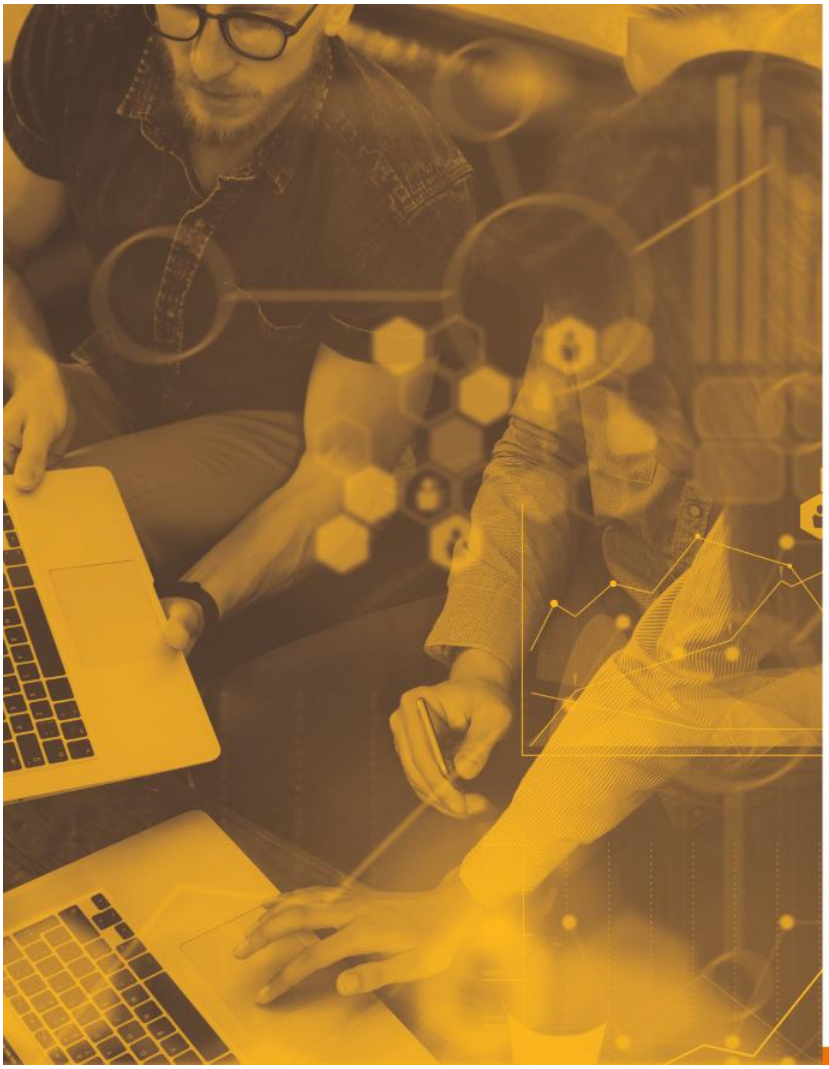
*We are pleased to introduce our revised Code of Business Conduct and Ethics ("Code of Conduct" or "Code"), effective January 1, 2021. The Code will help you understand wha Avadel expects of you and what our patients, customers, stakeholders and the public ex of us. The Code of Conduct is not an exhaustive list of every policy you need to know, bu a good roadmap, and it remains supported by many other Avadel policies and procedur well as applicable laws, regulations and industry codes.*

*Please read the Code of Conduct carefully. It embodies our ongoing commitment to ope with the highest sense of integrity, responsibility and transparency in order to improve health of people around the world. Acting in a responsible and principled manner is the way to earn and keep the confidence and trust of our patients, customers, stakeholders the public we serve. Therefore, it is essential that everyone at Avadel fully understands abides by both the letter and the spirit of the Code. We are committed to living the Avad Values every day and in every way we do business.*

*Thank you for ensuring that Avadel always pursues its mission the right way.*

/s/ Jerad G. Seurer

*Jerad G. Seurer,*
Vice President, Legal Affairs
& Corporate Secretary





# Table of Contents

# *Introduction to the* **Code** *of* **Conduct**



## *The Purpose of the Code of Conduct*

Our commitment to compliance goes beyond merely following the law.

At Avadel, we are always expected to act with integrity and make ethical decisions in all aspects of our business. As a matter of course, it is important for us to be aware of and fully comply with all applicable laws, regulations and industry codes. We should keep in mind that we are part of a highly-regulated industry, in which our business and operations are subject to a wide variety of laws, regulations and industry codes.

The Code of Conduct sets out our core standards for how we conduct business – every day, everywhere – over a broad range of subject areas. It is also intended to promote a culture of compliance throughout the Company and guide us to the right answers when we encounter ethical questions.

The Code is not an exhaustive description of our expected behavior and is supported by additional Company policies and procedures, including those governing specific subjects or applying to specific locations or functions. The Code and other Company policies and procedures cover many issues related to our work. However, they cannot address every possible situation we may face. Therefore, each of us must also take personal responsibility to act with the highest sense of integrity, use good judgment and ask questions in areas of uncertainty.

The Code of Conduct is an evolving document and may be updated from time to time to reflect changing laws or expectations of patients, customers, stakeholders or the public. Avadel reserves the right, in its sole discretion, to modify any aspect of the compliance program, including without limitation, the Code of Conduct and any Company policies and procedures, at any time, for any reason and with or without notice; provided, however, copies of any amendments or modifications to this Code of Conduct will be made available to all Avadel employees. If there is a conflict between the Code of Conduct and any specific Company policy or procedure, the specific Company policy or procedure in effect will govern, and any such inconsistency should be immediately brought to the attention of the Legal Department.

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*and industry*

**YOU MAY OBT**
**COPIES OF TH**
**FROM ANY OF**
**FOLLOWING S**

- The Legal Depar
- The Human Res Department;
- The Company's at http://www.avad

## Who Needs to Follow Our Code of Conduct

Avadel is committed to conducting business in accordance with the highest standards of ethics and integrity and in compliance with applicable laws, regulations and industry codes.

The Code of Conduct applies to everyone who works for Avadel in any location around the world and in any capacity whatsoever as a director, officer, employee, temporary worker, consultant, contract worker or otherwise, whether full-time or part-time. Also, we inform and encourage third parties acting on behalf of Avadel to comply with all relevant standards described in the Code. In this Code, references to "Avadel" or the "Company" refer to Avadel Pharmaceuticals plc and all of its subsidiaries and affiliates worldwide.

We have the responsibility to ensure that Avadel abides by the law in every country in which it conducts business. Adherence to the Code of Conduct is mandatory and is a condition of employment, retention or engagement for all personnel. Any person who violates this Code may be subject to potential disciplinary action in accordance with applicable laws, regulations and Company policies in his or her country of employment or assignment.

## Our Responsibilities

We all have a responsibility to follow applicable laws, regulations, industry codes and Company policies as we conduct business on behalf of Avadel. We also have a responsibility to maintain fair relationships with our business partners, customers and stakeholders. While this Code of Conduct has been written to familiarize you with many of the policies and procedures that apply at Avadel, it does not supersede them or act as a substitute for reading each policy and procedure that applies to your specific job. All Avadel personnel need to understand the policies and procedures that apply to their work and roles. Check with your supervisor or manager to learn about any job-specific information that you need to know.

Remember, no written policy or code on its own can guarantee compliance with the law or ethical decision-making. Each of us must do our part.



**HERE ARE JUST A FEW WAYS YOU CAN DO THE RIGHT THING:**

### ACT WITH HONESTY AND INTEGRITY

Conduct business with honesty, integrity and in a manner that protects Avadel's public image and reputation, as well as those of its business partners, customers and stakeholders.

### FOLLOW THE RULES

Follow the law and Avadel policies as you conduct company business.

### RESPECT OTHERS

Respect fellow staff members, government officials, business partners and our competitors.

### ASK

If you are unsure about what to do or have questions about law, policy, ethics or other compliance issues, ask your immediate supervisor or manager or consult the resources identified by this Code.

### DISCLOSE

Immediately disclose to the Legal Department if you currently are on an Exclusion List or otherwise ineligible to participate in the federal health care programs or in federal procurement or non-procurement programs, or have been convicted of a criminal offense that would lead to you being on an Exclusion List. Please also disclose if you are aware of any business partners who may be on the Exclusion List or ineligible to participate in federal programs.

**"Exclusion Lists" mean:**

- the U.S. Food and Drug Administration (FDA) Debarment List (Drug Product Applications);
- the U.S. Department of Health and Human Services (HHS)/Office of Inspector General (OIG) List of Excluded Individuals/Entities; or
- the U.S. General Services Administration (GSA) Excluded Parties Listing System.

