

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

Form 10-Q

(Mark One)

☒ QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934  
For the quarterly period ended June 30, 2024  
or

☐ TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934  
For the transition period from to  
Commission file number: 001-34207

Dynavax Technologies Corporation  
(Exact name of registrant as specified in its charter)

Delaware  
(State or other jurisdiction of  
incorporation or organization)

33-0728374  
(IRS Employer  
Identification No.)

2100 Powell Street, Suite 720  
Emeryville, CA 94608  
(510) 848-5100

(Address, including Zip Code, and telephone number, including area code, of the registrant's principal executive offices)

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

Title of each class:	Trading symbol(s):	Name of each exchange on which registered:
Common Stock, \$0.001 par value	DVAX	Nasdaq Global Select Market

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

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

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

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

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

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

As of August 1, 2024, the registrant had outstanding 131,044,383 shares of common stock.

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**DYNAVAX TECHNOLOGIES CORPORATION**

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## FORWARD-LOOKING STATEMENTS

*This Quarterly Report on Form 10-Q contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended, which are subject to a number of risks and uncertainties. All statements that are not historical facts are forward-looking statements, including statements about sales of HEPLISAV-B®, our ability to successfully commercialize HEPLISAV-B, CpG 1018 adjuvant or any future product, our anticipated market opportunity and level of sales of HEPLISAV-B and CpG 1018 adjuvant, our ability to manufacture sufficient supply of HEPLISAV-B to meet future demand, our business, collaboration and regulatory strategy, our ability to successfully support the development, manufacture and commercialization of other vaccines containing our CpG 1018 adjuvant, including any current or potential vaccine or vaccine candidate that stems from any of our collaborations, our ability to manufacture sufficient supply of CpG 1018 adjuvant to meet potential future demand in connection with new vaccines, our ability to advance our other product candidates, such as our shingles, Tdap and plague programs, and to otherwise develop and expand our clinical research pipeline, meet regulatory requirements, including post-marketing obligations and commitments, uncertainty regarding our capital needs and future operating results and profitability, anticipated sources of funds, liquidity and cash needs (including our ability to collect on accounts receivables), anticipated future revenue, as well as our plans, objectives, strategies, expectations and intentions for our business. These statements appear throughout this Quarterly Report on Form 10-Q and can be identified by the use of forward-looking language such as “may,” “will,” “should,” “expect,” “plan,” “anticipate,” “believe,” “estimate,” “predict,” “future,” or “intend,” or the negative of these terms or other variations or comparable terminology.*

*Actual results may vary materially from those in our forward-looking statements as a result of various factors that are identified in “Item 1A—Risk Factors” and “Item 2—Management’s Discussion and Analysis of Financial Condition and Results of Operations” and elsewhere in this document. No assurance can be given that the risk factors described in this Quarterly Report on Form 10-Q are all of the factors that could cause actual results to vary materially from the forward-looking statements. All forward-looking statements speak only as of the date of this Quarterly Report on Form 10-Q. Readers should not place undue reliance on these forward-looking statements and are cautioned that any such forward-looking statements are not guarantees of future performance. We assume no obligation to update any forward-looking statements after the date they are made.*

*This Quarterly Report on Form 10-Q includes trademarks and registered trademarks of Dynavax Technologies Corporation. Products or service names of other companies mentioned in this Quarterly Report on Form 10-Q may be trademarks or registered trademarks of their respective owners. References herein to “we,” “our,” “us,” “Dynavax” or the “Company” refer to Dynavax Technologies Corporation and its subsidiaries.*

