As confidentially submitted to the Securities and Exchange Commission on May 10, 2021.
This Amendment No. 1 to the draft registration statement has not been publicly filed with the Securities and Exchange Commission and all information herein remains strictly confidential.

Registration No. 333-

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM S-1

REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

Acurx Pharmaceuticals, LLC*

(Exact name of registrant as specified in its charter)

Delaware	**2834**	**82-3733567**
(State or other jurisdiction of incorporation or organization)	(Primary Standard Industrial Classification Code Number)	(I.R.S. Employer Identification Number)

259 Liberty Avenue
Staten Island, NY 10305
(917) 533-1469
(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

David P. Luci
President and Chief Executive Officer
Acurx Pharmaceuticals, LLC
259 Liberty Avenue
Staten Island, NY 10305
(917) 533-1469
(Name, address, including zip code, and telephone number, including area code, of agent for service)

Copies to:

Ivan K. Blumenthal, Esq.
Daniel A. Bagliebter, Esq.
Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.
666 Third Avenue
New York, NY 10017
(212) 935-3000

David E. Danovitch, Esq.
Scott M. Miller, Esq.
Michael DeDonato, Esq.
Sullivan & Worcester LLP
1633 Broadway
New York, NY 10019
(212) 660-3060

Approximate date of commencement of proposed sale to the public:
As soon as practicable after the effective date of this registration statement.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933 check the following box. ☐

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration number of the earlier effective registration statement for the same offering. ☐

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 to Section 7(a)(2)(B) of the Securities Act. ☐

CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities To Be Registered	**Proposed Maximum Aggregate Offering Price[1][2]**	**Amount of Registration Fee[3]**
Common Stock, $0.001 par value per share	$ 20,125,000	$ 2,195.64

(1) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(o) under the Securities Act of 1933, as amended.

(2) Includes the aggregate offering price of additional shares that the underwriter has the option to purchase.

(3) Calculated pursuant to Rule 457(o) based on an estimate of the proposed maximum aggregate offering price.

* Immediately prior to the effectiveness of this Registration Statement, Acurx Pharmaceuticals, LLC will convert into a Delaware corporation pursuant to a statutory conversion, and will change its name to Acurx Pharmaceuticals, Inc.

The registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933, as amended, or until this registration statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.

EXPLANATORY NOTE

Acurx Pharmaceuticals, LLC, the registrant whose name appears on the cover of this Registration Statement, is a Delaware limited liability company. Immediately prior to the effectiveness of this Registration Statement, Acurx Pharmaceuticals, LLC will convert into a Delaware corporation pursuant to a statutory conversion, and will change its name to Acurx Pharmaceuticals, Inc. As a result of the corporate conversion, all holders of membership interests of Acurx Pharmaceuticals, LLC will become holders of shares of common stock of Acurx Pharmaceuticals, Inc. As a result of the corporate conversion:

- all of the outstanding Class A membership interests and all of the outstanding Class B membership interests of Acurx Pharmaceuticals, LLC will become shares of common stock of Acurx Pharmaceuticals, Inc. pursuant to a conversion ratio of one-half of one share of common stock of Acurx Pharmaceuticals, Inc. for each Class A membership interest or Class B membership interest of Acurx Pharmaceuticals, LLC previously held and outstanding. Accordingly, 13,725,196 Class A membership interests and 100,000 Class B membership interests of Acurx Pharmaceuticals, LLC issued and outstanding immediately prior to the corporate conversion will be converted automatically into an aggregate of approximately 6,912,598 shares of common stock of Acurx Pharmaceuticals, Inc. (excluding rounding for fractional shares);
- all of the outstanding warrants to purchase Class A membership interests of Acurx Pharmaceuticals, LLC will become warrants to purchase shares of common stock of Acurx Pharmaceuticals, Inc. at a ratio of one-half of one share of common stock of Acurx Pharmaceuticals, Inc. for each Class A membership interest of Acurx Pharmaceuticals, LLC underlying such warrants, with the effect that warrants to purchase up to an aggregate of 2,875,119 Class A membership interests of Acurx Pharmaceuticals, LLC outstanding immediately prior to the corporate conversion will automatically convert into warrants to purchase up to an aggregate of approximately 1,437,559 shares of common stock of Acurx Pharmaceuticals, Inc. upon consummation of the corporate conversion; and
- the exercise price of all of the outstanding warrants to purchase Class A membership interests of Acurx Pharmaceuticals, LLC will be adjusted in the same ratio as the one-half-for-one conversion ratio for outstanding warrants to purchase Class A membership interests of Acurx Pharmaceuticals, LLC noted above such that all of our outstanding warrants to purchase Class A membership interests of Acurx Pharmaceuticals, LLC which are currently exercisable at a weighted average price of $1.44 per Class A membership interest will automatically be adjusted such that the new exercise price for the warrants to purchase shares of common stock of Acurx Pharmaceuticals, Inc. that will be outstanding upon consummating the corporate conversion will be at a weighted average price of $2.88 per share, subject to certain adjustment provisions included in each such warrant.

Except as disclosed in the accompanying prospectus, the financial statements data and other financial information included in this Registration Statement are those of Acurx Pharmaceuticals, LLC and do not give effect to the corporate conversion. All share and warrant amounts and related prices reflected in the accompanying prospectus give effect to the corporate conversion, however such amounts appearing in Part II of this Registration Statement do not give effect to the corporate conversion.

SUBJECT TO COMPLETION, DATED MAY 10, 2021

PRELIMINARY PROSPECTUS

Acurx Pharmaceuticals, LLC

2,500,000 Shares of Common Stock

Acurx Pharmaceuticals, LLC (the "Company", "we", "us" or "our") is offering 2,500,000 shares of common stock on a firm commitment basis, assuming an initial public offering price per share of $6.00. This is our initial public offering and no public market currently exists for our common stock. We anticipate that the initial public offering price will be between $5.00 and $7.00 per share and will be determined at pricing, based on, among other factors, our future prospects and those of our industry in general, and our sales, earnings and certain other financial and operating information in recent periods. A description of the determination of the initial public offering price is included in "*Underwriting — Pricing of the Offering.*". We have applied to list our common stock on The Nasdaq Capital Market under the symbol "ACXP."

We are an "emerging growth company" as defined under the federal securities laws and, as such, have elected to comply with certain reduced reporting requirements for this prospectus and may elect to do so in future filings.

Investing in our common stock is highly speculative and involves a high degree of risk. See "*Risk Factors*" beginning on page 12 to read about factors you should consider before buying shares of our common stock.

Neither the Securities and Exchange Commission nor any other regulatory body has approved or disapproved of these securities or passed upon the accuracy or adequacy of the disclosures in this prospectus. Any representation to the contrary is a criminal offense.

	Per Share	Total
Initial public offering price	$	$
Underwriting discounts and commissions(1)	$	$
Proceeds, before expenses, to us	$	$

(1) See the section titled "*Underwriting*" for a description of the compensation payable to the underwriter, including reimbursement of certain expenses.

We have granted the underwriter an option for a period of 45 days from the date of this prospectus to purchase up to an additional 375,000 shares of our common stock to cover over-allotments, if any, based on an assumed initial public offering price per share of $6.00. If such over-allotment option is fully exercised, the Company will receive an additional $, less an 8.0% fee to the underwriter before expenses.

The underwriter expects to deliver the shares against payment in New York, New York, on or about , 2021.

Sole Book-Running Manager

Alexander Capital, L.P.

The date of this prospectus is , 2021

TABLE OF CONTENTS

ABOUT THIS PROSPECTUS

This prospectus is part of a registration statement that we have filed with the Securities and Exchange Commission (the "SEC"). You should not assume that the information contained in this prospectus is accurate on any date subsequent to the date set forth on the front cover of this prospectus even though this prospectus is delivered or shares of common stock are sold or otherwise disposed of on a later date. It is important for you to read and consider all information contained in this prospectus in making your investment decision. You should also read and consider the information in the documents to which we have referred you under "*Where You Can Find More Information*" in this prospectus.

Neither we nor the underwriter have authorized anyone to give any information or to make any representation to you other than those contained in this prospectus. This prospectus does not constitute an offer to sell or the solicitation of an offer to buy any of our shares of common stock other than the shares of our common stock covered hereby, nor does this prospectus constitute an offer to sell or the solicitation of an offer to buy any securities in any jurisdiction to any person to whom it is unlawful to make such offer or solicitation in such jurisdiction. Persons who come into possession of this prospectus in jurisdictions outside the United States are required to inform themselves about, and to observe, any restrictions as to the offering and the distribution of this prospectus applicable to those jurisdictions.

Emerging Growth Company

We are an emerging growth company, as defined under the Jumpstart Our Business Startups Act of 2012 (the "JOBS Act"). The JOBS Act provides that an emerging growth company can delay adopting new or revised accounting standards until such time as those standards apply to private companies. We cannot predict if investors will find our common stock less attractive because we may rely on these exemptions. If some investors find our common stock less attractive as a result, there may be a less active trading market for our common stock and our stock price may be more volatile.

Subject to certain conditions set forth in the JOBS Act, if, as an "emerging growth company," we choose to rely on such exemptions we may not be required to, among other things, (i) provide an auditor's attestation report on our system of internal controls over financial reporting pursuant to Section 404, (ii) provide all of the compensation disclosure that may be required of non-emerging growth public companies under the Dodd-Frank Wall Street Reform and Consumer Protection Act, (iii) comply with any requirement that may be adopted by the Public Company Accounting Oversight Board regarding mandatory audit firm rotation or a supplement to the auditor's reporting providing additional information about the audit and the financial statements (auditor discussion and analysis), and (iv) disclose certain executive compensation related items such as the correlation between executive compensation and performance and comparisons of the CEO's compensation to median employee compensation.

We could remain an "emerging growth company" for up to five years, or until the earliest of (i) the last day of the first fiscal year in which our annual gross revenues exceed $1.07 billion, (ii) the date that we become a "large accelerated filer" as defined in Rule 12b-2 under the Securities and Exchange Act of 1934, as amended (the "Exchange Act"), which would occur if the market value of our common stock that is held by non-affiliates exceeds $700 million as of the last business day of our most recently completed second fiscal quarter, or (iii) the date on which we have issued more than $1.07 billion in non-convertible debt during the preceding three-year period.

Smaller Reporting Company

We are also currently a "smaller reporting company," meaning that we are not an investment company, an asset-backed issuer, or a majority-owned subsidiary of a parent company that is not a smaller reporting company and have a public float of less than $250 million or annual revenues of less than $100 million during the most recently completed fiscal year. In the event that we are still considered a "smaller reporting company," at such time we cease being an "emerging growth company," the disclosure we will be required to provide in our SEC filings will increase, but will still be less than it would be if we were not considered either an "emerging growth company" or a "smaller reporting company." Specifically, similar to "emerging growth companies," "smaller reporting companies" are able to provide simplified executive compensation disclosures in their filings; are exempt from the provisions of Section 404(b) of the Sarbanes-Oxley Act

requiring that independent registered public accounting firms provide an attestation report on the effectiveness of internal control over financial reporting; and have certain other decreased disclosure obligations in their SEC filings, including, among other things, only being required to provide two years of audited financial statements in annual reports. Decreased disclosures in our SEC filings due to our status as an "emerging growth company" or "smaller reporting company" may make it harder for investors to analyze our results of operations and financial prospects.

Presentation of Financial Information

Pursuant to the applicable provisions of the Fixing America's Surface Transportation Act, we are omitting our financial statements for periods prior to the year ended December 31, 2019 because they relate to historical periods that we believe will not be required to be included in the prospectus at the time of the offering. We intend to amend this registration statement to include all financial information required by Regulation S-X at the date of such amendment before distributing a preliminary prospectus to investors.

The financial statements include the accounts of Acurx Pharmaceuticals, LLC and its subsidiaries. Immediately prior to the effectiveness of the registration statement of which this prospectus forms a part, Acurx Pharmaceuticals, LLC will convert into a Delaware corporation pursuant to a statutory conversion, and will change its name to Acurx Pharmaceuticals, Inc. All holders of membership interests of, or warrants to purchase membership interests of, Acurx Pharmaceuticals, LLC will become holders of shares of common stock, or options or warrants to purchase shares of common stock, as applicable, of Acurx Pharmaceuticals, Inc., as described under the heading "Corporate Conversion." In this prospectus, we refer to all transactions related to our conversion to a corporation as the Corporate Conversion.

Industry and Market Data

This prospectus includes statistical and other industry and market data that we obtained from industry publications and research, surveys and studies conducted by third parties. Industry publications and third-party research, surveys and studies generally indicate that their information has been obtained from sources believed to be reliable, although they do not guarantee the accuracy or completeness of such information.

PROSPECTUS SUMMARY

This summary highlights selected information contained elsewhere in this prospectus and does not contain all of the information that you should consider in making your investment decision. Before investing in our common stock, you should carefully read this entire prospectus, including our financial statements and the notes thereto and the information set forth under the "Risk Factors" and "Management's Discussion and Analysis of Financial Condition and Results of Operations" sections of this prospectus. Except where the context otherwise requires or where otherwise indicated, the terms "Acurx," "we," "us," "our," "our company," "Company" and "our business" refer, prior to the Corporate Conversion discussed herein, to Acurx Pharmaceuticals, LLC, and after the Corporate Conversion, to Acurx Pharmaceuticals, Inc.

Introduction

We are a clinical stage biopharmaceutical company developing a new class of antibiotics for infections caused by bacteria listed as priority pathogens by the World Health Organization ("WHO"), the U.S. Centers for Disease Control and Prevention ("CDC"), and the U.S. Food and Drug Administration ("FDA"). Priority pathogens are those which require new antibiotics to address the worldwide crisis of antimicrobial resistance ("AMR"), as identified by the WHO, CDC and FDA. The CDC estimates that, in the U.S., antibiotic-resistant pathogens infect one individual every 11 seconds and result in one death every 15 minutes. The WHO recently stated that growing antimicrobial resistance is equally as dangerous as the ongoing COVID-19 pandemic, threatens to unwind a century of medical progress and may leave us defenseless against infections that today can be treated easily. According to the WHO, the current clinical development pipeline remains insufficient to tackle the challenge of the increasing emergence and spread of antimicrobial resistance.

Our approach is to develop antibiotic candidates that block the DNA polymerase IIIC enzyme ("Pol IIIC"). We believe we are developing the first Pol IIIC inhibitor to enter clinical trials. Pol IIIC is the primary catalyst for DNA replication of several Gram-positive bacterial cells. Our research and development pipeline includes clinical stage and early stage antibiotic candidates that target Gram-positive bacteria for oral and/or parenteral treatment of infections caused by *Clostridium difficile*, Enterococcus (including vancomycin-resistant strains ("VRE")), Staphylococcus (including methicillin-resistant strains ("MRSA")), and Streptococcus (including antibiotic-resistant strains).

Pol IIIC is required for the replication of DNA in certain Gram-positive bacterial species. By blocking this enzyme, our antibiotic candidates are believed to be bactericidal and inhibit proliferation of several common bacterial pathogens, including both sensitive and resistant *Clostridium difficile* ("*C. difficile*"), MRSA, vancomycin resistant Enterococcus, penicillin-resistant Streptococcus pneumoniae ("PRSP") and other resistant bacteria.

Our Technology

Our lead antibiotic candidate, ibezapolstat (formerly named ACX-362E), has a novel mechanism of action that targets the Pol IIIC enzyme, a previously unexploited scientific target. We recently completed a Phase 2a clinical trial of ibezapolstat to treat patients with *C. difficile* infections ("CDI"). The Phase 2a clinical trial was terminated early based upon the recommendation of our Scientific Advisory Board ("SAB"). The SAB reviewed the study data presented by management, including adverse events and efficacy outcomes, and discussed their clinical impressions. The SAB unanimously supported the early termination of the Phase 2a trial after 10 patients were enrolled in the trial instead of 20 patients as originally planned . The early termination was further based on the evidence of meeting the treatment goals of eliminating the infection with an acceptable adverse event profile.

The SAB noted that 10 out of 10 patients enrolled in the Phase 2a trial reached the Clinical Cure endpoint, defined in the study protocol as the resolution of diarrhea in the 24-hour period immediately before the end-of-treatment that is maintained for 48 hours after end of treatment. Such cure was sustained, meaning that the patients showed no sign of infection recurrence, for 30 days thereafter. This constitutes a 100% response rate for the primary and secondary endpoints of the trial. All 10 patients enrolled in the Phase 2a trial met the study's primary and secondary efficacy endpoints, namely, Clinical Cure at end of treatment and Sustained Clinical Cure of no recurrence of CDI at the 28-day follow-up visit. No treatment-related

serious adverse events ("SAEs") were reported by the investigators who enrolled patients in the trial. We believe these results represent the first-ever clinical data showing Pol IIIC has potential as a therapeutically-relevant antibacterial target. We plan to commence a Phase 2b clinical trial pursuant to the trial design described below.

The SAB is comprised of nine scientists and clinicians who have significant expertise in the scientific disciplines required for the research and development of antibiotics. The members of the SAB serve at the pleasure of management, are paid in cash on an hourly basis for their services and do not receive equity compensation. Generally, the SAB is consulted by management during the process of designing our preclinical and clinical trials as well as in the process of analyzing data generated from these trials, although the SAB's services are not limited to such activities.

Currently-available antibiotics used to treat CDI infections utilize other mechanisms of action. We believe ibezapolstat is the first antibiotic candidate to work by blocking the DNA Pol IIIC enzyme in *C. difficile*. This enzyme is necessary for replication of the DNA of certain Gram-positive bacteria, like *C. difficile*.

We also have an early stage pipeline of antibiotic product candidates with the same previously unexploited mechanism of action which has established proof of concept in animal studies. This pipeline includes ACX-375C, a potential oral and parenteral treatment targeting Gram-positive bacteria, including MRSA, VRE and PRSP.

Market Opportunity

C. Difficile Infection

According to the 2017 Update (published February 2018) of the *Clinical Practice Guidelines for Clostridium difficile Infectionin Adults and Children by the Infectious Diseases Society of America (IDSA) and Society of Healthcare Epidemiology of America (SHEA)*, CDI remains a significant medical problem in hospitals, in long-term care facilities and in the community. Clostridioides (formerly Clostridium) difficile, also known as *C. difficile* or C. diff, is one of the most common causes of healthcare-associated infections in U.S. hospitals (Lessa, et al, 2015, New England Journal of Medicine). Recent estimates suggest *C. difficile* approaches 500,000 infections annually in the U.S. and is associated with approximately 20,000 deaths. (Guh, 2020, New England Journal of Medicine). Based on internal estimates, including a recurrence rate of between 20% and 40% among approximately 150,000 patients treated, we believe that the annual incidence in the U.S. approaches 600,000 infections and a mortality rate of approximately 9.3%.

Antibiotics are the gold standard to treat CDI. However, while currently marketed antibiotics achieve a relatively high initial cure rate, they can fail to eliminate *C. difficile*, especially drug-resistant strains, in the gut, allowing the continued growth of the bacteria. This, together with a pronounced detrimental effect on the gut microbiome, leads to recurrence in over 25% of CDI patients after therapy is stopped. A significant unmet need remains for antibiotics that can meaningfully reduce recurrence. According to our recent clinical data, we believe ibezapolstat has the potential to continue to provide a bactericidal effect combined with a low incidence of recurrence when used to treat CDI.

Antibiotics provide advantages over the use of antibodies, microbiologics, and vaccines. Antibodies are generally only administered in combination with an antibiotic. Due to high costs and the inability to use antibodies as a first-line treatment, antibodies have gained limited commercial traction and there has only been one antibody treatment for CDI approved to date. As of the date of this prospectus, there are currently two microbiologics in late-stage development with clinical data forthcoming. Safety is a concern with microbiologics, and this course of treatment is only recommended for patients with multiple recurrences of CDI who have failed appropriate antibiotic treatments. There are also several vaccines against *C. difficile* in late-stage development, but none are currently approved. A vaccine is only likely to be commercially viable as a prevention of recurrent CDI in high-risk patients, if such patients can be identified. Additionally, large numbers of patients are required for clinical trials of vaccines, which could significantly delay the clinical development process for and eventual release of any CDI vaccine products currently in development.

MRSA, VRE and PRSP

In its 2019 update, the CDC further reported that more than 2.8 million antibiotic-resistant infections occur in the U.S. each year and more than 35,000 people die as a result, nearly twice as many annual deaths than previously reported by CDC in 2013. These deaths are attributed to antimicrobial-resistant pathogens including Enterococcus (including vancomycin-resistant strains or VRE), Staphylococcus (including MRSA), and Streptococcus (including antibiotic-resistant strains) which are the targets of our second antibiotic candidate currently in preclinical development. In hospitalized patients, MRSA accounted for 52% of all infections, which is almost twice as many as multidrug resistant Gram-negative infections.

ACX-375C, our second antibiotic candidate, is in preclinical development and, specifically, is at the point where we are optimizing the lead compound. The goal of lead optimization, which is part of the preclinical stage of development, is to identify and synthesize compounds with the best potency while demonstrating improvements in (1) aqueous solubility, (2) plasma protein binding and (3) cytotoxicity.

ACX- 375C has demonstrated potent activity against clinically important pathogens including minimum inhibitory concentration values ("MIC values"), of 1 to 4 μg/mL against MRSA, VRE and PRSP. Further characterization and testing in animal models are ongoing. Management believes that potential clinical indications of the efficacy of ACX-375C include infections that can impact the urinary tract, hospital acquired catheter/blood stream, intra-abdominal areas, skin/soft tissues, bones/joints, pneumonia, and ear/sinus infections. These bacterial targets involve an estimated incidence of approximately six million patients per year in the U.S. alone. Based on a review of other antibiotics currently marketed to treat these bacterial infections, our early estimate of peak year sales potential is based on 4% to 5% of this annual incidence and a peak year sales potential of $1 billion. This drug can help fill an unmet medical need because drugs currently used, such as daptomycin and linezolid-resistant bacteria, experience antibiotic resistance. (Wei-Chu Xu, et al., Bioorganic & Medicinal Chemistry https://doi.org/10.1016/j.bmc.2019.06.017).

Our Competitive Strengths

We attribute our success to the following competitive strengths:

- We have a novel mechanism of action which we believe will be highly advantageous given the continuing rate of recurrent CDI with currently available treatment options and the rising prevalence of antimicrobial resistance.
- Since ibezapolstat's molecular structure and mechanism of action are unrelated to any other antimicrobial chemical class, its use is not expected to foster the emergence of bacteria that are resistant to other classes of antibiotics.
- The Phase 1 Trial showed highly selective activity against *C. difficile* bacteria with minimal disruption to the gut flora as it is poorly soluble which has been corroborated by the data from the microbiome analysis.
- As of the date of this prospectus, ibezapolstat has shown an excellent human safety profile.

Our designation by the FDA of Qualified Infectious Disease ("QIDP") status and Fast Track designation provides significant benefits to our development of ibezapolstat. We have significant existing patent coverage in the world's largest pharmaceutical markets (U.S., Europe, Japan and Canada) extending to May 2032 in the United States and September 2030 in foreign markets. There is also the possibility to extend those patents thereafter. We also have a simple and low-cost process of manufacturing which is expected to yield cost of goods of less than 5% of the anticipated retail price.

Risks Associated With Our Business

Our business is subject to a number of risks and uncertainties that you should understand before making an investment decision. Risks are discussed more fully in the section entitled "*Risk Factors*" of this prospectus. These risks include, but are not limited to, the following:

Risks Related to Our Business

- We have a very limited operating history and are expected to incur significant operating losses during the early stage of our corporate development.

- We are reliant on the success of our lead product candidate, ibezapolstat, which we are developing for the treatment of CDI. If we are unable to commercialize ibezapolstat, or experience significant delays in doing so, our business will be materially harmed.
- If serious adverse or inappropriate side effects are identified during the development of ibezapolstat or any other product candidate, we may need to abandon or limit our development of that product candidate.
- Ibezapolstat or our other product candidates may never achieve sufficient market acceptance even if we obtain regulatory approval.
- We are exposed to product liability, and non-clinical and clinical liability risks which could place a substantial financial burden upon us, should lawsuits be filed against us.
- We are not currently profitable and may never become profitable.
- Our current and future operations substantially depend on our management team and our ability to hire other key personnel, the loss of any of whom could disrupt our business operations.
- Our failure to complete or meet key milestones relating to the development of our technologies and proposed products and formulations would significantly impair our financial condition.
- We will compete with larger and better capitalized companies, and competitors in the drug development or pharmaceutical industries may develop competing products which outperform or supplant our proposed products.
- We will incur increased costs as a result of being a public company.
- The insurance coverage and reimbursement status of newly approved products is uncertain. Failure to obtain or maintain adequate coverage and reimbursement for new or current products could limit our ability to market those products and decrease our ability to generate revenue.

Risks Related to Regulatory Approval

- If clinical trials of our lead product candidate fail to demonstrate safety and efficacy to the satisfaction of the FDA, or the European Medicines Agency (the "EMA"), or do not otherwise produce favorable results, we may incur additional costs or experience delays in completing, or ultimately be unable to complete the development and commercialization of ibezapolstat or any other product candidate.
- If we experience any of a number of possible unforeseen events in connection with our clinical trials, potential marketing approval or commercialization of our product candidates could be delayed or prevented.
- If we experience delays or difficulties in the enrollment of patients in our clinical trials, our receipt of necessary marketing approvals could be delayed or prevented.
- Our failure to obtain costly government approvals, including required FDA approvals, or to comply with ongoing governmental regulations relating to our proposed products and formulations could delay or limit introduction of our proposed formulations and products and result in failure to achieve revenues or maintain our ongoing business.
- Our results of operations may be adversely affected by current and potential future healthcare legislative and regulatory actions.

Risks Related to Our Dependence on Third Parties

- If we are unable to establish sales and marketing capabilities or enter into agreements with third parties to market and sell our product candidates, we may not be successful in commercializing ibezapolstat or any other product candidate if and when such product candidates are approved.
- We contract with third parties for the manufacture of our product candidates for preclinical studies and our ongoing clinical trials, and expect to continue to do so for additional clinical trials and ultimately for commercialization. This reliance on third parties increases the risk that we will not

have sufficient quantities of our product candidates or drugs or such quantities at an acceptable cost, which could delay, prevent or impair our development or commercialization efforts.

- If ultimate users of our product candidates are unable to obtain adequate reimbursement from third- party payers, or if new restrictive legislation is adopted, market acceptance of our proposed products may be limited and we may not achieve material revenues.

Risks Related to Intellectual Property

- We may be involved in lawsuits to protect or enforce our patents.
- Intellectual property litigation could cause us to spend substantial resources and distract our personnel from their normal responsibilities.
- We may need to license certain intellectual property from third parties, and such licenses may not be available or may not be available on commercially reasonable terms.
- If we are unable to adequately protect or enforce our rights to intellectual property or secure rights to third-party patents, we may lose valuable rights, experience reduced market share, assuming any, or incur costly litigation to enforce, maintain or protect such rights.
- Third party intellectual property rights, including patents, may affect or even block our ability to commercialize our future products in one or more countries. Third parties may sue us for infringing their patents. Defending such lawsuit would be costly and in the event of a successful claim of infringement against us, we may be required to:
  - pay substantial damages;
  - stop using our technologies and methods;
  - stop certain research and development efforts;
  - try to develop non-infringing products or methods; and
  - obtain one or more licenses from third parties.

Risks Related to this Offering and Ownership of Our Common Stock

- We may need substantial additional funding. If we are unable to raise capital when needed, we could be forced to delay, reduce or eliminate our product development programs or commercialization efforts.
- Because we do not anticipate paying any cash dividends on our common stock in the foreseeable future, capital appreciation, if any, will be your sole source of gain.
- Our largest stockholders will exercise significant influence over our company for the foreseeable future, including the outcome of matters requiring stockholder approval.
- Our common stock has no prior public market, and we cannot assure you that an active trading market will develop.

Corporate Conversion

We currently operate as a Delaware limited liability company under the name Acurx Pharmaceuticals, LLC. Immediately prior to the effectiveness of the registration statement of which this prospectus forms a part, Acurx Pharmaceuticals, LLC will convert into a Delaware corporation pursuant to a statutory conversion, and will change its name to Acurx Pharmaceuticals, Inc. In this prospectus, we refer to all transactions related to our conversion to a corporation as the Corporate Conversion. As a result of the Corporate Conversion, all holders of membership interests of Acurx Pharmaceuticals, LLC will become holders of shares of common stock of Acurx Pharmaceuticals, Inc. The number of shares of our common stock that holders of membership interests will be entitled to receive in the Corporate Conversion will be based on their relative rights as set forth in our limited liability company agreement. The number of shares of common stock certain holders of our membership interests will receive in connection with the Corporate

Conversion will vary depending on the initial public offering price set forth on the cover page of this prospectus. As a result of the corporate conversion:

- all of the Class A membership interests and all of the Class B membership interests of Acurx Pharmaceuticals, LLC will become shares of common stock of Acurx Pharmaceuticals, Inc. pursuant to a conversion ratio of one-half of one share of common stock of Acurx Pharmaceuticals, Inc. for each Class A membership interest or Class B membership interest of Acurx Pharmaceuticals, LLC previously held. Accordingly, 13,725,196 Class A membership interests and 100,000 Class B membership interests of Acurx Pharmaceuticals, LLC issued and outstanding immediately prior to the corporate conversion will be converted automatically into an aggregate of approximately 6,912,598 shares of common stock of Acurx Pharmaceuticals, Inc. (excluding rounding for fractional shares);
- all of the outstanding warrants to purchase Class A membership interests of Acurx Pharmaceuticals, LLC will become warrants to purchase shares of common stock of Acurx Pharmaceuticals, Inc. at a ratio of one-half of one share of common stock of Acurx Pharmaceuticals, Inc. for each Class A membership interest of Acurx Pharmaceuticals, LLC underlying such warrants, with the effect that warrants to purchase up to an aggregate of 2,875,119 Class A membership interests of Acurx Pharmaceuticals, LLC outstanding immediately prior to the corporate conversion will automatically convert into warrants to purchase up to an aggregate of approximately 1,437,559 shares of common stock of Acurx Pharmaceuticals, Inc. upon consummation of the corporate conversion; and
- the exercise price of all of the outstanding warrants to purchase Class A membership interests of Acurx Pharmaceuticals, LLC will be adjusted in the same ratio as the one-half-for-one conversion ratio for outstanding warrants to purchase Class A membership interests of Acurx Pharmaceuticals, LLC noted above such that all of our outstanding warrants to purchase Class A membership interests of Acurx Pharmaceuticals, LLC which are currently exercisable at a weighted average price of $1.44 per Class A membership interest will automatically be adjusted such that the new exercise price for the warrants to purchase shares of common stock of Acurx Pharmaceuticals, Inc. that will be outstanding upon consummating the corporate conversion will be at a weighted average price of $2.88 per share, subject to certain adjustment provisions included in each such warrant.

The purpose of the Corporate Conversion is to reorganize our structure so that the entity that is offering our common stock to the public in this offering is a corporation rather than a limited liability company and so that our existing investors will own our common stock rather than equity interests in a limited liability company. For further information regarding the Corporate Conversion, see "*Corporate Conversion*."

Recent Developments

Effects of Coronavirus on Our Business

The World Health Organization recognized COVID-19 as a public health emergency of international concern on January 30, 2020 and as a global pandemic on March 11, 2020. Public health responses have included national pandemic preparedness and response plans, travel restrictions, quarantines, curfews, event postponements and cancellations and closures of facilities including local schools and businesses. The global pandemic and actions taken to contain COVID-19 have adversely affected the global economy and financial markets.

Since the start of the COVID-19 pandemic, we continued to enroll patients in our Phase 2a clinical trial of our lead antibiotic candidate, ibezapolstat, although enrollment rates decreased significantly at certain of our clinical trial sites. Other areas of our business experienced no change, including our manufacturing and research and development activities, in each case, with key vendors. We believe that the COVID-19 pandemic has highlighted the importance of antibiotic development in responding to global health issues particularly because many hospitalized COVID-19 patients were also prescribed antibiotics which only accelerates the current antimicrobial resistance crisis described by several regulatory bodies worldwide.

The extent to which the COVID-19 pandemic will ultimately impact our business, results of operations, financial condition and cash flows depends on future developments that are highly uncertain, rapidly evolving and difficult to predict at this time. While we are not experiencing material adverse impacts at this time,

given the global economic slowdown, the overall disruption of global supply chains and distribution systems and the other risks and uncertainties associated with the COVID-19 pandemic, our business, financial condition, results of operations and growth prospects could be materially and adversely affected. While we believe that we are well positioned for the future as we navigate the crisis and prepare for an eventual return to a more normal operating environment, we continue to closely monitor the COVID-19 pandemic as we evolve our business continuity plans and response strategy.

In May 2020, we received a Paycheck Protection Program loan ("PPP Loan") under the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"), as administered by the U.S. Small Business Administration ("SBA") in the amount of $66,503. We did not provide any collateral or guarantees in connection with the PPP Loan, nor did we pay any facility charge to obtain the PPP Loan. The note and agreement provides for customary events of default, including those relating to failure to make payment, bankruptcy, breaches of representations and material adverse effects. We may prepay the principal of the PPP Loan at any time without incurring any prepayment charges. The PPP Loan carries an annual interest rate of 0.98% and matures two (2) years from issuance.

On April 13, 2021, the SBA authorized the full forgiveness of the PPP Loan. Upon forgiveness of the PPP Loan, we will reduce the liability and record a gain on extinguishment of debt in the statement of operations.

Corporate Information

We were organized as a limited liability company in the State of Delaware in July 2017 and we commenced operations in February 2018 upon acquiring the rights to our lead antibiotic product candidate from GLSynthesis, Inc. Our principal executive offices are located at 259 Liberty Avenue, Staten Island, NY 10305 and our telephone number is (917) 533-1469. Our website address is www.acurxpharma.com. The information contained on, or that can be accessed through, our website is not, and shall not be deemed to be part of, this prospectus. We have included our website address in this prospectus solely as an inactive textual reference. Investors should not rely on any such information in deciding whether to purchase our common stock. Immediately prior to the effectiveness of the registration statement of which this prospectus forms a part, Acurx Pharmaceuticals, LLC will convert into a Delaware corporation pursuant to a statutory conversion, and will change its name to Acurx Pharmaceuticals, Inc. See "*Corporate Conversion*."

THE OFFERING

Common stock offered by us	2,500,000 shares of common stock, based on an assumed initial public offering price per share of $6.00, which is the midpoint of the price range set forth on the cover page of this prospectus.
Option to purchase additional Shares	The underwriter has an option, exercisable within 45 days of the date of this prospectus, to purchase up to 375,000 additional shares of our common stock, based on an assumed initial public offering price per share of $6.00.
Common stock to be outstanding after this offering	9,541,159 shares of common stock (or 9,916,159 shares of common stock if the underwriter exercises in full its option to purchase additional shares of common stock).
Use of Proceeds	We estimate the net proceeds from this offering will be approximately $13.1 million (or $15.1 million if the underwriter exercises its option to purchase additional shares in full), assuming an initial public offering price of $6.00 per share, which is the midpoint of the price range set forth on the cover page of this prospectus, and after deducting the estimated underwriting discounts and commissions and estimated offering expenses payable by us. We intend to use the net proceeds from this offering (i) to complete the Phase 2b clinical trial of ibezapolstat in patients with CDI (approximately $4 million), (ii) to complete pre-clinical development of ACX-375C (approximately $6 million) and (iii) for general corporate purposes, which may include, without limitation, expenditures relating to research, development and clinical trials other than those specified above, manufacturing, capital expenditures, hiring additional personnel, acquisitions of new technologies or products, the payment, repayment, refinancing, redemption or repurchase of existing or future indebtedness, obligations or capital stock, and working capital. See "*Use of Proceeds*" for more information.
Dividend Policy	We have never declared nor paid cash dividends on our capital stock. We currently intend to retain any future earnings for use in the operation and expansion of our business. We do not expect to pay any dividends to holder of our common stock in the foreseeable future.
Concentration of Ownership	Upon completion of this offering, our executive officers and directors will beneficially own, in the aggregate, approximately 25.5% of the outstanding shares of our common stock. Each of our officers, directors and substantially all of our stockholders have entered into lock-up agreements with the underwriters or are subject to market standoff provisions that restrict their ability to sell or transfer their shares of common stock for 180 days from the date of this prospectus. See "*Shares Eligible for Future Sale — Lock-Up Agreements and Market Stand-off Provisions*."
Risk Factors	Investing in our common stock involves a high degree of risk. See "*Risk Factors"* beginning on page 12 of this prospectus for a discussion of certain factors to consider carefully before deciding to invest in our common stock.
Proposed Nasdaq Capital Market symbol	"ACXP"

The 9,541,159 shares of our common stock to be outstanding after this offering is based on 6,912,598 shares of common stock outstanding as of March 31, 2021, and 128,561 shares of common stock which will vest upon the consummation of this offering, after giving effect to the Corporate Conversion, and excludes:

- certain options to purchase shares of common stock at the time of this offering with an exercise price equal to the initial public offering price and with such options to be fully vested on the date of grant which we intend to grant to certain former Class B membership interest holders whose Class B membership interests were previously cancelled;
- shares of common stock issuable upon exercise of warrants issued to investors in prior financings, in each case, with a weighted average exercise price equal to $2.88 per share;
- 75,000 shares of common stock issuable to certain vendors of the Company which will vest upon the satisfaction of certain performance-based and time-based vesting requirements;
- 375,000 shares of our common stock issuable upon exercise of the underwriter's over-allotment option;
- 150,000 shares of shares of our common stock issuable upon exercise of the warrants to be issued to the underwriters (the "Underwriter Warrants"); and
- 2,000,000 shares of our common stock reserved for issuance pursuant to future awards under our 2021 Equity Incentive Plan.

Unless otherwise indicated, this prospectus reflects and assumes the completion of the Corporate Conversion, as a result of which all outstanding Class A membership interests and all outstanding Class B membership interests of Acurx Pharmaceuticals, LLC will be converted into an aggregate of 6,912,598 shares of common stock of Acurx Pharmaceuticals, Inc. pursuant to a conversion ratio of one-half of one share of common stock of Acurx Pharmaceuticals, Inc. for each Class A membership interest or Class B membership interest of Acurx Pharmaceuticals, LLC previously outstanding.

SUMMARY FINANCIAL AND OTHER DATA

The following tables set forth our summary financial and other data. We have derived the statement of operations data and the balance sheet data for the years ended December 31, 2020 and 2019 from our audited financial statements appearing elsewhere in this prospectus. The statement of operations data and the balance sheet data as of and for the three months ended March 31, 2021 and March 31, 2020 have been derived from our unaudited financial statements included elsewhere in this prospectus. Our unaudited condensed interim financial statements were prepared in accordance with U.S. generally accepted accounting principles ("U.S. GAAP"), on the same basis as our audited financial statements and include, in the opinion of management, all adjustments, consisting of normal recurring adjustments, that are necessary for the fair presentation of the financial information set forth in those financial statements. Our historical results are not necessarily indicative of the results to be expected for any future periods, and results for the three months ended March 31, 2021 are not necessarily indicative of results that may be expected for the full fiscal year ended December 31, 2021 or any other period. The following summary financial data should be read with the section titled "*Management's Discussion and Analysis of Financial Condition and Results of Operations*" and our financial statements and the related notes included elsewhere in this prospectus.

Statement of Operations Data	**Years Ended December 31,**		**Three Months Ended March 31,**	
	2020	**2019**	**2021 (unaudited)**	**2020 (unaudited)**
Total Revenue				
OPERATING EXPENSES				
Research & Development	$2,202,979	$3,510,088	$ 91,908	$ 684,732
General & Administrative	2,397,059	2,421,165	1,382,421	594,369
Loss from Operation	4,600,038	5,931,253	1,474,329	1,279,101
Net Loss	$4,600,038	$5,931,253	$1,474,329	$1,279,101
Net Loss per Share of Common Stock, Basic and Diluted[(1)]	$ (0.74)	$ (1.24)	—	—
Weighted average number of shares outstanding, Basic and Diluted[(1)]	6,190,875	4,801,536	—	—
Pro forma weighted average common shares outstanding, Basic and Diluted[(2)]	8,891,338	7,501,999	—	—

(1) See Note 9 to our audited financial statements included elsewhere in this prospectus for the calculation of basic and diluted net loss per share attributable to common stockholders for the years ended December 31, 2020 and 2019.

(2) The pro forma weighted average shares outstanding (basic and diluted) reflects (i) the sale and issuance by us of 2,500,000 shares of common stock in this offering, based upon the assumed initial public offering price of $6.00 per share, the midpoint of the price range set forth on the cover of this prospectus, after deducting underwriting discounts and commissions and estimated offering expenses payable, (ii) the Corporate Conversion, and (iii) the full vesting of the board of directors/corporate advisory council membership interests as of March 31, 2021 which will fully vest upon the Corporate Conversion.

Balance Sheet Data	Period Ended March 31, 2021 (unaudited)	Pro Forma, As Adjusted[1]
Cash	$ 2,628,273	$ 15,693,274
Working Capital[2]	2,181,562	15,246,563
Total Assets	2,981,838	15,707,363
Total Liabilities	510,678	510,678
Accumulated Deficit	(15,274,941)	(15,838,830)
Total Members' Equity	$ 2,471,160	$ 15,196,685

(1) The pro forma as adjusted balance sheet data in the table above reflects (i) the sale and issuance by us of 2,500,000 shares of our common stock in this offering, based upon the assumed initial public offering price of $6.00 per share, the midpoint of the price range set forth on the cover page of this prospectus, after deducting the underwriting discounts and commissions and estimated offering expenses payable by us, (ii) the Corporate Conversion and (iii) the full vesting of the board of directors/corporate advisory council membership interests as of March 31, 2021 which will fully vest upon the Corporate Conversion, and the recording of the pro forma unrecognized expense of $563,889.

(2) We define working capital as current assets minus current liabilities. See our audited financial statements included elsewhere in this prospectus for further details regarding our current assets and current liabilities.

RISK FACTORS

Investing in our common stock involves a high degree of risk. You should carefully consider the risks and uncertainties described below, together with all of the other information in this prospectus, including our financial statements and notes thereto, before deciding whether to invest in our common stock. The risks and uncertainties described below are not the only ones we face. Additional risks and uncertainties that we are unaware of, or that we currently believe are not material, may also become important factors that affect us. If any of the following risks occur, our business, operating results and prospects could be materially harmed. In that event, the price of our common stock could decline, and you could lose part or all of your investment.

Risks Relating to Our Business

We have a very limited operating history and are expected to incur significant operating losses during the early stage of our corporate development.

We were organized in July 2017 and we acquired the rights to our lead product candidate, ibezapolstat, in February 2018. We have a limited operating history. Our operations to date have been limited to securing our initial product candidate, generating a second product candidate in-house, conducting clinical and regulatory development for our lead program and raising capital.

Investing in an early-stage company with limited history, financial or otherwise, includes a high degree of risk. As an early-stage company, our prospects must be considered in light of the uncertainties, risks, expenses, and difficulties frequently encountered by companies in their early stages of operations. We have generated losses since inception and we expect to continue to run at a loss for several years until our initial program, or one of our pipeline products, is approved by the FDA or another worldwide regulatory body. We expect to incur substantial operating expenses over the next several years as our product development activities and related costs increase. No assurance can be given that we will be able to successfully implement any or all of our business plan, or if implemented, that we will accomplish the desired objectives, including achieving profitability.

Our independent registered public accounting firm has expressed substantial doubt about our ability to continue as a going concern.

Our independent registered public accounting firm noted in its report accompanying our financial statements for the fiscal year ended December 31, 2020 that we had suffered significant accumulated deficit and had negative operating cash flows and that the development and commercialization of our product candidates are expected to require substantial expenditures. We have not yet generated any material revenues from our operations to fund our activities, and are therefore dependent upon external sources for financing our operations. There can be no assurance that we will succeed in obtaining the necessary financing to continue our operations. As a result, our independent registered public accounting firm has expressed substantial doubt about our ability to continue as a going concern. The financial statements do not include any adjustments that might result from the outcome of this uncertainty. If we cannot successfully continue as a going concern, our stockholders may lose their entire investment in our common stock.

We are reliant on the success of our lead product candidate, ibezapolstat, which we are developing for the treatment of CDI. If we are unable to commercialize ibezapolstat, or experience significant delays in doing so, our business will be materially harmed.

Our ability to generate product revenues, which may not occur for several years, if ever, currently depends heavily on the successful development and commercialization of ibezapolstat. The success of ibezapolstat will depend on a number of factors, including the following:

- successful completion of clinical development;
- receipt of marketing approvals from applicable regulatory authorities;
- establishing commercial manufacturing arrangements with third-party manufacturers;
- obtaining and maintaining patent and trade secret protection and regulatory exclusivity;

- protecting our rights in our intellectual property portfolio;
- establishing sales, marketing and distribution capabilities;
- launching commercial sales of ibezapolstat, if and when approved, whether alone or in collaboration with others;
- acceptance of ibezapolstat, if and when approved, by patients, the medical community and third-party payors;
- effectively competing with other CDI therapies; and
- maintaining a continued acceptable safety profile of ibezapolstat following approval.

If we do not achieve one or more of these factors in a timely manner or at all, we could experience significant delays or an inability to successfully commercialize ibezapolstat, which would materially harm our business.

We have not yet demonstrated our ability to successfully complete development of any product candidates, obtain marketing approvals, manufacture a commercial scale product, or arrange for a third party to do so on our behalf, or conduct sales and marketing activities necessary for successful product commercialization. Assuming we obtain marketing approval for any of our product candidates, we will need to transition our focus from research and development to supporting commercial activities. We may encounter unforeseen expenses, difficulties, complications and delays and may not be successful in such a transition.

If serious adverse or inappropriate side effects are identified during the development of ibezapolstat or any other product candidate, we may need to abandon or limit our development of that product candidate.

Our product candidates are in clinical development and its risk of failure is high. It is impossible to predict when our product candidates will prove effective or safe in humans or will receive marketing approval. If our product candidates are associated with undesirable side effects or have characteristics that are unexpected, we may need to abandon their development or limit development to certain uses or subpopulations in which the undesirable side effects or other characteristics are less prevalent, less severe or more acceptable from a risk-benefit perspective.

Many compounds that initially show promise in clinical or earlier stage testing have later been found to cause side effects or other safety issues that prevented further development. If we elect or are forced to suspend or terminate any clinical trial of our product candidates, the commercial prospects of such product candidate will be harmed and our ability to generate product revenues from such product candidate will be delayed or eliminated. Any of these occurrences could materially harm our business.

Ibezapolstat or our other product candidates may never achieve sufficient market acceptance even if we obtain regulatory approval.

If ibezapolstat or any of our other future product candidates receive marketing approval, such products may nonetheless fail to gain sufficient market acceptance by physicians, patients, third-party payors and others in the medical community. If these products do not achieve an adequate level of acceptance, we may not generate significant product revenues or revenue from collaboration agreements or any profits from operations. The degree of market acceptance of our product candidates, if approved for commercial sale, will depend on a number of factors, including:

- the efficacy and potential advantages compared to alternative treatments or competitive products;
- the prevalence and severity of any side effects;
- the ability to offer our product candidates for sale at competitive prices;
- convenience and ease of administration compared to alternative treatments;
- the willingness of the target patient population to try new therapies and of physicians to prescribe these therapies;

- obtaining regulatory clearance of marketing claims for the uses that we are developing;
- our ability to timely and effectively manufacture, market and distribute our products, either on our own or through third parties;
- pricing and reimbursement policies of government and third-party payers such as insurance companies, health maintenance organizations and other health plan administrators;
- the timing of any such marketing approval in relation to other product approvals;
- support from patient advocacy groups;
- our ability to attract corporate partners, including pharmaceutical companies, to assist in commercializing our proposed formulations or products; and
- any restrictions on concomitant use of other medications.

If our products do not achieve an adequate level of acceptance by the relevant constituencies, or adequate pricing, we may not generate significant product revenue and may not become profitable.

We are exposed to product liability, and non-clinical and clinical liability risks which could place a substantial financial burden upon us, should lawsuits be filed against us.

Our business exposes us to potential product liability and other liability risks that are inherent in the testing, manufacturing and marketing of pharmaceutical formulations and products. We expect that such claims are likely to be asserted against us at some point, although we do carry product liability and clinical trial insurance to mitigate this risk. In addition, the use in our clinical trials of pharmaceutical formulations and products and the subsequent sale of these formulations or products by us or our potential collaborators may cause us to bear a portion of or all product liability risks. A successful liability claim or series of claims brought against us could have a material adverse effect on our business, financial condition and results of operations.

We are not currently profitable and may never become profitable.

We expect to incur substantial losses and negative operating cash flow for the foreseeable future, and we may never achieve or maintain profitability. Even if we are able to launch our product candidate, this will not occur for several years, if at all.

We also expect to experience negative cash flow for the foreseeable future as we fund our operating losses and capital expenditures. As a result, we will need to generate significant revenues in order to achieve and maintain profitability. We may not be able to generate these revenues or achieve profitability in the future. Our failure to achieve or maintain profitability would negatively impact the value of your common stock and potentially require us to shut down our business, which would result in the loss of your investment.

Our current and future operations substantially depend on our management team and our ability to hire other key personnel, the loss of any of whom could disrupt our business operations.

Our business does and will depend in substantial part on the continued services of David P. Luci, Robert J. DeLuccia and Robert G. Shawah. The loss of the services of any of these individuals would significantly impede implementation and execution of our business strategy and result in the failure to reach our goals. We do not carry key person life insurance on any member of our management, which would leave us uncompensated for the loss of any member of our management.

Our future financial condition and ability to achieve profitability will also depend on our ability to attract, retain and motivate highly qualified personnel in the diverse areas required for continuing our operations. There is a risk that we will be unable to attract, retain and motivate qualified personnel, both near term or in the future, and our failure to do so may severely damage our prospects.

Our failure to complete or meet key milestones relating to the development of our technologies and proposed products and formulations would significantly impair our financial condition.

In order to be commercially viable, we must research, develop and obtain regulatory approval to manufacture, introduce, market and distribute formulations or products incorporating our technologies. For each drug that we formulate, we must meet a number of critical developmental milestones, including:

- demonstration of the benefit of each specific drug through our drug delivery technologies;
- demonstration, through non-clinical and clinical trials, that our drug delivery technologies are safe and effective; and
- establishment of a viable current good manufacturing process ("cGMP") capable of potential scale-up.

The estimated required capital and time-frames necessary to achieve these developmental milestones is subject to inherent risks, many of which are beyond our control. As such, we may not be able to achieve these or similar milestones for any of our proposed product candidates or other product candidates in the future. Our failure to meet these or other critical milestones would adversely affect our financial condition.

Conducting and completing the clinical trials necessary for FDA approval is costly and subject to intense regulatory scrutiny as well as the risk of failing to meet the primary endpoint of such trials. We will not be able to commercialize and sell our proposed products and formulations without completing such trials.

In order to conduct clinical trials that are necessary to obtain approval by the FDA to market a formulation or product, it is necessary to receive clearance from the FDA to conduct such clinical trials. The FDA can halt clinical trials at any time for safety reasons or because we or our clinical investigators did not follow the FDA's requirements for conducting clinical trials. If we are unable to receive clearance to conduct clinical trials or the trials are permanently halted by the FDA, we would not be able to achieve any revenue from such product as it is illegal to sell any drug or medical device for human consumption or use without FDA approval. Moreover, there is a risk that our clinical trials will fail to meet their primary endpoints, which would make them unacceptable in having the subject product approved by the FDA. If this were to occur, such event would materially and adversely affect our business, results of operations and financial condition.

We will compete with larger and better capitalized companies, and competitors in the drug development or pharmaceutical industries may develop competing products which outperform or supplant our proposed products.

Drug companies and/or other technology companies have developed (and are currently marketing in competition with us), have sought to develop and may in the future seek to develop and market similar product candidates and drug delivery technologies which may become more accepted by the marketplace or which may supplant our technology entirely. In addition, many of our current competitors are, and future competitors may be, significantly larger and better financed than we are, thus giving them a significant advantage over us. Our competitors may also have significantly greater expertise in research and development, manufacturing, preclinical testing, conducting clinical trials, obtaining regulatory approvals and marketing approved products than we do. These competitors also compete with us in recruiting and retaining qualified scientific advisors and consultants as well as management personnel and establishing clinical trial sites and patient registration for clinical trials, as well as in acquiring technologies complementary to, or necessary for, our programs. Other small or early stage companies may also prove to be significant competitors, particularly through collaborative arrangements with large and established companies. We may be unable to respond to competitive forces presently in the marketplace which would severely impact our business.

We may not be able to effectively manage our growth and expansion or implement our business strategies, in which case our business and results of operations may be materially and adversely affected.

The expected growth of our business, if it occurs, will place increased demands on our management, operational and administrative resources. These increased demands and operating complexities could cause us to operate our business less effectively which, in turn, could cause a deterioration in our financial performance and negatively impact our growth. Any planned growth will also require that we continually monitor and upgrade our management information and other systems, as well as our infrastructure.

There can be no assurance that we will be able to grow our business and achieve our goals. Even if we succeed in establishing new strategic partnerships, we cannot assure that we will achieve planned revenue or profitability levels in the time periods estimated by us, or at all. If any of these initiatives fails to achieve or is unable to sustain acceptable revenue and profitability levels, we may incur significant costs.

The outbreak of the novel coronavirus disease, COVID-19, could adversely impact our business, including our preclinical studies and clinical trials.

The global coronavirus pandemic has resulted in widespread requirements for individuals to stay in their homes and strained medical facilities worldwide. It is too early to assess the full impact of the coronavirus outbreak on our business, but coronavirus may affect our ability to complete recruitment and data analysis for our clinical trials and our ability to conduct research and development of our complement programs in our planned timeframe. The extent to which the coronavirus impacts our operations will depend on future developments, which are highly uncertain and cannot be predicted with confidence, including the duration and severity of the outbreak, and the actions that may be required to contain the coronavirus or treat its impact. In particular, as a result of the COVID-19 pandemic, we may experience disruptions that could severely impact our business, preclinical studies, drug manufacturing and clinical trials including:

- delays or difficulties in enrolling potential trial participants in our clinical trials;
- delays or difficulties in clinical site initiation, including difficulties in recruiting clinical site investigators and clinical site staff;
- diversion of healthcare resources away from the conduct of clinical trials;
- interruption of key clinical trial activities, such as clinical trial site data monitoring, due to limitations on travel imposed or recommended by federal or state governments, employers and others or interruption of clinical trial subject visits and study procedures, which may impact the integrity of subject data and clinical study endpoints;
- interruption or delays in the operations of the Food and Drug Administration, European Medicines Agency or other regulatory authorities, which may impact review and approval timelines;
- interruption of, or delays in receiving, supplies of our product candidates from our contract manufacturing organizations due to staffing shortages, production slowdowns or stoppages and disruptions in delivery systems;
- interruptions in preclinical studies due to restricted or limited operations at laboratory facilities;
- suspension or termination of our clinical trials for various reasons, such as a finding that the participants are being exposed to infectious diseases like COVID-19 or the participants involved in our clinical trials have become infected with COVID-19;
- limitations on employee resources that would otherwise be focused on the conduct of our preclinical studies and clinical trials, including because of sickness of employees or their families or the desire of employees to avoid contact with large groups of people; and
- material delays and complications with respect to our research and development programs.

Furthermore, a recession or market correction resulting from the spread of COVID-19 could materially affect our operations and the value of our common stock.

We will incur increased costs as a result of being a public company.

As a public company, we will incur significant legal, accounting, insurance and other expenses that we did not incur as a private company. For example, we will incur increased legal and accounting costs as a result of being subject to the information and reporting requirements of the Exchange Act, and other federal securities laws. The costs of preparing and filing periodic and other reports, proxy statements and other information with the SEC and furnishing audited reports to stockholders, will cause significant increase in our expenses than if we remained privately-held. The cost of being a public company will divert resources that might otherwise have been used to develop our business, which could have a material adverse effect on our company.

As a privately held company, we have not been required to comply with certain corporate governance and financial reporting practices and policies required of a public reporting company. If the registration statement of which this prospectus forms a part is declared effective, as a public company, we will be required

to file with the SEC annual and quarterly information and other reports pursuant to the Exchange Act. We will also be required to ensure that we have the ability to prepare financial statements that are fully compliant with all SEC reporting requirements on a timely basis. In addition, we may become subject to other reporting and corporate governance requirements, including the requirements of any national securities exchange on which our common stock is listed, should we so qualify for listing, and certain provisions of the Sarbanes-Oxley Act of 2002, as amended (the "Sarbanes-Oxley Act"), and the regulations promulgated thereunder, which will impose significant compliance obligations upon us. As a public company, we will, among other things:

- prepare and distribute periodic public reports and other stockholder communications in compliance;
- comply with our obligations under the federal securities laws and applicable listing rules;
- create or expand the roles and duties of our board of directors and committees of the board of directors;
- institute more comprehensive financial reporting and disclosure compliance functions;
- enhance our investor relations function;
- establish new internal policies, including those relating to disclosure controls and procedures; and
- involve and retain to a greater degree outside counsel and accountants in the activities listed above.

These changes will require a significant commitment of additional resources and many of our competitors already comply with these obligations. We may not be successful in complying with these obligations and the significant commitment of resources required for complying with them could have a material adverse effect on our business, financial condition and results of operations. These laws and regulations could also make it more difficult or costly for us to obtain certain types of insurance, including director and officer liability insurance, and we may be forced to accept reduced policy limits and coverage or incur substantially higher costs to obtain the same or similar coverage. These laws and regulations could also make it more difficult for us to attract and retain qualified persons to serve on our board of directors, our committees of our board of directors or as our executive officers.

In addition, if we fail to implement the requirements with respect to our internal accounting and audit functions, our ability to report our results of operations on a timely and accurate basis could be impaired and we could suffer adverse regulatory consequences or violate applicable listing standards. There could also be a negative reaction in the financial markets due to a loss of investor confidence in us and the reliability of our financial statements, which could have a material adverse effect on our business, financial condition and results of operations.

The changes necessitated by becoming a public company require a significant commitment of resources and management supervision that has increased and may continue to increase our costs and might place a strain on our systems and resources. As a result, our management's attention might be diverted from other business concerns. If we fail to maintain an effective internal control environment or to comply with the numerous legal and regulatory requirements imposed on public companies, we could make material errors in, and be required to restate, our financial statements. Any such restatement could result in a loss of public confidence in the reliability of our financial statements and sanctions imposed on us by the SEC. We cannot predict or estimate the amount of additional costs we may incur or the timing of such costs. If we are unable to satisfy our obligations as a public company, we could be subject to delisting of our common stock, as applicable, fines, sanctions and other regulatory action and potentially civil litigation.

The insurance coverage and reimbursement status of newly approved products is uncertain. Failure to obtain or maintain adequate coverage and reimbursement for new or current products could limit our ability to market those products and decrease our ability to generate revenue.

The availability and extent of reimbursement by governmental and private payors is essential for most patients to be able to afford expensive treatments. Sales of our product candidates will depend substantially, both domestically and abroad, on the extent to which the costs of our product candidates will be paid by health maintenance, managed care, pharmacy benefit and similar healthcare management organizations, or reimbursed by government health administration authorities, private health coverage insurers and other

third-party payors. If reimbursement is not available, or is available only to limited levels, we may not be able to successfully commercialize our product candidates. Even if coverage is provided, the approved reimbursement amount may not be high enough to allow us to establish or maintain pricing sufficient to realize a sufficient return on our investment.

There is significant uncertainty related to the insurance coverage and reimbursement of newly approved products. Moreover, increasing efforts by governmental and third-party payors, in the U.S. and abroad, to cap or reduce healthcare costs may cause such organizations to limit both coverage and level of reimbursement for new products approved and, as a result, they may not cover or provide adequate payment for our product candidates. We expect to experience pricing pressures in connection with the sale of any of our product candidates, due to the trend toward managed healthcare, the increasing influence of health maintenance organizations and additional legislative changes. The downward pressure on healthcare costs in general has become very intense. As a result, increasingly high barriers are being erected to the entry of new products.

Because results of preclinical studies and early clinical trials are not necessarily predictive of future results, any product candidate we advance may not have favorable results in later clinical trials or receive regulatory approval. Moreover, interim, "top-line," and preliminary data from our clinical trials that we announce or publish may change, or the perceived product profile may be negatively impacted, as more patient data or additional endpoints (including efficacy and safety) are analyzed.

Pharmaceutical development has inherent risks. The outcome of preclinical development testing and early clinical trials may not be predictive of the outcome of later clinical trials, and interim results of a clinical trial do not necessarily predict final results. Moreover, preclinical and clinical data are often susceptible to varying interpretations and analyses, and many companies that have believed their product candidates performed satisfactorily in preclinical studies and clinical trials have nonetheless failed to obtain marketing approval of their product candidates. Once a product candidate has displayed sufficient preclinical data to warrant clinical investigation, we will be required to demonstrate through adequate and well-controlled clinical trials that our product candidates are effective with a favorable benefit-risk profile for use in populations for their target indications before we can seek regulatory approvals for their commercial sale. Many drug candidates fail in the early stages of clinical development for safety and tolerability issues or for insufficient clinical activity, despite promising pre-clinical results. Accordingly, no assurance can be made that a safe and efficacious dose can be found for these compounds or that they will ever enter into advanced clinical trials alone or in combination with other product candidates. Moreover, success in early clinical trials does not mean that later clinical trials will be successful because product candidates in later-stage clinical trials may fail to demonstrate sufficient safety or efficacy despite having progressed through initial clinical testing. Companies frequently experience significant setbacks in advanced clinical trials, even after earlier clinical trials have shown promising results. There is an extremely high rate of failure of pharmaceutical candidates proceeding through clinical trials.

Individually reported outcomes of patients treated in clinical trials may not be representative of the entire population of treated patients in such studies. In addition, larger scale Phase 3 studies, which are often conducted internationally, are inherently subject to increased operational risks compared to earlier stage studies, including the risk that the results could vary on a region to region or country to country basis, which could materially adversely affect the outcome of the study or the opinion of the validity of the study results by applicable regulatory agencies.

From time to time, we may publicly disclose top-line or preliminary data from our clinical trials, which is based on a preliminary analysis of then available data, and the results and related findings and conclusions are subject to change following a more comprehensive review of the data related to the particular study or trial. We also make assumptions, estimations, calculations and conclusions as part of our analyses of such data, and we may not have received or had the opportunity to fully and carefully evaluate all data from the particular study or trial, including all endpoints and safety data. As a result, top-line or preliminary results that we report may differ from future results of the same studies, or different conclusions or considerations may qualify such results, once additional data have been received and fully evaluated. Top-line or preliminary data also remain subject to audit and verification procedures that may result in the final data being materially different from the topline, interim, or preliminary data we previously published. When providing

top-line results, we may disclose the primary endpoint of a study before all secondary endpoints have been fully analyzed. A positive primary endpoint does not translate to all, or any, secondary endpoints being met. As a result, top-line and preliminary data should be viewed with caution until the final data are available, including data from the full safety analysis and the final analysis of all endpoints.

Further, from time to time, we may also disclose interim data from our preclinical studies and clinical trials. Interim data from clinical trials that we may complete are subject to the risk that one or more of the clinical outcomes may materially change as patient enrollment continues and more patient data become available. For example, time-to-event based endpoints such as duration of response ("DOR") and PFS have the potential to change, sometimes drastically, with longer follow-up. In addition, as patients continue on therapy, there can be no assurance given that the final safety data from studies, once fully analyzed, will be consistent with prior safety data presented, will be differentiated from other similar agents in the same class, will support continued development, or will be favorable enough to support regulatory approvals for the indications studied. Further, others, including regulatory agencies, may not accept or agree with our assumptions, estimates, calculations, conclusions or analyses or may interpret or weigh the importance of data differently, which could impact the value of the particular program, the approvability or commercialization of the particular product candidate or product and our company in general. The information we choose to publicly disclose regarding a particular study or clinical trial is based on what is typically extensive information, and regulators or others may not agree with what we determine is material or otherwise appropriate information to include in our disclosure. If the interim, top-line or preliminary data that we report differ from final results, or if others, including regulatory authorities, disagree with the conclusions reached, our ability to obtain approval for, or successfully commercialize, our product candidates may be harmed, which could harm our business, operating results, prospects or financial condition.

Risks Related to Regulatory Approval

If clinical trials of our lead product candidate fail to demonstrate safety and efficacy to the satisfaction of the FDA, or the EMA, or do not otherwise produce favorable results, we may incur additional costs or experience delays in completing, or ultimately be unable to complete the development and commercialization of ibezapolstat or any other product candidate.

In connection with obtaining marketing approval from regulatory authorities for the sale of any product candidate, we must complete extensive clinical trials to demonstrate the safety and efficacy of our product candidates in humans. Clinical testing is expensive, difficult to design and implement, can take many years to complete and is uncertain as to outcome. A failure of one or more clinical trials can occur at any stage of testing. The outcome of preclinical testing and early clinical trials, particularly with a small number of patients, may not be predictive of the success of later clinical trials, and interim results of a clinical trial do not necessarily predict final results. The design of a clinical trial can determine whether its results will support approval of a product, and flaws in the design of a clinical trial may not become apparent until the clinical trial is well advanced or completed. We have limited experience in designing clinical trials and may be unable to design and execute a clinical trial to support marketing approval.

Moreover, preclinical and clinical data are often susceptible to varying interpretations and analyses, and many companies that believe their product candidates performed satisfactorily in preclinical studies and clinical trials have failed to obtain marketing approval of their products.

If we experience any of a number of possible unforeseen events in connection with our clinical trials, potential marketing approval or commercialization of our product candidates could be delayed or prevented.

We may experience numerous unforeseen events during, or as a result of, clinical trials that could delay or prevent our ability to receive marketing approval or commercialize our product candidates, including:

- clinical trials of our product candidates may produce negative or inconclusive results, and we may decide, or regulators may require us, to conduct additional clinical trials or abandon product development programs;
- the number of patients required for clinical trials of our product candidates may be larger than we anticipate, enrollment in these clinical trials may be slower than we anticipate or participants may drop out of these clinical trials at a higher rate than we anticipate;

- we may be unable to enroll a sufficient number of patients in our clinical trials to ensure adequate statistical power to detect any statistically significant treatment effects;
- our third-party contractors may fail to comply with regulatory requirements or meet their contractual obligations to us in a timely manner, or at all;
- regulators, institutional review boards or independent ethics committees may not authorize us or our investigators to commence a clinical trial or conduct a clinical trial at a prospective trial site;
- we may have delays in reaching or fail to reach agreement on acceptable clinical trial contracts or clinical trial protocols with prospective trial sites;
- we may have to suspend or terminate clinical trials of our product candidates for various reasons, including a finding that the participants are being exposed to unacceptable health risks;
- regulators, institutional review boards or independent ethics committees may require that we or our investigators suspend or terminate clinical research for various reasons, including noncompliance with regulatory requirements or a finding that the participants are being exposed to unacceptable health risks;
- clinical trials are costly and the cost of clinical trials of our product candidates may be greater than we anticipate;
- the supply or quality of our product candidates or other materials necessary to conduct clinical trials of our product candidates may be insufficient or inadequate; and
- our product candidates may have undesirable side effects or other unexpected characteristics, causing us or our investigators, regulators, institutional review boards or independent ethics committees to suspend or terminate the clinical trials.

Our product development costs will increase if we experience delays in testing or marketing approvals. We do not know whether any preclinical tests or clinical trials will begin as planned, will need to be restructured or will be completed on schedule, or at all. Significant preclinical or clinical trial delays also could shorten any periods during which we may have the exclusive right to commercialize our product candidates or allow our competitors to bring products to market before we do and impair our ability to successfully commercialize our product candidates and may harm our business and results of operations.

If we experience delays or difficulties in the enrollment of patients in our clinical trials, our receipt of necessary marketing approvals could be delayed or prevented.

We may not be able to initiate or continue clinical trials for our product candidates, including our planned clinical trials of ibezapolstat, if we are unable to locate and enroll a sufficient number of eligible patients to participate in these clinical trials. CDI is an acute infection that requires rapid diagnosis. For our clinical trials of ibezapolstat, we need to identify potential patients, test them for CDI and enroll them in the clinical trial within a 24-hour period. In addition, our competitors have ongoing clinical trials for product candidates that could be competitive with our product candidates, and patients who would otherwise be eligible for our clinical trials may instead enroll in clinical trials of our competitors' product candidates. For our clinical trials of ibezapolstat, we need to identify potential patients and enroll them in the clinical trial based on a history of diarrhea within 24 hours of a positive stool test for *C. difficile* toxin.

Enrollment delays in our clinical trials may result in increased development costs for our product candidates, which would cause the value of our common stock to decline and limit our ability to obtain additional financing. Our inability to enroll a sufficient number of patients in our planned clinical trials of ibezapolstat would result in significant delays or may require us to abandon one or more clinical trials altogether.

Our failure to obtain costly government approvals, including required FDA approvals, or to comply with ongoing governmental regulations relating to our proposed products and formulations could delay or limit introduction of our proposed formulations and products and result in failure to achieve revenues or maintain our ongoing business.

Our research and development activities and the manufacture and marketing of our product candidates are subject to extensive regulation for safety, efficacy and quality by numerous government authorities in the

U.S. and abroad. Before receiving FDA or foreign regulatory clearance to market our proposed formulations and products, we will have to demonstrate that our products are safe and effective in the patient population and for the diseases that are to be treated. Clinical trials, manufacturing and marketing of drugs are subject to the rigorous testing and approval process of the FDA and equivalent foreign regulatory authorities. The Federal Food, Drug and Cosmetic Act and other federal, state and foreign statutes and regulations govern and influence the testing, manufacture, labeling, advertising, distribution and promotion of drugs and medical devices. As a result, regulatory approvals can take years to obtain and require the expenditure of substantial financial, managerial and other resources.

Moreover, we may not receive regulatory approval of any of our proposed products. We may be unable to obtain all required regulatory approvals, and our failure to do so would materially and adversely affect our business, results of operations and financial condition.

Our results of operations may be adversely affected by current and potential future healthcare legislative and regulatory actions.

Legislative and regulatory actions affecting government prescription drug procurement and reimbursement programs occur relatively frequently. In the U.S., the Patient Protection and Affordable Care Act (the "ACA") was enacted in 2010 to expand healthcare coverage. Since then, numerous efforts have been made to repeal, amend or administratively limit the ACA in whole or in part. For example, the Tax Cuts and Jobs Act ("TCJA"), signed into law by President Trump in 2017, repealed the individual health insurance mandate, which is considered a key component of the ACA. In December 2018, a U.S. District Court Judge in the Northern District of Texas ruled that the individual mandate was a critical and inseverable feature of the ACA, and therefore, because it was repealed as part of the TCJA, the remaining provisions of the ACA were invalid and the law in its entirety was unconstitutional. In December 2019, the U.S. Court of Appeals for the Fifth Circuit upheld the District Court ruling that the individual mandate was unconstitutional but remanded the case back to the District Court to determine whether other reforms enacted as part of the ACA but not specifically related to the individual mandate or health insurance could be severed from the rest of the ACA so as not to be declared invalid as well. On March 2, 2020, the United States Supreme Court granted the petitions for writs of certiorari to review this case and allocated one hour for oral arguments, which occurred on November 10, 2020. A decision from the Supreme Court is expected to be issued in spring 2021. It is unclear how this litigation and other efforts to repeal and replace the ACA will impact the implementation of the ACA, the pharmaceutical industry more generally, and our business. Complying with any new legislation or reversing changes implemented under the ACA could be time-intensive and expensive, resulting in a material adverse effect on our business.

Efforts to control prescription drug prices could also have a material adverse effect on our business. For example, in 2018, President Trump and the Secretary of the U.S. Department of Health and Human Services ("HHS") released the "American Patients First Blueprint" and have begun implementing certain portions. The initiative includes proposals to increase generic drug and biosimilar competition, enable the Medicare program to negotiate drug prices more directly and improve transparency regarding drug prices and ways to lower consumers' out-of-pocket costs. The Trump administration also proposed to establish an "international pricing index" that would be used as a benchmark to determine the costs and potentially limit the reimbursement of drugs under Medicare Part B. Among other pharmaceutical manufacturer industry-related proposals, Congress has proposed bills to change the Medicare Part D benefit to impose an inflation-based rebate in Medicare Part D and to alter the benefit structure to increase manufacturer contributions in the catastrophic phase. The volume of drug pricing-related bills has dramatically increased under the current Congress, and the resulting impact on our business is uncertain and could be material.

In addition, many states have proposed or enacted legislation that seeks to indirectly or directly regulate pharmaceutical drug pricing, such as by requiring biopharmaceutical manufacturers to publicly report proprietary pricing information or to place a maximum price ceiling on pharmaceutical products purchased by state agencies. For example, in 2017, California's governor signed a prescription drug price transparency state bill into law, requiring prescription drug manufacturers to provide advance notice and explanation for price increases of certain drugs that exceed a specified threshold. Both Congress and state legislatures are considering various bills that would reform drug purchasing and price negotiations, allow

greater use of utilization management tools to limit Medicare Part D coverage, facilitate the import of lower-priced drugs from outside the U.S. and encourage the use of generic drugs. Such initiatives and legislation may cause added pricing pressures on our products.

Changes to the Medicaid program at the federal or state level could also have a material adverse effect on our business. Proposals that could impact coverage and reimbursement of our products, including giving states more flexibility to manage drugs covered under the Medicaid program and permitting the re-importation of prescription medications from Canada or other countries, could have a material adverse effect by limiting our products' use and coverage. Furthermore, state Medicaid programs could request additional supplemental rebates on our products as a result of an increase in the federal base Medicaid rebate. To the extent that private insurers or managed care programs follow Medicaid coverage and payment developments, they could use the enactment of these increased rebates to exert pricing pressure on our products, and the adverse effects may be magnified by their adoption of lower payment schedules.

Other proposed regulatory actions affecting manufacturers could have a material adverse effect on our business. It is difficult to predict the impact, if any, of any such proposed legislative and regulatory actions or resulting state actions on the use and reimbursement of our products in the U.S., but our results of operations may be adversely affected.

Risks Related to Our Dependence on Third Parties

If we are unable to establish sales and marketing capabilities or enter into agreements with third parties to market and sell our product candidates, we may not be successful in commercializing ibezapolstat or any other product candidate if and when such product candidates are approved.

We do not have a sales or marketing infrastructure and have no experience in the sale or marketing of pharmaceutical products. To achieve commercial success for any approved product, we must either develop a sales and marketing organization or outsource these functions to third parties. If ibezapolstat receives marketing approval, we intend to commercialize it in the U.S. with our own focused, specialized sales force. We plan to evaluate the potential for utilizing additional collaboration, distribution and marketing arrangements with third parties to commercialize ibezapolstat in other jurisdictions where we retain commercialization rights. There are risks involved with establishing our own sales and marketing capabilities and entering into arrangements with third parties to perform these services. For example, recruiting and training a sales force is expensive and time-consuming and could delay any product launch. If the commercial launch of a product candidate for which we recruit a sales force and establish marketing capabilities is delayed or does not occur for any reason, we would have prematurely or unnecessarily incurred these commercialization expenses. This may be costly, and our investment would be lost if we cannot retain or reposition our sales and marketing personnel.

Factors that may inhibit our efforts to commercialize our products on our own include:

- our inability to recruit, train and retain adequate numbers of effective sales and marketing personnel;
- the inability of sales personnel to obtain access to or persuade adequate numbers of physicians to prescribe any future products;
- the lack of complementary products to be offered by sales personnel, which may put us at a competitive disadvantage relative to competitors with more extensive product lines; and
- unforeseen costs and expenses associated with creating an independent sales and marketing organization.

If we enter into arrangements with third parties to perform sales and marketing services, our product revenues or the profitability of these product revenues will likely be lower than if we were to market and sell any products that we develop ourselves. In addition, we may not be successful in entering into arrangements with third parties to sell and market our product candidates or may be unable to do so on terms that are acceptable to us. We likely will have little control over such third parties, and any of them may fail to devote the necessary resources and attention to sell and market our products effectively. If we do not establish sales and marketing capabilities successfully, either on our own or in collaboration with third parties, we will not be successful in commercializing our product candidates.

We contract with third parties for the manufacture of our product candidates for preclinical studies and our ongoing clinical trials, and expect to continue to do so for additional clinical trials and ultimately for commercialization. This reliance on third parties increases the risk that we will not have sufficient quantities of our product candidates or drugs or such quantities at an acceptable cost, which could delay, prevent or impair our development or commercialization efforts.

We do not currently have the infrastructure or internal capability to manufacture supplies of our product candidates for use in development and commercialization. We rely, and expect to continue to rely, on third-party manufacturers for the production of our product candidates for preclinical studies and clinical trials under the guidance of members of our organization. We do not have long-term supply agreements. Furthermore, the raw materials for our product candidates are sourced, in some cases, from a single-source supplier although other sources are available. For example, drug substance and drug product are sourced from our principal supplier, Piramal Pharma Solutions, in Ennore, India and Ahmedabad, India, respectively. Chemical raw materials used for drug substance manufacture are sourced locally in India and are generally available. Accordingly, we do not anticipate difficulties sourcing drug substance for our clinical trials or, if FDA approved, for our marketing period, but we have not yet sourced a backup supplier because we currently have sufficient supply to complete our Phase 2b clinical trial. We are considering U.S. sources of drug substance for the commercial period if ibezapolstat is FDA approved and we anticipate several manufacturing options will be available. If we were to experience an unexpected loss of supply of any of our product candidates or any of our future product candidates for any reason, whether as a result of manufacturing, supply or storage issues or otherwise, we could experience delays, disruptions, suspensions or terminations of, or be required to restart or repeat, any pending or ongoing clinical trials. For example, the extent to which the COVID-19 pandemic impacts our ability to procure sufficient supplies for the development of our products and product candidates will depend on the severity and duration of the spread of the virus, and the actions undertaken to contain COVID-19 or treat its effects.

We expect to continue to rely on third-party manufacturers for the commercial supply of any of our product candidates for which we obtain marketing approval. We may be unable to maintain or establish required agreements with third-party manufacturers or to do so on acceptable terms. Even if we are able to establish agreements with third-party manufacturers, reliance on third-party manufacturers entails additional risks, including:

- the failure of the third party to manufacture our product candidates according to our schedule, or at all, including if our third-party contractors give greater priority to the supply of other products over our product candidates or otherwise do not satisfactorily perform according to the terms of the agreements between us and them;
- the reduction or termination of production or deliveries by suppliers, or the raising of prices or renegotiation of terms;
- the termination or nonrenewal of arrangements or agreements by our third-party contractors at a time that is costly or inconvenient for us;
- the breach by the third-party contractors of our agreements with them;
- the failure of third-party contractors to comply with applicable regulatory requirements;
- the failure of the third party to manufacture our product candidates according to our specifications;
- the mislabeling of clinical supplies, potentially resulting in the wrong dose amounts being supplied or active drug or placebo not being properly identified;
- clinical supplies not being delivered to clinical sites on time, leading to clinical trial interruptions, or of drug supplies not being distributed to commercial vendors in a timely manner, resulting in lost sales; and
- the misappropriation of our proprietary information, including our trade secrets and know-how.

We do not have complete control over all aspects of the manufacturing process of, and are dependent on, our contract manufacturing partners for compliance with cGMP regulations for manufacturing both active drug substances and finished drug products. Third-party manufacturers may not be able to comply with

cGMP regulations or similar regulatory requirements outside of the U.S. If our contract manufacturers cannot successfully manufacture material that conforms to our specifications and the strict regulatory requirements of the FDA, EMA or others, they will not be able to secure and/or maintain marketing approval for their manufacturing facilities. In addition, we do not have control over the ability of our contract manufacturers to maintain adequate quality control, quality assurance and qualified personnel. If the FDA, EMA or a comparable foreign regulatory authority does not approve these facilities for the manufacture of our product candidates or if it withdraws any such approval in the future, we may need to find alternative manufacturing facilities, which would significantly impact our ability to develop, obtain marketing approval for or market our product candidates, if approved. Our failure, or the failure of our third-party manufacturers, to comply with applicable regulations could subject us and our third-party manufacturers to warning letters or other enforcement-related letters, holds on clinical trials or could result in further sanctions being imposed on us or our third-party manufacturers, including fines, injunctions, civil penalties, delays, suspension or withdrawal of approvals, license revocation, seizures or recalls of product candidates or drugs, operating restrictions and criminal prosecutions, any of which could significantly and adversely affect supplies of our product candidates or drugs and harm our business and results of operations. Our current and anticipated future dependence upon others for the manufacture of our product candidates or drugs may adversely affect our future profit margins and our ability to commercialize any product candidates that receive marketing approval on a timely and competitive basis.

We rely on third party clinical investigators, contract research organizations ("CROs"), clinical data management organizations and consultants to design, conduct, supervise and monitor preclinical studies and clinical trials of our product candidates. Because we rely on third parties and do not have the ability to conduct preclinical studies or clinical trials independently, we have less control over the timing, quality and other aspects of preclinical studies and clinical trials than we would if we conducted them on our own. These investigators, CROs and consultants are not our employees and we have limited control over the amount of time and resources that they dedicate to our programs. These third parties may have contractual relationships with other entities, some of which may be our competitors, which may draw time and resources from our programs. Further, these third parties may not be diligent, careful or timely in conducting our preclinical studies or clinical trials, resulting in the preclinical studies or clinical trials being delayed or unsuccessful.

If we cannot contract with acceptable third parties on commercially reasonable terms, or at all, or if these third parties do not carry out their contractual duties, satisfy legal and regulatory requirements for the conduct of preclinical studies or clinical trials or meet expected deadlines, our preclinical and clinical development programs could be delayed and otherwise adversely affected. In all events, we are responsible for ensuring that each of our preclinical studies and clinical trials is conducted in accordance with the general investigational plan and protocols for the trial. The FDA and other health authorities require preclinical studies to be conducted in accordance with GLP and clinical trials to be conducted in accordance with GCP, including conducting, recording and reporting the results of clinical trials to assure that data and reported results are credible and accurate and that the rights, integrity and confidentiality of clinical trial participants are protected. If we or our CROs fail to comply with these requirements, the data generated in our clinical trials may be deemed unreliable or uninterpretable and the FDA may require us to perform additional preclinical studies or clinical trials. Our reliance on third parties that we do not control does not relieve us of these responsibilities and requirements. Any such event could adversely affect our business, financial condition, results of operations and prospects.

If ultimate users of our product candidates are unable to obtain adequate reimbursement from third- party payers, or if new restrictive legislation is adopted, market acceptance of our proposed products may be limited and we may not achieve material revenues.

The continuing efforts of government and insurance companies, health maintenance organizations and other payers of healthcare costs to contain or reduce costs of healthcare may affect our future revenues and profitability, and the future revenues and profitability of our potential customers, suppliers and collaborative partners and the availability of capital. For example, in the U.S., given recent federal and state government initiatives directed at lowering the total cost of healthcare, the U.S. Congress and state legislatures will likely continue to focus on healthcare reform, the cost of prescription pharmaceuticals and on the reform of the Medicare and Medicaid systems. While we cannot predict whether any such legislative or

regulatory proposals will be adopted, the announcement or adoption of such proposals and related laws, rules and regulations could materially harm our business, financial condition, results of operations or stock price. Moreover, the passage of the ACA in 2010, and efforts to amend or repeal such law, has created significant uncertainty relating to the scope of government regulation of healthcare and related legal and regulatory requirements, which could have an adverse impact on sales of our products.

Moreover, our ability to commercialize our product candidates will depend in part on the extent to which appropriate reimbursement levels for the cost of such products and related treatments are obtained by governmental authorities, private health insurers and other organizations, such as HMOs. Consumers and third-party payers are increasingly challenging the prices charged for medical drugs and services. Also, the trend toward managed healthcare in the U.S. and the concurrent growth of organizations such as HMOs, which could control or significantly influence the purchase of healthcare services and drugs, as well as legislative proposals to reform healthcare or reduce government insurance programs, may all result in lower prices for or rejection of our proposed products.

Our relationships with customers and third-party payors will be subject to applicable anti-kickback, fraud and abuse and other healthcare laws and regulations, which could expose us to criminal sanctions, civil penalties, contractual damages, reputational harm and diminished profits and future earnings.

Healthcare providers, physicians and third-party payors will play a primary role in the recommendation and prescription of any product candidates for which we obtain marketing approval. Our future arrangements with third-party payors and customers may expose us to broadly applicable fraud and abuse and other healthcare laws and regulations that may constrain the business or financial arrangements and relationships through which we would market, sell and distribute our products. As a pharmaceutical company, even though we do not and may not control referrals of healthcare services or bill directly to Medicare, Medicaid or other third-party payors, federal and state healthcare laws and regulations pertaining to fraud and abuse and patients' rights are and will be applicable to our business. These regulations include:

- the Federal Healthcare Anti-Kickback Statute that prohibits, among other things, persons from knowingly and willfully soliciting, offering, receiving or providing remuneration, directly or indirectly, in cash or in kind, to induce or reward, or in return for, either the referral of an individual for, or the purchase, order or recommendation of, any good or service, for which payment may be made under a federal healthcare program such as Medicare and Medicaid, and which will constrain our marketing practices and the marketing practices of our licensees, educational programs, pricing policies, and relationships with healthcare providers or other entities;
- the federal physician self-referral prohibition, commonly known as the Stark Law, which prohibits physicians from referring Medicare or Medicaid patients to providers of "designated health services" with whom the physician or a member of the physician's immediate family has an ownership interest or compensation arrangement, unless a statutory or regulatory exception applies;
- federal false claims laws that prohibit, among other things, individuals or entities from knowingly presenting, or causing to be presented, claims for payment from Medicare, Medicaid, or other government reimbursement programs that are false or fraudulent, and which may expose entities that provide coding and billing advice to customers to potential criminal and civil penalties, including through civil whistleblower or qui tam actions, and including as a result of claims presented in violation of the Federal Healthcare Anti-Kickback Statute, the Stark Law or other healthcare-related laws, including laws enforced by the FDA;
- the federal Health Insurance Portability and Accountability Act of 1996, ("HIPAA"), which imposes criminal and civil liability for executing a scheme to defraud any healthcare benefit program and also created federal criminal laws that prohibit knowingly and willfully falsifying, concealing or covering up a material fact or making any materially false statements in connection with the delivery of or payment for healthcare benefits, items or services that, as amended by the Health Information Technology for Economic and Clinical Health Act, also imposes obligations, including mandatory contractual terms, with respect to safeguarding the privacy, security and transmission of individually identifiable health information;

- federal physician sunshine requirements under the ACA, which requires manufacturers of approved drugs, devices, biologics and medical supplies to report annually to the HHS, information related to payments and other transfers of value to physicians, other healthcare providers, and teaching hospitals, and ownership and investment interests held by physicians and other healthcare providers and their immediate family members and applicable group purchasing organizations;
- the Federal Food, Drug, and Cosmetic Act, which, among other things, strictly regulates drug product marketing, prohibits manufacturers from marketing drug products for off-label use and regulates the distribution of drug samples; and
- state and foreign law equivalents of each of the above federal laws, such as anti-kickback and false claims laws, which may apply to sales or marketing arrangements and claims involving healthcare items or services reimbursed by non-governmental third-party payors, including private insurers, state laws requiring pharmaceutical companies to comply with the pharmaceutical industry's voluntary compliance guidelines and the relevant compliance guidance promulgated by the federal government and which may require drug manufacturers to report information related to payments and other transfers of value to physicians and other healthcare providers or marketing expenditures, and state and foreign laws governing the privacy and security of health information in specified circumstances, many of which differ from each other in significant ways and often are not preempted by federal laws such as HIPAA, thus complicating compliance efforts.

Efforts to ensure that our business arrangements with third parties will comply with applicable healthcare laws and regulations will involve substantial costs. It is possible that governmental authorities will conclude that our business practices may not comply with current or future statutes, regulations or case law involving applicable fraud and abuse or other healthcare laws and regulations. If our operations are found to be in violation of any of these laws or any other governmental regulations that may apply to us, we may be subject to significant civil, criminal and administrative penalties, damages, fines, imprisonment, exclusion from government funded healthcare programs, such as Medicare and Medicaid, and the curtailment or restructuring of our operations. If any physicians or other healthcare providers or entities with whom we expect to do business are found to not be in compliance with applicable laws, they may be subject to criminal, civil or administrative sanctions, including exclusions from government funded healthcare programs.

Risks Related to Intellectual Property

We may be involved in lawsuits to protect or enforce our patents.

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

Interference proceedings or derivation proceedings may be filed to determine the priority of inventions with respect to our patents or patent applications or those of our licensors. An unfavorable outcome could require us to cease using the related technology or to attempt to license rights from the prevailing party. Our business could be harmed if the prevailing party does not offer us a license on commercially reasonable terms. We may not be able to prevent, alone or with our licensors, misappropriation of our intellectual property rights, both in the U.S. and in countries where the laws may not protect those rights as fully as in the U.S. Other proceedings, such as proceedings before the U.S. Patent and Trademark Office Patent Trial and Appeal Board, filed by a third party may result in the invalidation of one or more of our patents.

Furthermore, because of the substantial amount of discovery required in connection with intellectual property litigation, there is a risk that some of our confidential information could be compromised by disclosure during this type of litigation. 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.

Intellectual property litigation could cause us to spend substantial resources and distract our personnel from their normal responsibilities.

Even if resolved in our favor, litigation or other legal proceedings relating to intellectual property claims, regardless of their merit, would cause us to incur significant expenses, and could distract our technical and management personnel from their normal responsibilities. In the event of a successful claim of infringement against us, we may have to pay substantial damages, including treble damages and attorneys' fees for willful infringement, in addition to paying royalties, redesign infringing products or obtain one or more licenses from third parties, which may be impossible or require substantial time and monetary expenditure. A court may also issue an injunction against us preventing us from manufacturing and bringing our products to market. In addition, there could be public announcements of the results of hearings, motions or other interim proceedings or developments and if securities analysts or investors perceive these results to be negative, it could have a substantial adverse effect on the price of our common stock. Such litigation or proceedings could substantially increase our operating losses and reduce the resources available for development activities or any future sales, marketing or distribution activities. We may not have sufficient financial or other resources to conduct such litigation or proceedings adequately. Some of our competitors may be able to sustain the costs of such litigation or proceedings more effectively than we can because of their greater financial resources. Uncertainties resulting from the initiation and continuation of patent litigation or other proceedings could compromise our ability to compete in the marketplace.

We may need to license certain intellectual property from third parties, and such licenses may not be available or may not be available on commercially reasonable terms.

A third party may hold intellectual property, including patent rights, that is important or necessary to the development or commercialization of our products. It may be necessary for us to use the patented or proprietary technology of third parties to commercialize our products, in which case we would be required to obtain a license from these third parties on commercially reasonable terms, or our business could be harmed, possibly materially. Such licenses may not be available which could prevent us from commercializing our products. Further, if we are alleged to infringe third party intellectual property rights, we could face costly litigation, the outcome of which could negatively affect or prevent us from commercializing or developing our products. In the event of an adverse decision against us in a litigation, we could be required to: pay substantial damages and license fees, or even be prevented from using or commercializing our technologies and methods; and also be prevented from further research and development efforts. In such case, we may be unable to develop alternative non-infringing products or methods and unable to obtain one or more licenses from third parties.

If we are unable to adequately protect or enforce our rights to intellectual property or secure rights to third-party patents, we may lose valuable rights, experience reduced market share, assuming any, or incur costly litigation to enforce, maintain or protect such rights.

Our ability to license, obtain, enforce and maintain patents, maintain trade secret protection and operate without infringing the proprietary rights of others is important to the commercialization of any formulations or products under development. The patent positions of biotechnology and pharmaceutical companies, including ours, are frequently uncertain and involve complex legal and factual questions. In addition, the coverage claimed in a patent application can be significantly reduced before the patent is issued. Consequently, our patents, patent applications and other intellectual property rights may not provide protection against competitive technologies or products or may be held invalid if challenged or could be circumvented. Our competitors may also independently develop products similar to ours or design around or otherwise circumvent patents issued to, or licensed by, us. In addition, the laws of some foreign countries may not protect our proprietary rights to the same extent as U.S. law. Any of these occurrences would have a material adverse effect on our business.

Even if resolved in our favor, litigation or other legal proceedings relating to intellectual property claims may cause us to incur significant expenses, and could distract our technical and management personnel from their normal responsibilities. In addition, there could be public announcements of the results of hearings, motions or other interim proceedings or developments. Such litigation or proceedings could substantially increase our operating losses and reduce the resources available for development, sales,

marketing or distribution activities. We may not have sufficient financial or other resources to adequately conduct such litigation or proceedings. Some of our competitors may be able to sustain the costs of such litigation or proceedings more effectively than we can because of their greater financial resources. Accordingly, costs and lost management time, as well as uncertainties resulting from the initiation and continuation of patent litigation or other proceedings, could have a material adverse effect on our ability to compete in the marketplace.

If we are unable to protect the confidentiality of our trade secrets, our business and competitive position would be harmed.

In addition to seeking patents for some of our technology and products, we will also rely on trade secrets, including unpatented know-how, technology and other proprietary and confidential information, to maintain our competitive position. We will seek to protect these trade secrets, in part, by entering into non-disclosure and confidentiality agreements with parties who have access to them, such as our employees, corporate collaborators, outside scientific collaborators, contract manufacturers, consultants, advisors and other third parties. However, we cannot guarantee that we will have executed these agreements with each party that may have or have had access to our trade secrets or that the agreements we do execute will provide adequate protection. Any party with whom we have executed such an agreement could breach that agreement and disclose our proprietary or confidential information, including our trade secrets, and we may not be able to obtain adequate remedies for such breaches. Enforcing a claim that a party illegally disclosed or misappropriated a trade secret is difficult, expensive and time-consuming, and the outcome is unpredictable. In addition, some courts inside and outside the U.S. are less willing or unwilling to protect trade secrets. If any of our trade secrets were to be lawfully obtained or independently developed by a competitor, we would have no right to prevent them, or those to whom they communicate it, from using that technology or information to compete with us. If any of our trade secrets, particularly unpatented know-how, were to be obtained or independently developed by a competitor, our competitive position would be harmed.

Risks Related to this Offering and Ownership of Our Common Stock

We may need substantial additional funding. If we are unable to raise capital when needed, we could be forced to delay, reduce or eliminate our product development programs or commercialization efforts.

We expect our expenses to increase in connection with our ongoing activities, particularly as we continue research and development and initiate additional clinical trials of our product candidates and seek regulatory approval for these and potentially other product candidates. In addition, if we obtain regulatory approval for any of our product candidates, we expect to incur significant commercialization expenses related to product manufacturing, marketing, sales and distribution. In particular, the costs that may be required for the manufacture of any product candidate that receives marketing approval may be substantial. Accordingly, we may need to obtain substantial additional funding in connection with our continuing operations. If we are unable to raise capital when needed or on attractive terms, we could be forced to delay, reduce or eliminate our research and development programs or any future commercialization efforts.

We may be required to obtain further funding through public or private equity offerings, debt financings, collaborations or licensing arrangements or other sources. Adequate additional funding may not be available to us on acceptable terms or at all. Our failure to raise capital as and when needed would have a negative impact on our financial condition and our ability to pursue our business strategy.

Our future capital requirements will depend on many factors, including:

- the timing, progress, and results of our ongoing and planned clinical trials of our product candidates;
- our ability to manufacture sufficient clinical supply of our products candidates and the costs thereof;
- discussions with regulatory agencies regarding the design and conduct of our clinical trials and the costs, timing and outcome of regulatory review of our product candidates;
- the cost and timing of future commercialization activities, including product manufacturing, marketing, sales and distribution, for any of our product candidates for which we receive marketing approval;

- the costs of any other product candidates or technologies we pursue;
- our ability to establish and maintain strategic partnerships, licensing or other arrangements and the financial terms of such agreements;
- the revenue, if any, received from commercial sales of any product candidates for which we receive marketing approval; and
- the costs and timing of preparing, filing and prosecuting patent applications, maintaining and enforcing our intellectual property rights and defending any intellectual property-related claims.

Identifying potential product candidates and conducting clinical trials is a time-consuming, expensive and uncertain process that takes years to complete, and we may never generate the necessary data or results required to obtain regulatory approval and achieve product sales. In addition, our product candidates, if approved, may not achieve commercial success. Our commercial revenues, if any, will be derived from sales of products that we do not expect to be commercially available for several years, if at all. Accordingly, we will need to continue to rely on additional financing to achieve our business objectives. Adequate additional financing may not be available to us on acceptable terms, or at all. In addition, we may seek additional capital due to favorable market conditions or strategic considerations, even if we believe we have sufficient funds for our current or future operating plans. We also have certain restrictions on issuing shares and incurring indebtedness that are part of our investor rights agreement.