### REPORT VIOLATIONS

Promptly report all known or suspec violations of applicable law, regulatio industry codes, the Code of Conduct Company policies through the appro channels. If someone asks you or pre you to do something that might be a report that also. Report such matter immediate supervisor or manager. H if you are not comfortable bringing u with your immediate supervisor or m you may also report the matter to:

- The Legal Department;
- The Human Resources Department
- The Lighthouse Reporting Tool.
  - 1-844-264-2273
  - www.intouchwebsite.com/TellAva
  - In Ireland, dial +353-768-887197
  - www.intouchwebsite.com/TellAva

### COOPERATE WITH INVESTIGA AND LITIGATION

Fully cooperate with Company invest into potential violations and with Av defense or prosecution of litigation. This includes, but is not limited to, be forthcoming and telling the truth.

## Additional Responsibilities of Managers and Supervisors

If you are a manager or supervisor, you have additional compliance and ethical responsibilities. You must take steps to promote compliance and prevent violations in the areas you manage or supervise.

Lead by example. You must serve as a positive role model, personify the Avadel Values and encourage others to follow this Code and Avadel policies. What you do encourages others to do the same thing. Here are some specific ways you, as a manager, can fulfill these obligations:

- Foster a culture of compliance and ethics through personal leadership.
- Demonstrate the highest ethical standards and quality in your work every day and expect the same from the people who report to you.
- Never give others the impression that it is acceptable to ignore Company policies or skip steps. Do not create or tolerate an environment where staff members feel pressured to bend rules.
- Guide staff, consultants, contract workers and temporary staff.
- Ensure that your direct reports complete all corporate and job-specific compliance training. On a regular basis, review with your direct reports the policies that apply to them.
- Make sure vendors, consultants, contract workers and temporary staff working in your area act in a manner consistent with this Code and policies that apply to them.
- Prevent and report problems.
- Be proactive and take steps to prevent problems before they happen. Do not condone them when they do.
- Respond to staff members who raise concerns in a way that makes them feel secure and at ease sharing their issues.
- Be responsible for reporting violations you suspect or that others (not just your direct reports) share with you.

## Reporting Concerns

If you believe that your conduct or that of any other Company personnel has or may have violated the Code or any applicable law, regulation, industry code or Company policy, you have an obligation to report the matter. In addition, if you receive a report of a potential violation of the Code or any applicable law, regulation, industry code or Company policy from another source, you also have an obligation to report the matter. Generally, you should first raise the matter with your immediate supervisor or manager. Your immediate supervisor or manager may provide valuable insights or perspectives and encourage resolution of issues within the appropriate work unit. However, if you are not comfortable bringing up a matter with your immediate supervisor or manager or you do not believe your immediate supervisor or manager has dealt with a matter properly, you may also report the matter to:

- The Legal Department; or
- The Human Resources Department.

If for any reason you are not comfortable contacting any of these departments directly, you are encouraged to contact the Compliance Hotline, Website or Email operated by Lighthouse Services. Lighthouse Services is a long-established company which provides secure and confidential reporting services on behalf of national and multinational organizations across the world. Avadel has retained Lighthouse Services to provide you with an additional, secure and confidential (where permitted under local law) way to report serious workplace concerns and to receive replies from senior management.

- The Lighthouse Reporting Tool
  - 1-844-264-2273
  - www.intouchwebsite.com/TellAvadelUS
  - In Ireland, dial +353-768-887197
  - www.intouchwebsite.com/TellAvadelIreland

For individuals in the European Union, please note that the Lighthouse Services program only allows the reporting of certain issues in order to remain compliant with local laws. The issues include financial, accounting, auditing, banking, anti-corruption, bribery and anti-competitive practices by an officer, director, employee or contract worker. Anti-discrimination, health and safety and environmental protection issues are also allowed. Other matters may be reported internally as discussed above.

*" Take action
improper co
by reporting
Let's continu
ensure Avad
integrity an
accountabili
to ourselves
and to all of
stakeholders*

**THERE ARE THREE WAYS IN WHICH YOU CAN MAKE REPORTS USING THE LIGHTHOUSE REPORTING TOOL:**

**How to make a report using the Lighthouse reporting tool**

1. **Dial your country's Toll-Free number**
   - » **In the US**, dial 1-844-264-2273
   - » **In Ireland**, dial +353-768-887197
2. **Send an email to TellAvadelUS@getintouch.com**
3. **Submit your issue or concern via the web**
   - » **For the US**, visit http://www.intouchwebsite.com/TellAvadelUS
   - » **For Ireland**, visit http://www.intouchwebsite.com/TellAvadelIreland

Use of the Lighthouse Services program is optional and there is no consequence to employees for not using this tool as their selected avenue to report concerns or potential violations. However, failure to report wrongdoing at all in any venue is the basis for disciplinary action.

**NON-RETALIATION POLICY**

The Company prohibits any form of intimidation or retaliation against anyone who in good faith: (i) voices a concern or reports a violation to the Company or any law enforcement or government agency; (ii) cooperates or helps with a government or internal investigation; (iii) conducts self-evaluations, audits, remedial actions or other activities in support of Avadel's compliance program; or (iv) provides information to the government or the Company about a breach of the Code of Conduct or any law, regulation, industry code or Company policy.

Any suspected retaliation should be reported immediately. Retaliation is subject to disciplinary measures.

**SUPPORT**

Employees who have questions concerning this policy are responsible for contacting the Legal Department.

You may obtain copies of the Company's Compliance Integrity Policy—Tell Avadel from any of the following sources:

- » The Legal Department;
- » The Human Resources Department;
- » The Company's website at http://www.avadel.com.

*" Intimidation retaliation is unethical an not permitte Avadel. Ever has the righ responsibilit report or voi any concern violation, an Avadel supp just that."*

## Disciplinary Action

Failure to comply with the Code, Company policies or applicable laws, regulations or industry codes will subject Avadel employees to disciplinary action up to and including termination of employment, to the extent permitted by local laws. Disciplinary action may also be taken when managers ignore misconduct, or fail to correct it. In addition, Avadel may terminate the services or work engagement of non-employees who fail to comply with the Code, Avadel policies or applicable laws, regulations or industry codes. Nothing in the Code limits the Company's ability to end the employment of an Avadel employee at any time and for any or no reason, with or without notice or cause, to the extent permitted by local laws.

## Amendments

Avadel reserves the right to unilaterally amend the Code of Conduct or any Company policy in its entirety at any time, without prior notice.

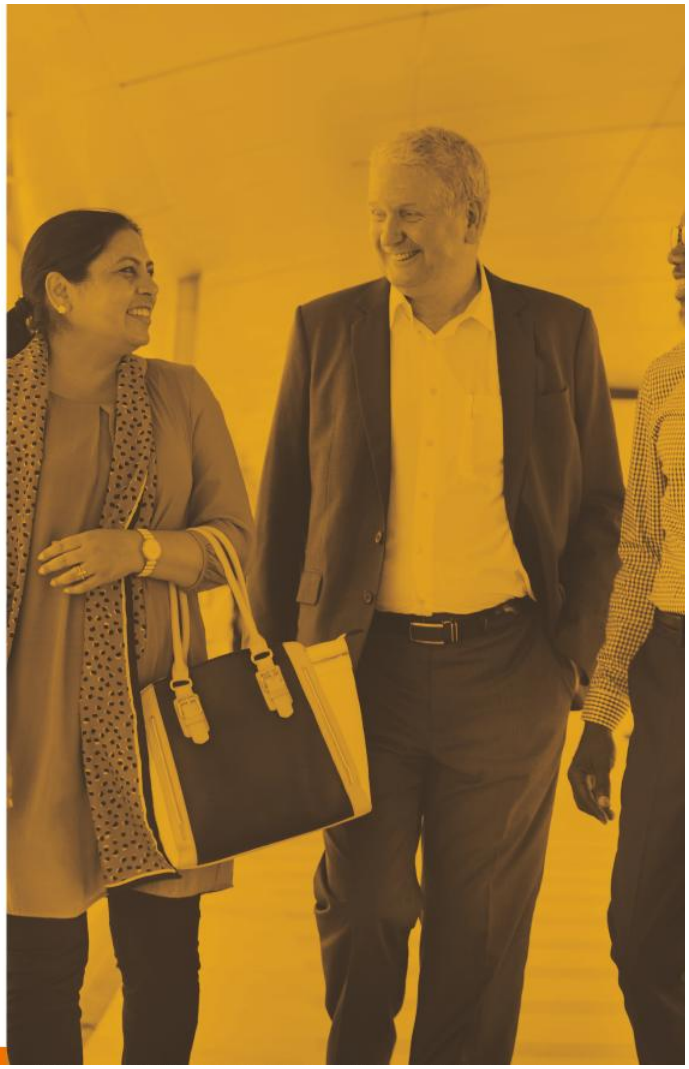
## Certification

Every director, officer and employee of Avadel must certify in writing that he or she has read the Code and that he or she, to the best of his or her knowledge and belief, understands, has complied with and will continue to comply with the Code and all applicable laws, regulations, industry codes and Company policies. The Legal Department will provide the procedure for such certification and may require a similar certification upon the approval and adoption of amendments to the Code. You will also be required to complete annual and/or update compliance training as determined necessary by the Legal Department. If you have any issue with making the certification required above, contact:

» Your immediate supervisor or manager;

» The Legal Department; or

» Human Resources Department



# The Avadel Workplace



## Our Work Environment

We all have a responsibility to follow all applicable laws, regulations and industry codes, observe the highest standards of professional behavior, exhibit integrity at all times, treat others with respect and comply with all Company policies.