# PART I. FINANCIAL INFORMATION

## ITEM 1. FINANCIAL STATEMENTS

### Dynavax Technologies Corporation Condensed Consolidated Balance Sheets (In thousands, except per share amounts)

	June 30, 2024 (unaudited)	December 31, 2023 (Note 1)
<b>Assets</b>		
Current assets:		
Cash and cash equivalents	\$ 112,501	\$ 150,279
Marketable securities available-for-sale	623,111	592,023
Accounts receivables, net of allowance for doubtful accounts of \$12,313 at June 30, 2024 and December 31, 2023, respectively	61,654	40,607
Other receivables	976	3,926
Inventories	62,462	53,290
Prepaid expenses and other current assets	21,308	18,995
Total current assets	882,012	859,120
Property and equipment, net	36,105	37,297
Operating lease right-of-use assets	22,526	24,287
Goodwill	2,007	2,067
Other assets	73,671	74,325
Total assets	<u>\$ 1,016,321</u>	<u>\$ 997,096</u>
<b>Liabilities and stockholders' equity</b>		
Current liabilities:		
Accounts payable	\$ 4,555	\$ 5,245
Accrued research and development	4,581	2,982
Accrued liabilities	48,488	49,448
Other current liabilities	4,568	4,520
Total current liabilities	62,192	62,195
Convertible Notes, net of debt discount of \$2,228 and \$2,802 at June 30, 2024 and December 31, 2023, respectively (Note 7)	223,272	222,698
Long-term portion of lease liabilities	27,473	29,720
CEPI accrual long-term (Note 6)	60,337	60,337
Other long-term liabilities	198	74
Total liabilities	373,472	375,024
Commitments and contingencies (Note 5)		
Stockholders' equity:		
Preferred stock: \$0.001 par value, 5,000 shares authorized at June 30, 2024 and December 31, 2023; zero shares outstanding at June 30, 2024 and December 31, 2023	-	-
Common stock: \$0.001 par value, 278,000 shares authorized at June 30, 2024 and December 31, 2023; 130,984 shares and 129,530 shares issued and outstanding at June 30, 2024 and December 31, 2023, respectively	131	130
Additional paid-in capital	1,575,548	1,554,634
Accumulated other comprehensive loss	(4,911)	(2,108)
Accumulated deficit	(927,919)	(930,584)
Total stockholders' equity	642,849	622,072
Total liabilities and stockholders' equity	<u>\$ 1,016,321</u>	<u>\$ 997,096</u>

See accompanying notes.

**Dynavax Technologies Corporation**  
**Condensed Consolidated Statements of Operations**  
(In thousands, except per share amounts)  
(Unaudited)

	Three Months Ended June 30,		Six Months Ended June 30,	
	2024	2023	2024	2023
Revenues:				
Product revenue, net	\$ 70,188	\$ 56,440	\$ 118,032	\$ 99,891
Other revenue	3,607	3,809	6,552	7,283
Total revenues	73,795	60,249	124,584	107,174
Operating expenses:				
Cost of sales - product	11,985	13,537	22,952	28,249
Research and development	14,950	13,046	28,478	26,651
Selling, general and administrative	41,662	37,071	85,727	73,614
Bad debt expense	-	-	-	12,313
Total operating expenses	68,597	63,654	137,157	140,827
Income (loss) from operations	5,198	(3,405)	(12,573)	(33,653)
Other income (expense):				
Interest income	9,201	7,378	18,668	13,975
Interest expense	(1,698)	(1,688)	(3,393)	(3,374)
Sublease income (Note 5)	2,205	1,993	603	3,591
Other	-	(71)	103	(48)
Net income (loss) before income taxes	14,906	4,207	3,408	(19,509)
Provision for income taxes	(3,520)	(776)	(743)	(1,392)
Net income (loss)	\$ 11,386	\$ 3,431	\$ 2,665	\$ (20,901)
Net income (loss) per share attributable to common stockholders				
Basic	\$ 0.09	\$ 0.03	\$ 0.02	\$ (0.16)
Diluted	\$ 0.08	\$ 0.03	\$ 0.02	\$ (0.16)
Weighted-average shares used in computing net income (loss) per share attributable to common stockholders:				
Basic	130,916	128,625	130,551	128,275
Diluted	154,468	152,142	133,582	128,275

See accompanying notes.

**Condensed Consolidated Statements of Comprehensive Income (Loss)**  
**(In thousands)**  
**(Unaudited)**

	Three Months Ended June 30,		Six Months Ended June 30,	
	2024	2023	2024	2023
Net income (loss)	\$ 11,386	\$ 3,431	\$ 2,665	\$ (20,901)
Other comprehensive (loss) income, net of tax:				
Change in unrealized loss on marketable securities available-for-sale	(289)	(1,197)	(1,746)	(531)
Cumulative foreign currency translation adjustments	(249)	25	(1,057)	597
Total other comprehensive (loss) income	(538)	(1,172)	(2,803)	66
Total comprehensive income (loss)	<u>\$ 10,848</u>	<u>\$ 2,259</u>	<u>\$ (138)</u>	<u>\$ (20,835)</u>

*See accompanying notes.*

**Dynavax Technologies Corporation**  
**Condensed Consolidated Statements of Stockholders' Equity**  
(In thousands)  
(Unaudited)