Any additional fundraising efforts may divert our management from their day-to-day activities, which may adversely affect our ability to develop and commercialize our product candidates. Our ability to raise additional funds will depend, in part, on the success of our preclinical studies and clinical trials and other product development activities, regulatory events, our ability to identify and enter into in-licensing or other strategic arrangements, and other events or conditions that may affect our value or prospects, as well as factors related to financial, economic and market conditions, many of which are beyond our control. We cannot be certain that sufficient funds will be available to us when required or on acceptable terms, if at all. Raising additional capital through the sale of securities could cause significant dilution to our stockholders. If we are unable to secure additional funds on a timely basis or on acceptable terms, we may be required to defer, reduce or eliminate significant planned expenditures, restructure, curtail or eliminate some or all of our development programs or other operations, dispose of technology or assets, pursue an acquisition of our company by a third party at a price that may result in a loss on investment for our stockholders, enter into arrangements that may require us to relinquish rights to certain of our product candidates, technologies or potential markets, file for bankruptcy or cease operations altogether. Any of these events could have a material adverse effect on our business, financial condition and results of operations. Moreover, if we are unable to obtain additional funds on a timely basis, there will be substantial doubt about our ability to continue as a going concern and increased risk of insolvency and loss of investment by our stockholders.

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

Until such time, if ever, as we can generate substantial product revenues, we expect to finance our cash needs through a combination of public or private equity offerings, debt financings and/or license and development agreements with collaboration partners. To the extent that we raise additional capital through the sale of equity or convertible debt securities, the ownership interests of our stockholders may be materially diluted, and the terms of such securities could include liquidation or other preferences or other rights such as anti-dilution rights that adversely affect the rights of our stockholders. Debt financing and preferred equity financing, if available, may involve agreements that include restrictive covenants that limit our ability to take specified actions, such as incurring additional debt, making capital expenditures or declaring dividends.

If we are unable to raise additional funds through equity or debt financings when needed, we may be required to delay, limit, reduce or terminate our product development or future commercialization efforts or grant rights to develop and market product candidates that we would otherwise prefer to develop and market ourselves. If we raise funds through collaborations, strategic partnerships or marketing, distribution or licensing arrangements with third parties, we may have to relinquish valuable rights to our technologies, future revenue streams, research programs or product candidates or grant licenses on terms that may not be favorable to us.

If you purchase shares of our common stock in our initial public offering, you will experience substantial and immediate dilution.

The initial public offering price of $6.00 per share is substantially higher than the net tangible book value per share of our outstanding common stock immediately following the completion of this offering. If you purchase shares of common stock in this offering, you will experience substantial and immediate dilution in the pro forma net tangible book value per share of $4.41 per share as of March 31, 2021. That is because the price that you pay will be substantially greater than the pro forma net tangible book value per share of the common stock that you acquire. This dilution is due in large part to the fact that our earlier investors paid substantially less than the initial public offering price when they purchased their shares of our capital stock. You will experience additional dilution when those holding stock options or warrants exercise their right to purchase common stock under our equity incentive plans or when we otherwise issue additional shares of common stock. See "*Dilution*."

Future sales of a substantial number of shares of our common stock may depress the price of our shares.

If any of our other stockholders sells or otherwise disposes of a large number of shares of our common stock, or if we issue a large number of shares of our common stock in connection with future acquisitions, financings, or other circumstances, the market price of shares of our common stock could decline significantly.

Subject to the lock-up agreements described below, all of the shares of our common stock sold in this offering will be freely tradable without restriction, except for shares of our common stock owned by any of our affiliates. Immediately after this offering, the public market for our common stock will include only the 2,500,000 shares of our common stock that are being sold in this offering, based upon the assumed initial public offering price of $6.00 per share, the midpoint of the price range set forth on the cover of this prospectus, or 2,875,000 shares of our common stock if the underwriter exercises its option to purchase additional shares of our common stock from us in full.

Our directors, officers and holders of substantially all of our capital stock and securities convertible into our capital stock have entered into lock-up agreements in which they have agreed that they will not sell, directly or indirectly, any shares of our common stock for a period of 180 days from the date of this prospectus (subject to certain exceptions) without the prior written consent of Alexander Capital L.P. See "*Shares Eligible for Future Sale*."

Furthermore, assuming the Corporate Conversion, the accelerated vesting of currently unvested board of director and corporate advisory council membership interests and the completion of this offering had occurred on March 31, 2021, warrants exercisable for up to 1,437,560 shares of our common stock at a weighted average exercise price of $2.88 per share were outstanding. The exercise of any of these warrants would result in additional dilution, and the sale of the shares issuable upon exercise of outstanding warrants could also lower the market price of our common stock.

Because we do not anticipate paying any cash dividends on our common stock in the foreseeable future, capital appreciation, if any, will be your sole source of gain.

We have never paid or declared any cash dividends on our common stock. We currently intend to retain earnings, if any, to finance the growth and development of our business and we do not anticipate paying any cash dividends in the foreseeable future. As a result, only appreciation of the price of our common stock will provide a return to our members.

Provisions in our corporate charter documents and under Delaware law could make an acquisition of our company, which may be beneficial to our stockholders, more difficult and may prevent attempts by our stockholders to replace or remove our current management.

These provisions might discourage, delay or prevent a change in control of our company or a change in our management. The existence of these provisions could adversely affect the voting power of holders of common stock and limit the price that investors might be willing to pay in the future for shares of our common stock. Furthermore, we have the authority to issue shares of our preferred stock without further stockholder approval, the rights of which will be determined at the discretion of the board of directors and

that, if issued, could operate as a "poison pill" to dilute the stock ownership of a potential hostile acquirer to prevent an acquisition that our board of directors does not approve. In addition, our certificate of incorporation and bylaws contain provisions that may make the acquisition of our company more difficult, including the following:

- our authorized but unissued and unreserved common stock and preferred stock could make more difficult or discourage an attempt to obtain control of us by means of a proxy contest, tender offer, merger or otherwise;
- our board of directors is classified into three classes of directors with staggered three-year terms and directors are only able to be removed from office for cause;
- our stockholders will only be able to take action at a meeting of stockholders and will not be able to take action by written consent for any matter, except in certain circumstances;
- a special meeting of our stockholders may only be called by the chairperson of our board of directors or a majority of our board of directors;
- advance notice procedures apply for stockholders to nominate candidates for election as directors or to bring matters before an annual meeting of stockholders; and
- certain amendments to our certificate of incorporation and any amendments to our bylaws by our stockholders will require the approval of at least two-thirds of our then-outstanding voting power entitled to vote generally in an election of directors, voting together as a single class.

We are an "emerging growth company," and a "smaller reporting company" and we cannot be certain if the reduced reporting requirements applicable to emerging growth companies and smaller reporting companies will make our common stock less attractive to investors.

We are an "emerging growth company," as defined in the JOBS Act. For as long as we continue to be an emerging growth company, we intend to take advantage of exemptions from various reporting requirements that are applicable to other public companies that are not emerging growth companies, including:

- being permitted to provide only two years of audited financial statements, in addition to any required unaudited interim financial statements, with correspondingly reduced "Management's Discussion and Analysis of Financial Condition and Results of Operations" disclosure in this prospectus;
- not being required to comply with the auditor attestation requirements of Section 404 of the Sarbanes-Oxley Act;
- not being required to comply with any requirement that may be adopted by the Public Company Accounting Oversight Board regarding mandatory audit firm rotation or a supplement to the auditor's report providing additional information about the audit and the financial statements;
- reduced disclosure obligations regarding executive compensation in this prospectus and our periodic reports and proxy statements; and
- exemptions from the requirements of holding nonbinding advisory stockholder votes on executive compensation and stockholder approval of any golden parachute payments not previously approved.

We cannot predict if investors will find our common stock less attractive because we may rely on these exemptions. If some investors find our common stock less attractive as a result, there may be a less active trading market for our common stock and our stock price may be more volatile.

We will remain an emerging growth company until the earlier of (1) the last day of the fiscal year (a) following the fifth anniversary of the completion of this offering, (b) in which we have total annual gross revenue of at least $1.07 billion (as adjusted for inflation pursuant to SEC rules from time to time), or (c) in which we are deemed to be a large accelerated filer, which means the market value of our common stock that is held by non-affiliates exceeds $700 million as of the prior June 30th, and (2) the date on which we have issued more than $1.0 billion in non-convertible debt securities during the prior three-year period.

Under the JOBS Act, emerging growth companies can also delay adopting new or revised accounting standards until such time as those standards apply to private companies. We intend to take advantage of the extended transition period for adopting new or revised accounting standards under the JOBS Act as an emerging growth company. As a result of this election, our financial statements may not be comparable to companies that comply with public company effective dates.

We are also a smaller reporting company, and we will remain a smaller reporting company until the fiscal year following the determination that our voting and non-voting common shares held by non-affiliates is more than $250 million measured on the last business day of our second fiscal quarter, or our annual revenues are less than $100 million during the most recently completed fiscal year and our voting and non-voting common shares held by non-affiliates is more than $700 million measured on the last business day of our second fiscal quarter.

Similar to emerging growth companies, smaller reporting companies have reduced disclosure obligations, such as an exemption from providing selected financial data and an ability to provide simplified executive compensation information and only two years of audited financial statements.

The price of our common stock may be volatile and fluctuate substantially, which could result in substantial losses for our stockholders.

The initial public offering price for our common stock will be determined through negotiations between the underwriters and us and may vary from the market price of our common stock following the completion of this offering. Our stock price may be volatile. The stock market in general, and the market for pharmaceutical companies in particular, has experienced extreme volatility that has often been unrelated to the operating performance of particular companies. As a result of this volatility, investors may not be able to sell their shares of common stock at or above the price they paid for their shares. The market price for our common stock may be influenced by many factors, including:

- actual or anticipated results from and any delays in our clinical trials, as well as results of regulatory input on our clinical trial programs and regulatory reviews relating to the approval of our product candidates;
- the results of our efforts to discover, develop, acquire or in-license additional product candidates or products;
- failure or discontinuation of any of our clinical development programs;
- the level of expenses related to any of our product candidates or clinical development programs;
- commencement or termination of any collaboration or licensing arrangement;
- disputes or other developments relating to proprietary rights, including patents, litigation matters and our ability to obtain patent protection for our technologies;
- announcements by us or our competitors of significant acquisitions, strategic partnerships, joint ventures and capital commitments;
- additions or departures of key scientific or management personnel;
- variations in our financial results or those of companies that are perceived to be similar to us;
- new products, product candidates or new uses for existing products introduced or announced by our competitors, and the timing of these introductions or announcements;
- results of clinical trials of product candidates of our competitors;
- general economic and market conditions and other factors that may be unrelated to our operating performance or the operating performance of our competitors, including changes in market valuations of similar companies;
- regulatory or legal developments in the U.S. and other countries;
- changes in the structure of healthcare payment systems;
- conditions or trends in the pharmaceutical, biotechnology and medical device industries;

- actual or anticipated changes in earnings estimates, development timelines or recommendations by securities analysts;
- announcement or expectation of additional financing efforts;
- sales of common stock by us or our stockholders in the future, as well as the overall trading volume of our common stock; and
- the other factors described in this "Risk Factors" section.

If our quarterly operating results fall below the expectations of investors or securities analysts, the price of our common stock could decline substantially. Furthermore, any quarterly fluctuations in our operating results may, in turn, cause the price of our stock to fluctuate substantially. We believe that quarterly comparisons of our financial results are not necessarily meaningful and should not be relied upon as an indication of our future performance.

In the past, following periods of volatility in the market price of a company's securities, securities class-action litigation often has been instituted against that company. Such litigation, if instituted against us, could cause us to incur substantial costs to defend such claims and divert management's attention and resources, which could seriously harm our business, financial condition, results of operations and prospects.

Our largest stockholders will exercise significant influence over our company for the foreseeable future, including the outcome of matters requiring stockholder approval.

As of March 31, 2021, our officers, directors and their affiliates collectively own 2,368,304 shares of our common stock (on an as-converted basis) or approximately 34.5% of our outstanding shares of common stock (on an as-converted basis) assuming the conversion of all currently outstanding Class A and B membership interests. After the consummation of the offering contemplated hereby, based upon the assumed initial public offering price of $6.00 per share and assuming no exercise by the underwriter of its option to purchase additional shares of our common stock in this offering, our officers, directors and their affiliates will collectively own 2,368,137 shares of our common stock (on an as-converted basis) or approximately 25.5% of our outstanding shares of common stock (on an as-converted basis). Accordingly, if these stockholders were to choose to act together, they could have a significant influence over all matters requiring stockholder approval, including the election of directors and approval of significant corporate transactions, such as a merger or other sale of our company or all or a significant percentage of our assets. This concentration of ownership could limit your ability to influence corporate matters and may have the effect of delaying or preventing a third party from acquiring control over us.

We cannot assure you that the interests of our officers, directors and affiliated persons will coincide with the interests of the investors. So long as our officers, directors and affiliated persons collectively controls a significant portion of our common stock, these individuals and/or entities controlled by them, will continue to collectively be able to strongly influence or effectively control our decisions. Therefore, you should not invest in reliance on your ability to have any control over our company. See "*Principal Stockholders*," "*Certain Relationships and Related Party Transactions*" and "*Description of Capital Stock*."

Our common stock has no prior public market, and we cannot assure you that an active trading market will develop.

Prior to this offering, there has not been a public market for our common stock. We have applied to list our common stock on The Nasdaq Capital Market (the "Nasdaq") and our application may not be approved or an active trading market in our common stock might not develop or continue. The initial public offering price for our common stock will be determined through negotiations between the underwriter and us and may vary from the market price of our common stock following the completion of this offering. If you purchase shares of our common stock in this offering, you will pay a price that was not established in a competitive market. Rather, you will pay a price that was determined through negotiations with the underwriter based upon an assessment of the valuation of our common stock and a book-building process. The public market may not agree with or accept this valuation, in which case you may not be able to sell your shares of our common stock at or above the initial offering price. In addition, if an active trading market does not develop, you may have difficulty selling your shares of our common stock at an attractive price, or at all. An

inactive market may also impair our ability to raise capital by selling shares of our common stock and may impair our ability to acquire other companies, products or technologies by using shares of our common stock as consideration.

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

Should we fail to satisfy the Nasdaq's continued listing requirements, such as the corporate governance requirements or the minimum closing bid price requirement, Nasdaq may take steps to delist our common stock. Such a delisting would likely have a negative effect on the price of our common stock, and would impair your ability to sell or purchase our common stock when you wish to do so. In the event of a delisting, we would take actions to restore our compliance with Nasdaq's listing requirements, but we can provide no assurance that any such action taken by us would allow our common stock to become listed again, stabilize the market price or improve the liquidity of our common stock, prevent our common stock from dropping below Nasdaq's minimum bid price requirement or prevent future non-compliance with the Nasdaq's listing requirements.

If Nasdaq does not maintain the listing of our securities for trading on its exchange, we could face significant material adverse consequences, including:

- a limited availability of market quotations for our common stock;
- reduced liquidity for our common stock;
- a determination that our common stock is a "penny stock" which will require brokers trading in our common stock to adhere to more stringent rules and possibly result in a reduced level of trading activity in the secondary trading market for our securities;
- a limited amount of news and analyst coverage; and
- a decreased ability to issue additional common stock or obtain additional financing in the future.

General Risk Factors

Cyber incidents or attacks directed at us could result in information theft, data corruption, operational disruption and/or financial loss.

We depend on digital technologies, including information systems, infrastructure and cloud applications and services, including those of third parties with which we may deal. Sophisticated and deliberate attacks on, or security breaches in, our systems or infrastructure, or the systems or infrastructure of third parties or the cloud, could lead to corruption or misappropriation of our assets, proprietary information and sensitive or confidential data. As an early-stage company without significant investments in data security protection, we may not be sufficiently protected against such occurrences. We may not have sufficient resources to adequately protect against, or to investigate and remediate any vulnerability to, cyber incidents. It is possible that any of these occurrences, or a combination of them, could have adverse consequences on our business and lead to financial loss.

Our employees, principal investigators, consultants and commercial partners may engage in misconduct or other improper activities, including non-compliance with regulatory standards and requirements and insider trading.

We are exposed to the risk of fraud or other misconduct by our employees, principal investigators, consultants and collaborators. Misconduct by these parties could include intentional failures to comply with the regulations of the FDA and non-U.S. regulators, to provide accurate information to the FDA and non-U.S. regulators, to comply with healthcare fraud and abuse laws and regulations in the U.S. and abroad, to report financial information or data accurately or to disclose unauthorized activities to us. In particular, sales, marketing and business arrangements in the healthcare industry are subject to extensive laws and regulations intended to prevent fraud, misconduct, kickbacks, self-dealing and other abusive practices. These laws and regulations may restrict or prohibit a wide range of pricing, discounting, marketing and promotion, sales commission, customer incentive programs and other business arrangements. Such

misconduct could also involve the improper use of information obtained during clinical studies that could result in regulatory sanctions and cause serious harm to our reputation. It is not always possible to identify and deter employee misconduct, and the precautions we take to detect and prevent this activity may not be effective in controlling unknown or unmanaged risks or losses or in protecting us from governmental investigations or other actions or lawsuits stemming from a failure to comply with these laws or regulations. If any such actions are instituted against us and we are not successful in defending ourselves or asserting our rights, those actions could have a significant impact on our business, including the imposition of significant fines or other sanctions.

There may be limitations on the effectiveness of our internal controls, and a failure of our control systems to prevent error or fraud may materially harm us.

Proper systems of internal control over financial accounting and disclosure are critical to the operation of a public company. We may be unable to effectively establish such systems, especially in light of the fact that we expect to operate as a publicly reporting company. This would leave us without the ability to reliably assimilate and compile financial information about us and significantly impair our ability to prevent error and detect fraud, all of which would have a negative impact on us from many perspectives.

Moreover, we do not expect that disclosure controls or internal control over financial reporting, even if established, will prevent all error and all fraud. A control system, no matter how well designed and operated, can provide only reasonable, not absolute, assurance that the control system's objectives will be met. Further, the design of a control system must reflect the fact that there are resource constraints and the benefits of controls must be considered relative to their costs. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues and instances of fraud, if any, have been detected. Failure of our control systems to prevent error or fraud could materially adversely impact us.

The estimates and judgments we make, or the assumptions on which we rely, in preparing our financial statements could prove inaccurate.

Our financial statements have been prepared in accordance with GAAP. The preparation of these financial statements requires us to make estimates and judgments that affect the reported amounts of our assets, liabilities, revenues and expenses, the amounts of charges accrued by us and related disclosure of contingent assets and liabilities. We base our estimates on historical experience and on various other assumptions that we believe to be reasonable under the circumstances. We cannot assure, however, that our estimates, or the assumptions underlying them, will not change over time or otherwise prove inaccurate. Any potential litigation related to the estimates and judgments we make, or the assumptions on which we rely, in preparing our financial statements could have a material adverse effect on our financial results, harm our business, and cause our share price to decline.

Failure to comply with the United States Foreign Corrupt Practices Act could subject us to penalties and other adverse consequences.

As a Delaware corporation, we are subject to the United States Foreign Corrupt Practices Act, which generally prohibits U.S. companies from engaging in bribery or other prohibited payments to foreign officials for the purpose of obtaining or retaining business. Some foreign companies, including some that may compete with us, may not be subject to these prohibitions. Corruption, extortion, bribery, pay-offs, theft and other fraudulent practices may occur from time-to-time in countries in which we conduct our business. However, our employees or other agents may engage in conduct for which we might be held responsible. If our employees or other agents are found to have engaged in such practices, we could suffer severe penalties and other consequences that may have a material adverse effect on our business, financial condition and results of operations.

Litigation may adversely affect our business, financial condition and results of operations.

From time to time in the normal course of our business operations, we may become subject to litigation that may result in liability material to our financial statements as a whole or may negatively affect our operating results if changes to our business operation are required. The cost to defend such litigation may be

significant and may require a diversion of our resources. There also may be adverse publicity associated with litigation that could negatively affect customer perception of our business, regardless of whether the allegations are valid or whether we are ultimately found liable. As a result, litigation may adversely affect our business, financial condition and results of operations.

If we fail to comply with environmental, health and safety laws and regulations, we could become subject to fines or penalties or incur costs that could harm our business.

We are subject to numerous environmental, health and safety laws and regulations, including those governing laboratory procedures and the handling, use, storage, treatment and disposal of hazardous materials and wastes. From time to time and in the future, our operations may involve the use of hazardous and flammable materials, including chemicals and biological materials, and may also produce hazardous waste products. Even if we contract with third parties for the disposal of these materials and waste products, we cannot completely eliminate the risk of contamination or injury resulting from these materials. In the event of contamination or injury resulting from the use or disposal of our hazardous materials, we could be held liable for any resulting damages, and any liability could exceed our resources. We also could incur significant costs associated with civil or criminal fines and penalties for failure to comply with such laws and regulations.

We maintain workers' compensation insurance to cover us for costs and expenses we may incur due to injuries to our employees resulting from the use of hazardous materials, but this insurance may not provide adequate coverage against potential liabilities. However, we do not maintain insurance for environmental liability or toxic tort claims that may be asserted against us.

In addition, we may incur substantial costs to comply with current or future environmental, health and safety laws and regulations. Current or future environmental laws and regulations may impair our research, development or production efforts that could adversely affect our business, financial condition, results of operations or prospects. In addition, failure to comply with these laws and regulations may result in substantial fines, penalties or other sanctions.

We have broad discretion in how we use our cash, cash equivalents and marketable securities and may not use these financial resources effectively, which could affect our results of operations and cause our stock price to decline.

Our management has considerable discretion in the investment of our cash and any cash equivalents and marketable securities. We intend to use the proceeds of this offering for general corporate purposes, which may include, without limitation, expenditures relating to research, development and clinical trials relating to our products and product candidates, manufacturing, capital expenditures, hiring additional personnel, acquisitions of new technologies or products, the payment, repayment, refinancing, redemption or repurchase of existing or future indebtedness, obligations or capital stock, and working capital. We may use the cash, cash equivalents and marketable securities for purposes that do not yield a significant return or any return at all for our stockholders. In addition, pending their use, we may invest the financial resources from our securities offerings in a manner that does not produce income or that loses value.

If securities or industry analysts do not publish research or reports about our business, or they publish negative reports about our business, our share price and trading volume could decline.

The trading market for our common stock will depend in part on the research and reports that securities or industry analysts publish about us or our business, our market and our competitors. We do not have any control over these analysts. If one or more of the analysts who cover us downgrade our shares or change their opinion of our shares, our share price would likely decline. If one or more of these analysts cease coverage of our company or fail to regularly publish reports on us, we could lose visibility in the financial markets, which could cause our share price or trading volume to decline.

Delaware law contains anti-takeover provisions that could deter takeover attempts that could be beneficial to our stockholders.

Provisions of Delaware law could make it more difficult for a third party to acquire us, even if doing so would be beneficial to our stockholders. Section 203 of the Delaware General Corporation Law may make

the acquisition of our company and the removal of incumbent officers and directors more difficult by prohibiting stockholders holding 15% or more of our outstanding voting stock from acquiring us, without the consent of our board of directors, for at least three years from the date they first hold 15% or more of the voting stock.

Our certificate of incorporation and our bylaws provide that the Court of Chancery of the State of Delaware will be the exclusive forum for substantially all disputes between us and our stockholders, which could limit our stockholders' ability to obtain a favorable judicial forum for disputes with us or our directors, officers or employees.

Our certificate of incorporation and our bylaws provide that the Court of Chancery of the State of Delaware is the exclusive forum for any derivative action or proceeding brought on our behalf; any action asserting a breach of fiduciary duty; any action asserting a claim against us arising pursuant to the Delaware General Corporation Law, our certificate of incorporation or our bylaws; or any action asserting a claim against us that is governed by the internal affairs doctrine. Notwithstanding the foregoing, the exclusive forum provision does not apply to suits brought to enforce any liability or duty created by the Exchange Act, the Securities Act or any other claim for which the federal courts have exclusive jurisdiction. Unless we consent in writing to the selection of an alternative forum, the federal district courts of the U.S. of America shall, to the fullest extent permitted by applicable law, be the sole and exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act. The choice of forum provision may limit a stockholder's ability to bring a claim in a judicial forum that it finds favorable for disputes with us or our directors, officers or other employees, which may discourage such lawsuits against us and our directors, officers and other employees. Alternatively, if a court were to find the choice of forum provision contained in our certificate of incorporation and our bylaws to be inapplicable or unenforceable in an action, we may incur additional costs associated with resolving such action in other jurisdictions, which could materially and adversely affect our business, financial condition, and results of operation.

SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

This prospectus contains forward-looking statements. You can generally identify forward-looking statements by our use of forward-looking terminology such as "anticipate," "believe," "continue," "could," "estimate," "expect," "intend," "may," "might," "plan," "potential," "predict," "seek," "will" or "should," or the negative thereof or other variations thereon or comparable terminology. In particular, statements about the markets in which we operate and statements about our expectations, beliefs, plans, strategies, objectives, prospects, assumptions or future events or performance contained in this prospectus under the headings "*Prospectus Summary*," "*Risk Factors*," "*Management's Discussion and Analysis of Financial Condition and Results of Operations*," and "*Business*" are forward-looking statements.

We have based these forward-looking statements on our current expectations, assumptions, estimates and projections. While we believe these expectations, assumptions, estimates and projections are reasonable, such forward-looking statements are only predictions and involve known and unknown risks and uncertainties, many of which are beyond our control. These and other important factors, including those discussed in this prospectus under the headings "*Prospectus Summary*," "*Risk Factors*," "*Management's Discussion and Analysis of Financial Condition and Results of Operations*," and "*Business*," may cause our actual results, levels of activity, performance or events and circumstances to differ materially from any future results, levels of activity, performance or events and circumstances expressed or implied by these forward-looking statements. Some of the factors that could cause actual results to differ materially from those expressed or implied by the forward- looking statements include:

- general economic and financial conditions;
- the adverse effects of public health epidemics, including the recent COVID-19 outbreak, on our business, results of operations and financial condition;
- the costs of being a public company;
- our ability to keep pace with technological advances;
- the success of our marketing activities;
- a disruption of breach of our information technology systems;
- our dependence on third parties;
- the performance of third parties on which we depend;
- compliance with health and safety laws;
- our ability to obtain and maintain protection for our intellectual property and proprietary rights;
- our ability to protect and defend against litigation, including claims related to intellectual property and proprietary rights;
- product shortages and relationships with key suppliers;
- our ability to attract key employees;
- the volatility of the price of our common stock;
- the marketability of our common stock; and
- other risks and uncertainties, including those listed in "*Risk Factors.*"

Moreover, we operate in a highly competitive and rapidly changing environment. New risks emerge from time to time and it is not possible for us to predict all risk factors, nor can we address the impact of all factors on our business or the extent to which any factor, or combination of factors, may cause our actual results to differ materially from those contained in any forward-looking statements.

You should not rely upon forward-looking statements as predictions of future events. Although we believe that the expectations reflected in the forward-looking statements are reasonable, we cannot guarantee

that the future results, levels of activity, performance or events and circumstances reflected in the forward-looking statements will be achieved or occur. We undertake no obligation to update publicly any forward-looking statements for any reason after the date of this prospectus to conform these statements to new information, actual results or to changes in our expectations, except as required by law.

You should read this prospectus and the documents that we reference in this prospectus and have filed with the SEC, as exhibits to the registration statement of which this prospectus is a part with the understanding that our actual future results, levels of activity, performance, and events and circumstances may be materially different from what we expect.

USE OF PROCEEDS

We estimate that the net proceeds from the sale of shares of common stock in this offering will be approximately $13.1 million, based on an assumed initial public offering price of $6.00 per share, which is the midpoint of the estimated price range set forth on the cover of this prospectus, and after deducting the underwriting discounts and commissions and estimated offering expenses payable by us and assuming no exercise of the underwriter's over-allotment option. If the underwriter exercises its over-allotment option in full, we estimate that our net proceeds will be $15.1 million based on an assumed initial public offering price of $6.00 per share, which is the midpoint of the estimated price range set forth on the cover of this prospectus, and after deducting underwriting discounts and commissions and estimated offering expenses payable by us.

We intend to use the net proceeds from this offering (i) to complete the Phase 2b clinical trial of ibezapolstat in patients with CDI (approximately $4 million), (ii) to complete pre-clinical development of ACX-375C (approximately $6 million) and (iii) for general corporate purposes, which may include, without limitation, expenditures relating to research, development and clinical trials other than those specified above, manufacturing, capital expenditures, hiring additional personnel, acquisitions of new technologies or products, the payment, repayment, refinancing, redemption or repurchase of existing or future indebtedness, obligations or capital stock, and working capital. Accordingly, using the proceeds raised in this offering, we expect ibezapolstat to complete Phase 2b testing and we expect ACX-375C to be IND ready, or ready for testing in clinical trials.

Each $1.00 increase (decrease) in the assumed initial public offering price of $6.00 per share, which is the midpoint of the estimated price range set forth on the cover of this prospectus, would increase (decrease) the net proceeds to us from this offering by approximately $2.3 million, assuming the number of shares of common stock offered by us, as set forth on the cover of this prospectus, remains the same and after deducting underwriting discounts and commissions and estimated offering expenses payable by us and assuming no exercise of the underwriter's over-allotment option. We may also increase or decrease the number of shares of common stock that we are offering. An increase of 1.0 million shares of common stock in the number of shares of common stock offered by us would increase the net proceeds to us from this offering by approximately $5.5 million, after deducting underwriting discounts and commissions and estimated offering expenses payable by us and assuming no exercise of the underwriter's over-allotment option and that the initial public offering price of such shares of common stock remains as set forth on the cover page of this prospectus remains the same. Conversely, a decrease of 1.0 million shares of common stock in the number of shares of common stock offered by us would decrease the net proceeds to us from this offering by approximately $5.6 million, after deducting underwriting discounts and commissions and estimated offering expenses payable by us and assuming no exercise of the underwriter's over-allotment option and that the initial public offering price of such shares of common stock remains as set forth on the cover page of this prospectus remains the same. The as adjusted information discussed above is illustrative only and will adjust based on the actual initial public offering price and other terms of this offering determined at pricing.

This expected use of the net proceeds from this offering represents our intentions based upon our current plans and business conditions, which could change in the future as our plans and business conditions evolve. We may also use a portion of the net proceeds to in-license, acquire or invest in additional businesses, technologies, products or assets, although currently we have no specific agreements, commitments or understandings in this regard. As of the date of this prospectus, we cannot predict with certainty all of the particular uses for the net proceeds to be received upon the closing of this offering or the amounts that we will actually spend on the uses set forth above. Predicting the cost necessary to develop product candidates can be difficult and we anticipate that we will need additional funds to complete the development of any product candidates we identify. The amounts and timing of our actual expenditures and the extent of clinical development may vary significantly depending on numerous factors, including the progress of our development efforts, the status of and results from pre-clinical studies and any ongoing clinical trials or clinical trials we may commence in the future, as well as any collaborations that we may enter into with third parties for our product candidates and any unforeseen cash needs. As a result, our management will retain broad discretion over the allocation of the net proceeds from this offering.

We believe that the net proceeds from this offering, together with our existing cash and cash equivalents, will enable us to fund our operating expenses and capital expenditure requirements through the end of 2023.

We have based this estimate on assumptions that may prove to be incorrect, and we could use our available capital resources sooner than we currently expect. We may satisfy our future cash needs through the sale of equity securities, debt financings, working capital lines of credit, corporate collaborations or license agreements, grant funding, interest income earned on invested cash balances or a combination of one or more of these sources. We will also continue to pursue non-dilutive grants for late stage clinical trials.

Pending our use of the net proceeds from this offering, we intend to invest the net proceeds in a variety of capital preservation investments, including cash and cash equivalents, short-term investment-grade interest-bearing instruments and U.S. government securities.

DIVIDEND POLICY

We have never declared or paid any cash dividends on our capital stock. We intend to retain future earnings, if any, to finance the operation and expansion of our business and do not anticipate paying any cash dividends in the foreseeable future. Any future determination related to our dividend policy will be made at the discretion of our board of directors after considering our financial condition, results of operations, capital requirements, business prospects and other factors the board of directors deems relevant, and subject to the restrictions contained in any future financing instruments.

CAPITALIZATION

The following table sets forth our cash and cash equivalents and capitalization as of March 31, 2021, as follows:

- on an actual basis;
- on a pro forma basis to give effect to accelerated vesting of currently unvested board of director and corporate advisory council membership interests upon closing of the public offering;
- on a pro forma basis to give effect to the Corporate Conversion; and
- on a pro forma as adjusted basis to give further effect to our issuance and sale of 2,500,000 shares of our common stock in this offering at an assumed initial public offering price of $6.00 per share, which is the midpoint of the price range set forth on the cover page of this prospectus, after deducting underwriting discounts and commissions and estimated offering expenses payable by us.

The pro forma as adjusted information below is illustrative only, and our capitalization following the closing of this offering will be adjusted based on the actual initial public offering price and other terms of this offering determined at pricing. You should read this information in conjunction with our financial statements and the related notes included elsewhere in this prospectus and the "*Management's Discussion and Analysis of Financial Condition and Results of Operations*" and "*Corporate Conversion*" sections and other financial information contained in this prospectus.

As of March 31, 2021

(in thousands, except membership interest and share amounts)

	Actual	Pro Forma Accelerated Vesting[3]	Pro Forma Corporate Conversion[1][2]	Pro Forma As Adjusted
Cash and cash equivalents	$ 2,628	$ 2,628	$ 2,628	$ 15,693
Equity:				
Class A membership interests: 13,725,196 interests issued and outstanding, actual; 13,928,318 interests issued and outstanding pro forma (accelerated vesting); no interests issued or outstanding pro forma (corporate conversion); and no interests issued or outstanding pro forma (as adjusted)[1][3]	16,916	17,480	—	—
Class B membership interests: 100,000 interests issued and outstanding, actual; 100,000 interests issued and outstanding pro forma (accelerated vesting); no interests issued or outstanding pro forma (corporate conversion); and no interests issued or outstanding pro forma (as adjusted)[1]	830	830	—	—
Common stock, $0.001 par value per share: no shares authorized, issued or outstanding, actual; no shares authorized, issued or outstanding pro forma (accelerated vesting); 7,041,159 shares issued and outstanding, pro forma (corporate conversion); and 9,541,159 shares issued and outstanding pro forma (as adjusted)	—	—	7	10
Preferred stock, $0.001 par value per share: no shares authorized, issued or outstanding, actual; no shares authorized, issued or outstanding pro forma (accelerated vesting); no shares issued or outstanding, pro forma (corporate conversion); and no shares issued or outstanding pro forma (as adjusted)	—	—	—	—

	Actual	Pro Forma Accelerated Vesting[3]	Pro Forma Corporate Conversion[1][2]	Pro Forma As Adjusted
Additional Paid in Capital			18,303	15,186
Accumulated deficit	(15,275)	(15,839)	(15,839)	—
Total equity (deficit)	$ 2,471	$ 2,471	$ 2,471	$ 15,196
Total capitalization	$ 2,471	$ 2,471	$ 2,471	$ 15,196

(1) In connection with the Corporate Conversion, all outstanding Class A membership interests and Class B membership interests will be reduced to zero to reflect the elimination of all outstanding membership interests and other interests in Acurx Pharmaceuticals, LLC and corresponding adjustments will be reflected as common stock and additional paid-in capital. The pro forma and pro forma as adjusted information is illustrative only.

(2) The table in footnote 3 below presents the number of shares of common stock issuable in connection with the Corporate Conversion to holders of Class A membership interests and Class B membership interests based on the assumed initial public offering price of $6.00 per membership interest, which is the midpoint of the price range set forth on the cover page of this prospectus, on a one half-for-one basis.

(3) Class A Membership Interests include 13,725,196 as reported, plus 257,122 of unvested Class A Membership Interests for grants made to the board of directors/corporate advisory council members as of March 31, 2021 that will fully vest upon the Corporate Conversion, and on a pro forma basis recording the unrecognized expense of $563,889.

Shares of common stock to be issued for:

Class A membership interests	6,991,159
Class B membership interests	50,000

Each $1.00 increase (decrease) in the assumed initial public offering price of $6.00 per share, which is the midpoint of the price range set forth on the cover page of this prospectus, would increase (decrease) the pro forma as adjusted amount of each of cash and cash equivalents, total equity and total capitalization by $2.3 million, assuming that the number of shares offered by us, as set forth on the cover page of this prospectus, remains the same and after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us and assuming no exercise of the underwriter's over-allotment option. Similarly, each increase (decrease) of 1.0 million shares in the number of shares offered by us at the assumed initial public offering price of $6.00 per share, which is the midpoint of the price range set forth on the cover page of this prospectus, would increase (decrease) the pro forma as adjusted amount of each of cash and cash equivalents, total equity and total capitalization by approximately $5.5 million, after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us, assuming no exercise of the underwriter's over-allotment option and that the initial public offering price of such shares of common stock remains as set forth on the cover page of this prospectus remains the same.

The 7,041,159 shares of our common stock outstanding as of March 31, 2021 on an as-converted basis is based on 6,912,598 shares of common stock outstanding as of March 31, 2021, and 128,561 shares of common stock which will vest upon the consummation of this offering, after giving effect to the Corporate Conversion, and excludes:

- certain options to purchase shares of common stock at the time of this offering with an exercise price equal to the initial public offering price and with such options to be fully vested on the date of grant which we intend to grant to certain former Class B membership interest holders whose Class B membership interests were previously cancelled;
- 1,437,560 shares of common stock issuable upon exercise of warrants issued to investors in prior financings, in each case, with a weighted average exercise price equal to $2.88 per share;
- 75,000 shares of common stock issuable to certain vendors of the Company which will vest upon the satisfaction of certain performance-based and time-based vesting requirements;

- 375,000 shares of our common stock issuable upon exercise of the underwriter's over-allotment option;
- 150,000 shares of shares of our common stock issuable upon exercise of the Underwriter Warrants; and
- 2,000,000 shares of our common stock reserved for issuance pursuant to future awards under our 2021 Equity Incentive Plan.

Unless otherwise indicated, this prospectus reflects and assumes the completion of the Corporate Conversion, as a result of which all outstanding Class A membership interests and all outstanding Class B membership interests of Acurx Pharmaceuticals, LLC will be converted into an aggregate of 6,912,598 shares of common stock of Acurx Pharmaceuticals, Inc. pursuant to a conversion ratio of one-half of one share of common stock of Acurx Pharmaceuticals, Inc. for each Class A membership interest or Class B membership interest of Acurx Pharmaceuticals, LLC previously outstanding.

DILUTION

If you invest in our common stock in this offering, your ownership interest will be immediately diluted to the extent of the difference between the initial public offering price per share of our common stock and the pro forma as adjusted net tangible book value per share of our common stock after this offering. Pro forma net tangible book value per share represents the book value of our tangible assets less the book value of our total liabilities divided by the number of shares of common stock then issued and outstanding after giving effect to the Corporate Conversion and the accelerated vesting of currently unvested membership interests.

The historical net tangible book value as of March 31, 2021 was $2.5 million or $0.18 per Class A membership interests and Class B membership interests. Historical net tangible book value per membership interest represents the amounts of our tangible assets less total liabilities, divided by the total number of Class A and Class B membership interests outstanding. On a pro forma basis, after giving effect to the Corporate Conversion, and the accelerated vesting of currently unvested membership interests, our pro forma net tangible book value as of March 31, 2021 was $2.5 million, or $0.35 per share, based on 7,041,159 shares of our common stock outstanding after the Corporate Conversion.

After giving effect to our sale of 2,500,000 shares of common stock in this offering at an assumed initial public offering price of $6.00 per share, which is the midpoint of the price range set forth on the cover page of this prospectus, after giving effect to the Corporate Conversion and the accelerated vesting of currently unvested membership interests, after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us, and assuming no exercise of the underwriter's over-allotment option and no exercise of outstanding options or warrants, our pro forma as adjusted net tangible book value as of March 31, 2021 would have been approximately $15.2 million, or approximately $1.59 per share. This amount represents an immediate and substantial dilution of $4.41 per share to new investors purchasing common stock in this offering. The following table illustrates this dilution:

Assumed initial public offering price per share		$6.00
Historical net tangible book value per Class A membership interest and Class B membership interest as of March 31, 2021	$0.18	
Pro forma net tangible book value per share as of March 31, 2021 before this offering and after giving effect to the Corporate Conversion and the accelerated vesting of currently unvested membership interests[(1)]	0.35	
Increase in the pro forma net tangible book value per share after giving effect to this offering	0.17	
Pro forma as adjusted net tangible book value per share after this offering		1.59
Dilution per share to new investors participating in this offering		$4.41

(1) Excludes the Class B membership interests granted in January 2021 and subsequently cancelled in March 2021.

A $1.00 increase (decrease) in the assumed initial public offering price of $6.00 per share, which is the midpoint of the price range set forth on the cover page of this prospectus, would increase (decrease) the pro forma as adjusted net tangible book value per share after this offering by approximately $0.24, and dilution in pro forma as adjusted net tangible book value per share to new investors by approximately $5.17, assuming that the number of shares offered by us, as set forth on the cover page of this prospectus, remains the same and after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us and assuming no exercise of the underwriter's over-allotment option. An increase of 1.0 million shares in the number of shares offered by us would increase our pro forma as adjusted net tangible book value per share after this offering by $0.38 per share and decrease the dilution to new investors purchasing common stock in this offering to $4.03 per share, assuming the assumed initial public offering price remains the same and after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us, and assuming no exercise of the underwriter's over-allotment option. A decrease of 1.0 million shares in the number of shares offered by us would decrease our pro forma as adjusted net tangible book value per share after this offering by $0.46 per share and increase the dilution to new investors purchasing common stock in this offering to $4.87 per share, assuming the assumed

initial public offering price remains the same and after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us and assuming no exercise of the underwriter's over-allotment option.

If the underwriter exercises its option to purchase additional shares of our common stock in full, the pro forma as adjusted net tangible book value after this offering would be $1.74 per share, and the dilution to new investors would be $4.26 per share, in each case assuming an initial public offering price of $6.00 per share, which is the midpoint of the price range set forth on the cover page of this prospectus, and after deducting underwriting discounts and commissions and the estimated offering expenses payable by us.

The following table summarizes on the pro forma as adjusted basis described above, as of March 31, 2021, the difference between the number of shares of common stock purchased from us, the total consideration paid or to be paid and the average price per share paid or to be paid by existing stockholders and new investors in this offering at an assumed initial public offering price of $6.00 per share, which is the midpoint of the price range set forth on the cover page of this prospectus, before deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us, and assuming no exercise of the underwriter's over-allotment option. As the table shows, new investors purchasing common stock in this offering will pay an average price per share substantially higher than our existing stockholders paid.

	Shares Purchased		Total Consideration		Average Price Per Share
	Number	Percent	Amount	Percent	
Existing stockholders	7,041,159	74%	$17,579,876	54%	$ 2.49
New investors	2,500,000	26%	$15,000,000	46%	$ 6.00
Total	9,541,159	100%	$32,579,876	100%	$ 3.41

If the underwriter exercises its option to purchase additional shares of our common stock in full, the percentage of shares of common stock held by existing stockholders will decrease to approximately 3% of the total number of shares of our common stock outstanding after this offering, and the number of shares held by new investors will increase to 2,875,000, or approximately 29% of the total number of shares of our common stock outstanding after this offering.

The 7,041,154 shares of our common stock outstanding as of March 31, 2021 on an as-converted basis is based on 9,541,159 shares of common stock outstanding as of March 31, 2021, and 128,561 shares of common stock which will vest upon the consummation of this offering, after giving effect to the Corporate Conversion, and excludes:

- certain options to purchase shares of common stock at the time of this offering with an exercise price equal to the initial public offering price and with such options to be fully vested on the date of grant which we intend to grant to certain former Class B membership interest holders whose Class B membership interests were previously cancelled;
- 1,437,164 shares of common stock issuable upon exercise of warrants issued to investors in prior financings, in each case, with a weighted average exercise price equal to $2.88 per share;
- 75,000 shares of common stock issuable to certain vendors of the Company which will vest upon the satisfaction of certain performance-based and time-based vesting requirements;
- 375,000 shares of our common stock issuable upon exercise of the underwriter's over-allotment option;
- 150,000 shares of shares of our common stock issuable upon exercise of the Underwriter Warrants; and
- 2,000,000 shares of our common stock reserved for issuance pursuant to future awards under our 2021 Equity Incentive Plan.

Unless otherwise indicated, this prospectus reflects and assumes the completion of the Corporate Conversion, as a result of which all outstanding Class A membership interests and all outstanding Class B membership interests of Acurx Pharmaceuticals, LLC will be converted into an aggregate of 6,912,598 shares of common stock of Acurx Pharmaceuticals, Inc. pursuant to a conversion ratio of one-half of one share of common stock of Acurx Pharmaceuticals, Inc. for each Class A membership interest or Class B membership interest of Acurx Pharmaceuticals, LLC previously outstanding.

To the extent that outstanding exercisable options or warrants are exercised or new options or other securities are issued under our equity incentive plans, you may experience further dilution. In addition, we may choose to raise additional capital due to market conditions or strategic considerations, even if we believe we have sufficient funds for our current or future operating plans. To the extent that we raise additional capital by issuing equity securities or convertible debt, your ownership will be further diluted.

CORPORATE CONVERSION

We currently operate as a Delaware limited liability company under the name Acurx Pharmaceuticals, LLC. Immediately prior to the effectiveness of the registration statement of which this prospectus forms a part, Acurx Pharmaceuticals, LLC will convert into a Delaware corporation pursuant to a statutory conversion, and will change its name to Acurx Pharmaceuticals, Inc. In order to consummate the corporate conversion, a certificate of conversion will be filed with the Secretary of State of the State of Delaware. In this prospectus, we refer to all transactions related to our conversion to a corporation as the Corporate Conversion.

As a result of the corporate conversion:

- all of the outstanding Class A membership interests and all of the outstanding Class B membership interests of Acurx Pharmaceuticals, LLC will become shares of common stock of Acurx Pharmaceuticals, Inc. pursuant to a conversion ratio of one-half of one share of common stock of Acurx Pharmaceuticals, Inc. for each Class A membership interest or Class B membership interest of Acurx Pharmaceuticals, LLC previously held and outstanding. Accordingly, 13,725,196 Class A membership interests and 100,000 Class B membership interests of Acurx Pharmaceuticals, LLC issued and outstanding immediately prior to the corporate conversion will be converted automatically into an aggregate of approximately 6,912,598 shares of common stock of Acurx Pharmaceuticals, Inc. (excluding rounding for fractional shares);
- all of the outstanding warrants to purchase Class A membership interests of Acurx Pharmaceuticals, LLC will become warrants to purchase shares of common stock of Acurx Pharmaceuticals, Inc. at a ratio of one-half of one share of common stock of Acurx Pharmaceuticals, Inc. for each Class A membership interest of Acurx Pharmaceuticals, LLC underlying such warrants, with the effect that warrants to purchase up to an aggregate of 2,875,119 Class A membership interests of Acurx Pharmaceuticals, LLC outstanding immediately prior to the corporate conversion will automatically convert into warrants to purchase up to an aggregate of approximately 1,437,560 shares of common stock of Acurx Pharmaceuticals, Inc. upon consummation of the corporate conversion; and
- the exercise price of all of the outstanding warrants to purchase Class A membership interests of Acurx Pharmaceuticals, LLC will be adjusted in the same ratio as the one-half-for-one conversion ratio for outstanding warrants to purchase Class A membership interests of Acurx Pharmaceuticals, LLC noted above such that all of our outstanding warrants to purchase Class A membership interests of Acurx Pharmaceuticals, LLC which are currently exercisable at a weighted average price of $1.44 per Class A membership interest will automatically be adjusted such that the new exercise price for the warrants to purchase shares of common stock of Acurx Pharmaceuticals, Inc. that will be outstanding upon consummating the corporate conversion will be at a weighted average price of $2.88 per share, subject to certain adjustment provisions included in each such warrant.

In connection with the Corporate Conversion, Acurx Pharmaceuticals, Inc. will continue to hold all property and assets of Acurx Pharmaceuticals, LLC and will assume all of the debts and obligations of Acurx Pharmaceuticals, LLC. Acurx Pharmaceuticals, Inc. will be governed by a certificate of incorporation filed with the Secretary of State of the State of Delaware and bylaws, the material portions of which are described under the heading "*Description of Capital Stock*." On the effective date of the Corporate Conversion, the members of the board of managers of Acurx Pharmaceuticals, LLC will become the members of Acurx Pharmaceuticals, Inc.'s board of directors, and the officers of Acurx Pharmaceuticals, LLC will become the officers of Acurx Pharmaceuticals, Inc.

References in this prospectus to our capitalization and other matters pertaining to our equity prior to the Corporate Conversion relate to the capitalization and equity of Acurx Pharmaceuticals, LLC, and after the Corporate Conversion, to Acurx Pharmaceuticals, Inc. The financial statements included elsewhere in this prospectus are those of Acurx Pharmaceuticals, LLC and its subsidiaries. We expect that the Corporate Conversion will not have a material effect on our financial statements.

The purpose of the Corporate Conversion is to reorganize our structure so that the entity that is offering our common stock to the public in this offering is a Delaware corporation rather than a Delaware limited liability company, and so that our existing investors will own our common stock rather than equity interests in a limited liability company.

MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following discussion and analysis provides information that we believe is relevant to an assessment and understanding of our results of operations and financial condition. You should read this analysis in conjunction with our audited and unaudited financial statements and the notes contained elsewhere in this prospectus. This discussion and analysis contains statements of a forward-looking nature relating to future events or our future financial performance. These statements are only predictions, and actual events or results may differ materially. In evaluating such statements, you should carefully consider the various factors identified in this prospectus, which could cause actual results to differ materially from those expressed in, or implied by, any forward-looking statements, including those set forth in "Risk Factors" in this prospectus. See "Special Note Regarding Forward-Looking Statements."

Introduction

We are a clinical stage biopharmaceutical company developing a new class of antibiotics for infections caused by bacteria listed as priority pathogens by the World Health Organization ("WHO"), the U.S. Centers for Disease Control and Prevention ("CDC") and the U.S. Food and Drug Administration ("FDA"). Priority pathogens are those which require new antibiotics to address the worldwide crisis of antimicrobial resistance ("AMR"), as identified by the WHO, CDC and FDA. The CDC estimates that, in the U.S., antibiotic-resistant pathogens infect one individual every 11 seconds and result in one death every 15 minutes. The WHO recently stated that growing antimicrobial resistance is equally as dangerous as the ongoing COVID-19 pandemic, threatens to unwind a century of medical progress and may leave us defenseless against infections that today can be treated easily. According to the WHO, the current clinical development pipeline remains insufficient to tackle the challenge of the increasing emergence and spread of antimicrobial resistance.

Our approach is to develop antibiotic candidates that block the DNA polymerase IIIC enzyme (Pol IIIC) . We believe we are developing the first Pol IIIC inhibitor to enter clinical trials. Pol IIIC is the primary catalyst for DNA replication of several Gram-positive bacterial cells. Our research and development pipeline includes clinical stage and early stage antibiotic candidates that target Gram-positive bacteria for oral and/or parenteral treatment of infections caused by *Clostridium difficile* ("*C. difficile*"), Enterococcus (including vancomycin-resistant strains ("VRE")), Staphylococcus (including methicillin-resistant strains ("MRSA")), and Streptococcus (including antibiotic-resistant strains).

Pol IIIC is required for the replication of DNA in certain Gram-positive bacterial species. By blocking this enzyme, our antibiotic candidates are believed to be bactericidal and inhibit proliferation of several common bacterial pathogens, including both sensitive and resistant *C. difficile*, MRSA, vancomycin resistant Enterococcus, penicillin-resistant Streptococcus pneumonia ("PRSP") and other resistant bacteria.

Recent Developments

Effects of Coronavirus on Our Business

The World Health Organization recognized COVID-19 as a public health emergency of international concern on January 30, 2020 and as a global pandemic on March 11, 2020. Public health responses have included national pandemic preparedness and response plans, travel restrictions, quarantines, curfews, event postponements and cancellations and closures of facilities including local schools and businesses. The global pandemic and actions taken to contain COVID-19 have adversely affected the global economy and financial markets.

Since the start of the COVID-19 pandemic, we continued to enroll patients in our Phase 2a clinical trial of our lead antibiotic candidate, ibezapolstat, although enrollment rates decreased significantly at certain of our clinical trial sites. Other areas of our business experienced no change, including our manufacturing and research and development activities, in each case, with key vendors. We believe that the COVID-19 pandemic has highlighted the importance of antibiotic development in responding to global health issues particularly because many hospitalized COVID-19 patients were also prescribed antibiotics which only accelerates the current antimicrobial resistance crisis described by several regulatory bodies worldwide.

The extent to which the COVID-19 pandemic will ultimately impact our business, results of operations, financial condition and cash flows depends on future developments that are highly uncertain, rapidly evolving and difficult to predict at this time. While we are not experiencing material adverse impacts at this time, given the global economic slowdown, the overall disruption of global supply chains and distribution systems and the other risks and uncertainties associated with the COVID-19 pandemic, our business, financial condition, results of operations and growth prospects could be materially and adversely affected. While we believe that we are well positioned for the future as we navigate the crisis and prepare for an eventual return to a more normal operating environment, we continue to closely monitor the COVID-19 pandemic as we evolve our business continuity plans and response strategy.

In May 2020, we received a Paycheck Protection Program loan ("PPP Loan") under the Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act"), as administered by the U.S. Small Business Administration ("SBA") in the amount of $66,503. We did not provide any collateral or guarantees in connection with the PPP Loan, nor did we pay any facility charge to obtain the PPP Loan. The note and agreement provides for customary events of default, including those relating to failure to make payment, bankruptcy, breaches of representations and material adverse effects. We may prepay the principal of the PPP Loan at any time without incurring any prepayment charges. The PPP Loan carries an annual interest rate of 0.98% and matures two (2) years from issuance.

On April 13, 2021, the Small Business Administration authorized the full forgiveness of the PPP Loan. Upon forgiveness of the PPP Loan, we will reduce the liability and record a gain on extinguishment of debt in the statement of operations.

Recent Transactions

To date, we have raised an aggregate of $12.9 million in gross proceeds from the sale of our securities. This includes investment of approximately $955,000 by our officers and directors and approximately $12 million from other investors.

Results of Operations

For the Three Months Ended March 31, 2021 Compared to the Three Months Ended March 31, 2020

Summary Table

The following table presents a summary of the changes in our results of operations for the three months ended March 31, 2021, compared with the three months ended March 31, 2020:

	Three Months Ended March 31 (unaudited)		Percentage Increase
	2021	2020	
	(in thousands)		
Research and Development Expenses	$ 92	$ 685	(86)%
General and Administrative Expenses	1,382	594	132%
Total Expenses	1,474	1,279	(15)%
Net Loss	$ 1,474	$ 1,279	(15)%

Research and Development Expenses

Research and development expenses were $0.1 million for the three months ended March 31, 2021, and $0.7 million for the three months ended March 31, 2020, a decrease of 86%. The decrease is due primarily to the Phase 2 trial costs and related consulting costs being incurred in 2020.

General and Administrative Expenses

General and administrative expenses were $1.4 million for the three months ended March 31, 2021, and $0.6 million for the three months ended March 31, 2020, an increase of 132%. The increase is due primarily to an increase in stock-based compensation expense $0.7 million in 2021 and an increase in professional fees of $0.1 million.

Net Loss

Net loss was $1.5 million for the three months ended March 31, 2021, compared to $1.3 million for the three months ended March 31, 2020, a decrease of $1.3 million, or 15%, primarily due to decreases in research and development expenses offset by the increase in general and administrative expenses for the reasons stated above.

Net Cash Used in Operating Activities

Net cash used in operating activities was $0.5 million for the three months ended March 31, 2021. The net loss for this period was greater than the net cash used in operating activities by $0.9 million, which was primarily attributable to share-based executive compensation of $0.9 million, share based compensation to the board of directors of $0.2 million, and share based vendor payments of $0.1 million, which was paid in restricted Class A membership interests, offset by an increase in deferred offering costs of $0.3 million.

Net cash used in operating activities was $0.9 million for the three months ended March 31, 2020. The net loss for this period was greater than the net cash used in operating activities by $0.4 million, which was primarily attributable to share-based executive compensation $0.8 million, share based compensation to the board of directors of $0.2 million, share-based vendor payments of $0.2 million, which was paid in restricted Class A membership interests, offset by a decrease in accounts payable and accrued expenses of $0.8 million.

Net Cash Provided by Financing Activities

Net cash provided by financing activities for the three months ended March 31, 2021 was $0.

Net cash provided by financing activities for the three months ended March 31, 2020 was $0.

Year Ended December 31, 2020 Compared to Year Ended December 31, 2019

Summary Table

The following table presents a summary of the changes in our results of operations for the year ended December 31, 2020, compared with the year ended December 31, 2019:

	Years Ended December 31,		Percentage Increase
	2020	2019	
	(in thousands)		
Research and Development Expenses	$2,203	$3,510	(37)%
General and Administrative Expenses	2,397	2,421	—%
Total Expenses	4,600	5,931	(22)%
Net Loss	$4,600	$5,931	(22)%

Research and Development Expenses

Research and development expenses were $2.2 million for the year ended December 31, 2020, and $3.5 million for the year ended December 31, 2019, a decrease of 37%. Research and development expenses decreased primarily as a result of the more costly Phase 1 trial being incurred in 2019, $0.6 million, as well as a $0.6 million decrease in biology and computational chemistry consulting work in 2020, and a $0.1 million reduction in other consulting related work.

General and Administrative Expenses

General and administrative expenses were $2.4 million for the year ended December 31, 2020, and $2.4 million for the year ended December 31, 2019. General and administrative expenses were consistent with the prior year primarily due to a decrease of $0.4 million in compensation related expenses, offset by

increased professional fees of $0.3 million as a result of increased accounting and consulting work and an increase in share-based compensation for directors of $0.1 million.

Net Loss

Net loss was $4.6 million for the year ended December 31, 2020, compared to $5.9 million for the year ended December 31, 2019, a decrease of $1.3 million, or 22%, primarily due to decreases in research and development expenses for the reasons stated above.

Net Cash Used in Operating Activities

Net cash used in operating activities was $3.4 million for the year ended December 31, 2020. The net loss for this period was greater than the net cash used in operating activities by $1.2 million, which was primarily attributable to share-based executive compensation of $0.7 million, share based compensation to the board of directors of $0.7 million, and share based vendor payments of $0.6 million, which was paid in restricted Class A membership interests, and a decrease in accounts payable and accrued expenses of $0.8 million.

Net cash used in operating activities was $3.9 million for the year ended December 31, 2019. The net loss for this period was greater than the net cash used in operating activities by $2.0 million, which was primarily attributable to share based compensation to the board of directors of $0.6 million, share-based vendor payments of $0.3 million, which was paid in restricted Class A membership interests, and an increase in accounts payable and accrued expenses of $1.1 million.

Net Cash Provided by Financing Activities

Net cash provided by financing activities for the year ended December 31, 2020 was $4.0 million, which was attributable to aggregate net proceeds of $1.7 million received from the private placement of our Class A membership interests on July 20, 2020 and net proceeds of the second closing of our private placement of our Class A membership interests of $2.3 million on October 16, 2020.

Net cash provided by financing activities for the year ended December 31, 2019 was $4.4 million, which was attributable to aggregate net proceeds of $0.5 million received from the private placement of our Class A membership interests on March 29, 2019, net proceeds of $2.5 million received from the private placement of our Class A membership interests on August 8, 2019, and net proceeds of $1.0 million received from the private placement of our Class A membership interests that closed on October 18, 2019, as well as advanced receipts of a private placement offering $0.4 million which closed on January 6, 2020.

Liquidity and Capital Resources

Overview

We have generated no revenue from operations and we have incurred cumulative losses of approximately $15.3 million since inception as of March 31, 2021. We have funded our operations primarily from equity issuances. We received net cash proceeds of approximately $12.9 million from equity financings closed between March 2018 and October 2020 starting with investments from the co-founders. All of our equity financings were consummated at a price ranging from $1.00 per Class A Membership Interest (March 2018) to $3.25 per Class A Membership Interest (July 2020 and October 2020). Warrant coverage was provided in all but our most-recent financing and the warrant coverage in our early-stage financings ranged from 25% warrant coverage to 50% warrant coverage, in each case, with a conversion price equal to the issue price in each offering.

Based upon our lack of revenue expected for 2021, together with the planned expenditures, management currently believes that current cash will be insufficient to fund our research and development expenses and general and administrative expenses beyond the end of 2021. Upon completion of this offering, the expected net proceeds from this offering, added to our current cash, is anticipated to be sufficient to fund our operations through the end of 2023.

Furthermore, if our assumptions underlying our anticipated timing for the completion of our clinical and regulatory program and our anticipated expenses prove to be wrong, we may have to raise additional capital sooner than anticipated. Because of numerous risks and uncertainties associated with the research, development and future commercialization of our product candidates, we are unable to estimate with certainty the amounts of increased capital outlays and operating expenditures associated with our anticipated clinical trials and development activities. Our current estimates may be subject to change as circumstances regarding requirements further develop. We may decide to raise capital through public or private equity offerings, debt financings or corporate collaboration and licensing arrangements. We do not have any existing commitments for future external funding. We may seek to sell additional equity or debt securities or obtain a bank credit facility if available. The sale of additional equity or debt securities, if convertible, could result in dilution to our stockholders. The incurrence of indebtedness would result in increased fixed obligations and could also result in covenants that would restrict our operations or other financing alternatives.

Our ability to continue as a going concern may be dependent on our ability to raise additional capital, to fund our research and development and commercial programs and meet our obligations on a timely basis. If we are unable to successfully raise sufficient additional capital, we may not have sufficient cash flow and liquidity to fund our business operations, forcing us to delay, discontinue or prevent product development and clinical trial activities or the approval of any of our potential products or curtail our activities and, ultimately, potentially cease operations. Even if we are able to raise additional capital, such financings may only be available on unattractive terms, or could result in significant dilution of stockholders' interests and, in such event, the value and potential future market price of our common stock may decline. In addition, the incurrence of indebtedness would result in increased fixed obligations and could result in covenants that would restrict our operations or other financing alternatives.

As of March 31, 2021, we had working capital of $2.2 million, consisting primarily of $2.6 million of cash, offset by $0.5 million of accounts payable and accrued expenses.

Recent Accounting Pronouncements

The Financial Accounting Standards Board has issued certain accounting pronouncements as of December 31, 2020 that will become effective in subsequent periods; however, we do not believe that any of those pronouncements would have significantly affected our financial accounting measurements or disclosures had they been in effect during 2020, or that they will have a significant impact on us at the time they become effective.

Critical Accounting Policies and Estimates

Use of Estimates

The preparation of financial statements in conformity with accounting standards generally accepted in the United States of America ("GAAP") requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of expenses during the reporting period. Actual results could differ from those estimates.

Federal Income Taxes

We are organized as a limited liability company, and are not a tax paying entity for Federal and state income tax purposes and, therefore, no income tax expense has been recorded in the financial statements. Our income or losses are passed through to the members for inclusion in their respective income tax returns.

Concentration of Credit Risk

We maintain our cash balance in one financial institution. The balance is insured up to the maximum allowable by the Federal Deposit Insurance Corporation ("FDIC"). We have not experienced any losses in such accounts and do not believe we are exposed to any significant risk of loss on cash. At times, the cash balance may exceed the maximum insured limit of the FDIC.

Guaranteed Payments to Members

Guaranteed payments to our members, that were designated to represent reasonable compensation for services rendered, were accounted for as our expenses rather than an allocation of our net income.

Research and Development

In accordance with Accounting Standards Codification Topic No. 730, Accounting for Research and Development Costs, we expense research and development costs when incurred. At times, we may make cash advances for future research and development services. These amounts are deferred and expensed in the period the service is provided. We incurred net research and development expenses in the amount of $2,202,979 and $3,510,088 for the years ended December 31, 2020 and 2019, respectively, and $91,908 and $684,731 for the three months ended March 31, 2021 and 2020, respectively.

Share-Based Compensation

We account for the cost of services performed by officers and directors received in exchange for an award of our membership interests based on the grant-date fair value of the award. We recognize compensation expense on a straight-line basis over the service period.

Share-Based Payments to Vendors

In accordance with our adoption of ASU No. 2018-07, Compensation — Stock Compensation (Topic 718): Improvements to Nonemployee Share-Based Payment Accounting, we account for the cost of services performed by vendors in exchange for an award of our membership interests based on the grant-date fair value of the award or the fair value of the services rendered; whichever is more readily determinable. Such fair value is measured as of the date the services or the date performance by the other party is complete. We recognize the expense in the same period and in the same manner as if we had paid cash for the services.

Foreign Currency Transactions

The financial statements are presented in U.S. dollars (“USD”), our reporting currency. We may engage in transactions denominated in other foreign currencies. These transactions were translated to USD at rates which approximate those in effect on the transaction dates. Monetary assets and liabilities denominated in foreign currencies at year-end will be translated at exchange rates in effect as of those dates. Nonmonetary assets and liabilities are translated at appropriate historical rates.

Major Vendor

For the year ended December 31, 2020, we had a major vendor that accounted for approximately 40% of the research and development expenditures. The same vendor also accounted for approximately 6% of the total accounts payable at December 31, 2020. This vendor is a clinical research organization (“CRO”), and has been involved with managing our clinical trials of ibezapolstat since the fourth quarter 2019. We entered into a Master Services Agreement, dated October 11, 2019 with this vendor to perform CRO services on our behalf and we signed a work order in November 2019 to retain the CRO to perform clinical trial services for our Phase 2a clinical trial of ibezapolstat. We anticipate working with the same vendor to perform CRO services in connection with our planned Phase 2b clinical trial which services would be performed pursuant to a new work order in September 2020 under the purview of the existing Master Services Agreement.

BUSINESS

Overview

We are a clinical-stage biopharmaceutical company developing a new class of antibiotics for infections caused by bacteria listed as priority pathogens by the World Health Organization ("WHO") the U.S. Centers for Disease Control and Prevention ("CDC") and the U.S. Food and Drug Administration ("FDA"). Priority pathogens are those which require new antibiotics to address the worldwide crisis of antimicrobial resistance ("AMR") as identified by the WHO, CDC and FDA. The CDC estimates that, in the U.S., antibiotic-resistant pathogens infect one individual every 11 seconds and result in one death every 15 minutes. The WHO recently stated that growing antimicrobial resistance is equally as dangerous as the ongoing COVID-19 pandemic, threatens to unwind a century of medical progress and may leave us defenseless against infections that today can be treated easily. According to the WHO, the current clinical development pipeline remains insufficient to tackle the challenge of the increasing emergence and spread of antimicrobial resistance.

Our approach is to develop antibiotic candidates that block the DNA polymerase IIIC ("Pol IIIC"). We believe we are developing the first Pol IIIC inhibitor to enter clinical trials. Pol IIIC is the primary catalyst for DNA replication of several Gram-positive bacterial cells. Our research and development pipeline includes clinical stage and early stage antibiotic candidates that target Gram-positive bacteria for oral and/or parenteral treatment of infections caused by *Clostridium difficile* ("*C. difficile*"), Enterococcus (including vancomycin-resistant strains ("VRE")), Staphylococcus (including methicillin-resistant strains ("MRSA")), and Streptococcus (including antibioticresistant strains).

Pol IIIC is required for the replication of DNA in certain Gram-positive bacterial species. By blocking this enzyme, our antibiotic candidates are believed to be bactericidal and inhibit proliferation of several common bacterial pathogens, including both sensitive and resistant *C. difficile*, MRSA, vancomycin resistant Enterococcus, penicillin-resistant Streptococcus pneumoniae ("PRSP") and other resistant bacteria.

We intend to "de-risk" this new class of antibiotics through our drug development activities and potentially partner with a fully-integrated pharmaceutical company for late-stage clinical trials and commercialization.

Our lead antibiotic candidate, ibezapolstat (formerly named ACX-362E), has a novel mechanism of action that targets the Pol IIIC enzyme, a previously unexploited scientific target. We recently completed a Phase 2a clinical trial of ibezapolstat to treat patients with *C. difficile* infections, or CDI. The Phase 2a clinical trial was terminated early based upon the recommendation of our Scientific Advisory Board, or SAB. The SAB reviewed the study data presented by management, including adverse events and efficacy outcomes, and discussed their clinical impressions. The SAB unanimously supported the early termination of the Phase 2a trial after 10 patients were enrolled in the trial instead of 20 patients as originally planned. The early termination was further based on the evidence of meeting the treatment goals of eliminating the infection with an acceptable adverse event profile.

The SAB noted that 10 out of 10 patients enrolled in the Phase 2a trial reached the Clinical Cure endpoint, defined in the study protocol as the resolution of diarrhea in the 24-hour period immediately before the end-of-treatment that is maintained for 48 hours after end of treatment. Such cure was sustained, meaning that the patients showed no sign of infection recurrence, for 30 days thereafter. This constitutes a 100% response rate for the primary and secondary endpoints of the trial. All 10 patients enrolled in the Phase 2a trial met the study's primary and secondary efficacy endpoints, namely, Clinical Cure at end of treatment and Sustained Clinical Cure of no recurrence of CDI at the 28-day follow-up visit. No treatment-related serious adverse events ("SAEs") were reported by the investigators who enrolled patients in the trial. We believe these results represent the first-ever clinical data showing Pol IIIC has potential as a therapeutically-relevant antibacterial target. We plan to commence a Phase 2b clinical trial pursuant to the trial design described below.

The SAB is comprised of nine scientists and clinicians who have significant expertise in the scientific disciplines required for the research and development of antibiotics. The members of the SAB serve at the pleasure of management, are paid in cash on an hourly basis for their services and do not receive equity

compensation. Generally, the SAB is consulted by management during the process of designing our preclinical and clinical trials as well as in the process of analyzing data generated from these trials, although the SAB's services are not limited to such activities.

Currently available antibiotics used to treat CDI infections utilize other mechanisms of action. We believe ibezapolstat is the first antibiotic candidate to work by blocking the DNA Pol IIIC enzyme in *C. difficile*. This enzyme is necessary for replication of the DNA of certain Gram-positive bacteria, like *C. difficile*.

We also have an early stage pipeline of antibiotic product candidates with the same previously unexploited mechanism of action which has established proof of concept in animal studies. This pipeline includes ACX-375C, a potential oral and parenteral treatment targeting Gram-positive bacteria, including MRSA, VRE and PRSP.

As of March 31, 2021, we had two full-time employees and one part-time employee.

Our Technology

These results also represent the first-ever clinical validation of DNA polymerase IIIC as a therapeutically relevant antibacterial target. Ibezapolstat was very well tolerated with no treatment-related SAEs noted in the Phase 2a trial. Additionally, data obtained to date demonstrate that ibezapolstat enhances actinobacteria in the microbiome and suppresses regrowth of proteobacteria; potentially lessening the likelihood of CDI recurrence or new infection by MDR Gram-negative bacteria (Garey, et. al., Late-Breaker Presentation, Ibezapolstat Clinical Update, 8th Annual International C. Diff. Virtual Conference, November 14, 2020).

PHYLUM	ANTIBIOTIC ACTIVITY	
	ibezapolstat	vancomycin (oral)
Actinobacteria	No	Yes
Bacteroidetes	No	Yes
Firmicutes	Yes	Yes
Fusobacteria	No	No
Proteobacteria	No	No

Prior to conducting the Phase 2a clinical trial, we successfully completed a Phase 1 clinical trial of ibezapolstat for the oral treatment of CDI (the "Phase 1 Trial"). The Phase 1 Trial, conducted in the U.S., was a double-blind, placebo- controlled study to determine safety, tolerability, pharmacokinetics and fecal concentrations of ibezapolstat in 62 healthy volunteers. It was conducted in two parts; first, single ascending doses were administered to four cohorts of eight subjects each, and second, multiple ascending doses were administered that simulate the anticipated clinical treatment regimen. Safety information was analyzed through assessment of adverse events and other standard safety measures, while concentrations of ibezapolstat were determined in both blood and the feces, the latter being the critical site of drug delivery for treating CDI. In addition, the laboratory of Dr. Kevin Garey at the University of Houston performed state-of-the-art microbiomic testing of gastrointestinal flora in trial subjects as compared with vancomycin, the standard of care for the treatment of patients with CDI, which testing was the first of its kind in Phase 1 clinical trials for CDI.

Data from the case report forms completed by the principal investigators of the Phase I Trial showed that single and multiple ascending doses of ibezapolstat demonstrated a safety signal similar to placebo according to the principal investigators as evidenced by the case report forms. There were no safety signals reported on the case report forms related to physical examination or vital signs (blood pressure, pulse or oral temperature) in any part of the study. No significant abnormalities developed in the 12-lead electrocardiogram traces for any subject at any dose given according to the data reported by the principal investigators in the case report forms. No changes were observed in serum biochemistry or haematological blood evaluations. No

dose-dependent increase in adverse events, (each, an "AE") was reported, and no serious AEs were observed. The proportion of ibezapolstat-dosed subjects with an AE was similar to placebo at each dosing level. All AEs were considered mild or moderate and none required a change in therapy or intervention.

Systemic exposure following oral dosing was very low and no accumulation occurred after ten days of repeated dosing. In addition, oral dosing of ibezapolstat resulted in rapid and sustained fecal concentrations that are approximately 2,500 times the minimum inhibitory concentration of ibezapolstat required to kill the CDI bacteria in the colon at the site of the infection. Comparative microbiome analysis versus vancomycin demonstrated a two to three log favorable difference in the reduction of the predominantly healthy bacteria in the gut microbiome. Free concentrations of ibezapolstat were found to be high enough to kill *C. difficile* but too low to kill healthy bacteria like Bacteroides & Firmicutes which constitute approximately 90% of healthy microbiome in the judgment of our scientific advisors. Upon review of the final Phase 1 Trial data, our medical and scientific advisors suggested these data supported advancing ibezapolstat into a Phase 2 clinical trial at doses up to 450 mg, twice daily, for 10 days of treatment, as described above. We believe that ibezapolstat is the only clinical-stage compound currently known to target *C. difficile* by acting specifically on Pol IIIC.

We have worked closely with the FDA to obtain our investigational new drug application ("IND"), and to obtain FDA fast track designation as well as designation of ibezapolstat as a qualified infectious disease product ("QIDP"), which provides incentives through the Generating Antibiotic Incentives Now Act (the "GAIN Act") including FDA priority review for the first application submitted for the QIDP, fast track designation eligibility and extension of statutory exclusivity periods in the U.S. for an additional 5 years upon FDA marketing approval of the product to treat patients with CDI.

Ibezapolstat originally was sponsored by GLSynthesis Inc., which completed several pre-clinical studies, developed the current manufacturing process and filed for the patents that have been granted to date. We acquired worldwide rights to manufacture, develop and commercialize ibezapolstat from GLSynthesis Inc. on February 5, 2018, pursuant to an asset purchase agreement executed by the parties on that date. At closing, we paid GLSynthesis $110,174 in cash and 100,000 Class B Membership Interests. We are also required to pay up to $700,000 in success-based clinical milestone payments to GLSynthesis, including a payment of $500,000 upon the successful completion of two phase 3 clinical trials and a royalty of 4% on net sales of ibezapolstat throughout the duration of the patent period, which currently extends to September 2030.

As of the date of this prospectus, of the $700,000 of potential milestone payments, we have paid to GLSynthesis a total of $50,000, including $25,000 paid upon receipt of a "safe to proceed" notification from FDA relating to the commencement of clinical trials (December 2018) and $25,000 paid upon the successful completion of clinical trial drug supply suitable to support our Phase 1 clinical trial (December 2018). The patent jurisdictions of the acquired patents include the U.S., European Union, Japan and Canada.

About QIDP and Fast Track Designations

The Generating Antibiotic Incentives Now (GAIN) Act, which was enacted as part of the Food and Drug Administration Safety and Innovation Act ("FDASIA") in 2012, created incentives for the development of novel antibiotic and antifungal products intended to treat serious and life-threatening infections. The GAIN Act amended the federal Food, Drug, and Cosmetic Act to add a designation for QIDPs. A QIDP is defined as "an antibacterial or antifungal drug for human use intended to treat serious or life-threatening infections, including those caused by (1) an antibacterial or antifungal resistant pathogen, including novel or infectious pathogens, or (2) qualifying pathogens listed under" 21 C.F.R. § 317.2. The primary incentive for developing a QIDP is a five-year exclusivity extension for the relevant antibiotic or antifungal indications of the QIDP, but the designation also offers FDA priority review for the first application submitted for the QIDP and eligibility for fast track designation.

FDA's fast track designation is a process designed to facilitate the development and expedite the regulatory pathway of new drugs to treat serious or life-threatening conditions and that fill a high unmet medical need. To be eligible for a fast track designation, the FDA must determine, based on the request of a sponsor, that a product is intended to treat a serious or life-threatening disease or condition and demonstrates the potential to address an unmet medical need by providing a therapy where none exists or a

therapy that may be potentially superior to existing therapy based on efficacy or safety factors. Fast track designation provides opportunities for more frequent interactions with the FDA review team to expedite development and review of the product. The FDA may also review sections of the new drug application ("NDA") for a fast track product on a rolling basis before the complete application is submitted, if the sponsor and the FDA agree on a schedule for the submission of the application sections and the sponsor pays any required user fees upon submission of the first section of the NDA. In addition, fast track designation may be withdrawn by the sponsor or rescinded by the FDA if the designation is no longer supported by data emerging from the clinical trial process.

Ibezapolstat is a novel, orally-administered antibacterial compound. It is the first of a novel class of DNA polymerase IIIC inhibitors under development by us to treat bacterial infections. Ibezapolstat has been designated by the FDA as a QIDP for the treatment of patients with CDI and will be eligible to benefit from the incentives for the development of new antibiotics established under the GAIN Act. Ibezapolstat is being developed as a targeted, narrow spectrum oral antibiotic for the treatment of patients with CDI. In addition, ibezapolstat has received fast track designation from FDA. We successfully completed the Phase 1 clinical trial in August 2019 and have completed a Phase 2a clinical trial and expect to begin a Phase 2b clinical trial in 2021. The CDC has designated *C. difficile* as an urgent threat highlighting the need for new antibiotics to treat CDI.

Based upon advice from our scientific advisors, we believe ACX-375C, our second antibiotic candidate currently in pre-clinical development, will also be eligible for FDA's QIDP and fast track designations. This advice is supported by the "qualifying" criteria for a QIDP (Qualified Infectious Disease Product) listed in GAIN Act legislation of 2012 enacted as part of the Food and Drug Administration Safety and Innovation Act (FDASIA). A QIDP is defined as "an antibacterial or antifungal drug for human use intended to treat serious or life-threatening infections, including those caused by qualifying pathogens listed under 21 C.F.R. § 317.2 which include bacterial pathogens against which ACX-375C has demonstrated microbiological activity namely, methicillin-resistant Staphylococcus aureus and vancomycin-resistant enterococcus. These bacteria are generally causative of serious or life-threatening infections, including, but not limited to, acute bacterial skin and skin structure infections, community acquired pneumonia, blood stream infections, hospital acquired bacterial pneumonia and ventilator acquired bacterial pneumonia, which are planned to be studied in future clinical trials at the appropriate time in product development.

Mechanism of Action

DNA Pol IIIC has proved essential for replicative DNA synthesis in aerobic, low G-C Gram-positive bacteria, i.e. those with a low guanine-cytosine (G-C) ratio relative to their adenine-thymine (A-T) ratio. Pol IIIC-specific genes of several such Gram-positive bacteria have been cloned and expressed, and the DNA Pol IIIC enzymes appear to share a unique capacity to be inhibited by 6-anilinouracils (AU), 2-phenylguanines (PG) and related compounds which are analogs of 2 '-deoxyguanosine 5' -triphosphate (dGTP).

The hypothesis supporting further development of ibezapolstat is that dGTP analog compounds bind to Pol IIICvia a "base-pairing domain" and an enzyme-specific "aryl domain" (**Figure 1**). Through its base-pairing domain, which mimics that of guanine, the dGTP analog base pairs with an un-apposed template cytosine just distal to the DNA primer terminus. Simultaneously, the aryl domain binds an aryl-specific "receptor" near the POL IIIC enzyme's dNTP binding site, causing the formation of an inactive ternary complex of inhibitor (dGTP analog), DNA and Pol IIIC (**Figure 2**).

Figure 1. Hypothetical mechanism of 2-phenylguanines base-pairing to DNA (Torti 2011).

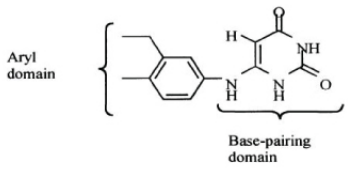
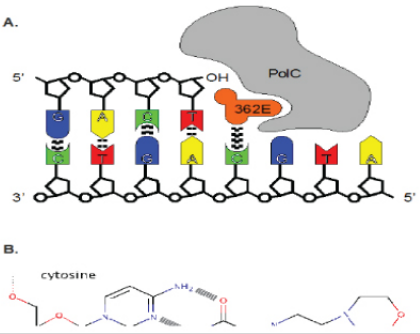


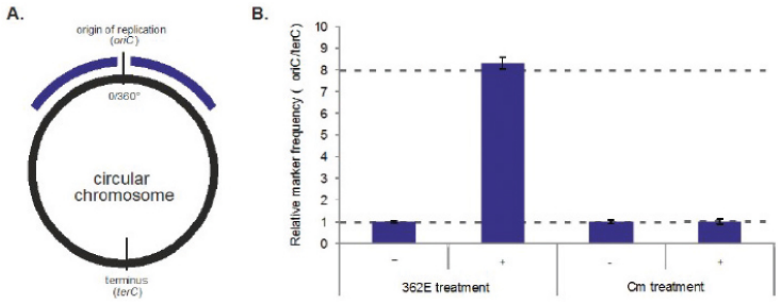
Figure 2. A. Ternary complex of ibezapolstat (362E), DNA, and pol IIIC (van Eijk 2012).

B. Hydrogen bonding schematic of 362E with cytosine./



Following the ternary binding hypothesis described above, Torti et al. (2011) reported that ibezapolstat (362E) inhibited purified Pol IIIC derived from C. *difficile* (Ki 0.325 µM) and from Bacillus subtilis (Ki 0.34 µM) in *in vitro* resting. *C. difficile* has a single circular chromosome and one origin of replication (*oriC*) from which DNA replication begins in a bi-directional fashion (**Figure 3A**). Using marker frequency analysis, the abundance of the *oriC* proximal genes relative to the terminus (*terC*) proximal genes can be determined. *C. difficile* treated with 4 µg/mL of ibezapolstat (362E) demonstrated an 8-16-fold increased oriC:terC ratio, which would be expected for inhibition of DNA replication (**Figure 3B**).

Figure 3. (A) Bi-directional replication of prokaryotes. (B) Marker Frequency Analysis of subinhibitory effects of PolC inhibitor ibezapolstat (362E) compared to the antibiotic Chloramphenicol (Cm).



Pre-Clinical Studies

All IND-enabling preclinical studies for ibezapolstat have been completed, including FDA-required toxicology, pharmacokinetics and *in vitro* microbiology studies and *in vivo* animal models. Highlights from these studies are included below:

Toxicology

Genetic Toxicology Studies:

- Ames test: Negative

- Mouse Lymphoma Assay: Negative
- Micronucleus assay: Negative

Cardiovascular Safety:

- hERG Assay: The IC50 observed represents an adequate safety margin
- Cardiovascular safety studies in telemetered dogs showed no significant CV risk

14- day Toxicology Studies:

- Rat: No effect on clinical observations, body weight, ophthalmology, hematology, clinical chemistry, urinalysis, micronucleus, gross necropsy, and microscopic endpoints; the no observed adverse effect level ("NOAEL"), is considered to be approximately 1000 mg/kg via oral administration
- Dog: Emesis and diarrhea were observed in the high dose groups, which are considered test article-related; No drug-related effects were observed for body weights, food consumption, ophthalmology, clinical pathology, organ weight, gross necropsy and microscopic evaluations; the NOAEL is approximately 200 mg/kg/day following 14 days oral administration

Pharmacokinetics

Administration in male rats of a 5 mg/kg IV bolus dose of a salt form of GLS362E showed rapid systemic clearance and a short terminal half-life (0.34 hours). Plasma concentrations were BQL (<0.5ng/mL) at three to four hours post-dose. All oral dosing of GLS362E, now known as ibezapolstat, did not use the salt form, only the parent molecule since the salt form is not necessary for oral dosing. Administration in male rats of a single 50mg/kg oral dose of ibezapolstat in a suspension formulation, Cmax was 119ng/mL and was observed at 15 minutes post-dose. Plasma levels declined with an apparent terminal half — life of 3.82 hours and were still quantifiable at 24 hours post-dose. Oral bioavailability in male rats was 8.6%. Ibezapolstat excretion in feces was much greater than urinary excretion, consistent with incomplete oral bioavailability. After administration in male rats of a single 50 mg/kg oral dose of ibezapolstat in a suspension formulation, concentrations in the GI mucosa of all regions of the gastrointestinal tract were >10μg/mL at four hours post-dose, and >10 μg/mL at ten hours post-dose for ileum, cecum, colon and rectum. Fecal concentrations after oral dosing were approximately 100 to 200 mcg/mL.

In vitro Microbiology

Several *in vitro* susceptibility tests have been completed. Below is a summary data table showing MIC values for 22 *C. difficile* strains, conducted in triplicate, with the testing conducted by the R.M. Alden Laboratory in California and the isolates obtained from the same. The table below shows that the activity of GLS362E was similar to that of vancomycin and metronidazole.

22 *C. difficile* isolate MIC testing (μ g/mL), Median values Testing Conducted at R.M. Alden Labs in California

Drug	MIC range	MIC50	MIC90
Ibezapolstat	1 – 4	2	4
Vancomycin	1 – 8	1	4
Metronidazole	0.25 – 4	1	4

Data in the table below show that ibezapolstat was not active against two*Bifidobacterium* species or *Eubacterium lentum* at 32 μ g/mL, the highest concentration tested. Activity was observed for lactobacilli and *Clostridium perfringens*. Most importantly, ibezapolstat was active against ten clinical isolates of*C. difficile* with an MIC range of 0.5 – 4 μ g/mL, MIC50 of 2 μ g/mL, and an MIC90 of 4 μ g/mL. Since the Pol IIIC target enzyme is present in only a narrow spectrum of Gram-positive organisms, minimal disruption of gut flora is anticipated. This is supported by the data in the table below, which shows that representative specimens of other gut bacteria — lactobacillus, bifidobacterium, and eubacterium — are not susceptible to ibezapolstat.

Study Report GLS001: Agar Dilution MIC (µ g/mL) Testing Conducted at Micromyx, 2010.

Organism	Micromyx Number	362E	Metronidazole
Bifidobacterium brevi	3967 (ATCC[1] 15698)	>32	2
Bifidobacterium longum	3968 (ATCC 15707)	>32	4
Lactobacillus casei	1722 (ATCC 393)	16	>32
Lactobacillus acidophilus	0681	4	>32
Eubacterium lentum	1274 (ATCC 43055)	>32	0.25
Clostridium perfringens	3414	16	1
Clostridium difficile	3579	4	0.25
	3580	2	0.25
	3581	2	0.5
	3582	4	0.5
	3584	1	0.25
	3585	2	0.25
	3587	2	0.5

Study Report GLS001: Agar Dilution MIC (µ g/mL) Testing Conducted at Micromyx, 2010.

Organism	Micromyx Number	362E	Metronidazole
	3588	0.5	0.25
	3589	2	1
Quality Control Strains			
Clostridium difficile	4381 (ATCC 700057)	1	0.25 (0.12 – 0.5)[2]
Bacteroides fragilis	0123 (ATCC 25285)	>32	0.25 (0.25 – 1)

(1) American Type Culture Collection

(2) Quality control range

Additional testing has shown that ibezapolstat is highly potent against 98 strains of recent clinical isolates of *C. difficile* in the U.S., with an MIC50 of 2 µg/mL and an MIC90 of 4 µg/mL, as shown in the table below. Similar recent testing of 364 European isolates showed identical MIC values.

	362E	MTZ	VAN	FDX
MIC range:	0.5 – 8	0.25 – >32	0.5 – 16	0.03 – > 8
MIC_{50}:	2	0.5	1	0.5
MIC_{90}:	4	4	4	2

MTZ, metronidazole; VAN, vancomyein; FDX, fidaxomicin

The in vitro activity of ibezapolstat was tested in June 2019 by conducting minimum inhibitory concentration (MIC) testing against 104 *C. difficile* clinical isolates, including those with important ribotypes. Fidaxomicin, vancomycin, and metronidazole were used as comparators. When ibezapolstat achieved the ≥99.9% bacterial kill (i.e., 3-log reduction in bacterial numbers), it met the Clinical Laboratory Standards Institute ("CLSI") criteria for bactericidal activity which is accepted by FDA. This represents a laboratory measure of antibacterial potency but does not translate directly into human efficacy which can only be established in clinical trials.

Results indicated that the activity of ibezapolstat was similar to that of the comparators evaluated, with a narrow MIC range against 104 *C. difficile* clinical isolates, of which ~30% were of different ribotypes

and another 30% were toxigenic. In addition, 4 isolates of the epidemic strain ribotypes 027 and 078 demonstrated ACX-362E sensitivities similar to those of other ribotypes. In Vitro Activity (in µg/mL) of ACX-362E (ibezapolstat) and Comparators against 104 C. dificile Clinical Isolates.

In Vitro Activity (in µg/mL) of ACX-362E (ibezapolstat) and Comparators against 104 C. difficile Clinical Isolates

	ACX-362E (ibezapolstat)	MTZ	VAN	FDX
MIC range:	1 – 8	0.25 – 16	0.5 – 4	0.015 – 1
MIC50:	4	0.5	1	0.12
MIC90:	4	1	2	0.25

Abbreviations: FDX=fidaxomicin; MIC=minimum inhibitory concentration; MTZ=metronidazole; VAN=vancomycin.

Overall, the results of this study indicated that the activity of ibezapolstat was similar to that of the comparators evaluated in this study. With a narrow MIC range against 104 *C. difficile* clinical isolates, approximately 30% were of different ribotypes and another 30% were toxigenic.

In July 2019 the bactericidal activity of ibezapolstat was evaluated by first determining the MIC and then the minimum bactericidal concentration (MBC) against 3 *C. difficile* isolates; vancomycin and metronidazole were used as comparators in these assays. In a second measure of bactericidal activity, the time-kill kinetics of ibezapolstat was assessed in comparison to vancomycin and metronidazole against the same 3 *C. difficile* isolates.

Against two of the three isolates, ibezapolstat had MBC:MIC ratios of 1 to 4 across replicates indicating bactericidal activity. For the remaining isolate, MBC:MIC ratios of 2 to >8 were observed although in instances where the ratio was >8, counts indicated >2-$\log^{10}$ killing at or near the MIC. When the time-kill kinetics (or the result of a microbiological laboratory study of antimicrobial activity of a compound over time) of ibezapolstat were evaluated against *C. difficile* MMX 5680 and BAA-1382, bactericidal activity was observed at the two later time points and at all three evaluated doses (MMX 5680) or the two highest doses (BAA-1382). Against *C. difficile* isolate BAA-1875, ibezapolstat did not demonstrate the ≥3 $\log^{10}$ CFU/mL killing required for bactericidal activity, but bacterial levels were reduced by >2 $\log^{10}$ CFU at the 24- and 48-hr time points at 16X and 32X the MIC. In the case of metronidazole and vancomycin, the highest MIC value recorded from the triplicate testing was used to calculate 8X, 16X, and 32X the MIC for the time kill study.

Activity of ibezapolstat and Comparators against C. difficile Isolates

				ACX-362E (ibezapolstat)		Metronidazole		Vancomycin	
Organism	**Isolate No.**	**Type**	**Replicate**	**MIC**	**MBC**	**MIC**	**MBC**	**MIC**	**MBC**
C. difficile	MMX 5680	Ribotype 027	A	1	1	2	2	0.5	0.5
			B	1	1	4	4	0.5	0.5
			C	1	2	2	2	0.25	0.25
	BAA- 1382	Ribotype 012	A	1	4	0.5	0.5	1	2
			B	1	2	0.5	1	1	1
			C	1	2	1	1	1	2
	BAA- 1875	Ribotype 078	A	1	>8*	0.5	1	0.25	0.5
			B	1	2	1	1	0.5	0.5
			C	1	>8*	0.5	0.5	0.5	0.5

Abbreviations: MIC=minimum inhibitory concentration; MBC=minimum bactericidal concentration.

* Counts only slightly exceeded the rejection values for 3-log killing (indicating that 3-log killing was nearly achieved)

Nonclinical data indicate that ibezapolstat demonstrates reproducible and consistent *in vitro* potency against C. *difficile* and is comparable to vancomycin in the standard and predictive Syrian Golden Hamster model of CDI. The nonclinical data also indicate that ibezapolstat may be active against *C. difficile* in the human colon, and in fact, ibezapolstat concentrations reached approximately 2,500-fold greater than the MIC needed to kill the *C. difficile* in this Phase 1 first-in-man clinical trial.

In vivo Efficacy Animal Models

GLS362E (and GLS359E) were studied *in vivo* in the golden Syrian hamster model of *C. difficile*-induced colitis. Both compounds had low GI absorption (<5% of an oral dose of 75 mg/kg was absorbed) and low toxicity (up to 1,000 mg/kg in hamsters). In the *in vivo* model, hamsters are first treated subcutaneously with clindamycin, followed 24 h later with ~10^7 CFU of *C. difficile* spores administered orally; therapy was initiated ~17 hours post-infection. Initial experiments evaluated the efficacy of the two compounds in this model (Dvoskin, et al, 2012, AAC) with studies designed to optimize the dose and length of therapy. In experiment 1 (shown in Table 2, below), treatment was given twice daily for three days with either vancomycin (50 mg/kg),

TABLE 2 Activity of test compounds on *C. difficile* infection model in golden Syrian hamsters

Group ($n = 6$)	Treatment,[a] mg/kg	No. of survivors at: 24 h	48 h	72 h	% Survivors at 120 h
1	None (negative control)	6	4	0	0
2	Vancomycin, 50	6	6	6	100
3	359E, 50	6	6	6	100
4	359E, 25	6	6	6	100
5	359E, 12.5	6	6	5	67
6[b]	359E, 6.25	1	1	1	0
7	362E, 50	6	6	6	100
8	362E, 25	6	6	6	100
9	362E, 12.5	6	6	6	100
10	362E, 6.25	6	6	6	83

[a] Treatment was *per os*, twice daily, for 3 days. Treatments were begun 16 to 18 h postinfection. All animals were pretreated with clindamycin hydrochloride (15 mg/kg, SC) 24 h before oral infection with ca. 10^7 CFU *C. difficile* spores (ATCC 43255).
[b] $n = 3$.

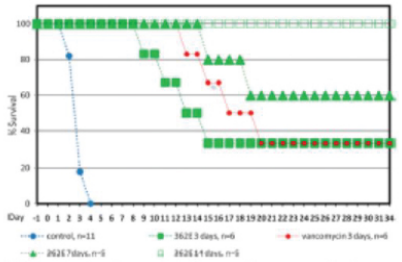


FIG 2 Acute cures and recurrences of CDAD in hamsters treated with 362E or vancomycin. Oral infection was on day 0 with 0.5×10^7 CFU of *C. difficile* strain ATCC 43255. The setup for the basic experimental protocol is described in the text. 362E (green squares) or vancomycin (red circles) was given twice daily at 50 mg/kg/dose by oral gavage from days 1 to 3, and, in separate groups, 362E was given by oral gavage from days 1 to 7 (green triangles) or 1 to 14 (open squares). Blue circles, untreated control animals.

GLS359E or GLS362E (GLS359E and GLS362E dosed at 50, 25, 12.5, or 6.25 mg/kg), with survivorship followed through 120 hours. 362E was found to be more efficacious at lower doses than GLS359E: 6.25 mg/kg of 362E was superior to an equivalent dose of GLS359E ($P<0.001$). For this reason, GLS362E was profiled further.