We are responsible for maintaining Avadel's good reputation. With this in mind, never engage in any conduct or activity that could raise questions about Avadel's honesty or integrity, or that might cause embarrassment to the Company. Ultimately, others judge Avadel by whether we live the Avadel Values.

**COMPLIANCE TIPS:**

- ✓ Follow all Company policies, including those discussed in this Code, and live the Avadel Values.
- ✓ Be honest in your words and actions.
- ✓ Act professionally and always adhere to accepted industry or professional standards that apply to you.
- ✓ Take the right steps to safeguard Avadel property.

**EXTRA FOCUS**

*It may seem that one person's choices and actions will have little impact on a small, but growing company like Avadel. This is not true. Everything you do helps to build and sustain an environment that embraces the Avadel Values.*

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# Non-Discrimination and a Harassment-Free Workplace

Avadel is committed to fostering a diverse workforce and a culture of inclusion. A diverse workforce with varied backgrounds and ideas strengthens Avadel and allows us all to strive to do our best.

Avadel pursues fair employment practices in every aspect of its business and is committed to a productive work environment for its employees. Avadel's employment policies and procedures, such as the Equal Employment Opportunity Policy and the Anti-Harassment Policy, reflect these practices and commitment. These policies apply to every type of employment action, including recruitment, training and compensation. Employees may obtain copies of these policies and procedures from the Human Resources Department, and they are also contained within Avadel's Employee Handbook. Employees are required to comply with these policies and procedures in all respects and failure to do so may result in disciplinary action, up to and including termination of employment. A violation of the Equal Employment Opportunity Policy or the Anti-Harassment Policy is a violation of the Code.

***Discrimination in any respect on the basis of race, color, religion, ethnic or national origin, gender, sexual orientation or identity, age, disability, veteran status, marital status or any other status protected by applicable law is prohibited. Harassment, including sexual harassment or other discriminatory harassment based on a status protected by applicable law, is also prohibited in any form.***

Discriminatory/harassing behavior violates the Code, Company policies and the Avadel Values. This behavior undermines our ability to work together in teams, and it is contrary to our belief in the importance of respecting each other. Retaliation in response to an employee's complaint of such behavior or participation in an investigation is prohibited. Any concerns or complaints involving discrimination, harassment or retaliation must be reported immediately to your immediate supervisor, manager or Human Resources. All complaints will be treated with sensitivity and discretion, to the extent practicable under the circumstances, and a prompt investigation will be conducted in accordance with Company policy. Should an investigation determine that harassment or discrimination occurred, Avadel will take prompt corrective action, which may include disciplinary action up to and including termination of employment. Avadel strictly prohibits retaliation against an employee who, in good faith, makes such a complaint or participates in an investigation.

**COMPLIANCE TIPS:**

- ✓ Never engage in any unlawful discrimination.
- ✓ Discourage and report comments, jokes or epithets that are inappropriate, offensive or derogatory to others.
- ✓ Never seek sexual favors in return for employment rewards.
- ✓ Never take part in conduct that is hostile or threatening, nor encourage others to do so.

**EXTRA FOCUS**

*Be aware that e-mails, posters, calendars, screen savers, photographs, cartoons, etc., which are inappropriate and offensive to others are prohibited and may rise to the level of being harassment. Making derogatory references concerning personal characteristics such as religion, race, gender, sexual orientation and identity, gender identity, ethnicity, national origin or disability, as well as inappropriate touching and personal threats, are also prohibited and violate Avadel's policies.*

# Safe and Healthy Workplace

### HAZARDOUS OR TOXIC MATERIALS

The safety and security of Avadel employees is vitally important. We have an obligation to our colleagues and to those who enter our premises to be sure work conditions meet our safety requirements. Avadel employees and staff must comply with all applicable environmental, health and safety laws, regulations and Company policies. It is your responsibility to understand and comply with such laws, regulations and policies that are relevant to your job, particularly if your job involves working with hazardous or toxic materials in any capacity or if your job involves the disposal of any Company product, material or equipment of any kind. Failure to comply with environmental, health and safety laws and regulations can result in civil and criminal liability against you and Avadel, as well as disciplinary action by Avadel, up to and including termination of employment. You should contact the Legal Department if you have any questions about the laws, regulations and policies that apply to you.

### ALCOHOL AND DRUG USE

Maintaining a productive work environment is the responsibility of both Avadel and its employees. We are committed to maintaining a drug-free work environment. All Avadel employees must strictly comply with our policies regarding the use and abuse of alcohol and the possession, sale and use of illegal substances in the workplace. Drinking alcoholic beverages is strictly prohibited while on duty or on any premises of Avadel, except at specified company-sanctioned events. Possessing, using, selling or offering illegal drugs and other controlled substances is prohibited under all circumstances while on duty or on the premises of Avadel. Likewise, you are prohibited from reporting for work or driving an Avadel vehicle or any vehicle on Avadel business, while under the influence of alcohol or any illegal drug or controlled substance. Failure to comply with Company policies on drug and alcohol use may result in disciplinary action by Avadel, up to and including termination of employment.

### WORKPLACE VIOLENCE

Avadel will not tolerate violence or threats of violence in, or related to, the workplace. Employees who experience, witness or otherwise become aware of a violent or potentially violent situation that occurs on Avadel property or affects our business must promptly report the situation to their immediate supervisor, manager or the Human Resources Department. Avadel does not permit any individual to have weapons of any kind on Avadel property or in Avadel vehicles, while on the job or off-site on Avadel business. This is true even if you have obtained legal permits to carry weapons. The only exception to this policy applies to security personnel who are specifically authorized by Avadel management to carry weapons. Failure to comply with Company policies on violence or threats of violence in, or related to, the workplace may result in disciplinary action by Avadel, up to and including termination of employment.

### COMPLIANCE TIPS:

- ✓ Promptly report all environmental, health and safety issues including unsafe conditions, accidents, near misses, work related injuries and illnesses, and threatening or violent behavior;
- ✓ Be responsible for any visitors you bring on site;
- ✓ Know how to use and maintain equipment that you use in your job, and wear necessary personal protective equipment;
- ✓ Know the health and safety rules for your site or area, including emergency response plans; and
- ✓ Seek treatment for any substance abuse issues.

**EXTRA FOCUS**

*On occasion, alcohol may be provided or available at some work-related or company-sponsored events. If you choose to drink at these events, we expect you to behave safely and responsibly. Supervisors or managers who organize these functions must ensure responsible alcohol distribution and use.*

# Patient *and* Product Safety



## Good Operating Practices

Avadel strives to adhere to sound scientific and quality principles and ensure that these principles are reflected in our operations, including those in research, development, manufacturing and distribution. To uphold these principles, we comply with all applicable laws dealing with Good Laboratory Practices ("GLP"), Good Clinical Practices ("GCP"), Good Manufacturing Practices ("GMP") and Good Distribution Practices ("GDP") (collectively, "Good Operating Practices" or "GxP".)

Since Avadel makes significant use of third party relationships in conducting its operations, we require that those third party relationships be in compliance with all applicable laws and operate according to Good Operating Practices in research laboratories, in clinical trials and in manufacturing plants and distribution centers. In order to ensure compliance and operations according to sound quality principles, we have adopted systems and internal controls for all GxP areas, including:

- Corporate and functional area written policies and procedures with related training;
- Mechanisms to assess compliance with applicable laws and Avadel policies;
- Where appropriate, processes for reporting and investigating noncompliance with applicable laws or policies;
- Processes for conducting and responding to audits; and
- Processes for handling regulatory inspections and investigations.

**COMPLIANCE TIPS:**

- ✓ Know the relevant Company policies and procedures that apply to your GxP responsibilities.
- ✓ Participate in GxP training.
- ✓ Cooperate with all assessments and tests designed to ensure GxP compliance.

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## Safety Information Collecting and Reporting

Avadel is committed to collecting, evaluating and the timely reporting of product safety information to health authorities around the world in compliance with applicable laws and regulations.

If any of us become aware of an adverse event or other safety information involving an Avadel product, we must promptly report it to the Medical Affairs or Quality Department in accordance with relevant Company policies and procedures.