	Common Stock		Preferred Stock					
	Shares	Par Amount	Shares	Par Amount	Additional Paid-In Capital	Accumulated Other Comprehensive Loss	Accumulated Deficit	Total Stockholders' Equity
<b>Three Months Ended June 30, 2024</b>								
Balances at March 31, 2024	130,859	\$ 131	-	\$ -	\$ 1,562,027	\$ (4,373)	\$ (939,305)	\$ 618,480
Issuance of common stock upon exercise of stock options	54	-	-	-	419	-	-	419
Issuance of common stock upon release of restricted stock awards, net of statutory tax withholdings	71	-	-	-	(416)	-	-	(416)
Stock compensation expense	-	-	-	-	13,518	-	-	13,518
Total other comprehensive loss	-	-	-	-	-	(538)	-	(538)
Net income	-	-	-	-	-	-	11,386	11,386
Balances at June 30, 2024	130,984	\$ 131	-	\$ -	\$ 1,575,548	\$ (4,911)	\$ (927,919)	\$ 642,849
<b>Six Months Ended June 30, 2024</b>								
Balances at December 31, 2023	129,530	\$ 130	-	\$ -	\$ 1,554,634	\$ (2,108)	\$ (930,584)	\$ 622,072
Issuance of common stock upon exercise of stock options	294	-	-	-	2,054	-	-	2,054
Issuance of common stock upon release of restricted stock awards, net of statutory tax withholdings	1,066	1	-	-	(8,576)	-	-	(8,575)
Issuance of common stock under Employee Stock Purchase Plan	94	-	-	-	904	-	-	904
Stock compensation expense	-	-	-	-	26,532	-	-	26,532
Total other comprehensive loss	-	-	-	-	-	(2,803)	-	(2,803)
Net income	-	-	-	-	-	-	2,665	2,665
Balances at June 30, 2024	130,984	\$ 131	-	\$ -	\$ 1,575,548	\$ (4,911)	\$ (927,919)	\$ 642,849
	Common Stock		Preferred Stock					
	Shares	Par Amount	Shares	Par Amount	Additional Paid-In Capital	Accumulated Other Comprehensive (Loss) Income	Accumulated Deficit	Total Stockholders' Equity
<b>Three Months Ended June 30, 2023</b>								
Balances at March 31, 2023	128,472	\$ 128	-	\$ -	\$ 1,516,331	\$ (4,200)	\$ (948,527)	\$ 563,732
Issuance of common stock upon exercise of stock options	203	-	-	-	1,378	-	-	1,378
Issuance of common stock upon release of restricted stock awards, net of statutory tax withholdings	104	1	-	-	(727)	-	-	(726)
Stock compensation expense	-	-	-	-	10,562	-	-	10,562
Total other comprehensive income	-	-	-	-	-	(1,172)	-	(1,172)
Net income	-	-	-	-	-	-	3,431	3,431
Balances at June 30, 2023	128,779	\$ 129	-	\$ -	\$ 1,527,544	\$ (5,372)	\$ (945,096)	\$ 577,205
<b>Six Months Ended June 30, 2023</b>								
Balances at December 31, 2022	127,604	\$ 128	-	\$ -	\$ 1,510,518	\$ (5,438)	\$ (924,195)	\$ 581,013
Issuance of common stock upon exercise of stock options	244	-	-	-	1,617	-	-	1,617
Issuance of common stock upon release of restricted stock awards, net of statutory tax withholdings	850	1	-	-	(5,964)	-	-	(5,963)
Issuance of common stock under Employee Stock Purchase Plan	81	-	-	-	777	-	-	777
Stock compensation expense	-	-	-	-	20,596	-	-	20,596
Total other comprehensive income	-	-	-	-	-	66	-	66
Net loss	-	-	-	-	-	-	(20,901)	(20,901)
Balances at June 30, 2023	128,779	\$ 129	-	\$ -	\$ 1,527,544	\$ (5,372)	\$ (945,096)	\$ 577,205

See accompanying notes.