Subsequent experiments extended the length of therapy for GLS362E to 7 or 14 days because in the experiment shown in Table 2 it was observed that survival was not maintained beyond five days after the end of treatment in any group; studies were then designed to evaluate recurrence rates. Table 2 displays (below, from Dvoskin, et. al, 2012, AAC) twice-daily treatment for three days with either GLS-362E (50 mg/kg) or vancomycin (50 mg/kg), 67% of treated animals died. When treatment with GLS362E is extended to 7 or 14 days, survival increased to 60 and 100%, respectively. Upon necropsy, the intestinal contents of surviving hamsters were negative for toxin A and/or B whereas those for animals that had died were positive. /The results for the 3-day dosing shown in Table 2 above were from additional studies. Other studies conducted by Dvoskin et al. evaluated GLS362E efficacy/recurrence rates in the hamster model at lower doses: after 14 days of dosing (100% survival for all groups at 25, 12.5 and 6.25 mg/kg out to 36 days; negative for A/B toxins): after 10 days of dosing at 10 mg/kg, GLS362E treatment resulted in 86% survival on Day 36 post-infection,

compared to vancomycin treatment's 43% survival at the same dose (see graph and table below) and animals that died with *C. difficile* disease symptoms tested positive for A/B toxin, whereas the surviving animals did not.

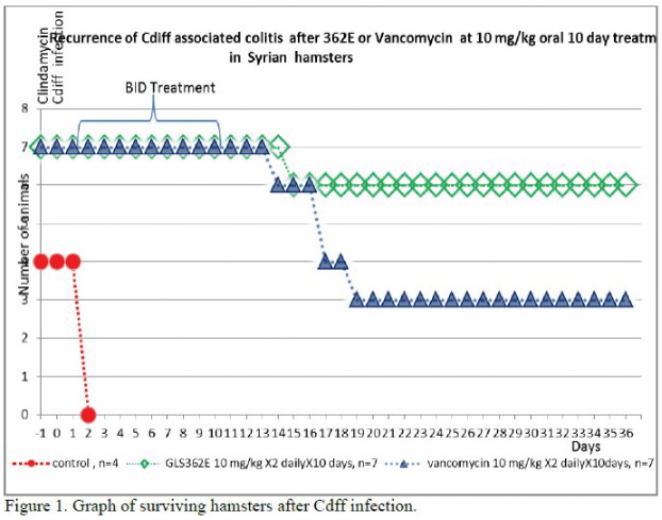


Figure 1. Graph of surviving hamsters after Cdff infection.

Hamster Efficacy vs C. difficile infection**

Drug	Survivors acute infection/total animals	Survivors with no recurrent infection /total animals
GLS362 (ibezapolstat)	7/7	6/7
vancomycin	7/7	3/7

** Animals were infected and treated orally with 2x10mg/kg/day of the indicated drug for 10 days; acute responses were determined during the treatment and recurrent infections after 36 days

C. difficile Infection Overview

Clostridioides difficile infection ("CDI") is a bacterial infection of the colon that produces toxins causing inflammation of the colon and severe diarrhea. CDI can also result in more serious disease complications, including pseudomembranous colitis, bowel perforation, toxic megacolon and sepsis. CDI represents a serious healthcare issue in hospitals, long-term care homes and, increasingly, in the wider community. We estimate that there are over one million cases of CDI each year in the U.S. and Europe, based on an epidemiology report on CDI that was published in 2015 by Decision Resources, a healthcare research and consulting company. In addition, CDI is responsible for approximately 29,000 deaths per year in the U.S., according to a study published in the *New England Journal of Medicine* in 2015. A separate study published in 2018 in*Clinical Microbiology and Infection*, a peer reviewed journal published by the European Society of Clinical Microbiology and Infectious Diseases, indicated that CDI may be underdiagnosed in approximately 25% of cases. A study published in *The Journal of Hospital Infection*, a peer reviewed journal published by the Healthcare Infection Society, reported that CDI is two to four times more common than hospital associated infections caused by methicillin-resistant *Staphylococcus aureus*, a bacterium frequently associated with such infections. The Healthcare Cost and Utilization Project, a family of databases developed through a federal-state-industry partnership sponsored by the Agency for

Healthcare Research and Quality of the U.S. Department of Health and Human Services, reported an approximate three and one-half-fold increase in hospital stays associated with CDI between 2000 and 2008. The economic impact of CDI is significant. A study published in 2012 in *Clinical Infectious Diseases* estimated that acute care costs for CDI total $4.8 billion per year in the U.S. alone. According to the 2017 Update (published February 2018) of the *Clinical Practice Guidelines for C. difficile Infection by the Infectious Diseases Society of America (IDSA) and Society or Healthcare Epidemiology of America (SHEA),* CDI remains a significant medical problem in hospitals, in long-term care facilities and in the community. *C. difficile* is one of the most common causes of health care-associated infections in U.S. hospitals (Lessa, et al, 2015, New England Journal of Medicine). Recent estimates suggest C. *difficile* approaches 500,000 infections annually in the U.S. and is associated with approximately 20,000 deaths annually. (Guh, 2020, New England Journal of Medicine). Based on internal estimates, the recurrence rate of two of the three antibiotics currently used to treat CDI is between 20% and 40% among approximately 150,000 patients treated. We believe the annual incidence of CDI in the U.S. approaches 600,000 infections and a mortality rate of approximately 9.3%. There are an additional six million patients in the U.S. per year with other Gram+ infections, such as *Staphylococcus*, *Streptococcus* or *Enterococcal*, with approximately 300,000 patients treated for such infections.

CDI originates from a bacterium known as *Clostridium difficile, or Clostridioides difficile*, or *C. difficile*.

C. difficile can be a harmless resident of the gastrointestinal tract. The complex community of microorganisms that make up the natural gut flora usually moderates levels and pathogenicity of *C. difficile*. The natural gut flora is an essential part of the normal function of the gastrointestinal tract and also has wide implications to human health, such as the proper function of the immune system. CDI typically develops following the use of broad-spectrum antibiotic agents that can cause widespread damage to the natural gut flora and allow overgrowth of *C. difficile*. Hypervirulent *C. difficile* strains have also emerged and are frequently associated with more severe disease. In the U.S., the hypervirulent strain, ribotype 027, accounts for approximately one-third of all CDI cases.

An important clinical issue with CDI is disease recurrence. This is in contrast to other bacterial threats for which drug resistance is the principal concern. According to an article published in 2012 in the peer reviewed journal *Clinical Microbiology and Infection*, 20% to 40% of patients with CDI suffer a second episode of the infection. The risk of further recurrence rises to 65% after a patient suffers a third episode of CDI. In addition, each episode of recurrent disease is associated with greater disease severity and higher mortality rates. Recurrent disease is associated with an increased burden on the healthcare system.

In 2013, and again in a 2019 Update, the CDC highlighted *C. difficile* as one of five pathogens that pose an immediate public health threat and require urgent and aggressive action. In 2012, the GAIN Act provisions became law along with the rest of FDASIA. The goal of the GAIN Act is to encourage the development of new antibiotics that treat specific pathogens, including *C. difficile*, which cause serious and life-threatening infections. Since the GAIN Act was adopted, there have been two antibiotic candidates developed for CDI that have been granted QIDP status under the GAIN Act, one of which was approved by the FDA in 2011. See "***Current CDI Antibiotic Treatments***" below.

Current CDI Antibiotic Treatments

Current treatment options for CDI are limited. The current standard-of-care for CDI is treatment with vancomycin or off label use of metronidazole, both of which are broad-spectrum antibiotics. Although these antibiotics reduce levels of *C. difficile*, both also cause significant collateral damage to the gut flora as a result of their broad spectrum of activity. This collateral damage to the gut flora leaves patients vulnerable to recurrent CDI. A review published in 2012 in the peer reviewed journal *International Journal of Antimicrobial Agents* reported recurrence rates of 24.0% for vancomycin and 27.1% for metronidazole. Metronidazole is frequently used in mild or moderate cases of CDI and has been associated with a number of side effects. The 2017 Update (published February 2018) of the *Clinical Practice Guidelines for C. difficile Infection by the Infectious Diseases Society of America (IDSA) and Society of Healthcare Epidemiology of America (SHEA)* provides a recommendation for clinicians to prescribe either vancomycin or fidaxomicin over metronidazole for an initial episode of CDI.

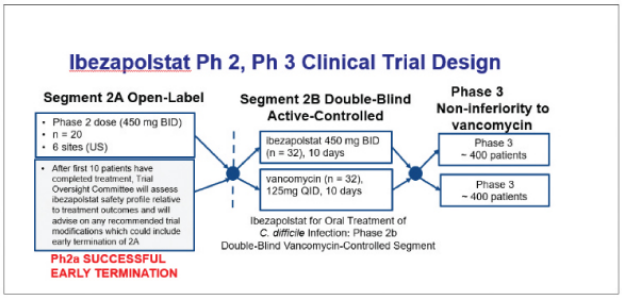
Fidaxomicin (Dificid) is an antibiotic approved to treat patients with CDI in the U.S. and the European Union, but it has not been shown to be superior to vancomycin in the treatment of patients with the hypervirulent strain ribotype 027. Fidaxomicin (Dificid) was approved by FDA in 2011. In July 2013, Optimer Pharmaceuticals, Inc., the sponsor of the fidaxomicin program, was sold to Cubist Pharmaceuticals for $535 million plus up to $266 million in contingent value right ("CVR") payments post-closing. Fidaxomicin was the first antibacterial drug the FDA approved in more than 30 years to treat CDI.

Summit Therapeutics has a clinical stage antibiotic, ridinilazole, and in January 2019 had opened enrollment of a Phase 3 clinical trial to treat patients with CDI. The ridinilazole Phase 3 program includes two randomized trials testing efficacy in CDI versus vancomycin as the positive control. The trials appear to be identical in design and plan to enroll 680 patients each. Ridinilazole is an orally administered small molecule antibiotic designed to selectively target *C. difficile* bacteria without causing collateral damage to the gut flora and thereby reduce CDI recurrence rates. Ridinilazole has completed two Phase 2 clinical trials successfully meeting or exceeding its primary efficacy endpoints.

Despite the advances of the ridinilazole development program and the approval of fidaxomicin to treat CDI, the CDC continues to cite it as an urgent need for new antibiotics.

Clinical Strategy

Based on advice from our medical and scientific consultants and advisors, we believe we will need to conduct one Phase 2 clinical trial prior to conducting one or two large Phase 3 clinical trials in order to file a new drug application with the FDA for the oral use of ibezapolstat to treat patients with CDI. The trial design and anticipated size of the required clinical trials is as follows:



Phase 1 Clinical Trial: Data reported in August 2019.

The Phase 1 clinical trial design was a randomized, double-blind, placebo-controlled, single and multiple ascending dose trial to determine the safety, pharmacokinetics and fecal microbiological effects of ibezapolstat administered orally to 62 healthy adults 18 years of age or older. For the single-dose ascending portion of the trial, the objectives were to evaluate the safety and determine the pharmacokinetics and systemic exposure of single doses as well as the effects of food on PK. The multiple ascending dose portion of the trial evaluated the safety, PK and fecal concentrations of repeated doses as well as evaluate the effects of ibezapolstat on characteristics of the gut microbiome in comparison to the current standard of care treatment antibiotic, oral vancomycin. We successfully completed the Phase 1 clinical trial in August 2019 and the data supported advancing to Phase 2 according to our medical and scientific advisors. Blood levels of ibezapolstat show low systemic exposure, as predicted by previously conducted animal studies and are desirable in treating CDI, and fecal concentrations of ibezapolstat were 2 to 3 orders of magnitude above the level required to kill CDI bacteria at the site of the infection.

Phase 2 Clinical Trial.

The Phase 2 clinical trial design is structured as a randomized, controlled Phase 2 trial of the efficacy and safety of ibezapolstat compared to vancomycin in the treatment of CDI in a total of up to 84 evaluable

patients (Phase 2a; up to 20 patients; Phase 2b; 64 patients). Phase 2a was designed to enroll up to 20 patients with a data review planned by a Trial Oversight Committee after 10 patients completed the trial.

Based upon the recommendation of the SAB, we terminated enrollment in Phase 2a early and will advance to Phase 2b. The SAB unanimously supported the early termination of the Phase 2a trial after 10 patients were enrolled in the trial instead of 20 patients as originally planned. The early termination was further based on the evidence of meeting the treatment goals of eliminating the infection with an acceptable adverse event profile.

The SAB noted that 10 out of 10 patients enrolled in the Phase 2a trial reached the Clinical Cure endpoint, defined in the study protocol as the resolution of diarrhea in the 24-hour period immediately before the end-of-treatment that is maintained for 48 hours after end of treatment. Such cure was sustained, meaning that the patients showed no sign of infection recurrence, for 30 days thereafter. This constitutes a 100% response rate for the primary and secondary endpoints of the trial. All 10 patients enrolled in the Phase 2a trial met the study's primary and secondary efficacy endpoints, namely, Clinical Cure at end of treatment and Sustained Clinical Cure of no recurrence of CDI at the 28-day follow-up visit. No treatment-related serious adverse events were reported by the investigators who enrolled patients in the trial. We believe these results represent the first-ever clinical data showing Pol IIIC has potential as a therapeutically-relevant antibacterial target. The Phase 2b portion of the Phase 2 clinical trial is designed as a 64-patient vancomycin- controlled efficacy study. 32 of the patients will receive 450mg of ibezapolstat twice per day, and 32 of the patients will receive 125mg of vancomycin four times per day. Both groups of patients will receive this treatment for 10 days. Phase 2b is expected to begin in the second half of 2021.

The SAB is comprised of nine scientists and clinicians who have significant expertise in the scientific disciplines required for the research and development of antibiotics. The members of the SAB serve at the pleasure of management, are paid in cash on an hourly basis for their services and do not receive equity compensation. Generally, the SAB is consulted by management during the process of designing our preclinical and clinical trials as well as in the process of analyzing data generated from these trials, although the SAB's services are not limited to such activities.

Phase 3 Clinical Trial(s).

We intend to meet with the FDA after completing the Phase 2B clinical trial to finalize the size and scope of the Phase 3 clinical trial program. Regulatory precedent indicates that two Phase 3 trials of approximately 400 patients each would need to be conducted.

Regulatory Status

The regulatory timeline for a newly proposed product can take eight to ten years from pre-clinical studies through marketing approval. However, we inherited the manufacturing and pre-clinical data generated by the prior sponsor of our lead product candidate which we believe will reduce the timeline for regulatory approval by two to three years.

We have worked closely with the FDA to obtain our IND, and to obtain FDA fast track designation as well as designation of ibezapolstat as a QIDP, which provides incentives through the GAIN Act including FDA priority review for the first application submitted for the QIDP, fast-track designation eligibility and extension of statutory exclusivity periods in the U.S. for an additional five years upon FDA approval of the product for the treatment of CDI.

Government Regulation

The research, development, testing, manufacture, quality control, approval, labeling, packaging, storage, record-keeping, promotion, advertising, distribution, marketing, among other things, of drug products are extensively regulated by governmental authorities in the U.S. and other countries. The processes for obtaining regulatory approvals in the U.S. and in foreign countries and jurisdictions, along with subsequent compliance with applicable statutes and regulations and other regulatory requirements, require the expenditure of substantial time and financial resources.

U.S. Government regulation of drug products

In the U.S., the FDA regulates human drugs under the Federal Food, Drug, and Cosmetic Act ("FDCA"), and its implementing regulations. Failure to comply with the applicable U.S. requirements may subject an applicant to administrative or judicial sanctions, such as FDA refusal to approve pending NDAs, or the agency's issuance of warning letters, or the imposition of fines, civil penalties, product recalls, product seizures, total or partial suspension of production or distribution, injunctions and/or criminal prosecution brought by the FDA and the U.S. Department of Justice or other governmental entities.

The process required by the FDA before a drug may be marketed in the United States generally involves the following:

- completion of preclinical laboratory tests, animal studies and formulation studies according to Good Laboratory Practices ("GLP"), regulations or other applicable regulations;
- submission to the FDA of an IND, which must become effective before human clinical trials may begin;
- approval by an independent institutional review board ("IRB"), or ethics committee at each clinical trial site before each clinical trial may be initiated;
- performance of adequate and well-controlled human clinical trials in accordance with applicable IND regulations, good clinical practice regulations and standards ("GCP"), and other clinical-trial related regulations to evaluate the safety and efficacy of the investigational product for each proposed indication;
- submission to the FDA of an NDA for marketing approval, including payment of application user fees;
- satisfactory completion of an FDA inspection of the manufacturing facility or facilities at which the drug is produced to assess compliance with current good manufacturing practice regulations ("cGMP"), to assure that the facilities, methods and controls are adequate to preserve the product's identity, strength, quality and purity;
- potential FDA audit of the clinical trial sites to assure compliance with GCP and the integrity of the clinical data submitted in support of the NDA; and
- FDA review and approval of the NDA, including satisfactory completion of an FDA advisory committee review of the product candidate, where appropriate or if applicable, prior to any commercial marketing or sale of the product in the United States.

Before testing any drug product candidate in humans, the product candidate must undergo rigorous preclinical testing. The preclinical developmental stage generally involves laboratory evaluations of drug chemistry, formulation and stability, as well as studies to evaluate toxicity in animals, which support subsequent clinical testing. The sponsor must submit the results of the preclinical studies, together with manufacturing information, analytical data, any available clinical data or literature and a proposed clinical protocol, to the FDA as part of the IND. An IND is a request for authorization from the FDA to administer an investigational product to humans, and must become effective before human clinical trials may begin.

Preclinical studies include laboratory evaluation of product chemistry and formulation, as well as *in vitro* and animal studies, to assess the potential for adverse events and in some cases to establish a rationale for therapeutic use. The conduct of preclinical studies is subject to federal regulations and requirements, including GLP regulations for safety and toxicology studies.

All clinical trials must be conducted under the supervision of qualified investigators and in accordance with protocols detailing the objectives of the study, the parameters to be used in monitoring the safety and effectiveness criteria to be evaluated. Each protocol must be submitted to the FDA as part of the IND and each study subject must sign an informed consent form before participating in a clinical trial. An IND automatically becomes effective 30 days after receipt by the FDA, unless before that time the FDA raises concerns or questions related to one or more proposed clinical trials and places the clinical trial on a clinical hold. In such a case, the IND sponsor and the FDA must resolve any outstanding concerns before the

clinical trial can begin. Clinical holds may be imposed by the FDA at any time before or during studies due to safety concerns or non-compliance.

In addition, an IRB representing each institution that is participating in the clinical trial must review and approve the plan for any clinical trial before it commences at that institution, and the IRB must thereafter conduct a continuing review and reapprove the trial at least annually.

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

Phase 1: The product candidate is initially introduced into healthy human subjects and tested for safety, dosage tolerance, absorption, metabolism, distribution and excretion. In the case of some products for severe or life-threatening diseases, such as cancer, especially when the product may be too inherently toxic to ethically administer to healthy volunteers, the initial human testing is often conducted in patients.

Phase 2: This phase involves studies in a limited patient population to identify possible adverse effects and safety risks, to preliminarily evaluate the efficacy of the product for specific targeted diseases and to determine dosage tolerance and optimal dosage.

Phase 3: Clinical trials are undertaken with an expanded patient population to further evaluate dosage, clinical efficacy and safety in an expanded patient population, often at geographically dispersed clinical study sites. These studies are intended to establish the overall risk-benefit ratio of the product candidate and provide, if appropriate, an adequate basis for product labeling. These trials may include comparisons with placebo and/or other comparator treatments. The duration of treatment is often extended to mimic the actual use of a product during marketing.

Post-approval trials, sometimes referred to as Phase 4 clinical trials, may be conducted after initial marketing approval. These trials are used to gain additional experience from the treatment of patients in the intended therapeutic indication. In certain instances, the FDA may mandate the performance of Phase 4 clinical trials as a condition of approval of an NDA.

Progress reports detailing the results of the clinical trials must be submitted at least annually to the FDA and more frequently if serious adverse events, or SAEs, occur. The FDA or the sponsor may suspend or terminate a clinical trial at any time on various grounds, including a finding that the research subjects or patients are being exposed to an unacceptable health risk. Similarly, an IRB can suspend or terminate approval of a clinical trial at its institution if the clinical trial is not being conducted in accordance with the clinical protocol, GCP, or other IRB requirements or if the drug has been associated with unexpected serious harm to patients.

Assuming successful completion of the required clinical testing, the results of the preclinical studies and clinical trials, along with information relating to the product's chemistry, manufacturing, and controls and proposed labeling, are submitted to the FDA as part of an NDA requesting approval to market the product for one or more indications. Under federal law, the fee for the submission of an NDA for which clinical data is substantial (for example, for FY2021 this application fee exceeds $2.8 million), and the sponsor of an approved NDA is also subject to an annual program fee, currently more than $300,000 per program. These fees are typically adjusted annually, but exemptions and waivers may be available under certain circumstances.

Under the goals and policies agreed to by the FDA under the Prescription Drug User Fee Act ("PDUFA"), for original NDAs, the FDA has ten months from the filing date in which to complete its initial review of a standard application and respond to the applicant, and six months from the filing date for an application with priority review. For an all new molecular entity ("NME"), NDAs, the ten and six-month time periods run from the filing date; for all other original applications, the ten and six-month time periods run from the submission date. Despite these review goals, it is not uncommon for FDA review of an NDA to extend beyond the goal date.

Before approving an NDA, the FDA will typically conduct a pre-approval inspection of the manufacturing facilities for the new product to determine whether the manufacturing processes and facilities comply with cGMP. The FDA will not approve the product unless it determines that the

manufacturing processes and facilities are in compliance with cGMP requirements and adequate to assure consistent production of the product within required specifications. The FDA also may inspect the sponsor and one or more clinical trial sites to assure compliance with GCP requirements and the integrity of the clinical data submitted to the FDA.

The FDA reviews an NDA to determine, among other things, whether a product is safe and effective for its intended use and whether its manufacturing is cGMP-compliant to assure and preserve the product's identity, strength, quality and purity. On the basis of the FDA's evaluation of the NDA and accompanying information, including the results of the inspection of the manufacturing facilities, the FDA may issue either an approval letter or a Complete Response Letter ("CRL"). An approval letter authorizes commercial marketing of the product with specific prescribing information for specific indications. A CRL indicates that the review cycle of the application is complete and the application will not be approved in its present form and outlines the deficiencies in the submission that must be addressed for the FDA to reconsider the application. If and when those deficiencies have been addressed to the FDA's satisfaction in a resubmission of the NDA, the FDA will issue an approval letter.

Following approval of a new product, the manufacturer and the approved product are subject to pervasive and continuing regulation by the FDA, including, among other things, monitoring and recordkeeping activities, reporting of adverse experiences with the product, product sampling and distribution restrictions, complying with promotion and advertising requirements, which include restrictions on promoting drugs for unapproved uses or patient populations (i.e., "off-label use") and limitations on industry-sponsored scientific and educational activities. Once a drug is granted approval, the FDA may withdraw the approval if compliance with regulatory requirements and standards is not maintained or if problems occur after the product reaches the market. Later discovery of previously unknown problems with a product, including adverse events of unanticipated severity or frequency, or with manufacturing processes, or failure to comply with regulatory requirements, may result in mandatory revisions to the approved labeling to add new safety information; imposition of post-market or clinical trials to assess new safety risks; or imposition of distribution or other restrictions. Other potential consequences include, among other things:

- restrictions on the marketing or manufacturing of the product, complete withdrawal of the product from the market or product recalls;
- fines, warning letters or other enforcement-related letters or clinical holds on post-approval clinical trials;
- refusal of the FDA to approve pending NDAs or supplements to approved NDAs, or suspension or revocation of product approvals;
- product seizure or detention, or refusal to permit the import or export of products;
- injunctions or the imposition of civil or criminal penalties; and
- consent decrees, corporate integrity agreements, debarment, or exclusion from federal health care programs; or mandated modification of promotional materials and labeling and the issuance of corrective information.

Manufacturing

Overall, management believes the manufacturing process established by the prior sponsor of our development program is efficient with cost of goods sold expected to be less than 5% of a preliminary range of proposed sales price estimates.

Thus far, ibezapolstat has been manufactured successfully in both 1 kg and 9 kg batches, with 9 kg batches considered to be a commercial scale. We anticipate that the commercial batch size upon completion of the clinical development program and submission of an NDA will be 10 kg to 15 kg which in our estimation will further reduce our cost of goods sold. The 9kg batch was sufficient to support the Phase 1 and Phase 2 clinical trial needs. No material issues were noted in the manufacture of either the 1 kg or 9 kg batches of ibezapolstat to date with 24-month stability very good and well within acceptable FDA standards. Additionally, ibezapolstat 150mg capsules have been manufactured and used in the Phase 1 and Phase 2a clinical trial with adequate inventory available to cover Phase 2B clinical supply requirements. Twenty-four

month stability data on capsules show no significant changes in the key quality attributes and no discernable data trends at any of the storage conditions. A minimum of 24-months shelf-life is anticipated.

Through our outside manufacturing vendors, we will continue to monitor the stability of the drug substance (API) and drug product on an ongoing basis as we continue to advance the clinical development program.

Market Opportunity

According to the 2017 Update (published February 2018) of the *Clinical Practice Guidelines for Clostridium difficile Infection in Adults and Children by the Infectious Diseases Society of America (IDSA) and Society of Healthcare Epidemiology of America (SHEA),* CDI remains a significant medical problem in hospitals, in long-term care facilities and in the community. *Clostridioides (formerly Clostridium) difficile*, also known as *C. difficile* or *C. diff,* is one of the most common causes of health care-associated infections in U.S. hospitals (Lessa, et al, 2015, New England Journal of Medicine). Recent estimates suggest *C. difficile* approaches 500,000 infections annually in the U.S. and is associated with approximately 20,000 deaths. (Guh, 2020, New England Journal of Medicine). Based on internal estimates including a recurrence rate of between 20% and 40% among approximately 150,000 patients treated, we believe that the annual incidence in the U.S. approaches 600,000 infections and a mortality rate of approximately 9.3%.

Antibiotics are the gold standard to treat CDI. However, while currently marketed antibiotics achieve a relatively high initial cure rate, they can fail to eliminate *C. difficile*, especially drug-resistant strains, in the gut, allowing the continued growth of the bacteria. This, together with a pronounced detrimental effect on the gut microbiome, leads to recurrence in over 25% of CDI patients after therapy is stopped. A significant unmet need remains for antibiotics that can meaningfully reduce recurrence. According to our recent clinical data, we believe ibezapolstat has the potential to continue to provide a bactericidal effect combined with a low incidence of recurrence when used to treat CDI.

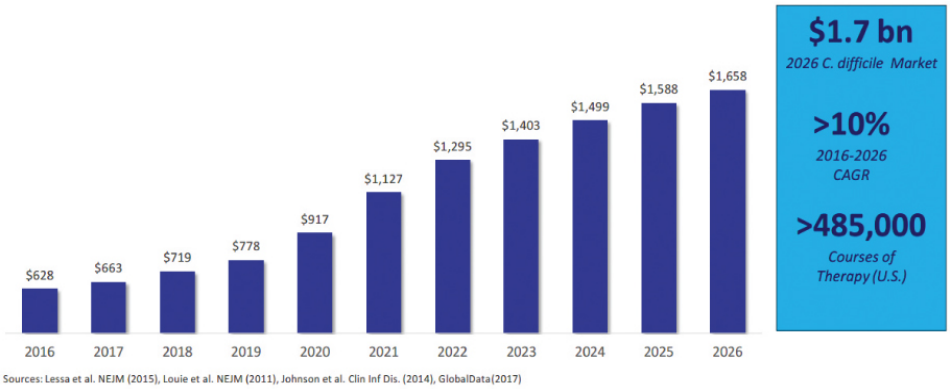
Antibiotics provide advantages over the use of antibodies, microbiologics, and vaccines. Antibodies are generally only administered in combination with an antibiotic. Due to high costs and the inability to use antibodies as a first-line treatment, antibodies have gained limited commercial traction and there has only been one antibody treatment for CDI approved to date. As of the date of this prospectus, there are currently two microbiologics in late-stage development with clinical data forthcoming. Safety is a concern with microbiologics, and this course of treatment is only recommended for patients with multiple recurrences of CDI who have failed appropriate antibiotic treatments. There are also several vaccines against *C. difficile* in late-stage development, but none are currently approved. A vaccine is only likely to be commercially viable as a prevention of recurrent CDI in high-risk patients, if such patients can be identified. Additionally, large numbers of patients are required for clinical trials of vaccines, which could significantly delay the clinical development process for and eventual release of any CDI vaccine products currently in development.

C. difficile has surpassed MRSA, as the leading cause of death among hospitalized patients. CDI is a serious illness resulting from infection of the inner lining of the colon by *C. difficile* bacteria that produce toxins causing inflammation of the colon, severe diarrhea and, in the most serious cases, death. Patients typically develop CDI from the use of broad-spectrum antibiotics that disrupt normal gastrointestinal (gut) flora, thus allowing *C. difficile* bacteria to flourish and produce toxins. *C. difficile* is a spore forming bacterium, creating spores excreted in the environment of the patients that can survive for months on dry surfaces in hospital rooms such as beds and doors, and can contaminate other patients by fecal-oral transmission through the hands of healthcare workers.

We estimate that, if approved, ibezapolstat could capture over 20% of the CDI market in peak year sales based on the incidence rates noted above. At a preliminary price estimate of $3,000 to $3,500 per full course of treatment, this projects out to estimated peak year sales of approximately $500 million. The peak market penetration of 20% assumes that there will be at least three treatment options available to treat CDI in addition to ibezapolstat even though only two antibiotics are currently recommended for the treatment of CDI and only ridinilazole is in late-stage development and may or may not succeed in Phase 3 clinical trials and/or obtain FDA approval. The selling price estimate of $3,000 to $3,500 is considered by management to be conservative as it is well below the price point of fidaxomicin, the most- recent approval in treating CDI.

Management believes that this market opportunity is substantial and provides significant upside potential for those investing at this early stage of development. We believe the size of the market and relatively few treatment options available will drive our market capitalization and availability of financing alternatives as it completes Phase 2 clinical trials successfully.

In addition, we believe ibezapolstat's profile provides an opportunity to develop significant market penetration of patients with recurrent infection following use of one of the initial-episode treatment options because of its unique mechanism of action.



Competition

The biopharmaceutical industry is characterized by rapidly advancing technologies, intense competition and a strong emphasis on proprietary products. While we believe that our technologies, knowledge, experience and scientific resources provide us with competitive advantages, we face potential competition from many different sources, including major pharmaceutical, specialty pharmaceutical and biopharmaceutical companies, academic institutions, government agencies and private and public research institutions. Any product candidates that we successfully develop and commercialize will compete with existing therapies and new therapies that may become available in the future.

Many of our competitors may have significantly greater financial resources and expertise in research and development, manufacturing, preclinical testing, conducting clinical trials, obtaining regulatory approvals and marketing approved products than we do. These competitors also compete with us in recruiting and retaining qualified scientific advisors and consultants as well as management personnel and establishing clinical trial sites and patient registration for clinical trials, as well as in acquiring technologies complementary to, or necessary for, our programs. Other small or early stage companies may also prove to be significant competitors, particularly through collaborative arrangements with large and established companies.

Our commercial opportunity could be reduced or eliminated if our competitors develop and commercialize products that are safer, more effective, have fewer or less severe side effects, are more convenient or are less expensive than any products that we may develop. Our competitors also may obtain marketing approvals for their products more rapidly than we obtain approval for ours. In addition, our ability to compete in the marketplace may be affected because in some cases insurers or other third-party payors seek to encourage the use of generic products. This may have the effect of making branded products less attractive, from a cost perspective, to buyers.

The key competitive factors affecting the success of our product candidate and other potential product candidates in the future are likely to be their efficacy, safety, convenience, price and the availability of coverage and reimbursement from government and other third-party payors.

The competition for ibezapolstat include the following:

- Several pharmaceutical companies have established themselves in the market for the treatment of CDI and several other companies, like Summit Therapeutics, are developing investigational antibiotics for the treatment of CDI. We expect these products, if approved, will compete with ibezapolstat;
- Current antibiotic treatments for patients with CDI include broad spectrum antibiotics like vancomycin and metronidazole, both of which are available in generic form in the U.S. Generic antibiotics typically are sold at lower prices than branded antibiotics and generally are preferred by managed care providers of health services;
- Fidaxomicin (Dificid® in the U.S., Dificlir™ in Europe) is approved for the treatment of CDI in the U.S. and Europe. Fidaxomicin was originally developed by Optimer Pharmaceuticals, Inc., which was later acquired by Cubist Pharmaceuticals, Inc. ("Cubist"). Cubist was then acquired by Merck & Co., Inc. ("Merck");
- Ridinilazole is a new antibiotic candidate (Summit Therapeutics) and, in January 2020, its sponsor opened enrollment in a Phase 3 clinical trial program for the treatment of CDI with target completion date of September 2021 as posted on *clinicaltrials.gov;* and
- A number of other approaches for the treatment of CDI are in development or have been approved as follows:
    - Merck developed a monoclonal antibody, bezlotoxumab, and obtained FDA approval for it in 2016 and EMA approval in 2016. This antibody neutralizes certain toxins that are produced by *C. Difficile* bacteria and would be an adjunctive therapy to antibiotics.
    - Pfizer is developing PF-06425090, a three-dose recombinant vaccine designed to stimulate an antibody against the two main toxins (A and B) produced by *C. difficile* which cause the characteristic diarrhea and colitis.
    - Fecal biotherapy aims to recolonize the bacteria that comprise the natural gut flora and, according to the 2017 IDSA Guidelines would be used for patients with multiple recurrences of CDI who have failed to resolve their infection despite treatment attempts with antibiotic agents targeting CDI.
    - Fecal biotherapy approaches in development include SER-109, being developed by Seres Therapeutics, Inc., which is an investigational oral microbiome therapeutic for the prevention of recurrent *C. difficile* infection in adults with multiply recurrent CDI. The FDA has granted SER-109 both Breakthrough Therapy and Orphan Drug designations and has recently initiated a Phase 3 clinical trial.
    - RBX2660 which is being developed by Rebiotix, Inc. is a microbiome-based technology and is currently being evaluated in a Phase 3 clinical trial for the prevention of recurrent *C. difficile* infection.
    - CRS3123 (Crestone Inc) is a novel small molecule that selectively inhibits methionyl-tRNA synthetase of *C. difficile* and is reported on clinicaltrials.gov as recruiting in a Phase 2 clinical trial with a primary completion date of December 2021.
    - MGB-BP-3 (MGB Biopharma) is a novel synthetic polyamide active against Gram- positive pathogens and binds to the minor groove of DNA. MGB announced that it has completed a dose-ranging Phase 2 clinical trial.
- No new antibiotics in clinical development have shown improvement in either initial clinical cure ("ICR") or sustained clinical response ("SCR") in comparison to currently marketed antibiotics. The data in the chart below constitute comparisons of data from prior clinical trials published in scientific journals for each listed antibiotic or antibiotic candidate and does not incorporate data, if any, from any control arm(s) that may be or may have been required to seek and obtain FDA approval. The data listed for ibezapolstat are from the Phase 2a clinical trial where no comparator agent was used. The only comparative data for ibezapolstat in clinical trials currently relate only to comparisons of the impact on the microbiome for ibezapolstat and vancomycin but do not compare clinical cure rates. All data presented is based on identical clinical endpoints used for ICR and SCR.

	Product	*C. difficile* - mITT population		
		% Initial Cure	% Sustained Cure	% Recurrence*
Marketed (Ph 3 results US/CAN)[1]	vancomycin (n=309)	86	61	25
	fidaxomicin (n=287)	88	73	15
In Development (Ph 2 results)[2]	ridinilazole (n=36)	78	67	14
	vancomycin (n=33)	70	42	39
In Development (Ph 2a ITT results)[3]	**ibezapolstat (n=10)**	**100**	**100**	**0**

[1] Louie et al, Fidaxomicin vs Vancomycin, Phase 3 study, NEJM, Feb 2011; [2] Vickers et al, Efficacy and Safety of Ridinilazole Compared with Vancomycin for treatment of C. difficile Infection; Ph2 Randomized, Double-blind, Active-controlled, Non-inferiority Study; Lancet, July 2017; [3] Garey, Late-Breaker Presentation, Ibezapolstat Clinical Update, 8th Annual International C.diff. Virtual Conference, Nov 18, 2020
** Calculated percent of patients with Initial Cure who experienced recurrence*

Competitive Strengths

We attribute our success to the following competitive strengths:

(i) We have a novel mechanism of action which we believe will be highly advantageous given the continuing rate of recurrent CDI with currently available treatment options and the rising prevalence of antimicrobial resistance;

(ii) Since ibezapolstat's molecular structure and mechanism of action are unrelated to any other antimicrobial chemical class, its use is not expected to foster the emergence of bacteria that are resistant to other classes of antibiotics;

(iii) The Phase 1 Trial showed highly selective activity against *C. difficile* bacteria with minimal disruption to the gut flora as it is poorly soluble which has been corroborated by the data from the microbiome analysis;

(iv) As of the date of this prospectus, ibezapolstat has shown an excellent human safety profile;

(v) Our designation by the FDA of Qualified Infectious Disease (QIDP) status and Fast Track designation provides significant benefits to our development of ibezapolstat. We have significant existing patent coverage in the world's largest pharmaceutical markets (U.S., Europe, Japan and Canada) extending to May 2030 in the United States and September 2030 in foreign markets. There is also the possibility to extend those patents thereafter;

(vi) We have a simple and low-cost process of manufacturing which is expected to yield cost of goods of less than 5% of the anticipated retail price; and

(vii) We believe that there is a high probability that the Phase 2b trial will be successful. If the vancomycin cure rate in our Phase 2b trial is 26/32 (81%); then ibezapolstat needs to achieve a cure rate of 24/32 (75%) in the Phase 2b clinical trial to be considered non-inferior ("NI"), to vancomycin based on a "p-value" of .0344. A "p value" is a statistical probability value used by FDA and drug developers to evaluate the efficacy, in this case, of development stage antibiotic candidates and their comparability to one or more approved products. A "p value" of .0344 is within FDA standards used by drug development companies to compare an experimental product candidate, like ibezapolstat, against an existing standard-of-care.

Intellectual Property and Market Exclusivity

We have two U.S. patents (U.S. Patent Numbers 6,926,763 and 8,796,292), with claims that cover ibezapolstat that expire in May 2023 and September 2030, respectively. The most important U.S. patent in

management's view, is the composition-of-matter patent (8,796,292) which expires in September 2030. Patent Number 6,926,763 includes claims that cover disubstituted purine compounds, compositions, surface coatings, and methods of treating bacterial infection or inhibiting bacterial growth, and these claims cover ibezapolstat. Patent Number 8,796,292 includes other claims that cover other disubstituted purine compounds, compositions, and methods of inhibiting bacterial growth and these claims cover ibezapolstat. Either patent may be subject to extension subject to certain circumstances.

For ibezapolstat, we also have one composition-of-matter patent in each of Europe, Japan and Canada. All of these non-U.S. patents expire in September 2030, subject to extension under certain circumstances.

We believe the commercial opportunity for ibezapolstat is best protected by regulatory exclusivity in the U.S. that has been made available for new chemical entities (five years) and QIDP designated products (five years).

The FDA has granted QIDP status for the oral use of ibezapolstat to treat CDI. QIDP status is provided by the FDA under the GAIN Act and provides incentives for us as the sponsor of the ibezapolstat development program, including FDA priority review for the first application submitted for the QIDP, eligibility for "fast track" status and extension of statutory exclusivity periods in the U.S. for an additional five years upon FDA approval of ibezapolstat for the treatment of CDI. In January 2019, the FDA approved "fast track" designation for ibezapolstat for the oral treatment of CDI. Accordingly, we will have 10 years of regulatory exclusivity on the oral use of ibezapolstat to treat CDI from the date of FDA marketing approval.

We believe the patent and regulatory coverage already in place provides strong protection for the commercialization of ibezapolstat and we will continue to consider additional patent submissions as we review available pre-clinical and clinical data as it becomes available throughout the development program.

With regard to ACX-375C, we have two issued patents including composition-of-matter, formulation and method-of-use claims to treat Gram-positive bacterial infections (including those resistant to other antibiotics) as well as a third patent application which is currently pending. The two issued patents (U.S. Patent Numbers 10,723,741 and 10,836,772), expire in December 2039 unless extended. We have filed a corresponding international application ("PCT") that is currently pending and such PCT includes the same composition-of-matter, formulation and method-of-use claims to treat Gram-positive bacterial infections as filed in the U.S. The coverage of this PCT is worldwide subject to our submission of national stage patents in the future replacing the PCT submissions. Management will select the non-U.S. jurisdictions to file the national stage patents in the future based, in part, on the resources available to us at that time. These PCTs, if approved, would expire in December 2039 unless extended.

Management believes that ACX-375C series lead product candidate will be QIDP and Fast-Track eligible as it is a new chemical entity and its antibacterial spectrum of activity covers bacterial pathogens included in the FD&C GAIN Act as "qualifying pathogens" for QIDP status. Accordingly, management anticipates 10 years of regulatory exclusivity from FDA approval to further secure the commercial potential of ACX-375C. We intend to file for QIDP and Fast-Track designations with the FDA at the appropriate time in the drug development process as was done in 2018 with ibezapolstat.

GAIN Exclusivity for Antibiotics

Our regulatory strategy includes targeting QIDP designation by the FDA under the GAIN Act. Congress passed the GAIN Act as part of FDASIA in 2012 to encourage the development of antibacterial and antifungal drug products that treat pathogens that cause serious and life-threatening infections.

Potential External Positive Drivers in 2021 for Sector

PASTEUR Act. The PASTEUR Act is legislation currently in the U.S. congress which, if approved, would provide "pull" incentives in the U.S. for developers of new classes of antibiotics that target a critical need. According to the Pasteur Act, the US Department of Health and Human Services would pay a subscription payment for eligible products of $750 million to $1 billion over a ten-year period and patients

would receive the drug at no cost. In addition, HHS would provide transitional support to fund Phase 3 clinical trials and manufacturing requirements for certain innovative antimicrobial drugs.

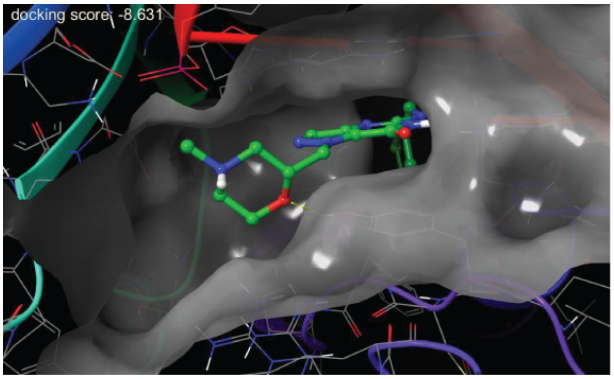
AMR Action Fund. The AMR Action Fund was created by the Antimicrobial Resistance Congress to generate interest to develop new classes of antibiotics to treat priority pathogens on the WHO and CDC priority pathogens list. The AMR Action Fund is funded by over 20 fully integrated worldwide pharmaceutical companies which have pledged over $1 billion to fund clinical activities of up to 15 sponsors of new classes of antibiotics to treat priority pathogens. We have active correspondence with the AMR Action Fund and anticipate initial funding commitments to be funded in 2021.

DISARM Act. The DISARM Act is legislation currently in the U.S. Congress which would remove the financial disincentives now in place for prescribers of antibiotics to use novel agents possibly more efficacious than older, less effective antibiotics that are prescribed at a lower cost. Accordingly, treating physicians would have the opportunity to treat patients with infectious disease with the most effective agents thereby enhancing patient outcomes as well as reducing the cost burden on public health.

EU Pull Incentives. Given the adoption of pull incentives for certain critical antibiotics adopted in the U.K. and under consideration in the U.S., the European Union currently is considering adopting certain pull incentives specifically to incentivize sponsors of key antibiotic development programs in the European Union. The European Union also is considering the creation and funding of a new regulatory organization similar to the Biomedical Advanced Research and Development Authority ("BARDA"), which is a division of the HHS which, among other things, is responsible to protect the U.S. against pandemic threats.

Pipeline Products

A series of novel antibacterial molecules derived from ACX-375C appear to share the same mechanism of action with ibezapolstat, i.e. they inhibit the Pol IIIC enzyme in certain Gram-positive bacterial cells including both sensitive and resistant *Clostridium difficile (C. difficile),* MRSA, vancomycin resistant Enterococcus, PRSP and other resistant bacteria. Further characterization and testing of these molecules is ongoing.



This diverse series of new agents which are believed to bind Pol IIIC and thereby prevent it from synthesizing new DNA, as shown below, where the gray area is the Pol IIIC enzyme and the therapeutic molecule occupies the critical binding pocket.

Compounds in this series have demonstrated potent activity against clinically important pathogens including minimum inhibitory concentration values, or MIC values, against MRSA, VRE and PRSP of 1 – 4 µg/mL. Further characterization and testing in animal models are ongoing.

To date, we have synthesized >435 novel analogs targeting Pol IIIC, which have been screened for potency (MIC) against a panel of pathogens. The table below shows the number of compounds with strong potency vs. MRSA, VRE, and both MRSA and VRE. These potential lead compounds have met the first

criteria, MIC potency ≤4 µg/mL vs. key pathogens. The Lead Optimization goal is to identify and synthesize compounds with this potency while demonstrating improvements in (1) aqueous solubility, (2) plasma protein binding and (3) cytotoxicity.

Number of Pol IIIC inhibitor compounds with potent MICs vs. MRSA and/or VRE:

MIC Range	MRSA	VRE	MRSA and VRE
< 1 µg/mL	18 compounds	51 compounds	17 compounds
>1 to <2 µg/mL	65 compounds	100 compounds	61 compounds
>2 to < 4 µg/mL	74 compounds	80 compounds	21 compounds

Analogs with good MIC are tested for cytotoxicity (CC50; µg/mL) vs. mammalian cell lines Hep G2 (liver) and HEK 293t (kidney), and against primary human hepatocytes. Several compounds show significant reduction of cytotoxicity (CC50 >128 µg/mL for both cell lines) as compared to ACX-375C (CC50 =35 µg/mL). The thermodynamic solubility has been improved for numerous compounds as well.

To date, a number of potential lead compounds have been tested in a lethal systemic MRSA-infection mouse model vs. vancomycin and vehicle control. These data show that some of our novel compounds show superior efficacy vs. low-dose vancomycin, as demonstrated by an increase in survival rate and duration, including one new lead compound dosed orally. Additional preliminary work demonstrated good bactericidal activity for several compounds vs. MRSA and VRE, as well as significant post-antibiotic effect ("PAE"), or the suppression of bacterial growth that persists after brief exposure of organisms to antimicrobials, (PAE >5 hours) vs. VRE, but not vs. MRSA. Early lead compounds show oral bioavailability from 33 – 59% in the absence of any absorption enhancing agents. An MIC screen of a few Acurx compounds vs. recent clinical isolates demonstrates potent activity against daptomycin-, vancomycin- and linezolid resistant strains of MRSA, *E. faecalis* and *E. faecium.* Based on the novel MOA for these Pol IIIC inhibitors, we anticipate strong antibacterial activity vs. all currently resistant isolates.

Taken as a whole, the nonclinical microbiology results indicate that our new antimicrobial potential lead product candidates (a) show potent in vitro inhibitory and killing activity against MRSA, vancomycin resistant Enterococcus, PRSP and other resistant bacteria, (b) are likewise effective in protecting and treating animals from induced life-threatening infections, and (c) therefore show promise in being able to treat Gram-positive infections in patients.

These bacterial targets (MRSA, VRE and PRSP) involve an incidence of approximately six million patients per year in the U.S. alone. Based on a review of other antibiotics currently marketed to treat these bacterial infections, our early estimate of peak year sales potential is 4% to 5% of this annual incidence and a peak year sales potential of approximately $1 billion.

Legal Proceedings

From time to time, we may become involved in various lawsuits and legal proceedings, which arise, in the ordinary course of business. We are currently not aware of any legal proceedings or claims that we believe will have a material adverse effect on our business, financial condition or operating results.

MANAGEMENT

Executive Officers and Directors

The following table sets forth the name, age as of the date of this prospectus, and position of the individuals who are executive officers, directors and director nominees of Acurx Pharmaceuticals, LLC, and will continue to serve as executive officers and directors of Acurx Pharmaceuticals, Inc. following the Corporate Conversion and the closing of this offering. The following also includes certain information regarding the individual experience, qualifications, attributes and skills of our directors and executive officers as well as brief statements of those aspects of our directors' backgrounds that led us to conclude that they are qualified to serve as directors.

Name	Age	Position
Executive Officers		
David P. Luci	54	President and Chief Executive Officer, Director
Robert J. DeLuccia	75	Executive Chairman, Director
Robert G. Shawah	54	Vice President, Finance & Chief Accounting Officer
Non-Employee Directors		
Carl V. Sailer(2)	51	Director
Thomas Harrison*(1)(2)	73	Director Nominee
Joseph C. Scodari*(1)(2)	68	Director Nominee
Jack H. Dean*	79	Director Nominee
James Donohue*(1)	51	Director Nominee

(1) Member of the audit committee.

(2) Member of the compensation committee.

* This individual has indicated his assent to occupy such position on the effective date of the registration statement of which this prospectus is a part.

Executive Officers

David P. Luci — President and Chief Executive Officer, Director

Mr. Luci is our co-founder and has served as Managing Director since February 2018. Previously, Mr. Luci was the President and Chief Executive Officer of Dipexium Pharmaceuticals (Nasdaq: DPRX), a pharmaceutical company focused on antibiotic drug development, from February 2010 until its sale to PLx Pharma Inc. (Nasdaq: PLXP) in a merger valued at $69 million in April 2017. From February 2009 to January 2010, Mr. Luci served as a member of the board of directors of Access, where he also served as Chairman of the Audit Committee and Chairman of the Compensation Committee as well as serving in a consulting capacity following the acquisition of MacroChem. From December 2007 through February 2009, Mr. Luci served as a member of the board of directors and President of MacroChem. Prior to that, Mr. Luci served as Executive Vice President, Chief Financial Officer, General Counsel and Corporate Secretary of Bioenvision, Inc. (or Bioenvision), an international biopharmaceutical company focused upon the development, marketing and commercialization of oncology products and product candidates. Mr. Luci began his career with Ernst & Whinney LLP (now Ernst &Young LLP) in New York as a certified public accountant working in the Healthcare Practice Group. He later practiced corporate law at Paul Hastings LLP in New York, where his practice encompassed all aspects of public and private mergers and acquisitions, corporate finance, restructurings and private equity transactions, with a core focus in the healthcare industry. Mr. Luci graduated from Bucknell University with a degree as a Bachelor of Science in Business Administration with a concentration in Accounting and graduated from Albany Law School of Union University where he served as Managing Editor of the Journal of Science & Technology. Mr. Luci became a certified public accountant in the State of Pennsylvania in 1990 (inactive) and is a member of the New

York State Bar Association. Mr. Luci was selected to serve on our board of directors because of his extensive experience in the pharmaceutical industry.

Robert J. DeLuccia — Executive Chairman

Mr. DeLuccia is our co-founder and has served as our Managing Partner and Director since February 2018. Previously, Mr. DeLuccia was the Executive Chairman of Dipexium Pharmaceuticals (Nasdaq: DPRX), a pharmaceutical company focused on antibiotic drug development, from February 2010 until its sale to PLx Pharma Inc. (Nasdaq: PLXP) in a merger valued at $69 million in April 2017. Previously, from 2004 to 2009, Mr. DeLuccia served in several capacities at MacroChem, a development-stage, publicly traded pharmaceutical company using topical drug delivery technology for products in dermatology, podiatry, urology and cancer, including as Chairman of the board of directors, President and Chief Executive Officer. Prior to joining MacroChem, Mr. DeLuccia served as President and Chief Executive Officer of Immunomedics, Inc., a publicly-traded biopharmaceutical company focused on antibody-based therapeutic products and diagnostic imaging for cancer and infectious diseases. Mr. DeLuccia also served as President of Sterling Winthrop, Inc. (or Sterling Winthrop) (as an independent corporation and then as subsidiary of Eastman Kodak), and subsequently, upon acquisition, the U.S. subsidiary of Sanofi-Aventis (or Sanofi) and currently serves as a member of the board of directors of IBEX Technologies Inc., which manufactures and markets proprietary enzymes (heparinases and chondroitinases) for use in pharmaceutical research and Heparinase I, used in many leading hemostasis monitoring devices. Mr. DeLuccia began his career as a pharmaceutical sales representative for Pfizer, Inc. (or Pfizer) and progressed to Director of Marketing, Pfizer Laboratories Division, and to Vice President Marketing and Sales Operations for Pfizer's Roerig Division. Mr. DeLuccia received a Bachelor of Business Administration with a concentration in Marketing and a Master's Degree in Business Administration from Iona College. Mr. DeLuccia was selected to serve as Chairman of our board of directors because of his extensive executive leadership and experience in the pharmaceutical industry.

Robert Shawah — Vice President, Finance & Chief Accounting Officer

Mr. Shawah is our co-founder and has served as our Chief Accounting Officer since January 2018 and previously served as Vice President of Finance. Since January 2002, Mr. Shawah has served as Vice President of Baldwin Pearson & Co, a commercial real estate firm. Mr. Shawah served as Chief Accounting Officer of Dipexium Pharmaceuticals, Inc. (Nasdaq: DPRX) from 2014 until April 2017. From August 2018 to December 2018, Mr. Shawah served as a director for Ameri100, a software integration company. Mr. Shawah has over 25 years of experience in finance and accounting including positions at Arthur Andersen PC, WR Grace & Co., and other early stage to mid-sized companies. Mr. Shawah is a CPA in the Commonwealth of Pennsylvania (inactive). Mr. Shawah received a Bachelor of Science in Business Administration (Accounting) from Bucknell University.

Non-Employee Directors

Carl V. Sailer — Director

Mr. Sailer has served as our director since October 23, 2018. Since May 2019, Mr. Sailer has served as VP, Global Account Lead for Syneos Health (Nasdaq: SYNH). Previously, Mr. Sailer served as VP, Sales and Marketing for Emisphere Technologies from October 2012 until March 2019, Vice President of Commercial Operations at New American Therapeutics from August 2010 to September 2012, and VP, Commercial Operations Akrimax Pharmaceuticals from May 2008 to July 2010. Mr. Sailer started his career in various sales, marketing and sales management roles in the pharmaceutical and consumer products divisions of Bristol-Myers Squibb and Bayer Healthcare. Mr. Sailer has over 25 years of experience as a commercial leader in the biopharmaceutical industry. Mr. Sailer earned a Master of Business Administration from Hofstra University and a Bachelor of Science in Marketing from Seton Hall University, where he currently serves on the Advisory Board of the Market Research Center at the Stillman School of Business. Mr. Sailer was selected to serve on our board of directors because of his extensive experience in the pharmaceutical and consumer goods industries.

Thomas Harrison — Director Nominee

Mr. Harrison will serve as a member of our board of directors upon the effectiveness of the registration statement of which this prospectus forms a part. Since June 2016, Mr. Harrison has served as Chairman Emeritus of the Diversified Agency Services ("DAS") division of Omnicom Group Inc. (NYSE:OMC), the world's largest group of marketing services companies, having previously served as its President, then Chairman and CEO. DAS provides an unparalleled range of marketing communications services including public relations, crisis management, branding, sales promotion, customer relationship management and specialty communications including health care advertising. With over 5000 worldwide clients, the DAS division under Mr. Harrison had annual revenues of over $6.0 billion and became the largest business unit within Omnicom Group.

Under Mr. Harrison's leadership, the DAS division grew from Omnicom's smallest to its largest division and accounted for over 50% of Omnicom's total revenues. He acquired and led a group of companies which became the most influential in their respective disciplines and built the largest, most innovative, diverse and relevant group of specialized agencies.

Mr. Harrison's multi-faceted career brought him to Omnicom in 1992 when Omnicom acquired the firm he co-founded, Harrison & Star Business Group, which was the most successful and rapidly growing agency group in the healthcare industry. Mr. Harrison served as Chairman of the Harrison & Star Group and Chairman of Diversified Healthcare Communications, a group of eight healthcare agencies within Omnicom, until his appointment as President of DAS in 1997. He was named Chairman and Chief Executive of DAS in 1998 and remained in this role until being named Chairman Emeritus in 2013

With an advanced degree in cell biology and physiology, Mr. Harrison began his business career at Pfizer Laboratories as a pharmaceutical sales representative His agency, Harrison & Star, was an entrepreneurial agency that fused high science with high creativity. The agency became uniquely positioned in the market due to its understanding of the clinical and scientific underpinnings of prescription product promotion and its ability to communicate with practicing physicians using the language of science not sales.

Mr. Harrison brought his scientific acumen and career experience in healthcare, wellness, branding and communication to the evolving cannabis marketplace in 2015 when he joined the Board of Directors of Zynerba Pharmaceuticals, a leader in pharmaceutically produced transdermal cannabinoid therapies for rare and near-rare psychiatric disorders. Mr. Harrison joined Merida Capital Partners in 2019 as Senior Operating Partner. At Merida, he serves as a strategic and operational advisor across the firm's portfolio companies. Mr. Harrison is focused on contributing his expertise to this dynamic industry as it continues to unfold.

Mr. Harrison is a member of the Executive Committee of the Montefiore Health System and currently sits on the board of Fifth Street Asset Management (2014 – Present) where he serves as Lead Independent Director and Chairman of the Audit Committee. He also serves on the board of Madison Logic, a digital business to business agency (2017 – Present). Most recently, Mr. Harrison was appointed to the board of MainStem, a cannabis-related supply company and also ACTV8me, a digital advertising attribution company.

Mr. Harrison is a past board member at ePocrates, a publicly traded healthcare information company, where he served from 2006 until its acquisition in 2013 and he has also served as a board member for The Morgans Hotel Group (2006 – 2013). Mr. Harrison joined the board of Dipexium Pharmaceuticals in 2011 and served until its acquisition in 2017. He was a board member of rVue, a digital out-of-home media company from 2013 until 2016 and sat on the board of Social Growth Technologies from 2014 until its acquisition in 2016. Mr. Harrison was appointed to the board of directors of Zynerba Pharmaceuticals in 2015 serving as Chair of the Nominations and Corporate Governance Committee and as a member of the Compensation Committee until 2019 when he joined Merida Capital Partners.

Mr. Harrison earned an LH.D and Masters of Science in cell biology from West Virginia University, and a Bachelor of Science in cell biology and physiology from Shepherdstown University. Mr. Harrison was selected to serve on our board of directors because of his extensive public company experience and his knowledge of the pharmaceutical industry.

Joseph C. Scodari — Director Nominee

Mr. Scodari will serve as a member of our board of directors upon the effectiveness of the registration statement of which this prospectus forms a part. Since October 2017, Mr. Scodari has served as Chairman of the Board of Directors of Optinose (NASDQ:OPTN), a specialty pharmaceutical company focused on serving the needs of patients cared for by ear, nose and throat ("ENT") and allergy specialists. Mr. Scodari was previously Worldwide Chairman, Pharmaceuticals Group, of Johnson & Johnson, and a member of Johnson & Johnson's Executive Committee from March 2005 until his retirement in March 2008. From 2003 to March 2005, Mr. Scodari was Company Group Chairman of Johnson & Johnson's Biopharmaceutical Business. Mr. Scodari joined Centocor in 1996 as President, Pharmaceutical Division and was named President and COO in 1998, a position that he served in until Conocor Inc.'s acquisition by Johnson & Johnson in 1999. Mr. Scodari began his career in 1974 in sales for Winthrop Laboratories, Division of Sterling Drug. He progressed through various management positions, eventually leading the Diagnostic Imaging Division for Winthrop and later Strategic Marketing at the Corporate level for the Imaging business. Mr. Scodari joined Rorer Pharmaceuticals (shortly thereafter, Rhône-Poulenc Rorer) in 1989 as Vice President of Marketing and Business Development. He later served as Vice President and General Manager for the United States, and subsequently, North America, and finally as Senior Vice President and General Manager for the Americas. Mr. Scodari previously served as a director of Actelion Pharmaceuticals, Ltd., Endo Health Solutions, Inc. and Covance, Inc. Mr. Scodari has served on various non-profit boards, including the University of the Health Sciences in Philadelphia, the Board of Overseers for the Robert Wood Johnson School of Medicine, and on the Board of Trustees for Gwynedd Mercy College. He has also served on various industry association boards, including the NWDA Associate Member Board, the National Pharmaceutical Council, as Vice Chairman of the Biotechnology Industry Organization ("BIO"), and Chairman of PA BIO. Mr. Scodari received a B.A. from Youngstown State University. Mr. Scodari was selected to serve on our board of directors because of his extensive experience in the pharmaceutical industry.

Jack H. Dean, Ph.D., Sc.D. (Hon.), DABT, Fellow ATS — Director Nominee

Dr. Dean will serve as a member of our board of directors upon the effectiveness of the registration statement of which this prospectus forms a part. He previously served as a director of our predecessor, Dipexium Pharmaceuticals (Nasdaq: DPRX), a pharmaceutical company focused on antibiotic drug development from October 2010 until its sale to PLx Pharma Inc. (Nasdaq: PLXP) in a merger valued at $69 million in April 2017. Since 2006, Dr. Dean has served as an advisor to the Executive Vice President of Drug Development for Sanofi, consulting on drug development strategy, drug safety issues and immunotoxicology through his company Drug Development Advisors, LLC where he serves as President. Dr. Dean is also a research professor in the departments of Medical Pharmacology and Pharmacology/Toxicology, Colleges of Medicine and Pharmacy, at University of Arizona in Tucson. Prior to January 2006, Dr. Dean served as the President, U.S. Science and Medical Affairs (R&D), Sanofi in Malvern, Pennsylvania and the Global Director of Preclinical Development for Sanofi. Dr. Dean joined Sterling Winthrop in 1988, as Director of the Department of Toxicology and was appointed Vice President, Drug Safety worldwide in 1989. In addition, Dr. Dean served as Director of the Sterling Winthrop Research Center in Alnwick, England from 1990 to 1992. Dr. Dean was appointed Executive Vice President, Drug Development, in 1992 where he managed Non-Clinical and Clinical Development, and Regulatory Affairs. Before joining Sterling Winthrop, Dr. Dean headed the Department of Cellular and Molecular Toxicology, Chemical Industry Institute of Toxicology, Research Triangle Park, NC from 1982 to 1988. Prior to 1982, he headed the Immunotoxicology Section, National Institute of Environmental Health Services and National Toxicology Program, NIH in Research Triangle Park. From 1972 to 1979, Dr. Dean was in the Department of Immunology at Litton Bionetics (Department Director from 1975 to 1979) conducting research in tumor immunology. Dr. Dean holds a Bachelor of Science in microbiology and a Master of Science in medical microbiology from California State University at Long Beach. He earned a Ph.D. in molecular biology and minor in biochemistry in 1972 from the College of Medicine, University of Arizona. Dr. Dean held adjunct professorships at the University of North Carolina, Chapel Hill and Duke University from 1981 to 1988. Dr. Dean was selected to serve on our board of directors because of his extensive experience in the pharmaceutical industry.

James Donohue — Director Nominee

Mr. Donohue will serve as a member of our board of directors upon the effectiveness of the registration statement of which this prospectus forms a part. Mr. Donohue has been a Vice President with Charles River

Associates (Nasdaq: CRAI), a leading global consulting firm specializing in economic, financial, and management consulting services, since April 2004. Mr. Donohue has nearly 30 years of experience in valuation, damages, and forensic accounting. Mr. Donohue is a Certified Public Accountant (CPA) in Maryland and has a Bachelor of Science degree in Accountancy from Villanova University. He is also a Certified Valuation Analyst (CVA) and is Accredited in Business Valuation (ABV). Mr. Donohue was selected to serve on our board of directors because of his expertise in financial accounting.

Family Relationships

There are no family relationships between any of our directors or executive officers.

Leadership Structure of Our Board of Directors

Our board of directors has responsibility for establishing broad corporate policies and reviewing our overall performance rather than day-to-day operations. The primary responsibility of our board of directors is to oversee our management and, in doing so, serve our best interests and the best interests of our stockholders. Our board of directors selects, evaluates and provides for the succession of executive officers and, subject to stockholder election, directors. It reviews and approves corporate objectives and strategies, and evaluates significant policies and proposed major commitments of corporate resources. Our board of directors also participates in decisions that have a potential major economic impact on us. Management keeps the directors informed of company activity through regular communication, including written reports and presentations at board of directors and committee meetings.

Our officers are appointed by our board of directors and hold office until they resign or are removed from office by the board of directors.

Thomas Harrison, Joseph C. Scodari, Jack H. Dean, Thomas Harrison, Carl V. Sailer and James Donohue qualify as independent directors.

Classified Board of Directors

We intend to have seven directors upon the effectiveness of the registration statement of which this prospectus forms a part. Immediately prior to the effectiveness of the registration statement of which this prospectus forms a part, we will adopt a certificate of incorporation which provides that, upon the consummation of this offering, our board of directors will be divided into three classes with staggered three-year terms. Only one class of directors will be elected at each annual meeting of stockholders, with the other classes continuing for the remainder of their respective three-year terms. Our current directors will be divided among the three classes as follows:

- the Class I directors will be Carl V. Sailer and Thomas Harrison and their terms will expire at the annual meeting of stockholders to be held in 2022;
- the Class II directors will be David P. Luci and Jack H. Dean and their terms will expire at the annual meeting of stockholders to be held in 2023; and
- the Class III directors will be Robert J. DeLuccia, Joseph C. Scodari and James Donohue and their terms will expire at the annual meeting of stockholders to be held in 2024.

Each director's term will continue until the election and qualification of their successor, or their earlier death, resignation or removal. Any increase or decrease in the number of directors will be distributed among the three classes so that, as nearly as possible, each class will consist of one-third of our directors. This classification of our board of directors may have the effect of delaying or preventing changes in control of our company. See the section titled "*Description of Capital Stock — Anti-Takeover Provisions — Classified Board of Directors*"

Committees of the Board of Directors

Our board of directors will have two standing committees: an audit committee and a compensation committee. Subject to phase-in rules and a limited exception, the rules of Nasdaq and Rule 10A-3 of the

Exchange Act require that the audit committee of a listed company be comprised solely of independent directors, and the rules of Nasdaq require that the compensation committee of a listed company be comprised solely of independent directors.

Audit Committee

Our board of directors will establish an audit committee of the board of directors. James Donohue (Chair), Joseph C. Scodari and Thomas Harrison will serve as members of our audit committee. Under the Nasdaq listing standards and applicable SEC rules, we are required to have at least three members of the audit committee, all of whom must be independent.

Each member of the audit committee is financially literate and our board of directors has determined that qualifies as an "audit committee financial expert" as defined in applicable SEC rules.

Our audit committee charter details the principal functions of the audit committee, including:

- the appointment, compensation, retention, replacement, and oversight of the work of the independent auditors and any other independent registered public accounting firm engaged by us;
- resolving any disagreements between management and the independent auditor regarding financial reporting;
- pre-approving all audit and permitted non-audit services to be provided by the independent auditors or any other registered public accounting firm engaged by us, and establishing pre-approval policies and procedures;
- reviewing and discussing with the independent auditors all relationships the auditors have with us in order to evaluate their continued independence;
- setting clear hiring policies for employees or former employees of the independent auditors;
- setting clear policies for audit partner rotation in compliance with applicable laws and regulations;
- seeking information that we require from employees or any of our direct or indirect subsidiaries (each, a "Subsidiary"), all of whom are directed to cooperate with the audit committee's requests, or external parties;
- meeting with any of our officers or employees (or officers or employees of any Subsidiary), the independent auditor or outside counsel, as necessary, or request that any such persons meet with any members of, or advisors or consultants to, the audit committee;
- obtaining and reviewing a report, at least annually, from the independent auditors describing (i) the independent auditor's internal quality-control procedures and (ii) any material issues raised by the most recent internal quality-control review, or peer review, of the audit firm, or by any inquiry or investigation by governmental or professional authorities within the preceding five years respecting one or more independent audits carried out by the firm and any steps taken to deal with such issues;
- reviewing and approving any related party transaction required to be disclosed pursuant to Item 404 of Regulation S-K promulgated by the SEC prior to us entering into such transaction;
- overseeing that management has established and maintained processes to assure compliance by us with applicable laws, regulations and corporate policy; and
- reviewing with management, the independent auditors, and our legal advisors, as appropriate, any legal, regulatory or compliance matters, including any correspondence with regulators or government agencies and any employee complaints or published reports that raise material issues regarding our financial statements or accounting policies and any significant changes in accounting standards or rules promulgated by the Financial Accounting Standards Board, the SEC or other regulatory authorities.

Compensation Committee

Our board of directors will establish a compensation committee of the board of directors. Joseph C. Scodari (Chair), Thomas Harrison and Carl V. Sailer will serve as members of our compensation committee. Under the Nasdaq listing standards and applicable SEC rules, we are required to have at least two members of the compensation committee, all of whom must be independent. Joseph C. Scodari, Thomas Harrison and Carl V. Sailer are independent.

Our compensation committee charter details the principal functions of the compensation committee, including:

- discharging the responsibilities of the board of directors relating to compensation of our directors and executive officers;
- reviewing and approving on an annual basis the corporate goals and objectives relevant to our Chief Executive Officer's compensation, evaluating our Chief Executive Officer's performance in light of such goals and objectives and determining and approving the remuneration (if any) of our Chief Executive Officer based on such evaluation;

- reviewing and approving on an annual basis the compensation of all of our other officers;
- reviewing on an annual basis our executive compensation policies and practices;
- implementing and administering our incentive compensation equity-based remuneration plans;
- assisting management in complying with our proxy statement and annual report disclosure requirements;
- periodically review executive supplementary benefits and, as appropriate, our retirement, benefit, and special compensation programs;
- overseeing the annual process of evaluation of the performance of our management;
- if required, producing a report on executive compensation to be included in our annual proxy statement; and
- reviewing and recommending compensation of the directors, including with respect to any equity-based plans.

The compensation committee charter also provides that the compensation committee may, in its sole discretion, retain or obtain the advice of a compensation consultant, legal counsel or other adviser and will be directly responsible for the appointment, compensation and oversight of the work of any such adviser. However, before engaging or receiving advice from a compensation consultant, external legal counsel or any other adviser, the compensation committee will consider the independence of each such adviser, including the factors required by Nasdaq and the SEC.

Director Nominations

We do not have a standing nominating committee. In accordance with Rule 5605(e)(2) of the Nasdaq rules, a majority of the independent directors may recommend a director nominee for selection by the board of directors. The board of directors believes that the independent directors can satisfactorily carry out the responsibility of properly selecting or approving director nominees without the formation of a standing nominating committee. As there is no standing nominating committee, we do not have a nominating committee charter in place.

The board of directors will also consider director candidates recommended for nomination by our stockholders during such times as they are seeking proposed nominees to stand for election at the next annual meeting of stockholders (or, if applicable, a special meeting of stockholders). Our stockholders that wish to nominate a director for election to the board of directors should follow the procedures set forth in our bylaws.

We have not formally established any specific, minimum qualifications that must be met or skills that are necessary for directors to possess. In general, in identifying and evaluating nominees for director, the board of directors considers educational background, diversity of professional experience, knowledge of our business, integrity, professional reputation, independence, wisdom, and the ability to represent the best interests of our stockholders.

Code of Conduct and Ethics

Our board of directors has adopted a code of conduct and ethics and whistle blower policy that applies to all of our employees, officers and directors. The full text of our code of conduct and ethics and whistle blower policy will be posted on the investor relations page on our website. We intend to disclose any amendments to our code of business conduct and ethics, or waivers of its requirements, on our website or in filings under the Exchange Act. Our code of conduct and ethics and whistle blower policy also addresses conflicts of interest that may arise between our business and the future business activities of our directors, executive officers or employees.

Board's Role in Risk Oversight

Effective risk oversight is an important priority of the board of directors. Because risks are considered in virtually every business decision, the board of directors discusses risk throughout the year generally or in

connection with specific proposed actions. The board of directors' approach to risk oversight includes understanding the critical risks in our business and strategy, evaluating our risk management processes, allocating responsibilities for risk oversight among the full board of directors, and fostering an appropriate culture of integrity and compliance with legal responsibilities.

EXECUTIVE AND DIRECTOR COMPENSATION

This section discusses the material components of the executive compensation program for our executive officers who are named in the "Summary Compensation Table" below, whom we refer to as our "NEOs."

This discussion may contain forward-looking statements that are based on our current plans, considerations, expectations and determinations regarding future compensation programs. Actual compensation programs that we adopt following the closing of this offering may differ materially from the currently planned programs summarized in this discussion.

Summary Compensation Table

The following table presents summary information regarding the total compensation that was awarded to, earned by or paid to our NEOs for services rendered during the years ended December 31, 2020 and 2019.

Name and principal position	Year	Salary ($)	Bonus ($)	Stock awards ($)	Option awards ($)	Non-equity incentive plan compensation ($)	All other compensation ($)[1]	Total ($)
David P. Luci	2020	277,000[2]	20,775	274,824	—	—	23,438	596,037
President and Chief Executive Officer	2019	266,833[2]	—	—	—	—	23,438	290,271
Robert J. DeLuccia	2020	277,000[3]	20,775	274,824	—	—	44,971	617,570
Executive Chairman	2019	266,833[3]	—	—	—	—	45,016	311,849
Robert G. Shawah	2020	90,000[4]	—	62,500	—	—	—	152,500
Vice President, Finance and Chief Accounting Officer	2019	90,000[4]	—	—	—	—	—	90,000

(1) Other compensation represents health care insurance and unused vacation.

(2) Mr. Luci's base salary was $277,000 and $266,833 for the years ended December 31, 2020 and 2019, respectively. During 2020, $246,000 was paid in cash and $31,000 was deferred until January 2021 when such amount was paid in Class A membership interests. During 2019, $221,000 was paid in cash and $45,833 was deferred until January 2020 when such amount was paid in Class A membership interests. These deferred amounts are reflected as accrued compensation in our financial statements.

(3) Mr. DeLuccia's base salary was $277,000 and $266,833 for the years ended December 31, 2020 and 2019, respectively. During 2020, $246,000 was paid in cash and $31,000 was deferred until January 2021 when such amount was paid in Class A membership interests. During 2019, $221,000 was paid in cash and $45,833 was deferred until January 2020 when such amount was paid in Class A membership interests. These deferred amounts are reflected as accrued compensation in our financial statements.

(4) Mr. Shawah's base salary was $90,000 for each of the years ended December 31, 2020 and 2019. During 2020, $48,000 was paid in cash and $42,000 was deferred until January 2021 when such amount was paid in cash. During 2019, $28,000 was paid in cash and $62,000 was deferred until January 2020 when such amount was paid in equal amounts of cash and Class A membership interests. These deferred amounts are reflected as accrued compensation in our financial statements.

Narrative Disclosure to Summary Compensation Table

Executive Employment Agreements

The following summaries set forth the material terms of the employment agreements entered into with our named executive officers. Each such agreement provides generally that, in the event the named executive officer's role is terminated by the Board without cause or the named executive officer resigns for "good reason," they will be entitled to receive an amount equal to two times the sum of their annual base salary and target bonus (DeLuccia and Luci) and one times the sum of annual base salary and target bonus

5(Shawah), in each case, plus any other incentive compensation earned but unpaid as of the date of termination, and their stock option grant(s) will become fully vested as of the date of termination.

Robert J. DeLuccia, Executive Chairman of the Board and Director

Mr. DeLuccia entered into an employment agreement with us, dated February 5, 2018 and an amended employment agreement dated January 12, 2021. Mr. DeLuccia entered into an Amended and Restated Employment Agreement, effective as of the date of this offering (the "DeLuccia Amended and Restated Employment Agreement"). The DeLuccia Amended and Restated Employment Agreement provides for a base salary of $450,000 per year and a potential incentive award bonus of up to 40% (or a higher or lower amount if so determined by the Board) of his base salary on an annualized basis (which amount shall be fixed for the first 12 months of the term). Mr. DeLuccia's employment agreement provides for the grant of an initial stock option award equal to 500,000 shares of Common Stock, 25% of which vested on the closing date of the offering and 75% of which vest pro rata on a monthly basis for 36 months, subject to accelerated vesting under certain circumstances. The options have an exercise price of $ per share with a term of ten years from the date of grant. Mr. DeLuccia will also earn a one-time bonus of $60,000 upon the closing of this offering.

David P. Luci, President and Chief Executive Officer

Mr. Luci entered into an employment agreement with us, dated February 5, 2018 and an amended employment agreement dated January 12, 2021. Mr. Luci entered into an Amended and Restated Employment Agreement, effective as of the date of this offering (the "Luci Amended and Restated Employment Agreement"). The Luci Amended and Restated Employment Agreement provides for a base salary of $450,000 per year and a potential incentive award bonus of up to 40% (or a higher or lower amount if so determined by the Board) of his base salary on an annualized basis (which amount shall be fixed for the first 12 months of the term). Mr. Luci's employment agreement provides for the grant of an initial stock option award equal to 500,000 shares of Common Stock, 25% of which vested on the closing date of the offering and 75% of which vest pro rata on a monthly basis for 36 months, subject to accelerated vesting under certain circumstances. The options have an exercise price of $ per share with a term of ten years from the date of grant. Mr. Luci will also earn a one-time bonus of $60,000 upon the closing of this offering.

Robert Shawah, Vice President, Finance & Chief Financial Officer

Mr. Shawah entered into an employee offer letter with us, dated June 1, 2018 and an amended offer letter, dated January 12, 2021, the amended offer letter, dated January 2, 2019 and the second amended offer letter dated January 12, 2021. In addition, we and Mr. Shawah entered into the Amended and Restated Employment Agreement, dated the date of this offering (the "Shawah Amended and Restated Employment Agreement"). The Shawah Amended and Restated Employment Agreement provides for a base salary of $250,000 per year and a potential incentive award bonus of up to 30% (or a higher or lower amount if so determined by the Board) of his base salary on an annualized basis. Mr. Shawah's employment agreement provides for the grant of an initial stock option award equal to 200,000 shares of Common Stock, 25% of which vested on the closing date of the offering and 75% of which vest pro rata on a monthly basis for 36 months, subject to accelerated vesting under certain circumstances. The options have an exercise price of $3.25 per share with a term of ten years from the date of grant. Mr. Shawah will also earn a one-time bonus of $25,000 upon the closing of this offering.

Equity Compensation Plan Information.

None.

Outstanding Equity Awards at Fiscal Year-End

None.

Directors' Compensation

Since inception, we have not paid any cash compensation to our directors in connection with their service on the board of directors. Upon their initial appointment to the board of directors, each non-employee director received an equity award of Class A membership interests, which vests in equal monthly

installments over a three-year period measured from the date of grant, subject to the non-employee director's continued service as a director.

Upon the consummation of this offering, we will pay cash compensation of $20,000 per year paid on a quarterly basis to members of the board of directors as well as options to purchase 50,000 shares of common stock under our Equity Incentive Plan which would vest ratably on a monthly basis over a 36-month period from the closing of the offering, subject to accelerated vesting upon a Change of Control. In addition, each committee chairman will receive $750 per meeting and each committee member will receive $500 per committee meeting, in each case, for meetings attended by each such committee chairman and/or member.

Director and Officer Indemnification Agreements and Insurance

We have entered into indemnification agreements with each of our directors and executive officers (the "Indemnification Agreements"). Such Indemnification Agreements provide for indemnification against expenses, judgments, fines and penalties actually and reasonably incurred by an indemnitee in connection with threatened, pending or completed actions, suits or other proceedings, subject to certain limitations. The Indemnification Agreements also provide for the advancement of expenses in connection with a proceeding prior to a final, non-appealable judgment or other adjudication, provided that the indemnitee provides an undertaking to repay to us any amounts advanced if the indemnitee is ultimately found not to be entitled to indemnification by us. The Indemnification Agreements set forth procedures for making and responding to requests for indemnification or advancement of expenses, as well as dispute resolution procedures that will apply to any dispute between us and an indemnitee arising under the Indemnification Agreements.

We maintain directors' and officers' liability insurance coverage for our directors and officers in their capacities as our directors and officers.

Equity Incentive Plan

Our 2021 Equity Incentive Plan (the "2021 Plan") was established to attract, retain and motivate our employees, officers, directors, consultants, agents, advisors and independent contractors by providing them with the opportunity to acquire a proprietary interest in us and to align their interests and efforts to the long-term interests of our stockholders. The 2021 Plan provides for, among other things, grants of restricted stock units, stock options, restricted stock and other stock-based awards to employees, directors, consultants and other individuals who provide services to us and our affiliates. As of , 2021, we have 2,000,000 shares of our common stock reserved for issuance under the 2021 Plan. Upon consummation of this offering, we intend to grant to certain former Class B membership interest holders options to purchase shares of common stock with an exercise price equal to the initial public offering price and with such options to be fully vested on the date of grant.

Eligibility. The 2021 Plan allow for grants, under the direction of the board of directors or compensation committee, as the plan administrator, of stock options, stock appreciation rights, restricted and unrestricted stock awards, restricted stock units and other stock or equity-related cash-based awards to employees, consultants and directors who, in the opinion of the plan administrator, are in a position to make a significant contribution to our long-term success. All of our employees, directors and consultants and our affiliates are eligible to participate in the 2021 Plan.

Shares Available for Issuance. Subject to the provisions of our 2021 Plan, the number of shares available for issuance under the 2021 Plan will be increased on January 1 of each year, beginning on January 1, 2022, and ending on January 2, 2032, in an amount equal to the lesser of (i) 5% of the outstanding shares of our common stock on such date or (ii) such number of shares determined by the plan administrator. Generally, shares of our common stock reserved for awards under the 2021 Plan that lapse or are forfeited will be added back to the share reserve available for future awards. However, shares delivered to or withheld to pay withholding taxes or any applicable exercise price will not be available for issuance under the 2021 Plan. In addition, any shares repurchased on the open market using exercise price proceeds will not be available for issuance under the 2021 Plan.

Stock Options. Stock options granted under the 2021 Plan may either be incentive stock options, which are intended to satisfy the requirements of Section 422 of the Code, or non-qualified stock options,

which are not intended to meet those requirements. Incentive stock options may be granted to our employees and affiliates, and the aggregate fair market value of a share of our common stock determined at the time of grant with respect to incentive stock options that are exercisable for the first time by a participant during any calendar year may not exceed $100,000. Non-qualified options may be granted to our employees, directors and consultants and our affiliates. The exercise price of a stock option may not be less than 100% of the fair market value of our common stock on the date of grant, and the term of the option may not be longer than ten years. If an incentive stock option is granted to an individual who owns more than 10% of the combined voting power of all classes of our capital stock, the exercise price may not be less than 110% of the fair market value of our common stock on the date of grant and the term of the option may not be longer than five years.

Award agreements for stock options include rules for exercise of the stock options after termination of service. Options may not be exercised unless they are vested, and no option may be exercised after the end of the term set forth in the award agreement. Generally, stock options will be exercisable for three months after termination of service for any reason other than death or total and permanent disability, and for one year after termination of service on account of death or total and permanent disability, but will not be exercisable if the termination of service was due to cause.

Restricted Stock. Restricted stock is common stock that is subject to restrictions, including a prohibition against transfer and a substantial risk of forfeiture, until the end of a "restricted period" during which the grantee must satisfy certain time or performance-based vesting conditions. If the grantee does not satisfy the vesting conditions by the end of the restricted period, the restricted stock is forfeited. During the restricted period, the holder of restricted stock has the rights and privileges of a regular stockholder, except that generally dividend equivalents may accrue but will not be paid during the restricted period, and the restrictions set forth in the applicable award agreement apply. For example, the holder of restricted stock may vote the restricted shares, but he or she may not sell the shares until the restrictions are lifted.

Other Stock-Based Awards and Performance-Based Awards. The 2021 Plan also authorizes the grant of other types of stock-based compensation including, but not limited to stock appreciation rights and unrestricted stock awards. The plan administrator may award such stock-based awards subject to such conditions and restrictions as it may determine. We may grant an award conditioned on satisfaction of certain performance criteria. Such performance-based awards also include performance-based restricted shares and restricted stock units. Any dividends or dividend equivalents payable or credited to a participant with respect to any unvested performance-based award will be subject to the same performance goals as the shares or units underlying the performance-based award.

Plan Administration. In accordance with the terms of the 2021 Plan, the board of directors may authorize the compensation committee to administer the 2021 Plan. The compensation committee may delegate part of its authority and powers under the 2021 Plan to one or more directors and/or officers, but only the compensation committee can make awards to participants who are subject to the reporting and other requirements of Section 16 of the Exchange Act. In accordance with the provisions of the 2021 Plan, the plan administrator determines the terms of awards, including which employees, directors and consultants will be granted awards, the number of shares subject to each award, the vesting provisions of each award, the termination or cancellation provisions applicable to awards, and all other terms and conditions upon which each award may be granted in accordance with the 2021 Plan.

In addition, the plan administrator may, in its discretion, amend any term or condition of an outstanding award provided (i) such term or condition as amended is permitted by the 2021 Plan and does not require stockholder approval under the rules of the Nasdaq Stock Market, and (ii) any such amendment will be made only with the consent of the participant to whom such award was made, if the amendment is adverse to the participant unless such amendment is required by applicable law or necessary to preserve the economic value of such award.

Stock Dividends and Stock Splits. If our common stock is subdivided or combined into a greater or smaller number of shares or if we issue any shares of common stock as a stock dividend, the number of shares of common stock deliverable upon exercise of an option issued or upon issuance of an award will be appropriately increased or decreased proportionately, and appropriate adjustments will be made in the

exercise price per share of stock options or purchase price, if any, and performance goals applicable to performance-based awards, if any, to reflect such subdivision, combination or stock dividend.

Corporate Transactions. Upon a merger or other reorganization event, the board of directors, may, in its sole discretion, take any one or more of the following actions pursuant to the 2021 Plan, as to some or all outstanding awards:

- provide that all outstanding options will be assumed or substituted by the successor corporation;
- upon written notice to a participant provide that the participant's unexercised options will terminate immediately prior to the consummation of such transaction unless exercised by the participant within a specified number of days of such notice;
- in the event of a merger pursuant to which holders of our common stock will receive a cash payment for each share surrendered in the merger, make or provide for a cash payment to option holder participants equal to the difference between the merger price times the number of shares of our common stock subject to such outstanding options, and the aggregate exercise price of all such outstanding options, in exchange for the termination of such options;
- with respect to other stock awards, provide that outstanding awards will be assumed or substituted by the successor corporation, become realizable or deliverable, or restrictions applicable to an award will lapse, in whole or in part, prior to or upon the merger or reorganization event;
- with respect to stock awards, and in lieu of any of the foregoing, provide that, upon consummation of the transaction, each outstanding stock award will be terminated in exchange for payment of an amount equal to the consideration payable upon consummation of such transaction to a holder of the number of shares of our common stock comprising such award (to the extent such stock grant is no longer subject to any forfeiture or repurchase rights then in effect or, at the discretion of the board of directors or an authorized committee, all forfeiture and repurchase rights being waived upon such transaction); and
- pursuant to the 2021 Plan, upon consummation of a Corporate Transaction, to the extent not assumed or substituted by the successor or cashed out, the outstanding awards will terminate.

Amendment and Termination. The 2021 Plan may be amended by our stockholders. The 2021 Plan may also be amended by the board of directors or the compensation committee, provided that any amendment which is of a scope that requires stockholder approval as required by (i) the rules of the Nasdaq Stock Market or (ii) for any other reason, is subject to obtaining such stockholder approval. However, no such action may adversely affect any rights under any outstanding award without the holder's consent unless such amendment is required by applicable law or necessary to preserve the economic value of such award.

Duration of Plan. The 2021 Plan will expire by its terms on January 2, 2032.

CERTAIN RELATIONSHIPS AND RELATED PARTY TRANSACTIONS

The following is a description of transactions since January 1, 2018, to which we were a party in which the amount involved exceeded or will exceed the lesser of $120,000 or one percent of the average of our total assets at year-end for the last two completed fiscal years, and in which any of our executive officers, directors or holders of more than 5% of any class of our voting securities, or an affiliate or immediate family member thereof, had or will have a direct or indirect material interest. We believe the terms obtained or the consideration that we paid or received, as applicable, in connection with the transactions described below are comparable to terms available or amounts that would be paid or received, as applicable, in arms'-length transactions with parties unrelated to us.

Equity Financings

In January 2018, we issued and sold to investors in a private placement an aggregate of 4,150,000 Class A membership interests at a purchase price of $0.10 per Class A membership interest, for aggregate consideration of $415,000. On February 5, 2018, we issued 100,000 Class B membership interests to GLSynthesis, Inc. as equity consideration for the purchase of an asset. We valued such interests at the time of issuance at $1.00 per unit, for aggregate consideration of $100,000. In March 2018, we issued and sold to investors in a private placement an aggregate of 2,081,500 units, each unit consisting of one Class A membership interest and one warrant to purchase one-half of one Class A membership interest, at a purchase price of $1.00 per unit, for aggregate consideration of $2,081,500. In October 2018, we issued and sold to investors in a private placement an aggregate of 610,008 units, each unit consisting of one Class A membership interest and one warrant to purchase one-half of one Class A membership interest, at a purchase price of $1.50 per unit, for aggregate consideration of $915,012. In March 2019, we issued and sold to investors in a private placement an aggregate of 277,000 units, each unit consisting of one Class A membership interest and one warrant to purchase one-half of one Class A membership interest, at a purchase price of $2.00 per unit, for aggregate consideration of $554,000. In August 2019, we issued and sold to investors in a private placement an aggregate of 1,248,750 units, each unit consisting of one Class A membership interest and one warrant to purchase one-half of one Class A membership interest, at a purchase price of $2.00 per unit, for aggregate consideration of $2,497,500. In October 2019, we issued and sold to investors in a private placement an aggregate of 483,501 units, each unit consisting of one Class A membership interest and one warrant to purchase one-half of one Class A membership interest, at a purchase price of $2.00 per unit, for aggregate consideration of $967,000. On July 20, 2020, we issued and sold to investors in a private placement an aggregate of 533,900 Class A membership interests at a purchase price of $3.25 per Class A membership interest, for aggregate consideration of $1,735,175. In October 2020, we issued and sold to investors in a private placement an aggregate of 705,727 Class A membership interests at a purchase price of $3.25 per Class A membership interest, for aggregate consideration of $2,293,613.

The following table sets forth the aggregate number of common stock acquired by our directors, officers and 5% security holders in the financing transactions described above, assuming such Class A membership interests are converted into shares of common stock and such warrants to purchase Class A membership interests are converted into warrants to purchase shares of common stock following the Corporate Conversion.

Participants	Common Stock	Warrants for Common Stock	Aggregate Purchase Price
Executive Officers and Directors[1][2]			
Robert J. DeLuccia, Executive Chairman[3]	1,853,527	47,917	$350,000
David P. Luci, President and Chief Executive Officer[4]	1,900,193	33,750	$350,000
Robert G. Shawah, Vice President, Finance and Chief Accounting Officer[5]	302,500	1,250	$ 35,000
Carl V. Sailer, Director Nominee[6]	66,667	33,334	$100,000
Jack H. Dean, PhD, Director Nominee[7]	31,539	10,000	$ 65,000
Joseph C. Scodari, Director Nominee	6,154		$ 20,000

Participants	Common Stock	Warrants for Common Stock	Aggregate Purchase Price
Thomas Harrison, Director Nominee	3,077		$ 10,000
James Donohue, Director Nominee	25,000	12,500	$ 25,000

(1) Additional details regarding these stockholders and their equity holdings are provided in this prospectus under the caption "*Principal Stockholders*."

(2) Excludes the Class B membership interests granted in January 2021 and subsequently cancelled in March 2021.

(3) Consists of (i) 2,052,853 shares of our common stock and 47,917 shares of our common stock underlying warrants to purchase shares of our common stock held of record by Mr. DeLuccia and (ii) 7,693 shares of our common stock held of record by Mr. DeLuccia's spouse.

(4) Consists of (i) 2,007,046 shares of our common stock and 33,750 shares of our common stock underlying warrants to purchase shares of our common stock held of record by Mr. Luci, (ii) 30,166 shares of our common stock held of record by Mr. Luci's spouse and (iii) 70,000 shares of our common stock held of record by Mr. Luci's child.

(5) Consists of 378,400 shares of our common stock and 1,250 shares of our common stock underlying warrants to purchase shares of our common stock held of record by Mr. Shawah.

(6) Consists of (i) 110,834 shares of our common stock and 33,334 shares of our common stock underlying warrants to purchase shares of our common stock held of record by Mr. Sailer and (ii) 10,000 shares of our common stock held of record by Mr. Sailer's spouse.

(7) Consists of shares held by 35,385 shares of our common stock and 10,000 shares of our common stock underlying warrants to purchase shares of our common stock held by Dr. Dean and the Dean Family Trust.

Investor Rights Agreement

We have entered into investor rights agreements with the investors who participated in our private placement financings between March 2018 and October 2019, including Messrs. DeLuccia, Luci, Sailer, Scodari, Harrison and Dean. Each such investor rights agreement imposes certain affirmative obligations on us and also grants certain rights to such investors, including certain registration rights with respect to the securities held by them and certain additional rights. See "*Description of Capital Stock — Registration Rights*" for additional information.

Corporate Conversion

Prior to the IPO, we have been operating as a Delaware limited liability company under the name Acurx Pharmaceuticals, LLC. In connection with and subsequent to the IPO, we will have converted from a Delaware limited liability company to a Delaware corporation pursuant to a statutory conversion and changed our name to Acurx Pharmaceuticals, Inc. Existing holders at the time of our IPO, including certain 5% security holders, executive officers and directors, of our Class A membership units and Class B membership units, received shares of our common stock as a result of the Corporate Conversion.

Employment Agreements

We have entered into employment agreements with each of our executive officers. See "*Executive and Director Compensation — Narrative Disclosure to Summary Compensation Table — Executive Employment Agreements*" for a further discussion of these arrangements.

Indemnification Agreements

We have entered into indemnification agreements with each of our directors and executive officers. These agreements, among other things, require us to indemnify each director and executive officer to the fullest extent permitted by Delaware law, including indemnification of expenses such as attorneys' fees,

judgments, fines and settlement amounts incurred by the director or executive officer in any action or proceeding, including any action or proceeding by or in right of us, arising out of the person's services as a director or executive officer. For further information, see "*Executive and Director Compensation — Director and Officer Indemnification Agreements and Insurance*."

Policies and Procedures for Related Party Transactions

Our board of directors has adopted a written related party transaction policy, setting forth the policies and procedures for the review and approval or ratification of related person transactions. This policy covers, with certain exceptions set forth in Item 404 of Regulation S-K under the Securities Act, any transaction, arrangement or relationship, or any series of similar transactions, arrangements or relationships, in which we were or are to be a participant, where the amount involved exceeds $120,000 in any fiscal year and a related person had, has or will have a direct or indirect material interest, including without limitation, purchases of goods or services by or from the related person or entities in which the related person has a material interest, indebtedness, guarantees of indebtedness and employment by us of a related person. In reviewing and approving any such transactions, our audit committee is tasked to consider all relevant facts and circumstances, including, but not limited to, whether the transaction is on terms comparable to those that could be obtained in an arm's length transaction and the extent of the related person's interest in the transaction. All of the transactions described in this section occurred prior to the adoption of this policy.

PRINCIPAL STOCKHOLDERS

The following table sets forth information as of March 31, 2021 with respect to the beneficial ownership of our common stock, giving pro forma effect to the Corporate Conversion, by:

- each person, or group of affiliated persons, known by us to beneficially own more than 5% of our outstanding shares of common stock
- each of our named executive officers;
- each of our directors; and
- all of our executive officers and directors as a group.

The number of shares beneficially owned by each stockholder is determined in accordance with the rules issued by the SEC, and the information is not necessarily indicative of beneficial ownership for any other purpose. Under these rules, beneficial ownership includes any shares as to which the individual or entity has sole or shared voting power or investment power, which includes the power to dispose of or to direct the disposition of such security. Except as indicated in the footnotes below, we believe, based on the information furnished to us, that the individuals and entities named in the table below have sole voting and investment power with respect to all shares of common stock beneficially owned by them, subject to any community property laws.