***"Adverse Events" include any undesirable event occurring in a patient or caregiver using or exposed to our pharmaceutical product, no matter how minor the adverse reaction may be, whether or not a causal relationship between the drug and the event is certain.***

Timely reporting is essential as the Company needs to fulfill its worldwide safety reporting obligations within required deadlines.

This policy applies to all Avadel employees and contract workers in all parts of the Company, not just those who work in functions that interact with patients and physicians. All Avadel employees and contract workers must report any Adverse Event that comes to their attention.

**COMPLIANCE TIPS:**

✓ Prompt notification must be made if you become aware of an Adverse Event from any source involving an Avadel product.

- Adverse events may be reported via phone or email:
  - Phone: 636-449-1830
  - Fax: 636-449-1850
  - Email: ProductSafety@avadel.com
- Serious adverse events should also be communicated to the Medical Affairs or Quality Department

✓ If you know that an Adverse Event has already been reported as part of a systematic data collection process (such as in a clinical trial), you do not need to report it.

*"All Adverse Events that you become aware of must be reported—no matter how minor and regardless if the exact causal link to an Avadel product has not been established. Adverse Events must be reported promptly."*

## Research and Development

Avadel is committed to maintaining the highest scientific and ethical standards in its pharmaceutical research and development. Therefore, we must comply with applicable laws, regulations and industry standards for non-clinical and clinical research. We must design and conduct our research both scientifically and ethically in accordance with applicable Company policies and procedures.

We ensure the scientific rigor of our non-clinical and clinical research by handling all data appropriately, keeping accurate and adequate records and properly managing bias and potential conflicts of interest. Fabrication, falsification and plagiarism of research results are strictly prohibited.

In our clinical trials, we put the health and safety of trial subjects first. We also respect and protect human rights, including rights to dignity, self-determination, privacy and confidentiality of personal information. We obtain appropriate informed consent from everyone taking part in Avadel sponsored clinical trials. We monitor compliance with these requirements by Avadel employees and third-parties.

We select clinical investigators based on appropriate criteria, such as their potential to recruit trial subjects and their ability to meet applicable legal, regulatory and industry standards.

## Clinical Trial Disclosure

In the best interests of patients, the medical and scientific community and the public at large, Avadel is committed to making its important study findings publicly available. Therefore, we must disclose information about Avadel's medical research in accordance with applicable laws, regulations, industry standards and Company policies and procedures.

We take care to ensure that all information that we disclose is truthful, accurate, balanced and not misleading. Also, to address the issue of potential conflicts of interest with research investigators, if applicable, we fully disclose our funding and other support for Avadel sponsored research and related publications. In our publication activities, we use due caution to protect the privacy and personal information of research subjects and to prevent copyright infringement and the premature disclosure of patentable information.

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# Avadel *in the* Marketplace

***Numerous laws govern our conduct in the marketplace. Retaining the trust of our patients, customers, stakeholders and the public depends on maintaining the highest level of ethical and legal conduct. We must always strive to act with the utmost integrity and fairness when conducting Avadel's business.***

## *Fair Competition*

Antitrust and competition laws promote fair competition. These laws often focus on ways to ensure that businesses compete on the basis of quality, price and service. Avadel will not tolerate or participate in any business conduct, transaction or activity that violates the antitrust and competition laws of any country in which we do business.

Avadel will engage only in appropriate competition. This means that we will not engage in any illegal or unethical practices, such as improperly obtaining proprietary information of a competitor or engaging in price-fixing, coercion or collusion with competitors.

We are responsible for awareness of the antitrust, trade practices and competition laws and compliance with such laws. Because antitrust and competition laws are complex, personnel should seek guidance from the Legal Department whenever there is any question about whether a particular activity may involve anti-competitive conduct. Violation of the antitrust, trade and competition laws may result in criminal and civil penalties, both for those involved and for Avadel.

**COMPLIANCE TIPS:**

- ✓ Do not engage in discussions or make agreements with any actual or potential competitor about pricing policies, discounts or other terms of sale, or splitting markets or customers.
- ✓ Do not engage in discussions or make agreements with any actual or potential competitor about the sale (or non-sale) of either our products or theirs.
- ✓ Never bribe or attempt to bribe customers or suppliers to help our business or hurt our competitors.

*" Avadel will only engage ethical and l competition.*

## Competitive Information

We will not attempt to improperly obtain or use a competitor's proprietary information. This includes information pertaining to a competitor's prices, bids or proposals in circumstances where there is reason to believe that the release of such information would be illegal or unauthorized.

Often it will be clear from the face of the relevant documents and/or the circumstances that certain information is proprietary, and therefore, should not be used. For example, if you receive a competitor's proposal in the mail from an unknown source, do not read it or use it. We are required to immediately turn over any such documents to the Legal Department.

It is important to note that it is not illegal or unethical to obtain and use information obtained through public Web sites, brochures, articles, presentations, market research, etc. If you have a question regarding information that you have obtained, contact the Legal Department.

## Anti-Corruption and Anti-Bribery

We do not tolerate bribery or any other corrupt conduct that violates the anti-corruption and anti-bribery laws of any country in which we do business or applicable industry codes such as the Organization for Economic Co-operation and Development's Anti-Bribery Convention. We also do not tolerate bribery or other corrupt conduct by our business partners or any third party acting on our behalf. In addition, many countries have anti-bribery and anti-corruption laws that extend and apply outside their borders, including the UK Bribery Act and the US Foreign Corrupt Practices Act (FCPA). Corrupt conduct committed in one country may result in civil and/or criminal actions not only in that country, but also in another country.

*"Avadel prohibits any form of corruption or bribery. We are all responsible for ensuring employees and third parties acting on Avadel's behalf comply with this prohibition."*

We comply with all applicable anti-bribery and anti-corruption laws wherever we do business. We do not, directly or indirectly, offer, promise or give any payment or other item of value to any person, whether a government official or private individual, for the purpose of obtaining or retaining business or improperly influencing any decision or action of the recipient in our favor. We also comply with all applicable anti-kickback laws and laws regarding the submission of claims for payment, including the Anti-Kickback Statute and the False Claims Act.

Even when no corrupt purpose is present, we seriously consider how our actions are perceived by others. We only provide gifts, meals or other items of value (whether tangible or intangible) if they are unsolicited, legal, modest in value, infrequent, part of commonly-accepted business or cultural practices and consistent with relevant laws, regulations, industry codes and Company policies. Similar restrictions are placed on us accepting items of value from third parties.

**COMPLIANCE TIPS:**

- ✓ Do not make, offer or promise any payment, gift, service, offer of employment or anything of value (directly or indirectly) that is intended to improperly influence the actions of government personnel or private individuals to advance Avadel's interests.
- ✓ Do not provide anything of value, including grants, donations, and offers of employment or gifts, to encourage the recipient, either from the government or private sector, to use Avadel products.
- ✓ Be aware that customs in one country, including gift giving, may not be lawful or appropriate elsewhere.

# Interaction with Healthcare Professionals

***Relationships between the pharmaceutical industry and healthcare professionals (including relevant decision-makers and other individuals of influence who are not necessarily healthcare professionals) are under constant public scrutiny. Avadel shall conduct all interactions with healthcare professionals with the utmost integrity, as well as in compliance with applicable laws, regulations and industry codes.***

***While laws, regulations, industry codes or other Company policies may require the application of more specific definitions for these categories of individuals, we generally interpret the definition of healthcare professionals in a very broad sense to include any person in a position to prescribe, purchase, recommend, supply or administer Avadel products, or to otherwise influence the use of our products or the results of Avadel's product-related medical research.***

*Healthcare professionals may include any person in a position to:*

- ***Prescribe***
- ***Purchase***
- ***Recommend***
- ***Supply or administer Avadel products,***

*or*

- ***To otherwise influence***

*the use of our products or the results of Avadel's product-related medical research.*

### EDUCATIONAL AND PROMOTIONAL MEETINGS

Informational presentations and discussions by Avadel sales specialists are valuable tools used to provide scientific and clinical information about Avadel products. *(See Section entitled "Advertising and Promoting Our Products".)* Presentations during healthcare professionals' workday, including mealtimes, are permitted if limited to in-office or in-hospital settings. It is appropriate for modest meals to be offered in conjunction with the company-sponsored presentation as a business courtesy to the healthcare professionals as well as members of their staff attending presentations, so long as the presentations provide scientific, educational or a business value and the meals are: (a) modest as judged by local standards; (b) not part of an entertainment or recreational event; and (c) provided in a manner conducive to informational communication.

### PROHIBITION ON ENTERTAINMENT

For the avoidance of doubt, it is never appropriate to fund any activities, meals, or other expenses, for spouses/partners or other company of a healthcare professional, whether in the framework of a meeting attendance, dinner reception, product presentation, or otherwise.