**Dynavax Technologies Corporation**  
**Condensed Consolidated Statements of Cash Flows**  
(In thousands)  
(Unaudited)

	Six Months Ended June 30,	
	2024	2023
<b>Operating activities</b>		
Net income (loss)	\$ 2,665	\$ (20,901)
Adjustments to reconcile net income (loss) to net cash (used in) provided by operating activities:		
Depreciation and amortization	2,259	2,113
Amortization of right-of-use assets	1,668	1,335
Inventory write off	1,264	-
Sublease termination loss (Note 5)	4,765	-
Accretion of discounts on marketable securities	(8,465)	(7,263)
Stock-based compensation expense	26,532	20,596
Bad debt expense (Note 6)	-	12,313
Non-cash interest expense	574	556
Changes in operating assets and liabilities:		
Accounts and other receivables, net	(18,097)	42,448
Inventories	(10,436)	6,358
Prepaid expenses and other current assets	(6,290)	(3,172)
Other assets	(101)	703
Accounts payable	(569)	(151)
Lease liabilities	(2,109)	(1,679)
Accrued and other liabilities	374	2,412
Net cash (used in) provided by operating activities	(5,966)	55,668
<b>Investing activities</b>		
Purchases of marketable securities	(326,121)	(259,531)
Proceeds from maturities and redemption of marketable securities	301,713	233,953
Purchases of property and equipment, net	(1,528)	(2,034)
Net cash used in investing activities	(25,936)	(27,612)
<b>Financing activities</b>		
Proceeds from exercise of stock options	2,054	1,617
Proceeds from Employee Stock Purchase Plan	904	777
Payments for taxes related to net share settlement of restricted stock units	(8,576)	(5,778)
Net cash used in financing activities	(5,618)	(3,384)
Effect of exchange rate changes on cash and cash equivalents, and restricted cash	(265)	150
Net (decrease) increase in cash and cash equivalents, and restricted cash	(37,785)	24,822
Cash and cash equivalents, and restricted cash at beginning of period	150,556	202,211
Cash and cash equivalents, and restricted cash at end of period	\$ 112,771	\$ 227,033
<b>Supplemental disclosure of cash flow information</b>		
Cash paid during the period for income taxes	\$ 2,963	\$ 710
Cash paid during the period for interest	\$ 2,819	\$ 2,819
Reclassification of contract asset from other current assets to other assets	\$ -	\$ 71,307
Reclassification of CEPI accrual to CEPI accrual long-term	\$ -	\$ (60,337)
Advance Payments forgiven per CEPI-Bio E Assignment Agreement (Note 6)	\$ -	\$ (47,401)
Non-cash investing and financing activities:		
Purchases of property and equipment, not yet paid	\$ 574	\$ 540
Right-of-use assets obtained in exchange of operating lease liabilities	\$ -	\$ 901

See accompanying notes.



**Dynavax Technologies Corporation**  
**Notes to Condensed Consolidated Financial Statements**  
**(Unaudited)**

**1. Organization**

Dynavax Technologies Corporation ("we," "our," "us," "Dynavax" or the "Company") is a commercial stage biopharmaceutical company developing and commercializing innovative vaccines to help protect the world against infectious diseases. Our first marketed product, HEPLISAV-B® [Hepatitis B Vaccine (Recombinant), Adjuvanted] is approved in the United States, the European Union and Great Britain for the prevention of infection caused by all known subtypes of hepatitis B virus in adults aged 18 years and older. In May 2022, we commenced commercial shipments of HEPLISAV-B in Germany.

We are advancing a pipeline of differentiated product candidates that leverage our CpG 1018® adjuvant, the adjuvant used in HEPLISAV-B, to develop improved vaccines in indications with unmet medical needs. These programs include vaccine candidates under development for shingles and Tdap, and a plague vaccine candidate program in collaboration with and fully funded by the U.S. Department of Defense ("DoD").

Additionally, we manufacture and have supplied in the past CpG 1018 adjuvant, the adjuvant used in HEPLISAV-B, through both commercial supply agreements, and through preclinical and clinical research collaborations with third-party organizations.

**Basis of Presentation**

Our accompanying unaudited condensed consolidated financial statements have been prepared in accordance with U.S. generally accepted accounting principles ("GAAP") for interim financial information and pursuant to the instructions to Form 10-Q and Article 10 of Regulation S-X. In our opinion, these unaudited condensed consolidated financial statements include all adjustments, consisting of normal recurring adjustments, which we consider necessary to present fairly our financial position and the results of our operations and cash flows. As permitted under those rules, certain footnotes or other financial information that are normally required by GAAP have been condensed or omitted. Interim-period results are not necessarily indicative of results of operations or cash flows to be expected for a full-year period or any other interim-period.

The condensed consolidated balance sheet as of December 31, 2023 has been derived from audited financial statements at that date, but excludes some disclosures required by GAAP for complete financial statements.