Percentage ownership of our common stock before this offering is based on shares of common stock outstanding as of March 31, 2021, after giving effect to the Corporate Conversion, assuming no exercise of the underwriter's over-allotment option, no exercise of the Underwriter Warrants and no exercise of outstanding warrants or options. Percentage ownership of our common stock after this offering is based on shares of common stock outstanding as of March 31, 2021, after giving effect to the Corporate Conversion, the accelerated vesting of currently unvested board of director and corporate advisory council membership interests and our issuance of 2,500,000 shares of our common stock in this offering, based upon the assumed initial public offering price of $6.00 per share, the midpoint of the price range set forth on the cover of this prospectus assuming no exercise of the underwriter's over-allotment option, no exercise of the Underwriter Warrants, and no exercise of outstanding warrants or options. In computing the number of shares beneficially owned by an individual or entity and the percentage ownership of that person, shares of common stock subject to options, warrants or other rights held by such person that are currently exercisable or will become exercisable within 60 days of March 31, 2021 are considered outstanding, although these shares are not considered outstanding for purposes of computing the percentage ownership of any other person. Unless noted otherwise, the address of all listed stockholders is Acurx Pharmaceuticals, LLC, 259 Liberty Avenue, Staten Island, NY 10305.

	Shares Beneficially Owned Prior to Offering		Shares Beneficially Owned After Offering	
Name of Beneficial Owner	**Number**	**Percentage**	**Number**	**Percentage**
Named Executive Officers and Directors[1]				
David P. Luci[2]	1,053,606	15.2%	1,053,606	11.2%
Robert G. Shawah[3]	189,200	2.7%	189,200	2.0%
Robert J. DeLuccia[4]	1,030,273	14.9%	1,030,273	11.0%
Joseph C. Scodari	3,077	*%	3,077	*
Jack H. Dean[5]	17,693	*%	17,693	*
Thomas Harrison[6]	1,539	*%	1,539	*
Carl Sailer[7]	60,417	1.1%	60,417	*
James Donohue	12,500	*%	12,500	*
All executive officers and directors as a group (8 persons)	2,368,304	34.5%	2,368,304	25.5%

* Represents beneficial ownership of less than 1%.

(1) Excludes the Class B membership interests granted in January 2021 and subsequently cancelled in March 2021.

(2) Consists of (i) 1,003,523 shares of our common stock and 16,875 shares of our common stock underlying warrants to purchase shares of our common stock held of record by Mr. Luci, (ii) 15,083 shares of our common stock held of record by Mr. Luci's spouse and (iii) 35,000 shares of our common stock held of record by Mr. Luci's child.

(3) Consists of 189,200 shares of our common stock and 625 shares of our common stock underlying warrants to purchase shares of our common stock held of record by Mr. Shawah.

(4) Consists of (i) 1,026,427 shares of our common stock and 23,959 shares of our common stock underlying warrants to purchase shares of our common stock held of record by Mr. DeLuccia and (ii) 3,847 shares of our common stock held of record by Mr. DeLuccia's spouse.

(5) Consists of shares held by 17,693 shares of our common stock and 5,000 shares of our common stock underlying warrants to purchase shares of our common stock held by Dr. Dean and the Dean Family Trust.

(6) Consists of shares held by 1,539 shares of our common stock and no shares of our common stock underlying warrants to purchase shares of our common stock held of record by Mr. Harrison.

(7) Consists of (i) 55,417 shares of our common stock and 16,667 shares of our common stock underlying warrants to purchase shares of our common stock held of record by Mr. Sailer and (ii) 5,000 shares of our common stock held of record by Mr. Sailer's spouse.

DESCRIPTION OF CAPITAL STOCK

The following description summarizes important terms of our capital stock and certain provisions of our certificate of incorporation and bylaws, each of which will be in effect upon the closing of this offering. Copies of these documents will be filed with the SEC as exhibits to our registration statement, of which this prospectus forms a part. The descriptions of our common stock and preferred stock reflect the completion of the Corporate Conversion that will occur immediately prior to the effectiveness of the registration statement of which this prospectus forms a part.

General

Following the closing of this offering, our authorized capital stock will consist of 200,000,000 shares of common stock, par value $0.001 per share, and 10,000,000 shares of preferred stock, par value $0.001 per share.

As of , 2021, after giving effect to the Corporate Conversion, there were shares of our common stock, held by approximately stockholders of record. No shares of our preferred stock are designated, issued or outstanding.

Common Stock

Voting. The holders of our common stock are entitled to one vote for each share held of record on all matters on which the holders are entitled to vote (or consent to).

Dividends. The holders of our common stock are entitled to receive, ratably, dividends only if, when and as declared by our board of directors out of funds legally available therefor and after provision is made for each class of capital stock having preference over the common stock.

Liquidation Rights. In the event of our liquidation, dissolution or winding-up, the holders of our common stock may be entitled to share, ratably, in all assets remaining available for distribution after payment or provision for payment of all debts and other liabilities and subject to the rights of each class or series of capital stock having preference over, or right to participate with, the common stock.

Preemptive and Similar Rights. The holders of our common stock have no preemptive or similar rights.

Preferred Stock

Under our certificate of incorporation that will be in effect upon the closing of this offering, our board of directors will be authorized to direct us to issue shares of preferred stock in one or more series without stockholder approval. Our board of directors has the discretion to determine the powers, privileges, preferences and relative participating, optional and other special rights, including voting rights, dividend rights, conversion rights, redemption privileges and liquidation preferences, of each series of preferred stock.

The purpose of authorizing our board of directors to issue preferred stock and determine its rights and preferences is to eliminate delays associated with a stockholder vote on specific issuances. The issuance of preferred stock, while providing flexibility in connection with possible acquisitions, future financings and other corporate purposes, could have the effect of making it more difficult for a third-party to acquire, or could discourage a third-party from seeking to acquire, a majority of our outstanding voting stock. Upon the closing of this offering, there will be no shares of preferred stock outstanding, and we have no present plans to issue any shares of preferred stock.

Warrants

As of March 31, 2021, warrants for the issuance of 1,437,964 shares of our common stock were outstanding, all of which are exercisable at a weighted average exercise price of $2.88 per share, after taking into effect the anticipated conversion of each warrant to purchase Class A membership interest of Acurx Pharmaceuticals, LLC into warrants to purchase shares of common stock of Acurx Pharmaceuticals, Inc. See "*Corporate Conversion*." All of the warrants are exercisable through various dates expiring between March

2028 and October 2030. The exercise price and the number of warrant shares purchasable upon the exercise of the warrants are subject to adjustment upon the occurrence of certain events, including stock dividends, stock splits, combinations and reclassifications of our capital stock. The warrants also contain a "cashless exercise" provision. The warrants do not confer upon the holders thereof any voting, dividend or other rights as our stockholders.

Registration Rights

Each of our investors in our previous private placements are party to an Investor Rights Agreement affording them certain "piggy back" registration rights with respect to their Class A membership interests in our company and Class A membership interests underlying warrants held by such investors. This comprises of 1,492,233 shares of our common stock on a post-conversion basis and shares of common stock (on a post-conversion basis) underlying warrants to purchase up to 34,300 shares. Notwithstanding the foregoing, we shall have no obligation to register any such securities after the date upon which such securities may be sold under Rule 144.

We refer to all of such Class A membership interests as "registrable securities." If at any time when there is not an effective registration statement covering all of the registrable securities, we determine to prepare and file with the SEC a registration statement relating to an offering for our own account or the account of others under the Securities Act of any of our equity securities (other than on Form S-4 or Form S-8), we are required to send to each holder of registrable securities written notice of such determination and, if within seven business days after receipt of such notice, any such holder shall so request in writing (which request shall specify the registrable securities intended to be disposed of by the holder), we will cause the registration under the Securities Act of all registrable securities which we have been so requested to register by the holder; provided, however, that, in connection with any underwritten public offering of our securities, we maintain the right to not register all or any portion of the registrable securities if it is determined, after consultation with the managing underwriter, that such registration would materially and adversely affect such underwritten public offering. We have exercised such rights in connection with this offering and therefore are not including any such shares in the registration statement of which this prospectus forms a part.

Forum Selection

Our Certificate of Incorporation and our Bylaws provide that the Court of Chancery of the State of Delaware is the exclusive forum for any derivative action or proceeding brought on our behalf; any action asserting a breach of fiduciary duty; any action asserting a claim against us arising pursuant to the Delaware General Corporation Law, our Certificate of Incorporation or our Bylaws; or any action asserting a claim against us that is governed by the internal affairs doctrine. Notwithstanding the foregoing, the exclusive forum provision does not apply to suits brought to enforce any liability or duty created by the Exchange Act, the Securities Act or any other claim for which the federal courts have exclusive jurisdiction. Unless we consent in writing to the selection of an alternative forum, the federal district courts of the United States of America shall, to the fullest extent permitted by applicable law, be the sole and exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act. The choice of forum provision may limit a stockholder's ability to bring a claim in a judicial forum that it finds favorable for disputes with us or our directors, officers or other employees, which may discourage such lawsuits against us and our directors, officers and other employees.

Anti-Takeover Provisions

Our Certificate of Incorporation and Bylaws contain provisions that may delay, defer or discourage another party from acquiring control of us. We expect that these provisions, which are summarized below, will discourage coercive takeover practices or inadequate takeover bids. These provisions are also designed to encourage persons seeking to acquire control of us to first negotiate with our board of directors, which we believe may result in an improvement of the terms of any such acquisition in favor of our stockholders. However, they also give our board of directors the power to discourage acquisitions that some stockholders may favor.

Authorized but unissued shares. The authorized but unissued shares of our common stock and our preferred stock are available for future issuance without stockholder approval, subject to the requirements

of any national securities exchange on which our common stock is listed, should we so qualify for listing. These additional shares may be used for a variety of corporate finance transactions, acquisitions and employee benefit plans. The existence of authorized but unissued and unreserved common stock and preferred stock could make more difficult or discourage an attempt to obtain control of us by means of a proxy contest, tender offer, merger or otherwise.

Elimination of Stockholder Action by Written Consent. Our certificate of incorporation will eliminate the right of stockholders to act by written consent without a meeting.

Special meetings of stockholders. Our certificate of incorporation and bylaws provide that, except as otherwise required by law or provided by the resolution or resolutions adopted by our board of directors designating the rights, powers and preferences of any series of preferred stock, special meetings of our stockholders may be called only by (a) our board of directors pursuant to a resolution approved by a majority of the total number of our directors that we would have if there were no vacancies or (b) the chair of our board of directors, and any power of our stockholders to call a special meeting is specifically denied.

Advance notice requirements for stockholder proposals and director nominations. Our bylaws provide for an advance notice procedure for stockholder proposals to be brought before an annual meeting of stockholders, including proposed nominations of candidates for election to our board of directors. In order for any matter to be "properly brought" before a meeting, a stockholder must comply with advance notice and duration of ownership requirements and provide us with certain information. Stockholders at an annual meeting may only consider proposals or nominations specified in the notice of meeting or brought before the meeting by or at the direction of our board of directors or by a qualified stockholder of record on the record date for the meeting, who is entitled to vote at the meeting and who has delivered timely written notice in proper form to our secretary of the stockholder's intention to bring such business before the meeting. These provisions could have the effect of delaying stockholder actions that are favored by the holders of a majority of our outstanding voting securities until the next stockholder meeting.

Amendment of Certificate of Incorporation or Bylaws. The Delaware General Corporation Law ("DGCL") provides generally that the affirmative vote of a majority of the shares entitled to vote on any matter is required to amend a corporation's certificate of incorporation, unless a corporation's certificate of incorporation requires a greater percentage. Our certificate of incorporation provides that certain provisions of our certificate of incorporation (namely, those provisions relating to (i) directors; (ii) limitation of director liability, indemnification and advancement of expenses and renunciation of corporate opportunities; (iii) meetings of stockholders; and (iv) certain amendments to our certificate of incorporation and bylaws) may not be altered, amended or repealed in any respect (including by merger, consolidation or otherwise), nor may any provision inconsistent therewith be adopted, unless such alteration, amendment, repeal or adoption is approved by the affirmative vote of the holders of at least sixty-six and two-thirds percent (662⁄3%) of the voting power of all of our then-outstanding shares then entitled to vote generally in an election of directors, voting together as a single class. Our certificate of incorporation and bylaws also provide that approval of stockholders holding sixty-six and two-thirds percent (662⁄3%) of the voting power of all of our then-outstanding shares entitled to vote generally in an election of directors, voting together as a single class, is required for stockholders to make, alter, amend, or repeal any provision of our bylaws. Our board of directors retains the right to alter, amend or repeal our bylaws.

Classified Board of Directors. Our certificate of incorporation, upon the consummation of this offering, provides for a classified board of directors consisting of three classes of approximately equal size, each serving staggered three-year terms. Only the directors in one class will be subject to election by a plurality of the votes cast at each annual meeting of stockholders, with the directors in the other classes continuing for the remainder of their respective three-year terms. Stockholders do not have the ability to cumulate votes for the election of directors.

Limitations on Liability and Indemnification of Officers and Directors

Our Certificate of Incorporation and Bylaws provides indemnification for our directors and officers to the fullest extent permitted by the DGCL. We have entered into Indemnification Agreements with each of our directors that may be, in some cases, broader than the specific indemnification provisions contained under the DGCL. In addition, as permitted by the DGCL, our Certificate of Incorporation and Bylaws includes

provisions that eliminate the personal liability of our directors for monetary damages resulting from breaches of certain fiduciary duties as a director. The effect of this provision is to restrict our rights and the rights of our stockholders in derivative suits to recover monetary damages against a director for breach of fiduciary duties as a director. These provisions may be held not to be enforceable for violations of the federal securities laws of the United States.

Section 203 of the Delaware General Corporation Law

We are subject to the provisions of Section 203 of the Delaware General Corporation Law. In general, Section 203 prohibits a publicly-held Delaware corporation from engaging in a "business combination" with an "interested stockholder" for a three-year period following the time that such stockholder becomes an interested stockholder, unless the business combination is approved in a prescribed manner. A "business combination" includes, among other things, a merger, asset or stock sale or other transaction resulting in a financial benefit to the interested stockholder. An "interested stockholder" is a person who, together with affiliates and associates, owns, or did own within three years prior to the determination of interested stockholder status, 15% or more of the corporation's voting stock.

Under Section 203, a business combination between a corporation and an interested stockholder is prohibited unless it satisfies one of the following conditions:

- before the stockholder became interested, the board of directors approved either the business combination or the transaction that resulted in the stockholder becoming an interested stockholder;
- upon consummation of the transaction that resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of the voting stock of the corporation outstanding at the time the transaction commenced, excluding for purposes of determining the voting stock outstanding, shares owned by persons who are directors and also officers, and employee stock plans, in some instances; or
- at or after the time the stockholder became interested, the business combination was approved by the board of directors of the corporation and authorized at an annual or special meeting of the stockholders by the affirmative vote of at least two-thirds of the outstanding voting stock that is not owned by the interested stockholder.

A Delaware corporation may "opt out" of these provisions with an express provision in its original certificate of incorporation or an express provision in its amended and restated certificate of incorporation or by-laws resulting from a stockholders' amendment approved by at least a majority of the outstanding voting shares. We have not opted out of these provisions. As a result, mergers or other takeover or change in control attempts of us may be discouraged or prevented.

Listing

We have applied to have our common stock listed on The Nasdaq Capital Market under the symbol "ACXP."

Transfer Agent and Registrar

The transfer agent and registrar of our common stock is VStock Transfer, LLC. They are located at 18 Lafayette Place, Woodmere, New York 11598. Their telephone number is (212) 828-8436.

SHARES ELIGIBLE FOR FUTURE SALE

Prior to this offering, no public market for our common stock existed, and a liquid trading market for our common stock may not develop or be sustained after this offering. Future sales of substantial amounts of our common stock in the public market, including shares issued upon exercise of outstanding stock options, or the anticipation of such sales, could adversely affect prevailing market prices of our common stock from time to time and could impair our ability to raise equity capital in the future. Furthermore, because only a limited number of shares of our common stock will be available for sale shortly after this offering due to certain contractual and legal restrictions on resale described below, sales of substantial amounts of our common stock in the public market after such restrictions lapse, or the anticipation of such sales, could adversely affect the prevailing market price of our common stock and our ability to raise equity capital in the future.

Upon the closing of this offering, based on the number of shares of our common stock outstanding as of March 31, 2021 and after giving effect to the Corporate Conversion, the accelerated vesting of currently unvested board of director and corporate advisory council membership interests, we will have an aggregate of shares of our common stock outstanding (or shares of our common stock if the underwriters exercise in full their option to purchase additional shares). Of these shares of our common stock, all of the 2,500,000 shares sold in this offering, based upon the assumed initial public offering price of $6.00 per share, the midpoint of the price range set forth on the cover of this prospectus (or 2,875,000 shares if the underwriters exercise in full their option to purchase additional shares), will be freely tradable unless purchased by our affiliates. The remaining shares of common stock outstanding after this offering will be restricted as a result of securities laws or lock-up agreements. Following the expiration of the lock-up period, all shares will be eligible for resale, subject to compliance with Rule 144 or Rule 701 of the Securities Act.

We may issue shares of common stock from time to time as consideration for future acquisitions, investments or other corporate purposes. In the event that any such acquisition, investment or other transaction is significant, the number of shares of common stock that we may issue may in turn be significant. We may also grant registration rights covering those shares of common stock issued in connection with any such acquisition and investment.

In addition, 2,000,000 shares of common stock that are subject to outstanding stock options, underlying restricted stock awards which have not yet vested or reserved for future issuance under our 2021 Equity Incentive Plan will become eligible for sale in the public market to the extent permitted by the provisions of various vesting schedules, the lock-up agreements and Rule 144 and Rule 701 of the Securities Act.

Rule 144

In general, under Rule 144 as currently in effect, beginning 90 days after the date of this prospectus, a person who is not one of our affiliates and who is not deemed to have been one of our affiliates at any time during the three months preceding a sale and who has beneficially owned shares of our common stock that are deemed restricted securities for at least six months would be entitled after such six-month holding period to sell the common stock held by such person, subject to the continued availability of current public information about us (which current public information requirement is eliminated after a one-year holding period).

Beginning 90 days after the date of this prospectus, a person who is one of our affiliates, or has been an affiliate of ours at any time during the three months preceding a sale, and who has beneficially owned shares of our common stock that are deemed restricted securities for at least six months would be entitled after such six-month holding period to sell his or her securities, provided that he or she sells an amount that does not exceed 1% of the number of shares of our common stock then outstanding (or, if our common stock is listed on a national securities exchange, the average weekly trading volume of the shares during the four calendar weeks preceding the filing of a notice on Form 144 with respect to the sale), subject to the continued availability of current public information about us, compliance with certain manner of sale provisions, and the filing of a Form 144 notice of sale if the sale is for an amount in excess of 5,000 shares or for an aggregate sale price of more than $50,000 in a three-month period.

Upon expiration of the lock-up periods described below, shares of our common stock will be eligible for sale under Rule 144. We cannot estimate the number of shares of our common stock that our existing stockholders will elect to sell under Rule 144.

Lock-Up Agreements and Market Stand-off Provisions

We, along with our directors and executive officers and holders of substantially all of our capital stock and securities convertible into our capital stock are subject to lock-up agreements which provide that each lock-up party, for a period of up to 180 days after the date of this prospectus (such period, the "restricted period"), may not, without the prior written consent of the underwriter, (i) offer, pledge, sell, contract to sell, grant, lend or otherwise transfer or dispose of, directly or indirectly, any shares of our common stock or any securities convertible into or exercisable or exchangeable for our common stock, (ii) enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of the lock-up securities, whether any such transaction described in clause (i) or (ii) above is to be settled by delivery of the lock-up securities, in cash or otherwise, (iii) make any demand for or exercise any right with respect to the registration of any lock-up securities or (iv) publicly disclose the intention to make any offer, sale, pledge or disposition, or to enter into any transaction, swap, hedge or other arrangement relating to any lock-up securities. In addition, if (i) during the last 17 days of such 180-day period, the Company issues an earnings release or material news or a material event relating to the Company occurs, or (ii) prior to the expiration of such 180-day period, the Company announces that it will release earnings results or becomes aware that material news or a material event will occur during the 16-day period beginning on the last day of such 180-day period, the restrictions imposed by such lock-up agreements will continue to apply until the expiration of the 18-day period beginning on the issuance of such earnings release or the occurrence of such material news or material event, as applicable. The underwriter may, in its sole discretion, at any time without prior notice, release all or any portion of the shares from the restrictions in any such agreement.

The lock-up agreements are subject to specified exceptions. In the case of our directors and executive officers and holders subject to the lock-up restrictions, such restrictions described in the paragraph above do not apply, subject in certain cases to various conditions, to:

(a) transactions relating to securities acquired in open market transactions after the completion of this offering;

(b) transfers of securities as a bona fide gift or gifts or for estate planning purposes, by will, other testamentary document or intestacy or to a family member or trust for the benefit of a family member (with "family member" meaning any relationship by blood, marriage or adoption, not more remote than first cousin);

(c) transfers of securities to a charity or educational institution;

(d) if such lock-up party, directly or indirectly, controls a corporation, partnership, limited liability company, trust or other business entity, any transfers of securities to any shareholder, partner or member of, or owner of similar equity interests in, such lock-up party, as the case may be;

(e) if required by the terms of a qualified domestic relations order, divorce settlement, divorce decree, separation agreement or court order;

(f) transfers to any trust for the direct or indirect benefit of such lock-up party or the immediate family of such lock-up party, or if such lock-up party is a trust, to a trustor or beneficiary of the trust or to the estate of a beneficiary of such trust;

(g) transfers to a nominee or custodian of a lock-up party or entity to whom a disposition or transfer would be permissible under clauses (b), (d), (e) or (f) above;

(h) transfers to us from our employee or other service provider upon death, disability or termination of employment or service, in each case, of such employee or other service provider;

(i) transfers to us in connection with the vesting, settlement, or exercise of restricted stock units, options, warrants or other rights to purchase shares of our common stock (including, in each case, by way of "net" or "cashless" exercise), including for the payment of exercise price and tax and remittance payments due as a result of the vesting, settlement, or exercise of such restricted

stock units, options, warrants or rights, provided that any such shares of common stock received upon such exercise, vesting or settlement shall be subject to the terms of the lock-up agreement, and provided further that any such restricted stock units, options, warrants or rights are held by the undersigned pursuant to an agreement or equity awards granted under a stock incentive plan or other equity award plan, each such agreement or plan which is described in the this prospectus; or

(j) pursuant to a bona fide third-party tender offer, merger, consolidation or other similar transaction that is approved by our board of directors and made to all holders of our capital stock involving a change of control of us;

provided that in the event that such tender offer, merger, consolidation or other similar transaction is not completed, such lock-up party's securities shall remain subject to the provisions of this the lock-up agreement; provided that in the case of any transfer pursuant to the foregoing clauses (b), (c), (d) or (g), if applicable, (i) any such transfer shall not involve a disposition for value and (ii) each transferee shall sign and deliver to the underwriter a lock-up agreement substantially in the form of the lock-up agreement described above.

Rule 701

In general, under Rule 701 of the Securities Act, any of an issuer's employees, directors, officers, consultants or advisors who purchase shares from the issuer in connection with a compensatory stock or stock option plan or other written agreement before the effective date of a registration statement under the Securities Act, is entitled to sell such shares 90 days after such effective date in reliance on Rule 144. An affiliate of the issuer can resell shares in reliance on Rule 144 without having to comply with the holding period requirement, and non-affiliates of the issuer can resell shares in reliance on Rule 144 without having to comply with the current public information and holding period requirements.

Registration Rights

Pursuant to our investor rights agreement, after the completion of this offering, the holders of up to 1,492,233 shares of our common stock, including 34,300 shares underlying outstanding warrants, or certain transferees, will be entitled to certain rights with respect to the registration of the offer and sale of those shares under the Securities Act. See the section titled "*Description of Capital Stock — Investor Rights Agreement*" for a description of these registration rights. If the offer and sale of these shares of our common stock are registered, the shares will be freely tradable without restriction under the Securities Act, subject to the Rule 144 limitations applicable to affiliates, and a large number of shares may be sold into the public market. Notwithstanding the foregoing, we shall have no obligation to register any such securities after the date upon which such securities may be sold under Rule 144.

Equity Incentive Plan

We intend to file with the SEC a registration statement on Form S-8 under the Securities Act covering the shares of common stock that we may issue upon exercise of outstanding options and vesting of restricted stock awards reserved for future issuance under the 2021 Plan. Such registration statement is expected to be filed and become effective as soon as practicable after the completion of this offering. Accordingly, shares registered under such registration statement will be available for sale in the open market following its effective date, subject to Rule 144 volume limitations and the lock-up agreements described above, if applicable.

MATERIAL U.S. FEDERAL INCOME TAX CONSIDERATIONS FOR NON-U.S. HOLDERS OF COMMON STOCK

The following discussion is a summary of certain material U.S. federal income tax considerations applicable to non-U.S. holders (as defined below) with respect to their ownership and disposition of shares of our common stock issued pursuant to this offering. For purposes of this discussion, a non-U.S. holder means a beneficial owner of our common stock that is for U.S. federal income tax purposes:

- a non-resident alien individual;
- a foreign corporation or any other foreign organization taxable as a corporation for U.S. federal income tax purposes; or
- a foreign estate or trust, the income of which is not subject to U.S. federal income tax on a net income basis.

This discussion is based on current provisions of the U.S. Internal Revenue Code of 1986, as amended, which we refer to as the Code, existing and proposed U.S. Treasury Regulations promulgated thereunder, current administrative rulings and judicial decisions, all as in effect as of the date of this prospectus and, all of which are subject to change or to differing interpretation, possibly with retroactive effect. Any such change or differing interpretation could alter the tax consequences to non-U.S. holders described in this prospectus. There can be no assurance that the Internal Revenue Service, which we refer to as the IRS, will not challenge one or more of the tax consequences described herein. We assume in this discussion that a non-U.S. holder holds shares of our common stock as a capital asset within the meaning of Section 1221 of the Code, which is generally property held for investment.

This discussion does not address all aspects of U.S. federal income taxation that may be relevant to a particular non-U.S. holder in light of that non-U.S. holder's individual circumstances nor does it address any U.S. state, local or non-U.S. taxes, or the 3.8% Medicare tax on net investment income, or any alternative minimum tax consequences, or U.S. federal gift and estate tax laws, or any other aspect of any U.S. federal tax other than the income tax. This discussion also does not consider any specific facts or circumstances that may apply to a non-U.S. holder and does not address the special tax rules applicable to particular non-U.S. holders, such as:

- banks, insurance companies;
- tax-exempt organizations, tax-qualified retirement plans, or governmental organizations;
- financial institutions;
- brokers or dealers in securities or currencies;
- traders in securities that elect to use a mark-to-market method of accounting for their securities holdings;
- persons that own, or are deemed to constructively own, more than five percent of our common stock (except to the extent specifically set forth below); persons who hold our common stock as a position in a hedging transaction, "straddle," "conversion transaction," synthetic security, other integrated investment, or other risk reduction transaction;
- pass-through entities such as partnerships, S corporations, disregarded entities for federal income tax purposes and limited liability companies (and investors therein);
- persons for whom our stock constitutes "qualified small business stock" within the meaning of Section 1202 of the Code or as "Section 1244 stock" for purposes of Section 1244 of the Code;
- persons who do not hold our common stock as a capital asset within the meaning of Section 1221 of the Code (generally, for investment purposes);
- real estate investment trusts or regulated investment companies;
- pension plans;
- "controlled foreign corporations" (including "specified foreign corporations"), "passive foreign investment companies," and corporations that accumulate earnings to avoid U.S. federal income tax;

- "qualified foreign pension funds," or entities wholly owned by a "qualified foreign pension fund";
- persons that elect to apply Section 1400Z-2 of the Code to gains recognized with respect to shares of our common stock;
- persons who hold or receive our common stock pursuant to the exercise of any employee stock option or otherwise as compensation; and
- certain U.S. expatriates, former citizens, or former long-term residents of the United States.

This discussion does not address the tax treatment of partnerships or other entities that are pass-through entities for U.S. federal income tax purposes or persons that hold their common stock through partnerships or other pass-through entities. A partner in a partnership or other pass-through entity that will hold our common stock should consult his, her or its tax advisor regarding the tax consequences of acquiring, holding and disposing of our common stock through a partnership or other pass-through entity, as applicable.

This discussion is for general information only and is not tax advice. Accordingly, all prospective non-U.S. holders of our common stock should consult their tax advisors with respect to the U.S. federal, state, local and non-U.S. tax consequences of the purchase, ownership and disposition of our common stock.

Distributions on Our Common Stock

As indicated in the "Dividend Policy" section of this prospectus, we have never declared or paid cash dividends on any of our capital stock and currently intend to retain all available funds and any future earnings to fund the development and growth of our business.

In the event that we do make distributions, subject to the discussions below under the sections titled "Backup Withholding and Information Reporting" and "Withholding and Information Reporting Requirements — FATCA", distributions paid on our common stock will constitute dividends for U.S. federal income tax purposes to the extent paid from our current or accumulated earnings and profits, as determined under U.S. federal income tax principles. If a distribution exceeds our current and accumulated earnings and profits, the excess will be treated as a tax-free return of the non-U.S. holder's investment, up to such holder's tax basis in the common stock. Any remaining excess will be treated as capital gain, subject to the tax treatment described below in "Gain on Sale or Other Taxable Disposition of Our Common Stock."

Subject to the discussion in the following two paragraphs in this section, dividends paid to a non-U.S. holder generally will be subject to withholding of U.S. federal income tax at a 30% rate or such lower rate as may be specified by an applicable income tax treaty between the United States and such holder's country of residence.

Dividends that are treated as effectively connected with a trade or business conducted by a non-U.S. holder within the United States and, if an applicable income tax treaty so provides, that are attributable to a permanent establishment or a fixed base maintained by the non-U.S. holder within the United States, are generally exempt from the 30% withholding tax if the non-U.S. holder satisfies applicable certification and disclosure requirements. However, such U.S. effectively connected income, net of specified deductions and credits, is taxed at the same graduated U.S. federal income tax rates applicable to United States persons (as defined in the Code). Any U.S. effectively connected income received by a non-U.S. holder that is a corporation may also, under certain circumstances, be subject to an additional "branch profits tax" at a 30% rate or such lower rate as may be specified by an applicable income tax treaty between the United States and such holder's country of residence.

A non-U.S. holder of our common stock who claims the benefit of an applicable income tax treaty between the United States and such holder's country of residence generally will be required to provide a properly executed IRS Form W-8BEN or W-8BEN-E (or successor form) to the applicable withholding agent and satisfy applicable certification and other requirements. Non-U.S. holders are urged to consult their tax advisors regarding their entitlement to benefits under a relevant income tax treaty. A non-U.S. holder that is eligible for such lower rate of U.S. withholding tax as may be specified under an income tax treaty may obtain a refund or credit of any excess amounts withheld by timely filing a U.S. tax return with the IRS.

Gain on Sale or Other Taxable Disposition of Our Common Stock

Subject to the discussions below under "Backup Withholding and Information Reporting" and "Withholding and Information Reporting Requirements — FATCA," a non-U.S. holder generally will not be subject to any U.S. federal income or withholding tax on any gain realized upon such holder's sale or other taxable disposition of shares of our common stock unless:

- the gain is effectively connected with the non-U.S. holder's conduct of a U.S. trade or business and, if an applicable income tax treaty so provides, is attributable to a permanent establishment or a fixed-base maintained by such non-U.S. holder in the United States, in which case the non-U.S. holder generally will be taxed on a net income basis at the graduated U.S. federal income tax rates applicable to United States persons (as defined in the Code) and, if the non-U.S. holder is a foreign corporation, the branch profits tax described above in "Distributions on Our Common Stock" also may apply;
- the non-U.S. holder is a nonresident alien individual who is present in the United States for a period or periods aggregating 183 days or more in the taxable year of the disposition and certain other conditions are met, in which case the non-U.S. holder will be subject to a 30% tax (or such lower rate as may be specified by an applicable income tax treaty between the United States and such holder's country of residence) on the net gain derived from the disposition, which may be offset by certain U.S. source capital losses of the non-U.S. holder, if any (even though the individual is not considered a resident of the United States), provided that the non-U.S. holder has timely filed U.S. federal income tax returns with respect to such losses; or
- we are, or have been, at any time during the five-year period preceding such sale or other taxable disposition (or the non-U.S. holder's holding period, if shorter) a "U.S. real property holding corporation." Generally, a corporation is a U.S. real property holding corporation only if the fair market value of its U.S. real property interests equals or exceeds 50% of the sum of the fair market value of its worldwide real property interests plus its other assets used or held for use in a trade or business. Even if we become a U.S. real property holding corporation, gain arising from the sale or other taxable disposition by a non-U.S. Holder of our common stock will not be subject to U.S. federal income tax as long as our common stock is regularly traded on an established securities market, as defined by applicable U.S. Treasury Regulations, and the non-U.S. holder holds no more than 5% of our outstanding common stock, directly or indirectly, actually or constructively, during the shorter of the 5-year period ending on the date of the disposition or the period that the non-U.S. holder held our common stock. If the foregoing exception does not apply, then if we are or were to become a U.S. real property holding corporation a purchaser may be required to withhold 15% of the proceeds payable to a non-U.S. Holder from a sale of our common stock and such Non-U.S. Holder generally will be taxed on its net gain derived from the disposition at the graduated U.S. federal income tax rates applicable to United States persons (as defined in the Code). Although there can be no assurance, we do not believe that we are, or have been, a U.S. real property holding corporation, or that we are likely to become one in the future. No assurance can be provided that our common stock will be regularly traded on an established securities market for purposes of the rules described above. Non-U.S. holders should consult their own tax advisors about the consequences that could result if we are, or become, a U.S. real property holding corporation.

Backup Withholding and Information Reporting

We must report annually to the IRS and to each non-U.S. holder the gross amount of the distributions on our common stock paid to such holder and the tax withheld, if any, with respect to such distributions. Non-U.S. holders may have to comply with specific certification procedures to establish that the holder is not a United States person (as defined in the Code) in order to avoid backup withholding at the applicable rate with respect to dividends on our common stock. Dividends paid to non-U.S. holders subject to withholding of U.S. federal income tax, as described above in "Distributions on Our Common Stock," generally will be exempt from U.S. backup withholding.

Information reporting and backup withholding will generally apply to the proceeds of a disposition of our common stock by a non-U.S. holder effected by or through the U.S. office of any broker, U.S. or foreign,

unless the holder certifies its status as a non-U.S. holder and satisfies certain other requirements, or otherwise establishes an exemption. Generally, information reporting and backup withholding will not apply to a payment of disposition proceeds to a non-U.S. holder where the transaction is effected outside the United States through a non-U.S. office of a broker. However, for information reporting purposes, dispositions effected through a non-U.S. office of a broker with substantial U.S. ownership or operations generally will be treated in a manner similar to dispositions effected through a U.S. office of a broker.

Non-U.S. holders should consult their tax advisors regarding the application of the information reporting and backup withholding rules to them. Copies of information returns may be made available to the tax authorities of the country in which the non-U.S. holder resides or is incorporated under the provisions of a specific treaty or agreement. Backup withholding is not an additional tax. Any amounts withheld under the backup withholding rules from a payment to a non-U.S. holder can be refunded or credited against the non-U.S. holder's U.S. federal income tax liability, if any, provided that an appropriate claim is filed with the IRS in a timely manner.

Withholding and Information Reporting Requirements — FATCA

Provisions of the Code commonly referred to as the Foreign Account Tax Compliance Act ("FATCA"), generally impose a U.S. federal withholding tax at a rate of 30% on payments of dividends on our common stock paid to a foreign entity unless (i) if the foreign entity is a "foreign financial institution," such foreign entity undertakes certain due diligence, reporting, withholding, and certification obligations, (ii) if the foreign entity is not a "foreign financial institution," such foreign entity identifies certain of its U.S. investors, if any, or (iii) the foreign entity is otherwise exempt under FATCA. Such withholding may also apply to payments of gross proceeds of sales or other dispositions of our common stock, although under recently proposed U.S. Treasury Regulations (the preamble to which specifies that taxpayers are permitted to rely on such proposed U.S. Treasury Regulations pending finalization), no withholding will apply to such payments of gross proceeds. Under certain circumstances, a non-U.S. holder may be eligible for refunds or credits of this withholding tax. An intergovernmental agreement between the United States and an applicable foreign country may modify the requirements described in this paragraph. Non-U.S. holders should consult their tax advisors regarding the possible implications of this legislation on their investment in our common stock and the entities through which they hold our common stock, including, without limitation, the process and deadlines for meeting the applicable requirements to prevent the imposition of the 30% withholding tax under FATCA.

UNDERWRITING

Alexander Capital, L.P. is acting as the sole book-running manager and as representative of the underwriters of this offering. Subject to the terms and conditions of the underwriting agreement, dated , 2021, between us and the representative of the underwriters, we will agree to sell to the underwriters, and the underwriters will purchase from us, the aggregate amount of shares of our common stock indicated in the table below:

Underwriter	Number of Shares of Common Stock
Alexander Capital, L.P.	
Total:	

The underwriters intend to purchase all the shares of common stock offered by us other than those covered by the option to purchase additional shares described below, if they purchase any shares. The obligations of the underwriters may be terminated upon the occurrence of certain events specified in the underwriting agreement. Furthermore, pursuant to the underwriting agreement, the underwriters' obligations will be subject to customary conditions, representations and warranties contained in the underwriting agreement, such as receipt by the underwriters of officers' certificates and legal opinions.

We will agree to indemnify the underwriters against specified liabilities, including liabilities under the Securities Act, and to contribute to payments the underwriters may be required to make in respect thereof.

The underwriters are offering the shares, subject to prior sale, when, as and if issued to and accepted by them, subject to approval of legal matters by its counsel and other conditions specified in the underwriting agreement. The underwriters reserve the right to withdraw, cancel or modify offers to the public and to reject orders in whole or in part.

Over-allotment Option

Pursuant to the underwriting agreement, we will grant the underwriters an over-allotment option. This option, which is exercisable for up to 45 days after the date of this prospectus, will permit the underwriters to purchase a maximum of additional shares (15% of the shares sold in this offering) from us to cover over-allotments, if any. If the underwriter exercises all or part of this option, they will purchase shares covered by the option at the public offering price per share that appears on the cover page of this prospectus, less the underwriting discount. If this option is exercised in full, the total offering price to the public will be and the total net proceeds, before expenses, to us will be $.

Discount

The following table shows the public offering price, underwriting discount and proceeds, before expenses, to us. The information assumes either no exercise or full exercise by the underwriters of the over-allotment option.

	Per Share	Total Without Over- Allotment Option	Total With Over- Allotment Option
Public offering price	$		
Underwriting discount (8%)	$		
Proceeds, before expenses, to us	$		

The underwriters propose to offer the shares offered by us to the public at the public offering price per share set forth on the cover of this prospectus. In addition, the underwriters may offer some of the shares to other securities dealers at such price less a concession of $ per share. If all of the shares offered by us are not sold at the public offering price per share, the underwriters may change the offering price per share and other selling terms by means of a supplement to this prospectus.

We will pay the out-of-pocket accountable expenses of the underwriters in connection with this offering.

The underwriting agreement, however, will provide that in the event the offering is terminated, any advance expense deposits paid to the underwriters will be returned to the extent that offering expenses are not actually incurred in accordance with Financial Industry Regulation Authority ("FINRA") Rule 5110(e).

We have agreed to pay the underwriters a non-accountable expenses allowance equal to 1% of the public offering price of the shares (excluding shares that we may sell to the underwriters to cover over-allotments), less the Advance (as defined below). We have also agreed to pay the underwriters' expenses relating to the offering, including (a) all filing fees incurred in clearing this offering with FINRA and listing our shares of common stock on the Nasdaq Capital Market; (b) fees, expenses and disbursements relating to background checks of our officers and directors; (c) all fees, expenses and disbursements relating to the registration, qualification or exemption of securities offered under the "blue sky" securities laws and other applicable securities laws of all states and domestic and foreign jurisdictions designated by the underwriters; (d) stock transfer and/or stamp taxes, if any, payable upon the transfer of shares of our common stock to the underwriters; (e) the costs associated with printing, mailing and delivering bound volumes of the public offering materials, any common stock certificates as well as Lucite cube mementos and other mementos associated with this offering; (f) the cost associated with the underwriters' use of book-building and compliance software for the offering, (g) the underwriters' actual accountable road show expenses for the offering; and (h) up to $75,000 for the fees of the underwriters' counsel; provided, the maximum amount we have agreed to pay the underwriters for items (b), (e), (f), (g) and (h) above is $150,000. We have paid an expense deposit of $25,000 (the "Advance"), to the representative of the underwriters, which will be applied against the out-of-pocket accountable expenses that will be payable by us to the underwriters in connection with this offering. Any portion of the Advance will be returned to us in the event it is not actually incurred.

We have granted to the representative of the underwriters a right of first refusal to act as sole investment banker, sole book-runner and/or sole underwriter, at the representative's sole discretion, for each and every future public or private financing conducted by the Company or any of its subsidiaries until twelve (12) months after completion of this offering.

We estimate that the total expenses of the offering payable by us, excluding underwriting discounts and commissions, will be approximately $.

Discretionary Accounts

The underwriter does not intend to confirm sales of the securities offered hereby to any accounts over which they have discretionary authority.

Underwriter Warrants

We have agreed to issue to the underwriters warrants to purchase up to an aggregate of 6% of the shares of common stock sold in this offering (excluding the shares sold through the exercise of the over-allotment option) (the "Underwriter Warrants"). The Underwriter Warrants are immediately exercisable upon issuance at $ per share (125% of the public offering price), but may not be transferred at any time prior to the date which is 180 days beginning on the date of commencement of sales of securities in connection with this offering and expiring on a date which is no more than five (5) years from the effective date of the offering in compliance with FINRA Rule 5110(e)(1)(A). The Underwriter Warrants have been deemed compensation by FINRA and are therefore subject to a 180-day lock-up pursuant to FINRA Rule 5110(e). The underwriters (or their respective permitted assignees under Rule 5110(e)(2)(B)) will not sell, transfer, assign, pledge, or hypothecate the Underwriter Warrants or the securities underlying such warrants, nor will they engage in any hedging, short sale, derivative, put, or call transaction that would result in the effective economic disposition of such warrants or the underlying securities for a period of 180 days following the date of commencement of sales pursuant to the offering. In addition, the Underwriter Warrants provide for "piggy-back" registration rights with respect to the shares underlying such warrants, exercisable in certain cases for a period of no more than seven (7) years from the effective date of the offering in compliance with FINRA Rule 5110(g)(8)(D). We will bear all fees and expenses attendant to registering the

securities issuable on exercise of the Underwriter Warrants other than underwriting commissions incurred and payable by the holders thereof. The exercise price and number of shares issuable upon exercise of the Underwriter Warrants may be adjusted in certain circumstances including in the event of a stock dividend, extraordinary cash dividend or our recapitalization, reorganization, merger or consolidation. However, the exercise price of the Underwriter Warrants or the underlying shares of such warrants will not be adjusted for issuances of shares of common stock at a price below such warrants' exercise price.

Electronic Offer, Sale and Distribution of Shares

A prospectus in electronic format may be made available on the websites maintained by the underwriter, if any, participating in this offering and the underwriter participating in this offering may distribute prospectuses electronically. The underwriters may agree to allocate a number of shares for sale to its online brokerage account holders. Internet distributions will be allocated by the underwriters that will make internet distributions on the same basis as other allocations. Other than the prospectus in electronic format, the information on these websites is not part of, nor incorporated by reference into, this prospectus or the Registration Statement of which this prospectus forms a part, has not been approved or endorsed by us or the underwriters in their respective capacities as underwriters, and should not be relied upon by investors.

Stabilization

In connection with this offering, the underwriters may engage in stabilizing transactions, over-allotment transactions, syndicate-covering transactions, penalty bids and purchases to cover positions created by short sales.

- Stabilizing transactions permit bids to purchase shares so long as the stabilizing bids do not exceed a specified maximum and are engaged in for the purpose of preventing or retarding a decline in the market price of the shares while the offering is in progress.
- Over-allotment transactions involve sales by the underwriters of shares in excess of the number of shares the underwriter is obligated to purchase. This creates a syndicate short position which may be either a covered short position or a naked short position. In a covered short position, the number of shares over-allotted by the underwriters are not greater than the number of shares that they may purchase in the over-allotment option. In a naked short position, the number of shares involved is greater than the number of shares in the over-allotment option. The underwriters may close out any short position by exercising their over-allotment option and/or purchasing shares in the open market.
- Syndicate covering transactions involve purchases of shares in the open market after the distribution has been completed in order to cover syndicate short positions. In determining the source of shares to close out the short position, the underwriters will consider, among other things, the price of shares available for purchase in the open market as compared with the price at which they may purchase shares through exercise of the over- allotment option. If the underwriters sell more shares than could be covered by exercise of the over-allotment option and, therefore, have a naked short position, the position can be closed out only by buying shares in the open market. A naked short position is more likely to be created if the underwriters are concerned that after pricing there could be downward pressure on the price of the shares in the open market that could adversely affect investors who purchase in the offering.
- Penalty bids permits the underwriters to reclaim a selling concession from a syndicate member when the shares originally sold by that syndicate member are purchased in stabilizing or syndicate covering transactions to cover syndicate short positions.

These stabilizing transactions, syndicate covering transactions and penalty bids may have the effect of raising or maintaining the market price of our shares of common stock or preventing or retarding a decline in the market price of our shares of common stock. As a result, the price of our common stock or warrants in the open market may be higher than it would otherwise be in the absence of these transactions. Neither we nor the underwriters make any representation or prediction as to the effect that the transactions described

above may have on the price of our common stock. These transactions may be effected on The Nasdaq Capital Market, in the over-the-counter market or otherwise and, if commenced, may be discontinued at any time.

Passive Market Making

In connection with this offering, the underwriters may engage in passive market making transactions in our common stock on the Nasdaq Capital Market in accordance with Rule 103 of Regulation M under the Exchange Act, during a period before the commencement of offers or sales of the shares and extending through the completion of the distribution. A passive market maker must display its bid at a price not in excess of the highest independent bid of that security. However, if all independent bids are lowered below the passive market maker's bid, then that bid must then be lowered when specified purchase limits are exceeded.

Other Relationships

The underwriters and their respective affiliates may, in the future provide various investment banking, commercial banking and other financial services for us and our affiliates for which they have received, and may in the future receive, customary fees. However, except as disclosed in this prospectus, we have no present arrangements with the underwriters for any further services.

Pricing of the Offering

Prior to this offering, there has been no public market for our common stock. The initial public offering price was determined by negotiations between us and the underwriters. Among the factors considered in determining the initial public offering price were our future prospects and those of our industry in general, our sales, earnings and certain other financial and operating information in recent periods, and the price-earnings ratios, price-sales ratios, market prices of securities, and certain financial and operating information of companies engaged in activities similar to ours.

Offer Restrictions Outside the United States

Other than in the United States, no action has been taken by us or the underwriters that would permit a public offering of the securities offered by this prospectus in any jurisdiction where action for that purpose is required. The securities offered by this prospectus may not be offered or sold, directly or indirectly, nor may this prospectus or any other offering material or advertisements in connection with the offer and sale of any such securities be distributed or published in any jurisdiction, except under circumstances that will result in compliance with the applicable rules and regulations of that jurisdiction. Persons into whose possession this prospectus comes are advised to inform themselves about and to observe any restrictions relating to the offering and the distribution of this prospectus. This prospectus does not constitute an offer to sell or a solicitation of an offer to buy any securities offered by this prospectus in any jurisdiction in which such an offer or a solicitation is unlawful.

LEGAL MATTERS

Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., New York, New York, which has acted as our counsel in connection with this offering, will pass upon the validity of the shares of our common stock being offered by this prospectus. Sullivan & Worcester LLP, New York, New York, has acted as counsel for the underwriters.

EXPERTS

CohnReznick LLP, independent registered public accounting firm, has audited our financial statements as of and for the years ended December 31, 2020, and 2019, as set forth in their report, which includes an explanatory paragraph regarding Acurx Pharmaceuticals, LLC's ability to continue as a going concern. We have included our financial statements in this prospectus and elsewhere in the registration statement in reliance on CohnReznick LLP's report, given on their authority as experts in accounting and auditing.

WHERE YOU CAN FIND MORE INFORMATION

We have filed with the SEC a registration statement on Form S-1, including exhibits and schedules, under the Securities Act that registers the shares of our common stock to be sold in this offering. This prospectus does not contain all the information contained in the registration statement and the exhibits and schedules filed as part of the registration statement. For further information with respect to us and our common stock, we refer you to the registration statement, including all amendments, supplements, schedules and exhibits thereto. Statements contained in this prospectus as to the contents of any contract or other document are not necessarily complete, and each such statement is qualified in all respects by reference to the full text of such contract or other document filed as an exhibit to the registration statement. If a contract or document has been filed as an exhibit to the registration statement, we refer you to the copies of the contract or document that has been filed. Each statement in this prospectus relating to a contract or document filed as an exhibit is qualified in all respects by the filed exhibit.

Upon effectiveness of the registration statement of which this prospectus forms a part, we will file annual, quarterly and current reports, proxy statements and other information with the SEC. The SEC maintains a website at *http://www.sec.gov* that contains reports, proxy statements and other information regarding registrants that file electronically with the SEC. Our registration statement and the referenced exhibits can also be found on this site.

Our website address is *www.acurxpharma.com.* The information contained in, and that can be accessed through, our website is not incorporated into and shall not be deemed to be part of this prospectus. We have included our website address in this prospectus solely as an inactive textual reference.

ACURX PHARMACEUTICALS, LLC

TABLE OF CONTENTS

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors
and Members Acurx
Pharmaceuticals, LLC

Opinion on the Financial Statements

We have audited the accompanying balance sheets of Acurx Pharmaceuticals, LLC (the "Company") as of December 31, 2020 and 2019, and the related statements of operations, changes in members' equity, and cash flows for the years then ended, and the related notes (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 the years then ended, in conformity with accounting principles generally accepted in the United States of America.

Substantial Doubt about the Company's Ability to Continue as a Going Concern

The accompanying financial statements have been prepared assuming that the Company will continue as a going concern. As further discussed in Note 1 to the accompanying financial statements, the Company has experienced net losses and negative cash flows from operations since inception that raise substantial doubt about its ability to continue as a going concern. Management's plans in regard to these matters are also described in Note 1. The financial statements do not include any adjustments that might result from the outcome of this uncertainty.

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

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

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

We have served as the Company's auditor since 2018.

/s/ CohnReznick LLP

Parsippany , New Jersey
April 2, 2021

ACURX PHARMACEUTICALS, LLC

BALANCE SHEETS
AS OF DECEMBER 31, 2020 AND 2019

	2020	2019
ASSETS		
CURRENT ASSETS		
Cash	$ 3,175,411	$ 2,483,322
Prepaid Expenses	48,609	48,103
TOTAL CURRENT ASSETS	3,224,020	2,531,425
TOTAL ASSETS	$ 3,224,020	$ 2,531,425
LIABILITIES AND MEMBERS' EQUITY		
CURRENT LIABILITIES		
Accounts Payable and Accrued Expenses	$ 455,931	$ 1,256,591
Paycheck Protection Program Loan	16,625	—
Advanced Receipt of Equity Subscriptions	—	454,980
TOTAL CURRENT LIABILITIES	472,556	1,711,571
NONCURRENT LIABILITIES		
Paycheck Protection Program Loan	49,878	—
TOTAL LIABILITIES	522,434	—
COMMITMENTS AND CONTINGENCIES		
MEMBERS' EQUITY		
Members' Equity, Class A	16,402,198	9,920,428
Members' Equity, Class B	100,000	100,000
Accumulated Deficit	(13,800,612)	(9,200,574)
TOTAL MEMBERS' EQUITY	2,701,586	819,854
TOTAL LIABILITIES AND MEMBERS' EQUITY	$ 3,224,020	$ 2,531,425

See accompanying notes to financial statements.

ACURX PHARMACEUTICALS, LLC

STATEMENTS OF OPERATIONS
YEARS ENDED DECEMBER 31, 2020 AND 2019

	2020	2019
OPERATING EXPENSES		
Research and Development	$2,202,979	$3,510,088
General and Administrative	2,397,059	2,421,165
TOTAL OPERATING EXPENSES	4,600,038	5,931,253
NET LOSS	$4,600,038	$5,931,253
Pro Forma C Corporation Information (unaudited) – See Note 9		
Historical loss from operations before income taxes		
Pro forma provision (benefit) for income taxes		
Pro forma net loss		
Pro forma net loss per common share basic and diluted		
Weighted average pro forma shares outstanding basic and diluted		

See accompanying notes to financial statements.

ACURX PHARMACEUTICALS, LLC

STATEMENTS OF CHANGES IN MEMBERS' EQUITY
YEARS ENDED DECEMBER 31, 2020 AND 2019

	Class A Membership Interests		Class B Membership Interests			
	Number of Units	Amount	Number of Units	Amount	Accumulated Deficit	Total Members' Equity
Balance at January 1, 2019	8,391,650	$ 5,019,542	100,000	$ 100,000	$ (3,269,321)	$ 1,850,221
Private Placement Offerings, net of issuance costs of $18,045	2,009,252	4,000,455	—	—	—	4,000,455
Share-Based Compensation	495,833	569,444	—	—	—	569,444
Share-Based Payments to Vendors	161,931	330,987	—	—	—	330,987
Net Loss	—	—	—	—	(5,931,253)	(5,931,253)
Balance at December 31, 2019	11,058,666	9,920,428	100,000	100,000	(9,200,574)	819,854
Private Placement Offerings, net of issuance costs of $51,409	1,421,629	4,432,124	—	—	—	4,432,124
Executive Compensation Settled with Membership Interests	312,680	781,700	—	—	—	781,700
Share-Based Compensation	553,419	695,833	—	—	—	695,833
Share-Based Payments to Vendors	147,413	572,113	—	—	—	572,113
Net Loss	—	—	—	—	(4,600,038)	(4,600,038)
Balance at December 31, 2020	13,493,807	$16,402,198	100,000	$ 100,000	$(13,800,612)	$ 2,701,586

See accompanying notes to financial statements.

ACURX PHARMACEUTICALS, LLC

STATEMENTS OF CASH FLOWS
YEARS ENDED DECEMBER 31, 2020 AND 2019

	2020	2019
Cash Flow from Operating Activities:		
Net loss	$(4,600,038)	$(5,931,253)
Adjustments to reconcile net loss to net cash used in operating activities:		
Share-Based Compensation	695,833	569,444
Share-Based Payments to Vendors	572,113	330,987
Executive Compensation Settled with Membership Interests	781,700	—
(Increase) / Decrease In:		
Prepaid Expenses	(506)	(15,374)
Accounts Payable and Accrued Expenses	(800,660)	1,060,930
Net Cash Used In Operating Activities	(3,351,558)	(3,985,266)
Cash Flow from Financing Activities:		
Proceeds from Advanced Receipts of Private Placement Offerings	—	454,980
Proceeds from Paycheck Protection Program Loan	66,503	—
Proceeds from Private Placement Offerings, net of issuance costs	3,977,144	4,000,455
Net Cash Provided By Financing Activities	4,043,647	4,455,435
Net Increase In Cash	692,089	470,169
Cash at Beginning of Year	2,483,322	2,013,153
Cash at End of Year	$ 3,175,411	$ 2,483,322
SUPPLEMENTAL DISCLOSURE		
NONCASH FINANCING ACTIVITY		
Vendor warrant issuance related to Private Placement Offering	$ 23,177	$ —

See accompanying notes to financial statements.

ACURX PHARMACEUTICALS, LLC

NOTES TO THE FINANCIAL STATEMENTS

NOTE 1 — NATURE OF OPERATIONS

Business:

Acurx Pharmaceuticals, LLC (the "Company") is a privately held clinical stage biopharmaceutical company formed in July 2017, with operations commencing in February 2018. The Company is focused on developing new antibiotics that address difficult to treat bacterial infections. The Company's approach is to develop antibiotic candidates that could potentially block an entirely new molecular target, the DNA polymerase IIIC (Pol IIIC) enzyme, and its research and development pipeline includes early stage Pol IIIC antibiotic candidates that target other Gram-positive bacteria that are active parenterally, and potentially orally, including Methicillin-Resistant *Staphylococcus aureus* ("MRSA"), Vancomycin-Resistant Enterococcus ("VRE") and Penicillin-Resistant *Streptococcus pneumoniae* ("PRSP"). The Pol IIIC enzyme is the primary catalyst for the replication of DNA in certain Gram-positive bacterial cells.

In March 2020, the World Health Organization declared the outbreak of COVID-19, a novel strain of coronavirus, a global pandemic. This outbreak is causing major disruptions to businesses and markets worldwide as the virus spreads. The COVID-19 pandemic has disrupted, and the Company expects it will continue to disrupt, its operations. The extent of the effect on the Company's operational and financial performance will depend on future developments, including the duration, spread and intensity of the pandemic, and governmental, regulatory and private sector responses, all of which are uncertain and difficult to predict. Although the Company is unable to estimate the financial effect of the pandemic, at this time, if the pandemic continues over a long period of time, it could have a material adverse effect on the Company's business, results of operations, financial condition, and cash flows. The financial statements do not reflect any adjustments as a result of the pandemic.

In February 2018, the Company purchased the active pharmaceutical ingredient, the intellectual property and other rights to an antibiotic product candidate known as GLS362E (renamed to ACX-362E and now approved for non-proprietary name, ibezapolstat) (the "Asset") from GLSynthesis, Inc. The Company paid $110,174 in cash, along with granting 100,000 Class B Membership Interests, profits interests as defined in the operating agreement with an exercise price of $0.10 and which would convert to common stock upon a corporate conversion, for all of the interests in and to the Asset. The Company is also required to make various payments totaling $700,000 in aggregate if certain milestones are achieved, which includes $500,000 following the successful completion of two Phase 3 trials (the "Milestones"). The Company is also obligated to make royalty payments equal to 4% of net sales for a period of time equal to the last to expire of any applicable patents, as defined in the purchase agreement. In December 2018, the Company paid $50,000 to GL Synthesis, Inc. upon successfully achieving the first two Milestones. The purchase of the Asset has resulted in our lead antibiotic product candidate, ibezapolstat, which targets the treatment of Clostridium difficile Infections ("CDI").

The Company's primary activities since inception have been organizational activities, including recruiting personnel, acquiring rights to a pharmaceutical compound, performing business and financial planning, performing research and development activities relating to the development of its two antibiotic candidates and raising funds through issuances of Class A Membership Interests and warrants to purchase Class A Membership Interests. The Company has not generated any revenues since inception.

The Company has experienced net losses and negative cash flows from operations since inception and expects these conditions to continue for the foreseeable future. The Company has needed to raise capital from sales of its securities to sustain operations. During 2020, the Company raised approximately $4.4 million through two separate private offerings with three respective closings, and has raised $12.9 million in equity offerings since inception starting with investment by the co-founders. As of December 31, 2020, the Company had a cash balance of approximately $3.2 million. Management believes that the Company will continue to incur losses for the foreseeable future and will need additional resources to sustain its operations until it can achieve profitability and positive cash flows, if ever. Management plans to seek additional equity financing and grant funding, but cannot assure that such financing and funding will be available at acceptable terms, or

at all. These matters raise substantial doubt about the Company's ability to continue as a going concern. The accompanying financial statements do not include any adjustments that might result from the outcome of this uncertainty.

There can be no assurance that the Company's research and development will be successfully completed or that any Company product candidate will be approved by the Food and Drug Administration ("FDA") or any other worldwide regulatory authority or become commercially viable. The Company is subject to risks common to companies in the biopharmaceutical industry including, but not limited to, dependence on collaborative arrangements, development by the Company or its competitors of new technological innovations, dependence on key personnel, protection of proprietary technology, and compliance with FDA and other governmental regulations and approval requirements.

NOTE 2 — SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Use of Estimates

The preparation of financial statements in conformity with accounting standards generally accepted in the United States of America ("GAAP") requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of expenses during the reporting period. Actual results could differ from those estimates.

Federal Income Taxes

The Company is organized as a limited liability company, and is not a tax paying entity for Federal and state income tax purposes and, therefore, no income tax expense has been recorded in the financial statements. Income or losses of the Company are passed through to members for inclusion in their respective income tax returns.

Concentration of Credit Risk

The Company maintains its cash balance in one financial institution. The balance is insured up to the maximum allowable by the Federal Deposit Insurance Corporation ("FDIC"). The Company has not experienced any losses in such accounts and does not believe it is exposed to any significant risk of loss on cash. At times, the cash balance may exceed the maximum insured limit of the FDIC.

Guaranteed Payments to Members

Guaranteed payments to members of the Company, that were designated to represent reasonable compensation for services rendered, were accounted for as Company expenses rather than an allocation of the Company's net income.

Research and Development

In accordance with Accounting Standards Codification Topic No. 730, Accounting for Research and Development Costs, the Company expenses research and development costs when incurred. At times, the Company may make cash advances for future research and development services. These amounts are deferred and expensed in the period the service is provided. The Company incurred net research and development expenses in the amount of $2,202,979 and $3,510,088 for the years ended December 31, 2020 and 2019, respectively.

Share-Based Compensation

The Company accounts for the cost of services performed by officers and directors received in exchange for an award of Company membership interests based on the grant-date fair value of the award. The Company recognizes compensation expense on a straight-line basis over the service period.

ACURX PHARMACEUTICALS, LLC

NOTES TO THE FINANCIAL STATEMENTS

Share-Based Payments to Vendors

In accordance with the Company's adoption of ASU No. 2018-07, Compensation — Stock Compensation (Topic 718): Improvements to Nonemployee Share-Based Payment Accounting, the Company accounts for the cost of services performed by vendors in exchange for an award of Company membership interests based on the grant-date fair value of the award or the fair value of the services rendered; whichever is more readily determinable. Such fair value is measured as of the date the services or the date performance by the other party is complete. The Company recognizes the expense in the same period and in the same manner as if the Company had paid cash for the services.

Foreign Currency Transactions

The financial statements are presented in in U.S. dollars ("USD") the reporting currency of the Company. The Company may engage in transactions denominated in other foreign currencies. These transactions were translated to USD at rates which approximate those in effect on the transaction dates. Monetary assets and liabilities denominated in foreign currencies at year-end will be translated at exchange rates in effect as of those dates. Nonmonetary assets and liabilities are translated at appropriate historical rates.

Major Vendor

During 2020, the Company had a major vendor that accounted for approximately 40% of the research and development expenditures for the year end December 31, 2020. The same vendor also accounted for approximately 6% of the total accounts payable at December 31, 2020. The Company expects to maintain this relationship with the vendor.

NOTE 3 — ACCOUNTS PAYABLE AND ACCRUED EXPENSES

Accounts payable and accrued expenses at December 31, 2020 and 2019 were as follows:

	2020	2019
Accrued compensation expenses	$317,068	$ 854,244
Accrued research and development	89,156	347,363
Accrued professional fees	49,707	52,680
Other accounts payable and accrued expenses	—	2,304
Total	$455,931	$1,256,591

NOTE 4 — PAYCHECK PROTECTION PROGRAM LOAN

In May 2020, the Company received a Paycheck Protection Program ("PPP") loan under the CARES Act, as administered by the U.S. Small Business Administration ("SBA") in the amount of $66,503. The Company did not provide any collateral or guarantees in connection with the PPP loan, nor did the Company pay any facility charge to obtain the PPP loan. The note and agreement provides for customary events of default, including those relating to failure to make payment, bankruptcy, breaches of representations and material adverse effects. The Company may prepay the principal of the PPP loan at any time without incurring any prepayment charges. The PPP loan carries an annual interest rate of 0.98% and matures two (2) years from issuance. The Company may apply for loan forgiveness under the PPP loan program within ten months after the covered period, as defined by the CARES Act. The Company will not be obligated to make any payments of principal or interest before the date on which the SBA remits the loan forgiveness amount to the lender or notifies the lender that no loan forgiveness is allowed.

In October 2020, the Company applied for loan forgiveness through their lender and believes that they are in compliance with the PPP regulations allowing for full forgiveness of the loan balance; however, this

ACURX PHARMACEUTICALS, LLC

NOTES TO THE FINANCIAL STATEMENTS

forgiveness has not been formally granted and cannot be guaranteed. If the loan is forgiven in part or in whole, and legal release is received, the Company will reduce the liability by the amount forgiven and record a gain on extinguishment in the statement of operations. However, if loan forgiveness is not granted, the Company estimates approximately, $16,625 may be due in 2021.

Total Paycheck Protection Program Loan	$66,503
Less current portion	16,625
Long-term Debt	$49,878

Principal payment requirements on the above obligation in each of the subsequent years:

2021	$16,625
2022	$33,251
2023	$16,627

NOTE 5 — EXECUTIVE COMPENSATION

The Company's co-founders and original two executives received compensation pursuant to employment agreements effective commencing January 2018 (the "Original Agreements"). The Original Agreements stipulated that the executives would receive a base salary of $277,000 per annum, of which a portion was payable with the issuance of Class A Membership Interests of the Company at the most recent offering price when the service was rendered. The Company also employs a third executive on a part-time basis for $7,500 per month, of which a portion was payable with the issuance of Class A Membership Interests during 2018. The Company did not issue any Class A Membership Interests to executives in 2019.

In 2019, the three executives executed waiver letters, deferring any unpaid compensation per their Original Agreements until the later to occur of (1) the date upon which the Company has raised $2.5 million from equity/debt offerings and/or grants equal to $2.5 million, and (2) January 15, 2020. Accrued deferred compensation per their Original Agreements was recorded in the amount of $104,000 and $153,664 as of December 31, 2020 and 2019, respectively.

In January 2020, the Company issued 312,680 Class A Membership Interests at $2.50 per unit to its three executives to settle unpaid year-end compensation for 2019 and a year-end bonus award, which was approved by the board of directors. The year-end bonus component was equal to 244,860 Class A Membership Interests.

NOTE 6 — ISSUANCE OF MEMBERSHIP INTERESTS

On March 29, 2019, the Company entered into a securities purchase agreement for the private placement of the Company's Class A Membership Interests and warrants to purchase its Class A Membership Interests, at a purchase price of $2.00 per unit. Each unit is comprised of one Class A Membership Interest and a warrant to purchase one-half of the total Class A Membership Interests purchased. The Company issued and sold an aggregate of 277,000 units, comprised of 277,000 Class A Membership Interests and warrants to purchase up to 138,500 additional Class A Membership Interests for gross proceeds of $554,000. Each warrant, exercisable for 10 years from March 29, 2019, has an exercise price of $2.00 per Class A Membership Interest.

On August 8, 2019, the Company entered into a securities purchase agreement for the private placement of the Company's Class A Membership Interests and warrants to purchase its Class A Membership Interests, at a purchase price of $2.00 per unit. Each unit is comprised of one Class A Membership Interest and a warrant to purchase one-half of the total Class A Membership Interests purchased. The Company issued and sold an aggregate of 1,248,750 units, comprised of 1,248,750 Class A Membership Interests and warrants

to purchase up to 624,375 additional Class A Membership Interests for gross proceeds of $2,497,500. Each warrant, exercisable for 10 years from August 8, 2019, has an exercise price of $2.00 per Class A Membership Interest.

On October 18, 2019, the Company entered into a securities purchase agreement for the private placement of the Company's Class A Membership Interests and warrants to purchase its Class A Membership Interests, at a purchase price of $2.00 per unit. Each unit is comprised of one Class A Membership Interest and a warrant to purchase one-half of the total Class A Membership Interests purchased. The Company issued and sold an aggregate of 483,501 units, comprised of 483,501 Class A Membership Interests and warrants to purchase up to 241,751 additional Class A Membership Interests for gross proceeds of $967,000. Each warrant, exercisable for 10 years from October 18, 2019, has an exercise price of $2.00 per Class A Membership Interest.

On January 6, 2020, the Company entered into a securities purchase agreement for the private placement of the Company's Class A Membership Interests and warrants to purchase its Class A Membership Interests, at a purchase price of $2.50 per unit. Each unit is comprised of one Class A Membership Interest and a warrant to purchase one-fourth of the total Class A Membership Interests purchased. The Company issued and sold an aggregate of 182,002 units, comprised of 182,002 Class A Membership Interests and warrants to purchase up to 45,501 additional Class A Membership Interests for gross proceeds of $455,005. The proceeds were received in 2019 and were recorded as advanced receipts of equity subscriptions. Each warrant, exercisable for 10 years from January 6, 2020, has an exercise price of $2.50 per Class A Membership Interest.

On July 20, 2020, the Company entered into a securities purchase agreement for the private placement of the Company's Class A Membership Interests at a purchase price of $3.25 per unit. The Company issued and sold an aggregate of 533,900 Class A Membership Interests for gross proceeds of $1,735,175. There were no warrants included in this private placement.

On October 16, 2020, the Company entered into a securities purchase agreement for the private placement of the Company's Class A Membership Interests at a purchase price of $3.25 per unit. The Company issued and sold an aggregate of 705,727 Class A Membership Interests for gross proceeds of $2,293,613. There were no warrants included in this private placement.

NOTE 7 — SHARE-BASED COMPENSATION

The Company granted restricted Class A Membership Interests awards to board members and corporate advisory council members in exchange for services. These awards of membership interests are scheduled to vest on a monthly basis over three (3) years, with the first year beginning on the date the member joined the board or the corporate advisory council, as applicable. Accelerated vesting will occur upon a change of control or other business combination. The fair value of the membership interests granted during 2020 and 2019 was equal to the per-membership interest value of the most recent private placement ($3.25 per membership interest and $2.50 per membership interest, respectively, with a weighted average of $2.14 per membership interest). Total share-based compensation expense in the amount of $695,833 and $569,444 has been recorded for the years ended December 31, 2020 and 2019, respectively.

ACURX PHARMACEUTICALS, LLC

NOTES TO THE FINANCIAL STATEMENTS

The following table summarizes the non-vested Class A Membership Interests and associated activity for the years ended December 31, 2020 and 2019:

	Class A Membership Interests
Nonvested at January1, 2019	1,107,870
Granted	225,000
Vested	(495,833)
Nonvested at December 31, 2019	837,037
Granted	117,308
Vested	(553,419)
Nonvested at December 31, 2020	400,926

As of December 31, 2020, there was $755,559 of total unrecognized compensation cost related to these awards. The cost is expected to be recognized over a weighted average period of 1.7 years.

NOTE 8 — SHARE-BASED PAYMENTS TO VENDORS

The Company grants Class A Membership Interests to certain vendors in the ordinary course of business in exchange for consulting services relating to research and development activities and investor relations. The Company granted 147,413 and 161,931 Class A Membership Interests during the years ended December 31, 2020 and 2019, respectively. The fair value of the Class A Membership Interests granted is equal to the value of the most recent private placement, the fair value at grant date. The Company recognizes the expense in the same period and in the same manner as if the Company had paid cash for the services. The Company recorded general and administrative expenses and research and development expenses for vendor equity grants in the amounts of $338,802 and $233,311, and $105,000 and $225,987 during the years ended December 31, 2020 and 2019, respectively.

On October 18, 2019, the Company granted a total of 150,000 restricted Class A Membership Interests to three consultants for investor related consulting services performed in 2019 and for services which are ongoing. These Class A Membership Interests vest on the second anniversary of the grant date, and are subject to accelerated vesting provisions upon a change of control of the Company. The fair value of the Class A Membership Interests granted is equal to the value of the most recent private placement, the fair value at grant date. The Company is recognizing the expense on a straight-line basis over the vesting period. The Company recorded general and administrative expenses in the amounts of $150,000 and $25,000 for the years ended December 31, 2020 and 2019, respectively, with an unrecognized expense of $125,000 at December 31, 2020.

During 2020, the Company issued 10,077 warrants to an investment banker for services relating to the October 2020 private placement. Each warrant vested upon issuance is exercisable for 10 years from the date of issuance and has an exercise price of $3.25 per Class A Membership Interest. The Company used the Black Scholes model to calculate the value of the warrants. The inputs utilized in the calculation were as follows: ten-year term, 0.32% risk free rate, stock price at grant date of $3.25, and a 94% volatility. The Company reduced the proceeds of the respective equity issuance by $23,177 relating to the warrant issuance.

NOTE 9 — PRO FORMA INCOME TAXES AND LOSS PER SHARE (unaudited)

Immediately prior to the effectiveness of the Company's registration statement on Form S-1, the Company will convert into a Delaware Corporation and will be subject to federal and state income taxes. Accordingly, a pro forma income tax provision has been disclosed as if the Company was a corporation for all periods presented. Based on the Company's history of generating operating losses and its anticipation of operating losses continuing for the foreseeable future, the Company has determined that it would not have been more likely than not that the tax benefits from these net operating losses would be realized and a full

valuation allowance against all deferred tax assets would be recorded on a pro forma basis. Therefore, for the purposes of the pro forma tax provision, we have applied a 0% combined federal and state income tax rate.

A pro forma net loss per common share has been disclosed for the years ended December 31, 2020 and 2019, assuming that a XXX to 1 conversion ratio will be used to convert the Class A and Class B Membership Interests into shares of common stock at the time of the proposed initial public offering. Pro forma basic net income or loss per common share is computed by dividing net income or loss available to common shareholders by the weighted average number of common shares outstanding during the periods.

NOTE 10 — RELATED PARTY TRANSACTIONS

During 2020, the Company engaged a member of the Board of Directors to provide administrative services for a 12- month period for a total of $15,000. The Company paid and expensed $7,500 for these services for the 12 months ended December 31, 2020, and will expense the balance during 2021 consistent with the terms of the agreement.

NOTE 11 — RECENT ACCOUNTING PRONOUNCEMENTS

In February 2016, the FASB issued ASU No. 2016-02, Leases (Topic 842) (“ASU 2016-02”), which requires lessees to recognize on the balance sheet the assets and liabilities for the rights and obligations created by leases with lease terms of more than twelve (12) months. The recognition, measurement, and presentation of expenses and cash flows arising from a lease by a lessee will continue to primarily depend on its classification as a finance or operating lease. However, unlike current GAAP, which requires only capital leases to be recognized on the balance sheet, ASU 2016-02 will require both types of leases to be recognized on the balance sheet. ASU 2016-02 also requires disclosures about the amount, timing, and uncertainty of cash flows arising from leases. These disclosures include qualitative and quantitative requirements, providing additional information about the amounts recorded in the financial statements. ASU 2016-02 is effective for fiscal years beginning after December 15, 2021, with early application permitted. We have evaluated the adoption of ASU 2016-02 and determined that the standard will not have an impact on the Company’s financial statements as the Company currently does not have any lease obligations.

NOTE 12 — COMMITMENTS AND CONTINGENCIES

In conjunction with the Asset purchase in February 2018, the Company is required to make various payments related to the ongoing development of ACX-362E totaling $700,000 in aggregate if certain milestones are achieved, which includes $500,000 following the successful completion of two Phase 3 trial Milestones. The Company is also obligated to make royalty payments equal to 4% of net sales of ACX-362E for a period of time equal to the last to expire of any applicable patents, as defined in the purchase agreement. In December 2018, the Company paid $50,000 to GLSynthesis, Inc. upon successfully achieving the first two Milestones, no Milestones were achieved during 2019 and 2020.

NOTE 13 — SUBSEQUENT EVENTS

The Company has evaluated subsequent events from the balance sheet date through April 2, 2021, the date at which the financial statements were available to be issued, and has not identified any requiring disclosure except as noted below:

On January 11, 2021, the Company issued 57,430 Class A Membership Interests to two of its executives to settle unpaid year-end bonus award and deferred compensation, which was approved by the board of directors. The year-end bonus component was equal to 38,353 Class A Membership Interests, which was included as accrued compensation.

The Company’s board of directors also approved certain grants to members of management authorizing the issuance of 1,540,000 Class B Membership Interests to its three executives, as well as 75,000 Class B Membership Interests which were granted to non-employee management team members. The Company’s

ACURX PHARMACEUTICALS, LLC

NOTES TO THE FINANCIAL STATEMENTS

Class B Membership Interests are profits interests as defined per the operating agreement. The Class B Membership Interests are profits interests with a defined exercise price of $3.25 per interest, the Company's most recent financing offering price. These Class B Membership interests vest over 36 months, with 25% vesting at grant date, subject to accelerated vesting provisions. On January 12, 2021, the Company also amended the employment agreements of the three executives. On March 25, 2021, the Company along with its three executives and non-employee management team agreed voluntarily to cancel the aforementioned equity grants.

ACURX PHARMACEUTICALS, LLC

CONDENSED INTERIM BALANCE SHEETS

	March 31, 2021 (unaudited)	December 31, 2020
ASSETS		
CURRENT ASSETS		
Cash	$ 2,628,273	$ 3,175,411
Prepaid Expenses and Other Receivable	14,089	48,609
TOTAL CURRENT ASSETS	2,642,362	3,224,020
OTHER ASSETS		
Deferred Initial Public Offering Costs	339,476	—
TOTAL ASSETS	$ 2,981,838	$ 3,224,020
LIABILITIES AND MEMBERS' EQUITY		
CURRENT LIABILITIES		
Accounts Payable and Accrued Expenses	$ 444,175	$ 455,931
Paycheck Protection Program Loan	16,625	16,625
Advanced Receipt of Equity Subscriptions	—	—
TOTAL CURRENT LIABILITIES	460,800	472,556
NONCURRENT LIABILITIES		
Paycheck Protection Program Loan	49,878	49,878
TOTAL LIABILITIES	510,678	522,434
COMMITMENTS AND CONTINGENCIES		
MEMBERS' EQUITY		
Members' Equity, Class A	16,915,986	16,402,198
Members' Equity, Class B	830,115	100,000
Accumulated Deficit	(15,274,941)	(13,800,612)
TOTAL MEMBERS' EQUITY	2,471,160	2,701,586
TOTAL LIABILITIES AND MEMBERS' EQUITY	$ 2,981,838	$ 3,224,020

See accompanying notes to financial statements.

ACURX PHARMACEUTICALS, LLC

CONDENSED INTERIM STATEMENTS OF OPERATIONS

	Three Months Ended March 31,	
	2021	**2020**
	(unaudited)	**(unaudited)**
OPERATING EXPENSES		
Research and Development	$ 91,908	$ 684,731
General and Administrative	1,382,421	594,370
TOTAL OPERATING EXPENSES	1,474,329	1,279,101
NET LOSS	$1,474,329	$1,279,101
Pro Forma C Corporation Information (unaudited) – See Note 9		
Historical loss from operations before income taxes		
Pro forma provision (benefit) for income taxes		
Pro forma net loss		
Pro forma net loss per common share basic and diluted		
Weighted average pro forma shares outstanding basic and diluted		

See accompanying notes to financial statements.

ACURX PHARMACEUTICALS, LLC

CONDENSED INTERIM STATEMENTS OF CHANGES IN MEMBERS' EQUITY (unaudited)

	Class A Membership Interests		Class B Membership Interests			
	Number of Units	Amount	Number of Units	Amount	Accumulated Deficit	Total Members' Equity
Balance at January 1, 2020	11,058,666	$ 9,920,428	100,000	$100,000	$ (9,200,574)	$ 819,854
Private Placement Offerings, net of issuance costs of $51,409	182,002	454,980	—	—	—	454,980
Executive Compensation Settled with Membership Interests	312,680	781,700	—	—	—	781,700
Share-Based Compensation	136,111	166,667	—	—	—	166,667
Share-Based Payments to Vendors	57,440	181,100	—	—	—	181,100
Net Loss	—	—	—	—	(1,279,101)	(1,279,101)
Balance at March 31, 2020	11,746,899	11,504,875	100,000	100,000	(10,479,675)	1,125,200
Balance at January 1, 2021	13,493,807	$16,402,198	100,000	$100,000	$(13,800,612)	$ 2,701,586
Executive Compensation Settled with Membership Interests	57,430	186,650	471,042	730,115	—	916,765
Cancellation of Class B Issuance	—	—	(471,042)	—	—	—
Share-Based Compensation	143,814	191,667	—	—	—	191,667
Share-Based Payments to Vendors	30,145	135,471	—	—	—	135,471
Net Loss	—	—	—	—	(1,474,329)	(1,474,329)
Balance at March 31, 2021	13,725,196	$16,915,986	100,000	$830,115	$(15,274,941)	$ 2,471,160

See accompanying notes to financial statements.

ACURX PHARMACEUTICALS, LLC

CONDENSED INTERIM STATEMENTS OF CASH FLOWS

	Three Months Ended March 31,	
	2021	2020
	(unaudited)	(unaudited)
Cash Flow from Operating Activities:		
Net loss	$(1,474,329)	$(1,279,101)
Adjustments to reconcile net loss to net cash used in operating activities:		
Share-Based Compensation	191,667	166,667
Share-Based Payments to Vendors	135,471	181,100
Executive Compensation Settled with Membership Interests	916,765	781,700
(Increase) / Decrease In:		
Prepaid Expenses and Other Assets	(304,958)	35,341
Accounts Payable and Accrued Expenses	(11,754)	(785,002)
Net Cash Used In Operating Activities	(547,138)	(899,295)
Cash Flow from Financing Activities:		
Proceeds from Advanced Receipts of Private Placement Offerings	—	—
Proceeds from Paycheck Protection Program Loan	—	—
Proceeds from Private Placement Offerings, net of issuance costs	—	—
Net Cash Provided By Financing Activities	—	—
Net Increase In Cash	(547,138)	(899,295)
Cash at Beginning of Period	3,175,411	2,483,322
Cash at End of Period	$ 2,628,273	$ 1,584,027

See accompanying notes to financial statements.

ACURX PHARMACEUTICALS, LLC

NOTES TO THE CONDENSED INTERIM FINANCIAL STATEMENTS (UNAUDITED)

NOTE 1 — NATURE OF OPERATIONS

Business:

Acurx Pharmaceuticals, LLC (the "Company") is a privately held clinical stage biopharmaceutical company formed in July 2017, with operations commencing in February 2018. The Company is focused on developing new antibiotics that address difficult to treat bacterial infections. The Company's approach is to develop antibiotic candidates that could potentially block an entirely new molecular target, the DNA polymerase IIIC (Pol IIIC) enzyme, and its research and development pipeline includes early stage Pol IIIC antibiotic candidates that target other Gram-positive bacteria that are active parenterally, and potentially orally, including Methicillin-Resistant *Staphylococcus aureus* ("MRSA"), Vancomycin-Resistant Enterococcus ("VRE") and Penicillin-Resistant *Streptococcus pneumoniae* ("PRSP"). The Pol IIIC enzyme is the primary catalyst for the replication of DNA in certain Gram-positive bacterial cells.

In March 2020, the World Health Organization declared the outbreak of COVID-19, a novel strain of coronavirus, a global pandemic. This outbreak is causing major disruptions to businesses and markets worldwide as the virus spreads. The COVID-19 pandemic has disrupted, and the Company expects it will continue to disrupt, its operations. The extent of the effect on the Company's operational and financial performance will depend on future developments, including the duration, spread and intensity of the pandemic, and governmental, regulatory and private sector responses, all of which are uncertain and difficult to predict. Although the Company is unable to estimate the financial effect of the pandemic, at this time, if the pandemic continues over a long period of time, it could have a material adverse effect on the Company's business, results of operations, financial condition, and cash flows. The financial statements do not reflect any adjustments as a result of the pandemic.

In February 2018, the Company purchased the active pharmaceutical ingredient, the intellectual property and other rights to an antibiotic product candidate known as GLS362E (renamed to ACX-362E and now approved for non-proprietary name, ibezapolstat) (the "Asset") from GLSynthesis, Inc. The Company paid $110,174 in cash, along with granting 100,000 Class B Membership Interests, profits interests as defined in the operating agreement with an exercise price of $0.10 and which would convert to common stock upon a corporate conversion, for all of the interests in and to the Asset. The Company is also required to make various payments totaling $700,000 in aggregate if certain milestones are achieved, which includes $500,000 following the successful completion of two Phase 3 trials (the "Milestones"). The Company is also obligated to make royalty payments equal to 4% of net sales for a period of time equal to the last to expire of any applicable patents, as defined in the purchase agreement. In December 2018, the Company paid $50,000 to GL Synthesis, Inc. upon successfully achieving the first two Milestones. The purchase of the Asset has resulted in our lead antibiotic product candidate, ibezapolstat, which targets the treatment of Clostridium difficile Infections ("CDI").

The Company's primary activities since inception have been organizational activities, including recruiting personnel, acquiring rights to a pharmaceutical compound, performing business and financial planning, performing research and development activities relating to the development of its two antibiotic candidates and raising funds through issuances of Class A Membership Interests and warrants to purchase Class A Membership Interests. The Company has not generated any revenues since inception.

The Company has experienced net losses and negative cash flows from operations since inception and expects these conditions to continue for the foreseeable future. The Company has needed to raise capital from sales of its securities to sustain operations. During 2020, the Company raised approximately $4.4 million through two separate private offerings with three respective closings, and has raised $12.9 million in equity offerings since inception starting with investment by the co-founders. As of March 31, 2021, the Company had a cash balance of approximately $2.6 million. Management believes that the Company will continue to incur losses for the foreseeable future and will need additional resources to sustain its operations until it can achieve profitability and positive cash flows, if ever. Management plans to seek additional equity financing and grant funding, but cannot assure that such financing and funding will be available at acceptable terms,

or at all. These matters raise substantial doubt about the Company's ability to continue as a going concern. The accompanying financial statements do not include any adjustments that might result from the outcome of this uncertainty.

There can be no assurance that the Company's research and development will be successfully completed or that any Company product candidate will be approved by the Food and Drug Administration ("FDA") or any other worldwide regulatory authority or become commercially viable. The Company is subject to risks common to companies in the biopharmaceutical industry including, but not limited to, dependence on collaborative arrangements, development by the Company or its competitors of new technological innovations, dependence on key personnel, protection of proprietary technology, and compliance with FDA and other governmental regulations and approval requirements.

NOTE 2 — SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Basis of Presentation

The accompanying unaudited interim financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America ("U.S. GAAP"). In the opinion of management, these unaudited interim statements include all adjustments, consisting only of normal, recurring adjustments, necessary for a fair statement of the Company's financial position, results of operations, and cash flows. The unaudited interim results of operations are not necessarily indicative of the results that may occur for the full fiscal year. The year-end condensed balance sheet data was derived from audited financial statements, but does not include all disclosures required by U.S. GAAP. Management believes that the disclosures provided herein are adequate when these unaudited interim financial statements are read in conjunction with the audited financial statements and notes thereto as of December 31, 2020.

Use of Estimates

The preparation of financial statements in conformity with accounting standards generally accepted in the United States of America ("GAAP") requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of expenses during the reporting period. Actual results could differ from those estimates.

Federal Income Taxes

The Company is organized as a limited liability company, and is not a tax paying entity for Federal and state income tax purposes and, therefore, no income tax expense has been recorded in the financial statements. Income or losses of the Company are passed through to members for inclusion in their respective income tax returns.

Concentration of Credit Risk

The Company maintains its cash balance in one financial institution. The balance is insured up to the maximum allowable by the Federal Deposit Insurance Corporation ("FDIC"). The Company has not experienced any losses in such accounts and does not believe it is exposed to any significant risk of loss on cash. At times, the cash balance may exceed the maximum insured limit of the FDIC.

Guaranteed Payments to Members

Guaranteed payments to members of the Company, that were designated to represent reasonable compensation for services rendered, were accounted for as Company expenses rather than an allocation of the Company's net income.

ACURX PHARMACEUTICALS, LLC

NOTES TO THE CONDENSED INTERIM FINANCIAL STATEMENTS (UNAUDITED)

Research and Development

In accordance with Accounting Standards Codification Topic No. 730, Accounting for Research and Development Costs, the Company expenses research and development costs when incurred. At times, the Company may make cash advances for future research and development services. These amounts are deferred and expensed in the period the service is provided. The Company incurred net research and development expenses in the amount $91,908 and $684,731 for the three months ended March 31, 2021 and 2020, respectively.

Share-Based Compensation

The Company accounts for the cost of services performed by officers and directors received in exchange for an award of Company membership interests based on the grant-date fair value of the award. The Company recognizes compensation expense on a straight-line basis over the service period.

Share-Based Payments to Vendors

The Company accounts for the cost of services performed by vendors in exchange for an award of Company membership interests based on the grant-date fair value of the award or the fair value of the services rendered; whichever is more readily determinable. Such fair value is measured as of the date the services or the date performance by the other party is complete. The Company recognizes the expense in the same period and in the same manner as if the Company had paid cash for the services.

Foreign Currency Transactions

The financial statements are presented in in U.S. dollars ("USD") the reporting currency of the Company. The Company may engage in transactions denominated in other foreign currencies. These transactions were translated to USD at rates which approximate those in effect on the transaction dates. Monetary assets and liabilities denominated in foreign currencies at year-end will be translated at exchange rates in effect as of those dates. Nonmonetary assets and liabilities are translated at appropriate historical rates.

Major Vendor

The Company had a major vendor that accounted for approximately 2% and 30% of the research and development expenditures for the three months ended March 31, 2021 and 2020, respectively. The same vendor also accounted for approximately 6% of the total accounts payable and accrued expenses at December 31, 2020 and March 31, 2021, respectively. The Company expects to maintain this relationship with the vendor.

NOTE 3 — ACCOUNTS PAYABLE AND ACCRUED EXPENSES

Accounts payable and accrued expenses as of March 31, 2021 and December 31, 2020 were as follows:

	March 31, 2021	2020
Accrued compensation expenses	$ 30,187	$317,068
Accrued research and development	62,310	89,156
Accrued professional fees	351,282	49,707
Other accounts payable and accrued expenses	396	—
Total	$ 444,175	$455,931

NOTE 4 — PAYCHECK PROTECTION PROGRAM LOAN

In May 2020, the Company received a Paycheck Protection Program ("PPP") loan under the CARES Act, as administered by the U.S. Small Business Administration ("SBA") in the amount of $66,503. The

Company did not provide any collateral or guarantees in connection with the PPP loan, nor did the Company pay any facility charge to obtain the PPP loan. The note and agreement provides for customary events of default, including those relating to failure to make payment, bankruptcy, breaches of representations and material adverse effects. The Company may prepay the principal of the PPP loan at any time without incurring any prepayment charges. The PPP loan carries an annual interest rate of 0.98% and matures two (2) years from issuance. The Company may apply for loan forgiveness under the PPP loan program within ten months after the covered period, as defined by the CARES Act. The Company will not be obligated to make any payments of principal or interest before the date on which the SBA remits the loan forgiveness amount to the lender or notifies the lender that no loan forgiveness is allowed.

In October 2020, the Company applied for loan forgiveness through their lender and believes that they are in compliance with the PPP regulations allowing for full forgiveness of the loan balance; however, this forgiveness has not been formally granted and cannot be guaranteed. If the loan is forgiven in part or in whole, and legal release is received, the Company will reduce the liability by the amount forgiven and record a gain on extinguishment in the statement of operations. However, if loan forgiveness is not granted, the Company estimates approximately $16,625 may be due in 2021.

Total Paycheck Protection Program Loan	$66,503
Less current portion	16,625
Long-term Debt	$49,878

Principal payment requirements on the above obligation in each of the subsequent years:

2021	$16,625
2022	$33,251
2023	$16,627

NOTE 5 — EXECUTIVE COMPENSATION

The Company's co-founders and original two executives received compensation pursuant to employment agreements effective commencing January 2018 (the "Original Agreements"). The Original Agreements stipulated that the executives would receive a base salary of $277,000 per annum, of which a portion was payable with the issuance of Class A Membership Interests of the Company at the most recent offering price when the service was rendered. The Company also employs a third executive on a part-time basis for $7,500 per month, of which a portion was payable with the issuance of Class A Membership Interests during 2018. The Company did not issue any Class A Membership Interests to executives in 2019.

In 2019, the three executives executed waiver letters, deferring any unpaid compensation per their Original Agreements until the later to occur of (1) the date upon which the Company has raised $2.5 million from equity/debt offerings and/or grants equal to $2.5 million, and (2) January 15, 2020. Accrued deferred compensation per their Original Agreements was recorded in the amount of $104,000 as of December 31, 2020, and $19,000 as March 31, 2021, respectively.

In January 2020, the Company issued 312,680 Class A Membership Interests at $2.50 per unit to its three executives to settle unpaid year-end compensation for 2019 and a year-end bonus award, which was approved by the board of directors. The year-end bonus component was equal to 244,860 Class A Membership Interests.

In January 2021, the Company issued 57,430 Class A Membership Interests to two of its executives to settle unpaid year-end bonus award and deferred compensation, which was approved by the board of directors. The year-end bonus component was equal to 38,353 Class A Membership Interests, which was included as accrued compensation. In January 2021, the Company also amended the employment agreements for the three executives.

ACURX PHARMACEUTICALS, LLC

NOTES TO THE CONDENSED INTERIM FINANCIAL STATEMENTS (UNAUDITED)

The Company's board of directors also approved certain grants to members of management authorizing the issuance of 1,540,000 Class B Membership Interests to its three executives, as well as 75,000 Class B Membership Interests which were granted to non-employee management team members. The Company's Class B Membership Interests are profits interests as defined per the operating agreement. The Class B Membership Interests are profits interests with a defined exercise price of $3.25 per interest, the Company's most recent financing offering price. These Class B Membership interests vest over 36 months, with 25% vesting at grant date, subject to accelerated vesting provisions.

For the three months ended March 31, 2021, 471,042 of these Class B Membership Interests vested. The Company utilized a third-party specialist to value the Class B Interests at grant date utilizing the option-pricing method. with the following assumptions: expected volatility of 80%, risk free-return of 0.50%, expected dividend yield of 0%, and an expected life of 5 years, valuing each interest at $1.55. Accordingly, the company expensed $730,115 for the vested portion of the grant for the three months ended March 31, 2021. On March 25, 2021, the Company along with its three executives and non-employee management team agreed voluntarily to cancel the aforementioned equity grants.

NOTE 6 — ISSUANCE OF MEMBERSHIP INTERESTS

On March 29, 2019, the Company entered into a securities purchase agreement for the private placement of the Company's Class A Membership Interests and warrants to purchase its Class A Membership Interests, at a purchase price of $2.00 per unit. Each unit is comprised of one Class A Membership Interest and a warrant to purchase one-half of the total Class A Membership Interests purchased. The Company issued and sold an aggregate of 277,000 units, comprised of 277,000 Class A Membership Interests and warrants to purchase up to 138,500 additional Class A Membership Interests for gross proceeds of $554,000. Each warrant, exercisable for 10 years from March 29, 2019, has an exercise price of $2.00 per Class A Membership Interest.

On August 8, 2019, the Company entered into a securities purchase agreement for the private placement of the Company's Class A Membership Interests and warrants to purchase its Class A Membership Interests, at a purchase price of $2.00 per unit. Each unit is comprised of one Class A Membership Interest and a warrant to purchase one-half of the total Class A Membership Interests purchased. The Company issued and sold an aggregate of 1,248,750 units, comprised of 1,248,750 Class A Membership Interests and warrants to purchase up to 624,375 additional Class A Membership Interests for gross proceeds of $2,497,500. Each warrant, exercisable for 10 years from August 8, 2019, has an exercise price of $2.00 per Class A Membership Interest.

On October 18, 2019, the Company entered into a securities purchase agreement for the private placement of the Company's Class A Membership Interests and warrants to purchase its Class A Membership Interests, at a purchase price of $2.00 per unit. Each unit is comprised of one Class A Membership Interest and a warrant to purchase one-half of the total Class A Membership Interests purchased. The Company issued and sold an aggregate of 483,501 units, comprised of 483,501 Class A Membership Interests and warrants to purchase up to 241,751 additional Class A Membership Interests for gross proceeds of $967,000. Each warrant, exercisable for 10 years from October 18, 2019, has an exercise price of $2.00 per Class A Membership Interest.

On January 6, 2020, the Company entered into a securities purchase agreement for the private placement of the Company's Class A Membership Interests and warrants to purchase its Class A Membership Interests, at a purchase price of $2.50 per unit. Each unit is comprised of one Class A Membership Interest and a warrant to purchase one-fourth of the total Class A Membership Interests purchased. The Company issued and sold an aggregate of 182,002 units, comprised of 182,002 Class A Membership Interests and warrants to purchase up to 45,501 additional Class A Membership Interests for gross proceeds of $455,005. The proceeds were received in 2019 and were recorded as advanced receipts of equity subscriptions. Each warrant, exercisable for 10 years from January 6, 2020, has an exercise price of $2.50 per Class A Membership Interest.

ACURX PHARMACEUTICALS, LLC

NOTES TO THE CONDENSED INTERIM FINANCIAL STATEMENTS (UNAUDITED)

On July 20, 2020, the Company entered into a securities purchase agreement for the private placement of the Company's Class A Membership Interests at a purchase price of $3.25 per unit. The Company issued and sold an aggregate of 533,900 Class A Membership Interests for gross proceeds of $1,735,175. There were no warrants included in this private placement.