Similarly, it is never appropriate to provide or pay for any entertainment or recreational activity or event for any healthcare professional. Such activities include, but are not limited to, theater, sporting events, golf, skiing, and leisure or vacation trips or the provision or purchase of sporting equipment.

Such entertainment or recreational events, activities, or items may not be provided, regardless of (1) their value; (2) whether Company engages the healthcare professional as a speaker or consultant, and (3) even if accompanied by patient or physician education materials.

### PRODUCT SAMPLES

In markets where permitted, free samples of Avadel products may be provided to healthcare professionals via third party distribution for distribution by the prescriber to their patients. Samples of Avadel products may be provided to healthcare professionals in accordance with Company policies and applicable laws and shall not exceed the amount reasonably necessary for adequate evaluation of the sample products distributed. At no time shall samples be distributed by Avadel sales specialists directly to healthcare professionals.

### ENGAGEMENT WITH HEALTHCARE PROFESSIONALS

Qualified healthcare professionals may be hired as consultants to provide bona fide services, such as assisting in the development of products or product claims, participating in clinical trials or other research, speaking at presentations or conferences or training Avadel colleagues. Such arrangements are designed to be in compliance with applicable laws and industry codes.

In no instance will Avadel engage any healthcare professional, regardless of qualification, as an inducement for such healthcare professional to use, prescribe, purchase or recommend an Avadel product or to influence the outcome of a clinical trial. Avadel is committed to ensuring that its relationships with healthcare professionals are designed to comply with applicable laws and industry codes. All arrangements shall be periodically reviewed to ensure (i) they are set out in writing; (ii) there is a legitimate need for the services; (iii) the services have been provided; (iv) compensation is at fair market value; and (v) all of the preceding facts are documented prior to payment.

### COMPLIANCE WITH TRANSPARENCY/DISCLOSURE RULES

Interactions with healthcare professionals can give rise to apparent or actual conflicts of interest and because of this there is a growing public expectation that interactions between pharmaceutical companies and healthcare professionals should be transparent. It is necessary to disclose financial and other interests and relationships that may create apparent or perceived conflicts of interest in research, education or

Providing items of entertainme including conce or paying for ot social or recreat events, as well a minimal value it such as pens ar bottles, may fo misperceptions company intera with healthcare professionals a based on inforr them about me and scientific is Such entertainr non-educationa should not be c healthcare prof or members of staff, even if th are accompanie patient or phys educational ma

clinical practice. Pursuant to the Physician Sunshine Act and other U.S. state laws, Avadel is required to submit an annual report to Centers for Medicare & Medicaid Services regarding information related to direct or indirect payments and other transfers of value made to physicians (defined to include doctors, dentists, optometrists, podiatrists and chiropractors) and teaching hospitals, as well as ownership and investment interests held by the physicians and their immediate family members. Avadel has developed and currently maintains systems and processes to ensure timely, accurate and complete disclosures, which should be utilized by all Avadel employees and sales specialists.

**INDEPENDENT DECISION MAKING**

Nothing of value (e.g. grants, scholarships, payor coverage, subsidies, support, consulting contracts or educational or practice related items) should be provided or offered to a healthcare professional that would interfere with the independence of a healthcare professional's decision making and methods of prescribing medication to his or her patients.

**COMPLIANCE TIPS:**

- ✓ Never promise or provide anything of value for the purpose of encouraging or inducing any healthcare professional to purchase, prescribe, use or recommend our products.
- ✓ When compensating any healthcare professional for his/her services, the amount must be commensurate with the services provided and reflect fair market value.
- ✓ You are required to collect and report any direct or indirect transfers of value including payments to healthcare professionals consistent with applicable laws, regulations and industry codes.

## Advertising and Promoting Our Products

Good advertising and promotion activities are founded upon honesty and truthfulness, and this practice ultimately helps us sell our products. Avadel's policy is to advertise, promote and market our products to healthcare professionals by providing substantiated information about the usage, safety, effectiveness and other aspects of the profile of our products.

*"Avadel products must be presented in an accurate, truthful and balanced manner, consistent with all applicable laws, regulations and industry codes."*

**All promotional materials distributed must be in the form and format supplied by the Avadel Medical Affairs Department with no additions or revisions made. The Avadel Medical Affairs and Legal Departments, in their review of Avadel promotional materials, take appropriate and extensive measures to ensure that the materials conform with applicable laws, regulations and industry standards.**

Interactions with healthcare professionals to promote Avadel products should be focused on informing such healthcare professionals about products, providing scientific and educational information and supporting medical education. Promotional materials provided to healthcare professionals by or on behalf of an Avadel sales specialist should: (a) be accurate and substantiated and not misleading; (b) not refer to off-label uses of the product; (c) make claims about a product only when properly substantiated; (d) reflect the balance between risks and benefits; and (e) be consistent with all applicable legal and regulatory standards, including any FDA-approved product labeling requirements governing such communications.

When describing the uses and effectiveness of Avadel products to healthcare professionals, Avadel sales specialists must avoid promoting, directly or indirectly, any unlawful off-label use or any use that Avadel is not permitted to promote based on applicable laws and regulations or agreements with government agencies, as applicable. Also, we prohibit the use of unsubstantiated or misleading comparisons between our products and those of our competitors.

When advertising and promoting Avadel products, Avadel personnel must know and understand their role in the product promotion process. If, for example, you work on research and development, you may interact with healthcare providers and/or purchasing decision-makers. It is important to be aware of the role you are playing and what activities are permitted in these different situations.

There are a variety of non-promotional contexts in which we may legally present product-related information or materials to interested parties or the public at large. As we do with promotional information, we ensure that our non-promotional product-related communications are truthful, accurate, balanced, not misleading and supported by scientific evidence.

**COMPLIANCE TIPS:**

- ✓ Be sure your promotional discussions and the promotional information you use or distribute are complete, accurate and not misleading when you are promoting Avadel's products.
- ✓ Never promote Avadel products off-label. All product claims must be consistent with approved labeling and prescribing information.
- ✓ When discussing Avadel products, always provide fair balance – that is be sure to describe all safety information fully and accurately and never misrepresent or minimize it in any way.

# Interaction with Business Partners

***Avadel works with a variety of third-party business partners, and strong partnerships play a key role in our success. We are committed to dealing with all our business partners fairly, openly and with integrity. We expect high ethical standards from them, as well.***

Our business partners include, but are not limited to, service providers, contract research organizations, contract manufacturing organizations, contract sales organizations, research and development collaborators, co-promotion partners, licensed distributors and wholesalers.

## SELECTING BUSINESS PARTNERS APPROPRIATELY

Avadel selects business partners based on appropriate criteria that are directly related to our business objectives, including, but not limited to, price and quality of goods or services, capability, reputation and past performance. We also take ethical considerations into account, including our partners' commitment to anti-corruption, human and labor rights, environmental protection and other ethical and social responsibility standards, as well as their past conduct relating to these. We assess the suitability of our potential business partners, through appropriate levels of due diligence, in accordance with applicable Company policies and procedures.

We do not put our personal interests ahead of Company interests when selecting business partners. We always exercise our professional judgment in the best interests of the Company and never seek personal gain as a condition of establishing or continuing a business relationship. (*See Section entitled "Avoiding Conflicts of Interest".*)

If you feel that you are being inappropriately pressured or influenced to do business by a third party or someone within the Company, you must notify your immediate supervisor, manager and/or the Legal Department immediately.

## PROPER DOCUMENTATION AND ETHICAL RELATIONSHIPS

As a general rule, we ensure that appropriate contracts or other comparable documents are in place for all business arrangements with third parties. Such documents must clearly set forth all material terms and conditions and never be created as a false record to pursue an improper purpose. (*See Section entitled "Record Keeping".*) We negotiate in good faith with our potential business partners to ensure all compensation we pay for their goods or services is commensurate with the value they provide. If we find ourselves in a superior bargaining position, we do not impose unreasonable disadvantages on the other party by abusing our position.

Members of the Avadel team should never solicit or request (either explicitly or implicitly) any payment, gift, meal or other item of value (whether tangible or intangible) from our current or potential business partners. You are only permitted to accept these items if they are unsolicited, legal, modest in value, infrequent, part of commonly-accepted business or cultural practices and consistent with relevant Company policies and industry standards. Also, you are prohibited from accepting any item of value that is intended, or likely to be perceived as intended, to improperly influence your business decisions or actions. If you receive a gift that does not meet the permissible criteria, you must return it immediately. If returning it is impractical or would cause serious offense to the giver, you must promptly consult with your supervisor or manager and/or the Legal Department for guidance.