The unaudited condensed consolidated financial statements and these notes should be read in conjunction with the audited consolidated financial statements included in our [Annual Report on Form 10-K for the year ended December 31, 2023](#), as filed with the Securities and Exchange Commission (the "SEC").

The unaudited condensed consolidated financial statements include the accounts of Dynavax and our wholly-owned subsidiaries, Dynavax GmbH, located in Düsseldorf, Germany, Dynavax India LLP, located in India, and a branch of Dynavax registered in Italy. All significant intercompany accounts and transactions among these entities have been eliminated from the unaudited condensed consolidated financial statements. We operate in one business segment: discovery, development and commercialization of novel vaccines.

**Use of Estimates**

The preparation of unaudited condensed consolidated financial statements in conformity with GAAP requires management to make informed estimates and assumptions that may affect the amounts reported in the unaudited condensed consolidated financial statements and accompanying notes, including amounts of revenues and expenses during the reported periods. Management's estimates are based on historical information available as of the date of the unaudited condensed consolidated financial statements and various other assumptions we believe are reasonable under the circumstances. On an ongoing basis, we evaluate our estimates, judgments and methodologies. Significant estimates and assumptions in the unaudited condensed consolidated financial statements include those related to revenue recognition; accounts receivable; useful lives of long-lived assets; valuation procedures for right-of-use assets and operating lease liabilities; valuation of inventory; research and development expenses; contingencies and share-based compensation. We base our estimates on historical experience and on various other assumptions that are believed to be reasonable, the results of which form the basis for making judgments about the carrying values of assets and liabilities. Actual results may differ materially from these estimates under different assumptions or conditions. Changes in estimates are reflected in reported results in the period in which they become known.

## Recent Accounting Pronouncements

### **Accounting Standards Update 2016-13**

In November 2023, the Financial Accounting Standards Board ("FASB") issued ASU 2023-07, *Segment Reporting (Topic 280): Improvements to Reportable Segment Disclosures*, which requires public entities to disclose information about their reportable segments' significant expenses and other segment items on an interim and annual basis. Public entities with a single reportable segment are required to apply the disclosure requirements in ASU 2023-07, as well as all existing segment disclosures and reconciliation requirements in ASC 280 on an interim and annual basis. ASU 2023-07 is effective for fiscal years beginning after December 15, 2023, and for interim periods within fiscal years beginning after December 15, 2024, with early adoption permitted. We are currently evaluating the impact of adopting ASU 2023-07.

In December 2023, the FASB issued ASU 2023-09, *Income Taxes (Topic 740): Improvements to Income Tax Disclosures*, which requires public entities, on an annual basis, to provide disclosure of specific categories in the rate reconciliation, as well as disclosure of income taxes paid disaggregated by jurisdiction. ASU 2023-09 is effective for fiscal years beginning after December 15, 2024, with early adoption permitted. We are currently evaluating the impact of adopting ASU 2023-09.

## **2. Fair Value Measurements**

We measure fair value as the exchange price that would be received for an asset or paid to transfer a liability (an exit price) in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants on the measurement date. Valuation techniques used to measure fair value must maximize the use of observable inputs and minimize the use of unobservable inputs. The accounting standard describes a fair value hierarchy based on three levels of inputs, of which the first two are considered observable and the last unobservable, that may be used to measure fair value which are the following:

- Level 1—Observable inputs, such as quoted prices in active markets for identical assets or liabilities;
- Level 2—Inputs other than Level 1 that are observable, either directly or indirectly, such as quoted prices for similar assets or liabilities, quoted prices in markets that are not active or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the assets or liabilities; and
- Level 3—Unobservable inputs that are supported by little or no market activity and that are significant to the fair value of the assets or liabilities; therefore, requiring an entity to develop its own valuation techniques and assumptions.

Assets and liabilities are classified based on the lowest level of input that is significant to the fair value measurements. We review the fair value hierarchy classification on a quarterly basis. Changes in the ability to observe valuation inputs may result in a reclassification of levels for certain assets or liabilities within the fair value hierarchy. There were no transfers between Level 1, 2 and 3 during the three and six months ended June 30, 2024.

The carrying amounts of cash equivalents, accounts and other receivables, accounts payable and accrued liabilities are considered reasonable estimates of their respective fair value because of their short-term nature.