On October 16, 2020, the Company entered into a securities purchase agreement for the private placement of the Company's Class A Membership Interests at a purchase price of $3.25 per unit. The Company issued and sold an aggregate of 705,727 Class A Membership Interests for gross proceeds of $2,293,613. There were no warrants included in this private placement.

NOTE 7 — SHARE-BASED COMPENSATION

The Company granted restricted Class A Membership Interests awards to board members and corporate advisory council members in exchange for services. These awards of membership interests are scheduled to vest on a monthly basis over three (3) years, with the first year beginning on the date the member joined the board or the corporate advisory council, as applicable. Accelerated vesting will occur upon a change of control or other business combination. The fair value of the membership interests granted during 2020 and 2019 was equal to the per-membership interest value of the most recent private placement ($3.25 per membership interest and $2.50 per membership interest, respectively, with a weighted average of $2.14 per membership interest). Total share-based compensation expense has been recorded in the amount of $191,667 and $166,667 for the three months ended March 31, 2021 and 2020, respectively.

The following table summarizes the non-vested Class A Membership Interests and associated activity for the three months ended March 31, 2021 and March 31, 2020:

	Class A Membership Interests
Nonvested at December 31, 2019	837,037
Granted	25,000
Vested	(136,111)
Nonvested at March 31, 2020	725,926
Nonvested at December 31, 2020	400,926
Vested	(143,804)
Nonvested at March 31, 2021	257,122

As of March 31, 2021, there was $563,889 of total unrecognized compensation cost related to these awards. The cost is expected to be recognized over a weighted average period of 1.7 years.

NOTE 8 — SHARE-BASED PAYMENTS TO VENDORS

The Company grants Class A Membership Interests to certain vendors in the ordinary course of business in exchange for consulting services relating to research and development activities and investor relations. The Company granted 30,145 and 57,440 Class A Membership Interests for the three months ended March 31, 2021 and 2020, respectively. The fair value of the Class A Membership Interests granted is equal to the value of the most recent private placement, the fair value at grant date. The Company recognizes the expense in the same period and in the same manner as if the Company had paid cash for the services. The Company recorded general and administrative expenses and research and development expenses for vendor equity grants in the amounts of $113,875 and $21,596 and $100,000 and $81,100 for the three months ended March 31, 2021 and 2020, respectively.

On October 18, 2019, the Company granted a total of 150,000 restricted Class A Membership Interests to three consultants for investor related consulting services performed in 2019 and for services which are

ongoing. These Class A Membership Interests vest on the second anniversary of the grant date, and are subject to accelerated vesting provisions upon a change of control of the Company. The fair value of the Class A Membership Interests granted is equal to the value of the most recent private placement, the fair value at grant date. The Company is recognizing the expense on a straight-line basis over the vesting period. The Company recorded general and administrative expenses of $37,500 for each of the three months ended March 31, 2021 and 2020, with an unrecognized expense of $87,500 at March 31, 2021.

During 2020, the Company issued 10,077 warrants to an investment banker for services relating to the October 2020 private placement. Each warrant vested upon issuance is exercisable for 10 years from the date of issuance and has an exercise price of $3.25 per Class A Membership Interest. The Company used the Black Scholes model to calculate the value of the warrants. The inputs utilized in the calculation were as follows: ten-year term, 0.32% risk free rate, stock price at grant date of $3.25, and a 94% volatility. The Company reduced the proceeds of the respective equity issuance by $23,177 relating to the warrant issuance.

NOTE 9 — PRO FORMA INCOME TAXES AND LOSS PER SHARE (unaudited)

Immediately prior to the effectiveness of the Company's registration statement on Form S-1, the Company will convert into a Delaware Corporation and will be subject to federal and state income taxes. Accordingly, a pro forma income tax provision has been disclosed as if the Company was a corporation for all periods presented. Based on the Company's history of generating operating losses and its anticipation of operating losses continuing for the foreseeable future, the Company has determined that it would not have been more likely than not that the tax benefits from these net operating losses would be realized and a full valuation allowance against all deferred tax assets would be recorded on a pro forma basis. Therefore, for the purposes of the pro forma tax provision, we have applied a 0% combined federal and state income tax rate.

A pro forma net loss per common share has been disclosed for the three months ended March 31, 2021 and 2020, assuming that a XXX to 1 conversion ratio will be used to convert the Class A and Class B Membership Interests into shares of common stock at the time of the proposed initial public offering. Pro forma basic net income or loss per common share is computed by dividing net income or loss available to common shareholders by the weighted average number of common shares outstanding during the periods.

NOTE 10 — RELATED PARTY TRANSACTIONS

During 2020, the Company engaged a member of the Board of Directors to provide administrative services for a 12- month period for a total of $15,000. The Company paid and expensed $0 for these services for the three months ended March 31, 2021, and will expense the balance during 2021 consistent with the terms of the agreement.

NOTE 11 — RECENT ACCOUNTING PRONOUNCEMENTS

In February 2016, the FASB issued ASU No. 2016-02, Leases (Topic 842) ("ASU 2016-02"), which requires lessees to recognize on the balance sheet the assets and liabilities for the rights and obligations created by leases with lease terms of more than twelve (12) months. The recognition, measurement, and presentation of expenses and cash flows arising from a lease by a lessee will continue to primarily depend on its classification as a finance or operating lease. However, unlike current GAAP, which requires only capital leases to be recognized on the balance sheet, ASU 2016-02 will require both types of leases to be recognized on the balance sheet. ASU 2016-02 also requires disclosures about the amount, timing, and uncertainty of cash flows arising from leases. These disclosures include qualitative and quantitative requirements, providing additional information about the amounts recorded in the financial statements. ASU 2016-02 is effective for fiscal years beginning after December 15, 2021, with early application permitted. We have evaluated the adoption of ASU 2016-02 and determined that the standard will not have an impact on the Company's financial statements as the Company currently does not have any lease obligations.

ACURX PHARMACEUTICALS, LLC

NOTES TO THE CONDENSED INTERIM FINANCIAL STATEMENTS (UNAUDITED)

NOTE 12 — COMMITMENTS AND CONTINGENCIES

In conjunction with the Asset purchase in February 2018, the Company is required to make various payments related to the ongoing development of ACX-362E totaling $700,000 in aggregate if certain milestones are achieved, which includes $500,000 following the successful completion of two Phase 3 trial Milestones. The Company is also obligated to make royalty payments equal to 4% of net sales of ACX-362E for a period of time equal to the last to expire of any applicable patents, as defined in the purchase agreement. In December 2018, the Company paid $50,000 to GLSynthesis, Inc. upon successfully achieving the first two Milestones, no Milestones were achieved during 2019 and 2020.

NOTE 13 — SUBSEQUENT EVENTS

The Company has evaluated subsequent events from the balance sheet date through May 10, 2021, the date at which the financial statements were available to be issued, and has not identified any requiring disclosure except as noted below.

On April 13, 2021, the Company was informed by their financial institution that the Small Business Administration has authorized the full forgiveness of the Paycheck Protection Program Loan. Upon legal release of the loan, the Company will reduce the liability and record a gain on extinguishment of debt in the statement of operations.

Acurx Pharmaceuticals, LLC

2,500,000 Shares of Common Stock

Prospectus

Sole Book-Running Manager

Alexander Capital, L.P.

, 2021

Through and including (the 25th day after the date of this prospectus), all dealers effecting transactions in these securities, whether or not participating in this offering, may be required to deliver a prospectus. This is in addition to a dealer's obligation to deliver a prospectus when acting as an underwriter and with respect to an unsold allotment or subscription.

PART II

INFORMATION NOT REQUIRED IN PROSPECTUS

ITEM 13. OTHER EXPENSES OF ISSUANCE AND DISTRIBUTION.

The following table sets forth all costs and expenses, other than underwriting discounts and commissions, paid or payable by the Registrant in connection with the sale of the common stock being registered. All amounts shown are estimates except for the SEC registration fee and the FINRA filing fee:

	Amount
SEC registration fee	$2,196
FINRA filing fee	3,519
Initial listing fee	*
Printing and engraving expenses	*
Legal fees and expenses	*
Accounting fees and expenses	*
Transfer agent and registrar fees and expenses	*
Miscellaneous expenses	*
Total	$ *

* To be filed by amendment.

ITEM 14. INDEMNIFICATION OF DIRECTORS AND OFFICERS.

Section 145(a) of the Delaware General Corporation Law provides, in general, that a corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation), because he or she is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by the person in connection with such action, suit or proceeding, if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the corporation and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful.

Section 145(b) of the Delaware General Corporation Law provides, in general, that a corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor because the person is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees) actually and reasonably incurred by the person in connection with the defense or settlement of such action or suit if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the corporation, except that no indemnification shall be made with respect to any claim, issue or matter as to which he or she shall have been adjudged to be liable to the corporation unless and only to the extent that the Court of Chancery or other adjudicating court determines that, despite the adjudication of liability but in view of all of the circumstances of the case, he or she is fairly and reasonably entitled to indemnity for such expenses that the Court of Chancery or other adjudicating court shall deem proper.

Section 145(g) of the Delaware General Corporation Law provides, in general, that a corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted

against such person and incurred by such person in any such capacity, or arising out of his or her status as such, whether or not the corporation would have the power to indemnify the person against such liability under Section 145 of the Delaware General Corporation Law.

Our Certificate of Incorporation, or the Charter, will provide that no director of our company shall be personally liable to us or our stockholders for monetary damages for any breach of fiduciary duty as a director, except for liability (1) for any breach of the director's duty of loyalty to us or our stockholders, (2) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (3) in respect of unlawful dividend payments or stock redemptions or repurchases, or (4) for any transaction from which the director derived an improper personal benefit. In addition, our Charter will provide that if the Delaware General Corporation Law is amended to authorize the further elimination or limitation of the liability of directors, then the liability of a director of our company shall be eliminated or limited to the fullest extent permitted by the Delaware General Corporation Law, as so amended.

The Charter will further provide that any repeal or modification of such article by our stockholders or amendment to the Delaware General Corporation Law will not adversely affect any right or protection existing at the time of such repeal or modification with respect to any acts or omissions occurring before such repeal or modification of a director serving at the time of such repeal or modification.

Our By-Laws, or the By-Laws, which will become effective upon completion of the offering, will provide that we will indemnify each of our directors and officers and, in the discretion of our board of directors, certain employees, to the fullest extent permitted by the Delaware General Corporation Law as the same may be amended (except that in the case of amendment, only to the extent that the amendment permits us to provide broader indemnification rights than the Delaware General Corporation Law permitted us to provide prior to such the amendment) against any and all expenses, judgments, penalties, fines and amounts reasonably paid in settlement that are incurred by the director, officer or such employee or on the director's, officer's or employee's behalf in connection with any threatened, pending or completed proceeding or any claim, issue or matter therein, to which he or she is or is threatened to be made a party because he or she is or was serving as a director, officer or employee of our company, or at our request as a director, partner, trustee, officer, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of our company and, with respect to any criminal proceeding, had no reasonable cause to believe his or her conduct was unlawful. Article of the By-Laws will further provide for the advancement of expenses to each of our directors and, in the discretion of the board of directors, to certain officers and employees.

In addition, the By-Laws will provide that the right of each of our directors and officers to indemnification and advancement of expenses shall be a contract right and shall not be exclusive of any other right now possessed or hereafter acquired under any statute, provision of the Charter or By-Laws, agreement, vote of stockholders or otherwise. Furthermore, Article VII, Section 7 of the By-Laws will authorize us to provide insurance for our directors, officers and employees, against any liability, whether or not we would have the power to indemnify such person against such liability under the Delaware General Corporation Law or the provisions of Article VII, Section 7 of the By-Laws.

In connection with the sale of common stock being registered hereby, we have entered into Indemnification Agreements with each of our directors and our executive officers. These agreements provide that we will indemnify each of our directors and such officers to the fullest extent permitted by law and the Charter and By-Laws.

We also maintain a general liability insurance policy, which covers certain liabilities of directors and officers of our company arising out of claims based on acts or omissions in their capacities as directors or officers.

In any underwriting agreement we enter into in connection with the sale of common stock being registered hereby, the underwriter will agree to indemnify, under certain conditions, us, our directors, our officers and persons who control us within the meaning of the Securities Act, against certain liabilities.

ITEM 15. RECENT SALES OF UNREGISTERED SECURITIES.

In the three years preceding the filing of this registration statement, we have issued the following securities that were not registered under the Securities Act:

Private Placement Issuances

In January 2018, we issued and sold to investors in a private placement an aggregate of 4,150,000 Class A membership interests at a purchase price of $0.10 per Class A membership interest, for aggregate consideration of $415,000.

On February 5, 2018, we issued 100,000 Class B membership interests to GLSynthesis, Inc. as equity consideration for the purchase of an asset. We valued such interests at the time of issuance at $1.00 per unit.

On March 20, 2018, we issued and sold to investors in a private placement an aggregate of 2,081,500 units, each unit consisting of one Class A membership interest and one warrant to purchase one-half of one Class A membership interest, at a purchase price of $1.00 per unit, for aggregate consideration of $2,081,500.

On May 18, 2018, we issued and sold to investors in a private placement an aggregate of 865,000 units, each unit consisting of one Class A membership interest and one warrant to purchase one-half of one Class A membership interest, at a purchase price of $1.00 per unit, for aggregate consideration of $865,000.

On October 23, 2018, we issued and sold to investors in a private placement an aggregate of 610,008 units, each unit consisting of one Class A membership interest and one warrant to purchase one-half of one Class A membership interest, at a purchase price of $1.50 per unit, for aggregate consideration of $915,012.

On December 21, 2018, we issued and sold to investors in a private placement an aggregate of 73,335 units, each units consisting of one Class A membership interest and one warrant to purchase one-half of one Class A membership interest, at a purchase price of $1.50 per unit, for aggregate consideration of $110,003.

On March 29, 2019, we issued and sold to investors in a private placement an aggregate of 277,000 units, each unit consisting of one Class A membership interest and one warrant to purchase one-half of one Class A membership interest, at a purchase price of $2.00 per unit, for aggregate consideration of $554,000.

On August 8, 2019, we issued and sold to investors in a private placement an aggregate of 1,248,750 units, each unit consisting of one Class A membership interest and one warrant to purchase one-half of one Class A membership interest, at a purchase price of $2.00 per unit, for aggregate consideration of $2,497,500.

On October 18, 2019, we issued and sold to investors in a private placement an aggregate of 483,501 units, each unit consisting of one Class A membership interest and one warrant to purchase one-half of one Class A membership interest, at a purchase price of $2.00 per unit, for aggregate consideration of $967,000.

On January 6, 2020, we issued and sold to investors in a private placement an aggregate of 182,002 units, each unit consisting of one Class A membership interest and one warrant to purchase one-fourth of one Class A membership interest, at a purchase price of $2.50 per unit, for aggregate consideration of $455,005.

On July 20, 2020, we issued and sold to investors in a private placement an aggregate of 533,900 Class A membership interests at a purchase price of $3.25 per Class A membership interest, for aggregate consideration of $1,735,175.

On October 16, 2020, we issued and sold to investors in a private placement an aggregate of 705,727 Class A membership interests at a purchase price of $3.25 per Class A membership interest, for aggregate consideration of $2,293,613.

None of the foregoing transactions involved any underwriters, underwriting discounts or commissions, or any public offering. We believe the offers, sales and issuances of the above securities were exempt from registration under the Securities Act (or Regulation D or Regulation S promulgated thereunder) by virtue of Section 4(a)(2) of the Securities Act because the issuance of securities to the recipients did not involve a public offering. The recipients of the securities in each of these transactions represented their intentions to

acquire the securities for investment only and not with a view to or for sale in connection with any distribution thereof, and appropriate legends were placed upon the stock certificates issued in these transactions. All recipients had adequate access, through their relationships with us, to information about us. The sales of these securities were made without any general solicitation or advertising.

Service-Related Issuances

On January 12, 2021, we issued 700,000 Class B membership interests to each of Messrs. Luci and DeLuccia in accordance with their respective employment agreements as amended and then in effect for services rendered in accordance with their respective employment agreements, as amended. The issuance of our securities in settlement of these accounts was made pursuant to Section 4(a)(2) and Rule 506(b) of the Securities Act. Such Class B membership interests were subsequently cancelled in March 2021.

The above mentioned issuances of unregistered securities do not reflect the conversion ratio of one-half of one share of common stock of Acurx Pharmaceuticals, Inc. for each Class A membership interest or Class B membership interest of Acurx Pharmaceuticals, LLC which shall occur as part of our corporate conversion to take place prior to the effectiveness of this registration statement.

No underwriters were used in the foregoing transactions, and no discounts or commissions were paid. All sales of securities described above were exempt from the registration requirements of the Securities Act in reliance on Section 4(a)(2) of the Securities Act, Rule 701 promulgated under the Securities Act or Regulation D promulgated under the Securities Act, relating to transactions by an issuer not involving a public offering. All of the foregoing securities are deemed restricted securities for purposes of the Securities Act.

ITEM 16. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES.

(a) Exhibits.

Exhibit Number	Description of Exhibit
1.1*	Form of Underwriting Agreement.
2.1	Form of Certificate of Conversion.
3.1	Certificate of Formation, as amended.
3.2	Form of Certificate of Incorporation to be in effect upon completion of the Registrant's conversion from a limited liability company to a corporation.
3.3	Form of By-Laws of the Registrant to be in effect upon completion of the Registrant's conversion from a limited liability company to a corporation.
4.1*	Form of Common Stock Certificate.
5.1*	Opinion of Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.
10.1	Form of Indemnification Agreement.
10.2	Form of Securities Purchase Agreement.
10.3	Form of Warrant.
10.4*	Form of Underwriter Warrant.
10.5	Form of Investor Rights Agreement, by and between the Registrant and certain purchasers.
10.6+*	Executive Employment Agreement, by and between the Registrant and Robert J. DeLuccia, dated , 2021.
10.7+*	Executive Employment Agreement, by and between the Registrant and David P. Luci, dated, 2021.

Exhibit Number	Description of Exhibit
10.8+*	Executive Employment Agreement, by and between the Registrant and Robert Shawah, dated, 2021.
10.9*	2021 Equity Incentive Plan.
10.10	Master Clinical Services Agreement, dated October 11, 2019, by and between the Registrant and Syneos Health, LLC.
10.11#	Asset Purchase Agreement, dated February 5, 2018, by and between the Registrant and GLSynthesis Inc.
23.1*	Consent of CohnReznick LLP.
23.2*	Consent of Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C. (included in Exhibit 5.1).
24.1	Power of Attorney (included on signature page).
99.1	Consent of Joseph C. Scodari to be Named as a Director Nominee.
99.2	Consent of Jack H. Dean to be Named as a Director Nominee.
99.3	Consent of Thomas Harrison to be Named as a Director Nominee.
99.4	Consent of James Donohue to be Named as a Director Nominee.

* To be filed by amendment.

\# Certain confidential portions of this Exhibit were omitted by means of marking such portions with brackets ("[***]") because the identified confidential portions (i) are not material and (ii) would be competitively harmful if publicly disclosed.

\+ Denotes management compensation plan or contract.

(b) Financial Statement Schedules.

No financial statement schedules are provided because the information called for is not required or is shown either in the financial statements or notes.

ITEM 17. UNDERTAKINGS.

The undersigned Registrant hereby undertakes to provide to the underwriter at the closing specified in the underwriting agreement certificates in such denominations and registered in such names as required by the underwriter to permit prompt delivery to each purchaser.

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the SEC such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

The undersigned Registrant hereby undertakes that:

(a) For purposes of determining any liability under the Securities Act, the information omitted from the form of prospectus filed as part of this registration statement in reliance upon Rule 430A and contained in a form of prospectus filed by the registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act shall be deemed to be part of this registration statement as of the time it was declared effective.

(b) For the purpose of determining any liability under the Securities Act, each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, the Registrant has duly caused this registration statement on Form S-1 to be signed on its behalf by the undersigned, thereunto duly authorized, in Staten Island, New York, on the day of , 2021.

ACURX PHARMACEUTICALS, LLC

David P. Luci
President and Chief Executive Officer
(Principal Executive Officer)

SIGNATURES AND POWER OF ATTORNEY

We, the undersigned directors and officers of Acurx Pharmaceuticals, LLC (the "Company"), hereby severally constitute and appoint David P. Luci and Robert G. Shawah, and each of them singly, our true and lawful attorneys, with full power to them, and to each of them singly, to sign for us and in our names in the capacities indicated below, the registration statement on Form S-1 filed herewith, and any and all pre-effective and post-effective amendments to said registration statement, and any registration statement filed pursuant to Rule 462(b) under the Securities Act of 1933, as amended, in connection with the registration under the Securities Act of 1933, as amended, of our equity securities, and to file or cause to be filed the same, with all exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys, 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 each of us might or could do in person, and hereby ratifying and confirming all that said attorneys, and each of them, or their substitute or substitutes, shall do or cause to be done by virtue of this Power of Attorney.

Pursuant to the requirements of the Securities Act of 1933, as amended, this registration statement on Form S-1 has been signed by the following persons in the capacities and on the dates indicated.

Name	Title	Date
David P. Luci	Chief Executive Officer & President *(Principal Executive Officer)*	, 2021
Robert G. Shawah	Vice President, Finance & Chief Accounting Officer *(Principal Financial Officer and Principal Accounting Officer)*	, 2021
Robert J. DeLuccia	Executive Chairman	, 2021
Carl Sailer	Director	, 2021

Exhibit 2.1

STATE OF DELAWARE
CERTIFICATE OF CONVERSION
FROM A LIMITED LIABILITY COMPANY TO A
CORPORATION PURSUANT TO SECTION 265 OF
THE DELAWARE GENERAL CORPORATION LAW

1.) The jurisdiction where the Limited Liability Company first formed is Delaware.

2.) The jurisdiction immediately prior to filing this Certificate is Delaware.

3.) The date the Limited Liability Company first formed is July 19, 2017.

4.) The name of the Limited Liability Company immediately prior to filing this Certificate is Acurx Pharmaceuticals, LLC.

5.) The name of the Corporation as set forth in the Certificate of Incorporation is Acurx Pharmaceuticals, Inc.

IN WITNESS WHEREOF, the undersigned being duly authorized to sign on behalf of the converting Limited Liability Company have executed this Certificate on the_____day of_____, A.D._____.

By:_____

Name:_____
Print or Type

Title: _____
Print or Type

Exhibit 3.1

Certificate of Formation

of

Ampex Pharmaceuticals, LLC

Under Section 18-201 of the Delaware Limited Liability Company Act

The undersigned, desiring to organize a limited liability company pursuant to the Delaware Limited Liability Company Act, does hereby certify:

FIRST: The name of the limited liability company is:

Ampex Pharmaceuticals, LLC

SECOND: The address of its registered office in the State of Delaware is 251 Little Falls Drive, Wilmington, Delaware 19808, in the county of New Castle. The name of the limited liability company's registered agent at such address is Corporation Service Company.

IN WITNESS WHEREOF, the undersigned has executed this Certificate this 19th day of July, 2017.

/s/ John A. Jadhon, Esq.
John A. Jadhon, Esq.
Authorized Person

65160.1

State of Delaware
Secretary of State
Division of Corporations
Delivered 03:18 PM 07/19/2017
FILED 03:18 PM 07/19/2017
SR 20175316223 - File Number 6484577

STATE OF DELAWARE
CERTIFICATE OF AMENDMENT

1. Name of Limited Liability Company: Ampex Pharmaceuticals, LLC

2. The Certificate of Formation of the limited liability company is hereby amended as follows:

1. The name of the limited liability company is: Acerx Pharmaceuticals, LLC

IN WITNESS WHEREOF, the undersigned have executed this Certificate on the 11th day of December, A.D. 2017 .

By: /s/ David P. Luci
Authorized Person(s)

Name: David P. Luci, Member
Print or Type

CERTIFICATE OF INCORPORATION

OF

ACURX PHARMACEUTICALS, INC.

The undersigned, a natural person, for the purpose of organizing a corporation for conducting the business and promoting the purposes hereinafter stated, under the provisions and subject to the requirements of the laws of the State of Delaware (particularly Chapter 1, Title 8 of the Delaware Code and the acts amendatory thereof and supplemental thereto, and known, identified and referred to as the "**Delaware General Corporation Law**"), hereby certifies that:

FIRST: The name of the corporation (the "**Corporation**") is

ACURX PHARMACEUTICALS, INC.

SECOND: The address, including street, number, city, and county, of the registered office of the Corporation in the State of Delaware is 251 Little Falls Drive, Wilmington, Delaware 19808; and the name of the registered agent of the Corporation in the State of Delaware is Corporation Service Company.

THIRD: The purpose of the Corporation is to engage in any lawful act or activity or carry on any business for which corporations may be organized under the Delaware General Corporation Law or any successor statute.

FOURTH: The capital stock of the Corporation shall be as follows:

(a) The total number of shares of all classes of stock which the Corporation shall have authority to issue is 210,000,000, consisting of 200,000,000 shares of common stock, $0.001 par value per share (the "**Common Stock**"). The holders of record of the Common Stock are entitled to one vote per share on all matters to be voted on (or consent to) by the Corporation's stockholders. Dividends may be declared and paid *pro rata* on the Common Stock from funds lawfully available therefor and after provision is made for each class of capital stock having preference over the Common Stock if, as and when determined by the Board of Directors of the Corporation (the "**Board of Directors**") in their sole discretion, subject to provisions of law, any provision of this Certificate of Incorporation, as amended from time to time. Upon the dissolution, liquidation or winding up of the Corporation, whether voluntary or involuntary, after payment or provision for payment of the debts and other liabilities of the Corporation and subject to the rights, if any, of the holders of any outstanding series of Preferred Stock or any class or series of stock having a preference over or the right to participate with the Common Stock with respect to the distribution of assets of the Corporation upon such dissolution, liquidation or winding up of the Corporation, holders of record of the Common Stock will be entitled to receive *pro rata* all assets of the Corporation available for distribution to its stockholders, subject, however, to the liquidation rights of the holders of Preferred Stock authorized, issued and outstanding hereunder.

(b) Shares of Preferred Stock may be issued from time to time in one or more series. The Board of Directors is hereby expressly authorized, by resolution or resolutions, to provide from time to time, out of the authorized, unissued shares of Preferred Stock, for one or more series of Preferred Stock, and, with respect to each such series, to fix, without further stockholder approval, the designation of such series, and the powers (including voting powers, if any), privileges, preferences and relative, participating, optional and other special rights (including voting rights, dividend rights, conversion rights, redemption privileges and liquidation preferences), if any, and any qualifications, limitations or restrictions thereof, of the shares of such series of Preferred Stock, and unless otherwise provided in the designation of such series, the Board of Directors may increase (but not above the total number of authorized shares of Preferred Stock) or decrease (but not below the number of shares of such series then outstanding) the number of shares of such series, and if the number of shares of such series shall be decreased, the shares constituting such decrease shall resume the status that they had prior to the adoption of the resolution originally fixing the number of shares of such series. The powers, privileges, preferences and relative, participating, optional and other special rights of, and the qualifications, limitations or restrictions thereof, of each series of Preferred Stock, if any, may differ from those of any and all other series at any time outstanding. Except as otherwise required by law, holders of any series of Preferred Stock shall be entitled to only such voting rights, if any, as shall expressly be granted thereto by this Certificate (including any certificate of designation relating to such series of Preferred Stock).

(c) The Corporation has the authority to create and issue rights, warrants, options and other convertible securities entitling the holders thereof to purchase shares of any class or series of the Corporation's capital stock or other securities of the Corporation, and such rights, warrants, options and other convertible securities shall be evidenced by instrument(s) approved by the Board of Directors. The Board of Directors is empowered to set the exercise price, duration, times for exercise and other terms and conditions of such rights, warrants, options or other convertible securities; provided, however, that the consideration to be received for any shares of capital stock subject thereto may not be less than the par value thereof

FIFTH: The name and mailing address of the sole incorporator is as follows:

Name	Mailing Address
Kostantinos Skordalos	Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C. 666 Third Avenue, New York, NY 10017

SIXTH: The Corporation is to have perpetual existence.

SEVENTH: For the management of the business and for the conduct of the affairs of the Corporation, and in further definition and not in limitation of the powers of the Corporation and of its directors and of its stockholders or any class thereof, as the case may be, conferred by the State of Delaware, it is further provided that:

(a) The management of the business and the conduct of the affairs of the Corporation shall be vested in its Board of Directors. The number of directors which shall constitute the whole Board of Directors shall be fixed by, or in the manner provided in, the Bylaws of the Corporation. The phrase "whole Board" and the phrase "total number of directors" shall be deemed to have the same meaning, to wit, the total number of directors which the Corporation would have if there were no vacancies. No election of directors need be by written ballot.

(b) After the original or other Bylaws of the Corporation have been adopted, amended or repealed, as the case may be, in accordance with the provisions of Section 109 of the Delaware General Corporation Law, and, after the Corporation has received any payment for any of its stock, the power to adopt, amend, or repeal the Bylaws of the Corporation may be exercised by the Board of Directors. The stockholders may not adopt, amend, alter or repeal the Bylaws of the Corporation, or adopt any provision inconsistent therewith, unless such action is approved, in addition to any other vote required by this Certificate of Incorporation, by the affirmative vote of the holders of at least sixty-six and two-thirds percent ($66^{2/3}$%) of voting power of the outstanding shares of capital stock of the Corporation entitled to vote thereon.

(c) The books of the Corporation may be kept at such place within or without the State of Delaware as the Bylaws of the Corporation may provide or as may be designated from time to time by the Board of Directors.

(d) Effective as of the closing of the Corporation's first public offering of shares of Common Stock registered pursuant to the Securities Act of 1933, as amended, subject to the rights of the holders of any series of Preferred Stock, the Board of Directors shall be divided into three classes (the "**Classified Board**"), as nearly equal in number as possible and designated as class one (1) Directors ("**Class I Directors**"), class two (2) Directors ("**Class II Directors**") and class three (3) Directors ("**Class III Directors**"). The Board of Directors is authorized to assign members of the Board of Directors already in office at the time of the closing of the Corporation's first public offering, or who have agreed to become directors subject to the closing of such public offering, as Class I Directors, Class II Directors and Class III Directors, which assignments shall become effective at the same time that the Classified Board becomes effective.

(e) Subject to the rights of holders of any series of Preferred Stock to elect directors, the term of the initial Class I Directors shall expire at the first annual meeting of the stockholders of the Corporation following the effectiveness of this amendment to the Certificate; the term of the initial Class II Directors shall expire at the second annual meeting of the stockholders of the Corporation following the effectiveness of this amendment to the Certificate; and the term of the initial Class III Directors shall expire at the third annual meeting of the stockholders of the Corporation following the effectiveness of this amendment to the Certificate. At each succeeding annual meeting of the stockholders of the Corporation, beginning with the first annual meeting of the stockholders of the Corporation following the effectiveness of this amendment to the Certificate, successors to the class of Directors whose term expires at that annual meeting shall be elected to hold office until the third succeeding annual meeting. Subject to the rights of the holders of any series of Preferred Stock, if the number of Directors is changed, any increase or decrease shall be apportioned by the Board of Directors among the classes so as to maintain the number of Directors in each class as nearly equal as possible. Subject to the rights of the holders of any series of Preferred Stock, if the number of directors is increased by the Board of Directors and any newly created directorships are filled by the Board of Directors, there shall be no classification of the additional Directors until the next annual meeting of stockholders.

(f) Advance notice of stockholder nominations for election of directors and other business to be brought by stockholders before a meeting of stockholders shall be given in the manner provided by the Bylaws of the Corporation.

(g) Subject to the rights of holders of any series of Preferred Stock, directors of the Corporation may be removed but only for cause and only by the affirmative vote of the holders of at least sixty-six and two-thirds percent ($66^{2/3}\%$) of voting power of the outstanding shares of capital stock of the Corporation entitled to vote at an election of directors.

(h) Notwithstanding any other provisions of law, this Certificate of Incorporation or the Bylaws of the Corporation, and notwithstanding the fact that a lesser percentage may be specified by law, the affirmative vote of the holders of at least sixty-six and two-thirds percent ($66^{2/3}\%$) of voting power of the outstanding shares of capital stock of the Corporation entitled to vote thereon shall be required to amend or repeal, or to adopt any provision inconsistent with, this Article SEVENTH.

EIGHTH: No action that is required or permitted to be taken by the stockholders of the Corporation at any annual or special meeting of stockholders may be effected by written consent of stockholders in lieu of a meeting. Notwithstanding any other provisions of law, this Certificate of Incorporation or the Bylaws of the Corporation, and notwithstanding the fact that a lesser percentage may be specified by law, the affirmative vote of the holders of at least sixty-six and two-thirds percent ($66^{2/3}\%$) of voting power of the outstanding shares of capital stock of the Corporation entitled to vote thereon shall be required to amend or repeal, or to adopt any provision inconsistent with, this Article EIGHTH.

NINTH: Special meetings of stockholders for any purpose or purposes may be called at any time only by (a) our Board of Directors pursuant to a resolution approved by a majority of our Board of Directors or (b) the chairperson of the Board of Directors, and may not be called by any other person or persons. Business transacted at any special meeting of stockholders shall be limited to the purpose or purposes stated in the notice of meeting. Notwithstanding any other provisions of law, this Certificate of Incorporation or the Bylaws of the Corporation, and notwithstanding the fact that a lesser percentage may be specified by law, the affirmative vote of the holders of at least sixty-six and two-thirds percent ($66^{2/3}\%$) of voting power of the outstanding shares of capital stock of the Corporation entitled to vote thereon shall be required to amend or repeal, or to adopt any provision inconsistent with, this Article NINTH.

TENTH: The Corporation shall, to the fullest extent permitted by Section 145 of the Delaware General Corporation Law, as the same may be amended and supplemented from time to time, indemnify and advance expenses to, (i) its directors and officers, and (ii) any person who at the request of the Corporation is or was serving as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, from and against any and all of the expenses, liabilities, or other matters referred to in or covered by said section as amended or supplemented (or any successor), provided, however, that except with respect to proceedings to enforce rights to indemnification, the Bylaws of the Corporation may provide that the Corporation shall indemnify any director, officer or such person in connection with a proceeding (or part thereof) initiated by such director, officer or such person only if such proceeding (or part thereof) was authorized by the Board of Directors. The Corporation, by action of its Board of Directors, may provide indemnification or advance expenses to employees and agents of the Corporation or other persons only on such terms and conditions and to the extent determined by the Board of Directors in its sole and absolute discretion. The indemnification provided for herein shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any Bylaw, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in their official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee, or agent and shall inure to the benefit of the heirs, executors and administrators of such a person. Notwithstanding any other provisions of law, this Certificate of Incorporation or the Bylaws of the Corporation, and notwithstanding the fact that a lesser percentage may be specified by law, the affirmative vote of the holders of at least sixty-six and two-thirds percent ($66^{2/3}\%$) of voting power of the outstanding shares of capital stock of the Corporation entitled to vote thereon shall be required to amend or repeal, or to adopt any provision inconsistent with, this Article TENTH.

ELEVENTH: No director of the Corporation shall be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director except to the extent that exemption from liability or limitation thereof is not permitted under the Delaware General Corporation Law as in effect at the time such liability or limitation thereof is determined. No amendment, modification or repeal of this Article ELEVENTH or adoption of any provision of this Certificate of Incorporation inconsistent with this Article ELEVENTH shall apply to or have any effect on the liability or alleged liability of any director of the Corporation for or with respect to any acts or omissions of such director occurring prior to such amendment, modification, repeal or adoption. If the Delaware General Corporation Law is amended after approval by the stockholders of this Article ELEVENTH to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of the directors of the Corporation shall be eliminated or limited to the fullest extent permitted by the Delaware General Corporation Law, as so amended. Notwithstanding any other provisions of law, this Certificate of Incorporation or the Bylaws of the Corporation, and notwithstanding the fact that a lesser percentage may be specified by law, the affirmative vote of the holders of at least sixty-six and two-thirds percent ($66^{2/3}\%$) of voting power of the outstanding shares of capital stock of the Corporation entitled to vote thereon shall be required to amend or repeal, or to adopt any provision inconsistent with, this Article ELEVENTH.

TWELFTH: Unless the Corporation consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware shall, to the fullest extent permitted by law, be the sole and exclusive forum for (i) any derivative action or proceeding brought on behalf of the Corporation; (ii) any action asserting a claim of breach of a fiduciary duty owed by any Director, officer or other employee of the Corporation to the Corporation or the Corporation's stockholders, creditors or other constituents; (iii) any action asserting a claim against the Corporation or any Director or officer of the Corporation arising pursuant to, or a claim against the Corporation or any Director or officer of the Corporation with respect to the interpretation or application of any provision of, the DGCL, this Certificate or the Bylaws of the Corporation; or (iv) any action asserting a claim governed by the internal affairs doctrine, in each such case subject to said court having personal jurisdiction over the indispensable parties named as defendants therein; provided, that, if and only if the Court of Chancery of the State of Delaware dismisses any such action for lack of subject matter jurisdiction, such action may be brought in another state court sitting in the State of Delaware. To the fullest extent permitted by law, any person or entity purchasing or otherwise acquiring any interest in shares of capital stock of the Corporation shall be deemed to have notice of and consented to the provisions of this Article IX. Notwithstanding any other provisions of law, this Certificate of Incorporation or the Bylaws of the Corporation, and notwithstanding the fact that a lesser percentage may be specified by law, the affirmative vote of the holders of at least sixty-six and two-thirds percent ($66^{2/3}\%$) of voting power of the outstanding shares of capital stock of the Corporation entitled to vote thereon shall be required to amend or repeal, or to adopt any provision inconsistent with, this Article TWELFTH. If any provision or provisions of this Article TWELFTH shall be held to be invalid, illegal or unenforceable as applied to any person or entity or circumstance for any reason whatsoever, then, to the fullest extent permitted by law, the validity, legality and enforceability of such provisions in any other circumstance and of the remaining provisions of this Article TWELFTH (including, without limitation, each portion of any sentence of this Article TWELFTH containing any such provision held to be invalid, illegal or unenforceable that is not itself held to be invalid, illegal or unenforceable) and the application of such provision to other persons or entities and circumstances shall not in any way be affected or impaired thereby.

THIRTEENTH: Whenever a compromise or arrangement is proposed between this Corporation and its creditors or any class of them and/or between this Corporation and its stockholders or any class of them, any court of equitable jurisdiction within the State of Delaware may, on the application in a summary way of the Corporation or of any creditor or stockholder thereof or on the application of any receiver or receivers appointed for the Corporation under the provisions of Section 291 of Title 8 of the Delaware Code or on the application of trustees in dissolution or of any receiver or receivers appointed for the Corporation under the provisions of Section 279 of Title 8 of the Delaware Code, order a meeting of the creditors or class of creditors, and/or of the stockholders or class of stockholders of the Corporation, as the case may be, to be summoned in such manner as the said court directs. If a majority in number representing three-fourths in value of the creditors or class of creditors, and/or of the stockholders or class of stockholders of the Corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of the Corporation as consequence of such compromise or arrangement, the said compromise or arrangement and the said reorganization shall, if sanctioned by the court to which the said application has been made, be binding on all the creditors or class of creditors, and/or on all the stockholders or class of stockholders, of the Corporation, as the case may be, and also on the Corporation.

FOURTEENTH: From time to time any of the provisions of this Certificate of Incorporation may be amended, altered or repealed, and other provisions authorized by the laws of the State of Delaware at the time in force may be added or inserted in the manner and at the time prescribed by said laws, and all rights at any time conferred upon the stockholders of the Corporation by this Certificate of Incorporation are granted subject to the provisions of this Article FOURTEENTH.

I, the undersigned, being the sole incorporator, for the purpose of forming a Corporation under the laws of the State of Delaware, do make, file and record this Certificate of Incorporation, to certify that the facts herein stated are true, and accordingly have hereto set my hand this __ day of _____, 2021.

Kostantinos Skordalos

Exhibit 3.3

ACURX PHARMACEUTICALS, INC.

BYLAWS

Table of Contents

ARTICLE I
STOCKHOLDERS

Section 1. Annual Meeting.

An annual meeting of the stockholders, for the election of directors to succeed those whose terms expire and for the transaction of such other business as may properly come before the meeting, shall be held each year at ten o'clock a.m. or such other time as is determined by the Board of Directors, on such date (other than a Saturday, Sunday or legal holiday) as is determined by the Board of Directors and at such place as the Board of Directors shall each year fix. If no date for the annual meeting is fixed or said meeting is not held on the date determined as provided above, there may be action by written consent of the stockholders on matters to be voted on at the annual meeting, and such written consent shall have for the purposes of these Bylaws or otherwise all the force and effect of an annual meeting.

Section 2. Notice of Stockholder Business and Nominations

(a) Annual Meetings of Stockholders.

(1) Nominations of persons for election to the Board of Directors and the proposal of other business to be considered by the stockholders may be brought before an Annual Meeting only (i) pursuant to the Corporation's notice of meeting (or any supplement thereto), (ii) by or at the direction of the Board of Directors or (iii) by any stockholder of the Corporation who was a stockholder of record at the time of giving of notice provided for in this Bylaw, who is entitled to vote at the meeting, and who complies with the notice procedures set forth in this Bylaw as to such nomination or business. For the avoidance of doubt, the foregoing clause (iii) shall be the exclusive means for a stockholder to bring nominations or business properly before an Annual Meeting (other than matters properly brought under Rule 14a-8 (or any successor rule) under the Securities Exchange Act of 1934, as amended (with the rules and regulations promulgated thereunder, the "Exchange Act")), and such stockholder must comply with the notice and other procedures set forth in Article I, Section 2 of this Bylaw to bring such nominations or business properly before an Annual Meeting. In addition to the other requirements set forth in this Bylaw, for any proposal of business (other than the nomination of persons for election to the Board of Directors) to be considered at an Annual Meeting, it must be a proper subject for action by stockholders of the Corporation under Delaware law.

(2) For nominations or other business to be properly brought before an Annual Meeting by a stockholder pursuant to clause (iii) of Article I, Section 2(a)(1) of this Bylaw, the stockholder must (i) have given Timely Notice (as defined below) thereof in writing to the Secretary of the Corporation, (ii) have provided any updates or supplements to such notice at the times and in the forms required by this Bylaw and (iii) together with the beneficial owner(s), if any, on whose behalf the nomination or business proposal is made, have acted in accordance with the representations set forth in the Solicitation Statement (as defined below) required by this Bylaw. To be timely, a stockholder's written notice shall be received by the Secretary at the principal executive offices of the Corporation not later than the close of business on the ninetieth (90th) day nor earlier than the close of business on the one hundred twentieth (120th) day prior to the one-year anniversary of the preceding year's Annual Meeting; provided, however, that in the event the Annual Meeting is first convened more than thirty (30) days before or more than sixty (60) days after such anniversary date, or if no Annual Meeting were held in the preceding year, notice by the stockholder to be timely must be received by the Secretary of the Corporation not later than the close of business on the later of the ninetieth (90th) day prior to the scheduled date of such Annual Meeting or the tenth (10th) day following the day on which public announcement of the date of such meeting is first made (such notice within such time periods shall be referred to as "Timely Notice"). Notwithstanding anything to the contrary provided herein, for the first Annual Meeting following the effective date of the Corporation's registration statement submitted with the U.S. Securities and Exchange Commission, a stockholder's notice shall be timely if received by the Secretary at the principal executive offices of the Corporation not later than the close of business on the later of the ninetieth (90th) day prior to the scheduled date of such Annual Meeting or the tenth (10th) day following the day on which public announcement of the date of such Annual Meeting is first made or sent by the Corporation. In no event shall the public announcement of an adjournment or postponement of an annual meeting commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above. Such stockholder's Timely Notice shall set forth:

(A) as to each person whom the stockholder proposes to nominate for election or reelection as a director, all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors in an election contest, or is otherwise required, in each case pursuant to Regulation 14A under the Exchange Act (including such person's written consent to being named in the proxy statement as a nominee and to serving as a director if elected) provided, further, that the Corporation may require any proposed nominee to furnish such other information as the Corporation may reasonably require to determine the eligibility of such proposed nominee to serve as a director of the Corporation.;

(B) as to any other business that the stockholder proposes to bring before the meeting, a brief description of the business desired to be brought before the meeting, the text of the proposal or business (including the text of any resolutions proposed for consideration and in the event that such business includes a

proposal to amend the Corporation's bylaws (the "Bylaws"), the language of the proposed amendment), the reasons for conducting such business at the meeting, and any material interest in such business of each Proposing Person (as defined below);

(C) (i) the name and address of the stockholder giving the notice, as they appear on the Corporation's books, and the names and addresses of the other Proposing Persons (if any) and (ii) as to each Proposing Person, the following information: (a) the class or series and number of all shares of capital stock of the Corporation which are, directly or indirectly, owned beneficially or of record by such Proposing Person or any of its affiliates or associates (as such terms are defined in Rule 12b-2 promulgated under the Exchange Act), including any shares of any class or series of capital stock of the Corporation as to which such Proposing Person or any of its affiliates or associates has a right to acquire beneficial ownership at any time in the future, (b) all Synthetic Equity Interests (as defined below) in which such Proposing Person or any of its affiliates or associates, directly or indirectly, holds an interest including a description of the material terms of each such Synthetic Equity Interest, including without limitation, identification of the counterparty to each such Synthetic Equity Interest and disclosure, for each such Synthetic Equity Interest, as to (x) whether or not such Synthetic Equity Interest conveys any voting rights, directly or indirectly, in such shares to such Proposing Person, (y) whether or not such Synthetic Equity Interest is required to be, or is capable of being, settled through delivery of such shares and (z) whether or not such Proposing Person and/or, to the extent known, the counterparty to such Synthetic Equity Interest has entered into other transactions that hedge or mitigate the economic effect of such Synthetic Equity Interest, (c) any proxy (other than a revocable proxy given in response to a public proxy solicitation made pursuant to, and in accordance with, the Exchange Act), agreement, arrangement, understanding or relationship pursuant to which such Proposing Person has or shares a right to, directly or indirectly, vote any shares of any class or series of capital stock of the Corporation, (d) any rights to dividends or other distributions on the shares of any class or series of capital stock of the Corporation, directly or indirectly, owned beneficially by such Proposing Person that are separated or separable from the underlying shares of the Corporation, and (e) any performance-related fees (other than an asset based fee) that such Proposing Person, directly or indirectly, is entitled to based on any increase or decrease in the value of shares of any class or series of capital stock of the Corporation or any Synthetic Equity Interests (the disclosures to be made pursuant to the foregoing clauses (a) through (e) are referred to, collectively, as "Material Ownership Interests"), (iii) a description of the material terms of all agreements, arrangements or understandings (whether or not in writing) entered into by any Proposing Person or any of its affiliates or associates with any other person for the purpose of acquiring, holding, disposing or voting of any shares of any class or series of capital stock of the Corporation and (iv) any other information relating to such stockholder and beneficial owner, if any, required to be disclosed in a proxy statement or other filings required to be made in connection with the solicitation of proxies for, as applicable, the proposal and/or for the election of directors in an election contest pursuant to and in accordance with Section 14(a) of the Exchange Act and the rules and regulations promulgated thereunder;

(D) (i) a description of all agreements, arrangements or understandings by and among any of the Proposing Persons, or by and among any Proposing Persons and any other person (including with any proposed nominee(s)), pertaining to the nomination(s) or other business proposed to be brought before the meeting of stockholders (which description shall identify the name of each other person who is party to such an agreement, arrangement or understanding), and (ii) identification of the names and addresses of other stockholders (including beneficial owners) known by any of the Proposing Persons to support such nominations or other business proposal(s), and to the extent known the class and number of all shares of the Corporation's capital stock owned beneficially or of record by such other stockholder(s) or other beneficial owner(s); and

(E) a statement whether or not the stockholder giving the notice and/or the other Proposing Person(s), if any, will (i) deliver a proxy statement and form of proxy to holders of, in the case of a business proposal, at least the percentage of voting power of all of the shares of capital stock of the Corporation required under applicable law to approve the proposal or, in the case of a nomination or nominations, at least the percentage of voting power of all of the shares of capital stock of the Corporation reasonably believed by such Proposing Person to be sufficient to elect the nominee or nominees proposed to be nominated by such stockholder and/or (ii) otherwise solicit proxies or votes from stockholders in support of such proposal or nomination (such statement, the "Solicitation Statement").

For purposes of this Article I of these Bylaws, the term "Proposing Person" shall mean the following persons: (i) the stockholder of record providing the notice of nominations or business proposed to be brought before a stockholders' meeting, and (ii) the beneficial owner(s), if different, on whose behalf the nominations or business proposed to be brought before a stockholders' meeting is made. For purposes of this Section 2 of Article I of these Bylaws, the term "Synthetic Equity Interest" shall mean any transaction, agreement or arrangement (or series of transactions, agreements or arrangements), including, without limitation, any derivative, swap, hedge, repurchase or so-called "stock borrowing" agreement or arrangement, the purpose or effect of which is to, directly or indirectly: (a) give a person or entity economic benefit and/or risk similar to ownership of shares of any class or series of capital stock of the Corporation, in whole or in part, including due to the fact that such transaction, agreement or arrangement provides, directly or indirectly, the opportunity to profit or avoid a loss from any increase or decrease in the value of any shares of any class or series of capital stock of the Corporation, (b) mitigate loss to, reduce the economic risk of or manage the risk of share price changes for, any person or entity with respect to any shares of any class or series of capital stock of the Corporation, (c) otherwise provide in any manner the opportunity to profit or avoid a loss from any decrease in the value of any shares of any class or series of capital stock of the Corporation, or (d) increase or decrease the voting power of any person or entity with respect to any shares of any class or series of capital stock of the Corporation.

(3) A stockholder providing Timely Notice of nominations or business proposed to be brought before an Annual Meeting shall further update and supplement such notice, if necessary, so that the information (including, without limitation, the Material Ownership Interests information) provided or required to be provided in such notice pursuant to this Bylaw shall be true and correct as of the record date for the meeting and as of the date that is ten (10) business days prior to such Annual Meeting, and such update and supplement shall be received by the Secretary at the principal executive offices of the Corporation not later than the close of business on the fifth (5th) business day after the record date for the Annual Meeting (in the case of the update and supplement required to be made as of the record date), and not later than the close of business on the eighth (8th) business day prior to the date of the Annual Meeting (in the case of the update and supplement required to be made as of ten (10) business days prior to the meeting).

(4) Notwithstanding anything in the second sentence of Article I, Section 2(a)(2) of this Bylaw to the contrary, in the event that the number of directors to be elected to the Board of Directors of the Corporation is increased and there is no public announcement naming all of the nominees for director or specifying the size of the increased Board of Directors made by the Corporation at least ten (10) days before the last day a stockholder may deliver a notice of nomination in accordance with the second sentence of Article I, Section 2(a)(2), a stockholder's notice required by this Bylaw shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if it shall be received by the Secretary of the Corporation not later than the close of business on the tenth (10th) day following the day on which such public announcement is first made by the Corporation.

(5) Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to the Corporation's notice of meeting. Nominations for persons for election to the Board of Directors may be made at a special meeting of stockholders at which directors are to be elected pursuant to the Corporation's notice of meeting (i) by or at the direction of the Board of Directors or any committee thereof or (ii) provided that the Board of Directors has determined that directors shall be elected at such meeting, by any stockholder of the Corporation who is a stockholder of record at the time the notice provided for in this Section 2 is delivered to the Secretary of the Corporation, who is entitled to vote at the meeting and upon such election and who complies with the notice procedures set forth in this Section 2. In the event the Corporation calls a special meeting of stockholders for the purpose of electing one or more directors to the Board of Directors, any such stockholder entitled to vote in such election of directors may nominate a person or persons (as the case may be) for election to such position(s) as specified in the Corporation's

notice of meeting, if the stockholder's notice required by paragraph (a)(2) of this Section 2 shall be delivered to the Secretary at the principal executive offices of the Corporation not earlier than the close of business on the one hundred twentieth (120th) day prior to such special meeting and not later than the close of business on the later of the ninetieth (90th) day prior to such special meeting or the tenth (10th) day following the day on which public announcement is first made of the date of the special meeting and of the nominees proposed by the Board of Directors to be elected at such meeting. In no event shall the public announcement of an adjournment or postponement of a special meeting commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above.

(b) General.

(1) Except as otherwise expressly provided in any applicable rule or regulation promulgated under the Exchange Act, only such persons who are nominated in accordance with the provisions of this Bylaw shall be eligible for election and to serve as directors and only such business shall be conducted at a meeting as shall have been brought before the meeting in accordance with the provisions of this Bylaw. The Board of Directors or a designated committee thereof shall have the power to determine whether a nomination or any business proposed to be brought before the meeting was made in accordance with the provisions of this Bylaw. If prior to the meeting neither the Board of Directors nor such designated committee makes a determination as to whether any stockholder proposal or nomination was made in accordance with the provisions of this Bylaw, the presiding officer of the meeting shall have the power and duty to determine whether the stockholder proposal or nomination was made in accordance with the provisions of this Bylaw. If the Board of Directors or a designated committee thereof or the presiding officer, as applicable, determines that any stockholder proposal or nomination was not made in accordance with the provisions of this Bylaw, such proposal or nomination shall be disregarded and shall not be presented for action at the meeting.

(2) Except as otherwise required by any applicable law or rule or regulation promulgated under the Exchange Act, nothing in this Article I, Section 2 shall obligate the Corporation or the Board of Directors to include in any proxy statement or other stockholder communication distributed on behalf of the Corporation or the Board of Directors information with respect to any nominee for director or any other matter of business submitted by a stockholder.

(3) Notwithstanding the foregoing provisions of this Article I, Section 2, if the proposing stockholder (or a qualified representative of the stockholder) does not appear at the meeting to present a nomination or any business, such nomination or business shall be disregarded, notwithstanding that proxies in respect of such vote may have been received by the Corporation. For purposes of this Article I, Section 2, to be considered a qualified representative of the proposing stockholder, a person must be authorized by a written instrument executed by such stockholder or an electronic transmission delivered by such stockholder to act for such stockholder as proxy at the meeting of stockholders and such person must produce such written instrument or electronic transmission, or a reliable reproduction of the written instrument or electronic transmission, to the presiding officer at the meeting of stockholders.

(4) For purposes of this Bylaw, "public announcement" shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or comparable national news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the Exchange Act.

(5) Notwithstanding the foregoing provisions of this Bylaw, a stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth in this Bylaw. Nothing in this Bylaw shall be deemed to affect any rights of (i) stockholders to have proposals included in the Corporation's proxy statement pursuant to Rule 14a-8 (or any successor rule) under the Exchange Act and, to the extent required by such rule, have such proposals considered and voted on at an Annual Meeting or (ii) the holders of any series of Preferred Stock as specified in the Certificate, as the same may hereafter be amended and/or restated, including any certificate of designation relating to any series of Preferred Stock.

(6) In addition to the requirements set forth elsewhere in these Bylaws, to be eligible to be a nominee for election or re-election as a director of the Corporation pursuant to a nomination under clause (iii) of Article I, Section 2(a)(1) and under clause (ii) of Article I, Section 2(a)(5) of this Bylaw, such proposed nominee or a person on such proposed nominee's behalf must deliver, in accordance with the time periods for delivery of Timely Notice under Section 2(a)(2) of Article 1 and under clause (ii) of Article I, Section 2(a)(5) of this Bylaw, to the Secretary of the Corporation at the principal executive offices of the Corporation a completed and signed questionnaire with respect to the background and qualification of such proposed nominee and the background of any other person or entity on whose behalf the nomination is being made (which questionnaire shall be provided by the Secretary upon written request) and a written representation and agreement (in the form provided by the Secretary upon written request) that such proposed nominee (i) is not and will not become a party to (A) any agreement, arrangement or understanding with, and has not given any commitment or assurance to, any person or entity as to how such proposed nominee, if elected as a director of the Corporation, will act or vote on any issue or question (a "Voting Commitment") that has not been disclosed to the Corporation or (B) any Voting Commitment that could limit or interfere with such proposed nominee's fiduciary duties under applicable law, (ii) is not and will not become a party to any agreement, arrangement or understanding with any person or entity other than the Corporation with respect to any direct or indirect compensation, reimbursement or indemnification in connection with service or action as a director that has not been disclosed to the Corporation, and (iii) in such proposed nominee's individual capacity and on behalf of any person or entity on whose behalf the nomination is being made, would be in compliance, if elected as a director of the Corporation, and will comply with, all applicable publicly disclosed corporate governance, code of conduct and ethics, conflict of interest, confidentiality, corporate opportunities, trading and any other policies and guidelines of the Corporation applicable to directors

Section 3. Special Meetings.

Subject to the rights of the holders of any class or series of preferred stock of the Corporation, special meetings of stockholders of the Corporation may be called only by (a) our Board of Directors pursuant to a resolution approved by a majority of our Board of Directors or (b) the chairperson of the Board of Directors, and may not be called by any other person or persons. Business transacted at any special meeting of stockholders shall be limited to the purpose or purposes stated in the notice of meeting. Special meetings of the stockholders may be held at such place within or without the State of Delaware as may be stated in such resolution. Only the purposes specified in the notice of special meeting shall be considered or dealt with at such special meeting.

Section 4. Notice of Meetings.

Written notice of the place (unless such meeting is to be held solely by means of remote communication), date, and time of all meetings of the stockholders, the record date for determining the stockholders entitled to vote at such meeting (if such date is different from the record date for stockholders entitled to notice of the meeting) and the means of remote communication, if any, shall be given in conformity with Article VI of these Bylaws, not less than ten (10) nor more than sixty (60) days before the date on which the meeting is to be held, to each stockholder entitled to vote at such meeting, except as otherwise provided herein or required by law (meaning, here and hereinafter, as required from time to time by the Delaware General Corporation Law or the Certificate of Incorporation of the Corporation (as amended from time to time, the "**Certificate of Incorporation**")).

When a meeting is adjourned to another place, date or time, written notice need not be given of the adjourned meeting if the place or means of remote communication, date and time thereof are announced at the meeting at which the adjournment is taken; *provided, however*, that if the date of any adjourned meeting is more than thirty (30) days

after the date for which the meeting was originally noticed, or if a new record date is fixed for the adjourned meeting, written notice of the place (unless such meeting is to be held solely by means of remote communication), date, means of remote communication, if any, and time of the adjourned meeting shall be given in conformity with Article VI of these Bylaws. At any adjourned meeting, any business may be transacted which might have been transacted at the original meeting.

Section 5. Quorum.

At any meeting of the stockholders, the holders of a majority of all of the shares of the stock entitled to vote at the meeting, present in person or by proxy, shall constitute a quorum for all purposes, unless or except to the extent that the presence of a larger number may be required by law. Where a separate vote by a class or classes is required, a majority of the shares of such class or classes present in person or represented by proxy shall constitute a quorum entitled to take action with respect to that vote on that matter.

If a quorum shall fail to attend any meeting, the chairman of the meeting or the holders of a majority of the shares of stock entitled to vote who are present, in person or by proxy, may adjourn the meeting to another place, date, or time.

Section 6. Organization.

The Chairman of the Board of Directors or, in their absence, such person as the Board of Directors may have designated or, in their absence, the chief executive officer of the Corporation or, in their absence, such person as may be chosen by the holders of a majority of the shares entitled to vote who are present, in person or by proxy, shall call to order any meeting of the stockholders and act as chairman of the meeting. In the absence of the Secretary of the Corporation, the secretary of the meeting shall be such person as the chairman of the meeting appoints.

Section 7. Conduct of Business.

The Chairman of the Board of Directors or their designee or, if neither the Chairman of the Board nor their designee is present at the meeting, then a person appointed by a majority of the Board of Directors, shall preside at, and act as chairman of, any meeting of the stockholders. The chairman of any meeting of stockholders shall determine the order of business and the procedures at the meeting, including such regulation of the manner of voting and the conduct of discussion as they deem to be appropriate.

Section 8. Proxies and Voting.

At any meeting of the stockholders, every stockholder entitled to vote may vote in person or by proxy authorized by an instrument in writing filed in accordance with the procedure established for the meeting or by a transmission permitted by Section 212(c) of the Delaware General Corporation Law *provided* that no proxy shall be voted or acted upon after three (3) years from its date, unless the proxy provides for a longer period or is irrevocable and coupled with an interest.

Each stockholder shall have one vote for every share of stock entitled to vote which is registered in their name on the record date for the meeting, except as otherwise provided in the Certificate of Incorporation, herein or as required by law.

All voting, including on the election of directors but excepting where otherwise required by law, may be by a voice vote;*provided, however*, that upon demand therefor by a stockholder entitled to vote their proxy, a vote by ballot shall be taken.

Except as otherwise provided in the terms of any class or series of preferred stock of the Corporation, all elections shall be determined by a plurality of the votes cast, and except as otherwise required by law, all other matters shall be determined by a majority of the votes cast.

Section 9. Action without Meeting.

Any action required to be taken at any annual or special meeting of stockholders, or any action which may be taken at any annual or special meeting of such stockholders, may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be (i) signed and dated by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and (ii) delivered to the Corporation within sixty (60) days of the earliest dated consent by delivery to its registered office in the State of Delaware (in which case delivery shall be by hand or by certified or registered mail, return receipt requested), its principal place of business, or an officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing.

Section 10. Stock List.

A complete list of stockholders entitled to vote at any meeting of stockholders, arranged in alphabetical order for each class of stock and showing the address of each such stockholder and the number of shares registered in their name, shall be open to the examination of any such stockholder, for any purpose germane to the meeting during ordinary business hours for a period of at least ten (10) days prior to the meeting, (i) at the principal place of business of the corporation or (ii) on a reasonably accessible electronic network, *provided* that the information required to gain access to such list is specified in the notice of the meeting.

The stock list shall also be kept at the place of the meeting during the whole time thereof and shall be open to the examination of any such stockholder who is present. If the meeting is to be held solely by means of remote communication, then such list shall also be open to the examination of any stockholder throughout the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting. In the event that the list is made available on an electronic network, the Corporation may take reasonable steps to ensure that such information is available only to stockholders. Such list shall presumptively determine the identity of the stockholders entitled to vote at the meeting and the number of shares held by each of them.

ARTICLE II
BOARD OF DIRECTORS

Section 1. Number, Election, Tenure and Qualification.

Except as otherwise specified in the Certificate of Incorporation, the number of directors which shall constitute the whole board shall be determined by resolution of the Board of Directors or by the stockholders at the annual meeting or at any special meeting of stockholders. The directors shall be elected at the annual meeting or at any

special meeting of the stockholders, except as provided in Section 2 of this Article, and each director elected shall hold office until their successor is elected and qualified, unless sooner displaced. Directors need not be stockholders. The certificate of incorporation or these bylaws may prescribe other qualifications for directors.

Section 2. Vacancies and Newly Created Directorships.

Subject to the rights of the holders of any class or series of preferred stock of the Corporation to elect directors, newly created directorships resulting from any increase in the authorized number of directors or any vacancies in the Board of Directors resulting from death, resignation, retirement, disqualification, removal from office or other cause may be filled only by a majority vote of the directors then in office, though less than a quorum, or the sole remaining director. No decrease in the number of authorized directors constituting the Board of Directors shall shorten the term of any incumbent director.

Section 3. Resignation and Removal.

Any director may resign at any time upon notice in writing or by electronic transmission to the Corporation at its principal place of business or to the chief executive officer or secretary. Such resignation shall be effective upon receipt unless it is specified to be effective at some other time or upon the happening of some other event. Subject to the rights of holders of any series of Preferred Stock, directors of the Corporation may be removed but only for cause and only by the affirmative vote of the holders of at least sixty-six and two-thirds percent ($66^{2/3}\%$) of voting power of the outstanding shares of capital stock of the Corporation entitled to vote at an election of directors.

Section 4. Regular Meetings.

Regular meetings of the Board of Directors shall be held at such place or places, on such date or dates, and at such time or times as shall have been established by the Board of Directors and publicized among all directors. A written notice of each regular meeting shall not be required.

Section 5. Special Meetings.

Special meetings of the Board of Directors may be called by the Chairman of the Board of Directors, if any, the President, the Treasurer, the Secretary or one or more of the directors then in office and shall be held at such place, on such date, and at such time as they shall fix. Notice of the place (unless such meeting is to be held solely by means of remote communication), date, time of each such special meeting and means of remote communication, if any, shall be given each director by whom it is not waived by mailing written notice not less than three (3) days before the meeting or by notice given orally or by electronic transmission, given not less than twenty-four (24) hours before the meeting. Unless otherwise indicated in the notice thereof, any and all business may be transacted at a special meeting.

Section 6. Quorum.

At any meeting of the Board of Directors, a majority of the total number of members of the Board of Directors shall constitute a quorum for all purposes. If a quorum shall fail to attend any meeting, a majority of those present may adjourn the meeting to another place, date, or time, without further notice or waiver thereof.

Section 7. Action by Consent.

Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting, if all members of the Board or committee, as the case may be, consent thereto in writing or by electronic transmission, and the writing or writings or, in the case of electronic transmission, copies thereof, are filed with the minutes of proceedings of the Board or committee thereof.

Section 8. Participation in Meetings by Electronic Communications Equipment.

Members of the Board of Directors, or of any committee thereof, may participate in a meeting of such Board or committee by means of telephone or video conference or similar communications equipment by means of which all persons participating in the meeting can hear each other and such participation shall constitute presence in person at such meeting.

Section 9. Conduct of Business.

At any meeting of the Board of Directors, business shall be transacted in such order and manner as the Board may from time to time determine, and all matters shall be determined by the vote of a majority of the directors present, except as otherwise provided herein or required by law.

Section 10. Powers.

The Board of Directors may, except as otherwise required by law, exercise all such powers and do all such acts and things as may be exercised or done by the Corporation, including, without limiting the generality of the foregoing, the unqualified power:

(1) To declare dividends from time to time in accordance with law;

(2) To purchase or otherwise acquire any property, rights or privileges on such terms as it shall determine;

(3) To authorize the creation, making and issuance, in such form as it may determine, of written obligations of every kind, negotiable or non-negotiable, secured or unsecured, to borrow funds and guarantee obligations, and to do all things necessary in connection therewith;

(4) To remove any officer of the Corporation with or without cause, and from time to time to devolve the powers and duties of any officer upon any other person for the time being;

(5) To confer upon any officer of the Corporation the power to appoint, remove and suspend subordinate officers, employees and agents;

(6) To adopt from time to time such stock, option, stock purchase, bonus or other compensation plans for directors, officers, employees and agents of the Corporation and its subsidiaries as it may determine;

(7) To adopt from time to time such insurance, retirement, and other benefit plans for directors, officers, employees and agents of the Corporation and its subsidiaries as it may determine; and,

(8) To adopt from time to time regulations, not inconsistent with these Bylaws, for the management of the Corporation's business and affairs.

Section 11. Compensation of Directors.

Directors, as such, may receive, pursuant to a resolution of the Board of Directors, fixed fees and other compensation for their services as directors, including, without limitation, their services as members of committees of the Board of Directors.

ARTICLE III
COMMITTEES

Section 1. Committees of the Board of Directors.

The Board of Directors, by a vote of a majority of the Board of Directors, may from time to time designate committees of the Board, with such lawfully delegable powers and duties as it thereby confers, to serve at the pleasure of the Board and shall, for those committees and any others provided for herein, elect a director or directors to serve as the member or members, designating, if it desires, other directors as alternate members who may replace any absent or disqualified member at any meeting of the committee. Any such committee, to the extent provided in the resolution of the Board of Directors, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it; but no such committee shall have the power or authority in reference to amending the Certificate of Incorporation, adopting an agreement of merger or consolidation, recommending to the stockholders the sale, lease or exchange of all or substantially all of the Corporation's property and assets, recommending to the stockholders a dissolution of the Corporation or a revocation of a dissolution, or amending these Bylaws. Any committee so designated may exercise the power and authority of the Board of Directors to declare a dividend, to authorize the issuance of stock or to adopt a certificate of ownership and merger pursuant to Section 253 of the Delaware General Corporation Law if the resolution which designates the committee or a supplemental resolution of the Board of Directors shall so provide. In the absence or disqualification of any member of any committee and any alternate member in their place, the member or members of the committee present at the meeting and not disqualified from voting, whether or not they constitute a quorum, may by unanimous vote appoint another member of the Board of Directors to act at such meeting in the place of the absent or disqualified member.

Section 2. Conduct of Business.

Each committee may determine the procedural rules for meeting and conducting its business and shall act in accordance therewith, except as otherwise provided herein or required by law. Adequate provision shall be made for notice to members of all meetings; one-third (1/3) of the committee members shall constitute a quorum; and all matters shall be determined by a majority vote of the members present. Action may be taken by any committee without a meeting if all members thereof consent thereto in writing, and the writing or writings are filed with the minutes of the proceedings of such committee. Members of any such committee may participate in any committee meeting by means of conference telephone or similar communication equipment by means of which all persons participating in the meeting can hear each other, and such participation shall constitute presence in person at such meeting.

ARTICLE IV
OFFICERS

Section 1. Enumeration.

The officers of the Corporation shall be the President and Chief Executive Officer, the Treasurer, the Secretary and such other officers as the Board of Directors or the Chairman of the Board may determine, including, but not limited to, the Chairman of the Board of Directors, one or more Vice Presidents, Assistant Treasurers and Assistant Secretaries.

Section 2. Election.

The Chairman of the Board, if any, the President and Chief Executive Officer, the Treasurer and the Secretary shall be elected annually by the Board of Directors at their first meeting following the annual meeting of the stockholders. The Board of Directors or such officer of the Corporation as it may designate, if any, may, from time to time, elect or appoint such other officers as they may determine, including, but not limited to, one or more Vice Presidents, Assistant Treasurers and Assistant Secretaries.

Section 3. Qualification.

No officer need be a stockholder. The Chairman of the Board, if any, and any Vice Chairman appointed to act in the absence of the Chairman, if any, shall be elected by and from the Board of Directors, but no other officer need be a director. Two or more offices may be held by any one person. If required by vote of the Board of Directors, an officer shall give bond to the Corporation for the faithful performance of their duties, in such form and amount and with such sureties as the Board of Directors may determine. The premiums for such bonds shall be paid by the Corporation.

Section 4. Tenure and Removal.

Each officer elected or appointed by the Board of Directors shall hold office until the first meeting of the Board of Directors following the next annual meeting of the stockholders and until their successor is elected or appointed and qualified, or until they die, resign, are removed or become disqualified, unless a shorter term is specified in the vote electing or appointing said officer. Each officer appointed by an officer designated by the Board of Directors to elect or appoint such officer, if any, shall hold office until their successor is elected or appointed and qualified, or until they die, resign, are removed or become disqualified, unless a shorter term is specified by any agreement or other instrument appointing such officer. Any officer may resign by giving written notice in conformity with Article VI of these Bylaws of their resignation to the Chairman of the Board, if any, the President and Chief Executive Officer, or the Secretary, or to the Board of Directors at a meeting of the Board, and such resignation shall become effective at the time specified therein. Any officer may be removed from office with or without cause by vote of a majority of the directors. Any officer appointed by an officer or committee designated by the Board of Directors to elect or appoint such officer, if any, may be removed with or without cause by such officer or committee, as applicable.

Section 5. Chairman of the Board.

The Chairman of the Board, if any, shall preside at all meetings of the Board of Directors and stockholders at which they are present and shall have such authority and

perform such duties as may be prescribed by these Bylaws or from time to time be determined by the Board of Directors.

Section 6. President and Chief Executive Officer.

The President and Chief Executive Officer shall, subject to the control and direction of the Board of Directors, have and perform such powers and duties as may be prescribed by these Bylaws or from time to time be determined by the Board of Directors.

Section 7. Vice Presidents.

The Vice Presidents, if any, in the order of their election, or in such other order as the Board of Directors may determine, shall have and perform the powers and duties of the President (or such of the powers and duties as the Board of Directors may determine) whenever the President is absent or unable to act. The Vice Presidents, if any, shall also have such other powers and duties as may from time to time be determined by the Board of Directors.

Section 8. Treasurer and Assistant Treasurers.

The Treasurer shall, subject to the control and direction of the Board of Directors, have and perform such powers and duties as may be prescribed in these Bylaws or be determined from time to time by the Board of Directors. All property of the Corporation in the custody of the Treasurer shall be subject at all times to the inspection and control of the Board of Directors. Unless otherwise voted by the Board of Directors, each Assistant Treasurer, if any, shall have and perform the powers and duties of the Treasurer whenever the Treasurer is absent or unable to act, and may at any time exercise such of the powers of the Treasurer, and such other powers and duties, as may from time to time be determined by the Board of Directors.

Section 9. Secretary and Assistant Secretaries.

The Board of Directors shall appoint a Secretary and, in their absence, an Assistant Secretary. The Secretary or, in their absence, any Assistant Secretary, shall attend all meetings of the directors and shall record all votes of the Board of Directors and minutes of the proceedings at such meetings. The Secretary or, in their absence, any Assistant Secretary, shall notify the directors of their meetings, and shall have and perform such other powers and duties as may from time to time be determined by the Board of Directors. If the Secretary or an Assistant Secretary is elected but is absent from any meeting of directors, a temporary secretary may be appointed by the directors at the meeting.

Section 10. Bond.

If required by the Board of Directors, any officer shall give the Corporation a bond in such sum and with such surety or sureties and upon such terms and conditions as shall be satisfactory to the Board of Directors, including without limitation a bond for the faithful performance of the duties of his office and for the restoration to the Corporation of all books, papers, vouchers, money and other property of whatever kind in their possession or under his control and belonging to the Corporation.

Section 11. Action with Respect to Securities of Other Corporations.

Unless otherwise directed by the Board of Directors, the President and Chief Executive Officer, the Treasurer or any officer of the Corporation authorized by the President and Chief Executive Officer shall have power to vote and otherwise act on behalf of the Corporation, in person or by proxy, at any meeting of stockholders of or with respect to any action of stockholders of any other corporation in which this Corporation may hold securities and otherwise to exercise any and all rights and powers which this Corporation may possess by reason of its ownership of securities in such other corporation.

ARTICLE V
STOCK

Section 1. Certificates of Stock.

Each stockholder shall be entitled to a certificate of the capital stock of the Corporation in such form as may from time to time be prescribed by resolution of the Board of Directors. Each holder of stock represented by certificates shall be entitled to have such certificate signed by, or in the name of the Corporation by any two authorized officers of the Corporation. Such signatures may be by facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if such person were such officer, transfer agent or registrar at the date of issue. Every certificate for shares of stock which are subject to any restriction on transfer and every certificate issued when the Corporation is authorized to issue more than one class or series of stock shall contain such legend with respect thereto as is required by law. Notwithstanding anything to the contrary provided in these Bylaws, the Board of Directors of the Corporation may provide by resolution or resolutions that some or all of any or all classes or series of its stock shall be uncertificated shares (except that the foregoing shall not apply to shares represented by a certificate until such certificate is surrendered to the Corporation), and by the approval and adoption of these Bylaws the Board of Directors has determined that all classes or series of the Corporation's stock may be uncertificated, whether upon original issuance, re-issuance, or subsequent transfer.

Section 2. Transfers of Stock.

Transfers of stock shall be made only upon the transfer books of the Corporation kept at an office of the Corporation or by transfer agents designated to transfer shares of the stock of the Corporation. Except where a certificate is issued in accordance with Section 4 of this Article of these Bylaws, an outstanding certificate for the number of shares involved shall be surrendered for cancellation before a new certificate is issued therefor.

Section 3. Record Date.

In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders, to consent to corporate action in writing without a meeting, or to receive payment of any dividend or other distribution or allotment of any rights or to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board of Directors may fix a record date, which record date shall not precede the date on which the resolution fixing the record date is adopted and which record date shall not be more than sixty (60) nor less than ten (10) days before the date of any meeting of stockholders, more than ten (10) days after the date on which the record date for any stockholder consent without a meeting is established, nor more than sixty (60) days prior to the time for such other action as hereinbefore described; *provided, however*, that if no record date is fixed by the Board of Directors, (i) the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given or, if notice is waived, at the close

of business on the day next preceding the day on which the meeting is held, (ii) the record date for determining stockholders entitled to consent to corporate action in writing without a meeting, when no prior action by the Board of Directors is necessary, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the Corporation by delivery to its registered office in Delaware, to its principal place of business, or to an officer or agent of the Corporation having custody of the Corporation's minute books, and (iii) the record date for determining stockholders entitled to receive payment of any dividend or other distribution or allotment of rights or to exercise any rights of change, conversion or exchange of stock or for any other purpose shall be at the close of business on the day on which the Board of Directors adopts a resolution relating thereto.

A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting;*provided, however*, that the Board of Directors may fix a new record date for the adjourned meeting.

Section 4. Lost, Stolen or Destroyed Certificates.

In the event of the loss, theft or destruction of any certificate of stock, another may be issued in its place pursuant to such regulations as the Board of Directors may establish concerning proof of such loss, theft or destruction and concerning the giving of a satisfactory bond or bonds of indemnity.

Section 5. Regulations.

The issue, transfer, conversion and registration of certificates of stock shall be governed by such other regulations as the Board of Directors may establish.

Section 6. Interpretation.

The Board of Directors shall have the power to interpret all of the terms and provisions of these Bylaws, which interpretation shall be conclusive.

ARTICLE VI
NOTICES

Section 1. Notices.

Except as otherwise specifically provided herein or required by law, all notices required to be given to any stockholder or director shall be in writing and shall in every instance be effectively given, if delivered (i) by hand, when delivered to the recipient (ii) by courier service or when deposited in the mail, postage paid, when delivered to the recipient's address as it appears on the records of the Corporation, (iii) by facsimile transmission, when sent to the recipient's number, and in the case of notice to any stockholder, to a number at which such stockholder has consented to receive notice, and (iv) by electronic mail, when sent to the recipient's electronic mail address unless, in the case of notice to any stockholder, such stockholder has notified the Corporation in writing or by electronic transmission of an objection to receiving notice by electronic mail. Any notice to any stockholder by electronic mail shall include a prominent legend that the communication is an important notice regarding the Corporation.

Notwithstanding the foregoing, a notice may not be given by an electronic transmission from and after the time that (i) the Corporation is unable to deliver by such electronic transmission two consecutive notices and (ii) such inability becomes known to the secretary or an assistant secretary of the Corporation or to the transfer agent, or other person responsible for the giving of notice; *provided, however*, the inadvertent failure to discover such inability shall not invalidate any meeting or other action.

Section 2. Waiver of Notice.

Whenever notice is required to be given under any provision of these Bylaws, a written waiver signed by the person entitled to notice or a waiver by electronic transmission by the person entitled to notice whether before or after the time of the event for which notice is to be given, shall be deemed equivalent to the notice required to be given to such person. Neither the business nor the purpose of any meeting need be specified in such waiver. Attendance of a director or stockholder at a meeting without protesting prior thereto or at its commencement the lack of notice shall also constitute a waiver of notice by such director or stockholder.

ARTICLE VII
INDEMNIFICATION

Section 1. Actions other than by or in the Right of the Corporation.

The Corporation (i) shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation) by reason of the fact that they are or were a director or officer of the Corporation, or is or was serving at the request of the Corporation as a director or officer of another corporation, partnership, joint venture, trust or other enterprise and (ii) may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation) by reason of the fact that they are or were an employee or agent of the Corporation, in either case, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by them in connection with such action, suit or proceeding if they acted in good faith and in a manner they reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceedings, had no reasonable cause to believe their conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of *nolo contendere* or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which they reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that their conduct was unlawful.

Section 2. Actions by or in the Right of the Corporation.

The Corporation (i) shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that they are or were a director or officer of the Corporation, or is or was serving at the request of the Corporation as a director or officer of another corporation, partnership, joint venture, trust, or other enterprise and (ii) may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that they are or were an employee or agent of the Corporation, in either case, against expenses (including attorneys' fees) actually and reasonably incurred by them in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner they reasonably believed to be in or not opposed to the best interests of the Corporation and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the Corporation unless and only to the extent that the Court of Chancery of the State of Delaware or the court in which such action or suit was brought shall determine upon

application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery of the State of Delaware or such other court shall deem proper.

Section 3. Success on the Merits.

To the extent that any person described in Section 1 or Section 2 of this Article has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in said Sections, or in defense of any claim, issue or matter therein, they shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by them in connection therewith.

Section 4. Specific Authorization.

Any indemnification under Section 1 or Section 2 of this Article (unless ordered by a court) shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of any person described in said Sections is proper in the circumstances because they have met the applicable standard of conduct set forth in said Sections. Such determination shall be made (1) by the Board of Directors by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding, or (2) if such a quorum is not obtainable, or, even if obtainable, a quorum of disinterested directors so directs, by independent legal counsel in a written opinion, or (3) by the stockholders of the Corporation.

Section 5. Advance Payment.

Expenses (including attorneys' fees) incurred in defending any civil, criminal, administrative, or investigative action, suit or proceeding may be paid by the Corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of any person described in said Section to repay such amount if it shall ultimately be determined that they are not entitled to indemnification by the Corporation as authorized in this Article.

Section 6. Non-Exclusivity.

The indemnification and advancement of expenses provided by, or granted pursuant to, the other Sections of this Article shall not be deemed exclusive of any other rights to which those provided indemnification or advancement of expenses may be entitled under any bylaw, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in such person's official capacity and as to action in another capacity while holding such office.

Section 7. Insurance.

The Board of Directors may authorize, by a vote of the majority of the full board, the Corporation to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against them and incurred by them in any such capacity, or arising out of their status as such, whether or not the corporation would have the power to indemnify them against such liability under the provisions of this Article.

Section 8. Continuation of Indemnification and Advancement of Expenses.

The indemnification and advancement of expenses provided by, or granted pursuant to, this Article shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

Section 9. Severability.

If any word, clause or provision of this Article or any award made hereunder shall for any reason be determined to be invalid, the provisions hereof shall not otherwise be affected thereby but shall remain in full force an effect.

Section 10. Intent of Article.

The intent of this Article is to provide for indemnification and advancement of expenses to officers and directors of the Corporation the fullest extent permitted by Section 145 of the General Corporation Law of Delaware. To the extent that such Section or any successor section may be amended or supplemented from time to time, this Article shall be amended automatically and construed so as to permit indemnification and advancement of expenses of directors and officers of the Corporation to the fullest extent from time to time permitted by law.

ARTICLE VIII
CERTAIN TRANSACTIONS

Section 1. Transactions with Interested Parties.

No contract or transaction between the Corporation and one or more of its directors or officers, or between the Corporation and any other corporation, partnership, association, or other organization in which one or more of its directors or officers are directors or officers, or have a financial interest, shall be void or voidable solely for this reason, or solely because the director or officer is present at or participates in the meeting of the Board or committee thereof which authorizes the contract or transaction or solely because the votes of such director or officer are counted for such purpose, if:

(a) The material facts as to their relationship or interest and as to the contract or transaction are disclosed or are known to the Board of Directors or the committee, and the Board or committee in good faith authorizes the contract or transaction by the affirmative votes of a majority of the disinterested directors, even though the disinterested directors be less than a quorum; or

(b) The material facts as to their relationship or interest and as to the contract or transaction are disclosed or are known to the stockholders entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the stockholders; or

(c) The contract or transaction is fair as to the Corporation as of the time it is authorized, approved or ratified, by the Board of Directors, a committee thereof, or the stockholders.

Section 2. Quorum.

Common or interested directors may be counted in determining the presence of a quorum at a meeting of the Board of Directors or of a committee which authorizes the contract or transaction.

ARTICLE IX
MISCELLANEOUS

Section 1. Facsimile and Electronic Signatures.

In addition to the provisions for use of facsimile or electronic signatures elsewhere specifically authorized in these Bylaws, facsimile and electronic signatures of any officer or officers of the Corporation may be used to the maximum extent permitted by applicable law.

Section 2. Reliance upon Books, Reports and Records.

Each director, each member of any committee designated by the Board of Directors, and each officer of the Corporation shall, in the performance of their duties, be fully protected in relying in good faith upon the books of account or other records of the Corporation and upon such information, opinions, reports or statements presented to the Corporation by any of its officers or employees, or committees of the Board of Directors so designated, or by any other person as to matters which such director or committee member reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Corporation.

Section 3. Fiscal Year.

Except as otherwise determined by the Board of Directors from time to time, the fiscal year of the Corporation shall end on the last day of December of each year.

Section 4. Time Periods.

In applying any provision of these Bylaws which requires that an act be done or not be done a specified number of days prior to an event or that an act be done during a period of a specified number of days prior to an event, calendar days shall be used, the day of the doing of the act shall be excluded, and the day of the event shall be included.

Section 5. Exclusive Forum Provision.

Unless the Corporation consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware (or, if and only if the Court of Chancery of the State of Delaware does not have subject matter jurisdiction, any state court located within the State of Delaware or, if and only if all such state courts lack subject matter jurisdiction, the federal district court for the District of Delaware) shall be the sole and exclusive forum for the following types of actions or proceedings under Delaware statutory or common law: (i) any derivative action or proceeding brought on behalf of the Corporation, (ii) any action asserting a claim of breach of a fiduciary duty owed by any current or former director, officer or other employee of the Corporation, to the Corporation or the Corporation's stockholders, (iii) any action or proceeding asserting a claim against the Corporation or any current or former director, officer or other employee of the Corporation arising out of or pursuant to any provision of the DGCL or the Corporation's Certificate or the Bylaws of the Corporation (in each case, as they may be amended from time to time), (iv) any action or proceeding to interpret, apply, enforce or determine the validity of the Corporation's Certificate or the Bylaws of the Corporation (including any right, obligation, or remedy thereunder), (v) any action or proceeding as to which the DGCL confers jurisdiction to the Court of Chancery of the State of Delaware or (vi) any action asserting a claim governed by the internal affairs doctrine against the Corporation or any director, officer or other employee of the Corporation, in all cases to the fullest extent permitted by law and subject to the court's having personal jurisdiction over the indispensable parties named as defendants. This Article IX, Section 5 shall not apply to actions brought to enforce a duty or liability created by the Securities Act of 1933, as amended, the Exchange Act, or any claim for which the federal courts have exclusive jurisdiction. Unless the Corporation consents in writing to the selection of an alternative forum, the federal district courts of the United States of America shall, to the fullest extent permitted by applicable law, be the sole and exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act of 1933, as amended. Any person or entity purchasing or otherwise acquiring any interest in shares of capital stock of the Corporation shall be deemed to have notice of and consented to the provisions of this Article IX, Section 5.

ARTICLE X
AMENDMENTS

These Bylaws may be amended, rescinded or repealed by the stockholders or by the Board of Directors, when such power is conferred upon the Board of Directors by the Certificate of Incorporation, at any meeting of the stockholders or of the Board of Directors, provided notice of the proposed change was given in the notice of the meeting or, in the case of a meeting of the Board of Directors, in a notice given not less than two (2) days prior to the meeting.

ACURX PHARMACEUTICALS, INC.

INDEMNIFICATION AGREEMENT

This Indemnification Agreement (this "Agreement") is effective as of _____, 20__ by and between Acurx Pharmaceuticals, Inc., a Delaware corporation (the "Company"), and _____ ("Indemnitee").

A.The Company recognizes the difficulty in obtaining liability insurance for its directors, officers, employees, controlling persons, fiduciaries and other agents and affiliates, the significant cost of such insurance and the general limitations in the coverage of such insurance.

B.The Company further recognizes the substantial increase in corporate litigation in general, subjecting directors, officers, employees, controlling persons, fiduciaries and other agents and affiliates to expensive litigation risks at the same time as the availability and coverage of liability insurance has been severely limited.

C.The current protection available to directors, officers, employees, controlling persons, fiduciaries and other agents and affiliates of the Company may not be adequate under the present circumstances, and directors, officers, employees, controlling persons, fiduciaries and other agents and affiliates of the Company (or persons who may be alleged or deemed to be the same), including the Indemnitee, may not be willing to serve or continue to serve or be associated with the Company in such capacities without additional protection.

D.The Company (a) desires to attract and retain the involvement of highly qualified persons, such as Indemnitee, to serve and be associated with the Company, and (b) accordingly, wishes to provide for the indemnification and advancement of expenses to the Indemnitee to the maximum extent permitted by law.

E.In view of the considerations set forth above, the Company desires that Indemnitee shall be indemnified and advanced expenses by the Company as set forth herein.

AGREEMENT:

In consideration of the mutual promises and covenants contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Certain Definitions.

(a) "*Change in Control*" shall be deemed to have occurred if, on or after the date of this Agreement, (i) any "person" (as such term is used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended (the "*Exchange Act*"), other than a trustee or other fiduciary holding securities under an employee benefit plan of the Company acting in such capacity or a corporation or limited liability company owned directly or indirectly by the members of the Company in substantially the same proportions as their ownership of securities of the Company, becomes the "beneficial owner" (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of securities of the Company representing more than fifty percent (50%) of the total voting power represented by the Company's then outstanding Voting Securities, (ii) during any period of two (2) consecutive years, individuals who at the beginning of such period constitute the Board of Directors of the Company and any new director whose election by the Board of Directors or nomination for election by the Company's members was approved by a vote of at least two- thirds (2/3) of the directors then still in office who either were directors at the beginning of the period or whose election or nomination for election was previously so approved, cease for any reason to constitute a majority thereof, (iii) the members of the Company approve a merger or consolidation of the Company with any other corporation or limited liability company other than a merger or consolidation which would result in the Voting Securities of the Company outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into Voting Securities of the surviving entity) at least eighty percent (80%) of the total voting power represented by the Voting Securities of the Company or such surviving entity outstanding immediately after such merger or consolidation or (iv) the members of the Company approve a plan of complete liquidation of the Company or an agreement for the sale or disposition by the Company of (in one transaction or a series of related transactions) all or substantially all of the Company's assets.

(b) "*Claim*" shall mean with respect to a Covered Event: any threatened, asserted, pending or completed action, suit, proceeding or alternative dispute resolution mechanism, or any hearing, inquiry or investigation (formal or informal) that Indemnitee (or in the case of a Fund Indemnitor (as defined in Section 18 below) seeking to be indemnified, a Fund Indemnitor) in good faith believes might lead to the institution of any such action, suit, proceeding or alternative dispute resolution mechanism, whether civil, criminal, administrative, investigative or other, including any appeal therefrom.

(c)References to the "*Company*" shall include, in addition to Acurx Pharmaceuticals, Inc., any constituent corporation or limited liability company (including any constituent of a constituent) absorbed in a consolidation or merger to which Acurx Pharmaceuticals, Inc. (or any of its wholly owned subsidiaries) is a party, which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, employees, agents or fiduciaries, so that if Indemnitee is or was a director, officer, employee, agent or fiduciary of such constituent corporation or limited liability company, or is or was serving at the request of such constituent corporation or limited liability company as a director, officer, employee, agent or fiduciary of another corporation, limited liability company, partnership, joint venture, employee benefit plan, trust or other enterprise, Indemnitee shall stand in the same position under the provisions of this Agreement with respect to the resulting or surviving corporation or limited liability company as Indemnitee would have with respect to such constituent corporation or limited liability company if its separate existence had continued.

(d) "*Covered Event*" shall mean any event or occurrence by reason of the fact that Indemnitee is or was a director, officer, employee, agent or fiduciary of the Company, or any subsidiary of the Company, direct or indirect, or is or was serving at the request of the Company as a director, officer, employee, agent or fiduciary of another corporation, limited liability company, partnership, joint venture, trust or other enterprise, or by reason of any action or inaction on the part of Indemnitee while serving in such capacity.

(e) "*Expense Advance*" shall mean a payment to Indemnitee for Expenses pursuant to Section 3 hereof, in advance of the settlement of or final judgment in any action, suit, proceeding or alternative dispute resolution mechanism, hearing, inquiry or investigation, which constitutes a Claim.

(f) "*Expenses*" shall mean any and all direct and indirect costs, losses, claims, damages, fees, expenses and liabilities, joint or several (including reasonable attorneys' fees and all other costs, expenses and obligations reasonably incurred in connection with investigating, defending, being a witness in or participating in (including on appeal), or preparing to defend, to be a witness in or to participate in, any action, suit, proceeding, alternative dispute resolution mechanism, hearing, inquiry or investigation), judgments, fines, penalties and amounts paid in settlement (if such settlement is approved in advance by the Company, which approval shall not be unreasonably withheld) actually and reasonably incurred, of any Claim and any federal, state, local or foreign taxes imposed on the Indemnitee as a result of the actual or deemed receipt of any payments under this Agreement.

(g) "*Independent Legal Counsel*" shall mean an attorney or firm of attorneys, selected in accordance with the provisions of Section 2(d) hereof, who shall not have otherwise performed services for (i) the Company or Indemnitee in any matter material to either such party (other than with respect to matters concerning the rights of Indemnitee under this Agreement, or of other indemnitees under similar indemnity agreements) or (ii) any other party to the Claim giving rise to a claim for indemnification hereunder, within the last three (3) years. Notwithstanding the foregoing, the term "Independent Legal Counsel" shall not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Company or Indemnitee in an action to determine Indemnitee's rights under this Agreement.

(h)References to " *other enterprises*" shall include employee benefit plans; references to *"fines"* shall include any excise taxes assessed on Indemnitee with respect to an employee benefit plan; and references to "*serving at the request of the Company*" shall include any service as a director, officer, employee, agent or fiduciary of the Company which imposes duties on, or involves services by, such director, officer, employee, agent or fiduciary with respect to an employee benefit plan, its participants or its beneficiaries; and if Indemnitee acted in good faith and in a manner Indemnitee reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan, Indemnitee shall be deemed to have acted in a manner "*not opposed to the best interests of the Company*" as referred to in this Agreement.

(i) "*Reviewing Party*" shall mean, subject to the provisions of Section 2(d), any person or body appointed by the Board of Directors in accordance with applicable law to review the Company's obligations hereunder and under applicable law, which may include a member or members of the Company's Board of Directors, Independent Legal Counsel or any other person or body not a party to the particular Claim for which Indemnitee is seeking indemnification, exoneration or hold harmless rights.

(j) "*Section*" refers to a section of this Agreement unless otherwise indicated.

(k) "*Voting Securities*" shall mean any securities of the Company that vote generally in the election of directors.

2. Indemnification.

(a) Indemnification of Expenses. Subject to the provisions of Section 2(b) below, the Company shall indemnify, exonerate or hold harmless Indemnitee for Expenses to the fullest extent permitted by law if Indemnitee was, is or becomes a party to or witness or other participant in, or is threatened to be made a party to or witness or other participant in, any Claim (whether by reason of or arising in part out of a Covered Event), including all interest, assessments and other charges incurred in connection with or in respect of such Expenses.

(b) Review of Indemnification Obligations.

(i)Notwithstanding the foregoing, in the event any Reviewing Party shall have determined (in a written opinion, in any case in which Independent Legal Counsel is the Reviewing Party) that Indemnitee is not entitled to be indemnified, exonerated or held harmless hereunder under applicable law, (A) the Company shall have no further obligation under Section 2(a) to make any payments to Indemnitee not made prior to such determination by such Reviewing Party and (B) the Company shall be entitled to be reimbursed by Indemnitee (who hereby agrees to reimburse the Company) for all Expenses theretofore paid in indemnifying, exonerating or holding harmless Indemnitee (within thirty (30) days after such determination); *provided*, *however*, that if Indemnitee has commenced or thereafter commences legal proceedings in a court of competent jurisdiction to secure a determination that Indemnitee is entitled to be indemnified, exonerated or held harmless hereunder under applicable law, any determination made by any Reviewing Party that Indemnitee is not entitled to be indemnified hereunder under applicable law shall not be binding and Indemnitee shall not be required to reimburse the Company for any Expenses theretofore paid in indemnifying, exonerating or holding harmless Indemnitee until a final judicial determination is made with respect thereto (as to which all rights of appeal therefrom have been exhausted or lapsed). Indemnitee's obligation to reimburse the Company for any Expenses shall be unsecured and no interest shall be charged thereon.

(ii)Subject to Section 2(b)(iii) below, if the Reviewing Party shall not have made a determination within forty-five (45) days after receipt by the Company of the request therefor, the requisite determination of entitlement to indemnification shall, to the fullest extent not prohibited by law, be deemed to have been made and Indemnitee shall be entitled to such indemnification, absent (A) a misstatement by Indemnitee of a material fact, or an omission of a material fact necessary to make Indemnitee's statement not materially misleading, in connection with the request for indemnification or (B) a prohibition of such indemnification under applicable law; *provided*, *however*, that such 45-day period may be extended for a reasonable time, not to exceed an additional thirty (30) days, if the person, persons or entity making the determination with respect to entitlement to indemnification in good faith requires such additional time for the obtaining or evaluating of documentation and/or information relating thereto.

(iii)Notwithstanding anything in this Agreement to the contrary, no determination as to entitlement of Indemnitee to indemnification under this Agreement shall be required to be made prior to the final disposition of the Claim.