Similar restrictions are placed on us providing items of value to third parties. (*See Section entitled "Anti-Bribery and Anti-Corruption".*)

## AVADEL'S RESPONSIBILITY FOR BUSINESS PARTNERS' CONDUCT

We recognize that any misconduct by our business partners could subject Avadel to liability and/or reputational harm. We do not direct, authorize or condone any illegal act by our business partners. We require their compliance with applicable laws, regulations and industry codes, as well as their contractual obligations to Avadel.

We will in appropriate circumstances conduct due diligence on our business partners to ensure that we retain only reputable, honest and qualified business partners. Such due diligence may include review of records of business partners to ensure compliance with applicable laws, regulations, industry codes and Company policies and procedures.

*" All business decisions mu based on Av best interest should avoid the appeara conflict of in*

***If you have any compliance issue with a business partner, you must promptly report it to your supervisor or manager and/or the Legal Department.***

**COMPLIANCE TIPS:**

- ✓ Deal with suppliers, customers and everyone doing business with Avadel objectively, professionally and fairly.
- ✓ Never seek or accept payments, fees, loans or services from any person or firm as a condition of doing business with Avadel.
- ✓ Do not accept gifts from people or firms doing or seeking to do business with Avadel that give even the appearance of wrongful intention.

## *Avoiding Conflicts of Interest*

All Avadel personnel are responsible for acting in the best interests of the Company and ensuring that their professional judgment or actions for the Company are not compromised by their own interests.

We are all expected to avoid having any personal interest that could conflict with Company interests. Even when no actual conflict is intended, putting ourselves in such a situation might diminish our impartiality or dedication to our job duties and thereby damage the Company.

Although it is impossible to describe every conflict of interest situation, there are some common areas where actual or potential conflicts may occur. These include:

- » Having a significant investment or ownership interest in competitors or business partners of the Company;
- » Serving as a director, officer, employee, consultant or advisor for competitors or business partners of the Company;

*" Full disclosure is key to addressing actual or potential conflicts of interest."*

- » Engaging in outside activities that compete with the Company's business or impair our ability to devote sufficient time and attention to our assigned jobs and responsibilities at the Company;
- » Doing business on behalf of the Company with related parties; and
- » Using corporate information, assets or opportunities, or our positions at the Company for personal benefit or for the benefit of others.

While these rules may require us to strictly avoid certain conflicts of interest, there are many situations that can be resolved in an acceptable manner for both the individual and the Company. The key to addressing conflicts of interest is full disclosure. If you believe an actual or potential conflict exists or may arise, you must promptly disclose it to your supervisor or manager and/or the Legal Department, who will provide appropriate guidance. Further, all transactions with related parties, such as with family members or businesses in which we have a significant interest, must be approved pursuant to the Company policies.

**COMPLIANCE TIPS:**

- ✓ Avoid situations where a reasonable person would question whether you were inappropriately influenced in making a business decision.
- ✓ Make sure that related-party transactions are conducted as arm's-length transactions and both parties are acting in their own self-interest and are not subject to any duress or pressure from the other party.

# Export/Import Laws

Avadel is a globally-operating company and its international activities are subject to numerous laws, regulations and industry standards all over the world, including trade control laws and regulations.

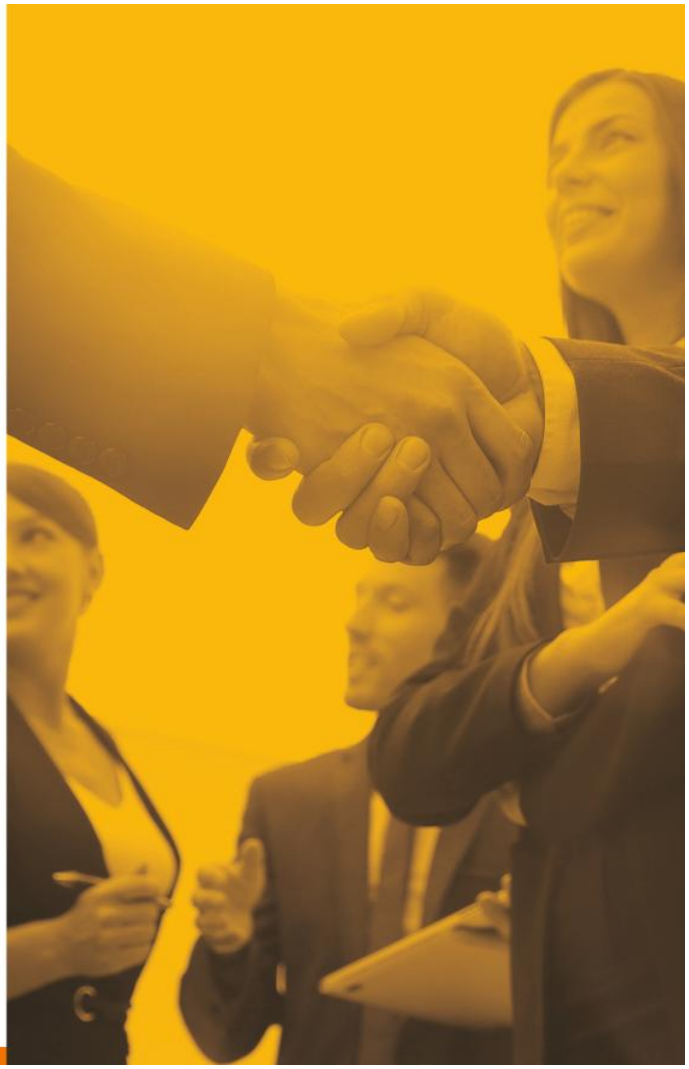
Trade control laws and regulations may restrict or prohibit the import, export or domestic trade of our products and other items (which may include intangibles such as services, software or technology) for a variety of reasons (public health, foreign policy, national security or otherwise). The restrictions or prohibitions may depend on the nature of the item, the country of origin or destination or the identity of a party to the transaction. We are committed to complying with all relevant, import, export and other trade control laws and regulations. We ensure that all required licenses and permits are in place prior to the item being imported, exported or domestically transferred. We also make all proper declarations to relevant customs authorities with truthful, accurate and complete information on applicable items.

The decision to expand our operations (including indirect operations through third parties) beyond those countries in which we are already qualified to conduct business may raise many legal, regulatory and tax implications. These activities must not be undertaken without prior consultation with legal, regulatory, tax and other experts.

Any questions concerning export/import laws or these procedures should be directed to the Legal Department.

**COMPLIANCE TIPS:**

- ✓ In all international dealings, make sure you know and comply with all export and import controls and trade restrictions.
- ✓ Know your location-specific procedures for shipping and other export or import activities.




# Protecting *and* *Managing* Information



## *Protecting Personal Information*

At Avadel, we respect the privacy of the Personal Information entrusted to us. Everyone in the Company worldwide has a role to play in protecting, securing and appropriately processing (e.g., collecting, using, accessing, viewing, storing, transferring, etc.) Personal Information. Avadel, and parties acting on Avadel's behalf, process various types of Personal Information about patients, consumers, clinical trial subjects, healthcare professionals, Avadel employees, contractors and others for a variety of lawful business purposes.

The lawful processing of such information is important to Avadel's business activities. We are required by applicable privacy and data protection laws, including, but not limited to the European General Data Protection Regulation, the Health Insurance Portability and Accountability Act of 1996, as amended (HIPAA) and state privacy laws, to implement appropriate physical, administrative and technical safeguards to protect individual's Personal Information and to take steps to ensure the protection of individual privacy rights. Unlawful or unauthorized use or disclosure of Personal Information could adversely affect the individuals whose information is compromised, as well as potentially expose Avadel to legal and regulatory risks, financial damage and reputational harm. As such, Avadel investigates and responds to all incidents that are known or believed to have compromised the privacy or security of any Personal Information.

**COMPLIANCE TIPS:**

- ✓ If you process an individual's Personal Information, you must comply with all laws and Avadel governance documents in connection with the processing of such Personal Information. This may include providing the individual with proper notice and, if necessary, obtaining the individual's consent pursuant to applicable laws, regulations and Company policies.

Personal Inform
is information r
to an individual
identity is know
can be figured
the information
direct or indirec
This informatio
vary by country
by local law.

- ✓ If you have access to Personal Information, you must safeguard it, use it only for lawful purposes and share it only with authorized people or entities.
- ✓ You must comply with specific protocols or agreements with respect to how Avadel handles Personal Information. For example, commitments made in clinical trial patient informed consent forms or in an Avadel website privacy statement.
- ✓ Laws vary by country. You must know your function's policies and procedures for protecting Personal Information. Also be aware that special rules may apply to some types of Personal Information and certain processes that you may undertake.