### Recurring Fair Value Measurements

The following table represents the fair value hierarchy for our financial assets (cash equivalents and marketable securities) measured at fair value on a recurring basis (in thousands):

	Level 1	Level 2	Level 3	Total
<b>June 30, 2024</b>				
<b>Assets</b>				
Money market funds	\$ 96,611	\$ -	\$ -	\$ 96,611
U.S. treasuries	-	134,696	-	134,696
U.S. government agency securities	-	172,084	-	172,084
Corporate debt securities	-	323,954	-	323,954
<b>Total assets</b>	<b>\$ 96,611</b>	<b>\$ 630,734</b>	<b>\$ -</b>	<b>\$ 727,345</b>
<b>December 31, 2023</b>				
<b>Assets</b>				
Money market funds	\$ 131,635	\$ -	\$ -	\$ 131,635
U.S. treasuries	-	74,237	-	74,237
U.S. government agency securities	-	216,688	-	216,688
Corporate debt securities	-	308,552	-	308,552
<b>Total assets</b>	<b>\$ 131,635</b>	<b>\$ 599,477</b>	<b>\$ -</b>	<b>\$ 731,112</b>

Money market funds are highly liquid investments and are actively traded. The pricing information on these investment instruments is readily available and can be independently validated as of the measurement date. This approach results in the classification of these securities as Level 1 of the fair value hierarchy.

U.S. treasuries, U.S. government agency securities and corporate debt securities are measured at fair value using Level 2 inputs. We review trading activity and pricing for these investments as of each measurement date. When sufficient quoted pricing for identical securities is not available, we use market pricing and other observable market inputs for similar securities obtained from various third-party data providers. These inputs represent quoted prices for similar assets in active markets or these inputs have been derived from observable market data. This approach results in the classification of these securities as Level 2 of the fair value hierarchy.

### 3. Cash and Cash Equivalents, Restricted Cash and Marketable Securities

The following table provides a reconciliation of cash and cash equivalents, and restricted cash reported within the condensed consolidated balance sheets that sum to the total of the same amounts shown in the condensed consolidated statements of cash flows (in thousands):

	June 30, 2024	December 31, 2023	June 30, 2023	December 31, 2022
Cash and cash equivalents	\$ 112,501	\$ 150,279	\$ 226,823	\$ 202,004
Restricted cash (1)	270	277	210	207
<b>Total cash and cash equivalents, and restricted cash shown in the condensed consolidated statements of cash flows</b>	<b>\$ 112,771</b>	<b>\$ 150,556</b>	<b>\$ 227,033</b>	<b>\$ 202,211</b>

(1) Restricted cash is included in "Other assets" in the Condensed Consolidated Balance Sheets.

Restricted cash balances relate to certificates of deposit issued as collateral to certain letters of credit issued as security to our lease arrangements (see Note 5).

Cash and cash equivalents, and marketable securities consist of the following (in thousands):

	Amortized Cost	Unrealized Gains	Unrealized Losses	Estimated Fair Value
<b>June 30, 2024</b>				
Cash and cash equivalents:				
Cash	\$ 8,267	\$ -	\$ -	\$ 8,267
Money market funds	96,611	-	-	96,611
Corporate debt securities	7,623	-	-	7,623
Total cash and cash equivalents	112,501	-	-	112,501
Marketable securities available-for-sale:				
U.S. treasuries	134,941	76	(321)	134,696
U.S. government agency securities	172,341	48	(305)	172,084
Corporate debt securities	316,730	38	(437)	316,331
Total marketable securities available-for-sale	624,012	162	(1,063)	623,111
Total cash and cash equivalents, and marketable securities	<u>\$ 736,513</u>	<u>\$ 162</u>	<u>\$ (1,063)</u>	<u>\$ 735,612</u>
<b>December 31, 2023</b>				
Cash and cash equivalents:				
Cash	\$ 11,190	\$ -	\$ -	\$ 11,190
Money market funds	131,635	-	-	131,635
Corporate debt securities	7,453	1	-	7,454
Total cash and cash equivalents	150,278	1	-	150,279
Marketable securities available-for-sale:				
U.S. treasuries	74,109	172	(44)	74,237
U.S. government agency securities	216,265	692	(269)	216,688
Corporate debt securities	300,803	315	(20)	301,098
Total marketable securities available-for-sale	591,177	1,179	(333)	592,023
Total cash and cash equivalents, and marketable securities	<u>\$ 741,455</u>	<u>\$ 1,180</u>	<u>\$ (333)</u>	<u>\$ 742,302</u>

The maturities of our marketable securities available-for-sale are as follows (in thousands):