(c) Indemnitee Rights on Unfavorable Determination; Binding Effect. If any Reviewing Party determines that Indemnitee substantively is not entitled to be indemnified, exonerated or held harmless hereunder in whole or in part under applicable law, Indemnitee shall have the right to commence litigation seeking an initial determination by the court or challenging any such determination by such Reviewing Party or any aspect thereof, including the legal or factual bases therefor, and, subject to the provisions of Section 15 hereof, the Company hereby consents to service of process and to appear in any such proceeding. Absent such litigation, any determination by any Reviewing Party shall be conclusive and binding on the Company and Indemnitee.

(d) Selection of Reviewing Party; Change in Control. If there has not been a Change in Control, any Reviewing Party shall be selected by the Board of Directors, and if there has been such a Change in Control (other than a Change in Control which has been approved by a majority of the Company's Board of Directors who were directors immediately prior to such Change in Control), any Reviewing Party with respect to all matters thereafter arising concerning Indemnitee's indemnification, exoneration or hold harmless rights for Expenses under this Agreement or any other agreement or under the Company's Bylaws (the "Bylaws") or Certificate of Incorporation as now or hereafter in effect, or under any other applicable law, if desired by Indemnitee, shall be Independent Legal Counsel selected by the Indemnitee and approved by Company (which approval shall not be unreasonably withheld). Such counsel, among other things, shall render its written opinion to the Company and Indemnitee as to whether and to what extent Indemnitee would be entitled to be indemnified, exonerated or held harmless hereunder under applicable law and the Company agrees to abide by such opinion. The Company agrees to pay the reasonable fees of the Independent Legal Counsel referred to above and to fully indemnify, exonerate and hold harmless such counsel against any and all expenses (including attorneys' fees), claims, liabilities and damages arising out of or relating to this Agreement or its engagement pursuant hereto. Notwithstanding any other provision of this Agreement, the Company shall not be required to pay Expenses of more than one Independent Legal Counsel in connection with all matters concerning a single Indemnitee, and such Independent Legal Counsel shall be the Independent Legal Counsel for any or all other Indemnitees unless (i) the Company otherwise determines or (ii) any Indemnitee shall provide a written statement setting forth in detail a reasonable objection to such Independent Legal Counsel representing other Indemnitees.

(e) Mandatory Payment of Expenses. Notwithstanding any other provision of this Agreement other than Section 10 hereof, to the fullest extent permitted by

applicable law and to the extent that Indemnitee was a party to (or participant in) and has been successful on the merits or otherwise, including, without limitation, the dismissal of an action without prejudice, in defense of any Claim, Indemnitee shall be indemnified, exonerated and held harmless against all Expenses actually and reasonably incurred by Indemnitee in connection therewith. If Indemnitee is not wholly successful in such Claim but is successful, on the merits or otherwise, as to one or more but less than all claims, issues or matters in such Claim, the Company shall indemnify Indemnitee against all Expenses actually and reasonably incurred by him or on his behalf in connection with or related to each successfully resolved claim, issue or matter to the fullest extent permitted by law. For purposes of this Section and without limitation, the termination of any claim, issue or matter in such a Claim by dismissal, with or without prejudice, shall be deemed to be a successful result as to such claim, issue or matter.

(f) Contribution. If the indemnification, exoneration or hold harmless rights provided for in this Agreement is for any reason held by a court of competent jurisdiction to be unavailable to an Indemnitee, then in lieu of indemnifying, exonerating or holding harmless Indemnitee thereunder, the Company shall contribute to the amount paid or required to be paid by Indemnitee as a result of such Expenses (i) in such proportion as is deemed fair and reasonable in light of all of the circumstances in order to reflect the relative benefits received by the Company and Indemnitee as a result of the event(s) and/or transaction(s) giving cause to such Claim or (ii) if the allocation provided by clause (i) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the Company (and its directors, officers, employees and agents) and Indemnitee in connection with the action or inaction which resulted in such Expenses, as well as any other relevant equitable considerations. In connection with the registration of the Company's securities, the relative benefits received by the Company and Indemnitee shall be deemed to be in the same respective proportions that the net proceeds from the offering (before deducting expenses) received by the Company and Indemnitee, in each case as set forth in the table on the cover page of the applicable prospectus, bear to the aggregate public offering price of the securities so offered. The relative fault of the Company and Indemnitee shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Company or Indemnitee and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

The Company and Indemnitee agree that it would not be just and equitable if contribution pursuant to this Section 2(f) were determined by pro rata or by any other method of allocation which does not take account of the equitable considerations referred to in the immediately preceding paragraph. In connection with the registration of the Company's securities, in no event shall Indemnitee be required to contribute any amount under this Section 2(f) in excess of the net proceeds received by Indemnitee from its sale of securities under such registration statement. No person found guilty of fraudulent misrepresentation (within the meaning of Section 11(a) of the Securities Act of 1933, as amended) shall be entitled to contribution from any person who was not found guilty of such fraudulent misrepresentation.

3. Expense Advances.

(a) Obligation to Make Expense Advances. The Company shall make Expense Advances to Indemnitee upon receipt of a written undertaking by or on behalf of the Indemnitee to repay such amounts if it shall ultimately be determined that the Indemnitee is not entitled to be indemnified, exonerated or held harmless therefor by the Company.

(b) Form of Undertaking. Any written undertaking by the Indemnitee to repay any Expense Advances hereunder shall be unsecured and no interest shall be charged thereon.

4. Procedures for Indemnification and Expense Advances.

(a) Timing of Payments. All payments of Expenses (including without limitation Expense Advances) by the Company to the Indemnitee pursuant to this Agreement shall be made to the fullest extent permitted by law as soon as practicable after written demand by Indemnitee therefor is presented to the Company, but in no event later than forty-five (45) days after such written demand by Indemnitee is presented to the Company, except in the case of Expense Advances, which shall be made no later than twenty (20) days after such written demand by Indemnitee is presented to the Company. If the Company disputes a portion of the amounts for which indemnification is requested, the undisputed portion shall be paid and only the disputed portion withheld pending resolution of any such dispute.

(b) Notice/Cooperation by Indemnitee. Indemnitee shall, as a condition precedent to Indemnitee's right to be indemnified, exonerated or held harmless or Indemnitee's right to receive Expense Advances under this Agreement, give the Company notice in writing as soon as practicable of any Claim made against Indemnitee for which indemnification, exoneration or hold harmless rights will or could be sought under this Agreement. Notice to the Company shall be directed to the President and the Secretary of the Company at the address shown on the signature page of this Agreement (or such other address as the Company shall designate in writing to Indemnitee) and shall include a description of the nature of the Claim and the facts underlying the Claim, in each case to the extent known to Indemnitee. To obtain indemnification under this Agreement, Indemnitee shall submit to the Company a written request, including therein or therewith such documentation and information as is reasonably available to Indemnitee and is reasonably necessary to determine whether and to what extent Indemnitee is entitled to indemnification following the final disposition of such Claim. In addition, Indemnitee shall give the Company such information and cooperation as the Company may reasonably require and as shall be within Indemnitee's power. The failure by Indemnitee to notify the Company hereunder will not relieve the Company from any liability which it may have to Indemnitee hereunder or otherwise than under this Agreement, and any delay in so notifying the Company shall not constitute a waiver by Indemnitee of any rights under this Agreement, except to the extent (solely with respect to the indemnity hereunder) that such failure or delay materially prejudices the Company.

(c) No Presumptions; Burden of Proof. For purposes of this Agreement, the termination of any Claim by judgment, order, settlement (whether with or without court approval) or conviction, or upon a plea of *nolo contendere*, or its equivalent, shall not create a presumption that Indemnitee did not meet any particular standard of conduct or have any particular belief or that a court has determined that indemnification, exoneration or hold harmless right is not permitted by this Agreement or applicable law. In addition, neither the failure of any Reviewing Party to have made a determination as to whether Indemnitee has met any particular standard of conduct or had any particular belief, nor an actual determination by any Reviewing Party that Indemnitee has not met such standard of conduct or did not have such belief, prior to the commencement of legal proceedings by Indemnitee to secure a judicial determination that Indemnitee should be indemnified, exonerated or held harmless under this Agreement or applicable law, shall be a defense to Indemnitee's claim or create a presumption that Indemnitee has not met any particular standard of conduct or did not have any particular belief. In connection with any determination by any Reviewing Party or otherwise as to whether the Indemnitee is entitled to be indemnified, exonerated or held harmless hereunder, the burden of proof shall be on the Company to establish that Indemnitee is not so entitled.

(d) Notice to Insurers. If, at the time of the receipt by the Company of a notice of a Claim pursuant to Section 4(b) hereof, the Company has liability insurance in effect which may cover such Claim, the Company shall give prompt notice of the commencement of such Claim to the insurers in accordance with the procedures set forth in the respective policies. The Company shall thereafter take all reasonably necessary or desirable action to cause such insurers to pay, on behalf of the Indemnitee, all amounts payable as a result of such Claim in accordance with the terms of such policies.

(e) Selection of Counsel. In the event the Company shall be obligated hereunder to provide indemnification, exoneration or hold harmless rights for or make any Expense Advances with respect to the Expenses of any Claim, the Company, if appropriate, shall be entitled to assume the defense of such Claim with counsel approved by Indemnitee (which approval shall not be unreasonably withheld) upon the delivery to Indemnitee of written notice of the Company's election to do so. After

delivery of such notice, approval of such counsel by Indemnitee and the retention of such counsel by the Company, the Company will not be liable to Indemnitee under this Agreement for any fees or expenses of separate counsel subsequently employed by or on behalf of Indemnitee with respect to the same Claim; *provided, however*, that (i) Indemnitee shall have the right to employ Indemnitee's separate counsel in any such Claim at Indemnitee's expense and (ii) if (A) the employment of separate counsel by Indemnitee has been previously authorized by the Company, (B) Indemnitee shall have reasonably concluded that there may be a conflict of interest between the Company and Indemnitee in the conduct of any such defense or (C) the Company shall not continue to retain such counsel to defend such Claim, then the fees and expenses of Indemnitee's separate counsel shall be Expenses for which Indemnitee may receive indemnification, exoneration or hold harmless rights or Expense Advances hereunder. The Company shall have the right to conduct such defense as it sees fit in its sole discretion, including the right to settle any claim, action or proceeding against Indemnitee without the consent of Indemnitee, provided that the terms of such settlement include either: (i) a full release of Indemnitee by the claimant from all liabilities or potential liabilities under such claim or (ii), in the event such full release is not obtained, the terms of such settlement do not limit any indemnification, exoneration or hold harmless rights Indemnitee may now, or hereafter, be entitled to under this Agreement, the Company's Bylaws, Certificate of Incorporation, any agreement, any vote of members or disinterested directors, the General Corporation Law of the State of Delaware (the "DGCL") or otherwise.

5. Additional Indemnification Rights; Nonexclusivity.

(a) Scope. The Company hereby agrees to indemnify, exonerate and hold harmless the Indemnitee to the fullest extent permitted by law, notwithstanding that such indemnification, exoneration or hold harmless right is not specifically authorized by the other provisions of this Agreement, the Company's Bylaws, the Company's Certificate of Incorporation or by statute, a vote of members or a resolution of directors, or otherwise. The rights of indemnification and to receive Expense Advances as provided by this Agreement shall be interpreted independently of, and without reference to, any other such rights to which Indemnitee may at any time be entitled. In the event of any change after the date of this Agreement in any applicable law, statute or rule which expands the right of a Delaware corporation to indemnify, exonerate or hold harmless a member of its board of directors or an officer, employee, agent or fiduciary, it is the intent of the parties hereto that Indemnitee shall enjoy by this Agreement the greater benefits afforded by such change. In the event of any change in any applicable law, statute or rule which narrows the right of a Delaware corporation to indemnify, exonerate or hold harmless a member of its board of directors or an officer, employee, agent or fiduciary, such change, to the extent not otherwise required by such law, statute or rule to be applied to this Agreement, shall have no effect on this Agreement or the parties' rights and obligations hereunder except as set forth in Section 10(a) hereof.

(b) Nonexclusivity. The indemnification, exoneration or hold harmless rights and the payment of Expense Advances provided by this Agreement shall be in addition to any rights to which Indemnitee may be entitled under the Company's Bylaws, its Certificate of Incorporation, any other agreement, any vote of members or disinterested directors, the DGCL, or otherwise. The indemnification, exoneration or hold harmless rights and the payment of Expense Advances provided under this Agreement shall continue as to Indemnitee for any action taken or not taken while serving in an indemnified, exonerated or held harmless capacity even though subsequent thereto Indemnitee may have ceased to serve in such capacity.

6. No Duplication of Payments. The Company shall not be liable under this Agreement to make any payment in connection with any Claim made against Indemnitee to the extent Indemnitee has otherwise actually received payment (under any insurance policy, provision of the Company's Bylaws, Certificate of Incorporation or otherwise) of the amounts otherwise payable hereunder, except as provided in Section 18 below.

7. Partial Indemnification. If Indemnitee is entitled under any provision of this Agreement to indemnification, exoneration or hold harmless rights by the Company for some or a portion of Expenses incurred in connection with any Claim, but not, however, for the total amount thereof, the Company shall nevertheless indemnify, exonerate or hold harmless Indemnitee for the portion of such Expenses to which Indemnitee is entitled.

8. Mutual Acknowledgment. Both the Company and Indemnitee acknowledge that in certain instances, federal law or applicable public policy may prohibit the Company from indemnifying, exonerating or holding harmless its directors, officers, employees, agents or fiduciaries under this Agreement or otherwise. Indemnitee understands and acknowledges that the Company may be required in the future to undertake with the Securities and Exchange Commission to submit the question of indemnification, exoneration or hold harmless rights to a court in certain circumstances for a determination of the Company's right under public policy to indemnify, exonerate or hold harmless Indemnitee.

9. Liability Insurance. To the extent the Company maintains liability insurance applicable to directors, officers, employees, agents or fiduciaries, Indemnitee shall be covered by such policies in such a manner as to provide Indemnitee the same rights and benefits as are provided to the most favorably insured of the Company's directors who are not employees of the Company, if Indemnitee is a director who is not employed by the Company; or of the Company's officers, if Indemnitee is a director of the Company and is also employed by the Company, or is not a director of the Company but is an officer; or in the Company's sole discretion, if Indemnitee is not an officer or director but is an employee, agent or fiduciary.

10. Exceptions. Notwithstanding any other provision of this Agreement, the Company shall not be obligated pursuant to the terms of this Agreement:

(a) Excluded Action or Omissions. To indemnify, exonerate or hold harmless Indemnitee for Expenses resulting from acts, omissions or transactions for which Indemnitee is prohibited from receiving indemnification, exoneration or hold harmless rights under this Agreement or applicable law; *provided, however*, that notwithstanding any limitation set forth in this Section 10(a) regarding the Company's obligation to provide indemnification, exoneration or hold harmless rights to Indemnitee, Indemnitee shall be entitled under Section 3 to receive Expense Advances hereunder with respect to any such Claim unless and until a court having jurisdiction over the Claim shall have made a final judicial determination (as to which all rights of appeal therefrom have been exhausted or lapsed) that Indemnitee has engaged in acts, omissions or transactions for which Indemnitee is prohibited from receiving indemnification under this Agreement or applicable law.

(b) Claims Initiated by Indemnitee. To indemnify, exonerate or hold harmless or make Expense Advances to Indemnitee with respect to Claims initiated or brought voluntarily by Indemnitee and not by way of defense, counterclaim or cross claim, except (i) with respect to actions or proceedings brought to establish or enforce an indemnification, exoneration or hold harmless right under this Agreement or any other agreement or insurance policy or under the Company's Bylaws or Certificate of Incorporation now or hereafter in effect relating to Claims for Covered Events, (ii) in specific cases if the Board of Directors has approved the initiation or bringing of such Claim or (iii) as otherwise required under DGCL, regardless of whether Indemnitee ultimately is determined to be entitled to such indemnification, exoneration, hold harmless right, Expense Advances or insurance recovery, as the case may be.

(c) Lack of Good Faith. To indemnify, exonerate or hold harmless Indemnitee for any Expenses incurred by Indemnitee with respect to any action instituted (i) by Indemnitee to enforce or interpret this Agreement, if a court having jurisdiction over such action determines as provided in Section 13 hereof that each of the material assertions made by Indemnitee as a basis for such action was not made in good faith or was frivolous or (ii) by or in the name of the Company to enforce or interpret this Agreement, if a court having jurisdiction over such action determines as provided in Section 13 hereof that each of the material defenses asserted by Indemnitee in such action was made in bad faith or was frivolous.

11. Counterparts. This Agreement may be executed in counterparts and by facsimile or electronic transmission, each of which shall constitute an original and all of

which, together, shall constitute one instrument.

12. Binding Effect; Successors and Assigns. This Agreement shall be binding upon, inure to the benefit of and be enforceable by the parties hereto and their respective successors and assigns (including any direct or indirect successor by purchase, merger, consolidation or otherwise to all or substantially all of the business and/or assets of the Company), spouses, heirs, and personal and legal representatives. The Company shall require and cause any successor (whether direct or indirect by purchase, merger, consolidation or otherwise) to all, substantially all, or a substantial part, of the business and/or assets of the Company, by written agreement in form and substance satisfactory to Indemnitee, expressly to assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform if no such succession had taken place. This Agreement shall continue in effect regardless of whether Indemnitee continues to serve as a director, officer, employee, agent or fiduciary (as applicable) of the Company or of any other enterprise at the Company's request. The Company and Indemnitee agree that the Fund Indemnitors (as defined in Section 18 below) are express third party beneficiaries of this Agreement.

13. Expenses Incurred in Action Relating to Enforcement or Interpretation. In the event that any action is instituted by Indemnitee under this Agreement or under any liability insurance policies maintained by the Company to enforce or interpret any of the terms hereof or thereof, Indemnitee shall be entitled to be indemnified for all Expenses incurred by Indemnitee with respect to such action (including without limitation attorneys' fees), regardless of whether Indemnitee is ultimately successful in such action, unless as a part of such action a court having jurisdiction over such action makes a final judicial determination (as to which all rights of appeal therefrom have been exhausted or lapsed) that each of the material assertions made by Indemnitee as a basis for such action was not made in good faith or was frivolous; *provided*, *however*, that until such final judicial determination is made, Indemnitee shall be entitled under Section 3 to receive payment of Expense Advances hereunder with respect to such action. In the event of an action instituted by or in the name of the Company under this Agreement to enforce or interpret any of the terms of this Agreement, Indemnitee shall be entitled to be indemnified, exonerated or held harmless for all Expenses incurred by Indemnitee in defense of such action (including without limitation costs and expenses incurred with respect to Indemnitee's counterclaims and cross-claims made in such action), unless as a part of such action a court having jurisdiction over such action makes a final judicial determination (as to which all rights of appeal therefrom have been exhausted or lapsed) that each of the material defenses asserted by Indemnitee in such action was made in bad faith or was frivolous; *provided*, *however*, that until such final judicial determination is made, Indemnitee shall be entitled under Section 3 to receive payment of Expense Advances hereunder with respect to such action.

14. Notices. All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed duly given (i) if delivered by hand and signed for by the party addressed, on the date of such delivery or (ii) if mailed by domestic certified or registered mail with postage prepaid, on the third business day after the date postmarked. Addresses for notice to either party are as shown on the signature page of this Agreement or as subsequently modified by written notice.

15. Consent to Jurisdiction. The Company and Indemnitee each hereby irrevocably consent to the jurisdiction of the courts of the State of Delaware for all purposes in connection with any action or proceeding which arises out of or relates to this Agreement and agree that any action instituted under this Agreement shall be commenced, prosecuted and continued only in the Court of Chancery of the State of Delaware in and for New Castle County, which shall be the exclusive and only proper forum for adjudicating such a claim.

16. Severability. The provisions of this Agreement shall be severable in the event that any of the provisions hereof (including any provision within a single section, paragraph or sentence) are held by a court of competent jurisdiction to be invalid, void or otherwise unenforceable, and the remaining provisions shall remain enforceable to the fullest extent permitted by law. Furthermore, to the fullest extent possible, the provisions of this Agreement (including without limitation each portion of this Agreement containing any provision held to be invalid, void or otherwise unenforceable, that is not itself invalid, void or unenforceable) shall be construed so as to give effect to the intent manifested by the provision held invalid, illegal or unenforceable.

17. Choice of Law. This Agreement, and all rights, remedies, liabilities, powers and duties of the parties to this Agreement, shall be governed by and construed in accordance with the laws of the State of Delaware without regard to principles of conflicts of laws.

18. Primacy of Indemnification; Subrogation.

(a) The Company hereby acknowledges that Indemnitee has or may in the future have certain indemnification, exoneration, hold harmless or Expense advancement rights and/or insurance provided by Fund and certain of its affiliates (collectively, the "Fund Indemnitors"). The Company hereby agrees (i) that it is the indemnitor of first resort (*i.e.*, its obligations to Indemnitee are primary and any obligation of the Fund Indemnitors to advance Expenses or to provide indemnification, exoneration or hold harmless rights for the same Expenses incurred by Indemnitee are secondary), (ii) that it shall be required to advance the full amount of Expenses incurred by Indemnitee and shall be liable for the full amount of all Expenses, to the extent legally permitted and as required by the Company's Bylaws or Certificate of Incorporation (or any agreement between the Company and Indemnitee), without regard to any rights Indemnitee may have against the Fund Indemnitors, (iii) that it irrevocably waives, relinquishes and releases the Fund Indemnitors from any and all claims against the Fund Indemnitors for contribution, subrogation or any other recovery of any kind in respect thereof and (iv) if any Fund Indemnitor is a party to or a participant in a legal proceeding, which participation or involvement arises solely as a result of Indemnitee's service to the Company as a director of the Company, then such Fund Indemnitor shall be entitled to all of the indemnification rights and remedies under this Agreement to the same extent as Indemnitee. The Company further agrees that no advancement or payment by the Fund Indemnitors on behalf of Indemnitee with respect to any Claim for which Indemnitee has sought indemnification, exoneration or hold harmless rights from the Company shall affect the foregoing and the Fund Indemnitors shall have a right to receive from the Company, contribution and/or be subrogated, to the extent of such advancement or payment to all of the rights of recovery of Indemnitee against the Company.

(b) Except as provided in Section 18(a) above, in the event of payment under this Agreement, the Company shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee from any insurance policy purchased by the Company, who shall execute all documents required and shall do all acts that may be necessary to secure such rights and to enable the Company effectively to bring suit to enforce such rights. In no event, however, shall the Company or any other person have any right of recovery, through subrogation or otherwise, against (i) Indemnitee, (ii) any Fund Indemnitor or (iii) any insurance policy purchased or maintained by Indemnitee or any Fund Indemnitor.

19. Amendment and Termination. No amendment, modification, termination or cancellation of this Agreement shall be effective unless it is in writing signed by both the parties hereto. No waiver of any of the provisions of this Agreement shall be deemed to be or shall constitute a waiver of any other provisions hereof (whether or not similar), nor shall such waiver constitute a continuing waiver.

20. Integration and Entire Agreement. This Agreement sets forth the entire understanding between the parties hereto and supersedes and merges all previous written and oral negotiations, commitments, understandings and agreements relating to the subject matter hereof between the parties hereto, including any existing director or officer indemnification agreement; *provided*, *however*, that this Agreement is a supplement to and in furtherance of the Company's Bylaws, Certificate of Incorporation, any directors and officers insurance maintained by the Company and applicable law, and shall not be deemed a substitute therefor, nor to diminish or abrogate any rights of Indemnitee thereunder.

21. **No Construction as Employment Agreement.** Nothing contained in this Agreement shall be construed as giving Indemnitee any right to employment by the Company or any of its subsidiaries or affiliated entities.

22. **Additional Acts.** If for the validation of any of the provisions in this Agreement any act, resolution, approval or other procedure is required, the Company undertakes to cause such act, resolution, approval or other procedure to be affected or adopted in a manner that will enable the Company to fulfill its obligations under this Agreement.

(The remainder of this page is intentionally left blank.)

IN WITNESS WHEREOF, the parties hereto have executed this Indemnification Agreement as of the date first above written.

ACURX PHARMACEUTICALS, INC.

By: _____

Name: _____

Title: _____

Address:
259 Liberty Avenue
Staten Island, NY 10305

AGREED TO AND ACCEPTED BY:

INDEMNITEE:

By: _____

Name: _____

Title: _____

Address: _____

_____

_____

Date: _____, 20__

[*Signature Page to Indemnification Agreement*]

Exhibit 10.2

SECURITIES PURCHASE AGREEMENT

This **SECURITIES PURCHASE AGREEMENT** (the "**Agreement**"), dated as of _____, 20__, is made by and among Acurx Pharmaceuticals, Inc., a corporation organized under the laws of Delaware (the "**Company**"), and the investors listed on the Schedule of Buyers attached hereto (individually, a "**Buyer**" and collectively, the "**Buyers**").

WHEREAS:

A. The Company and each Buyer is executing and delivering this Agreement in reliance upon the exemption from securities registration afforded by Section 4(2) of the Securities Act of 1933, as amended (the "**1933 Act**"), and Rules 504 and/or 506, as applicable, of Regulation D ("**Regulation D**") as promulgated by the United States Securities and Exchange Commission (the "**SEC**") under the 1933 Act.

B. Each Buyer wishes to purchase, and the Company wishes to sell, upon the terms and conditions stated in this Agreement, (i) that aggregate number of shares of common stock of the Company (the "**Shares**") set forth opposite such Buyer's name in column (3) on the Schedule of Buyers (which aggregate amount of Shares for all Buyers together shall collectively be referred to herein as the "**Common Stock**") and (ii) warrants, in substantially the form attached hereto as Exhibit A (the "**Warrants**"), to acquire up to that number of additional Shares set forth opposite such Buyer's name in column (4) of the Schedule of Buyers (as converted, collectively, the "**Warrant Interests**"). The total amount of Shares and Warrants being issued by the Company hereunder is up to a maximum aggregate offering amount of $_____ (with an option exercisable by the Company, in its sole discretion, for up to an additional $_____).

C. The Company and each Buyer are executing an Investor Rights Agreement, dated the date hereof, in the form attached hereto as Exhibit B (the "**Investor Rights Agreement**"), pursuant to which the Company agrees to provide certain registration rights with respect to the Common Stock, and the Warrant Interests under the 1933 Act and the rules and regulations promulgated thereunder, and applicable state securities laws.

D. The Company and each Buyer desire that each such Buyer join and become a party to the Investor Rights Agreement.

E. The Shares, the Warrants and the Warrant Interests collectively are referred to herein as the "**Securities**".

NOW, THEREFORE, the Company and each Buyer hereby agree as follows:

1. PURCHASE AND SALE OF COMMON STOCK AND WARRANTS.

(a) Purchase of Common Stock and Warrants. Subject to the satisfaction (or waiver) of the conditions set forth in Sections 6 and 7 below, at each closing of the transaction contemplated hereby (each, a "**Closing**"), the Company shall issue and sell to each Buyer, and each Buyer severally, but not jointly, agrees to purchase from the Company on the Closing Date (as defined below), (A) the number of Shares as is set forth opposite such Buyer's name in column (3) on the Schedule of Buyers, along with (B) Warrants to acquire up to that number of Warrant Interests as is set forth opposite such Buyer's name in column (4) on the Schedule of Buyers. Each Closing shall occur on the Closing Date at the offices of Mintz Levin, Cohn, Ferris, Glovsky and Popeo, P.C., 666 Third Avenue, New York, New York 10017 or remotely via the electronic exchange of documents and facsimile signatures. The Schedule of Buyers shall be amended accordingly following each Closing.

(b) Purchase Price. The purchase price for the Shares and related Warrants to be purchased by each Buyer at the Closing shall be the amount set forth opposite such Buyer's name in column (5) of the Schedule of Buyers (the "**Purchase Price**") which shall be equal to the amount of $_____ per Share and the related Warrants.

(c) Closing Date. The date and time of the initial Closing hereunder shall be ____ [a.m./p.m.], New York City Time, on the date first written above. Each Buyer acknowledges and agrees that the Company may, in its sole discretion, conduct subsequent and multiple Closings for such amounts and Shares and Warrants as the Company may, in its sole discretion, determine, up a maximum amount of $_____ worth of Securities. The date of each Closing hereunder shall be a "**Closing Date**."

(d) Form of Payment. On each Closing Date, (i) each Buyer shall pay its respective Purchase Price to the Company for the Shares and Warrants to be issued and sold to such Buyer at the Closing by wire transfer of immediately available funds in accordance with the Company's written wire instructions and (ii) the Company shall deliver to each Buyer (A) one or more certificates, evidencing the number of Shares such Buyer is purchasing as is set forth opposite such Buyer's name in column (3) of the Schedule of Buyers, and (B) a Warrant pursuant to which such Buyer shall have the right to acquire such number of Warrant Interests as is set forth opposite such Buyer's name in column (4) of the Schedule of Buyers in all cases duly executed on behalf of the Company and registered in the name of such Buyer or its designee.

(e) Joinder. Each Buyer, by their execution of a joinder agreement to be delivered to the Company as of the Closing Date on which such Buyer purchases Common Stock and Warrants, agrees to become a party to the Investor Rights Agreement. Each Buyer acknowledges receipt of the the Investor Rights Agreement.

2. BUYER'S REPRESENTATIONS AND WARRANTIES . Each Buyer, severally and not jointly, represents and warrants with respect to only itself that, as of the date hereof and as of the applicable Closing Date:

(a) No Public Sale or Distribution. Such Buyer is (i) acquiring the Shares and the Warrants and (ii) upon exercise of the Warrants (other than pursuant to a Cashless Exercise (as defined in the Warrants)) will acquire the Warrant Interests issuable upon exercise thereof for its own account and not with a view towards, or for resale in connection with, the public sale or distribution thereof, except pursuant to sales registered or exempted under the 1933 Act and such Buyer does not have a present arrangement to effect any distribution of Securities to or through any person or entity; provided, however, that by making the representations herein, such Buyer does not agree to hold any of the Securities for any minimum or other specific term and reserves the right to dispose of the Securities at any time in accordance with or pursuant to a registration statement or an exemption under the 1933 Act. Such Buyer is acquiring the Securities hereunder in the ordinary course of its business. Such Buyer does not presently have any agreement or understanding, directly or indirectly, with any Person (as defined in Section 3(p)) to distribute any of the Securities.

(b) Accredited Investor Status. Such Buyer is an "accredited investor" as that term is defined in Rule 501(a) of Regulation D or a "sophisticated" investor as defined in Regulation D or an entity that is a "qualified institutional buyer" within the meaning of Rule 144A promulgated under the 1933 Act.

(c) Reliance on Exemptions. Such Buyer understands that the Securities are being offered and sold to it in reliance on specific exemptions from the registration requirements of United States federal and state securities laws and that the Company is relying in part upon the truth and accuracy of, and such Buyer's compliance with, the representations, warranties, agreements, acknowledgments and understandings of such Buyer set forth herein in order to determine the availability of such exemptions

and the eligibility of such Buyer to acquire the Securities.

(d) Information. Such Buyer and its advisors, if any, have been furnished with material information relating to the business, finances and operations of the Company and the offer and sale of the Securities which have been requested by such Buyer, including the Company's _____, describing the Company and the transactions contemplated hereby. Such Buyer and its advisors, if any, have been afforded the opportunity to ask questions of the Company. Such Buyer understands that its investment in the Securities involves a high degree of risk and is able to afford a complete loss of such investment. Such Buyer has sought such accounting, legal and tax advice as it has considered necessary to make an informed investment decision with respect to its acquisition of the Securities.

(e) No Governmental Review. Such Buyer understands that no United States federal or state agency or any other government or governmental agency has passed on or made any recommendation or endorsement of the Securities or the fairness or suitability of the investment in the Securities nor have such authorities passed upon or endorsed the merits of the offering of the Securities.

(f) Transfer or Resale. Such Buyer understands that except as provided in the Investor Rights Agreement: (i) the Securities have not been and are not being registered under the 1933 Act or any state securities laws, and may not be offered for sale, sold, assigned or transferred unless (A) subsequently registered thereunder, (B) such Buyer shall have delivered to the Company, an opinion of counsel, in a form reasonably satisfactory to the Company, to the effect that such Securities to be sold, assigned or transferred may be sold, assigned or transferred pursuant to an exemption from such registration, or (C) such Buyer provides the Company with reasonable assurance that such Securities can be sold, assigned or transferred pursuant to Rule 144 or Rule 144A promulgated under the 1933 Act (or a successor rule thereto) (collectively, "**Rule 144**"); (ii) any sale of the Securities made in reliance on Rule 144 may be made only in accordance with the terms of Rule 144 and further, if Rule 144 is not applicable, any resale of the Securities under circumstances in which the seller (or the Person) through whom the sale is made) may be deemed to be an underwriter (as that term is defined in the 1933 Act) may require compliance with some other exemption under the 1933 Act or the rules and regulations of the SEC thereunder; and (iii) neither the Company nor any other Person is under any obligation to register the Securities under the 1933 Act or any state securities laws or to comply with the terms and conditions of any exemption thereunder. Notwithstanding the foregoing, the Securities may be pledged in connection with a bona fide margin account or other loan or financing arrangement secured by the Securities and such pledge of Securities shall not be deemed to be a transfer, sale or assignment of the Securities hereunder, and no Buyer effecting a pledge of Securities shall be required to provide the Company with any notice thereof or otherwise make any delivery to the Company pursuant to this Agreement or any other Transaction Document (as defined in Section 3(b)), including, without limitation, this Section 2(f).

(g) Legends. Such Buyer understands that the certificates or other instruments representing the Shares and the Warrant Interests and, until such time as the resale of the Shares and the Warrant Interests have been registered under the 1933 Act as contemplated by the Investor Rights Agreement, the certificates representing the Warrant Interests, except as set forth below, shall bear any legend as required by the "blue sky" laws of any state and a restrictive legend in substantially the following form (and a stop-transfer order may be placed against transfer of such certificates):

> [NEITHER THE ISSUANCE AND SALE OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE NOR THE SECURITIES INTO WHICH THESE SECURITIES ARE EXERCISABLE HAVE BEEN][THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN] REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED ("ACT"), OR APPLICABLE STATE SECURITIES LAWS. THE SECURITIES MAY NOT BE OFFERED FOR SALE, SOLD, TRANSFERRED OR ASSIGNED (I) IN THE ABSENCE OF (A) AN EFFECTIVE REGISTRATION STATEMENT FOR THE SECURITIES UNDER THE ACT OR (B) AN OPINION OF COUNSEL IN A FORM REASONABLY SATISFACTORY TO THE COMPANY, THAT REGISTRATION IS NOT REQUIRED UNDER SAID ACT OR (II) UNLESS SOLD PURSUANT TO RULE 144 OR RULE 144A UNDER SAID ACT. NOTWITHSTANDING THE FOREGOING, THE SECURITIES MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN OR FINANCING ARRANGEMENT SECURED BY THE SECURITIES.*

The legend set forth above shall be removed and the Company shall issue a certificate without such legend to the holder of the Securities upon which it is stamped if, unless otherwise required by state securities laws, (i) such Securities are registered for resale under the 1933 Act, (ii) in connection with a sale, assignment or other transfer, such holder provides the Company with an opinion of counsel reasonably satisfactory to the Company to the effect that such sale, assignment or transfer of the Securities may be made without registration under the applicable requirements of the 1933 Act and that such legend is no longer required, or (iii) such holder provides the Company with reasonable assurance that the Securities can be sold, assigned or transferred pursuant to Rule 144 or Rule 144A without limitation. The Company shall be responsible for the fees, if any, of its transfer agent associated with such issuance.

* Bracketed language to be inserted if applicable.

(h) Validity; Enforcement. This Agreement and the Investor Rights Agreement have been duly and validly authorized, executed and delivered on behalf of such Buyer and shall constitute the legal, valid and binding obligations of such Buyer enforceable against such Buyer in accordance with their respective terms, except as such enforceability may be limited by general principles of equity or to applicable bankruptcy, insolvency, reorganization, moratorium, liquidation and other similar laws relating to, or affecting generally, the enforcement of applicable creditors' rights and remedies.

(i) No Conflicts. The execution, delivery and performance by such Buyer of this Agreement and the Investor Rights Agreement and the consummation by such Buyer of the transactions contemplated hereby and thereby will not (i) result in a violation of the organizational documents of such Buyer or (ii) conflict with, or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, any agreement, indenture or instrument to which such Buyer is a party, or (iii) result in a violation of any law, rule, regulation, order, judgment or decree (including federal and state securities laws) applicable to such Buyer, except in the case of clauses (ii) and (iii) above, for such conflicts, defaults, rights or violations which would not, individually or in the aggregate, reasonably be expected to have a material adverse effect on the ability of such Buyer to perform its obligations hereunder.

(j) Residency. Such Buyer is a resident of that jurisdiction specified below its address on the Schedule of Buyers.

(k) General Solicitation. Such Buyer is not purchasing the Securities as a result of any advertisement, article, notice or other communication regarding the Securities published in any newspaper, magazine or similar media or broadcast over television, radio or via the Internet or presented at any seminar or, to such Buyer's knowledge, any other general solicitation or general advertisement.

(l) Fees. Such Buyer shall be responsible for the payment of any placement agent's fees, financial advisory fees, or broker's commissions (other than for Persons engaged by the Company) relating to or arising out of the transactions contemplated hereby. Such Buyer shall pay, and hold the Company harmless against, any liability, loss or expense (including, without limitation, reasonable attorney's fees and out-of-pocket expenses) arising in connection with any claim relating to any such payment.

3. REPRESENTATIONS AND WARRANTIES OF THE COMPANY . The Company represents and warrants to each of the Buyers that, as of the date hereof

and as of the applicable Closing Date:

(a) Organization and Qualification; Subsidiaries. The Company is an entity duly organized and validly existing in good standing under the laws of Delaware and has the requisite power and authorization to carry on their business as now being conducted. The Company is duly qualified as a foreign entity to do business and is in good standing in every jurisdiction in which the nature of the business conducted by it makes such qualification necessary, except to the extent that the failure to be so qualified or be in good standing would not reasonably be expected to have a Material Adverse Effect. As used in this Agreement, "**Material Adverse Effect**" means any material adverse effect on the business, properties, assets, operations, results of operations or condition (financial or otherwise) of the Company, taken as a whole, or on the transactions contemplated hereby or on the other Transaction Documents or by the agreements and instruments to be entered into in connection herewith or therewith, or on the authority or ability of the Company to perform its obligations under the Transaction Documents (as defined below). The Company has no subsidiaries.

(b) Authorization; Enforcement; Validity. The Company has the requisite power and authority to enter into and perform its obligations under this Agreement, the Investor Rights Agreement, the Warrants and each of the other agreements entered into by the parties hereto in connection with the transactions contemplated by this Agreement (collectively, the "**Transaction Documents**") and to issue the Securities in accordance with the terms hereof and thereof. The execution and delivery of the Transaction Documents by the Company and the consummation by the Company of the transactions contemplated hereby and thereby, including, without limitation, the issuance of the Shares and the Warrants and the reservation for issuance and the issuance of the Warrant Interests issuable upon exercise of the Warrants have been duly authorized by the Company's Board of Directors and no further consent or authorization is required by the Company, its Board of Directors or its members. This Agreement and the other Transaction Documents have been duly executed and delivered by the Company, and constitute the legal, valid and binding obligations of the Company, enforceable against the Company in accordance with their respective terms, except as such enforceability may be limited by general principles of equity or applicable bankruptcy, insolvency, reorganization, moratorium, liquidation or similar laws relating to, or affecting generally, the enforcement of applicable creditors' rights and remedies.

(c) Issuance of Securities. The Common Stock and the Warrants are duly authorized and, upon issuance in accordance with the terms hereof, shall be validly issued and free from all taxes, liens and charges with respect to the issue thereof and the Common Stock shall be fully paid and nonassessable with the holders being entitled to all rights accorded to a holder of Shares. As of the Closing Date, the Company shall have duly authorized and reserved for issuance a number of Common Stock which equals the maximum number of Warrant Interests issuable upon exercise of the Warrants. The Company shall, so long as any of the Warrants are outstanding, take all action necessary to reserve and keep available for issuance, solely for the purpose of effecting the exercise of the Warrants, 100% of the number of Shares issuable upon exercise of the Warrants. Upon exercise in accordance with the Warrants, the Warrant Interests will be validly issued, fully paid and nonassessable and free from all preemptive or similar rights, taxes, liens and charges with respect to the issue thereof, with the holders being entitled to all rights accorded to a holder of Shares. The offer and issuance by the Company of the Securities is exempt from registration under the 1933 Act.

(d) No Conflicts. The execution, delivery and performance of the Transaction Documents by the Company and the consummation by the Company of the transactions contemplated hereby and thereby (including, without limitation, the issuance of the Shares and the Warrants and the reservation for issuance and issuance of the Warrant Interests) will not (i) result in a violation of the Certificate of Incorporation (as defined below), the Bylaws, or other constituent documents of the Company or (ii) conflict with, or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, any material agreement, indenture or instrument to which the Company is a party.

(e) Consents. The Company is not required to obtain any consent, authorization or order of, or make any filing or registration with, any court, governmental agency or any regulatory or self-regulatory agency or any other Person in order for it to execute, deliver or perform any of its obligations under or contemplated by the Transaction Documents, in each case in accordance with the terms hereof or thereof except for filings pursuant to Regulation D of the Securities Act, and applicable state securities laws, which have been made or will be made in a timely manner. All consents, authorizations, orders, filings and registrations which the Company is required to obtain prior to the Closing Date pursuant to the preceding sentence have been obtained or effected on or prior to the Closing Date. The Company is unaware of any facts or circumstances that might prevent the Company from obtaining or effecting any of the registration, application or filings pursuant to the preceding sentence.

(f) Acknowledgment Regarding Buyer's Purchase of Securities. The Company acknowledges and agrees that each Buyer is acting solely in the capacity of arm's length purchaser with respect to the Transaction Documents and the transactions contemplated hereby and thereby and that, except as set forth on Schedule 3(f), no Buyer is (i) an officer or director of the Company, (ii) an "affiliate" of the Company or (iii) to the knowledge of the Company, a "beneficial owner" of more than 10% of the Common Stock (as defined for purposes of Rule 13d-3 of the Securities Exchange Act of 1934, as amended (the "**1934 Act**")). The Company further represents to each Buyer that the Company's decision to enter into the Transaction Documents has been based solely on the independent evaluation by the Company and its representatives.

(g) No General Solicitation. Neither the Company, nor any of its affiliates, nor any Person acting on its or their behalf, has engaged in any form of general solicitation or general advertising (within the meaning of Regulation D) in connection with the offer or sale of the Securities.

(h) No Integrated Offering. None of the Company, its affiliates, or any Person acting on their behalf has, directly or indirectly, made any offers or sales of any security or solicited any offers to buy any security, under circumstances that would require registration of any of the Securities under the 1933 Act, whether through integration with prior offerings or otherwise. Neither the Company, nor its affiliates or any Person acting on their behalf have taken any action or steps referred to in the preceding sentence that would require registration of any of the Securities under the 1933 Act or cause the offering of the Securities to be integrated with other offerings for purposes of any applicable membership approval provisions.

(i) Dilutive Effect. The Company acknowledges that its obligation to issue the Warrant Interests upon exercise of the Warrants in accordance with this Agreement and the Warrants, in each case, is absolute and unconditional regardless of the dilutive effect that such issuance may have on the ownership interests of other members of the Company.

(j) Application of Takeover Protections. The Company has not adopted an equity holder rights plan or similar arrangement relating to accumulations of beneficial ownership of Common Stock or a change in control of the Company.

(k) No Undisclosed Events, Liabilities, Developments or Circumstances. No event, liability, development or circumstance has occurred or exists, or is contemplated to occur, with respect to the Company or its business, properties, prospects, operations or financial condition, that would be required to be disclosed by the Company under applicable securities laws on a registration statement on Form S-1 filed with the SEC relating to an issuance and sale by the Company of its Common Stock and

which has not been publicly announced.

(l) Conduct of Business; Regulatory Permits. The Company is not in violation of any term of its Certificate of Incorporation (the "**Certificate of Incorporation**") or Bylaws. The Company is not in violation of any judgment, decree or order or any statute, ordinance, rule or regulation applicable to the Company. The Company currently possesses all certificates, authorizations and permits issued by the appropriate federal, state or foreign regulatory authorities necessary to conduct its business, except where the failure to possess such certificates, authorizations or permits would not have, individually or in the aggregate, a Material Adverse Effect, and the Company has not received any notice of proceedings relating to the revocation or modification of any such certificate, authorization or permit.

(m) Foreign Corrupt Practices. The Company has not, nor has any director, officer, agent, employee or other Person acting on behalf of the Company, in the course of its actions for, or on behalf of, the Company (i) used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expenses relating to political activity; (ii) made any direct or indirect unlawful payment to any foreign or domestic government official or employee from corporate funds; (iii) violated or is in violation of any provision of the U.S. Foreign Corrupt Practices Act of 1977, as amended; or (iv) made any unlawful bribe, rebate, payoff, influence payment, kickback or other unlawful payment to any foreign or domestic government official or employee.

(n) Transactions With Affiliates. None of the officers, directors or employees of the Company is presently a party to any transaction with the Company (other than for ordinary course services as employees, officers or directors), including any contract, agreement or other arrangement providing for the furnishing of services to or by, providing for rental of real or personal property to or from, or otherwise requiring payments to or from any such officer, director or employee or any corporation, partnership, trust or other entity in which any such officer, director, or employee has a substantial interest or is an officer, director, trustee or partner.

(o) Equity Capitalization. As of _____, 20__, the Company has an aggregate of _____ shares of common stock issued and outstanding and _____ shares of preferred stock issued and outstanding. All of such outstanding Shares have been, or upon issuance will be, validly issued and are fully paid and nonassessable. Except as may be set forth in the bylaws of the Company (the "**Bylaws**") or this Agreement, no common stock or preferred stock are subject to preemptive rights or any other similar rights or any liens or encumbrances suffered or permitted by the Company. In addition, except as may be set forth in the Bylaws or this Agreement, there are no outstanding options, warrants, scrip, rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities or rights convertible into, or exercisable or exchangeable for, any common stock or preferred stock of the Company, or contracts, commitments, understandings or arrangements by which the Company is or may become bound to issue additional common stock or preferred stock or options, warrants, scrip, rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities or rights convertible into, or exercisable or exchangeable for, any class of stock of the Company. The Company has furnished or made available to the Buyer upon such Buyer's request, true, correct and complete copies of the Company's Certificate of Incorporation and Bylaws, in each case, in effect on the date hereof.

(p) Indebtedness and Other Contracts. The Company (i) has no outstanding Indebtedness (as defined below), (ii) is not in violation of any term of or in default under any contract, agreement or instrument relating to any Indebtedness, except where such violations and defaults would not result, individually or in the aggregate, in a Material Adverse Effect, or (iii) is not a party to any contract, agreement or instrument relating to any Indebtedness, the performance of which, in the judgment of the Company's officers, has or is expected to have a Material Adverse Effect. For purposes of this Agreement: (x) "**Indebtedness**" of any Person means, without duplication (A) all indebtedness for borrowed money, (B) all obligations issued, undertaken or assumed as the deferred purchase price of property or services, including, without limitation, "capital leases" in accordance with United States generally accepted accounting principles (other than trade payables entered into in the ordinary course of business), (C) all reimbursement or payment obligations with respect to letters of credit, surety bonds and other similar instruments, (D) all obligations evidenced by notes, bonds, debentures or similar instruments, including obligations so evidenced incurred in connection with the acquisition of property, assets or businesses, (E) all indebtedness created or arising under any conditional sale or other title retention agreement, or incurred as financing, in either case with respect to any property or assets acquired with the proceeds of such indebtedness (even though the rights and remedies of the seller or bank under such agreement in the event of default are limited to repossession or sale of such property), (F) all monetary obligations under any leasing or similar arrangement which, in connection with generally accepted accounting principles, consistently applied for the periods covered thereby, is classified as a capital lease, (G) all indebtedness referred to in clauses (A) through (F) above secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any mortgage, lien, pledge, charge, security interest or other encumbrance upon or in any property or assets (including accounts and contract rights) owned by any Person, even though the Person which owns such assets or property has not assumed or become liable for the payment of such indebtedness, and (H) all Contingent Obligations in respect of indebtedness or obligations of others of the kinds referred to in clauses (A) through (G) above; (y) "**Contingent Obligation**" means, as to any Person, any direct or indirect liability, contingent or otherwise, of that Person with respect to any indebtedness, lease, dividend or other obligation of another Person if the primary purpose or intent of the Person incurring such liability, or the primary effect thereof, is to provide assurance to the obligee of such liability that such liability will be paid or discharged, or that any agreements relating thereto will be complied with, or that the holders of such liability will be protected (in whole or in part) against loss with respect thereto; and (z) "**Person**" means an individual, a limited liability company, a partnership, a joint venture, a corporation, a trust, an unincorporated organization and a government or any department or agency thereof.

(q) Absence of Litigation. There is no action, suit, proceeding, inquiry or investigation before any court, public board, government agency, self-regulatory organization or body pending or, to the knowledge of the Company, threatened against or affecting the Company or any of the Company's officers or directors, whether of a civil or criminal nature or otherwise.

(r) Insurance. The Company currently has or plans to obtain directors' and officers' liability insurance in amounts deemed satisfactory in connection with the Company's ongoing business and operations and no other insurance. The Company has not been refused any insurance coverage sought or applied for.

(s) Intellectual Property Rights. The Company owns or possesses adequate rights or licenses to use all trademarks, trade names, service marks, service mark registrations, service names, original works of authorship, patents, patent rights, copyrights, inventions, licenses, approvals, governmental authorizations, trade secrets and other intellectual property rights and all applications and registrations therefor ("**Intellectual Property Rights**") necessary to conduct its business as now conducted. The Company does not have any knowledge of any infringement by the Company of Intellectual Property Rights of others. There is no claim, action or proceeding being made or brought, or to the knowledge of the Company, being threatened, against the Company regarding its Intellectual Property Rights. The Company is not aware of any facts or circumstances which might give rise to any of the foregoing infringements or claims, actions or proceedings. The Company has taken reasonable security measures to protect the secrecy, confidentiality and value of all of its Intellectual Property Rights.

(t) Tax Status. The Company was formed in July 2017 and has filed all material U.S. federal and/or state income or other tax returns, reports and declarations required to date. There are no unpaid taxes in any material amount claimed to be due by the taxing authority of any jurisdiction, and the officers of the Company know of no basis for any such claim.

(u) Off Balance Sheet Arrangements. There is no transaction, arrangement, or other relationship between the Company and an unconsolidated or other off balance sheet entity that would be reasonably likely to have a Material Adverse Effect.

(v) Transfer Taxes. On the Closing Date, all stock transfer or other taxes (other than income or similar taxes) which are required to be paid in connection

with the sale and transfer of the Securities to be sold to each Buyer hereunder will be, or will have been, fully paid or provided for by the Company, and all laws imposing such taxes will be or will have been complied with.

(w) Investment Company Status. The Company is not, and upon consummation of the sale of the Securities, will not be, an "investment company," a company controlled by an "investment company" or an "affiliated person" of, or "promoter" or "principal underwriter" for, an "investment company" as such terms are defined in the Investment Company Act of 1940, as amended.

(x) U.S. Real Property Holding Corporation. The Company is not and has never been, a U.S. real property holding corporation within the meaning of Section 897 of the Internal Revenue Code of 1986, as amended, and the Company shall so certify upon Buyer's request.

(y) Bank Holding Company Act. The Company is not subject to the Bank Holding Company Act of 1956, as amended (the "**BHCA**") and to regulation by the Board of Governors of the Federal Reserve System (the "**Federal Reserve**"). The Company does not own or control, directly or indirectly, five percent (5%) or more of the outstanding shares of any class of voting securities or twenty-five percent (25%) or more of the total equity of a bank or any entity that is subject to the BHCA and to regulation by the Federal Reserve. The Company does not exercise a controlling influence over the management or policies of a bank or any entity that is subject to the BHCA and to regulation by the Federal Reserve.

(z) No Additional Agreements. The Company does not have any agreement or understanding with any Buyer with respect to the transactions contemplated by the Transaction Documents other than as specified in the Transaction Documents.

(aa) Disclosure. The Company understands and confirms that each of the Buyers will rely on the foregoing representations in effecting transactions in securities of the Company. With respect to each Buyer severally, all written disclosure provided to such Buyer regarding the Company, its business and the transactions contemplated hereby, including the Schedules to this Agreement, furnished by or on behalf of the Company are true and correct and do not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading. The Company acknowledges and agrees that no Buyer makes or has made any representations or warranties with respect to the transactions contemplated hereby other than those specifically set forth in Section 2 of this Agreement.

4. COVENANTS.

(a) Best Efforts. Each party shall use its best efforts timely to satisfy each of the covenants and the conditions to be satisfied by it as provided in Sections 5, 6 and 7 of this Agreement.

(b) Form D and Blue Sky. The Company shall make all material filings and reports relating to the offer and sale of the Securities required under applicable federal securities or "Blue Sky" laws of the states of the United States.

(c) Use of Proceeds. The Company will use the proceeds from the sale of the Securities for general corporate and for working capital purposes and not for (i) the repayment of any outstanding Indebtedness of the Company or (ii) the redemption or repurchase of any of its equity securities.

(d) Fees. The Company shall be responsible for the payment of any placement agent's fees, financial advisory fees, or broker's commissions (other than for Persons engaged by any Buyer) relating to or arising out of the transactions contemplated hereby. The Company shall pay, and hold each Buyer harmless against, any liability, loss or expense (including, without limitation, reasonable attorney's fees and out-of-pocket expenses) arising in connection with any claim relating to any such payment.

(e) Closing Documents. On or prior to thirty (30) calendar days after the applicable Closing Date, the Company agrees to deliver, or cause to be delivered, to each Buyer a complete closing set of the Transaction Documents, Securities and any other document required to be delivered to any party pursuant to Section 7 hereof or otherwise.

5. REGISTER; TRANSFER AGENT INSTRUCTIONS. The Company shall maintain at its principal executive offices (or such other office or agency of the Company as it may designate), a register for the Shares and the Warrants, in which the Company shall record the name and address of the person in whose name the Shares and the Warrants have been issued (including the name and address of each transferee), the number of Shares held by such person, the number of Warrant Interests issuable upon exercise of the Warrants held by such person and the number of Shares held by such person. The Company shall keep the register open and available at all times during normal business hours for inspection of any Buyer or its legal representatives.

6. CONDITIONS TO THE COMPANY'S OBLIGATION TO SELL.

The obligation of the Company hereunder to issue and sell the Shares and the related Warrants to each Buyer at the Closing is subject to the satisfaction, at or before the applicable Closing Date, of each of the following conditions, provided that these conditions are for the Company's sole benefit and may be waived by the Company at any time in its sole discretion by providing each Buyer with prior written notice thereof:

(a) Such Buyer shall have executed each of the Transaction Documents to which it is a party (including a Joinder to the Investor Rights Agreement or this Agreement, as the case may be) and delivered the same to the Company.

(b) Such Buyer shall have delivered to the Company the Purchase Price for the Shares and the related Warrants being purchased by such Buyer and each other Buyer at the Closing by wire transfer of immediately available funds pursuant to the wire instructions provided by the Company or by check made out in the name of the Company.

(c) The representations and warranties of such Buyer shall be true and correct in all material respects (except for those representations and warranties that are qualified by materiality or Material Adverse Effect, which are true and correct in all respects) as of the date when made and as of the Closing Date as though made at that time (except for representations and warranties that speak as of a specific date which shall be true and correct as of such specified date), and such Buyer shall have performed, satisfied and complied in all material respects with the covenants, agreements and conditions required by this Agreement to be performed, satisfied or complied with by such Buyer at or prior to the Closing Date.

7. CONDITIONS TO EACH BUYER'S OBLIGATION TO PURCHASE.

The obligation of each Buyer hereunder to purchase the Shares and the related Warrants at the Closing is subject to the satisfaction, at or before the applicable Closing Date, of each of the following conditions, provided that these conditions are for each Buyer's sole benefit and may be waived by such Buyer at any time in its sole discretion by providing the Company with prior written notice thereof:

(a) The Company shall have executed and delivered to such Buyer (i) each of the Transaction Documents and (ii) the Shares and the related Warrants being purchased by such Buyer at the Closing pursuant to this Agreement.

(b) Such Buyer shall have received the opinion of Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., the Company's outside counsel ("**Company Counsel**"), dated as of the Closing Date, as to the due authorization and valid issuance of the Securities (but which shall not include a "10b-5" opinion) substantially in the form attached as Exhibit C hereto.

(c) The Company shall have delivered to such Buyer a certificate, executed by a Managing Partner of the Company and dated as of the Closing Date, certifying as to (i) the resolutions as duly adopted by the Company's Board of Directors relating to the transactions contemplated hereby as in effect at the Closing, (ii) the Bylaws and the Certificate of Incorporation, each as in effect at the Closing and (iii) the matters set forth in Section 7(d), in the form attached hereto as Exhibit D.

(d) The representations and warranties of the Company shall be true and correct in all material respects (except for those representations and warranties that are qualified by materiality or Material Adverse Effect, which are true and correct in all respects) as of the date when made and as of the Closing Date as though made at that time (except for representations and warranties that speak as of a specific date which shall be true and correct as of such specified date) and the Company shall have performed, satisfied and complied in all respects with the covenants, agreements and conditions required by the Transaction Documents to be performed, satisfied or complied with by the Company at or prior to the Closing Date.

8. TERMINATION. With respect to each Closing, in the event that such Closing shall not have occurred with respect to a Buyer on or before ten (10) Business Days from the applicable Closing Date due to the Company's or such Buyer's failure to satisfy the conditions set forth in Sections 6 and 7 above (and the nonbreaching party's failure to waive such unsatisfied condition(s)), the nonbreaching party shall have the option to terminate this Agreement with respect to such breaching party at the close of business on such date without liability of any party to any other party.

9. MISCELLANEOUS.

(a) Governing Law; Jurisdiction; Waiver of Jury Trial. All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by the internal laws of the State of New York, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New York or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of New York. Each party hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in the City of New York, Borough of Manhattan for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof to such party at the address for such notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. **EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT OR ANY TRANSACTION CONTEMPLATED HEREBY.**

(b) Counterparts. This Agreement may be executed in two or more identical counterparts, all of which shall be considered one and the same agreement and shall become effective when counterparts have been signed by each party and delivered to the other party; provided that a facsimile or other electronic signature delivered by fax or e-mail transmission shall be considered due execution and shall be binding upon the signatory thereto with the same force and effect as if the signature were an original, not a facsimile signature.

(c) Headings. The headings of this Agreement are for convenience of reference and shall not form part of, or affect the interpretation of, this Agreement.

(d) Severability. If any provision of this Agreement is prohibited by law or otherwise determined to be invalid or unenforceable by a court of competent jurisdiction, the provision that would otherwise be prohibited, invalid or unenforceable shall be deemed amended to apply to the broadest extent that it would be valid and enforceable, and the invalidity or unenforceability of such provision shall not affect the validity of the remaining provisions of this Agreement so long as this Agreement as so modified continues to express, without material change, the original intentions of the parties as to the subject matter hereof and the prohibited nature, invalidity or unenforceability of the provision(s) in question does not substantially impair the respective expectations or reciprocal obligations of the parties or the practical realization of the benefits that would otherwise be conferred upon the parties. The parties will endeavor in good faith negotiations to replace the prohibited, invalid or unenforceable provision(s) with a valid provision(s), the effect of which comes as close as possible to that of the prohibited, invalid or unenforceable provision(s).

(e) Entire Agreement; Amendments. This Agreement and all other Transaction Documents supersede all other prior oral or written agreements between the Buyers, the Company, their affiliates and Persons acting on their behalf with respect to the matters discussed herein, and this Agreement, the other Transaction Document and the instruments referenced herein and therein contain the entire understanding of the parties with respect to the matters covered herein and therein and, except as specifically set forth herein or therein, neither the Company nor any Buyer makes any representation, warranty, covenant or undertaking with respect to such matters. No provision of this Agreement may be amended other than by an instrument in writing signed by the Company and the holders of Shares and Warrants representing at least a majority of the number of the Shares together with the number of Shares underlying the Warrants then held by the Buyers and any of their respective successors or assigns. No provision hereof may be waived other than by an instrument in writing signed by the party against whom enforcement is sought.

(f) Notices. Any notices, consents, waivers or other communications required or permitted to be given under the terms of this Agreement must be in writing and will be deemed to have been delivered: (i) upon receipt, when delivered personally; (ii) when sent, if sent by electronic mail during the recipient's normal business

hours, and if not sent during normal business hours, then on the recipient's next Business Day; or (iii) one Business Day after deposit with an overnight courier service, in each case properly addressed to the party to receive the same. The addresses and email address for such communications shall be:

If to the Company:

Acurx Pharmaceuticals, Inc.
_____
_____
Telephone: _____
E-mail: _____
Attention: _____

with a copy (for informational purposes only) to:

David P. Luci
c/o Acurx Pharmaceuticals, Inc.
_____
_____
Telephone: _____
E-mail: _____

If to a Buyer, to its address and email address set forth on the Schedule of Buyers or to such other address and/or email address and/or to the attention of such other Person as the recipient party has specified by written notice given to each other party five (5) days prior to the effectiveness of such change. Written confirmation of receipt (A) given by the recipient of such notice, consent, waiver or other communication, or (B) provided by an overnight courier service shall be rebuttable evidence of personal service, receipt by E-mail or receipt from an overnight courier service in accordance with clause (i), (ii) or (iii) above, respectively.

(g) Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns, including any purchasers of the Shares or the Warrants. The Company shall not assign this Agreement or any rights or obligations hereunder without the prior written consent of the holders of Shares representing at least a majority of the number of the Shares together with the number of Shares underlying the Warrants then held by the Buyers and any of their respective successors or assigns including by way of a Change of Control (as defined in the Warrants) (unless the Company is in compliance with the applicable provisions governing Change of Control set forth in the Warrants). A Buyer may assign some or all of its rights hereunder without the consent of the Company, in which event such assignee shall be deemed to be a Buyer hereunder with respect to such assigned rights.

(h) No Third Party Beneficiaries. This Agreement is intended for the benefit of the parties hereto and their respective permitted successors and assigns, and is not for the benefit of, nor may any provision hereof be enforced by, any other Person.

(i) Survival. Unless this Agreement is terminated under Section 8, the representations and warranties of the Company and the Buyers contained in Sections 2 and 3, the agreements and covenants set forth in Sections 4, 5 and 9 shall survive the Closing and the delivery and exercise of Securities, as applicable, for a period of one (1) year. Each Buyer shall be responsible only for its own representations, warranties, agreements and covenants hereunder.

(j) Further Assurances. Each party shall do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other agreements, certificates, instruments and documents, as any other party may reasonably request in order to carry out the intent and accomplish the purposes of this Agreement and the consummation of the transactions contemplated hereby.

(k) No Strict Construction. The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent, and no rules of strict construction will be applied against any party.

(l) Independent Nature of Buyers' Obligations and Rights. The obligations of each Buyer under any Transaction Document are several and not joint with the obligations of any other Buyer, and no Buyer shall be responsible in any way for the performance of the obligations of any other Buyer under any Transaction Document. Nothing contained herein or in any other Transaction Document, and no action taken by any Buyer pursuant hereto or thereto, shall be deemed to constitute the Buyers as, and the Company acknowledges that the Buyers do not so constitute, a partnership, an association, a joint venture or any other kind of entity, or create a presumption that the Buyers are in any way acting in concert or as a group, and the Company shall not assert any such claim, with respect to such obligations or the transactions contemplated by the Transaction Documents and the Company acknowledges that the Buyers are not acting in concert or as a group with respect to such obligations or the transactions contemplated by the Transaction Documents. The Company acknowledges and each Buyer confirms that it has independently participated in the negotiation of the transaction contemplated hereby with the advice of its own counsel and advisors. Each Buyer shall be entitled to independently protect and enforce its rights, including, without limitation, the rights arising out of this Agreement or out of any other Transaction Documents, and it shall not be necessary for any other Buyer to be joined as an additional party in any proceeding for such purpose.

[Signature Page Follows]

IN WITNESS WHEREOF, each Buyer and the Company have caused its respective signature page to this Securities Purchase Agreement to be duly executed as of the date first written above.

COMPANY:

ACURX PHARMACEUTICALS, INC.

By: _____
Name: _____
Title: _____

IN WITNESS WHEREOF, each Buyer and the Company have caused their respective signature page to this Securities Purchase Agreement to be duly executed as of the date first written above.

BUYERS:

_____

By: _____
Name:
Title:

Investment Amount: $ _____

No. of Shares: _____

No. of Warrants (50% Warrant coverage): _____

[Signature Page to Securities Purchase Agreement]

ACURX WIRE INSTRUCTIONS:

Bank Name:

Account No.

ABA Routing No.:

Bank Address:

Swift Code (for International Wires Only):

SCHEDULE OF BUYERS

(1)	(2)	(3)	(4)	(5)
Buyer	Address and E-Mail Address	Number of Shares	Number of Warrant Interests	Purchase Price

EXHIBITS

Exhibit A	Formof Warrant
Exhibit B	Formof Investor Rights Agreement
Exhibit C	Formof Company Counsel Opinion
Exhibit D	Formof Managing Partner's Certificate

Exhibit A

Form of Warrant

[attached hereto]

Exhibit B

Form of Investor Rights Agreement

[attached hereto]

Exhibit C

Form of Company Counsel Opinion

The following opinions of Company counsel shall be provided with such terms, provisions and caveats as are customary for opinions of like nature:

1. Based solely on a certificate of good standing issued by the Secretary of State of the State of Delaware, the Company is validly existing as a limited liability company in good standing under the laws of State of Delaware.

2. The Company has full right, power and authority to execute and deliver the Transaction Documents and to perform its obligations thereunder, and all action required to be taken for the due and proper authorization, execution and delivery of the Transaction Documents and consummation of the transactions contemplated by the Transaction Documents have been duly and validly taken.

3. The Shares issued to the Buyers have been duly and validly authorized, and when issued and delivered against payment therefor as provided in the Securities Purchase Agreement, will be validly issued, fully paid and non-assessable.

4. When issued, the Warrants will constitute valid and binding obligations of the Company to issue and sell, upon exercise thereof and payment of the respective exercise prices therefor, the number of Shares called for thereby in accordance with the terms thereof and such Warrants are enforceable against the Company in accordance with their respective terms.

Exhibit D

Form of Officers' Certificate

Pursuant to the terms of that certain Securities Purchase Agreement (the "Agreement"), dated _____, 20___ between Acurx Pharmaceuticals, Inc., a corporation organized under the laws of Delaware (the "Company"), and the Buyers signatory thereof, the undersigned, on behalf of the Company, hereby certifies by and on behalf of the Company to the Buyers as follows. All capitalized terms used but not defined herein as have the meanings ascribed to such terms in the Agreement.

1. The undersigned is a duly appointed and acting Managing Partner of the Company as of the date hereof.

2. A true, complete and correct copy of the Company's Bylaws, dated _____, 20__, is attached hereto as Exhibit A (as amended from time to time, the "Bylaws"). No amendment or other document relating to or affecting the Bylaws has been undertaken since the date referred to above, and no action has been taken by the Company or members, directors or officers in contemplation of any such amendment as of the date hereof.

3. A true, complete and correct copy of the Company's Certificate of Incorporation, dated _____, 20__, and in full force and effect as of the date hereof, is attached hereto as Exhibit B (the "Certificate of Incorporation"). No amendment or other document relating to or affecting the Certificate of Incorporation has been filed with the Secretary of State of the State of Delaware since the date referred to above, and no action has been taken by the Company or members, directors or officers in contemplation of any such amendment as of the date hereof.

4. A true, complete and correct copy of the of resolutions duly and validly adopted by the Board of Directors of the Company relating to the transactions contemplated by the Agreement at meetings or upon written consent are attached hereto as Exhibit C, which resolutions have not been suspended or modified in any manner and are in full force and effect as of the date hereof.

5. The representations and warranties of the Company set forth in the Agreement are true and correct in all material respects as of the date when made and as of the Closing Date as though made at that time (except for representations and warranties that speak as of a specific date which shall be true and correct as of such specified date).

6. The Company has performed, satisfied and complied in all material respects with the covenants, agreements and conditions required by the Transaction Documents to be performed, satisfied or complied with by the Company at or prior to the Closing Date

IN WITNESS WHEREOF, this Managing Partner's Certificate has been executed on this _____ day of _____, 20___.

SCHEDULES

Schedule 3(f) – Officers, Directors, Affiliates and 10% Beneficial Owners

Exhibit 10.3

NEITHER THE ISSUANCE AND SALE OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE NOR THE SECURITIES INTO WHICH THESE SECURITIES ARE EXERCISABLE HAVE BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR APPLICABLE STATE SECURITIES LAWS. THE SECURITIES MAY NOT BE OFFERED FOR SALE, SOLD, TRANSFERRED OR ASSIGNED (I) IN THE ABSENCE OF (A) AN EFFECTIVE REGISTRATION STATEMENT FOR THE SECURITIES UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR (B) AN OPINION OF COUNSEL IN A FORM REASONABLY SATISFACTORY TO THE COMPANY, THAT REGISTRATION IS NOT REQUIRED UNDER SAID ACT OR (II) UNLESS SOLD PURSUANT TO RULE 144 OR RULE 144A UNDER SAID ACT.

Warrant No. W- __

WARRANT TO PURCHASE SHARES
OF COMMON STOCK

To Purchase ____ Shares of Common Stock of
ACURX PHARMACEUTICALS, INC.

THIS IS TO CERTIFY THAT _____ or registered assigns (the "Holder"), is entitled, during the Exercise Period (as hereinafter defined), to purchase from Acurx Pharmaceuticals, Inc., a corporation organized under the laws of the State of Delaware (the "Company"), the Shares (as hereinafter defined and subject to adjustment as provided herein), in whole or in part, at a purchase price of $____ per Share (the "Warrant Price"), all on and subject to the terms and conditions hereinafter set forth.

1. Definitions. As used in this Warrant, the following terms have the respective meanings set forth below:

"Affiliate" means any person or entity that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with a person or entity, as such terms are used in and construed under Rule 144 under the Securities Act. With respect to a Holder of Warrants, any investment fund or managed account that is managed on a discretionary basis by the same investment manager as such Holder will be deemed to be an Affiliate of such Holder.

"Bloomberg" means Bloomberg Financial Markets.

"Business Day" means any day except Saturday, Sunday and any day which shall be a legal holiday or a day on which banking institutions in the State of New York generally are authorized or required by law or other government actions to close.

"Shares" means the shares of common stock of the Company.

"Commission" means the Securities and Exchange Commission or any other federal agency then administering the Securities Act and other federal securities laws.

"Exercise Period" means the period during which this Warrant is exercisable pursuant to Section 2.1(a).

"Expiration Date" means __, 20__.

"Person" means any individual, sole proprietorship, partnership, joint venture, trust, incorporated organization, association, corporation, limited liability company, institution, public benefit corporation, entity or government (whether federal, state, county, city, municipal or otherwise, including, without limitation, any instrumentality, division, agency, body or department thereof).

"Purchase Agreement" means that certain Securities Purchase Agreement, dated as of _____, 20__, among the Company and the other parties named therein or who may in the future become a party thereto, and as the same may be amended, pursuant to which this Warrant was originally issued.

"Securities Act" means the Securities Act of 1933, as amended, or any similar federal statute, and the rules and regulations of the Commission thereunder, all as the same shall be in effect at the time.

"Transfer" means any disposition of any Warrant or Share or of any interest in either thereof, which would constitute a sale thereof within the meaning of the Securities Act.

"Warrants" means this Warrant and all warrants issued upon transfer, division or combination of, or in substitution for, any thereof. All Warrants shall at all times be identical as to terms and conditions and date, except as to the number of Shares for which they may be exercised.

"Warrant Price" has the meaning set forth in the preamble.

2. Exercise of Warrant.

2.1. Manner of Exercise.

(a) From and after the date hereof, and until ____ [A.M./P.M.], New York time, on the Expiration Date (the "Exercise Period"), the Holder may exercise this Warrant, on any Business Day, for all or any part (except fractional parts) of the number of Shares purchasable hereunder.

(b) In order to exercise this Warrant, in whole or in part, the Holder shall deliver to the Company at its principal office or at the office or agency designated by the Company pursuant to Section 9, (i) a written notice of Holder's election to exercise this Warrant, which notice shall specify the number of Shares to be purchased and (ii) payment of the Warrant Price as provided herein. Such notice shall be substantially in the form of the exercise notice appearing at the end of this Warrant as Exhibit A, duly executed by the Holder or its agent or attorney (the "Exercise Notice"). The Holder shall not be required to deliver the original Warrant in order to effect an exercise hereunder unless this Warrant is being exercised in full to purchase (or acquire by Cashless Exercise as described below) the total number of Shares issuable upon exercise of this Warrant. Upon receipt thereof, the Company shall, as promptly as practicable, and in any event within five (5) Business Days thereafter deliver to the address as specified in the Exercise Notice, a certificate, registered in the Company's share register in the name of the Holder or its designee, for the number of Shares to which the Holder is entitled pursuant to such exercise. No fractional Shares are to be issued upon the exercise of this Warrant, but rather the Company shall pay cash in lieu of any fraction of an interest, as provided in Section 2.2. The certificate or certificates so delivered shall be, to the extent possible, in such denomination or denominations as the Holder shall request in the notice and shall

be registered in the name of the Holder or if permitted pursuant to the terms of this Warrant such other name as shall be designated in the notice. This Warrant shall be deemed to have been exercised and such certificate or certificates shall be deemed to have been issued, and the Holder or any other Person so designated to be named therein shall be deemed to have become a Holder of record of such shares for all purposes, as of the date when the notice, together with the payment of the Warrant Price and this Warrant, is received by the Company as described above. If this Warrant shall have been exercised in part, the Company shall, at the time of delivery of the certificate or certificates representing Shares, deliver to the Holder a new Warrant evidencing the rights of the Holder to purchase the unpurchased Shares called for by this Warrant, which new Warrant shall in all other respects be identical with this Warrant, or at the request of the Holder, appropriate notation may be made on this Warrant and the same returned to the Holder.

(c) Payment of the Warrant Price may be made at the option of the Holder: (i) by certified or official bank check payable to the order of the Company, (ii) by wire transfer of immediately available funds to the account of the Company or (iii) in lieu of making the cash payment otherwise contemplated to be made to the Company upon such exercise in payment of the Warrant Price, elect instead to receive upon such exercise the "Net Number" of Shares determined according to the following formula (a "Cashless Exercise"):

$$\text{Net Number} = \frac{(A \times B) - (A \times C)}{B}$$

For purposes of the foregoing formula:

A= the total number of Shares with respect to which this Warrant is then being exercised.

B= the "Fair Market Value" (as defined below) of the Shares on the date immediately preceding the date of the Exercise Notice.

C= the Warrant Price for the Shares at the time of such exercise.

For purposes of this Warrant, "Fair Market Value" shall mean a value per each Shares as proscribed by the Company's board of directors in good faith taking into account, among other things, industry standards for similarly situated companies and/or the most-recent offering price of any of the Company's securities and/or other factors reasonably believed to relate, directly or indirectly, to the value of the Shares.

(d) All Shares issuable upon the exercise of this Warrant pursuant to the terms hereof shall be validly issued and, upon payment of the Warrant Price, shall be fully paid and nonassessable.

2.2. Fractional Units. The Company shall not be required to issue a fractional interest of Shares upon exercise of any Warrant. As to any fraction of a Share which the Holder of one or more Warrants, the rights under which are exercised in the same transaction, would otherwise be entitled to purchase upon such exercise, the Company shall pay an amount in cash equal to the Fair Market Value per Share on the date of exercise multiplied by such fraction.

2.3. Restrictions on Exercise Amount. The Holder of the Warrant shall be required to exercise at least one-half of the aggregate number of Warrants held by such Holder (and its Affiliates) in each instance such Holder desires to effect an exercise under this Warrant until such time as any such Holder's remaining Shares underlying its Warrant are less than 1% of the total Shares then outstanding; from and after which such Holder shall be required to exercise all remaining warrants in any one exercise.

3. Transfer, Division and Combination.

3.1. Transfer. The Warrants and the Shares shall be freely transferable, subject to compliance with this Section 3.1 and all applicable laws, including, but not limited to the Securities Act. If, at the time of the surrender of this Warrant in connection with any transfer of this Warrant or the resale of the Shares, this Warrant or the Shares, as applicable, shall not be registered under the Securities Act or are not eligible to be sold pursuant to Rule 144, the Company may require, as a condition of allowing such transfer (i) that the Holder or transferee of this Warrant or the Shares as the case may be, furnish to the Company a written opinion of counsel that is reasonably acceptable to the Company to the effect that such transfer may be made without registration under the Securities Act, (ii) that the Holder or transferee execute and deliver to the Company an investment representation letter in form and substance acceptable to the Company and substantially in the form attached as Exhibit C hereto and (iii) that the transferee be an "accredited investor" as defined in Rule 501(a) promulgated under the Securities Act. Transfer of this Warrant and all rights hereunder, in whole or in part, in accordance with the foregoing provisions, shall be registered on the books of the Company to be maintained for such purpose, upon surrender of this Warrant at the principal office of the Company referred to in Section 2.1 or the office or agency designated by the Company pursuant to Section 12, together with a written assignment of this Warrant substantially in the form of Exhibit B hereto duly executed by the Holder or its agent or attorney and funds sufficient to pay any transfer taxes payable upon the making of such transfer. Upon such surrender and, if required, such payment, the Company shall execute and deliver a new Warrant or Warrants in the name of the assignee or assignees and in the denomination specified in such instrument of assignment, and shall issue to the assignor a new Warrant evidencing the portion of this Warrant not so assigned, and this Warrant shall promptly be cancelled. Following a transfer that complies with the requirements of this Section 3.1, the Warrant may be exercised by a new Holder for the purchase of Shares regardless of whether the Company issued or registered a new Warrant on the books of the Company.

3.2. Restrictive Legends. Each certificate for Shares initially issued upon the exercise of this Warrant, and each certificate for Shares issued to any subsequent transferee of any such certificate, unless, in each case, such Shares are eligible for resale without registration pursuant to Rule 144 (or any successor thereto) promulgated under the Securities Act, shall bear the following legend:

"THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED ("ACT"), OR APPLICABLE STATE SECURITIES LAWS. THE SECURITIES MAY NOT BE OFFERED FOR SALE, SOLD, TRANSFERRED OR ASSIGNED (I) IN THE ABSENCE OF (A) AN EFFECTIVE REGISTRATION STATEMENT FOR THE SECURITIES UNDER THE ACT OR (B) AN OPINION OF COUNSEL IN A FORM REASONABLY SATISFACTORY TO THE COMPANY, THAT REGISTRATION IS NOT REQUIRED UNDER SAID ACT OR (II) UNLESS SOLD PURSUANT TO RULE 144 OR RULE 144A UNDER SAID ACT."

In addition, the legend set forth above shall be removed and the Company shall issue a certificate without such legend to the holder of any Shares upon which it is stamped, if, unless otherwise required by applicable state securities laws, such Shares are registered for sale under an effective registration statement filed under the Securities Act.

3.3. Division and Combination; Expenses; Books. This Warrant may be divided or combined with other Warrants upon presentation hereof at the aforesaid office or agency of the Company, together with a written notice specifying the names and denominations in which new Warrants are to be issued, signed by the Holder or its agent or attorney. Subject to compliance with Section 3.1 as to any transfer which may be involved in such division or combination, the Company shall execute and deliver a new

Warrant or Warrants in exchange for the Warrant or Warrants to be divided or combined in accordance with such notice. The Company shall prepare, issue and deliver at its own expense the new Warrant or Warrants under this Section 3. The Company agrees to maintain, at its aforesaid office or agency, books for the registration and the registration of transfer of the Warrants.

4. Adjustments. The number of Shares for which this Warrant is exercisable, and the price at which such Shares may be purchased upon exercise of this Warrant, shall be subject to adjustment from time to time as set forth in this Section 4. The Company shall give the Holder notice of any event described below which requires an adjustment pursuant to this Section 4 in accordance with Sections 5.1 and 5.2.

4.1. Stock Dividends, Subdivisions and Combinations. If at any time while this Warrant is outstanding the Company shall:

(a) declare a dividend or make a distribution on its outstanding Shares in Shares,

(b) subdivide its outstanding Shares into a larger number of Shares, or

(c) combine its outstanding Shares into a smaller number of Shares, then:

(A) the number of Shares acquirable upon exercise of this Warrant immediately after the occurrence of any such event shall be adjusted to equal the number of Shares that would have been acquirable under this Warrant immediately prior to the record date by a record holder of the same number of Shares for such dividend or distribution or the effective date of such subdivision or combination would own or be entitled to receive after such record date or the effective date of such subdivision or combination, as applicable, and

(B) the Warrant Price shall be adjusted to equal:

(1) the Warrant Price in effect at the time of the record date for such dividend or distribution or of the effective date of such subdivision or combination, multiplied by the number of Shares into which this Warrant is exercisable immediately prior to the adjustment, divided by

(2) the number of Shares into which this Warrant is exercisable immediately after such adjustment.

Any adjustment made pursuant to clause (i) of this paragraph shall become effective immediately after the record date for the determination of stockholders entitled to receive such dividend or distribution, and any adjustment pursuant to clauses (ii) or (iii) of this paragraph shall become effective immediately after the effective date of such subdivision or combination.

4.2 Fractional Interests. In computing adjustments under this Section 4, fractional interests in Shares shall be taken into account to the nearest 1/100th of an interest.

4.3 Transfer Taxes. The issuance of certificates upon exercise of this Warrant shall be made without charge to the holder for any tax in respect of such issue. The Company shall not, however, be required to pay any tax which may be payable in respect of any transfer involved in the issue and delivery of Shares in any name other than that of the holder of this Warrant, and the Company shall not be required to issue or deliver any such certificate unless and until the person or persons requesting the issue thereof shall have paid to the Company the amount of such tax or shall have established to the satisfaction of the Company that such tax has been paid.

5. Notices to Warrant Holders.

5.1. Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Warrant Price, the Company, at its expense, shall promptly compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to the Holder of this Warrant a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Company shall, upon the written request at any time of the Holder of this Warrant, furnish or cause to be furnished to such Holder a like certificate setting forth (i) such adjustments and readjustments, (ii) the Warrant Price at the time in effect and (iii) the number of Shares and the amount, if any, which at the time would be received upon the exercise of Warrants owned by such Holder.

5.2. Notice of Corporate Action. The Company shall promptly notify each Holder if and to the extent any of the following occur:

(a) there shall be any capital reorganization of the Company, any reclassification or recapitalization of any class of stock of the Company or any consolidation or merger of the Company with, or any sale, transfer or other disposition of all or substantially all the property, assets or business of the Company to, another corporation, or

(c) there shall be a voluntary or involuntary dissolution, liquidation or winding up of the Company.

Such notice shall set forth the nature and timing of any such action or occurrence in reasonable detail and shall be delivered no more than fifteen (15) days prior to any such action or occurrence.

5.3. No Rights as Member. This Warrant does not entitle the Holder to any voting or other rights as a member of the Company prior to exercise and payment for the Shares in accordance with the terms hereof.

6. No Impairment. The Company shall not by any action, including, without limitation, amending its certificate of formation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Warrant, but will at all times in good faith assist in the carrying out of all such terms and in the taking of all such actions as may be necessary or appropriate to protect the rights of the Holder against impairment.

7. Registration Rights. The resale of the Shares shall have the piggy-back registration rights in accordance with the terms and conditions contained in that certain Investor Rights Agreement, among the Holder, the Company and the other parties named therein (the "Investor Rights Agreement").

8. Loss or Mutilation. Upon receipt by the Company from the Holder of evidence reasonably satisfactory to it of the ownership of and the loss, theft, destruction or mutilation of this Warrant and indemnity or security reasonably satisfactory to it and reimbursement to the Company of all reasonable expenses incidental thereto and in case of mutilation upon surrender and cancellation hereof, the Company will execute and deliver in lieu hereof a new Warrant of like tenor to the Holder; provided, however, that in

the case of mutilation, no indemnity shall be required if this Warrant in identifiable form is surrendered to the Company for cancellation.

9. Office of the Company. As long as any of the Warrants remain outstanding, the Company shall maintain an office or agency (which may be the principal executive offices of the Company) where the Warrants may be presented for exercise, registration of transfer, division or combination as provided in this Warrant.

10. Limitation of Liability. No provision hereof, in the absence of affirmative action by the Holder to purchase Shares, and no enumeration herein of the rights or privileges of the Holder hereof, shall give rise to any liability of the Holder for the purchase price of any Shares, whether such liability is asserted by the Company or by creditors of the Company.

11. Miscellaneous.

11.1. Nonwaiver and Expenses. No course of dealing or any delay or failure to exercise any right hereunder on the part of the Holder shall operate as a waiver of such right or otherwise prejudice the Holder's rights, powers or remedies. If the Company fails to make, when due, any payments provided for hereunder, or fails to comply with any other material provision of this Warrant, the Company shall pay to the Holder such amounts as shall be sufficient to cover any third party costs and expenses including, but not limited to, reasonable attorneys' fees, including those of appellate proceedings, incurred by the Holder in collecting any amounts due pursuant hereto or in otherwise enforcing any of its rights, powers or remedies hereunder.

11.2. Notice Generally. All notices, requests, demands or other communications provided for herein shall be in writing and shall be given in the manner and to the addresses set forth in the Purchase Agreement.

11.3. Successors and Assigns. This Warrant and the rights evidenced hereby shall inure to the benefit of and be binding upon the successors of the Company and the successors and assigns of the Holder. The provisions of this Warrant are intended to be for the benefit of all Holders from time to time of this Warrant, and shall be enforceable by any such Holder.

11.4. Amendment. This Warrant may be modified or amended or the provisions of this Warrant waived with the written consent of the Company and at least a majority in interest of the Warrant(s) then outstanding.

11.5. Severability. If any provision of this Warrant is prohibited by law or otherwise determined to be invalid or unenforceable by a court of competent jurisdiction, the provision that would otherwise be prohibited, invalid or unenforceable shall be deemed amended to apply to the broadest extent that it would be valid and enforceable, and the invalidity or unenforceability of such provision shall not affect the validity of the remaining provisions of this Warrant so long as this Warrant as so modified continues to express, without material change, the original intentions of the parties as to the subject matter hereof and the prohibited nature, invalidity or unenforceability of the provision(s) in question does not substantially impair the respective expectations or reciprocal obligations of the parties or the practical realization of the benefits that would otherwise be conferred upon the parties. The parties will endeavor in good faith negotiations to replace the prohibited, invalid or unenforceable provision(s) with a valid provision(s), the effect of which comes as close as possible to that of the prohibited, invalid or unenforceable provision(s).

11.6. Headings. The headings used in this Warrant are for the convenience of reference only and shall not, for any purpose, be deemed a part of this Warrant.

11.7. Governing Law. This Warrant and the transactions contemplated hereby shall be deemed to be consummated in the State of New York and shall be governed by and interpreted in accordance with the local laws of the State of New York without regard to the provisions thereof relating to conflicts of laws. The Company and each Holder, respectively, hereby irrevocably consent to the exclusive jurisdiction of the State and Federal courts located in New York City, New York in connection with any action or proceeding arising out of or relating to this Warrant.

11.8 Dispute Resolution. In the case of a dispute as to the determination of the revised Warrant Price or the arithmetic calculation of the number of Shares, the Company shall submit the disputed determinations or arithmetic calculations via facsimile within ten (10) Business Days of receipt of the Exercise Notice giving rise to such dispute, as the case may be, to the Holder. If the Holder and the Company are unable to agree upon such determination or calculation of the revised Warrant Price or the Shares within ten (10) Business Days of such disputed determination or arithmetic calculation being submitted to the Holder, then the Company shall, within five (5) Business Days submit the disputed determination of the revised Warrant Price and/or revised number of Shares, as the case may be, to an independent, reputable investment bank or independent accounting firm, in either case, selected by the Company and approved by the Holder in Holder's reasonable discretion (not to be unreasonably withheld or delayed). The Company shall cause at its expense the investment bank or the accountant, as the case may be, to perform the determinations or calculations and notify the Company and the Holder of the results no later than ten (10) Business Days from the time it receives the disputed determinations or calculations. Such investment bank's or accountant's determination or calculation, as the case may be, shall be binding upon all parties absent demonstrable error. Under no circumstances will the Company be required to perform this exercise more than once for different Holders based on the same action or transaction giving rise to any revision to the Warrant Price or number of Shares subject to this Warrant.

[Signature Page Follows]

IN WITNESS WHEREOF, Acurx Pharmaceuticals, Inc. has caused this Warrant to be executed by its duly authorized officer.

Dated: _____, 20__

ACURX PHARMACEUTICALS, INC.

By: _____

Name:

Title:

EXHIBIT A

EXERCISE NOTICE

[To be executed only upon exercise of Warrant]

1. The undersigned hereby elects to purchase _____ Shares of Acurx Pharmaceuticals, Inc. pursuant to the terms of the attached Warrant, and tenders herewith payment of the purchase price of such Shares in full.

2. The undersigned hereby elects to exercise the attached Warrant for Shares of Acurx Pharmaceuticals, Inc. through "cashless exercise" in the manner specified in the Warrant. This exercise is exercised with respect to _____ of the Shares covered by the Warrant.

3. Please issue a certificate or certificates representing said Shares in the name of the undersigned or in such other name as is specified below:

(Name)

(Address)

[and, if such Shares shall not include all of the Shares issuable as provided in this Warrant, that a new Warrant of like tenor and date for the balance of the Shares issuable hereunder be delivered to the undersigned.]

(Name of Registered Owner)

(Signature of Registered Owner)

(Street Address)

(State) (Zip Code)

NOTICE: The signature on this subscription must correspond with the name as written upon the face of the Warrant in every particular, without alteration or enlargement or any change whatsoever.

EXHIBIT B

ASSIGNMENT FORM

FOR VALUE RECEIVED the undersigned registered owner of this Warrant for the purchase of Shares of Acurx Pharmaceuticals, Inc. hereby sells, assigns and transfers unto the Assignee named below all of the rights of the undersigned under this Warrant, with respect to the number of Shares set forth below:

(Name and Address of Assignee)

(Number of Shares)

and does hereby irrevocably constitute and appoint _____ attorney-in-fact to register such transfer on the books of the Company, maintained for the purpose, with full power of substitution in the premises.

Dated:

(Print Name and Title)

(Signature)

(Witness)

NOTICE: The signature on this assignment must correspond with the name as written upon the face of the Warrant in every particular, without alteration or enlargement or any change whatsoever.

EXHIBIT C

FORM OF INVESTMENT REPRESENTATION LETTER

In connection with the acquisition of [warrants (the "Warrants") to purchase ____ shares of common stock of Acurx Pharmaceuticals, Inc. (the "Company") (the "Shares") upon the exercise of warrants by _____, by _____ (the "Holder") from _____, the Holder hereby represents and warrants to the Company as follows:

The Holder (i) is an "Accredited Investor" as that term is defined in Rule 501(a) of Regulation D promulgated under the Securities Act of 1933, as amended (the "Act"); and (ii) has the ability to bear the economic risks of such Holder's prospective investment, including a complete loss of Holder's investment in the Warrants and the Shares issuable upon the exercise thereof (collectively, the "Securities").

The Holder, by acceptance of the Warrants, represents and warrants to the Company that the Warrants and all securities acquired upon any and all exercises of the Warrants (other than pursuant to a Cashless Exercise) are purchased for the Holder's own account, and not with view to distribution of either the Warrants or any securities purchasable upon exercise thereof in violation of applicable securities laws.

The Holder acknowledges that (i) the Securities have not been registered under the Act, (ii) the Securities are "restricted securities" and the certificate(s) representing the Securities shall bear the following legend, or a similar legend to the same effect, until (i) such Securities are registered for resale under the Act, (ii) in connection with a sale, assignment or other transfer, such holder provides the Company with an opinion of counsel reasonably satisfactory to the Company to the effect that such sale, assignment or transfer of the Securities may be made without registration under the applicable requirements of the Act and that such legend is no longer required, or (iii) such holder provides the Company with reasonable assurance that the Securities can be sold, assigned or transferred pursuant to Rule 144 or Rule 144A:

> **"[**NEITHER THE ISSUANCE AND SALE OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE NOR THE SECURITIES INTO WHICH THESE SECURITIES ARE EXERCISABLE HAVE BEEN **][**THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN **]** REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED ("ACT"), OR APPLICABLE STATE SECURITIES LAWS. THE SECURITIES MAY NOT BE OFFERED FOR SALE, SOLD, TRANSFERRED OR ASSIGNED (I) IN THE ABSENCE OF (A) AN EFFECTIVE REGISTRATION STATEMENT FOR THE SECURITIES UNDER THE ACT OR (B) AN OPINION OF COUNSEL IN A FORM REASONABLY SATISFACTORY TO THE COMPANY, THAT REGISTRATION IS NOT REQUIRED UNDER SAID ACT OR (II) UNLESS SOLD PURSUANT TO RULE 144 OR RULE 144A UNDER SAID ACT.*

*Bracketed language to be inserted if applicable.

IN WITNESS WHEREOF, the Holder has caused this Investment Representation Letter to be executed this __ day of _____ 20___.

_____

By: _____
Name:
Title:

Exhibit 10.5

INVESTOR RIGHTS AGREEMENT

This Investor Rights Agreement (this "*Agreement*") is made and entered into as of _____, 20__ among Acurx Pharmaceuticals, Inc., a corporation organized under the laws of the State of Delaware (the "*Company*"), and each of the purchasers executing this Agreement and listed on Schedule 1 attached hereto as of the date hereof (collectively, the "*Initial Purchasers*").

This Agreement is being entered into in connection with a closing pursuant to that certain Securities Purchase Agreement, dated as of _____, 20__, by and among the Company and the Initial Purchasers (the "*Initial Purchase Agreement*") and in connection with the closing on the date hereof pursuant to the Securities Purchase Agreement, dated as of _____, 20__.

The Company and the Purchasers hereby agree as follows:

1. Definitions.

Capitalized terms used and not otherwise defined herein shall have the meanings given such terms in the Initial Purchase Agreement. As used in this Agreement, the following terms shall have the following meanings:

"*Additional Closing*" means a closing by the Company under the Initial Purchase Agreement with additional purchasers as provided in the Initial Purchase Agreement.

"*Business Day*" means any day except Saturday, Sunday and any day which shall be a legal holiday or a day on which banking institutions in the State of New York generally are authorized or required by law or other government actions to close.

"*Class A Membership Interests*" means the Company's Class A Membership Interests.

"*Commission*" means the Securities and Exchange Commission.

"*Deemed Liquidation Event*" shall mean, unless the holders of at least a majority of the outstanding shares of Class A Membership Interests elect otherwise by written notice sent to the Company at least five (5) days prior to the effective date of any such event:

(a) a merger or consolidation in which (i) the Company is a constituent party or (ii) a subsidiary of the Company is a constituent party and the Company issues shares of its capital stock or membership interests pursuant to such merger or consolidation, except any such merger or consolidation involving the Company or a subsidiary in which the shares of capital stock or membership interests of the Company outstanding immediately prior to such merger or consolidation continue to represent, or are converted into or exchanged for equity securities that represent, immediately following such merger or consolidation, at least a majority, by voting power, of the equity securities of (1) the surviving or resulting party or (2) if the surviving or resulting party is a wholly owned subsidiary of another party immediately following such merger or consolidation or the parent of such surviving or resulting party; or

---

(b) the sale, lease, transfer, exclusive license or other disposition, in a single transaction or series of related transactions, by the Company or any subsidiary of the Company of all or substantially all the assets or intellectual property of the Company and its subsidiaries taken as a whole, or, if substantially all of the assets or intellectual property of the Company and its subsidiaries taken as a whole are held by such subsidiary or subsidiaries, the sale or disposition (whether by merger or otherwise) of one or more subsidiaries of the Company, except where such sale, lease, transfer, exclusive license or other disposition is to the Company or one or more wholly owned subsidiaries of the Company.

"*Exchange Act*" means the Securities Exchange Act of 1934, as amended.

"*Holder*" or "*Holders*" means the holder or holders, as the case may be, from time to time of Registrable Securities, including without limitation the Purchasers and their assignees.

"*Indemnified Party*" shall have the meaning set forth in Section 6(c).

"*Indemnifying Party*" shall have the meaning set forth in Section 6(c).