## *Safeguarding Company Information*

Confidential information must not be shared with others outside Avadel except pursuant to approved business relationships or legal requirements. The safeguarding of confidential information by employees is critical for strategic, competitive and legal reasons. Confidential information is information that is not generally known outside Avadel, including business plans, marketing and sales programs and data, customer information, product development plans, trade secrets and other intellectual property, undisclosed transactions, design and engineering specs, computer files, personal information about Avadel employees and other information about Avadel and its operations not within the public domain or that is specifically designated as "Confidential" by Avadel.

You should never discuss Avadel's confidential information with anyone outside the Company unless such disclosure has been approved in advance, as required by Company policy. Before sending confidential data to any outside companies, institutions or individuals, you need to obtain the appropriate corporate authorization. A written confidential disclosure agreement is also needed, except when the other party is a governmental regulatory authority or a non-governmental body working on behalf of a governmental authority.

**COMPLIANCE TIPS:**

- ✓ Never use Avadel's confidential information for non-Avadel business or personal endeavors.
- ✓ Never discuss Avadel's confidential information with anyone outside the Company unless such disclosure has been approved in advance as required by Company policy.
- ✓ When you have confidential third party information, respect its proprietary and/or confidential nature. Do not use or disclose this information in a way that violates any legal or contractual obligations with the third party.
- ✓ Information is an especially important asset for a company like Avadel. It gives us a key competitive advantage and must be protected. Information you create or receive on the job is the Company's property, and you are responsible for safeguarding it.

**EXTRA FOCUS**

*Confidential disclosure agreements protect a party's disclosure of information by requiring the party that receives the information to use and handle it in a confidential way. Often, when two companies are considering doing business together, they sign such an agreement to share information that will enable a better understanding between them.*

## Use of Company Systems

Company systems are corporate assets that generally should only be used for Company business. Personal usage can be tolerated subject to reasonable use in terms of frequency and duration. Generally, all Avadel systems and the records and information stored on them are the property of the Company, and you should not expect any confidentiality or privacy when using Company systems. Local laws in some countries, for example outside of the United States, may give you greater rights in terms of confidentiality if records and information are explicitly marked as personal. In any case, all files that you may store on Company systems and assets must be lawful and professionally appropriate.

Where legally permitted to do so, Avadel may, at its sole discretion, inspect your files and messages or monitor your Internet usage at any time without advance notice or consent. Use of a Company system constitutes consent to inspection, monitoring and access by Avadel, as permitted by law. Where not permitted by law to inspect without notice or consent, the use of information system and IT resources provided to employees will be subject to controls and, in the event of disregard of rules or laws, sanctions may be applied. These controls can be done at different levels and on different kinds of equipment with or without a notice to you.

*"Avadel entrusts you with its assets and their proper use."*

**COMPLIANCE TIPS:**

- ✓ Never create, send, display or receive inappropriate, offensive or disruptive material on any Company system.
- ✓ To protect yourself and Avadel, you must not share your password for any Company system.
- ✓ Do not expect confidentiality or privacy when using Company systems, except as provided by applicable law.
- ✓ Return all Company property and equipment, including all information and records stored on them, when your employment ends.

**EXTRA FOCUS**

*Examples of Company systems include Avadel's computers, e-mail, voicemail, instant messages, telephone records, networks and Internet access.*

## Record Keeping

***Proper record keeping is important to the successful management of our business and to maintaining public confidence in Avadel. We keep accurate and timely business records of the Company's transactions and other activities in sufficient detail. We prohibit the intentional making of false or misleading entries in any corporate records for any reason.***

We have records and information management policies and procedures which are designed to help us satisfy business needs and comply with legal and regulatory requirements through the systematic control of our business records throughout their lifecycle (from creation through disposition). As a general rule, we require that all Company records (paper and electronic) be maintained and destroyed in accordance with applicable records and information management policies and procedures.

**LEGAL HOLD ORDER**

A specific Legal Hold Order may be issued by the Legal Department in connection with actual or potential litigation or government investigation relating to Avadel. A Legal Hold Order suspends the normal record retention rules and requires each recipient of the Legal Hold Order to take active steps to preserve all documents in any media (including electronic files and emails) covered by the Legal Hold Order. If we receive a Legal Hold Order, we must strictly comply with its terms unless and until a Legal Hold Order Lift Notice is issued by the Legal Department.

**COMPLIANCE TIPS:**

- ✓ Retain all records for the time needed to comply with applicable laws and Avadel's policies.
- ✓ If a Legal Hold Order is issued, do not destroy any records, information or data (regardless of its form, e.g., paper or electronic) that you are required to retain under that Legal Hold Order.
- ✓ Never create, alter or destroy records or documents for the purpose of impeding the efforts of any governmental or regulatory agency.

## Financial Integrity

Avadel employees and entities shall maintain complete, non-misleading, accurate and reliable Company records and accounts in all material respects. Doing so is necessary not only to comply with applicable laws, regulations and Company policies, but to ensure the integrity of our business operations.

***Accurate and reliable records are crucial to Avadel's business. Our records are the basis of our earning statements, financial reports and other public disclosures and are the source of essential data that guides business decision-making and strategic planning.***

Our "Company Records" include booking information, payroll, time cards, travel and expense reports, accounting and financial data, measurement and performance records, customer and vendor records, design and engineering records (including facility and plant designs) and electronic data files and emails relating to the foregoing. There is never a reason to make or to allow false or misleading entries. Undisclosed or unrecorded transactions are inconsistent with our business practices and are prohibited.

**COMPLIANCE TIPS:**

- ✓ Keep Avadel records accurate, true and complete.
- ✓ If you are involved in preparing reports and documents that Avadel submits to the U.S. Securities and Exchange Commission, be sure that the content is full, fair, accurate, timely and clear.
- ✓ Cooperate fully with Avadel's independent public accountants and never take any action to coerce, manipulate or mislead them.

**EXTRA FOCUS**

*Financial records are not only those records that we report publicly. Records containing financial information are found across the Company and form the foundation of our public disclosures. Every financial record in every function must be accurate, true and complete.*

## Inside Information and Insider Trading

Many countries have laws regarding insider trading. In the United States, for example, you may not buy or sell any type of security while aware of material, non-public information relating to the company issuing the security, whether that company is Avadel or another company. You also may not share material, non-public information with others.

**Definition** - Material, non-public information is any information that a reasonable investor would consider important in determining whether to buy, sell or hold a security and that has not yet been widely disseminated to the public with sufficient time for the financial market to become aware of it.

Even if the activities prohibited under Avadel's Insider Trading Policy are not illegal in the country where you are based, our Insider Trading Policy applies to you regardless of your location. Avadel's policy requirements also apply to family (including spouses, minor children or any family member living in the same household) of Avadel staff.

**COMPLIANCE TIPS:**

- ✓ Never purchase or sell any type of security while you are aware of material, non-public information about Avadel or another company.
- ✓ Do not directly or indirectly pass along ("tip") material, non-public information about Avadel or another company to anyone who may trade securities while aware of such information.
- ✓ Do not directly or indirectly participate in transactions in Avadel securities that are aggressive or speculative or may give rise to an appearance of impropriety.

*"You must no or sell securi Avadel, direc indirectly, b on material, public inforr or communi such informa to others for purpose."*

## Investor and Media Relations

As a publicly traded company, Avadel has a responsibility to maintain an orderly flow of information to the general public and to its investors. All of Avadel's dealings with the investment community and the media, including reporters, must be properly managed to make certain that accurate and timely information is given to investors and the public. We also need to be careful to comply fully with all laws governing our disclosures.

Reporters, media representatives, investors and investment analysts may try to solicit information directly from you. Only authorized members of senior management or designated Company spokespersons are authorized to speak to the news media.

If you receive an inquiry about Avadel from an investor, financial analyst, the media or any other outside party, you should not respond to the request and you should notify Avadel's Chief Financial Officer about the request.

**EXTRA FOCUS**

*All media and investor relations inquires must be handled by the authorized spokespersons of the Company.*

## Government Inspections and Requests

From time to time, we may be contacted by government authorities for information or other assistance (e.g., interviews or site visits) in connection with their inquiries or investigations. The government inquires may be routine or triggered by a specific reason. These government requests must be communicated to all relevant departments, including the Legal Department.

Generally, it is the policy of Avadel to cooperate fully with any government inquiry or investigation. We respond appropriately to these inquiries and investigations with truthful and accurate information. We do not make any false or misleading statements to government representatives, or otherwise interfere with their work. We also do not cause or influence others to impede government inquiries or investigations.

It is not acceptable to alter, destroy or conceal any related documents or records in any format (paper, electronic, etc.) in response to, or in anticipation of, any government inquiry or investigation, or litigation. We also fully comply with all Legal Hold Orders we may receive. *(See Section entitled "Records Keeping".)*

If an allegation is made against Avadel, we will assess its validity and defend our interests in a lawful manner. In these cases, we will take all appropriate actions to protect the interests of the Company in accordance with applicable laws, regulations and Company policies, while cooperating in good faith with government inquiries or investigations.