	June 30, 2024	
	Amortized Cost	Estimated Fair Value
Mature in one year or less	\$ 372,276	\$ 371,881
Mature after one year through two years	251,736	251,230
	<u>\$ 624,012</u>	<u>\$ 623,111</u>

We have classified our entire investment portfolio as available-for-sale and available for use in current operations and accordingly have classified all investments as short-term. Available-for-sale securities are carried at fair value based on inputs that are observable, either directly or indirectly, such as quoted market prices for similar securities, quoted prices in markets that are not active, or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the securities. Unrealized losses are included in accumulated other comprehensive loss in stockholders' equity. We determine whether a decline in the fair value of our available-for-sale ("AFS") debt securities below their amortized cost basis (i.e., an impairment) is due to credit-related factors or noncredit-related factors. Any impairment that is not credit related is recognized in other comprehensive income (loss), net of applicable taxes. Credit-related impairments (if any) are recognized as an allowance on the balance sheet with a corresponding adjustment to earnings. Both the allowance and the adjustment to net income can be reversed if conditions change.

There were no realized gains or losses from the sale of marketable securities during the three and six months ended June 30, 2024 and 2023. We do not intend to sell, and are not required to sell, the investments that are in an unrealized loss position before recovery of their amortized cost basis. During each of the three and six months ended June 30, 2024, we did not record an allowance for credit losses, as management believes any such losses would be immaterial based on the investment-grade credit rating for each of

the investments as of June 30, 2024. As such, there have been no declines in fair value that have been identified as a credit-related impairment.

#### 4. Inventories

The following table presents inventories (in thousands):

	June 30, 2024	December 31, 2023
Raw materials	\$ 24,130	\$ 27,256
Work-in-process	23,011	18,954
Finished goods	15,321	7,080
Total	<u>\$ 62,462</u>	<u>\$ 53,290</u>

#### 5. Commitments and Contingencies

##### Leases

We lease our facilities in Emeryville, California and Düsseldorf, Germany. We lease and sublease certain manufacturing and office space with lease terms ranging from 3 to 12 years. These leases require monthly lease payments that may be subject to annual increases throughout the lease term. Certain of these leases also include options to renew or extend the lease for two successive five-year terms. These optional periods have not been considered in the determination of the right-of-use assets or lease liabilities associated with these leases as we did not consider the exercise of these options to be reasonably certain.

##### Sublease Termination and New Sublease

On February 22, 2024, our third-party subtenant obtained the approval of a voluntary petition for relief under Chapter 11 of the United States Code. As a consequence, the sublease agreement with that third-party for the subleased premises (approximately 75,662 square feet of office/laboratory space located at 5959 Horton Street, Emeryville, California) was terminated effective March 7, 2024. Simultaneously, on March 7, 2024, we entered into a new sublease agreement with a different third-party under similar conditions and for the same premises. Rent from the new sublease agreement is subject to scheduled annual increases, and the subtenant is responsible for certain operating expenses and taxes throughout the life of the sublease. The new sublease term expires on March 31, 2031, unless earlier terminated, concurrent with the term of our lease. The subtenant has no option to extend the sublease term.

As a result of the termination of the existing sublease agreement, we recognized a net loss of approximately \$3.5 million comprising primarily of a \$4.8 million write-off of the accrued rent asset balance as of March 7, 2024, partially offset by the collection of a termination payment of \$1.3 million. Sublease income for the three and six months ended June 30, 2024 was \$2.2 million and \$0.6 million, respectively. Sublease income for the three and six months ended June 30, 2023 was \$2.0 million and \$3.6 million, respectively. Both the net loss on sublease termination and the sublease income are included net in "Sublease income" within "other income (expense)" in our condensed consolidated statements of operations. Rent received from the new subtenant in excess of rent paid to the landlord shall be shared by paying the landlord 50% of the excess rent. The excess rent is considered a variable lease payment and the total estimated payments are being recognized as additional rent expense on a straight-line basis.

Our lease expense comprises of the following (in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2024	2023	2024	2023
Operating lease expense	\$ 1,496	\$ 1,392	\$ 2,912	\$ 2,780

Cash paid for amounts included in the measurement of lease liabilities for the six months ended June 30, 2024 and 2023 was \$3.8 million and \$3.5 million, respectively, and were included in change in lease liabilities in our condensed consolidated statement of cash flows.