"*Losses*" shall have the meaning set forth in Section 6(a).

"*Person*" means an individual or a corporation, partnership, trust, incorporated or unincorporated association, joint venture, limited liability company, joint stock company, government (or an agency or political subdivision thereof) or other entity of any kind.

"*Proceeding*" means an action, claim, suit, investigation or proceeding (including, without limitation, an investigation or partial proceeding, such as a deposition), whether commenced or threatened.

"*Prospectus*" means the prospectus included in any Registration Statement (including, without limitation, a prospectus that includes any information previously omitted from a prospectus filed as part of an effective registration statement in reliance upon Rule 430A promulgated under the Securities Act), as amended or supplemented by any prospectus supplement, with respect to the terms of the offering of any portion of the Registrable Securities covered by such Registration Statement, and all other amendments and supplements to the Prospectus, including post-effective amendments, and all material incorporated by reference in such Prospectus.

"*Purchase Agreement*" means the Initial Purchase Agreement and any additional Securities Purchase Agreement by and between the Company and any additional purchaser with respect to any Additional Closing.

"*Purchased Units*" means the Class A Membership Interests purchased by the Purchasers pursuant to the Purchase Agreement.

"*Purchaser*" means, collectively, the Initial Purchasers and any additional purchasers.

"*Registrable Securities*" means the Class A Membership Interests or other securities issued or issuable to each Purchaser or its transferee or designee upon (i) any dividend or distribution with respect to, any exchange for or any replacement of such Purchased Units or (ii) upon any conversion, exercise or exchange of any Class A Membership Interests or securities issued in connection with any such conversion, exercise or exchange.

"*Registration Statement*" means the registration statements and any additional registration statements contemplated by Section 2, including (in each case) the Prospectus, amendments and supplements to such registration statement or Prospectus, including pre- and post-effective amendments, all exhibits thereto, and all material incorporated by reference in such registration statement.

"*Required Holders*" means the holders of at least a majority of the Registrable Securities.

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

"*Securities Act*" means the Securities Act of 1933, as amended.

2. Piggy-Back Registration. Subject to Section 4 below, if at any time when there is not an effective Registration Statement covering all of the Registrable Securities, the Company shall determine to prepare and file with the Commission a registration statement relating to an offering for its own account or the account of others under the Securities Act of any of its equity securities, other than on Form S-4 or Form S-8 (each as promulgated under the Securities Act) or their then equivalents relating to equity securities to be issued solely in connection with any acquisition of any entity or business or equity securities issuable in connection with stock option or other employee benefit plans, the Company shall send to each Holder of Registrable Securities written notice of such determination and, if within seven (7) Business Days after receipt of such notice, any such Holder shall so request in writing (which request shall specify the Registrable Securities intended to be disposed of by the Holder), the Company will cause the registration under the Securities Act of all Registrable Securities which the Company has been so requested to register by the Holder, to the extent required to permit the disposition of the Registrable Securities so to be registered, provided that if at any time after giving written notice of its intention to register any securities and prior to the effective date of the registration statement filed in connection with such registration, the Company shall determine for any reason not to register or to delay registration of such securities, the Company may, at its election, give written notice of such determination to such Holder and, thereupon, (i) in the case of a determination not to register, shall be relieved of its obligation to register any Registrable Securities in connection with such registration, and (ii) in the case of a determination to delay registering, shall be permitted to delay registering any Registrable Securities being registered for the same period as the delay in registering such other securities. The Company shall include in such registration statement all or any part of such Registrable Securities such Holder requests to be registered. In the case of an underwritten public offering, if the managing underwriter(s) or underwriter(s) should reasonably object to the inclusion of the Registrable Securities in such registration statement, then if the Company after consultation with the managing underwriter should reasonably determine that the inclusion of such Registrable Securities, would materially adversely affect the offering contemplated in such registration statement, and based on such determination recommends inclusion in such registration statement of fewer or none of the Registrable Securities of the Holders, then (x) the number of Registrable Securities of the Holders included in such registration statement shall be reduced pro-rata among such Holders (based upon the number of Registrable Securities requested to be included in the registration), if the Company after consultation with the underwriter(s) recommends the inclusion of fewer Registrable Securities, or (y) none of the Registrable Securities of the Holders shall be included in such registration statement, if the Company after consultation with the underwriter(s) recommends the inclusion of none of such Registrable Securities. Notwithstanding the foregoing, the Company shall have no further obligation to register the Registrable Securities from and after the date upon which such Registrable Securities are salable under Rule 144.

3. Registration Expenses.

All fees and expenses incident to the performance of or compliance with this Agreement by the Company shall be borne by the Company whether or not the Registration Statement is filed or becomes effective and whether or not any Registrable Securities are sold pursuant to the Registration Statement. The fees and expenses referred to in the foregoing sentence shall include, without limitation, (i) all registration and filing fees (including, without limitation, fees and expenses (A) with respect to filings required to be made with each securities exchange, quotation system, market or over-the-counter bulletin board on which Registrable Securities are required hereunder to be listed, if any, (B) with respect to filings required to be made with the Commission, and (C) in compliance with state securities or Blue Sky laws, (ii) printing expenses (including, without limitation, expenses of printing certificates for Registrable Securities and of printing or photocopying prospectuses), (iii) Securities Act liability insurance, if the Company so desires such insurance, and (iv) fees and expenses of all other Persons retained by the Company in connection with the consummation of the transactions contemplated by this Agreement, including, without limitation, the Company's independent public accountants, if any (including, in the case of an underwritten offering, the expenses of any comfort letters or costs associated with the delivery by independent public accountants of a comfort letter or comfort letters) and legal counsel. In addition, the Company shall be responsible for all of its internal expenses incurred in connection with the consummation of the transactions contemplated by this Agreement (including, without limitation, all salaries and expenses of its officers and employees performing legal or accounting duties), the expense of any annual audit, the fees and expenses incurred in connection with the listing of the Registrable Securities on any securities exchange as required hereunder.

4. "Market Stand-Off" Agreement. Notwithstanding anything set forth in Section 2 above, each Holder hereby agrees that it shall not, to the extent requested by the Company or an underwriter of securities of the Company, sell or otherwise transfer or dispose of any securities of the Company then owned by such Holder for up to 180 days following the effective date of any registration statement of the Company filed under the Securities Act. In no event will the restricted period extend beyond 215 days after the effective date of the registration statement.

For purposes of this Section 4, the term "Company" shall include any wholly-owned subsidiary of the Company into which the Company merges or consolidates. To enforce the foregoing covenant, the Company shall have the right to place restrictive legends on the certificates representing the shares subject to this Section 4 and to impose stop transfer instructions with respect to the securities and such other shares of stock of each Holder (and the shares or securities of every other person subject to the foregoing restriction) until the end of such period. Each Holder further agrees to enter into any agreement reasonably required by the underwriters to implement the foregoing within any reasonable timeframe so requested.

5. Drag Along Right. In the event that each of (a) the holders of a majority of the Class A Membership Interests and (b) the Board of Directors (the "Board") approve a Deemed Liquidation Event, then each Holder hereby agrees to vote (in person, by proxy or by action by written consent, as applicable) all Class A Membership Interests of the Company now or hereafter directly or indirectly owned of record or beneficially by such Holder in favor of, and adopt, such Deemed Liquidation Event and to execute and deliver all related documentation and take such other action in support of the Deemed Liquidation Event as shall reasonably be requested by the Company in order to carry out the terms and provision of this Section 5, including, without limitation, executing and delivering instruments of conveyance and transfer, and any purchase agreement, merger agreement, indemnity agreement, escrow agreement, consent, waiver, governmental filing, share certificates duly endorsed for transfer (free and clear of impermissible liens, claims and encumbrances) and any similar or related documents.

6. Indemnification.

(a) Indemnification by the Company. The Company shall, notwithstanding any termination of this Agreement, indemnify and hold harmless each Holder, the

officers, directors, members, partners, representatives, agents, brokers (including brokers who offer and sell Registrable Securities as principal as a result of a pledge or any failure to perform under a margin call of Common Stock), investment advisors and employees of each of them, each Person who controls any such Holder (within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act) and the officers, directors, agents and employees of each such controlling Person, to the fullest extent permitted by applicable law, from and against any and all losses, claims, damages, liabilities, costs (including, without limitation, costs of preparation and reasonable attorneys' fees) and expenses (collectively, "*Losses*"), as incurred, arising out of or relating to (x) any untrue or alleged untrue statement of a material fact contained or incorporated by reference in the Registration Statement, any Prospectus or any form of prospectus or in any amendment or supplement thereto or in any preliminary prospectus, or arising out of or relating to any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein (in the case of any Prospectus or form of prospectus or amendment or supplement thereto, in the light of the circumstances under which they were made) not misleading (y) any violation or alleged violation by the Company of the Securities Act, the Exchange Act, any other law, including, without limitation, any state securities law, or any rule or regulation thereunder relating to the offer or sale of the Registrable Securities pursuant to a Registration Statement or (z) any violation of this Agreement, except to the extent, but only to the extent, that such untrue statements or omissions are based solely upon information regarding such Holder furnished in writing to the Company by such Holder expressly for use therein, which information was reasonably relied on by the Company for use therein; provided, however, that the indemnity agreement contained in this section shall not apply to amounts paid in settlement of any Losses if such settlement is effected without the prior written consent of the Company. The Company shall notify the Holders promptly of the institution, threat or assertion of any Proceeding of which the Company is aware in connection with the transactions contemplated by this Agreement.

(b) Indemnification by Holders. Each Holder shall, severally and not jointly, indemnify and hold harmless the Company, its directors, members, partners, representatives, officers, agents and employees, each Person who controls the Company (within the meaning of Section 15 of the Securities Act and Section 20 of the Exchange Act), and the directors, officers, agents and employees of such controlling Persons, to the fullest extent permitted by applicable law, from and against all Losses, as incurred, arising solely out of or based solely upon any untrue statement of a material fact contained in the Registration Statement, any Prospectus, or any form of prospectus, or in any amendment or supplement thereto, or arising solely out of or based solely upon any omission of a material fact required to be stated therein or necessary to make the statements therein (in the case of any Prospectus or form of prospectus or supplement thereto, in the light of the circumstances under which they were made) not misleading, to the extent that (i) such untrue statement or omission is contained in or omitted from any information so furnished in writing by such Holder to the Company specifically for inclusion in the Registration Statement or such Prospectus and that such information was reasonably relied upon by the Company for use in the Registration Statement, such Prospectus, or in any amendment or supplement thereto; provided, however, that the indemnity agreement contained in this section shall not apply to amounts paid in settlement of any Losses if such settlement is effected without the prior written consent of the Holder, which consent shall not be unreasonably withheld. Notwithstanding anything to the contrary contained herein, the Holder shall be liable under this section for only 200% of the amount that does not exceed the net proceeds to such Holder as a result of the sale of such Registrable Securities pursuant to such Registration Statement.

(c) Conduct of Indemnification Proceedings. If any Proceeding shall be brought or asserted against any Person entitled to indemnity hereunder (an "*Indemnified Party*"), such Indemnified Party promptly shall notify the Person from whom indemnity is sought (the "*Indemnifying Party*") in writing, and the Indemnifying Party shall have the right to assume the defense thereof, including the employment of counsel reasonably satisfactory to the Indemnified Party and the payment of all reasonable fees and expenses incurred in connection with defense thereof; provided, that the failure of any Indemnified Party to give such notice shall not relieve the Indemnifying Party of its obligations or liabilities pursuant to this Agreement, except (and only) to the extent that it shall be determined by a court of competent jurisdiction that such failure shall have adversely prejudiced the Indemnifying Party.

An Indemnified Party shall have the right to employ separate counsel in any such Proceeding and to participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of such Indemnified Party. The Indemnifying Party shall not be liable for any settlement of any such Proceeding effected without its written consent. No Indemnifying Party shall, without the prior written consent of the Indemnified Party, effect any settlement of any pending Proceeding in respect of which any Indemnified Party is a party, unless such settlement includes an unconditional release of such Indemnified Party from all liability on claims that are the subject matter of such Proceeding and does not impose any monetary or other obligation or restriction on the Indemnified Party.

The indemnity agreements contained herein shall be in addition to (i) any cause of action or similar right of the Indemnified Party against the Indemnifying Party or others, and (ii) any liabilities the indemnifying party may be subject to pursuant to the law.

(d) Contribution. If a claim for indemnification under Section 6(a) or 6(b) is unavailable to an Indemnified Party because of a failure or refusal of a governmental authority to enforce such indemnification in accordance with its terms (by reason of public policy or otherwise), then each Indemnifying Party, in lieu of indemnifying such Indemnified Party, shall contribute to the amount paid or payable by such Indemnified Party as a result of such Losses, in such proportion as is appropriate to reflect the relative fault of the Indemnifying Party and Indemnified Party in connection with the actions, statements or omissions that resulted in such Losses as well as any other relevant equitable considerations. The relative fault of such Indemnifying Party and Indemnified Party shall be determined by reference to, among other things, whether any action in question, including any untrue or alleged untrue statement of a material fact or omission or alleged omission of a material fact, has been taken or made by, or relates to information supplied by, such Indemnifying Party or Indemnified Party, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such action, statement or omission. The amount paid or payable by a party as a result of any Losses shall be deemed to include any reasonable attorneys' or other reasonable fees or expenses incurred by such party in connection with any Proceeding to the extent such party would have been indemnified for such fees or expenses if the indemnification provided for in this section was available to such party in accordance with its terms.

7. Miscellaneous.

(a) Remedies. In the event of a breach by the Company or by a Holder, of any of their obligations under this Agreement, each Holder or the Company, as the case may be, in addition to being entitled to exercise all rights granted by law and under this Agreement, including recovery of damages, will be entitled to seek specific performance of its rights under this Agreement. The Company and each Holder agree that monetary damages may not provide adequate compensation for any losses incurred by reason of a breach by it of any of the provisions of this Agreement and hereby further agrees that, in the event of any action for specific performance in respect of such breach, it shall waive the defense that a remedy at law would be adequate.

(b) Consent to Jurisdiction. Each of the Company and the Holders (i) hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts located in New York City, New York for the purposes of any suit, action or proceeding arising out of or relating to this Agreement and (ii) hereby waives, and agrees not to assert in any such suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of such court, that the suit, action or proceeding is brought in an inconvenient forum or that the venue of the suit, action or proceeding is improper. Each of the Company and the Holders consents to process being served in any such suit, action or proceeding by mailing a copy thereof to such party at the address in effect for notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing in this section shall affect or limit any right to serve process in any other manner permitted by law.

(c) Amendments and Waivers. The provisions of this Agreement, including the provisions of this sentence, may not be amended, modified or supplemented, and waivers or consents to departures from the provisions hereof may not be given, unless the same shall be in writing and signed by the Company and the Required Holders. Notwithstanding the foregoing, a waiver or consent to depart from the provisions hereof with respect to a matter that relates exclusively to the rights of Holders and that does not

directly or indirectly affect the rights of other Holders may be given by Holders of the Registrable Securities to which such waiver or consent relates; provided, however, that the provisions of this sentence may not be amended, modified, or supplemented except in accordance with the provisions of the immediately preceding sentence.

(d) Notices. Any and all notices or other communications or deliveries required or permitted to be provided hereunder shall be in writing and shall be deemed given and effective on the earlier of (i) when sent, if sent by electronic mail during the recipient's normal business hours, and if not sent during normal business hours, then on the recipient's next Business Day, (ii) the Business Day following the date of mailing, if sent by nationally recognized overnight courier service such as Federal Express or (iii) actual receipt by the party to whom such notice is required to be given. The addresses for such communications shall be with respect to each Holder at its address set forth under its name on Schedule 1 attached hereto, or with respect to the Company, addressed to:

Acurx Pharmaceuticals, Inc.
259 Liberty Avenue Staten Island, NY 10305
Attention: Managing Partner
Email: davidluci@acurxpharma.com

or to such other address or addresses or email address or addresses as any such party may most recently have designated in writing to the other parties hereto by such notice. Copies of notices to the Company shall be sent to:

David P. Luci
270 Benedict Road
Staten Island, NY 10304

Copies of notices to any Holder shall be sent to the addresses, if any, listed onSchedule 1 attached hereto.

(e) Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties and their successors and permitted assigns and shall inure to the benefit of each Holder and its successors and assigns. The Company may assign this Agreement or any rights or obligations hereunder without the prior written consent of any of the Required Holders including by way of a Change of Control. A Holder may assign some or all of its rights hereunder as set forth below.

(f) Assignment of Registration Rights. The rights of each Holder hereunder, including the right to have the Company register for resale Registrable Securities in accordance with the terms of this Agreement, shall be automatically assignable by each Holder to any transferee of such Holder of all or a portion of the Purchased Units or the Registrable Securities if: (i) the Holder agrees in writing with the transferee or assignee to assign such rights, and a copy of such agreement is furnished to the Company within a reasonable time after such assignment, (ii) the Company is, within a reasonable time after such transfer or assignment, furnished with written notice of (a) the name and address of such transferee or assignee, and (b) the securities with respect to which such registration rights are being transferred or assigned, (iii) following such transfer or assignment the further disposition of such securities by the transferee or assignees is restricted under the Securities Act and applicable state securities laws, (iv) at or before the time the Company receives the written notice contemplated by clause (ii) of this section, the transferee or assignee agrees in writing with the Company to be bound by all of the provisions of this Agreement and the Operating Agreement, and (v) such transfer shall have been made in accordance with the applicable requirements of the Purchase Agreement. The rights to assignment shall apply to the Holders (and to subsequent) successors and assigns.

(g) Counterparts; Facsimile. This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and, all of which taken together shall constitute one and the same Agreement. In the event that any signature is delivered by electronic means or facsimile transmission, such signature shall create a valid binding obligation of the party executing (or on whose behalf such signature is executed) the same with the same force and effect as if such electronic or facsimile signature were the original thereof.

(h) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to principles of conflicts of law thereof.

(i) Cumulative Remedies. Unless otherwise provided herein, the remedies provided herein are cumulative and not exclusive of any remedies provided by law.

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

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

(l) Obligations of Purchasers. The Company acknowledges that the obligations of each Purchaser under this Agreement, are several and not joint with the obligations of any other Purchaser, and no Purchaser shall be responsible in any way for the performance of the obligations of any other Purchaser under this Agreement. The decision of each Purchaser to enter into to this Agreement has been made by such Purchaser independently of any other Purchaser.

(m) Joinder. Any additional purchasers may become a party to this Agreement, as a Purchaser, by executing the Investor Rights Joinder Agreement attached hereto as Exhibit A. Upon the execution of any such Investor Rights Joinder Agreement, Schedule 1 hereto shall automatically be updated to reflect such Purchaser.

[signature page follows]

IN WITNESS WHEREOF, the parties hereto have caused this Investor Rights Agreement to be duly executed by their respective authorized persons as of the date first indicated above.

COMPANY:

ACURX PHARMACEUTICALS, INC.

By: _____

Name:
Title:

[Omnibus Acurx Pharmaceuticals Inc. Investor Rights Agreement Signature Page]

IN WITNESS WHEREOF, the parties hereto have caused this Investor Rights Agreement to be duly executed by their respective authorized persons as of the date first indicated above.

PURCHASERS:

Print Exact Name: _____

By: _____

Address: _____

_____

[Omnibus Acurx Pharmaceuticals, Inc. Investor Rights Agreement Signature Page]

Schedule 1

Acurx Pharmaceuticals, Inc.
Schedule of Buyers
_____, 20__

Investor	**State of Residence**

EXHIBIT A

INVESTOR RIGHTS AGREEMENT JOINDER

By execution of this Investor Rights Agreement Joinder, the undersigned agrees to become a party to that certain Investor Rights Agreement, dated as of _____, 20__ as may be amended, among Acurx Pharmaceuticals, Inc., a corporation under the laws of the State of Delaware and the parties named therein. The undersigned shall have all the rights, and shall observe all the obligations, applicable to a Purchaser under such Agreement.

PURCHASER:

Name: _____

By: _____
Name:
Title:

Date: _____

Address for notices:

_____

_____

_____

Exhibit 10.10

MASTER CLINICAL SERVICES AGREEMENT

This MASTER CLINICAL SERVICES AGREEMENT ("**Agreement**"), effectively dated as of the last date of authorized signature herein ("**Effective Date**"), is made by and between **Acrux Pharmaceuticals, LLC,** a Delaware limited liability company ("**Sponsor**"), with principal offices located at 22 Camelot Court, White Plains, NY 10603 and **Syneos Health, LLC**, a Delaware limited liability company, with principal offices located in the United States at 1030 Sync Street, Morrisville, North Carolina 27560, together with **Syneos Health UK Limited**, a company with principal offices located at Farnborough Business Park, 1 Pinehurst Road, Farnborough, Hampshire, GU14 7BF, England, Europe ("**Syneos Health**").

WITNESSETH:

WHEREAS, Sponsor is engaged in the business of developing, manufacturing, distributing, and/or selling pharmaceutical products, biotechnological products, and/or medical devices;

WHEREAS, Syneos Health is engaged in the business of providing clinical research services, data management, and related services in the pharmaceutical, biotechnology, and medical device industries; and

WHEREAS, Sponsor and Syneos Health desire to agree on terms which will be applied to govern Syneos Health's provision of services for Sponsor in connection with support of clinical investigation, management and/or research of a particular Study or Studies (as defined herein).

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and adequacy of which hereby are mutually acknowledged, the Parties intending to be legally bound do hereby agree as follows:

1. DEFINITIONS

1.1. "**Affiliates**" means, with respect to a Party to this Agreement, any entity that directly or indirectly controls, is controlled by or is under common control with such Party. "Control", "controls", or "controlled" means the possession, directly or indirectly, of at least 50% of the share capital or voting rights or of the power to direct or cause the direction of the management and policies of an entity, whether through the ownership of voting securities, by contract or otherwise. Any reference to "Syneos Health" in this Agreement shall be deemed to include its Affiliates unless otherwise so stated as being applicable to **Syneos Health, LLC**, or an individual Affiliate exclusively.

1.2. "**Applicable Law**" means any international, national, federal, state, and local laws and regulations, including, without limitation, FDA regulations, the Food, Drug, and Cosmetic Act and, as applicable to a Study or the Services, accepted standards of Good Clinical Practice ("GCP") and International Conference on Harmonization ("ICH") guidelines.

1.3. "**Change Order**" means an amendment to a Work Order that captures a change in the scope of Services or other Study specific parameters, which may include an increase or decrease in the Direct Costs and Pass Through Costs and/or any timeline adjustments required due to the change in assumptions. Each Change Order shall be agreed in writing between the Parties and expressly approved by an authorized individual on behalf of each Party.

1.4. "**Clinical Trial Agreement**" means the executed contractual agreement between Sponsor (and/or Syneos Health) and the Investigator or Site that manages the relationship, financial support and/or proprietary information during the performance of the Study by such Investigator or Site.

1.5. "**Commercially Reasonable Efforts**" means the efforts and resources which would be used (including the promptness in which such efforts and resources would be applied) by a Party, consistent with generally accepted industry standards with regard to the activity to be undertaken.

1.6. "**Confidential Information**" means all non-public, protected and/or proprietary information in the broadest sense communicated, observed, or heard, by either Sponsor or Syneos Health, including either Party's employees, Subcontractors, consultants, agents, and Affiliates that relates to past, present or future research, development, processes, protocol(s), financial statements, personnel information, pricing and/or business activities of the Party disclosing the Confidential Information (the "**Disclosing Party**") and its respective systems, procedures, algorithms, and data of which the Party receiving the Confidential Information (the "**Receiving Party**") may construct, acquire, access, or possess by reason of this Agreement. Confidential Information will include any Confidential Information disclosed previously by a Disclosing Party to a Receiving Party in connection with the discussions among the Parties with respect to the subject matter of this Agreement. The Parties further agree that Confidential Information shall include that information discovered during an audit of either Party's or its respective Affiliates' facilities.

1.7. "**Direct Costs**" means the price charged for labor in the performance of Services as set forth in the applicable Work Order.

1.8. "**Early Phase Services**" means any combination of the following services: performance by Syneos Health of a clinical trial at a Syneos Health facility where Syneos Health would serve as a Site, bioanalytical analysis, statistics, validations, pharmacokinetics and related services.

1.9. "**FDA**" means the United States Food and Drug Administration.

1.10. "**Investigator**" means a qualified clinical investigator as defined in ICH E6 4.1.1 engaged to conduct a clinical investigation of a particular Study and/or Study Product, excluding Syneos Health investigators performing Early Phase Services. For purposes of clarification, Investigators are not Subcontractors, Third Party Vendors, agents, or representatives of either Party.

1.11. "**Party**" means either Syneos Health or Sponsor, and collectively as "**Parties**".

1.12. "**Pass Through Costs**" means any costs that are not Direct Costs incurred by Syneos Health in the performance of Services, including, without limitation, for Service-related travel, Third Party Vendor fees for items such as printing, laboratory services, shipping and facsimile costs, language translation, telephone charges, advertising, investigator meeting expenses, and/or other expenses associated with the Services. Travel costs include, but are not limited to, those associated with reasonable transportation, lodging, internet connection, and meals. For purposes of clarification, Investigator Grants (as defined in Section 4.3.1) are not considered Pass Through Costs.

1.13. "**Protocol**" means the written protocol including the clinical testing procedures, conditions, and instructions for conducting a particular Study.

1.14. "**Regulatory Authority**" means the FDA or any other local, state, national or multinational regulatory authority or government agency that is equivalent to or has any similar regulatory functions or responsibilities as the FDA.

1.15. "**Services**" means the particular clinical research services and other tasks to be performed by Syneos Health for a given Study or project pursuant to this Agreement, as set forth in the Work Order.

1.16. "**Site**" means a hospital, clinic, institution, academic institution, or practicing physician's office participating in the conduct of the Study.

1.17. "**Study**" or "**Studies**" means the clinical investigation, management and/or research activities related to a particular human clinical trial, or similar Sponsor project conducted pursuant to the applicable Protocol.

1.18. "**Study Product**" means, for a given Study, the therapeutic compound or device of Sponsor that is the subject of such Study, as well as any applicable placebo, potential product, or device administered as a result of the Protocol.

1.19. "**Study Records**" refers to all information regardless of purpose, format, location, system or origination that is a result of the conduct of a Study and/or performance of Services.

1.20. "**Subcontractor**" means any entity or individual other than Syneos Health or Syneos Health's Affiliates who is performing Services which Syneos Health agreed to directly perform for Sponsor in a Work Order.

1.21. "**Syneos Health Personnel**" means employees of Syneos Health or of any Syneos Health Affiliate performing the Services in connection with a given Work Order.

1.22. "**Third Party Vendor**" means any entity approved by Sponsor (whether in writing or in a Work Order) that performs ancillary services for a Study or the Services pursuant to a contract entered into by either Sponsor or Syneos Health, or any agent or representative of either. Third Party Vendors include, but are not limited to, central labs, drug depots, meeting planners, transportation companies, translation vendors, scale providers, equipment providers, electronic data capture (EDC) providers or any other vendor performing services not within those offered by Syneos Health. For purposes of clarification, Third Party Vendors shall not include Subcontractors, Investigators or Sites.

1.23. "**Work Order**" means an individual project agreement executed between Sponsor and Syneos Health that: (i) expressly incorporates the terms and conditions of this Agreement; (ii) is made with respect to such specific Study or Sponsor project; (iii) is signed by both Parties; and (iv) specifies the parameters and sets forth the details of the Services to be performed by Syneos Health in conducting the Study or project, including, without limitation, the scope of work, Study/Service-specific assumptions, estimated time period for completing Services, major Study milestones and target dates, estimated budget, payment and currency schedules, resource allocation, and/or other specific Services to be performed by Syneos Health.

1.24. "**Work Product**" means all data and information generated or derived by Syneos Health as the result of Services performed by Syneos Health under this Agreement or through the use of or access to the Sponsor Confidential Information.

2. SERVICES

2.1. **Use of Affiliates.** An Affiliate of a Party can enter into or perform Services in association with Work Orders under this Agreement with the other Party or an Affiliate of the other Party, with such Affiliates being bound by the terms and conditions contained herein; provided that such Party shall remain responsible for the actions and omissions of its Affiliates.

2.2. **Work Orders.**

2.2.1. Each Work Order will incorporate this Agreement by reference, subject to mutually agreeable Change Orders. Each Work Order shall constitute a unique agreement and shall stand alone with respect to any other Work Order entered under this Agreement. To the extent that terms and/or provisions of a Work Order conflict with the terms and/or provisions of this Agreement, the terms and/or provisions of this Agreement shall control unless the Work Order expressly states otherwise.

2.2.2. The Parties agree that the Work Order shall set forth a reasonable schedule for the Services to be performed, and each Party will use Commercially Reasonable Efforts to comply with the timelines stated therein.

2.2.3. To the extent a Work Order includes the provision of Early Phase Services, then the terms set forth in**Appendix A** shall apply to the Early Phase Services in addition to the terms set forth in this Agreement and the relevant Work Order.

2.3. **Start-Up Agreements**. Prior to finalization of the respective Work Order, Syneos Health and Sponsor may enter into a start-up agreement ("**Start-Up Agreement**"). Syneos Health may commence certain start-up services with respect to that Study or project pursuant to the Start-Up Agreement prior to finalization of the full-Study or project Work Order. Upon finalization of the full-Study or project Work Order, the respective Start-Up Agreement Services (if any) will be integrated into and superseded by the full Work Order.

2.4. **Change Orders**.

2.4.1. If either Party requests a change in the scope of Services or if there are changes to the assumptions upon which the Work Order is based (including, but not limited to, a change in start date for a Study or suspension of a Study), the Parties will agree to such changes in writing prior to their implementation.

2.4.2. Once a change is identified, Syneos Health shall provide written description of such change, including any impact to the budget, if any, in a Change Notification Form ("**CNF"**). The CNF will be submitted to Sponsor for verification. Sponsor's execution of the CNF shall serve as approval and instruction for Syneos Health to proceed with the modification of Services and budget revisions as set forth in the CNF. Upon signature of the CNF by Sponsor, the services set forth in the CNF will be considered Services to be performed by Syneos Health governed by and subject to the terms and conditions of this Agreement and the corresponding Work Order. The CNF process described herein shall not apply to Early Phase Services.

2.4.3. A Change Order shall be completed when the cumulative CNF(s)' Direct Costs and Pass Through Costs equal or exceed the threshold set forth in the requisite Work Order.

2.4.4. CNFs and Change Orders may be approved and forwarded via hand-delivery, facsimile, electronic mail, portable document format (PDF), or overnight courier. Absent compelling reasons, CNF and Change Order requests will be considered and a response will be affirmatively given to Syneos Health within fifteen (15) calendar days of Sponsor's receipt of same. The Parties agree to work together in good faith and use Commercially Reasonable Efforts to ensure that the timelines are not adversely affected; provided, however, that Syneos Health is under no obligation to perform any out of scope work until a CNF or Change Order is agreed to by both Parties.

2.4.5. Notwithstanding anything to the contrary herein: (i) if a modification reasonably involves the safety of a human subject or the integrity of the Study data, Syneos Health shall quickly act on the requested change, and when practicable, give notice promptly to Sponsor by telephone or electronic means that such change occurred and a CNF or Change Order may be required; and (ii) in the event Syneos Health provides additional services or incurs Pass Through Costs at Sponsor's written request and in accordance with Sponsor's requirements in the absence of a CNF or Change Order, Sponsor will compensate Syneos Health for all Direct Costs and reimburse for all Pass Through Costs incurred.

2.5. **Interruption, Suspension, Delay.** In the event Sponsor delays, suspends or places a hold on a Study or the Services, or in the event a Regulatory Authority places a hold on a Study for any reason or for reasons beyond the reasonable control of Syneos Health, Sponsor will promptly provide Syneos Health with written notice of such delay, hold or suspension. The Parties will, within thirty (30) days of such notice, use Commercially Reasonable Efforts to negotiate in good faith appropriate revisions to the applicable Work Order in accordance with Section 2.4. During the period following Syneos Health's receipt of Sponsor's notice of delay, hold or suspension, Sponsor will compensate Syneos Health for reasonable additional Direct Costs and Pass Through Costs incurred as a result of such delay, hold or suspension. Sponsor acknowledges that if it delays, holds or suspends performance of the Services, then the Syneos Health Personnel or Subcontractors originally allocated to the Work Order may be re-allocated by Syneos Health, and Syneos Health will not be responsible for delays due to re-staffing or re-allocation of resources. If Sponsor wishes to retain the Syneos Health Personnel or Subcontractors during the delay, hold or suspension, then Sponsor agrees to pay the standard hourly rates of the allocated Syneos Health Personnel or Subcontractors during the delay, hold or suspension. This cost is in addition to the budget contained in the Work Order. In the event that a Study or Services are delayed or suspended for a period of at least sixty (60) days, then Sponsor will compensate and reimburse Syneos Health for partially completed milestones and units and Pass Through Costs incurred or irrevocably committed to third parties up to the effective date of delay, hold or suspension in accordance with the payment terms applicable to the Work Order. In addition to the disclaimers set forth in Section 3.1.2 and Section 11, Syneos Health is not responsible for or liable to Sponsor for errors, delays or other consequences to the extent arising from (i) Sponsor's actions or omissions (including, but not limited to, Sponsor's failure to timely provide documents, materials, or information or to cooperate with Syneos Health); and (ii) reasons beyond the reasonable control of Syneos Health.

2.6. **Transfer of Sponsor Obligations/Responsibilities**. The transfer of obligations and/or responsibilities from Sponsor to Syneos Health pursuant to Applicable Law will be set forth in each Work Order. Any regulatory responsibilities not specifically transferred to Syneos Health shall remain the responsibility of Sponsor. Under no circumstance shall Syneos Health be required to accept responsibilities or conduct itself contrary to Applicable Law. The Parties acknowledge and agree that Sponsor shall at all times be deemed the "sponsor" of each Study pursuant to Applicable Law and ICH-GCP. All obligations transferred to Syneos Health revert back to Sponsor upon completion of the Services under a Work Order or termination or expiration of the applicable Work Order. Sponsor acknowledges that the development of the Protocol concept and scientific rationale shall be the sole responsibility of Sponsor regardless of Syneos Health's involvement or lack thereof.

2.7. **Compliance with Law.** The Parties shall perform their obligations hereunder in accordance with this Agreement, the applicable Work Order, and Applicable Law. The Parties will also comply, to the extent applicable, with the United States Federal anti-kickback statute (42 U.S.C. 1320a-7b), and the related safe harbor regulations. The Parties represent and warrant that they are, and will remain, in compliance with the Foreign Corrupt Practices Act ("**FCPA**") and/or all other, applicable anti-bribery laws or regulations. A breach of this warranty, will allow the non-breaching Party to immediately terminate this Agreement and/or any associated Work Order. Should any requirements of Applicable Law change, each Party will use Commercially Reasonable Efforts to satisfy the new requirements. In the event that compliance with such new requirements necessitates a change in the Services, the Parties will evaluate the need for a Change Order.

2.8. **Professional Standards.** The Parties shall comply with any applicable validated methodology and generally accepted professional standards of care, including without limitation ICH Guidelines for GCP. In addition, as applicable, the Parties shall also perform their obligations in accordance with the Protocol, agreed upon standard operating procedures ("**SOPs**"), and mandates of any institutional review board(s) ("**IRBs**"), ethics committees or similar organizations approving a Study.

3. PERSONNEL, SUBCONTRACTORS, THIRD PARTY VENDORS

3.1. **Responsibility and Management.**

3.1.1. **Syneos Health Personnel and Subcontractors**. Syneos Health will remain responsible for the actions of all Syneos Health Personnel and Subcontractors as if Syneos Health had taken such actions itself.

3.1.2. **Third Party Vendors.** Syneos Health shall not be liable for any Third Party Vendor errors, omissions, delays or consequences therefrom which are not the result of Syneos Health's failure to manage the Third Party Vendor. If the Third Party Vendor is non-compliant with any instruction provided by Syneos Health or provides non-conforming services or goods, Syneos Health will (after knowledge of such non-compliance) provide remedial instructions to such Third Party Vendor and promptly inform the Sponsor of repeated or systemic non-conformance. If the non-compliance or non-conformance continues, Syneos Health and Sponsor will discuss further remedial measures which may include termination of the Third Party Vendor's contract and the identification of a replacement.

3.2. **Debarment/Exclusions.**

3.2.1. **Syneos Health and Sponsor**. Each Party hereby represents that neither it, its employees, nor its Affiliates have been debarred or convicted of a crime which could lead to debarment or disqualification under the Generic Drug Enforcement Act of 1992.

3.2.2. **Subcontractors and Third Parties**. Syneos Health will not use the services of any Subcontractors or, to the best of its knowledge, Third Party Vendors that are or have been debarred or disqualified under the Generic Drug Enforcement Act of 1992.

3.2.3. **Notification**. In the event that Syneos Health becomes aware that any of its officers, directors, Syneos Health Personnel, Subcontractors or any Third Party Vendors or Investigators used in connection with the Services has become debarred, Syneos Health will promptly notify Sponsor.

3.3. **Third Party Vendor Indemnification**. Upon reasonable request of a Third Party Vendor used in connection with the Services, Sponsor shall provide a separate letter of indemnification with such Third Party Vendor covering claims related to the administration of the Protocol and/or Study Product in a form mutually acceptable to Sponsor and such Third Party Vendor. Syneos Health shall not be required to indemnify any Third Party Vendors for third party claims related to the administration of the Protocol and/or Study Product. Syneos Health shall not be responsible for delays resulting from the negotiation of separate indemnification rights between Sponsor and any Third Party Vendors.

3.4. **Third Party Vendor Flow-Downs.** The Parties agree that the following provisions will be flowed down to Third Party Vendors unless substantially similar provisions are already included in Syneos Health's pre-existing agreement with such Third Party Vendor: Sections 2.7 (Compliance with Law), 2.8 (Professional Standards), 3.2 (Debarment/Exclusions), 8 (Confidentiality), 9.1 (Work Product).

4. SITES AND INVESTIGATORS

4.1. **Independence.** Sponsor acknowledges and agrees that Investigators, Sites, data safety monitoring boards, key opinion leaders, IRBs, ethics committees, and other similar organizations and their members: (i) will not be considered Syneos Health Personnel, Subcontractors, Third Party Vendors or the agents of Syneos Health; and (ii) will exercise their own independent medical judgment. Syneos Health's responsibilities regarding these organizations and their members will be limited to those specifically set forth in the applicable Work Order.

4.2. **Site Identification and Clinical Trial Agreements**. If, pursuant to a Work Order, Syneos Health is responsible for identifying Investigators and Sites (collectively referred to as "Investigators" for purposes of Sections 4.2 and 4.3 only) and/or negotiating/executing Clinical Trial Agreements, the following provisions apply:

4.2.1. **Site Identification**. Selection of Investigators will be subject to written approval by Sponsor prior to initiation of any Services or negotiations involving such Investigators.

4.2.2. **Clinical Trial Agreements**. Unless otherwise agreed to in the Work Order, the Clinical Trial Agreement will be Syneos Health's standard template, which will be provided to Sponsor for review. If there are material changes to such template suggested by Investigators that have a direct impact on Sponsor's rights, Sponsor will provide timely feedback in connection with the drafting and negotiation of such Clinical Trial Agreement. Syneos Health is not responsible for any undue delay attributable to Sponsor's failure to provide timely approvals or responses. If requested by an Investigator, Sponsor will provide a written indemnification directly to the Investigator. Sponsor acknowledges that Syneos Health shall have no indemnification obligation to any Investigator relative to the applicable Study Product or Protocol.

4.3. **Investigator Grants**.

4.3.1. To the extent agreed to in a Work Order, Syneos Health is responsible to administer payments to Investigators on behalf of Sponsor according to the applicable Clinical Trial Agreement and Work Order ("**Investigator Grants**"). Investigator Grants shall be paid in advance of Syneos Health's expectation to pay the Investigator, and Sponsor shall be responsible for any adverse action taken by an Investigator as a result of failure to pay Investigator Grants and other costs due and payable in a timely manner. Each Clinical Trial Agreement will contain a statement to this effect.

4.3.2. Initial payment of Investigator Grants shall be set forth in the Work Order, as applicable. As the Study progresses, such initial grant payment will be applied to Investigator fees and other approved fees. Syneos Health will invoice Sponsor quarterly, based on estimated Investigator payment accruals anticipated for the applicable Study in the following quarter, less any previously unused funds from previous requests.

4.4. **Patient Safety**. Sponsor shall reimburse Syneos Health for all costs and expenses incurred by Syneos Health or others engaged by Syneos Health on behalf of Sponsor to ensure patient safety, continuity of treatment and compliance with Applicable Law, to the extent that such costs are actual, reasonable and verifiable. Such costs may include, but are not limited to, costs associated with the diagnosis of an adverse reaction, adverse event or personal injury involving the Study Product or the Protocol. In the event an Investigator reasonably assesses that a diagnostic procedure(s) is/are medically necessary and connected to the Study, yet the suspected adverse event is later deemed not to be Study-related, Sponsor shall be required to pay for reasonable costs of said diagnostic procedure(s). Payments under this Section shall be in addition to any payments specified in the Work Order. Syneos Health shall not be responsible for the payments described in this Section.

4.5. **Investigator Misconduct**. If, during the course of conducting the Services, Syneos Health becomes aware of possible fraud or misconduct (collectively referred to as "fraud" for purposes of this Section) by an Investigator or at a Site, and after appropriate investigation determines that the possibility of fraud is substantiated, Syneos Health will promptly inform Sponsor of its findings and present an action plan for Sponsor's approval. Sponsor and Syneos Health will work together in good faith to determine who will investigate the Investigator or Site (and any associated costs). If fraud is confirmed, then it will be Sponsor's responsibility to notify the applicable Regulatory Authority unless otherwise agreed by the Parties in writing. If the Sponsor conducts the investigation and is responsible for notifying the Regulatory Authority, after completion of its investigation, Sponsor will provide evidence satisfactory to Syneos Health either (i) that fraud was not committed or, (ii) if fraud was committed, that the proper reporting was timely made to the appropriate Regulatory Authority. If Sponsor does not investigate the possible fraud within a reasonable time, or if fraud is confirmed by investigation and Sponsor does not fulfill its obligations to report the fraud within a reasonable time, then Syneos Health may report its suspicions of fraud to the appropriate Regulatory Authority and notify Sponsor of this action in writing.

---

5. INVOICING AND PAYMENT

5.1. **Direct Costs and Pass Through Costs.** In exchange for the Services, Sponsor shall pay Syneos Health the Direct Costs upon the terms specified in this Section and the applicable Work Order. Sponsor shall advance (in accordance with the applicable Work Order) Syneos Health all or a portion of the Pass Through Costs for Third Party Vendors in accordance with the terms specified in the applicable Work Order.

5.2. **Invoicing.** Unless otherwise agreed to in a Work Order, Syneos Health may submit, at its discretion, at a minimum, monthly invoices or other substantiating internal documentation to Sponsor for timely payment of the Direct Costs and Pass Through Costs. Sponsor shall render all payments due and payable to Syneos Health within thirty (30) days from the date of invoice. All invoices shall be deemed received: (i) three (3) days after the date postmarked if sent by mail; (ii) on the date sent if they are sent electronically; or (iii) one (1) day after the date sent if delivered by overnight delivery service. If a purchase order number is required for Syneos Health to invoice for the Services performed, Sponsor agrees to provide such purchase order number within seven (7) days after the execution of the applicable Work Order. If the purchase order number is not provided within such time period, Sponsor agrees to timely pay any invoices issued without a purchase order number. Should Sponsor require that Syneos Health use a third party invoicing service/system, any costs associated with such use shall be invoiced to Sponsor as incurred, without mark-up.

5.3. **Late Payments**. Sponsor will pay interest in the amount of 1% per month (or the maximum amount permitted by law if less than 1% per month) for any undisputed payment not timely received. Sponsor will also reimburse Syneos Health for any attorneys' fees and other costs or expenses incurred as a result of Syneos Health's efforts to collect late undisputed payments. In the event that any non-disputed amounts remain unpaid for fifteen (15) days after the invoice due date, Syneos Health may stop work on the Services until it receives such past due payment. Prior to any such work stoppage, Syneos Health will provide Sponsor with ten (10) business days' notice of its intent to cease Services. Other than as may be required under Applicable Law, Syneos Health shall have no liability to Sponsor for any costs or damages as a result of suspension caused by Sponsor's failure to pay non-disputed amounts in accordance with this Section 5.

5.4. **Disputed Charges.** If Sponsor, in good faith, disputes one or more items in an invoice, Sponsor will notify Syneos Health in writing, noting its objection with specificity within twenty (20) business days of receipt of the invoice. Invoices for which no written objection is received within such twenty (20) business day period shall be final and binding on the Parties. Syneos Health will respond to Sponsor within ten (10) business days of receipt of the notification of dispute. This written communication pattern will continue until the Parties agree to a resolution of the disputed amount. Sponsor shall pay the undisputed portion of an invoice according to Section 5.2 and shall pay the disputed amount immediately upon resolution of the dispute. Any dispute that cannot be resolved by good faith negotiation shall be resolved in accordance with Section 13.5 (Dispute Resolution). Sponsor shall not withhold payment of any non-disputed amounts due and payable under this Agreement by reason of any setoff, claim or dispute with Syneos Health, whether relating to Syneos Health's breach, bankruptcy or otherwise.

5.5. **Study Close**. Syneos Health will submit a final invoice to Sponsor and any overpayment by Sponsor shall be credited or refunded to Sponsor by Syneos Health within thirty (30) days of such final invoice. Any underpayment by Sponsor shall be paid to Syneos Health within thirty (30) days after receipt by Sponsor of such final invoice.

5.6. **Financial Records**. Syneos Health shall keep and maintain complete and accurate books and records in sufficient detail to determine amounts owed to Syneos Health hereunder. Such books and records shall be maintained for at least one (1) year following completion or termination of a Work Order and shall be made available for inspection, copying and audit by Sponsor in accordance with Section 7 and for the purpose of determining the accuracy of amounts invoiced.

5.7. **Taxes.** As and when required by local law, VAT, GST or similar sales taxes or duties actually incurred by Syneos Health and imposed by any governmental agency as a result of this Agreement ("**Applicable Taxes**") will be invoiced at current statutory rates and paid to Syneos Health by Sponsor in addition to contracted Direct Costs and Pass Through Costs**.** Excluding taxes based on Syneos Health's income, Syneos Health shall invoice Sponsor, and Sponsor shall pay Syneos Health in accordance with Section 5.2 for such Applicable Taxes. If requested by Syneos Health, Sponsor shall provide official documentation for such Applicable Taxes paid. If any payments made by the Parties become subject to withholding taxes under Applicable Law, each Party shall be authorized to withhold such taxes as required under Applicable Law, pay such taxes, and remit the balance due to the other Party net of such taxes. The Parties will cooperate in good faith to qualify the transactions for any exemptions or reductions in the amount of otherwise applicable withholding tax provided under Applicable Law (including the provisions of any relevant income tax treaty) and to complete such forms as necessary for such purpose.

5.8. **Currency**. Unless otherwise agreed in the applicable Work Order, Sponsor shall make all payments to Syneos Health in United States dollars ("**US Currency**"), and accordingly Syneos Health shall invoice Sponsor for all Direct Costs, Pass Through Costs and Investigator Grants in US Currency. If Direct Costs are incurred in a currency other than US Currency, then Syneos Health and Sponsor will define the mechanism for currency exchange adjustment in the Work Order. If Pass Through Costs and Investigator Grants are incurred in a currency differing from US Currency, then Syneos Health shall invoice Sponsor using the exchange rate published in oanda.com at the average bid rate on as of the most recent trading day before the expense invoice is generated by Syneos Health.

6. TERM AND TERMINATION

6.1. **Term.** This Agreement shall commence as of the Effective Date and shall continue for a period of five (5) years, or until earlier terminated as provided below. Any Work Orders in existence as of the date of expiration or termination of this Agreement shall continue to be governed by the terms and conditions of this Agreement unless such Work Order is specifically terminated in accordance with the terms therein, or as otherwise mutually agreed in writing by the Parties.

6.2. **Termination.** This Agreement or any and all associated Work Order(s) may be terminated as follows:

6.2.1. A Party may terminate this Agreement upon sixty (60) days' written notice to the other Party.

6.2.2. Sponsor may terminate any Work Order upon sixty (60) days' written notice to Syneos Health.

6.2.3. A Party may terminate this Agreement and any Work Order on written notice effective immediately if the other Party commits a Material Breach (as hereinafter defined) of this Agreement or a Work Order which cannot be cured, or for a Material Breach of this Agreement or a Work Order which is capable of cure but is not cured within thirty (30) days of receipt of written notice from the other Party ("**Material Breach**" being defined herein as failure to substantially comply with any material provision of this Agreement or any Work Order, including without limitation failure by Sponsor to pay any undisputed portion of an invoice within thirty (30) days of receipt of notice of an overdue invoice);

6.2.4. A Party may terminate this Agreement and all Work Orders on written notice effective immediately if the other Party (i) ceases, or threatens to cease, to carry on business or maintain itself as a going concern; or (ii) becomes insolvent, is dissolved or liquidated, makes a general assignment for the benefit of its creditors, files or has filed against it, a petition in bankruptcy, or (iii) has a receiver appointed for a substantial part of its assets and is not discharged within thirty (30) days after the date of such appointment;

6.2.5. A Party may terminate this Agreement and any Work Order on written notice effective immediately as a result of (i) reasonably compelling scientific evidence that patient safety is at risk should the Services continue; (ii) the compromise of Study data integrity; (iii) the withdrawal of the authorization to conduct the Study by the duly empowered government agency; or (iv) a reasonable belief that Applicable Law will be materially violated should this Agreement or any Work Order continue in effect; or

6.2.6. A Party may terminate this Agreement and any Work Order immediately as a result of the other Party's breach of the FCPA warranty in Section 2.7.

6.3. **Duties Upon Termination.**

6.3.1. **Cooperation.** Upon termination of this Agreement or any Work Order the Parties will promptly meet and agree upon wind down activities and associated costs prior to the performance of any additional tasks not otherwise addressed in such Work Order. The Parties will reasonably cooperate with each other to provide for an orderly cessation of Services in a manner which recognizes the best interests and welfare of the Study subjects and is designed in accordance with ICH-GCP and Applicable Law. In the event Sponsor terminates only part of the Services described in a Work Order, the Parties will cooperate in good faith to enter into a Change Order.

6.3.2. **Payment.** Sponsor will pay or reimburse Syneos Health for the following upon termination in accordance with the terms set forth in Section 5 or the applicable Work Order:

a. Direct Costs owing for partially completed milestones and units;

b. Pass Through Costs and Investigator Grants incurred or irrevocably committed to third parties up to the effective date of termination (provided that Syneos Health has used Commercially Reasonable Efforts to minimize such costs);

c. any additional amounts owed, but not yet paid, for Services performed or expenses incurred up to the effective date of termination;

d. time spent by Syneos Health Personnel (which shall be billed at Syneos Health's rates then in effect as of the date of the termination notice under the affected Work Order(s)), incurred to conduct activities (including the fulfillment of any regulatory requirements) associated with the wind down of the affected Work Order(s) or this Agreement as referenced in Section 6.3.1; ; and

e. if terminated for no-cause by Sponsor, then three (3) months of project management costs as set forth in the applicable Work Order.

6.3.3. **Excess Payments**. In the event of excess payment to Syneos Health by Sponsor, Syneos Health shall either apply such excess payment as a credit against other amounts due and payable or promptly refund such excess if there are no outstanding payments owed to Syneos Health.

6.4. **Records Retention.**

6.4.1. **Responsibility.** At the expiration or termination of a Work Order and following satisfaction of Sponsor's obligations, Syneos Health shall transfer all regulatory responsibility for the Study Records to Sponsor and provide Sponsor with all applicable Study Records.

6.4.2. **Instructions.** Sponsor shall provide Syneos Health with written instructions as to the disposition of the Study Records. Such written instructions will provide that Syneos Health (i) deliver the Study Records to the location or party designated by Sponsor, subject to reimbursement as set forth herein or (ii) dispose of the Study Records as directed by Sponsor. Any costs incurred as a result of such destruction or shipment of Study Records incurred by Syneos Health will be reimbursed by Sponsor. Notwithstanding the foregoing and subject to any ongoing confidentiality obligations, Syneos Health may retain copies of any portion of the Study Records as reasonably necessary for legal, regulatory or insurance purposes.

7. INSPECTIONS AND AUDITS

7.1. **Conducted by Regulatory Authority**. Each Party shall promptly notify the other Party of any Regulatory Authority's inspections, investigations or inquiries concerning any Study for which Syneos Health is performing Services ("**Inspections**"). If a Regulatory Authority requests Syneos Health not provide notification to Sponsor of an Inspection, Syneos Health will comply with such request, and its failure to notify will not be a breach of this Agreement. Sponsor may not direct the manner in which Syneos Health fulfills its obligations to permit Inspections by Regulatory Authorities. Syneos Health will prepare responses for Inspections occurring on Syneos Health's premises so long as Sponsor timely provides Syneos Health information required for adequately responding to Inspection findings. Commercially reasonable costs associated with hosting and responding to any Inspection (including any preparation, participation, follow-up and resolution of findings), may be invoiced to Sponsor on a time and materials basis. Where Syneos Health is the subject of an Inspection as a direct consequence of Syneos Health's participation in the requisite Study, or is not otherwise the result of Syneos Health's acts or omissions, Sponsor agrees to pay all reasonable costs incurred associated with such Inspection. For clarity, Sponsor shall not be responsible for costs associated with Inspections of Syneos Health conducted as part of a Regulatory Authority's oversight of contract research organizations, even if such audit involves a Sponsor Study through chance of random selection by such Regulatory Authority

7.2. **Conducted by Sponsor**. Syneos Health will permit Sponsor-designated representatives (provided they are not competitors of Syneos Health) to examine, during normal business hours, raw Study data, financials and other relevant information, which Sponsor may reasonably require in order to confirm that the Services are being conducted in compliance with this Agreement, applicable Work Order, Protocol and Applicable Law (each an " **Audit**"). Audits will be permitted while Syneos Health performs Services on a Study and limited to one (1) audit per twelve-month period at no-cost to Sponsor. Additional Audits shall be at Sponsor's expense. Sponsor will provide Syneos Health with at least thirty (30) days' advance written notice of such Audits. The foregoing shall not apply to for-cause Audits, for which Sponsor shall provide at least five (5) business days' advance written notice and will be conducted at Syneos Health's expense. Any Audits requested by Sponsor after a Study's termination or conclusion will only be permitted where Sponsor is preparing for an impending Inspection by a Regulatory Authority. Notwithstanding anything to the contrary, in the event Syneos Health is conducting an internal investigation relating to the Services at the same time as Sponsor's audit is proposed to occur, the parties will collaborate to define the scope of any such audit and the preservation of any legal rights and remedies of the relevant parties.

8. CONFIDENTIALITY

8.1. **Obligations**. Either Sponsor or Syneos Health may become the recipient of Confidential Information of the other during the term of this Agreement. The Receiving Party shall (i) treat the Disclosing Party's Confidential Information as confidential and proprietary and protect it with the same level of prudence and care as it would protect its Confidential Information, but in no event less than reasonable care; and (ii) use the Disclosing Party's Confidential Information only as necessary to perform its obligations or exercise its rights hereunder. These confidentiality and use obligations shall remain in effect for seven (7) years after the expiration or termination of this Agreement.

8.2. **Disclosure**. Without the prior written consent of the Disclosing Party, the Receiving Party will not disclose such information to any third party; provided, however, that Syneos Health may disclose Sponsor's Confidential Information to the following parties that have a need to know such information in connection with the Services: (i) Syneos Health's Affiliates and its and its Affiliates' respective employees, Subcontractors, Third Party Vendors, agents or representatives; (ii) Investigators and their respective Sites; (iii) third-party auditors retained by the Sponsor; (iv) IRB or ethics committee members; or (v) Regulatory Authorities. Syneos Health shall only disclose Confidential Information to parties described in (i)-(iii) where such parties are bound to obligations of confidentiality and non-use substantially similar to those set forth herein.

8.3. **Exceptions**. Confidential Information shall not include, and these confidentiality obligations shall not operate as a restriction on each Party's right to use, disclose, or deal with information which:

8.3.1. was in the Receiving Party's possession prior to the time it was acquired from the Disclosing Party and was not directly or indirectly acquired from the Disclosing Party;

8.3.2. is or lawfully becomes generally available to the public through no fault of Receiving Party;

8.3.3. is lawfully and independently made available to the Receiving Party by a third party;

8.3.4. is released from its confidential status by the Disclosing Party; or

8.3.5. is independently developed by or for the Receiving Party without the use of the Disclosing Party's Confidential Information as evidenced by written records.

Nothing in this Agreement shall restrict the Parties from disclosing Confidential Information as required by law or court order or other governmental order or request, provided in each case the Party requested to make such disclosure shall, to the extent permitted by law, timely inform the other Party and use Commercially Reasonable Efforts to limit the disclosure and maintain the confidentiality of such Confidential Information. The Party required to make such disclosure shall permit the other Party to attempt to limit such disclosure by appropriate legal means.

9. INTELLECTUAL PROPERTY

9.1. **Work Product.** Work Product shall be and remain the exclusive property of Sponsor. All data, information, reports, and any discoveries, inventions, works of authorship, ideas, suggestions that may evolve from the Work Product or as the result of Services under this Agreement or through the use of or access to the Sponsor Confidential Information (collectively, "**Developments**") shall belong to Sponsor. Syneos Health fully assigns to Sponsor all of its rights in all Work Product and Developments and any related patents, copyrights and other intellectual property rights. Syneos agrees, at Sponsor's expense to execute any necessary documents reasonably required by Sponsor and its counsel to effect the assignment of rights set forth in this Section 9.1.

9.2. **Syneos Health Works**. Sponsor acknowledges that all inventions, processes, know-how, trade secrets, improvements, other intellectual properties and other assets, including but not limited to analytical methods, procedures and techniques, computer program source code (written in SAS, SQL, or other computer languages), procedure manuals, personnel data, financial information, computer technical expertise and software, which have been independently developed by Syneos Health and which relate to the business or operations of Syneos Health ("**Syneos Health Works**"), are the exclusive property of Syneos Health or its licensors. Any improvements, alterations or enhancements to Syneos Health Works shall be the sole property of Syneos Health. To the extent any Syneos Health Works are incorporated in, combined with or otherwise necessary for the use of the Work Product, Syneos Health hereby grants Sponsor a royalty-free, fully paid-up, perpetual, irrevocable, sublicensable, worldwide, non-exclusive right and license to use any Syneos Health Works in connection with Sponsor's use of the Work Product. Any Syneos Health Works licensed to Sponsor under this Section are provided as-is and Syneos Health disclaims any and all warranties pertaining to such licensed Syneos Health Works.

9.3. **Coding**. In the event that the Services include encoding adverse events and/or medications, unless otherwise directed by Sponsor, Syneos Health will use the WHO Drug Dictionary for coding medications and the most recent version of MedDRA for coding adverse events. Sponsor represents and warrants that it will have a current license and/or subscription agreement with The Uppsala Monitoring Centre and/or MedDRA relating to the use of the WHO Drug and/or MedDRA Dictionaries, respectively, at all times it receives from Syneos Health or uses documentation containing such licensed information. In accordance with the requisite licensing agreement and validation requirements, Sponsor agrees to provide evidence of such licensure to Syneos Health and/or permits Syneos Health to seek validation from the licensor.

9.4. **Software Rights**. Syneos Health may facilitate the use or distribution of software and associated software documentation in accordance with this Agreement. Syneos Health accordingly grants Sponsor a non-exclusive right to use, store, or disseminate such software and associated documentation for the sole purpose of conducting the Study for which Syneos Health is providing Services.

9.5. **Publication**. Sponsor shall be free to publish or utilize Study data. At Sponsor's own expense, Sponsor may request collaboration from Syneos Health or the relevant Subcontractors, Investigators or Third Party Vendors to assist with preparation of the manuscript. If Syneos Health is required to negotiate Clinical Trial Agreements, Sponsor will consider publication requests initiated by Site(s). Syneos Health shall have no liability whatsoever for any delay resulting from such consideration and response. Syneos Health may use de-identified, aggregated data developed in the course of performing Services.

9.6. **Publicity**. Except to the extent required by Applicable Law or the rules of any stock exchange or listing agency, no Party will use the name and logo of another party in any form of advertising, promotion or publicity or in any press release, without the prior written consent of the other Party.

10. INDEMNIFICATION, LIABILITY, INSURANCE

10.1. **Indemnification by Sponsor**. Sponsor shall promptly indemnify, defend and hold harmless Syneos Health and its Affiliates and its and their respective directors, officers, employees, Subcontractors and agents ("**Syneos Health Parties**") from and against any and all third party losses, liabilities, claims, causes of action, suits, awards, damages, expenses, costs, fees (including reasonable attorneys' fees) whether joint or several (collectively, the "**Losses**") relating to, arising from or in connection with this Agreement or the Services contemplated herein, including without limitation, any Study, Protocol, specifications or Study Product performed or administered as a result thereof. Sponsor's indemnity obligations shall not apply to the extent that such Losses result or arise from (i) the negligence, and/or willful misconduct of Syneos Health Parties; or (ii) any breach of this Agreement by Syneos Health Parties.

10.2. **Indemnification by Syneos Health**. Syneos Health shall promptly indemnify, defend and hold harmless Sponsor and its Affiliates and its and their respective directors, officers, employees, and agents ("**Sponsor Parties**") from and against any and all Losses relating to, arising from or in connection with (i) Syneos Health's breach of this Agreement; or (ii) the negligence or willful misconduct of any Syneos Health Parties that materially contributed to or caused Losses to Sponsor. Syneos Health's indemnity obligations shall not apply to the extent that such Losses result or arise from (y) the negligence and/or willful misconduct of Sponsor Parties; or (z) any breach of this Agreement by Sponsor Parties.

10.3. **Indemnification Procedures.**

10.3.1. **Notice.** Each party and any person seeking indemnification and/or defense pursuant to this Section shall give the indemnifying party prompt and timely written notice and reasonable cooperation and assistance in the defense of any claim; provided however, that failure of the indemnified party to give timely notice shall not limit the indemnified party's right to indemnification except in such case where such failure materially and adversely affects the indemnifying party's ability to defend against such claim.

10.3.2. **Counsel.** The indemnified party shall have the right to participate jointly with the indemnifying party, at its own expense, in the defense, settlement or other disposition of any indemnification claim. If the indemnified party exercises such right, all costs and expenses incurred by the indemnified party for separate counsel shall be borne by the indemnified party.

10.3.3. **Settlement.** Neither party will enter into any settlement agreement that attributes fault or negligence to, requires any payment by, or restricts the future actions or activities of the other party, without such party's prior written consent, which shall not be unreasonably withheld or delayed.

10.4. **Additional Expenses**. Additionally, Sponsor shall reimburse Syneos Health for all reasonable actual out-of-pocket expenses, fees and costs (including, but not limited to attorneys' fees and costs) incurred by Syneos Health in connection with subpoenas, civil investigative demands, government investigations and other similar legal orders and legal and regulatory processes issued to Syneos Health (collectively referred to herein as a "**Subpoena**") regarding Sponsor, Study Product, the Services or Services performed by Syneos Health pursuant to this Agreement (as may be amended from time to time). The reasonable actual out-of-pocket expenses, fees and costs referenced above shall include but are not limited to, attorneys' fees and other professional fees incurred by Syneos Health in response to the Subpoena, travel costs related to witness interviews and depositions related to the Subpoena, and all e-discovery costs (including, but not limited to third party vendor costs) and internal Syneos Health costs related to the production of documents, testimony, or other information and material requested pursuant to the Subpoena. Sponsor shall have no obligation to reimburse Syneos Health for such expenses, fees and costs which are proximately caused by Syneos Health's actions or omissions that violate this Agreement or Applicable Law. The additional expenses referred to in this section shall be paid by Sponsor to Syneos Health on a monthly basis, as incurred by Syneos Health, upon the presentation by Syneos Health to Sponsor of an invoice.

10.5. **Limitation of Liability**. IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH OR RELATED TO THIS AGREEMENT (INCLUDING LOSS OF PROFITS, USE, DATA, OR OTHER ECONOMIC ADVANTAGE), HOWSOEVER ARISING, EITHER OUT OF BREACH OF THIS AGREEMENT (INCLUDING BREACH OF EXPRESS OR IMPLIED WARRANTY), NEGLIGENCE, STRICT LIABILITY, TORT OR ANY OTHER THEORY, EVEN IF THE OTHER PARTY HAS BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. IN ADDITION, SYNEOS HEALTH'S LIABILITY FOR DIRECT DAMAGES ARISING UNDER A WORK ORDER SHALL BE LIMITED TO THE VALUE OF THE SERVICES COMPLETED UNDER THE WORK ORDER UNDER WHICH SUCH DAMAGES AROSE EXCLUDING PASS THROUGH COSTS AND INVESTIGATOR GRANTS.

10.6. **Insurance**. Sponsor represents that it carries general liability and product liability insurance coverage for a sufficient limit to cover Sponsor's total liability under this Agreement. Sponsor warrants that, in addition to its liability insurance, it has the capacity to compensate any claim for which it is responsible which may exceed the coverage of its insurance policy. The insurance policy shall be valid in whatever jurisdictions the trial is being conducted. The insurance policy shall have a limit of USD $5,000,000 unless otherwise agreed upon in a Work Order. Prior to enrolling any subjects in a clinical trial, Sponsor shall deliver a Certificate of Insurance indicating the coverage in accordance with local statutory and Ethics Committee requirements and in no event coverage with limits of less than USD $5,000,000. Sponsor will promptly notify Syneos Health of any notice of cancellation or non-renewal of, or material change in, or claim against, its insurance coverage.

---

11. DISCLAIMERS

11.1. Sponsor acknowledges that:

11.1.1. the results of the Services to be provided as outlined herein are inherently uncertain and that, accordingly, there can be no assurance, representation or warranty by Syneos Health that the Study Product will be successfully marketed by Sponsor;

11.1.2. Syneos Health shall not be responsible for the authenticity of the Study Product;

11.1.3. the terms of this Agreement exclude all implied warranties including, but not limited to, the implied warranties of merchantability and fitness for a particular purpose; and

11.1.4. the Services provided by Syneos Health are based upon information supplied by Syneos Health and Sponsor, as well as others, and that Syneos Health does not guarantee or warrant the results of such Services to any functions or other standards.

11.2. Nothing contained in this Agreement shall be construed in any manner as an obligation or inducement for either Party to recommend that any person or entity purchase the other Party's or its Affiliates' products or services.

11.3. Regardless of anything to the contrary, no printed standard terms appearing on any proposal, purchase order, invoice, quotation, or other documentation relating to the Services will be effective in adding to or changing the terms of this Agreement or any Work Order.

12. DATA PROCESSING

Syneos Health will process personal data in accordance with all applicable privacy and personal data protection laws and regulations. To the extent the Services involve the processing of personal data within the European Economic Area (EEA), the Parties agree that such processing will be governed by the terms set forth in **Appendix B** to this Agreement.

13. GENERAL TERMS

13.1. **Relationship of the Parties.** The Parties are independent contractors and not agents of each other unless otherwise explicitly agreed to in writing. Nothing in this Agreement or any Work Order is intended or shall be deemed to constitute a partnership, principal/agent, employer/employee, or joint venture relationship. Neither Party shall have the power or right to bind or obligate the other Party, nor shall it hold itself out as having such authority, except to the extent, if at all, specifically provided for in this Agreement, Work Order or as authorized in writing.

13.2. **Non-Exclusivity.** Neither Party shall have any obligation of exclusivity of any nature to the other, or any obligation to conduct, sponsor, or to offer to conduct or sponsor, any particular services or Study or any number of Studies, unless specified in a Work Order. Each Party shall be free to provide services to or conduct or sponsor clinical or research studies or other projects involving other parties, so long as a Party's agreement with any such third party does not prevent it from performing its material obligations under this Agreement or any Work Order.

13.3. **Force Majeure.** In the event either Party is delayed, hindered or prevented from performing any act required hereunder by reasons beyond its ability to reasonably anticipate and prevent, control or mitigate, including, but not limited to, (i) acts of God; (ii) flood, fire, earthquake or explosion; (iii) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (iv) government order or law; (v) actions, embargoes or blockades in effect on or after the date of this Agreement; (vi) action by any governmental authority; (vii) national or regional emergency; (viii) strikes, labor stoppages or slowdowns or other industrial disturbances (except where such strike, lockout or labor trouble involves a Party's own employees); or (ix) shortage of adequate power or transportation facilities (a "**Force Majeure Event**"), then performance of such act (except for payment of money owed) shall be extended for the reasonable period of such delay, and either Party shall be granted a reasonable period of time to perform after the cessation of the reason for the delay. Notwithstanding the foregoing, Sponsor shall not be relieved from payment of non-cancellable expenses incurred by Syneos Health as a result of a Force Majeure Event.

13.4. **Governing Law.** This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Delaware, excluding that body of law known as choice of law, and shall be binding upon the Parties hereto in the United States and worldwide.

13.5. **Dispute Resolution.** In the event any dispute arises between the Parties concerning this Agreement, the interpretation of this Agreement, the application of this Agreement or the Services performed pursuant to this Agreement, the Parties shall first settle such a dispute by good faith negotiation and consultation between themselves, including senior representatives with authority to resolve the dispute ("**Senior Representatives**"). This section shall apply regardless of whether the nature of the dispute originates in contract, tort, statute or other legal basis. If such efforts do not result in a resolution, and at least thirty (30) days have elapsed since notification of the dispute pursuant to Section 13.6, the Parties may next seek to mediate their dispute pursuant to the Commercial Mediation Procedures of the American Arbitration Association (AAA). The Parties agree to convene with the mediator, with Senior Representatives present, for at least one session. If mediation does not result in resolution or sixty (60) days have elapsed since notification of the dispute pursuant to Section 13.6, for disputes with an amount in controversy less than $2,500,000.00, the Parties agree to resolve the dispute through arbitration before a single arbitrator in accordance with the Commercial Arbitration Rules of the AAA, then pertaining (available at www.adr.org), except where those rules conflict with this provision, in which case this provision controls. For disputes with an amount in controversy greater than or equal to $2,500,000.00, the Parties agree to proceed under the AAA's Streamlined Three-Arbitrator Panel Option, with each Party appointing a single arbitrator, who both will then select the third neutral arbitrator. Any court with jurisdiction shall enforce this clause and enter judgment on any award. Within forty-five (45) days of initiation of arbitration, the Parties shall agree upon and follow procedures assuring that the arbitration will be concluded and the award rendered within no more than eight (8) months from selection of the arbitrator(s) or, failing agreement, procedures meeting such time limits designated by the AAA. The arbitration shall be held in New York, New York, conducted in the English language and shall apply the substantive law of Delaware, except that the interpretation and enforcement of this arbitration provision shall be governed by the Federal Arbitration Act. The arbitrator shall be bound by the expressed terms of this Agreement. Each Party shall bear their own costs in connection with any of the remedial actions set forth above. By agreeing to arbitration, the Parties do not intend to deprive any competent court of such court's jurisdiction to issue a pre-arbitral injunction, pre-arbitral attachment or other order in aid of the arbitration proceedings and the enforcement of any award or judgment. Without prejudice to such provisional remedies in aid of arbitration as may be available under the jurisdiction of a court of competent jurisdiction, the court of arbitration shall have full authority to grant provisional remedies and to award damages for failure of any Party to respect the court of arbitration's order to that effect.

13.6. **Notices.** All formal or legal notices, requests, demands or other communications hereunder, other than communications reasonably deemed to be day-to-day within the duties of project management shall be in writing and shall be deemed given if personally delivered or disseminated by nationally recognized courier or certified mail with return receipt within five (5) days after prior mailing to the address set forth below:

If to Syneos Health:	Syneos Health, LLC Attn: Legal Department 1030 Sync Street Morrisville, NC 27560 Phone: 919-876-9300 Facsimile: 919-882-0425	**If to Sponsor:**	Acurx Pharmaceuticals, LLC 22 Camelot Court White Plains, NY 10603 Phone: 914-949-3898 Facsimile: 914-949-6180

13.7. **Assignment.** Neither Party shall have the right to assign this Agreement or any of the rights or obligations hereunder without the prior written consent of the other Party, except that (i) either Party may assign this Agreement to an Affiliate or a successor to that area of its business to which this Agreement is related, upon prior written notice, where such Affiliate or successor has the financial and operational capacity and ability to perform the assigning Party's obligations hereunder, and in the case of Sponsor as the assignor, all outstanding balances owing to Syneos Health at the time of assignment are paid in full prior to the effective date of the assignment, and (ii) either Party may assign or transfer this Agreement and any Work Order and/or the rights and obligations thereunder in connection with a merger, consolidation, sale of substantially all assets, or other change of control transaction.

13.8. **Survival.** The terms, provisions, representations and warranties contained in this Agreement that, by their context are intended to survive the performance thereof by either or both Parties hereunder, shall so survive the expiration or termination of this Agreement.

13.9. **Entire Agreement.** This Agreement, in conjunction with its attachments, embodies the entire and integrated understanding between the Parties and supersedes all prior agreements or understandings, negotiations, or representations either written or oral, regarding its subject matter. The Parties have not relied on any statement, representation, warranty, or agreement of the other Party or of any other person on such Party's behalf, except for the representations, warranties, or agreements expressly contained in this Agreement. No modification of this Agreement shall be deemed effective unless in writing and executed as described herein.

13.10. **Binding Agreement.** This Agreement shall be binding upon the Parties and shall inure to the successors and assigns of the Parties.

13.11. **Waiver.** Any waiver granted shall not be deemed effective unless in writing and executed by the Party against whom enforcement of the waiver is sought. Waiver or forbearance by either Party or the failure to claim a breach of any provision of this Agreement or to exercise any right or remedy provided by hereunder, or under Applicable Law, shall not constitute a waiver with respect to any subsequent breach of this Agreement.

13.12. **Severability.** If any term or provision of this Agreement shall be held to be invalid, illegal, unenforceable or in conflict with Applicable Law, the validity, legality and enforceability of the remaining terms shall not be affected or impaired, except if the principal intent of this Agreement is negated by such reformation or deletion, in which case this Agreement shall terminate.

13.13. **Headings Not Controlling.** Headings used in this Agreement are for reference purposes only and shall not be used to modify the meaning of the terms and conditions of this Agreement.

13.14. **Counterparts.** This Agreement and any Work Order may be executed in several counterparts by duly authorized individuals on behalf the Parties, each document of which shall be deemed an original but all of which shall constitute one and the same instrument.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed by a duly authorized individual on behalf of each requisite Party effective as of the Effective Date. In the event that the Parties execute this Agreement by exchange of portable document format, other electronically signed copies or facsimile signed copies, the Parties agree that, upon being signed by both Parties, this Agreement shall become effective and binding and that such copies will constitute evidence of the existence of this Agreement.

SYNEOS HEALTH, LLC

By: /s/ Kristen Greene

ACURX PHARMACEUTICALS, LLC

By: /s/ Robert J. DeLuccia

Name:	Kristen Greene	Name:	Robert J. DeLuccia
Title:	Senior Corporate Counsel	Title:	Co-Founder & Managing Partner
Date:	October 9, 2019	Date:	October 11, 2019

SYNEOS HEALTH UK LIMITED

By:	/s/ Jonathan Boykin
Name:	Jonathan Boykin
Title:	SVP, Global Pricing and Deal Management
Date:	October 10, 2019

APPENDIX A

EARLY PHASE SERVICES

A. **Scope and Precedence**. This Appendix A (the "**Early Phase Appendix**") concerns the Early Phase Services as part of the Services provided by Syneos Health, as further specified in the Agreement, the applicable Work Order, and all documents, addenda, schedules and exhibits incorporated therein. This Early Phase Appendix is subject to the terms of the Agreement. In the event of any conflict between the terms of the Agreement and the terms of this Early Phase Appendix, the relevant terms of this Early Phase Appendix shall prevail over matters as they relate to the provision of Early Phase Services. Unless otherwise defined in this Early Phase Appendix, capitalized terms shall have the meaning set forth in the Agreement. The term "Services" when used in this Appendix A shall refer to Early Phase Services as defined in this Agreement.

B. **Delivery**. At least five (5) business days prior to the beginning of the performance of the Study by Syneos Health involving the collection of Biological Samples (as defined below), Sponsor shall deliver to Syneos Health, at Sponsor's risk and expense and at the location of Syneos Health identified in the heading of this Agreement, the samples of the Study Product and, as applicable, of the reference drug and of the placebo, in sufficient and necessary quantities for Syneos Health to perform the Study as set forth herein and as required by Applicable Law.

C. **Representations and Warranties for the Study Product**. Sponsor shall provide Syneos Health, concomitantly with the delivery of the Study Product, and where available, with certificates of analysis of the Study Product and with sufficient data as may be reasonably required by Syneos Health concerning the stability and the extension of the expiry date of the Study Product, as well as with instructions for the handling, storage and safety requirements and conditions of the Study Product. Sponsor represents and warrants that: (i) the Study Product is suitable for use in human studies; (ii) the Study Product is manufactured and packaged in accordance with good manufacturing practices; (iii) the Study Product is identical in content to the description provided in the applicable Protocol and in the the written instructions for the handling, storage and safety requirements and conditions of the Study Product if blinded formulations are to be used, or identical to the labeling description for open-label formulations if they are to be used, as the case may be; (iv) the labeling of the Study Product complies with the provisions of the standard operating procedures of Sponsor and Applicable Law; (v) the use by Syneos Health of the Study Product for the purpose of performing the Services does not and will not infringe the rights and patents of any third-party; and (vi) no dosage form constituting or being part of any shipment now or hereafter delivered to Syneos Health pursuant to any Work Order will be adulterated or mislabeled.

D. **Restricted Use.** Upon completion of the Services, all samples of the Study Product that have not been consumed during the performance of the Services, or that are not required to be retained by Syneos Health pursuant to the Applicable Law, shall be returned to Sponsor, at Sponsor's risk and expense, in accordance with packaging and shipping instructions furnished by Sponsor.

E. **Storage, Destruction or Return of Biological Samples**. Upon written notice from Syneos Health which shall be provided to Sponsor three (3) months after the delivery of the first draft of the Study report or of the final Study report, whichever comes first, or upon receipt by Sponsor of data when no Study report is provided, Sponsor will be offered the option of having the biological samples on which the Study Product is hereunder tested (the "**Biological Samples**") destroyed, stored under Syneos Health's responsibility, or returned to Sponsor at Sponsor's risk and expense. An authorization request form will be sent to Sponsor one (1) month before the expiry of such three (3)-month period. Should Sponsor either request a longer period of storage of the Biological Samples or not respond in writing to such request within thirty (30) days following its notification, the Biological Samples will be stored at the appropriate rate of USD0.15 (for generic) or USD0.35 (for innovator) per tube per month. The long-term storage fees will be invoiced quarterly in advance for each three (3)-month long-term storage period, and will be payable by Sponsor in accordance with the payment terms set forth below.

F. **No Warranty for Shipped Biological Samples**. When the Services ordered or commissioned under a Work Order are limited to the performance of a clinical trial with no laboratory analysis of the collected Biological Samples, Syneos Health shall ship to Sponsor or to any third party designated in writing by Sponsor, at Sponsor's risk and expense, the Biological Samples "as is". Syneos Health makes no representation or warranty, express or implied, that Biological Samples are free from harmful biological or infectious agents or organisms and are otherwise merchantable or fit for a particular purpose or use. Syneos Health ensures that only trained and certified personnel prepare shipments of hazardous materials such as Biological Samples and dry ice. Syneos Health shall package and ship the Biological Samples in compliance with the requirements of all Applicable Law.

G. **Record Retention and Protection.**

1. **Use** – If processing on Sponsor's behalf any personal data, Syneos Health shall only do so in accordance with Sponsor's instructions and the Applicable Laws and for no other purpose, and shall take all appropriate technical and organizational measures to prevent the unauthorized or unlawful processing or accidental loss or destruction of, or damage to, or disclosure of such data.

2. **Storage, Return and Destruction** – Upon completion of the services hereunder, Syneos Health agrees to keep and maintain the Work Products, for a period of one (1) year after completion of the relevant services. One (1) month before the expiry of such period, Syneos Health shall send an authorization request form to Sponsor to determine if such records shall continue to be archived, destroyed or returned to Sponsor at Sponsor's risk and expense. In no event shall Syneos Health destroy such records without prior written confirmation from Sponsor. Should Sponsor either request a longer period of storage of the records or not respond in writing to such request within thirty (30) days following its notification, Syneos Health shall continue to retain these records at the rate of USD1,500 for each additional five (5) years (or portion thereof) of record retention. The record retention fees shall be invoiced at the beginning of each five (5)-year period and is payable in accordance with the payment terms set forth herein. Syneos Health shall store the foregoing items in accordance with the Applicable Laws, in suitable storage facilities, and shall be responsible for the safekeeping and storage of all such foregoing items. In addition, Syneos Health may continue to retain any such records or copies thereof as is reasonable necessary to comply with its regulatory or insurance obligations, subject to Syneos Health's obligations of confidentiality as set forth in this Agreement. Notwithstanding anything to the contrary herein contained, in the event that Syneos Health determines to cease licensing or maintenance of any software or electronic systems on which the Work Products are stored, Syneos Health will deliver to Sponsor such Work Products in the format in which they are stored and will have no further record retention obligations with respect to such Work Products except as mandated by Applicable Laws.

H. **Protocol Designs, Methods and Standard Operating Procedures**. IN NO EVENT SHALL SYNEOS HEALTH BE HELD LIABLE FOR ANY DELAY, COSTS OR OTHER CONSEQUENCES ARISING FROM ITS PROTOCOL DESIGN, METHODS AND/OR STANDARD OPERATING PROCEDURES BECOMING NON-COMPLIANT AS A RESULT OF NEW SCIENTIFIC, INDUSTRY, GOVERNMENT OR REGULATORY STANDARDS OR REQUIREMENTS THAT BECAME IN FULL FORCE AND EFFECT (WITHOUT RETROACTIVE EFFECT) AFTER THE REFERENCE PERIOD.

I. **Early Postponement or Cancellation**. In the event of the postponement or cancellation by Sponsor of the performance of the Services that (i) occurs thirty-five (35) days or less before the first dosing of the first subject of any group of any period of the Study ("**Dosing Date**") (when the Services include the performance of a clinical trial); and (ii) is not caused by a breach by Syneos Health of its obligations hereunder, Sponsor shall then pay Syneos Health the following postponement/cancellation fees (in addition of all costs and reasonable direct expenses incurred by Syneos Health up to the date of postponement or cancellation):

Appendix A – Early Phase Services

Days before Dosing Date	Postponement/Cancellation Fees
29 to 35	5% of Study budget (less subject stipends and Pass Through Costs) for the applicable Study cohorts affected by such postponement or cancellation
22 to 28	10% of Study budget (less subject stipends and Pass Through Costs) for the applicable Study cohorts affected by such postponement or cancellation
15 to 21	15% of Study budget (less subject stipends and Pass Through Costs) for the applicable Study cohorts affected by such postponement or cancellation
8 to 14	20% of Study budget (less subject stipends and Pass Through Costs) for the applicable Study cohorts affected by such postponement or cancellation
0 to 7	30% of Study budget (less subject stipends and Pass Through Costs) for the applicable Study cohorts affected by such postponement or cancellation

J. **Late Postponement or Cancellation**. In the event of the postponement or cancellation by Sponsor of the Study that (i) occurs after the Dosing Date and (ii) occurs for any reason other than a) a breach by Syneos Health of its obligations hereunder or b) as a direct result of safety data received by Sponsor from Syneos Health, Sponsor shall then pay Syneos Health, (x) all fees owed for all outstanding non-terminable or non-cancellable obligations (whether such obligations are due and payable before, on or after the date of termination or postponement) incurred by Syneos Health until the date of early termination or postponement, and for which Syneos Health has not yet been paid, plus (y) fees on the remaining affected cohorts only (as calculated using the percentages in the table above). Sponsor shall in no event be invoiced an incremental fee related to a completed period of the Study.

Appendix A – Early Phase Services

APPENDIX B

Data Processing Addendum

Based on the General Data Protection Regulation (GDPR) and European Commission Decision 2010/87/EU - Standard Contractual Clauses (Processors)

This Data Processing Addendum ("DPA") forms part of the Master Services Agreement (or other such titled written or electronic agreement addressing the same subject matter) between Syneos Health Affiliates including any legacy INC Research or inVentiv Health legal entity that is a party to the underlying Agreement(s) and any entity that directly or indirectly controls, is controlled by or is under common control with such entities (Syneos Health) and Sponsor for the purchase of Services to improve and accelerate the delivery of therapies (identified collectively either as the "Services" or otherwise in the applicable Agreement, and hereinafter defined as the "Services"), wherein such Agreement is hereinafter defined as the "Agreement" and whereby this DPA reflects the parties' agreement with regard to the Processing of Personal Data. Sponsor enters into this DPA on behalf of itself and, to the extent required under applicable Data Protection Laws and Regulations, in the name and on behalf of its Authorized Affiliates, if and to the extent Syneos Health processes Personal Data for which such Authorized Affiliates qualify as the Controller. All capitalized terms not defined herein shall have the meaning set forth in the Agreement. In providing the Service to Sponsor pursuant to the Agreement, Syneos Health may Process Personal Data on behalf of Sponsor, and the parties agree to comply with the following provisions with respect to any Personal Data.

HOW TO EXECUTE THIS DPA

1. This DPA consists of distinct parts: this body and its set of definitions and provisions; the Standard Contractual Clauses; and Appendices

2. To complete this DPA, Sponsor must: (a) Complete the information in the signature box and sign on Page 10, complete the information as the data exporter on Page 11 (c) Complete the information in the signature box and sign on Pages19, 21 & 22.

APPLICATION OF THIS DPA

If the Sponsor entity signing this DPA is a party to the Agreement, then this DPA is an addendum to, and forms part of, the Agreement. In such case, the Syneos Health entity (i.e., either Syneos Health or a subsidiary of Syneos Health) that is party to the Agreement is party to this DPA.

If the Sponsor entity signing this DPA has executed an individual project agreement, referred to as a project agreement, work order, statement of work, or other form of contract ("Order Form") with Syneos Health or its Affiliate pursuant to the Agreement, but is not itself a party to the Agreement, then this DPA is an addendum to that Order Form and applicable renewal contract, and the Syneos entity that is a party to such Order Form is a party to this DPA.

If the Sponsor entity signing this DPA is neither a party to an Order Form nor the Agreement, then this DPA is not valid and therefore is not legally binding. Such entity should request that the Sponsor entity who is a party to the Agreement executes this DPA.

DEFINITIONS

"Affiliate" means any entity that directly or indirectly controls, is controlled by, or is under common control with the Sponsor entity signing this Agreement. "Control," for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

"Authorized Affiliate" means any of Sponsor's Affiliate(s) which (a) is subject to the data protection laws and regulations of the European Union, the European Economic Area and/or their member states, Switzerland and/or the United Kingdom, and (b) is permitted to use the Service pursuant to the Agreement between Sponsor and Syneos Health, but has not signed its own Order Form with Syneos Health and is not a "Sponsor" as defined under this Agreement.

"Controller" means the entity which determines the purposes and means of the Processing of Personal Data.

"Sponsor Data" means all electronic data submitted by or on behalf of Sponsor, or an Authorized Affiliate, to the Service.

"Data Protection Laws and Regulations" means all laws and regulations, including laws and regulations of the European Union, the European Economic Area and their member states, Switzerland and the United Kingdom, applicable to the Processing of Personal Data under this Agreement.

"Data Subject" means the identified or identifiable person to whom Personal Data relates.

"GDPR" means the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).

"Personal Data" means any information relating to (i) an identified or identifiable natural person and, (ii) an identified or identifiable legal entity (where such information is protected similarly as personal data or personally identifiable information under applicable Data Protection Laws and Regulations), where for each (i) or (ii), such data is Sponsor Data.

"Processing" means any operation or set of operations which is performed upon Personal Data, whether or not by automatic means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.

"Processor" means the entity which Processes Personal Data on behalf of the Controller.

"Syneos Health " means the Syneos Health entity which is a party to this Agreement, as specified in the section "Application of this DPA" above, being Syneos Health having its principal place of business at 1030 Sync Street, Morrisville, NC 27560.

"Standard Contractual Clauses" means the agreement executed by and between Sponsor and Syneos Health and included herein, pursuant to the European Commission's decision (C(2010)593) of 5 February 2010 on Standard Contractual Clauses for the transfer of personal data to processors established in third countries which do not ensure an adequate level of data protection.

"Sub-processor" means any Processor engaged by Syneos Health or an Affiliate of Syneos Health.

"Supervisory Authority" means an independent public authority which is established by an EU Member State pursuant to the GDPR.

TERMS

Provision of the Service

Syneos Health provides the Service to Sponsor under the Agreement. In connection with the Service, the parties anticipate that Syneos Health may Process Sponsor Data that contains Personal Data relating to Data Subjects.

The Parties' Roles

The parties agree that with regard to the Processing of Personal Data, Sponsor is the Controller, Syneos Health is the Processor, and that Syneos Health or members of the Syneos Health will engage Sub-processors pursuant to the requirements of this DPA.

Sponsor Responsibilities

Sponsor shall, in its use of the Services, Process Personal Data in accordance with the requirements of Data Protection Laws and Regulations. For the avoidance of doubt, Sponsor's instructions for the Processing of Personal Data shall comply with Data Protection Laws and Regulations. Sponsor shall have sole responsibility for the accuracy, quality, and legality of Personal Data and the means by which Sponsor acquires Personal Data.

Processing Purposes

Syneos Health shall keep Personal Data confidential and shall only Process Personal Data on behalf of and in accordance with Sponsor's documented instructions for the following purposes: (i) Processing in accordance with the Agreement and applicable Order Form(s); (ii) Processing initiated by Users in their use of the Service; and (iii) Processing to comply with other documented, reasonable instructions provided by Sponsor (for example, via email) where such instructions are consistent with the terms of the Agreement. Syneos Health shall not be required to comply with or observe Sponsor's instructions if such instructions would violate the GDPR or other EU law or EU member state data protection provisions.

Scope of Processing

The subject-matter of Processing of Personal Data by Syneos Health is the performance of the Service pursuant to the Agreement. The duration of the Processing shall be for the term of the Agreement. The nature and purpose of the Processing, the types of Personal Data and categories of Data Subjects Processed under this DPA are further specified below.

Data Subject Access Requests

To the extent legally permitted, Syneos Health shall promptly notify Sponsor if Syneos Health receives a request from a Data Subject to exercise the Data Subject's right of access, right to rectification, restriction of Processing, erasure ("right to be forgotten"), data portability, object to the Processing, or its right not to be subject to an automated individual decision making ("Data Subject Request").

Factoring into account the nature of the Processing, Syneos Health shall assist Sponsor by appropriate organizational and technical measures, insofar as this is possible, for the fulfilment of Sponsor's obligation to respond to a Data Subject Request under Data Protection Laws and Regulations.

In addition, to the extent Sponsor, in its use of the Service, does not have the ability to address a Data Subject Request, Syneos Health shall, upon Sponsor's request, provide commercially-reasonable efforts to assist Sponsor in responding to such Data Subject Request, to the extent that Syneos Health is legally authorized to do so, and the response to such Data Subject Request is required under Data Protection Laws and Regulations.

Syneos Health Personnel

Syneos Health shall ensure that its personnel engaged in the Processing of Personal Data are informed of the confidential nature of the Personal Data, have received appropriate training regarding their responsibilities, and have executed written confidentiality agreements.

Syneos Health shall take commercially-reasonable steps to ensure the reliability of any Syneos Health personnel engaged in the Processing of Personal Data.

Syneos Health shall ensure that Syneos Health's access to Personal Data is limited to those personnel assisting in the provision of the Service in accordance with the Agreement.

Data Protection Officer

Syneos Health has appointed a data protection officer and may be reached at data.privacy@SyneosHealth.com.

Syneos Health's Sub-processors

Sponsor has instructed or authorized the use of Sub-processors to assist Syneos Health with respect to the provision of the Services. Syneos Health has entered into a written agreement with each Sub-processor containing data protection obligations not; less protective than those in this Agreement with respect to the protection of Sponsor Data to the extent applicable to the nature of the Services provided by such Sub-processor.

Upon written request of the Sponsor, Syneos Health will provide to Sponsor a list of its then-current Sub-processors. Sponsor acknowledges and agrees that (a) Syneos Health's Affiliates may be retained as Sub-processors; and (b) Syneos Health and Syneos Health's Affiliates respectively may engage third-party Sub-processors in connection with the provision of the Services.

Syneos Health shall provide notification of a new Sub-processor(s) before authorizing any new Sub-processor(s) to process Personal Data in connection with the provision of the applicable Service. In order to exercise its right to object to Syneos Health's use of a new Sub-processor, Sponsor shall notify Syneos Health promptly in writing within ten (10) business days after receipt of Syneos Health's notice.. In the event Sponsor objects to a new Sub-processor, and that objection is not unreasonable, Syneos Health will use reasonable efforts to make available to Sponsor a change in the Services or recommend a commercially-reasonable change to Sponsor's configuration or use of the Services to avoid Processing of Personal Data by the objected-to new Sub-processor without unreasonably burdening the Sponsor. If Syneos Health is unable to make available such change within a reasonable time period, which shall not exceed thirty (30) days, Sponsor may terminate the applicable Agreement(s) with respect only to those aspects of the Services which cannot be provided by Syneos Health without the use of the rejected new Sub-processor by providing written notice to Syneos Health. The parties agree that the copies of the Sub-processor agreements that must be provided by Syneos Health to Sponsor pursuant to Clause 5(j) of the Standard Contractual Clauses may have all commercial information, or clauses unrelated to the Standard Contractual Clauses or their equivalent, removed by Syneos Health and, that such copies will be provided by Syneos Health, in a manner to be determined in its discretion, only upon request by Sponsor.

Liability for Sub-processors

Syneos Health shall be liable for the acts and omissions of its Sub-processors to the same extent Syneos Health would be liable if performing the services of each Sub-processor directly under the terms of this DPA, except as otherwise set forth in the Agreement.

Security Measures

Syneos Health shall maintain appropriate organizational and technical measures for protection of the security (including protection against unauthorized or unlawful Processing, and against unlawful or accidental destruction, alteration or damage or loss, unauthorized disclosure of, or access to, Sponsor Data), confidentiality, and integrity of Sponsor Data, as set forth in Syneos Health's applicable Security Documentation. Syneos Health regularly monitors compliance with these measures. Syneos Health will not materially decrease the overall security of the Service during Sponsor's and/or Authorized Affiliates' Agreement term.

Controls for the Protection of Customer Data

Syneos Health shall maintain appropriate technical and organizational measures for protection of the security (including protection against unauthorized or unlawful Processing and against accidental or unlawful destruction, loss or alteration or damage, unauthorized disclosure of, or access to, Sponsor Data), confidentiality and integrity of Sponsor Data Documentation. Syneos Health regularly monitors compliance with these measures. Syneos will not materially decrease the overall security of the Services for the duration of the Agreement.

Syneos Health maintains security incident management policies and procedures and shall, notify Customer without undue delay after becoming aware of the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to Sponsor Data, including Personal Data, transmitted, stored or otherwise Processed by Syneos Health or its Sub-processors of which Syneos Health becomes aware (a "Sponsor Data Incident"). Syneos Health shall make reasonable efforts to identify the cause of such Sponsor Data Incident and take those steps as Syneos Health deems necessary and reasonable in order to remediate the cause of such a Sponsor Data Incident to the extent the remediation is within Syneos Health's reasonable control. The obligations herein shall not apply to incidents that are caused by Sponsor or Sponsor's Users.

Third-Party Certifications and Audit Results

Upon Sponsor's written request at reasonable intervals, and subject to the confidentiality obligations set forth in the Agreement, Syneos Health shall make available to Sponsor a copy of Syneos Health's then most recent third-party certifications or audit results, as applicable.

Notifications Regarding Sponsor Data

Syneos Health has in place reasonable and appropriate security incident management policies and procedures and shall notify Sponsor without undue delay after becoming aware of the unlawful or accidental destruction, alteration or damage or loss, unauthorized disclosure of, or access to, Sponsor Data, including Personal Data, transmitted, stored or otherwise Processed by Syneos Health or its Sub-processors of which Syneos Health becomes aware (hereinafter, a "Sponsor Data Incident"), as required to assist the Sponsor in ensuring compliance with its obligations to notify the Supervisory Authority in the event of Personal Data breach. Syneos Health shall make reasonable efforts to identify the cause of such Sponsor Data Incident, and take those steps as Syneos Health deems necessary and reasonable in order to remediate the cause of such a Sponsor Data Incident, to the extent that the remediation is within Syneos Health's reasonable control. The obligations set forth herein shall not apply to incidents that are caused by either Sponsor or Sponsor's Users.