**COMPLIANCE TIPS:**

- ✓ Never make false or misleading statements to any government official.
- ✓ Be familiar with your location's procedure for complying with a request for access to Avadel's premises or responding to an inquiry, subpoena or other legal request.

# *Additional* **Information**



## *Avadel's Compliance Program*

The Legal Department oversees Avadel's compliance program, which is driven by Avadel's commitment to conducting business with integrity and in compliance with applicable laws, regulations and industry standards. We do this by informing and educating staff and others who conduct business on our behalf about the requirements and our expectations. We also regularly monitor our compliance program to identify any existing compliance-related issues, to determine whether the program is operating as intended and to identify potential improvements.

The major features of our compliance program include:

- A Legal Department head, who is responsible for making sure that the necessary elements of an effective compliance program are in place.
- A Legal Department head who is also responsible for oversight of the compliance program. The Legal Department head and any Compliance personnel reporting to that individual report to the Board of Directors on compliance matters.
- The Legal Department head will issue regular compliance reports to the Nominating and Corporate Governance Committee of the Board of Directors. The Legal Department head will report any financial misconduct to the Audit Committee of the Board of Directors.
- Written policies and supporting documentation such as this Code of Conduct and our Company Policies.
- Ongoing training and education of employees on our compliance program and its requirements.
- A compliance hotline, website, and email through which anyone, internal or external to Avadel, can report misconduct without fear of retaliation. Callers may remain anonymous unless they are from countries where anonymity is discouraged or not permitted by law.
- Routine monitoring of our compliance risks through normal processes embedded in our operations and audits that use a unified approach across our business activities.

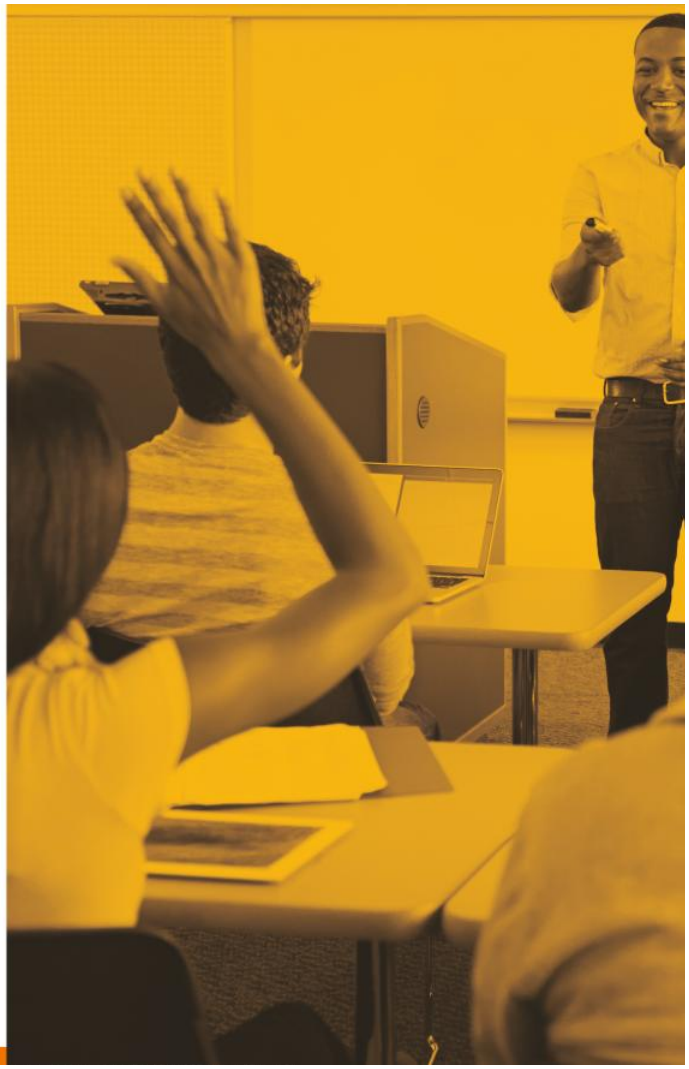
## Asking Questions and Getting Help

Seek help when you need it. If the Code or other Company policies and procedures do not provide enough direction, ask your manager or the Legal Department for clarification.

There are many resources available to help you when you have a question, or need additional guidance about the topics discussed in this Code or about compliance in general. They include:

*"Many resources are at your disposal on a daily basis. If you have a question, ask. If you need confirmation, seek clarification."*

| Resource | Contact Information |
|---|---|
| Your Immediate Supervisor or Manager | Refer to Avadel's Corporate Directory |
| Legal | 636-730-1420 |
| Human Resources | 636-449-5878 |
| Compliance Hotline | 1-844-264-2273<br>email: TellAvadelUS@getintouch.com<br>**For the US**, visit http://www.intouchwebsite.com/TellAvadelUS<br>**For Ireland**, visit http://www.intouchwebsite.com/TellAvadelIreland |



Avadel

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**USA**

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Suite 200
Chesterfield, MO 63005

Phone: +1 (636) 449-1830
Fax: +1 (636) 449-1850

AVADEL.COM

**Exhibit 21.1**

**List of Subsidiaries**

| Name | Jurisdiction |
|---|---|
| Avadel Pharmaceuticals plc (the Registrant): | Ireland |
| 1) Avadel US Holdings, Inc. *(f/k/a Flamel US Holdings, Inc.)* | United States (Delaware) |
| B. Avadel Legacy Pharmaceuticals, LLC *(f/k/a Éclat Pharmaceuticals LLC)* | United States (Delaware) |
| C. Avadel Management Corporation | United States (Delaware) |
| D. Avadel Specialty Pharmaceuticals, LLC | United States (Delaware) |
| E. Avadel CNS Pharmaceuticals, LLC | United States (Delaware) |
| 2) Flamel Ireland Ltd. *(d/b/a Avadel Ireland)* | Ireland |
| 3) Avadel Investment Company, Ltd. | Cayman Islands |
| 4) Avadel France Holding SAS | France |
| A. Avadel Research SAS | France |
| 5) Avadel Finance Ireland Designated Activity Company | Ireland |
| A. Avadel Finance Cayman Ltd. | Cayman Islands |

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in Registration Statement Nos. 333-213154, 333-212585, 333-177591 and 333-219016, and 333-252956 on Form S-8, and 333-183961 and 333-236258 and 333-237962 on Form S-3 of our reports dated March 9, 2021, relating to the consolidated financial statements of Avadel Pharmaceuticals plc (the "Company") and the effectiveness of the Company's internal control over financial reporting, appearing in this Annual Report on Form 10-K of Avadel Pharmaceuticals plc for the year ended December 31, 2020.

/s/ Deloitte and Touche LLP
St. Louis, Missouri
March 9, 2021

**Exhibit 31.1**

## CERTIFICATION

## RULES 13a-14(a) AND 15d-14(a) UNDER THE SECURITIES EXCHANGE ACT OF 1934, AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Gregory J. Divis, certify that:

1. I have reviewed this Annual Report on Form 10-K of Avadel Pharmaceuticals plc;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation;

d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 9, 2021

/s/ Gregory J. Divis
Gregory J. Divis
Chief Executive Officer

**Exhibit 31.2**

## CERTIFICATION

## RULES 13a-14(a) AND 15d-14(a) UNDER THE SECURITIES EXCHANGE ACT OF 1934, AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Thomas S. McHugh, certify that:

1. I have reviewed this Annual Report on Form 10-K of Avadel Pharmaceuticals plc;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation;

d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 9, 2021

/s/ Thomas S. McHugh
Thomas S. McHugh
Senior Vice President and Chief Financial Officer

**Exhibit 32.1**

**CERTIFICATION PURSUANT TO**
**18 U.S.C. SECTION 1350**
**AS ADOPTED PURSUANT TO**
**SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the annual report of Avadel Pharmaceuticals plc (the "Company") on Form 10-K for the period ending December 31, 2020, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Gregory J. Divis, Chief Executive Officer of the Company, certify, to the best of my knowledge, pursuant to 18 U.S.C. §1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

(1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ Gregory J. Divis
Gregory J. Divis
Chief Executive Officer
Avadel Pharmaceuticals plc
March 9, 2021

**Exhibit 32.2**

**CERTIFICATION PURSUANT TO**
**18 U.S.C. SECTION 1350**
**AS ADOPTED PURSUANT TO**
**SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the annual report of Avadel Pharmaceuticals plc (the "Company") on Form 10-K for the period ending December 31, 2020, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Thomas S. McHugh, Senior Vice President and Chief Financial Officer of the Company, certify, to the best of my knowledge, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

(1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ Thomas S. McHugh
Thomas S. McHugh
Senior Vice President and Chief Financial Officer
Avadel Pharmaceuticals plc
March 9, 2021