Return or Deletion of Sponsor Data

Syneos Health shall return Sponsor Data to Sponsor and, to the extent allowed by applicable law, delete Sponsor Data in accordance with the procedures and time periods specified in the Agreement and any further instructions, unless the retention of the data is required according to mandatory statutory laws.

The parties agree that the certification of deletion of Personal Data that is described in Clause 12(1) of the Standard Contractual Clauses shall be provided by Syneos Health to Sponsor only upon Sponsor's request.

Authorized Affiliates

The parties agree that, by executing the DPA, the Sponsor enters into the DPA on behalf of itself and, as applicable, in the name and on behalf of its Authorized Affiliate(s), thereby establishing a separate DPA between Syneos Health and each such Authorized Affiliate, subject to the provisions of the Agreement. Each Authorized Affiliate agrees to be bound by the obligations under this DPA and, to the extent applicable, the Agreement. An Authorized Affiliate is not and does not become a party to the Agreement, and is only a party to the DPA. All access to and use of the Service by Authorized Affiliate(s) must comply with the terms and conditions of the Agreement and any violation thereof by an Authorized Affiliate shall be deemed a violation by Sponsor.

Communications

The Sponsor that is the contracting party to the Agreement shall remain responsible for coordinating all communication with Syneos Health under this Agreement, and shall be entitled to transmit and receive any communication in relation to this Agreement on behalf of its Authorized Affiliate(s).

Exercise of Rights

Where an Authorized Affiliate becomes a party to the Agreement, it shall to the extent required under applicable Data Protection Laws and Regulations be entitled to exercise the rights and seek remedies under this DPA, except where applicable Data Protection Laws and Regulations require the Authorized Affiliate to exercise a right or seek any remedy under this DPA against Syneos Health directly by itself, the parties agree that (i) solely the Sponsor that is the contracting party to the Agreement shall exercise any such right or seek any such remedy on behalf of the Authorized Affiliate, and (ii) the Sponsor that is the contracting party to the Agreement shall exercise any such rights under this DPA in a combined manner for all of its Authorized Affiliates together, instead of doing so separately for each Authorized Affiliate.

Limitations of Liability

Each party's and all of its Affiliates' liability, taken together in the aggregate, arising out of or related to this DPA, and all Agreements between Authorized Affiliates and Syneos Health , whether in contract, tort or under any other theory of liability, is subject to the 'Limitation of Liability' section of the Agreement, and any reference in such section to the liability of a party means the aggregate liability of that party and all of its Affiliates under the Agreement and all Agreements together. Syneos Health 's and its Affiliates' total liability for all claims from the Sponsor and all of its Authorized Affiliates arising out of or related to the Agreement and each Agreement shall apply in the aggregate for all claims under both the Agreement and all Agreements established under this DPA, including by Sponsor and all Authorized Affiliates, and shall not be understood to apply individually and severally to Sponsor and/or to any Authorized Affiliate that is a contractual party to any such Agreement. Each reference to the DPA herein means this DPA including its Appendices.

European Specific Provisions

GDPR

Syneos Health will Process Personal Data in accordance with the GDPR requirements directly applicable to Syneos Health's provision of the Service.

Data Protection Impact Assessment

Upon Sponsor's request, Syneos Health shall provide Sponsor with reasonable cooperation and assistance needed to fulfil Sponsor's obligation under the GDPR to carry out a data protection impact assessment related to Sponsor's use of the Service, to the extent Sponsor does not otherwise have access to the relevant information, and to the extent such information is available to Syneos Health. Syneos Health shall provide reasonable assistance to Sponsor in the cooperation or prior consultation with the Supervisory Authority in the performance of its tasks relating to this DPA, to the extent required under the GDPR.

Privacy Shield

INC Research, LLC complies with the EU-U.S. Privacy Shield Framework and the Swiss-U.S. Privacy Shield Framework as set forth by the U.S. Department of Commerce regarding the collection, use and retention of personal information transferred from the European Union and Switzerland to the United States, respectively. INC Research, LLC has certified to the Department of Commerce that it adheres to the Privacy Shield Principles. If there is any conflict between the terms in this Privacy Notice and the Privacy Shield Principles, the Privacy Shield Principles shall govern.

When data is stored or processed by Syneos Health legal entities that have not certified participation with the EU-U.S. and Swiss-US Privacy Shield programs, Syneos Health uses alternative means of meeting the adequacy requirements of the applicable data protection laws, such as executing Standard Contractual clauses.

Standard Contractual Clauses

The Standard Contractual Clauses apply to (i) the legal entity that has executed this DPA as a data exporter and its Authorized Affiliates and, (ii) all Affiliates of Sponsor established within the European Economic Area, Switzerland and the United Kingdom, which have signed Order Forms for the Service. For the purpose of the Standard Contractual Clauses the aforementioned entities shall be deemed "data exporters."

Sponsor's Processing Instructions

This DPA is Sponsor's complete and final instructions at the time of signature of the DPA to Syneos Health for the Processing of Personal Data. Any additional or alternate instructions must be agreed upon separately. For the purposes of Clause 5(a) of the Standard Contractual Clauses, the following is deemed an instruction by the Sponsor to process Personal Data: (a) Processing in accordance with the Agreement and applicable Order Form(s); (b) Processing initiated by Users in their use of the Service; and (c) Processing to comply with other reasonable instructions provided by Sponsor (e.g., via email) where such instructions are consistent with the terms of the Agreement.

Audits

The parties agree that the audits described in Clause 5(f) and Clause 12(2) of the Standard Contractual Clauses shall be carried out in accordance with the following specifications: following Sponsor's written request, and subject to the confidentiality obligations set forth in the Agreement, Syneos Health shall make available to Sponsor information regarding the Syneos Health Group's compliance with the obligations set forth in this DPA in the form of the third-party certifications and audits to the extent that Syneos Health makes them generally available to its Sponsors. Sponsor may contact Syneos Health, in accordance with the "Notices" Section of the DPA to request an on-site audit of the procedures relevant to the protection of Personal Data. Sponsor shall reimburse Syneos Health for any time expended for any such on-site audit at the Syneos Health's then-current professional services rates, which shall be made available to Sponsor upon request. Before the commencement of any such on-site audit, Sponsor and Syneos Health shall mutually agree upon the scope, timing, and duration of the audit in addition to the reimbursement rate for which Sponsor shall be responsible. All reimbursement rates shall be reasonable, taking into account the resources expended by Syneos Health. Sponsor shall promptly notify Syneos Health and provide information about any actual or suspected non-compliance discovered during an audit. The provision in this section shall by no means derogate from or materially alter the provisions on audits as specified in the Standard Contractual Clauses.

Order of Precedence

With respect to the rights and obligation of the parties vis-à-vis each other, in the event of a conflict between the terms of the Agreement and this DPA, the terms of this DPA will control. In the event of a conflict between the terms of the Agreement and the Standard Contractual Clauses, the Standard Contractual Clauses will prevail.

IN WITNESS WHEREOF, the following have caused this Data Processing Addendum to be executed by their respective duly authorized representatives effective as of the Effective Date.

SYNEOS HEALTH, LLC		**ACURX PHARMACEUTICALS, LLC**	
By:	/s/ Kristen Greene	By:	/s/ Robert J, DeLuccia
Name:	Kristen Greene	Name:	Robert J. DeLuccia
Title:	Senior Corporate Counsel	Title:	Co-Founder & Managing Partner
Date:	October 9, 2019	Date:	October 11, 2019

SCHEDULE 1

STANDARD CONTRACTUAL CLAUSES

[These Clauses are deemed to be amended from time to time, to the extent that they relate to a Restricted Transfer which is subject to the Data Protection Laws of a given country or territory, to reflect (to the extent possible without material uncertainty as to the result) any change (including any replacement) made in accordance with those Data

Protection Laws (i) by the Commission to or of the equivalent contractual clauses approved by the Commission under EU Directive 95/46/EC or the GDPR (in the case of the Data Protection Laws of the European Union or a Member State); or (ii) by an equivalent competent authority to or of any equivalent contractual clauses approved by it or by another competent authority under another Data Protection Law (otherwise).]

[If these Clauses are not governed by the law of a Member State, the terms "Member State" and "State" are replaced, throughout, by the word "jurisdiction".]

Standard Contractual Clauses (processors)

For the purposes of Article 26(2) of Directive 95/46/EC for the transfer of personal data to processors established in third countries which do not ensure an adequate level of data protection [*This opening recital is deleted if these Clauses are not governed by the law of a member state of the EEA*]

[*The gaps below are populated with details of the relevant Company Group Member:*]

Name of the data exporting organisation:

Address:

Tel.: _____; fax: _____; e-mail: _____

Other information needed to identify the organisation

……
(the data **exporter**)

And

[*The gaps below are populated with details of the relevant Contracted Processor:*]

Syneos Health, LLC.

Address: 1030 Sync Street, Morrisville, NC 27560

Tel.: _____; fax: _____; e-mail: data.privacy@syneoshealth.com

Other information needed to identify the organisation:

……
(the data **importer**)

each a “party”; together “the parties”,

SCHEDULE 1

STANDARD CONTRACTUAL CLAUSES

HAVE AGREED on the following Contractual Clauses (the Clauses) in order to adduce adequate safeguards with respect to the protection of privacy and fundamental rights and freedoms of individuals for the transfer by the data exporter to the data importer of the personal data specified in Appendix 1.

Background

The data exporter has entered into a data processing addendum (“DPA”) with the data importer. Pursuant to the terms of the DPA, it is contemplated that services provided by the data importer will involve the transfer of personal data to data importer. Data importer is located in a country not ensuring an adequate level of data protection. To ensure compliance with Directive 95/46/EC and applicable data protection law, the controller agrees to the provision of such Services, including the processing of personal data incidental thereto, subject to the data importer’s execution of, and compliance with, the terms of these Clauses.

Clause 1

Definitions

For the purposes of the Clauses:

(a) *'personal data', 'special categories of data', 'process/processing', 'controller', 'processor', 'data subject'* and *'supervisory authority'* shall have the same meaning as in 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; [*If these Clauses are governed by a law which extends the protection of data protection laws to corporate persons, the words “except that, if these Clauses govern a transfer of data relating to identified or identifiable corporate (as well as natural) persons, the definition of "personal data" is expanded to include those data” are added.*]

(b) '*the data exporter'* means the controller who transfers the personal data;

(c) *'the data importer'* means the processor who agrees to receive from the data exporter personal data intended for processing on his behalf after the transfer in accordance with his instructions and the terms of the Clauses and who is not subject to a third country's system ensuring adequate protection within the meaning of Article 25(1) of Directive 95/46/EC; [*If these Clauses are not governed by the law of a Member State, the words "and who is not subject to a third country's system ensuring adequate protection within the meaning of Article 25(1) of Directive 95/46/EC" are deleted.*]

(d) *'the subprocessor'* means any processor engaged by the data importer or by any other subprocessor of the data importer who agrees to receive from the data importer or from any other subprocessor of the data importer personal data exclusively intended for processing activities to be carried out on behalf of the data exporter after the transfer in accordance with his instructions, the terms of the Clauses and the terms of the written subcontract;

SCHEDULE 1

STANDARD CONTRACTUAL CLAUSES

(e) '*the applicable data protection law*' means the legislation protecting the fundamental rights and freedoms of individuals and, in particular, their right to privacy with respect to the processing of personal data applicable to a data controller in the Member State in which the data exporter is established;

(f) *'technical and organisational security measures'* means those measures aimed at protecting personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing.

Clause 2

Details of the transfer

The details of the transfer and in particular the special categories of personal data where applicable are specified in Appendix 1 which forms an integral part of the Clauses.

Clause 3

Third-party beneficiary clause

1. The data subject can enforce against the data exporter this Clause, Clause 4(b) to (i), Clause 5(a) to (e), and (g) to (j), Clause 6(1) and (2), Clause 7, Clause 8(2), and Clauses 9 to 12 as third-party beneficiary.

2. The data subject can enforce against the data importer this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where the data exporter has factually disappeared or has ceased to exist in law unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity.

3. The data subject can enforce against the subprocessor this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity. Such third-party liability of the subprocessor shall be limited to its own processing operations under the Clauses.

4. The parties do not object to a data subject being represented by an association or other body if the data subject so expressly wishes and if permitted by national law.

SCHEDULE 1

STANDARD CONTRACTUAL CLAUSES

Clause 4

Obligations of the data exporter

The data exporter agrees and warrants:

(a) that the processing, including the transfer itself, of the personal data has been and will continue to be carried out in accordance with the relevant provisions of the applicable data protection law (and, where applicable, has been notified to the relevant authorities of the Member State where the data exporter is established) and does not violate the relevant provisions of that State;

(b) that it has instructed and throughout the duration of the personal data processing services will instruct the data importer to process the personal data transferred only on the data exporter's behalf and in accordance with the applicable data protection law and the Clauses;

(c) that the data importer will provide sufficient guarantees in respect of the technical and organisational security measures specified in Appendix 2 to this contract;

(d) that after assessment of the requirements of the applicable data protection law, the security measures are appropriate to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing, and that these measures ensure a level of security appropriate to the risks presented by the processing and the nature of the data to be protected having regard to the state of the art and the cost of their implementation;

(e) that it will ensure compliance with the security measures;

(f) that, if the transfer involves special categories of data, the data subject has been informed or will be informed before, or as soon as possible after, the transfer that its data could be transmitted to a third country not providing adequate protection within the meaning of Directive 95/46/EC; [*If these Clauses are not governed by the law of a Member State, the words "within the meaning of Directive 95/46/EC" are deleted.*]

(g) to forward any notification received from the data importer or any subprocessor pursuant to Clause 5(b) and Clause 8(3) to the data protection supervisory authority if the data exporter decides to continue the transfer or to lift the suspension;

(h) to make available to the data subjects upon request a copy of the Clauses, with the exception of Appendix 2, and a summary description of the security measures, as well as a copy of any contract for subprocessing services which has to be made in accordance with the Clauses, unless the Clauses or the contract contain commercial information, in which case it may remove such commercial information;

(i) that, in the event of subprocessing, the processing activity is carried out in accordance with Clause 11 by a subprocessor providing at least the same level of protection for the personal data and the rights of data subject as the data importer under the Clauses; and

(j) that it will ensure compliance with Clause 4(a) to (i).

Clause 5

Obligations of the data importer

The data importer agrees and warrants:

(a) to process the personal data only on behalf of the data exporter and in compliance with its instructions and the Clauses; if it cannot provide such compliance for whatever reasons, it agrees to inform promptly the data exporter of its inability to comply, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;

(b) that it has no reason to believe that the legislation applicable to it prevents it from fulfilling the instructions received from the data exporter and its obligations under the contract and that in the event of a change in this legislation which is likely to have a substantial adverse effect on the warranties and obligations provided by the Clauses, it will promptly notify the change to the data exporter as soon as it is aware, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;

(c) that it has implemented the technical and organisational security measures specified in Appendix 2 before processing the personal data transferred;

(d) that it will promptly notify the data exporter about:

(i) any legally binding request for disclosure of the personal data by a law enforcement authority unless otherwise prohibited, such as a prohibition under criminal law to preserve the confidentiality of a law enforcement investigation,

(ii) any accidental or unauthorised access, and

(iii) any request received directly from the data subjects without responding to that request, unless it has been otherwise authorised to do so;

(e) to deal promptly and properly with all inquiries from the data exporter relating to its processing of the personal data subject to the transfer and to abide by the advice of the supervisory authority with regard to the processing of the data transferred;

(f) at the request of the data exporter to submit its data processing facilities for audit of the processing activities covered by the Clauses which shall be carried out by the data exporter or an inspection body composed of independent members and in possession of the required professional qualifications bound by a duty of confidentiality, selected by the data exporter, where applicable, in agreement with the supervisory authority;

SCHEDULE 1

STANDARD CONTRACTUAL CLAUSES

(g) to make available to the data subject upon request a copy of the Clauses, or any existing contract for subprocessing, unless the Clauses or contract contain commercial information, in which case it may remove such commercial information, with the exception of Appendix 2 which shall be replaced by a summary description of the security measures in those cases where the data subject is unable to obtain a copy from the data exporter;

(h) that, in the event of subprocessing, it has previously informed the data exporter and obtained its prior written consent;

(i) that the processing services by the subprocessor will be carried out in accordance with Clause 11;

(j) to send promptly a copy of any subprocessor agreement it concludes under the Clauses to the data exporter.

Clause 6

Liability

1. The parties agree that any data subject, who has suffered damage as a result of any breach of the obligations referred to in Clause 3 or in Clause 11 by any party or subprocessor is entitled to receive compensation from the data exporter for the damage suffered.

2. If a data subject is not able to bring a claim for compensation in accordance with paragraph 1 against the data exporter, arising out of a breach by the data importer or his subprocessor of any of their obligations referred to in Clause 3 or in Clause 11, because the data exporter has factually disappeared or ceased to exist in law or has become insolvent, the data importer agrees that the data subject may issue a claim against the data importer as if it were the data exporter, unless any successor entity has assumed the entire legal obligations of the data exporter by contract of by operation of law, in which case the data subject can enforce its rights against such entity.

The data importer may not rely on a breach by a subprocessor of its obligations in order to avoid its own liabilities.

3. If a data subject is not able to bring a claim against the data exporter or the data importer referred to in paragraphs 1 and 2, arising out of a breach by the subprocessor of any of their obligations referred to in Clause 3 or in Clause 11 because both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, the subprocessor agrees that the data subject may issue a claim against the data subprocessor with regard to its own processing operations under the Clauses as if it were the data exporter or the data importer, unless any successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law, in which case the data subject can enforce its rights against such entity. The liability of the subprocessor shall be limited to its own processing operations under the Clauses.

SCHEDULE 1

STANDARD CONTRACTUAL CLAUSES

Clause 7

Mediation and jurisdiction

1. The data importer agrees that if the data subject invokes against it third-party beneficiary rights and/or claims compensation for damages under the Clauses, the data importer will accept the decision of the data subject:

(a) to refer the dispute to mediation, by an independent person or, where applicable, by the supervisory authority;

(b) to refer the dispute to the courts in the Member State in which the data exporter is established.

2. The parties agree that the choice made by the data subject will not prejudice its substantive or procedural rights to seek remedies in accordance with other provisions of national or international law.

Clause 8

Cooperation with supervisory authorities

1. The data exporter agrees to deposit a copy of this contract with the supervisory authority if it so requests or if such deposit is required under the applicable data protection law.

2. The parties agree that the supervisory authority has the right to conduct an audit of the data importer, and of any subprocessor, which has the same scope and is subject to the same conditions as would apply to an audit of the data exporter under the applicable data protection law.

3. The data importer shall promptly inform the data exporter about the existence of legislation applicable to it or any subprocessor preventing the conduct of an audit of the data importer, or any subprocessor, pursuant to paragraph 2. In such a case the data exporter shall be entitled to take the measures foreseen in Clause 5 (b).

Clause 9

Governing Law

The Clauses shall be governed by the law of the Member State in which the data exporter is established.

SCHEDULE 1

STANDARD CONTRACTUAL CLAUSES

Clause 10

Variation of the contract

The parties undertake not to vary or modify the Clauses. This does not preclude the parties from adding clauses on business related issues where required as long as they do not contradict the Clause.

Clause 11

Subprocessing

1. The data importer shall not subcontract any of its processing operations performed on behalf of the data exporter under the Clauses without the prior written consent of the data exporter. Where the data importer subcontracts its obligations under the Clauses, with the consent of the data exporter, it shall do so only by way of a written agreement with the subprocessor which imposes the same obligations on the subprocessor as are imposed on the data importer under the Clauses. Where the subprocessor fails to fulfil its data protection obligations under such written agreement the data importer shall remain fully liable to the data exporter for the performance of the subprocessor's obligations under such agreement.

2. The prior written contract between the data importer and the subprocessor shall also provide for a third-party beneficiary clause as laid down in Clause 3 for cases where the data subject is not able to bring the claim for compensation referred to in paragraph 1 of Clause 6 against the data exporter or the data importer because they have factually disappeared or have ceased to exist in law or have become insolvent and no successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law. Such third-party liability of the subprocessor shall be limited to its own processing operations under the Clauses.

3. The provisions relating to data protection aspects for subprocessing of the contract referred to in paragraph 1 shall be governed by the law of the Member State in which the data exporter is established.

4. The data exporter shall keep a list of subprocessing agreements concluded under the Clauses and notified by the data importer pursuant to Clause 5 (j), which shall be updated at least once a year. The list shall be available to the data exporter's data protection supervisory authority.

SCHEDULE 1

STANDARD CONTRACTUAL CLAUSES

Clause 12

Obligations after the termination of personal data processing services

1. The parties agree that on the termination of the provision of data processing services, the data importer and the subprocessor shall, at the choice of the data exporter, return all the personal data transferred and the copies thereof to the data exporter or shall destroy all the personal data and certify to the data exporter that it has done so, unless legislation imposed upon the data importer prevents it from returning or destroying all or part of the personal data transferred. In that case, the data importer warrants that it will guarantee the confidentiality of the personal data transferred and will not actively process the personal data transferred anymore.

2. The data importer and the subprocessor warrant that upon request of the data exporter and/or of the supervisory authority, it will submit its data processing facilities for an audit of the measures referred to in paragraph 1.

On behalf of the data exporter		**On behalf of the data importer**	
Name:	_____	Name:	_____
Signature:	_____	Signature:	_____
Title:	_____	Title:	_____
Date:	_____	Date:	_____

APPENDIX 1 TO THE STANDARD CONTRACTUAL CLAUSES

DETAILS OF THE PROCESSING

This Appendix forms part of the Clauses and must be completed and signed by the parties.

Nature and Purpose of Processing

Syneos Health shall Process Personal Data as necessary to perform the Services pursuant to the Agreement, as further instructed by Customer in its use of the Services.

Duration of Processing

Syneos Health shall Process Personal Data for the duration of the Agreement, unless otherwise agreed upon in writing.

Processing Operations

The objective of Processing of Personal Data by data importer is the performance of the Services pursuant to the Agreement.

Data exporter

Data Exporter is (i) the legal entity that has executed the Agreement and, (ii) all Affiliates (as defined in the Agreement) of Sponsor established within the European Economic Area (EEA) and Switzerland that have contracted Syneos Health Services on the basis of one or more Agreements.

Data importer

Syneos Health is a Clinical Research Organization which processes personal data upon the instruction of the data exporter in order to deliver the services in accordance with the terms of the Agreement.

Data subjects

Data exporter may submit Personal Data to the Services, the extent of which is determined and controlled by the data exporter in its sole discretion, and which may include, but is not limited to Personal Data relating to the following categories of data subjects:

- Study participants, potential study participants, site staff, business partners and vendors of data exporter (who are natural persons)
- Employees or contact persons, business partners and vendors of data exporter
- Employees, agents, advisors, freelancers of the data exporter (who are natural persons)
- Data exporter's Users authorized by data exporter to use the Services

---

APPENDIX 1 TO THE STANDARD CONTRACTUAL CLAUSES

DETAILS OF THE PROCESSING

Categories of data

Data exporter may submit Personal Data to the Services, the extent of which is determined and controlled by the data exporter in its sole discretion, and which may include, but is not limited to the following categories of Personal Data:

- First and last name
- Title
- Position
- Employer
- Contact information (company, email, phone, physical address)
- ID data
- Professional life data
- Personal life data (banking & financial details)
- Connection Data
- Localization Data

Special categories of data

Data exporter may submit Personal Data to the Services, the extent of which is determined and controlled by the data exporter in its sole discretion, and which may include, but is not limited to Personal Data with information revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, trade-union membership and data concerning health or sex life.

Processing operations

The personal data transferred will be subject to the following basic processing activities (please specify):

The objective of Processing of Personal Data by data importer is the performance of the Services pursuant to the Agreement.

Name:	_____	Name:	_____
Signature:	_____	Signature:	_____
Title:	_____	Title:	_____
Date:	_____	Date:	_____

APPENDIX 1 TO THE STANDARD CONTRACTUAL CLAUSES

DETAILS OF THE PROCESSING

This Appendix forms part of the Clauses and must be completed and signed by the parties.

Description of the technical and organisational security measures implemented by the data importer in accordance with Clauses 4(d) and 5(c):

Data importer shall maintain appropriate technical and organizational measures for protection of the security (including protection against unauthorized or unlawful Processing and against accidental or unlawful destruction, loss or alteration or damage, unauthorized disclosure of, or access to, Sponsor Data), confidentiality and integrity of Sponsor Data. Syneos Health regularly monitors compliance with these measures. Syneos Health will not materially decrease the overall security of the Services for the duration of the Agreement.

On behalf of the data exporter		**On behalf of the data importer**	
Name:	_____	Name:	_____
Signature:	_____	Signature:	_____
Title:	_____	Title:	_____
Date:	_____	Date:	_____

Exhibit 10.11

EXECUTION COPY

ASSET PURCHASE AGREEMENT

between

ACURX PHARMACEUTICALS, LLC

and

GLSYNTHESIS INC.,

Dated February 5, 2018

ASSET PURCHASE AGREEMENT

ASSET PURCHASE AGREEMENT (the "**Agreement**") dated February 5, 2018 (the "**Effective Date**"), by and between Acurx Pharmaceuticals, LLC, a limited liability company organized and existing under the laws of Delaware having a principal place of business at 22 Camelot Court, White Plains, NY 10603 (the "**Purchaser**") and GLSynthesis Inc., a Massachusetts corporation having a principal place of business at 298 Highland Street, Worcester, MA 01602 (the " **Seller**" and, together with the Purchaser, the "**Parties**").

RECITALS

WHEREAS, the Seller is a private company developing certain development stage pharmaceutical product candidates (the '**Business**");

WHEREAS, the Seller desires to sell and the Purchaser desires to purchase certain assets and rights of the Seller including, without limitation, certain intellectual property rights and other materials that relate to the Purchased Assets (as defined below), in each case, upon the terms and conditions set forth in this Agreement; and

WHEREAS, for services to be provided to the Company from time to time, the Seller shall be issued certain equity interests (the **Profits Interests**") in the Purchaser.

NOW, THEREFORE, in consideration of the covenants, agreements, representations, and warranties contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

ARTICLE I

PURCHASE AND SALE OF ASSETS; PURCHASE PRICE; CLOSING

1.1. Purchase and Sale of Assets. Subject to the terms and conditions of this Agreement, on the Closing Date (as defined herein), the Seller shall sell, transfer, convey, assign, and deliver to the Purchaser, and the Purchaser shall purchase, acquire, and accept from the Seller, free and clear of any Liens (as defined below) other than Permitted Liens (as defined below), the following specified assets, properties and rights owned or held by the Seller (the "**Purchased Assets**"):

(a) Any and all intellectual property disclosed or described in the Product Documentation (as defined inSection 1.1(e) below) that is owned by the Seller as of the Closing Date that are exclusively used or usable in or for the development, manufacture, use, import or sale of the API (as defined below) anywhere in the world including, without limitation, the Patent Rights, Trademarks and Trade Secrets (each as fined below) (collectively, the "**Intellectual Property**");

(b) Any and all unexpired United States and foreign patents, patent applications and disclosures of inventions, certificates of invention and all rights therein owned by the Seller as of the Closing Date, including, without limitation those listed in Section 1.1(b) of the Seller Disclosure Schedule, and any and all extensions, continuations, continuations-in-part, divisional, reissues, patents of addition, registrations, confirmations, supplementary protection certificates, term extensions (under applicable patent law or regulation or other law or regulation) or reexaminations thereof, any subsequent filings in any country claiming priority therefrom and any and all discoveries or inventions embodied within the foregoing (collectively, the "**Patent Rights**");

(c) Any and all applications, registrations, approvals, concurrences and filings with, or other submissions or correspondence relating to, the Product (as defined below) to or from the United States Food and Drug Administration ("**FDA**"), any state counterpart, any European notified body and any other foreign governmental authority with similar authority and, with respect to FDA filings and submissions, identifying the type of the filing or submission (whether under an IND or NDA or otherwise), including all warning letters, all vigilance reports, all adverse event reports, all correspondence relating to clinical activities, all responses to FDA audits, all European notified body audits, all responses to European notified bodies, all CE technical or CE Marketing files, all facilities registration documentation and all device listing documentation (collectively, the "**Regulatory Correspondence**");

(d) Any and all data and information maintained in confidence by the Seller or its representatives and owned by and in the possession of the Seller or its representatives as of the Closing Date (including, without limitation, such data and information listed in Section 1.1(d) of the Seller Disclosure Schedule) that are exclusively used or usable in or for the development, manufacture, use, import or sale of the API anywhere in the world, including, without limitation, such data and information that are exclusively used in or for the design, development, animal or clinical testing, obtaining regulatory concurrence or approval, manufacture, production, revision, maintenance, repair, quality assurance, marketing, labeling, packaging, advertising, sale, operation, use or other exploitation of the API as of the Closing Date and including all related processes, plans, designs, research, operating manuals, methods, compounds, formulae, discoveries, developments, designs, drawings, technology, techniques, procedures, know-how, specifications, inventions, customer and supplier lists, computer programs, and other scientific or technical data or information conceived, memorialized, developed and/or reduced to practice, in each case, whether or not patentable in any jurisdiction, that are owned by the Seller as of the Closing Date (collectively, the "**Trade Secrets**");

(e) Any and all patterns, plans, designs, research data, clinical data, formulae, specifications, manufacturing processes, vendor and raw material and component lists and specifications, quality testing procedures, process validations, environmental control documentation, operating manuals, blueprints, sketches, drawings, manuals, data, records, procedures and research and development records, compositions, proposals, process descriptions and other technical data (including chemical formulations, design specifications, standard operating procedures and manufacturing protocol(s) in each case that are owned by and in the possession of Seller as of the Closing Date and exclusively used for the manufacture or quality assurance testing of any existing Inventory (as defined below), including, without limitation, those listed in Section 1.1(e) of the Seller Disclosure Schedule (collectively, the "**Product Documentation**");

(f) Any and all Investigational New Drug Applications filed by the Seller and relating to the API (each, a "**Product IND**" and, collectively, the "**Product INDs**"), including without limitation, as listed in Section 1.1(f) of the Seller Disclosure Schedule;

(g) All of the Seller's right, title, and interest in and to any pharmaceutical composition or preparation comprising or containing the API (as defined below).

(h) The active pharmaceutical ingredient ("**API**") known as GLS362E, including its pharmacologically acceptable salts, and if applicable, any analogs, solvents, hydrates, hemihydrates, polymorphs, metabolites, free base forms, pro-drugs, esters, tautomers, isomers, stereoisomers, racemates, enantiomers and, in each case, all optically active forms thereof including, without limitation, all dosage forms of such compositions or preparations, together with all historical variations of the API which lead or may have led to its development (the "**Product**");

(i) Any and all of the license rights or assignments granted to the Seller, pursuant to which Seller obtained an ownership interest in the Product; and

(j) Any and all grant applications, whether submitted or unsubmitted, complete or incomplete, relating to the Product as listed in Section 1.1(j) of the Seller Disclosure Schedule; and

(k) All inventory of the Product listed in Section 1.1(k) of the Seller Disclosure Schedule, including, without limitation, all finished goods, bulk goods inventory, raw materials, or any other component of inventory at any stage of completion in the drug manufacturing cycle, in each case, owned or controlled by the Seller on the Closing Date whether or not such items are manufactured consistently with current Good Manufacturing Practices ("**GMP**") as promulgated by the FDA as in effect from time to time and other materials, if any, applicable to manufacturing of API, [including without limitation, cell line(s) potentially relevant to recombinant production of API that may exist] and be in Seller's possession or control (the "**Inventory**").

1.2. Excluded Assets. Notwithstanding any other provision of this Agreement, the Seller shall retain and shall not transfer to the Purchaser any assets, properties or rights of the Seller not set forth in Section 1.1 above, in each case, taken together with related sections of the Seller Disclosure Schedule (the "**Excluded Assets**").

1.3. Assumed Liabilities. Except as otherwise set forth in this Agreement, including without limitation contracts and commitments contemplated in Section 2.8 of this Agreement entitled "Contracts and Commitments", the Purchaser shall not assume any liabilities or obligations of the Seller, including Taxes allocable to a pre-closing period, and nothing herein shall be construed as imposing any liability or obligation upon the Purchaser other than those related to the Purchased Assets from and after the Closing Date and those specifically set forth in Section 1.3 of the Purchaser Disclosure Schedule.

1.4 Transfer Tax. Any transfer, documentary, sales, use or other taxes ("Transfer Tax") assessed upon or with respect to the transfer of the Purchased Assets to Purchaser and any recording or filing fees with respect thereto shall be paid by Seller, and Seller shall promptly reimburse Purchaser for any such amounts paid by Purchaser.

1.5. Purchase Price. The aggregate consideration for the Purchased Assets shall consist of four components; cash consideration, milestone payments conditioned upon certain events, equity consideration and royalty payments as follows (collectively, the "**Purchase Price**"):

(a) Cash Consideration. At the Closing, Purchaser shall pay to Seller one hundred and ten thousand one hundred seventy-four dollars ($110,174) by wire transfer of immediately available funds to the Seller's bank account as previously instructed to the Purchaser by the Seller in writing prior to the Closing (the "**Cash Consideration**"). The Cash Consideration represents reimbursement of patent related costs paid by Seller and/or its representatives on or prior to the Closing Date related to the Product.

(b) Milestones. In addition to the Cash Consideration, Purchaser shall pay to Seller one or more of the amounts below (each a "**Milestone Payment**" and together, the "**Milestone Payments**") in respect of the milestones listed below upon the occurrence of the events described below:

A. Manufacturing Milestone. Within 30 days following Purchaser's receipt of "Safe-to-Proceed" IND notification from FDA, Purchaser shall pay to Seller or its designee(s) twenty-five thousand dollars ($25,000);

B. Manufacturing Milestone. Within 30 days following completion of manufacture of cGMP material with manufacturing specifications adequate to support planned Phase 2 clinical trials, Purchaser shall pay to Seller or its designee(s) twenty-five thousand dollars ($25,000);

C. Clinical Milestone. Within 90 days following successful completion of the first Phase 2 clinical trial of the Product that favorably meets all primary endpoints, Purchaser shall pay to Seller or its designee(s) one hundred and fifty thousand dollars ($150,000); and

D. Clinical Milestone. Within 90 days following successful completion of two Phase 3 clinical trials of the Product that favorably meet all primary endpoints, Purchaser shall pay to Seller or its designee(s) five hundred thousand dollars ($500,000); provided, however, if the Food and Drug Administration allows Purchaser to submit a New Drug Application upon successful completion of only one Phase 3 clinical trial of the Product, then this payment shall be due within 90 days following successful completion of such one Phase 3 clinical trial of the Product that favorably meets all primary endpoints.

(c) Equity Consideration. At the Closing, Purchaser shall grant to Seller one hundred thousand Class B Membership Interests (the "**Class B Interests**") of Purchaser. The Class B Interests shall be fully vested on the Effective Date. The Class B Interests will not be registered under the Securities Act of 1933, as amended (the "**Securities Act**") and, accordingly, will include a customary restricted legend under the Securities Act. The foregoing equity grant is conditioned upon Seller's executing and delivering to Purchaser at Closing a new member's consent (the "**New Member's Consent**"), pursuant to which Seller agrees to be bound by the terms and provisions of Purchaser's limited liability company operating agreement (the "**LLC Operating Agreement**") as a member of Purchaser's limited liability company.

(d) Royalties. The Purchaser shall make to Seller the following royalty payments on net sales of the Product anywhere in the world (the "**Royalty**" or, collectively, the "**Royalties**"):

A. The Purchaser shall pay a royalty to Seller equal to 4% of "Net Sales" (as defined below), on a country-by-country basis, which amount shall be payable for a period of time equal to the last to expire of any applicable patent(s), patent application(s), extensions, continuations, or continuations-in-part (each, a "**Patent**" and collectively, the "**Patents**"), in each case, covering the Product in each applicable country within which such Net Sales are made (the "**Royalty Period**"). After the Royalty Period, Purchaser shall continue to own the Product on a royalty free basis with no further obligation(s) to Seller or its designee(s).

1.6. Allocation of Purchase Price. The Purchase Price shall be allocated for all tax purposes among the Purchased Assets in accordance with their respective fair market values pursuant to the principles of Section 1060 of the Internal Revenue Code of 1986, as amended (the "Code"), and the regulations adopted thereunder, and in accordance with the principles set forth in Exhibit A. Neither the Purchaser nor the Seller shall, in connection with any tax return, any refund claim, any litigation or investigation or otherwise, take any position with respect to the allocation of the Purchase Price which is inconsistent with the principles provided in Exhibit A (including, without limitation, filing Internal Revenue Service ("IRS") Form 8594 with its federal income tax return for the taxable year that includes the Closing Date); provided, however, Purchaser may make reasonable adjustments as are appropriate to account for transaction expenses and other amounts treated as amounts paid by Purchaser in respect of the transactions contemplated by this Agreement. To the extent that the Purchase Price is adjusted pursuant to this Agreement, including adjustments to Purchase Price in connection with payment of Royalties or Milestone Payments, the allocation of purchase price shall be adjusted accordingly and the Purchaser and Seller shall file supplement IRS Form 8594s consistent with such adjustment.

1.7. Withholding Taxes. Buyer shall be entitled to deduct and withhold from the consideration otherwise payable hereunder amounts required to be deducted and withheld under any provision of applicable federal, state, local or foreign law.

1.8. Assignment of Purchased Assets. Notwithstanding anything in this Agreement to the contrary, (a) this Agreement shall not constitute an agreement to sell, transfer, convey, assign or deliver to the Purchaser any Purchased Assets if such Purchased Assets are not transferable under applicable laws or regulations, and (b) this Agreement shall not constitute an agreement to assign any asset or claim or right or any benefit arising under or resulting from such asset if an attempted assignment thereof, without the consent of a third party, would constitute a breach or other contravention of the rights of such third party, or would be ineffective with respect to any party to an agreement concerning such asset. If any transfer or assignment by the Seller of any Purchased Assets is limited by the immediately preceding sentence, or any assumption by the Purchaser of, any interest in, or liability, obligation or commitment under any asset requires the consent of a third party and such consent has not been obtained, then such transfer, assignment or assumption shall be subject to any such consent or required authorization being obtained. The Seller shall use its commercially reasonable efforts to obtain such consent or authorization as promptly as practicable, and the Seller and the Purchaser shall cooperate (at their own expense) in any lawful and commercially reasonable mutually agreeable arrangement under which (i) the Purchaser shall obtain (without infringing upon the legal rights of such third party or outside party or violating any applicable laws) the economic claims, right and benefits under the asset, claim or right with respect to which the consent or authorization has not been obtained in accordance with this Agreement and (ii) the Purchaser shall assume any related economic burden with respect to the asset, claim or right with respect to which the consent or authorization has not been obtained (including any related Assumed Liability). Any and all obligations resulting from obtaining required consents or authorizations shall be the obligation(s) of and paid by the Purchaser or its designee(s).

1.9. Definitions. As used in this Agreement, the following terms shall have the following meanings:

(a) "Acquisition Documents" shall have the meaning set forth in Section 2.1(a).

(b) "Affiliate" shall have the meaning given to such term in Rule 12b-2 promulgated under the Securities Exchange Act of 1934, as amended, as in effect as of the date of this Agreement.

(c) "Agreement" shall have the meaning set forth in the preamble.

(d) "API" shall have the meaning set forth in Section 1.1(h).

(e) "Business" shall have the meaning set forth in the preamble.

(f) "Cash Consideration" shall have the meaning set forth in Section 1.5(a).

(g) "Class B Interests" shall have the meaning set forth in Section 1.5(c).

(h) "Closing" or "Closing Date" shall have the meaning set forth in Section 5.1.

(i) "Damages" shall have the meaning set forth in Section 6.2.

(j) "Effective Date" shall have the meaning set forth in the preamble.

(k) "Excluded Assets" shall have the meaning set forth in Section 1.2.

(l) "GMP" shall have the meaning set forth in Section 1.1(k).

(m) "Gross Sales" means the gross amount invoiced by the Purchaser or any party acting on its behalf for sales of the Product to a third party unaffiliated with the Purchaser or any party acting on its behalf.

(n) "Indemnified Party" or "Indemnifying Party" in each case shall have the respective meanings set forth in Section 6.4.

(o) "Intellectual Property" shall have the meaning set forth in Section 1.1(a).

(p) "Inventory" shall have the meaning set forth in Section 1.1(k).

(q) "Lien" or "Liens" shall have the meaning set forth in Section 2.5(b).

(r) "LLC Operating Agreement" shall have the meaning set forth in Section 1.5(c).

(s) "Material Adverse Effect" means any change, circumstance, event or effect (each an "**Effect**") that materially impedes the consummation of the transactions contemplated by this Agreement in accordance with the terms hereof and all applicable law; provided, however, that none of the following shall be deemed in themselves, either alone or in combination, to constitute, and that none of the following shall be taken into account in determining whether there has been or will be, a Material Adverse Effect: (A) any adverse Effect to the extent attributable in whole or in part to the announcement or pendency of the transactions contemplated by this Agreement; (B) any adverse Effect attributable to conditions generally affecting the biotechnology or pharmaceutical industries or the U.S. or international economy or the U.S. or international financial markets which do not materially disproportionately affect the Seller; (C) any adverse Effect arising from or relating to compliance with the terms of this Agreement; (D) changes in law after the date hereof; (E) earthquakes, fires, floods, hurricanes, tornadoes or similar catastrophes, or acts of war, sabotage, terrorism, military action or any escalation or worsening thereof after the date hereof, and whether or not pursuant to the declaration of national emergency or war; and (F) any action taken by the Seller with the Purchaser's written consent or the taking of any action expressly required by this Agreement.

(t) "Milestone Payment" or "Milestone Payments" shall have the meaning set forth in Section 1.5(b).

(u) "Net Sales" means Gross Sales less the sum of (i) credits or allowances given or made for rejection or return of previously sold Products, (ii) sales, use, value-added and similar retail taxes charged to the purchaser and specifically identified on the invoice or other documentation related to such sale and (iii) charges for freight and insurance directly related to the distribution of Products, as applicable.

(v) "New Member's Consent" shall have the meaning set forth in Section 1.5(c).

(w) "Non-Competition Period" shall have the meaning set forth in Section 4.8(a).

(x) "Party" or "Parties" shall have the meaning set forth in the preamble.

(y) "Patent" or "Patents" shall have the meaning set forth in Section 1.5(d)(A).

(z) "Patent Rights" shall have the meaning set forth in Section 1.1(b).

(aa) "Permitted Liens" shall have the meaning set forth in Section 2.2(a).

(bb) "Person" means an individual, a corporation, a partnership, an association, a joint venture, a limited liability company, a trust or other entity or organization.

(cc) "Product" shall have the meaning set forth in Section 1.1(h).

(dd) "Product Documentation" shall have the meaning set forth in Section 1.1(e).

(ee) "Profits Interests" shall have the meaning set forth in the Recitals.

(ff) "Purchased Assets" shall have the meaning set forth in Section 1.1.

(gg) "Purchase Price" shall have the meaning set forth in Section 1.5.

(hh) "Purchaser Disclosure Schedule" shall have the meaning set forth in the preamble of Article III of this Agreement.

(ii) "Regulatory Correspondence" shall have the meaning set forth in Section 1.1(c).

(jj) "Restricted Business" shall have the meaning set forth in Section 4.8(a).

(kk) "Royalty" or "Royalties" shall have the meaning set forth in Section 1.5(d).

(ll) "Royalty Period" shall have the meaning set forth in Section 1.5(d)(A).

(mm) "Securities Act" shall have the meaning set forth in Section 1.5(c).

(nn) "Seller Disclosure Schedule" shall have the meaning set forth in the preamble of Article II of this Agreement.

(oo) "Seller's knowledge" means the actual knowledge of Dr. George Wright and the representatives of Seller.

(pp) "Taxes" means all federal, state or local and all foreign taxes, including income, gross receipts, windfall profits, value added, severance, property, production, sales, use, duty, license, excise, franchise, employment, withholding or similar taxes, together with any interest, additions or penalties with respect thereto and any interest in respect of such additions or penalties.

(qq) "Tax Returns" means all reports and returns required to be filed with respect to Taxes.

(rr) "Trade Secrets" shall have the meaning set forth in Section 1.1(d).

(ss) The definitions of the terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation". The word "will" shall be construed to have the same meaning and effect as the word "shall". Unless the context requires otherwise (i) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (except any such amendments, supplements or modifications that are not permitted hereby), (ii) any reference herein to any Person shall be construed to include the Person's successors and assigns, (iii) the words "herein", "hereof" and "hereunder", and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, and (iv) all references herein to Articles, Sections, Exhibits or Schedules shall be construed to refer to Articles, Sections, Exhibits and Schedules of this Agreement.

ARTICLE II

REPRESENTATIONS AND WARRANTIES OF THE SELLER

Except as otherwise set forth in the schedules attached to this Agreement (hereinafter collectively referred to as the "**Seller Disclosure Schedule**"), the Seller represents and warrants to the Purchaser as set forth below:

2.1. Authorization; Organization.

(a) The Seller has full power and authority to enter into this Agreement, all exhibits and schedules hereto, and all agreements contemplated herein (this Agreement and all such exhibits, schedules, and other agreements being collectively referred to herein as the "**Acquisition Documents**"), to perform its obligations hereunder and thereunder, to transfer the Purchased Assets, and to carry out the transactions contemplated hereby and thereby. This Agreement has been duly executed and delivered by the Seller and upon the execution and delivery of the remaining Acquisition Documents by a duly authorized officer of the Seller, the remaining Acquisition Documents will have been duly executed and delivered by the Seller, and, assuming their enforceability against the Purchasers, this Agreement is and such other Acquisition Documents will be, upon due execution and delivery thereof, the legal, valid, and binding obligations of the Seller enforceable according to their terms, except (i) as such enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium, general principle, or similar laws now or hereafter in effect relating to creditors' rights and (ii) that the remedy of specific performance and injunctive and other forms of equitable relief may be subject to equitable defenses and to the discretion of the court before which any proceeding may be brought.

(b) The Seller is a corporation duly organized, validly existing and in good standing under the Laws of the Commonwealth of Massachusetts and has full corporate power and authority to own, operate or lease the properties and assets now owned, operated or leased by it and to carry on the Business as currently conducted.

2.2. Title to Purchased Assets; Absence of Liens and Encumbrances; Intellectual Property.

(a) The Seller has good and valid title to all of the Purchased Assets, free and clear of all Liens, except for (i) Liens for current taxes not yet due and payable or which are being actively contested in good faith by appropriate proceedings as set forth in Section 2.2(a) of the Seller Disclosure Schedule, (ii) such other minor imperfections of title and encumbrances, if any, that do not, individually or in the aggregate, have a Material Adverse Effect on the Purchased Assets, in each case, as set forth in Section 2.2(a) of the Seller Disclosure Schedule, and (iii) mechanics', materialmen's, carriers', workmen's, warehousemen's, repairmen's or other like Liens and security obligations that are not delinquent as set forth in Section 2.2(a) of the Seller Disclosure Schedule (collectively hereinafter referred to as the "**Permitted Liens**") The Seller has not granted to any other person any license, option or other rights to develop, use, sell or exploit any or all of the Intellectual Property, whether requiring the payment of royalties or not, and the Seller is not obligated to grant to any other person any license, option or other rights to develop, use, sell or exploit any or all of the Intellectual Property, whether requiring the payment of royalties or not, in each case, that would conflict with the rights granted to the Purchaser as set forth in this Agreement.

(b) To the Seller's knowledge, there is no pending or threatened litigation matter (and the Seller has received no written notice in the past two (2) years) (i) contesting the patentability, validity, enforceability or ownership of, or right to use or license, any intellectual property rights included in the Intellectual Property, or (ii) asserting that any Intellectual Property (or the development, manufacture, use, importation, offer for sale or sale of any product) conflict or will conflict with the intellectual property rights of any other person.

2.3. No Violation. None of (a) the execution and delivery of this Agreement or any of the other Acquisition Documents by the Seller, (b) the performance by the Seller of its obligations hereunder or thereunder, (c) the consummation of the transactions contemplated hereby or thereby, will (i) violate, or be in conflict with, or constitute a default under or breach of, or permit the termination of, or cause the acceleration of the maturity of, any indenture, mortgage, contract, commitment, debt or obligation of the Seller, which violation, conflict, default, breach, termination, or acceleration, either individually or in the aggregate with all other such violations, conflicts, defaults, breaches, terminations, and accelerations, would have a Material Adverse Effect on the Purchased Assets including, without limitation, the Intellectual Property; (ii) require the consent of any other party to or result in the creation or imposition of any Lien upon any of the Purchased Assets under any indenture, mortgage contract, commitment, debt or obligation of or to which the Seller is a party or by which the Purchased Assets are bound; (iii) violate any statute, law, judgment, decree, order, regulation, or rule of any court or governmental authority to which the Seller or the Purchased Assets is subject, which violation, either individually or in the aggregate with all other such violations, would have a Material Adverse Effect on the Purchased Assets including, without limitation, the Intellectual Property; or (iv) result in the loss, forfeiture or termination of any Intellectual Property.

2.4. Consents and Approvals of Governmental Authorities. No consent, approval, or authorization of, or declaration, filing, or registration with, any governmental or regulatory authority is required to be made or obtained by the Seller in connection with the execution and delivery of this Agreement or any of the other Acquisition

Documents by the Seller.

2.5 Absence of Certain Changes. Since January 1, 2017, the Seller has not:

(a) suffered any damage, destruction, or loss, whether covered by insurance or not, that had a Material Adverse Effect, directly or indirectly, on any of the Purchased Assets;

(b) permitted or allowed any of the Purchased Assets (including, without limitation, any such Purchased Assets which constitute personal property or mixed, tangible property or intangible property) to be subjected to any mortgage, pledge, security interest or other title retention agreement, encumbrance, lien, easement, claim, option, or charge of any kind (individually and collectively hereinafter referred to as a "**Lien**"), except Permitted Liens;

(c) granted any concessions, leases, licenses, sublicenses or other agreements with respect to or disposed of or permitted to lapse any rights to the use of any of the Purchased Assets, or disposed of or disclosed to any person any trade secret, formula, process, or know-how relating directly or indirectly to any of the Purchased Assets not theretofore a matter of public knowledge;

(d) entered into any material commitment or transaction relating directly or indirectly to the Purchased Assets not in the ordinary course of business and consistent with past practice;

(e) sold or otherwise disposed of, or entered into or agreed to enter into any agreement or other arrangement to sell or otherwise dispose of, any of the Purchased Assets or any agreement or other arrangement which requires the consent of any party to the transfer and assignment of any of the Purchased Assets or related rights; or

(f) agreed, whether in writing or otherwise, to take any action described in this Section 2.5.

2.6. Patents, Trademarks, Trade Names. The Seller owns, is licensed, or otherwise has the right to use all patents, trademarks, servicemarks, trade names, and copyrights which are included in the Purchased Assets. Section 2.6 of the Seller Disclosure Schedule contains a complete and accurate list of the following Purchased Assets: (i) all issued patents, registered trademarks, registered servicemarks, registered copyrights, and all applications therefor, and (ii) all agreements relating to technology, know-how, or processes that the Seller is licensed, assignee or otherwise authorized to use by others or licenses or authorizes others to use. Except as set forth in any of such licenses or agreements, the Seller has the sole and exclusive right to use the patents, trademarks, servicemarks, trade names, copyrights, technology, know-how, and processes owned by the Seller, and to the Seller's knowledge, no consent of any third party is required for the use thereof by the Seller upon completion of the transfer of the Purchased Assets. To the Seller's knowledge, no claims have been asserted against the Seller by any Person in the past two (2) years challenging the Seller's use of any such patents, trademarks, servicemarks, trade names, copyrights, technology, know-how, or processes, or challenging or questioning the validity or effectiveness of any such license or agreement. The Seller has not received any written notice in the past two (2) years alleging that the use of such patents, trademarks, servicemarks, trade names, copyrights, technology, know-how, or processes by the Seller infringes on the rights of any other person.

2.7. Legal Proceedings, etc. There is no claim, action, proceeding or investigation pending or, to the Seller's knowledge, threatened against or relating to the Seller with respect to the Purchased Assets before any court or governmental or regulatory authority or body.

2.8. Contracts and Commitments. (a) Section 2.8 of the Seller Disclosure Schedule contains a complete list of each contract and commitment of the Seller that is material to the development or commercialization of the Purchased Assets including, without limitation, any and all licenses, sublicenses and/or assignments of the Product and/or Patent(s).

(b) The Seller has delivered to the Purchaser, or will deliver on or prior to the Closing Date, copies of the documents identified on Section 2.8 of the Seller Disclosure Schedule.

(c) Each of the contracts listed in Section 2.8 of the Seller Disclosure Schedule is valid and binding, and each such contract has been entered into in the ordinary course of business. The Seller is not in default under or in breach or violation of, and the Seller has not received notice of any asserted claim of default by any other party under, or a breach or violation of, any of the contracts, agreements, and commitments listed in Section 2.8 of the Seller Disclosure Schedule, including any licensing or usage agreements, if any, with respect to the technology that the Seller now uses or currently intends and plans to use.

2.9 Product Documentation. The Seller has delivered to the Purchaser, or will deliver on or prior to the Closing Date, copies of any and all Product Documentation including, without limitation, documentation relating to all present and past clinical trials, to the extent such documentation exists and is in the possession of the Seller.

2.10. Compliance with Laws. The Seller is not in violation of, has not been charged with any violation of, or, to the Seller's knowledge, is not under any investigation with respect to any charge concerning any violation of any law, statute, rule, regulation, ordinance, standard, code, order, judgment, decision, writ, injunction, decree, award or other governmental restriction, in which such violation either singly or in the aggregate with other violations would have a Material Adverse Effect upon the Purchased Assets. The Seller is not in default with respect to any order, writ, injunction, or decree of any court, agency, or instrumentality except to the extent that it would not reasonably be expected to result in a Material Adverse Effect.

2.11. Disclosure of Confidential Information. The Seller has fully disclosed, or will disclose to the Purchaser, on or before the Closing Date, all processes, inventions, methods, formulas, plans, drawings, customer lists, secret information, and know-how (whether secret or not) known to it or in its possession that are comprised within the Purchased Assets including, without limitation, the Intellectual Property.

2.12. Tax Return; Taxes. The Seller has duly and timely filed all federal, state, local, and foreign tax returns required to have been filed by it and there are in effect no waivers of applicable status of limitations with respect to taxes for any year. No Portion of such tax returns have been the subject of any audit, action, suit, proceeding, claim or examination by an governmental authority, and no such audit, action, suit, proceeding, claim, deficiency or assessment is pending or, to the knowledge of the Seller, threatened. There are no unpaid tax obligations or liabilities by the Purchased Assets or Seller except for taxes not yet due and such taxes will be paid when due. Seller and the Purchased Assets do not have any liability for taxes of any entity under Treasury Regulation Section 1.1502-6 (or any corresponding provision of state, local or any non-U.S. tax law). No state of facts exists or has existed that would constitute grounds for the assessment against Purchaser, whether by reason of transferee liability or otherwise, of any liability for any tax of anyone other than Purchaser.

2.13. Condition of Tangible Purchased Assets. The only tangible Purchase Assets known to Seller consist of documentation and API. The Seller has not received any notice of any violations of any applicable law with respect to the Seller's properties or operations that have not been cured. All API, product inventory and/or raw materials and work-in-process has been delivered by Seller to Purchaser on or prior to the Closing Date.

2.14. Absence of Undisclosed Liabilities. The Seller does not have any debt, liability, or obligation of any nature, whether known or unknown, or fixed, absolute, accrued, contingent, or otherwise, that would attach to or could constitute a lien on the Purchased Assets or that could otherwise impair Seller's ability to convey the Purchased Assets to the Purchaser in accordance with the terms of this Agreement.

2.15 Full Access. The Seller has permitted the Purchaser, any of its Affiliates and any of their respective Representatives to have full access at all times, in a manner so as not to interfere unreasonably with the normal business operations of the Seller, to all premises, properties, personnel, books, records, contracts and documents of or pertaining to the Seller. Seller has provided written instructions to all third parties holding Purchased Assets, if any, stating that the Purchased Assets in said third party's possession are to be released to Purchaser in accordance with Purchaser's instructions and delivered to Purchaser at Purchaser's expense. Purchaser will take delivery of all Purchased Assets promptly and hold Seller harmless from any expense incurred for storage, handling or shipping incurred after the Closing. Storage costs prior to Closing shall remain Seller's liability. Purchaser will promptly take delivery of the API, intermediates and other material held by Seller, but in no event later than 30 days following the Closing. Seller will direct third parties holding these products to ship these assets to locations designated by Purchaser by such means of shipment as Purchaser reasonably requests. Seller will, at Purchaser's request, direct third parties holding assets pursuant to this Agreement to promptly close out the Seller's account for storage with said third party and request said third party to transfer or open an account for storage in the Purchaser's name in accordance with Purchaser's directions.

2.16. Disclosure. No representation or warranty by the Seller in this Agreement or any of the other Acquisition Documents (including, without limitation, the Seller Disclosure Schedule), contains or will contain any untrue statement of a material fact or omits or will omit to state any material fact necessary to make the statements herein or therein not misleading.

2.17. No Brokers. No broker or finder has acted directly or indirectly for the Seller or any of its Affiliates or representatives in connection with this Agreement or the transactions contemplated hereby, and no broker or finder is entitled to any brokerage or finder's fee or other commission in respect thereof based in any way on the actions or statements of, or agreements, arrangements, or understandings made with the Seller or any of its Affiliates or representatives.

2.18. Investment. Seller is acquiring the Class B Interests for its own account and for investment purposes and not with a view to the distribution thereof. Seller acknowledges that the Class B Interests have not been registered under the Securities Act or any state securities Law and that Seller must bear the economic risk of its investment in the Class B Interests until and unless the offer and sale of such Class B Interests is subsequently registered under the Securities Act and all applicable state securities Laws or an exemption from such registration is applicable. Seller has conducted an examination of available information relating to the Purchaser, Seller has such knowledge, sophistication and experience in business and financial matters that it is capable of evaluating an investment in the Class B Interests and Seller can bear the economic risk of an investment in the Class B Interests and can afford a complete loss of such investment.

ARTICLE III
REPRESENTATIONS AND WARRANTIES OF THE PURCHASER

Except as otherwise set forth in the schedules attached to this Agreement (hereinafter collectively referred to as the '**Purchaser Disclosure Schedule**"), the Purchaser hereby represents and warrants to the Seller as set forth below:

3.1. Corporate Organization, etc. The Purchaser is on the date hereof, and will be on the Closing Date, a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware.

3.2. Authorization, etc. The Purchaser has full power and authority to enter into this Agreement and the other Acquisition Documents to which it is or will be a party, to perform its obligations hereunder and thereunder, and to carry out the transactions contemplated hereby and thereby. The Purchaser has taken all actions required by law, its LLC operating agreement, or otherwise to authorize (a) the execution and delivery of this Agreement and the other Acquisition Documents and (b) the performance of its obligations hereunder and thereunder. This Agreement has been duly executed and delivered by the Purchaser and, upon the execution and delivery of the remaining Acquisition Documents by a duly authorized officer of the Purchaser, the remaining Acquisition Documents will have been duly executed and delivered by the Purchaser, and this Agreement is, and such other Acquisition Documents will be, upon due execution and delivery thereof, the legal, valid, and binding obligations of the Purchaser, enforceable according to their terms (i) as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium, or similar laws now or hereafter in effect relating to creditors' rights, and (ii) that the remedy of specific enforcement and injunctive and other forms of equitable relief may be subject to equitable defenses and to the discretion of the court before which any proceeding therefor may be brought.

3.3. No Violation. None of (a) the execution and delivery of this Agreement or any other Acquisition Document by the Purchaser, (b) the performance by the Purchaser of its obligations hereunder or thereunder, or (c) the consummation of the transactions contemplated hereby or thereby will (i) violate any provision of the LLC operating agreement of the Purchaser, (ii) violate, or be in conflict with, or permit the termination of, or constitute a default under or breach of, or cause the acceleration of the maturity of, any contract, debt, or other obligation of the Purchaser, which violation, conflict, default, breach, termination or acceleration, either individually or in the aggregate with all other such violations, conflicts, defaults, breaches, terminations and accelerations, would have a material adverse effect on the business, assets or financial condition of the Purchaser, (iii) require the consent of any other party to, or result in the creation or imposition of any Lien upon any property or assets of the Purchaser under any agreement or commitment to which the Purchaser is a party or by which the Purchaser is bound, or (iv) to the best knowledge and belief of the Purchaser, violate any statute or law or any judgment, decree, order, regulation, or rule of any court or governmental authority to which the Purchaser is subject.

3.4. Litigation. There is no action pending or, to the best knowledge and belief of the Purchaser, threatened against the Purchaser, or any properties or rights of the Purchaser, that questions or challenges the validity of this Agreement or any of the other Acquisition Documents, nor any action taken or to be taken by the Purchaser pursuant hereto or thereto or in connection with the transactions contemplated hereby or thereby and the Purchaser does not know of any such action, proceeding, or investigation that may be asserted.

3.5. Disclosure. No representation or warranty by the Purchaser in this Agreement contains or will contain any untrue statement of a material fact or omits or will omit to state any material fact necessary to make the statements herein not misleading.

3.6. Brokerage. No broker or finder has acted directly or indirectly for the Purchaser or its affiliates or representatives in connection with this Agreement or the transactions contemplated hereby, and no broker or finder is entitled to any brokerage or finder's fee or other commission in respect thereof based in any way on the actions or statements of, or the agreements, arrangements, or understandings made with the Purchaser or its affiliates or representatives.

ARTICLE IV

COVENANTS OF THE PARTIES

The Seller hereby covenants and agrees with the Purchaser and the Purchaser hereby covenants and agrees with the Seller that:

4.1. Further Assurances.

(a) Before and after the Closing, each Party shall execute and deliver such instruments and take such other actions as any other Party may reasonably request for the purpose of carrying out the intent of this Agreement and the other Acquisition Documents. The Seller shall give prompt notice to the Purchaser, after receipt thereof by the Seller, of (a) any notice of, or other communication relating to, any default or event that, with notice or lapse of time or both, would become a default under any indenture, instrument, or agreement material to the Purchased Assets, to which the Seller is a party or by which the Purchased Assets are bound, and (b) any notice or other communication from any third party alleging that the consent of such third party is or may be required in connection with the transactions contemplated by this Agreement and the other Acquisition Documents.

(b) On the Closing Date, or as promptly as practicable thereafter, Seller shall deliver to Purchaser originals, or where not available, copies, of all books and records, including, but not limited to, books of account, ledgers and general, financial and accounting records, machinery and equipment maintenance files, customer lists, customer purchasing histories, price lists, distribution lists, supplier lists, production data, quality control records and procedures, customer complaints and inquiry files, research and development files, records and data (including all correspondence with any governmental authority), sales material and records (including pricing history, total sales, terms and conditions of sale, sales and pricing policies and practices), strategic plans, internal financial statements, marketing and promotional surveys, material and research and files relating to the Intellectual Property.

4.2. Confidentiality. Before and after the Closing, each Party to this Agreement shall, and shall cause its officers, accountants, counsel, and other authorized representatives and Affiliates, to hold in strict confidence and not use or disclose to any other party without the prior written consent of the other Party, all information obtained from the other Party in connection with the transactions contemplated hereby, except such information may be used or disclosed (a) when required by any regulatory authorities or governmental agencies, (b) if required by court order or decree or applicable law, (c) if it is publicly available other than as a result of a breach of this Agreement, or (d) if it is otherwise contemplated herein.

4.3. Public Announcement. Except as otherwise required by law, the Parties will not issue any press release or make any other public disclosure or announcement concerning this Agreement or the other Acquisition Documents or the transactions contemplated hereby or thereby, without the prior written approval of the Seller, in the case of the Purchaser, or the Purchaser, in the case of the Seller; provided, however, that if such release or announcement is required by Law, in order to discharge the disclosure obligations of the Purchaser or Seller (including without limitation the Purchaser's obligation to describe and file this Agreement with the Securities and Exchange Commission) and it is unable after good faith efforts to obtain timely the approval of the Seller or the Purchaser, as the case may be, then it may make or issue the obligatory filing, release or announcement and promptly furnish the Seller or the Purchaser, as the case may be, with a copy thereof.

4.4. Bulk Transfer Laws. The Purchaser hereby waives compliance by the Seller with the provisions of any so-called "bulk transfer law" of any jurisdiction in connection with the transactions contemplated hereby. For the avoidance of doubt, such waiver shall not impact liabilities and obligations of Seller pursuant to Section 1.3 of this agreement.

4.5. Intellectual Property. Commencing on the Closing Date, the Seller shall, and shall cause all of its Affiliates, to cease using the Intellectual Property and promptly shall work to deliver all Intellectual Property, including, but not limited to, all manufacturing process "know how", in each case, to the Purchaser and its agents and representatives. The Seller shall ensure that any and all documents, agreements of any kind or nature whatsoever which are necessary to convey any and all of the Intellectual Property and other Purchased Assets to the Purchaser shall be executed and delivered promptly on the Closing Date or as soon thereafter as reasonably practicable. The Seller shall use its commercially reasonable efforts to ensure that any and all such conveyance documents are prepared and executed in a timely manner for the benefit of and in suitable condition to be filed by the Purchaser. The Parties agree that on the Closing Date, all right, title and interest in and to the Intellectual Property and other Purchased Assets shall be owned by and the property of the Purchaser. On and after the Closing Date, all matters related to the ownership or control of the Intellectual Property shall be owned and controlled by the Purchaser, including, without limitation, all patent prosecution and patent enforcement matters.

4.6. Inventory. On the Closing Date, or as promptly as practicable thereafter, the Seller shall deliver to the Purchaser any and all Inventory held by or on behalf of the Seller on or prior to the Closing Date. The Purchaser acknowledges and agrees to take such Inventory in "as is" condition provided that the Seller agrees to use reasonable commercial efforts to deliver such Inventory in substantially the same condition it existed on the date hereof.

4.7. Reporting and Payment Requirements.

(a) Reporting. During the Royalty Period, no less frequently than annually during the term hereof, the Purchaser shall provide written updates as the development activities, progress achieved and goals for future development of the Product including progress on formulation issues, significant communications with or actions by regulatory agencies governing the marketing, development or sale of the Product. Any and all such reports shall be confidential.

(b) Records Related to Sales and Royalties. During the Royalty Period, Purchaser shall keep, and shall cause its Affiliates and sublicensees to keep, complete and accurate books, records and accounts which fairly reflect, in reasonable detail, Net Sales of Products and of all payments due Seller hereunder, in accordance with U.S. GAAP. All such books, records and accounts shall be maintained for not less than three (3) years, or for such longer period if and as required by applicable law, following the date of such Net Sales. During the commercialization period, if any, Purchaser shall deliver to Seller written reports of Net Sales of each Product by Purchaser and its Affiliates and sublicensees, and any other sublicensee income received, during the preceding calendar quarter, on or before the forty-fifth (45th) day following the end of each

calendar quarter (in each case, after marketing approval has been obtained such that Net Sales are booked). Such report shall include:

(i) a calculation of the royalty due for such preceding calendar quarter (based on the actual Net Sales of each Product) and any nonroyalty sublicense income; and

(ii) the total amount of Net Sales of Products, including detailed descriptions of all reductions applicable thereto.

Each such report shall be accompanied by the monies due in respect of the royalties owed by Purchaser for the preceding calendar quarter.

(c) Audit. During the Royalty Period and for a period of one (1) year thereafter, Seller shall have the right after thirty (30) days advance written notice to Purchaser, at its own expense, to nominate an independent accountant who shall have full and unhindered access to Purchaser's and its Affiliates' and sublicensees' books and records during reasonable business hours for the sole purpose of verifying the royalties payable as provided for in this Agreement for the preceding calendar year, but this right may not be exercised more than once in any calendar year, unless during any particular audit a discrepancy of more than five percent (5%) is found in the amount of Royalties due to Seller, in which case Seller shall be entitled to perform two (2) audits in the subsequent calendar year and recovery of its costs and expenses incurred in conducting such particular audit, as well as any shortfall in such Royalties due to Seller together with interest at the rate of five percent (5%) per year (compounded annually), or the maximum rate permitted by applicable law, whichever is lower, from the date the royalties should have been paid.

(d) Currency. All royalties and other payments shall be made in U.S. dollars. Royalties payable on sales in countries other than the United States shall be calculated by multiplying the appropriate royalty rate times the sale in each currency in which they are made and converting the resulting amount into United States dollars at the applicable rates of exchange specified in the Wall Street Journal at the time such royalty payments are made.

4.8. Non-Competition.

(a) The Purchaser and the Seller agree that the Purchase Price was fixed on the basis that the transfer of the Purchased Assets to the Purchaser would provide the Purchaser with the full benefit and good will of the Seller with respect to the Purchased Assets as it will exist on the Closing Date. The Seller acknowledges that it is proper for the Purchaser to have assurance that the value of the Purchased Assets will not be diminished by acts of the Seller after the Closing Date. Accordingly, the Seller covenants and agrees that, commencing on the Closing Date and ending on the date which is two (2) years after the Closing Date (the "**Non-Competition Period**"), it will not directly or indirectly compete with, or own, manage, operate, or control or participate in the ownership, management, operation or control of, or provide consulting services to, any business, firm, corporation, partnership, person, proprietorship or other entity which is conducting any business or developing or marketing any product candidate which competes or could compete in the future, directly or indirectly, with the Product in any market within which the Product is targeted or sold during such Non-Competition Period (the "**Restricted Business**"); provided, however, that this Section 4.8(a) shall not apply to the ownership of not more than five percent (5%) of the outstanding stock of any publicly traded company.

(b) Nothing contained in Section 4.8(a) shall prevent the Seller from continuing to engage in or have any ownership interest in any business or activity in which it is currently engaged or in which it currently has an ownership interest (other than any such business or activity which relates solely to the Purchased Assets).

(c) If the Seller commits a breach, or threatens to commit a breach, of any of the provisions of this Section 4.8, the Purchaser shall have the right and remedy, in addition to any others, to have the provisions of this Section 4.8 specifically enforced by any court having competent jurisdiction, together with an accounting therefor, it being acknowledged and understood by the Seller that any such breach or threatened breach will cause irreparable injury to the Purchaser and that money damages will not provide an adequate remedy therefor.

ARTICLE V

CLOSING

5.1. Closing. The closing (the "**Closing**") will be shall take place remotely via the exchange of documents, funds and signatures, at 10:00 a.m. on the Effective Date (the "**Closing Date**"), at which Closing the documents, funds and instruments referred to in Section 5.2 hereof will be delivered by the Parties.

5.2. Closing Deliverables.

(a) At the Closing, Seller shall deliver to Purchaser the following:

(i) a bill of sale, substantially in the form attached as Exhibit B hereto, conveying in the aggregate all personal property included in the Purchased Assets and assigning to the Purchaser any and all rights to Intellectual Property, in recordable form to the extent necessary to assign such rights;

(ii) an assignment of Patents, substantially in the form attached as Exhibit C hereto, conveying all Patent rights included in the Purchased Assets to the Purchaser in a form to be filed with the United States Patent and Trademark Office;

(iii) to the extent in written or other deliverable form and not previously delivered to the Purchaser, all copies of Intellectual Property or other secret, proprietary or confidential information included in the Purchased Assets and any and all other Product Documentation;

(iv) such other instruments as shall be reasonably requested by the Purchaser or its counsel to vest in Purchaser good and valid title in and to the Purchased Assets in accordance with the provisions of this Agreement;

(v) a certificate certifying that the transaction contemplated by this Agreement is exempt from withholding under Section 1445 of the Code; and

(vi) a New Member's Consent to Purchaser's LLC Operating Agreement, substantially in the form attached as Exhibit D hereto.

(b) At the Closing, Purchaser shall deliver to Seller the following:

(i) the Cash Consideration and Equity Consideration as provided in Section 1.5.

(ii) such other documents, instruments, or certificates as shall be reasonably requested by the Seller or its counsel.

ARTICLE VI

INDEMNIFICATION

6.1. Survival. Notwithstanding (a) the making of this Agreement, (b) any examination made by or on behalf of the Parties hereto, and (c) the Closing hereunder, (i) the representations and warranties of the Parties contained herein or in any certificate or other document delivered pursuant hereto or in connection herewith shall survive until the two (2) year anniversary of the Closing Date, (ii) notwithstanding any other provision in this Section 6.1, representations and warranties contained in Section 2.12 of this Agreement shall terminate on the expiration of the applicable statute of limitations under Section 6501 of the Code or on the expiration of the statute of limitations under applicable state, local, or foreign law, and (iii) the covenants and agreements required to be performed after the Closing pursuant to any provision of this Agreement, including this Article VI, shall survive until fully performed or fulfilled. No action for indemnification pursuant toSections 6.2 or 6.3 may be brought after the applicable expiration date, provided, however, that if before such date one party hereto has notified in good faith the other party hereto in writing of a claim (stating in reasonable detail the basis of such claim to the extent then known) for indemnity hereunder (whether or not formal legal action shall have been commenced based upon such claim), such claim shall continue to be subject to indemnification in accordance herewith.

6.2. Indemnification by the Seller. From and after the Closing, the Seller, its successors, and assigns shall indemnify and hold the Purchaser and its successors and assigns harmless in respect of any and all claims, losses, damages, liabilities, and expenses (including, without limitation, settlement costs and legal, accounting, and other expenses in connection therewith) (collectively, the "**Damages**" as applied to either Purchaser under this Section 6.2 or to Seller under Section 6.3 below) incurred by the Purchaser and its successors and assigns in connection with each and all of the following:

(a) Any breach or other failure to perform any covenant, agreement, or obligation of the Seller contained in this Agreement, any other Acquisition Document or any other instrument, including all certificates, contemplated hereby or thereby;

(b) Any Taxes or Transfer Tax for which Sellers are responsible in accordance with Sections 1.3 and 1.4; and/or

(c) Any breach of any representation or warranty by the Seller contained in this Agreement, any other Acquisition Document or any other instrument, including all certificates, contemplated hereby or thereby, but only to the extent that the Damages arising in connection with all such breaches exceed $20,000 in the aggregate.

Notwithstanding the foregoing, the Seller's indemnification obligations set forth herein shall be limited in all events to one hundred percent (100%) of the amount of the Purchase Price (which, for the avoidance of doubt, shall include (i) the Cash Consideration, (ii) all Milestone Payments, (iii) the fair market value of the Class B Interests and (iv) all Royalties).

6.3. Indemnification by the Purchaser. From and after the Closing, the Purchaser and its successors and assigns shall indemnify the Seller and its successors and assigns in respect of any and all Damages incurred by the Seller and its successors and assigns in connection with each and all of the following.

(a) The breach or other failure to perform any covenant, agreement, or obligation of the Purchaser contained in this Agreement or any other Acquisition Document or any other instrument, including all certificates, contemplated hereby or thereby; and/or

(b) Any breach of any representation or warranty by the Purchaser contained in this Agreement, any other Acquisition Document or any other instrument, including all certificates, contemplated hereby or thereby, but only to the extent that the Damages arising in connection with such breaches exceed $20,000 in the aggregate.

Notwithstanding the foregoing, the Purchaser's indemnification obligations set forth herein shall be limited in all events to one hundred percent (100%) of the amount of the Purchase Price.

6.4. Notice and Defense of Claim. Whenever any claim shall arise for indemnification hereunder, the Party entitled to indemnification (the "**Indemnified Party**") shall provide written notice to the other party (the "**Indemnifying Party**") within thirty (30) days of becoming aware of the right to indemnification and, as expeditiously as possible thereafter, the facts constituting the basis for such claim; provided, however, that a failure by an Indemnified Party to give timely, complete or accurate notice as provided in this Section 6.4 will not affect the rights or obligations of any Indemnified Party or Indemnifying Party hereunder except and only to the extent that, as a result of such failure, the party entitled to receive such notice was deprived of its right to recover any payment under its applicable insurance coverage or was otherwise directly and materially damaged as a result of such failure to give timely notice. In connection with any claim giving rise to indemnity hereunder, resulting from or arising out of any claim or legal proceeding by a Person who is not a party to this Agreement, the Indemnifying Party, at its sole cost and expense and upon written notice to the Indemnified Party, may assume the defense of any such claim or legal proceeding with counsel reasonably satisfactory to the Indemnified Party and may conduct such defense in such manner as it may deem appropriate including, but not limited to, settling such claim or legal proceeding, after giving notice of such settlement to the Indemnified Party, on such terms as the Indemnifying Party may deem appropriate. The Indemnified Party shall be entitled to participate in the defense of any such action, with its counsel and at its own expense. If the Indemnifying Party does not assume the defense of any such claim or litigation resulting therefrom, the Indemnified Party may, but shall not be obligated to, defend against such claim or litigation in such manner as it may deem appropriate including, but not limited to, settling such claim or litigation, after giving notice of such settlement to the Indemnifying Party, on such terms as the Indemnified Party may deem appropriate and no action taken by the Indemnified Party in accordance with such defense and settlement shall relieve the Indemnifying Party of its indemnification obligations herein provided with respect to any Damages resulting therefrom.

6.5. Losses Net of Insurance, Etc. The amount of any Damages for which indemnification is provided under thisArticle VI shall be net of (a) any amounts recovered by the Indemnified Party pursuant to any indemnification by or indemnification agreement with any third party related to such Damages, and (b) any insurance proceeds available as an offset against such Damages (and no right of subrogation shall accrue to any insurer or third party indemnitor hereunder). If the amount to be netted hereunder from any payment required under Sections 6.2 or 6.3 is determined after payment by the Indemnifying Party of any amount otherwise required to be paid to an Indemnified Party pursuant to this Article VI, the Indemnified Party shall repay to the Indemnifying Party, promptly after such determination, any amount that the Indemnifying Party would not have had to pay pursuant to this Article VI had such determination been made at the time of such payment.

6.6. Sole Remedy; No Additional Representations. Except as otherwise specifically provided in any other Acquisition Document, each of the Parties hereto acknowledges and agrees that its sole and exclusive remedy after the Closing Date with respect to any and all claims and causes of action relating to this Agreement and the other

Acquisition Documents, the transactions contemplated hereby and thereby, the Purchased Assets and the Assumed Liabilities (other than claims or causes of action arising from fraud) shall be pursuant to the indemnification provisions set forth in this Article VI. In furtherance of the foregoing, the Purchaser hereby waives, from and after the Closing, to the fullest extent permitted under applicable law, any and all rights, claims and causes of action relating to this Agreement and the other Acquisition Documents, the transactions contemplated hereby and thereby, the Purchased Assets and the Assumed Liabilities it may have against the Seller arising under or based upon any applicable law or arising under or based upon common law or any contract (except pursuant to the indemnification provisions set forth in Section 6.2 or Section 6.3, as applicable). Nothing in this Section 6.6 shall limit any Party's right to seek and obtain any equitable relief to which any Party shall be entitled.

6.7. Limitations on Liability. (a) Notwithstanding any provision herein, neither the Seller nor the Purchaser shall in any event be liable to the other party on account of any indemnity obligation set forth in Section 6.2 or Section 6.3 for any indirect, consequential or punitive damages except to the extent payable to third parties.

(b) The Seller and the Purchaser shall cooperate with each other in resolving any claim or liability with respect to which one Party is obligated to indemnify the other under this Agreement, including, without limitation, by making commercially reasonable efforts to mitigate or resolve any such claim or liability to the extent required by applicable law.

ARTICLE VII

TERMINATION

7.1. Termination. This Agreement may be terminated at any time before the Closing Date:

(a) by mutual consent of the Purchaser and the Seller;

(b) by either the Purchaser or the Seller if the Closing has not occurred on or before March 31, 2018, provided that this provision shall not be available to the party which fails or refuses to consummate the transactions contemplated herein or to take any other action referred to herein as necessary to consummate the transactions contemplated hereby in breach of such party's obligations contained herein; and

(c) by either the Purchaser or the Seller if there has been a material breach on the part of the other party of any representation, warranty or covenant set forth in this Agreement which will prevent the satisfaction of any condition to the obligations of such other party at the Closing and such breach is not cured or waived within ten (10) business days after such other party has been notified of the intent to terminate this Agreement pursuant to this Section 7.1(c).

7.2. Effect of Termination. In the event of termination of this Agreement as expressly permitted under Section 7.1 hereof, this Agreement shall forthwith become void (except for this Section 7.2 and Sections 8.2, and 8.5 hereof) and there shall be no liability on the part of either the Seller, the Purchaser, or their respective officers, directors or Affiliates; provided, however, if such termination occurs pursuant to Section 7.1(c) and resulted from the willful (a) breach by a Party of any agreement or representation or warranty of such Party contained in this Agreement or (b) failure to perform a covenant of such Party contained in this Agreement, then in each case, such party shall be fully liable to the non-breaching Party for any and all Damages sustained or incurred as a result of such breach or failure. In the event of termination hereunder before the Closing, each Party shall return promptly to the other Party all documents, work papers, and other material of the other Party furnished or made available to such Party or its representatives or agents and all copies thereof.

ARTICLE VIII

OTHER AGREEMENTS

8.1. Amendment and Modification; Waiver of Compliance. Subject to applicable law, this Agreement may be amended, modified, and supplemented only by way of a written agreement signed by the Purchaser and the Seller. Any failure by any Party to this Agreement to comply with any obligation, covenant, agreement, or condition contained herein may be expressly waived in writing by the other Party hereto, but such waiver or failure to insist upon strict compliance shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure. Whenever this Agreement requires or permits consent by or on behalf of any Party hereto, such consent shall be given in a manner consistent with the requirements for a waiver of compliance as set forth in this Section 8.1.

8.2. Fees and Expenses. Except as otherwise provided herein, each of the Parties hereto will pay its own fees and expenses (including attorneys' and accountants' fees, legal costs, and expenses) incurred in connection with this Agreement, the other Acquisition Documents and the consummation of the transactions contemplated hereby and thereby.

8.3. Notices. All notices, requests, demands, and other communications required or permitted hereunder shall be in writing and shall be deemed to have been given upon receipt if delivered by hand, or the next business day, if sent by reputable overnight courier (charges prepaid), or on the third business day if mailed by certified or registered mail (postage prepaid and return receipt requested) to the Parties at the following addresses (or at such other address for a party as shall be specified by like notice):

(a). If to the Purchaser, to:

Acurx Pharmaceuticals, LLC
22 Camelot Court
White Plains, NY 10603
Attention: Robert J. DeLuccia, Co-Founder & Managing Partner

With a copy to:
David P. Luci, Esq., Co-Founder & Managing Partner
270 Benedict Road
Staten Island, NY 10304

(b). If to the Seller, to:

GLSynthesis Inc.
298 Highland Street
Worcester, MA 01602
Attention: Dr. George Wright, President

With a copy to:
Dr. Jan-Long Chen
3 Cox Circle
Shrewsbury MA 01545

8.4. Assignment. This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns, but neither this Agreement nor any of the rights, interest, or obligations hereunder shall be assigned by any of the Parties hereto without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed.

8.5. Governing Law. This Agreement and the legal relations between the Parties hereto shall be governed by, and construed in accordance with, the laws of the State of Delaware, without reference to the conflicts of law principles thereof.

8.6. Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

8.7. Headings. The headings contained in this Agreement are inserted for convenience only and shall not constitute a part hereof.

8.8. Entire Agreement. This Agreement, including the Seller Disclosure Schedule and Purchaser Disclosure Schedule, the Acquisition Documents and the exhibits hereto and thereto and other documents referred to herein which form a part hereof, embody the entire agreement and understanding of the Parties hereto in respect of the subject matter contained herein and supersede all prior agreements and understandings between the Parties with respect to such subject matter, including, by way of illustration and not by limitation, any term sheet agreed to by the Parties hereto prior to the date hereof. There are no restrictions, promises, warranties, covenants, or undertakings other than those expressly set forth or referred to herein.

8.9. Definitional Provisions. All terms defined in this Agreement shall have such defined meanings when used in any exhibit, schedule, or any certificate or other document made or delivered pursuant hereto or thereto, unless otherwise defined therein.

8.10. Severability. In the event that any one or more of the provisions contained herein, or the application thereof in any circumstances, is held invalid, illegal or unenforceable in any respect for any reason, the parties shall negotiate in good faith with a view to the substitution therefor of a suitable and equitable solution in order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid provision; provided, that the validity, legality and enforceability of any such provision in every other respect and of the remaining provisions contained herein shall not be in any way impaired thereby, it being intended that all of the rights and privileges of the Parties hereto shall be enforceable to the fullest extent permitted by applicable law.

8.11. Specific Performance. Notwithstanding anything to the contrary set forth herein or elsewhere, the Parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the parties shall be entitled to seek an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement in any federal court of the United States of America sitting in the State of Delaware, this being in addition to any other remedy to which they are entitled at law or in equity.

8.12. Disclosure Schedules. The disclosures made in the Seller Disclosure Schedule and Purchaser Disclosure Schedule and those made in any supplement thereto relate only to the representations and warranties in the section of this Agreement to which they expressly relate and not to any other representation or warranty in this Agreement. In the event of any inconsistency in the statements made in the body of this Agreement and those made in the Seller Disclosure Schedule or Purchaser Disclosure Schedule, as applicable, (other than as expressly set forth in such disclosure schedule) with respect to a specifically identified representation or warranty, the statement(s) in the body of this Agreement will control.

[Signature page follows]

IN WITNESS, the Parties hereto have caused this Agreement to be duly executed on the day and year first-above stated.

GLSYNTHESIS INC.

By: /s/ George Wright, Ph.D.
Name: George Wright, Ph.D.
Title: President

ACURX PHARMACEUTICALS, LLC

By: /s/ David P. Luci
Name: David P. Luci
Title: Co-Founder & Managing Partner

Patent Counsel: Clark & Elbing LLP (Kristina Bieker-Brady, P.C.)
Phone: 617-428-7045
Fax: 617-428-0200

Seller Disclosure Schedule

Section 1.1(b) – Purchase and Sale of Assets – Patents (Unexpired)

Section 1.1(b) – Purchase and Sale of Assets – Patents (Expired or Abandoned)

Section 1.1(d) – Purchase and Sale of Assets - Trade Secrets

Section 1.1(e) – Purchase and Sale of Assets – Product Documentation

Section 1.1(f) – Product INDs

Section 1.1(j) – Grant Applications

Section 1.1(k) – Purchase and Sale of Assets – Inventory
Section 2.2(a) – Permitted Liens

Section 2.6 Patents, Trademarks and Trade Names

Section 2.8 Contracts and Commitments

Purchaser Disclosure Schedule

Section 1.3
Assumed Liabilities

Section 3.3
Required Consents; Liens

Exhibit A

Allocation of Purchase Price

Exhibit B

Form of Bill of Sale

BILL OF SALE, CONVEYANCE, ASSIGNMENT AND TRANSFER

This INSTRUMENT is made this ____ day of February, 2018, from GLSynthesis Inc., a Massachusetts corporation (the "Seller") to Acurx Pharmaceuticals, LLC, a limited liability company organized under the laws of the State of Delaware (the "Purchaser"). Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to such terms in the Asset Purchase Agreement, dated as of the date hereof, by and between Seller and Purchaser (the "Agreement").

WHEREAS, pursuant to the Agreement, for value received as provided in the Agreement, Seller agreed to grant, sell, assign, transfer, convey and deliver to the Purchaser, all of Seller's right, title and interest in and to the Purchased Assets, interest in all property of Seller as described in the Agreement and specified therein to be conveyed, assigned and transferred to the Purchaser.

NOW, THEREFORE, for value received, the receipt and sufficiency of which is hereby acknowledged, the Seller hereby grants, sells, assigns, transfers and conveys (including, without limitation, by license, sublicense or otherwise) to the Purchaser all of Seller's right, title and interest in and to the Purchased Assets, including, without limitation, all of the rights to practice the Patents and to manufacture, develop and commercialize the Product, in each case, as described in the Agreement an specified therein to be conveyed, assigned and transferred to the Purchaser (which Agreement is incorporated by reference in this Instrument as if set forth herein), TO HAVE AND TO HOLD the same unto the Purchaser and its successors and assigns forever.

At any time and from time to time after the date hereof, the Seller covenants and agrees, at its own expense (except as otherwise provided in the Agreement), to take such actions and to execute and deliver such further acts, bills of sale, assignments, transfers, conveyances, leases, powers of attorney and assurances as the Purchaser may reasonably request to more effectively vest in the Purchaser good, valid and marketable title to any asset or assets transferred to the Purchaser hereby and pursuant to the Agreement.

[*Signature page follows*]

IN WITNESS WHEREOF, the Seller has caused this Instrument to be duly executed this 5th day of February, 2018.

GLSYNTHESIS INC.

By: _____
Name: George Wright, Ph.D.
Title: President

ACURX PHARMACEUTICALS, LLC

By: _____
Name: David P. Luci
Title: Co-Founder & Managing Partner

Exhibit C

Form of Assignment of Patents

ASSIGNMENT

For good and valuable consideration as set forth in that certain Asset Purchase Agreement dated as of _____ between GLSynthesis Inc. and Acurx Pharmaceuticals, LLC (hereinafter ASSIGNEE), the receipt and sufficiency of which are hereby acknowledged, the undersigned **GLSynthesis Inc.**, a Massachusetts corporation, (hereinafter ASSIGNOR) has sold and assigned, and by these presents hereby sells and assigns, unto:

Acurx Pharmaceuticals, LLC

a limited liability company organized in the state of Delaware (hereinafter ASSIGNEE) all right, title, and interest in the inventions and improvements which are the subject of:

a) Each of the patents and patent applications that are described in detail in the Asset Purchase Agreement, dated February __, 2018, by and between ASSIGNOR AND ASSIGNEE, including without limitation, Section 1.1(b) of the Seller Disclosure Schedule, annexed hereto and made a part hereof;

b) Any and all applications that claim the benefit of the patents and patent applications described in detail in the Asset Purchase Agreement, dated February __, 2018, by and between ASSIGNOR AND ASSIGNEE, including without limitation, Section 1.1(b) of the Seller Disclosure Schedule, including any and all United States and foreign utility patents and patent applications, including non-provisional, continuing (continuation, continuation-in-part or divisional), reissue, and reexamination applications, utility models, and design registrations;

c) Any and all inventions described in each of the patents and patent applications that are described in detail in the Asset Purchase Agreement, dated February __, 2018, by and between ASSIGNOR AND ASSIGNEE, including without limitation, Section 1.1(b) of the Seller Disclosure Schedule, and in all forms of intellectual and industrial property protection derivable therefrom, and that are derivable from any and all continuing applications, reissues, extensions, renewals and reexaminations of such patents and patent applications, including without limitation, patents, applications, utility models, inventor's certificates, and designs together with the right to file applications therefore, and including the right to claim the same priority rights from any previously filed applications under the International Agreement for the Protection of Industrial Property, or any other international agreement, or the domestic laws of the country in which any such application is filed, as may be applicable;

in any form or embodiment thereof, in the United States and all foreign countries, including applications for patents in all countries through the world and through the Patent Cooperation Treaty and/or the European Patent Convention;

to be held and enjoyed by said ASSIGNEE, its successors, legal representatives and assigns to the full end of the term or terms for which any and all such Letters Patent may be granted as fully and entirely as would have been held and enjoyed by the undersigned had this Assignment not been made.

The ASSIGNOR hereby authorizes and requests the Director of the U.S. Patent and Trademark Office to issue any and all such Letters Patent to said ASSIGNEE, its successors or assigns in accordance herewith.

The ASSIGNOR warrants and covenants that ASSIGNOR has the full and unencumbered right to sell and assign the interests herein sold and assigned and that ASSIGNOR has not executed and will not execute any document or instrument in conflict herewith.

The ASSIGNOR further covenants and agrees ASSIGNOR will communicate to said ASSIGNEE, its successors, legal representatives or assigns all information known to ASSIGNOR relating to said invention or Patent application and that ASSIGNOR will execute and deliver any papers, make all rightful oaths, testify in any legal proceedings and perform all other lawful acts deemed necessary or desirable by said ASSIGNEE, its successors, legal representatives or assigns to perfect title to said invention, to said application including divisions and continuations thereof and to any and all Letters Patent which may be granted therefor or thereon, including reissues or extensions, in said ASSIGNEE, its successors, or assigns or to assist said ASSIGNEE, its successors, legal representatives or assigns in obtaining, reissuing or enforcing Letters Patent of the United States and foreign jurisdictions for said invention.

Notwithstanding any other provision of this Assignment to the contrary, nothing contained in this Assignment shall in any way supersede, modify, replace, amend, change, rescind, waive, exceed, expand, enlarge or in any way affect the provisions set forth in the Asset Purchase Agreement nor shall this Assignment reduce, expand or

enlarge any remedies under the Asset Purchase Agreement including, without limitation, any representations or warranties specified therein. In the event of any conflict or inconsistency between this Assignment and the Asset Purchase Agreement, the terms of the Asset Purchase Agreement shall prevail.

This Assignment shall be binding upon and inure to the benefit of ASSIGNOR, ASSIGNEE and their respective successors and permitted assigns.

SIGNED, on behalf of said ASSIGNOR:

GLSynthesis Inc.

By: _____

Name: George E. Wright
Title: President
Date:

Before me this _____ day of _____, 201__, personally appeared _____ known to me to be the person whose name is subscribed to the foregoing Assignment, proved to through satisfactory evidence of identification in the form of _____, and acknowledged that he/she executed the same as his/her free act and deed for the purposes therein contained.

Exhibit D

Form of New Member's Consent

The undersigned agrees to be bound as a Member by the terms of the Operating Agreement of Acurx Pharmaceuticals, LLC as if the undersigned was a signatory thereof.

GLSYNTHESIS INC.

By: _____

Name: George Wright, Ph.D.
Title: President

Date:

Exhibit 99.1

Consent to be Named as a Director Nominee

In connection with the filing by Acurx Pharmaceuticals, LLC of the Registration Statement on Form S-1 with the Securities and Exchange Commission under the Securities Act of 1933, as amended (the "***Securities Act***"), I hereby consent, pursuant to Rule 438 of the Securities Act, to being named as a nominee to the board of directors of Acurx Pharmaceuticals, Inc. in the Registration Statement and any and all amendments and supplements thereto. I also consent to the filing of this consent as an exhibit to such Registration Statement and any amendments thereto.

Dated: April 10, 2021

Joseph C. Scodari

/s/ Joseph C. Scodari
Signature

Exhibit 99.2

Consent to be Named as a Director Nominee

In connection with the filing by Acurx Pharmaceuticals, LLC of the Registration Statement on Form S-1 with the Securities and Exchange Commission under the Securities Act of 1933, as amended (the "***Securities Act***"), I hereby consent, pursuant to Rule 438 of the Securities Act, to being named as a nominee to the board of directors of Acurx Pharmaceuticals, Inc. in the Registration Statement and any and all amendments and supplements thereto. I also consent to the filing of this consent as an exhibit to such Registration Statement and any amendments thereto.

Dated: April 10, 2021

Jack H. Dean

/s/ Jack H. Dean
Signature

Exhibit 99.3

Consent to be Named as a Director Nominee

In connection with the filing by Acurx Pharmaceuticals, LLC of the Registration Statement on Form S-1 with the Securities and Exchange Commission under the Securities Act of 1933, as amended (the "***Securities Act***"), I hereby consent, pursuant to Rule 438 of the Securities Act, to being named as a nominee to the board of directors of Acurx Pharmaceuticals, Inc. in the Registration Statement and any and all amendments and supplements thereto. I also consent to the filing of this consent as an exhibit to such Registration Statement and any amendments thereto.

Dated: April 10, 2021

Thomas Harrison

/s/ Thomas Harrison
Signature

Exhibit 99.4

Consent to be Named as a Director Nominee

In connection with the filing by Acurx Pharmaceuticals, LLC of the Registration Statement on Form S-1 with the Securities and Exchange Commission under the Securities Act of 1933, as amended (the "***Securities Act***"), I hereby consent, pursuant to Rule 438 of the Securities Act, to being named as a nominee to the board of directors of Acurx Pharmaceuticals, Inc. in the Registration Statement and any and all amendments and supplements thereto. I also consent to the filing of this consent as an exhibit to such Registration Statement and any amendments thereto.

Dated: April 10, 2021

James Donohue

/s/ James Donohue
Signature