The balance sheet classification of our operating lease liabilities was as follows (in thousands):

	June 30, 2024	December 31, 2023
Operating lease liabilities:		
Current portion of lease liabilities (included in other current liabilities)	\$ 4,536	\$ 4,496
Long-term portion of lease liabilities	27,473	29,720
Total operating lease liabilities	<u>\$ 32,009</u>	<u>\$ 34,216</u>

As of June 30, 2024, the maturities of our sublease income and operating lease liabilities were as follows (in thousands):

Years ending December 31,	Sublease Income	Operating Lease Liabilities
2024 (remaining)	\$ 2,960	\$ 3,808
2025	6,127	6,962
2026	6,342	6,103
2027	6,564	6,034
2028	6,794	6,197
Thereafter	16,191	15,007
Total	\$ 44,978	44,111
Less:		
Present value adjustment		(12,102)
Total		<u>\$ 32,009</u>

The weighted average remaining lease term and the weighted average discount rate used to determine the operating lease liabilities were as follows:

	June 30, 2024	December 31, 2023
Weighted average remaining lease term	6.4 years	6.7 years
Weighted average discount rate	10.1%	10.1%

## Commitments

As of June 30, 2024 and December 31, 2023, our material non-cancelable purchase and other commitments for the supply of HEPLISAV-B totaled \$38.2 million and \$43.4 million, respectively.

On September 7, 2023 (the "Effective Date"), we entered into an agreement (the "Avecia Supply Agreement") with Nitto Denko Avecia Inc. ("Avecia") for the manufacture and supply of our CpG 1018 adjuvant using a specific production process. Under the Avecia Supply Agreement, Avecia has agreed to produce and supply to us quantities of CpG 1018 adjuvant ordered by us after the Effective Date. Subject to certain conditions in the Avecia Supply Agreement, we are obligated to purchase all of our annual volume requirements of CpG 1018 adjuvant from Avecia up to a specified production capacity. We may alternatively order CpG 1018 adjuvant produced using a different production process pursuant to the existing supply agreement between us and Avecia dated October 1, 2012 (the "2012 Agreement"). Included in the balance of our material non-cancelable purchase and other commitments for the supply of HEPLISAV-B, as of June 30, 2024 and December 31, 2023, our aggregate minimum commitment for the supply of CpG 1018 adjuvant under the Avecia Supply Agreement totaled \$7.4 million for each period, anticipated within the next 12 months.

In addition to the non-cancelable commitments included above, we have entered into contractual arrangements that obligate us to make payments to the contractual counterparties upon the occurrence of future events. In addition, in the normal course of operations, we have entered into license and other agreements and intend to continue to seek additional rights relating to compounds or technologies in connection with our discovery, manufacturing and development programs. Under the terms of the agreements, we may be required to pay future up-front fees, milestones and royalties on net sales of products originating from the licensed technologies, if any, or other payments contingent upon the occurrence of future events that cannot reasonably be estimated.

We also rely on and have entered into agreements with research institutions, contract research organizations and clinical investigators as well as clinical material manufacturers. These agreements are terminable by us upon written notice. Generally, we are liable only for actual effort expended by the organizations at any point in time during the contract through the notice period.

As of June 30, 2024, the aggregate principal amount of our convertible senior notes ("Convertible Notes") was \$225.5 million, excluding debt discount of \$2.2 million (see Note 7).

During 2004, we established a letter of credit with Deutsche Bank as security for our Düsseldorf lease in the amount of €0.2 million (Euros). The letter of credit remained outstanding through June 30, 2024 and was collateralized by a certificate of deposit for €0.2 million, which has been included in restricted cash in the condensed consolidated balance sheets as of June 30, 2024.

In conjunction with our agreement with Symphony Dynamo, Inc. and Symphony Dynamo Holdings LLC ("Holdings") in November 2009, we agreed to make contingent cash payments to Holdings equal to 50% of the first \$50 million from any upfront, pre-commercialization milestone or similar payments received by us from any agreement with any third party with respect to the development and/or commercialization of cancer and hepatitis C therapies originally licensed to Symphony Dynamo, Inc., including our immune-oncology compound, SD-101. In July 2020, we sold assets related to SD-101 to Surefire Medical, Inc. d/b/a TriSalus Life Sciences ("TriSalus"). We paid \$2.5 million to Holdings in August 2020. In each of September 2021, May 2022 and September 2023, we received \$1.0 million from TriSalus because it met pre-commercialization milestones. We recorded the proceeds as gain on sale of assets in our condensed consolidated statements of operations. We paid Holdings \$0.5 million in each of September 2021, May 2022 and October 2023. We included the payments in selling, general and administrative expenses in our condensed consolidated statements of operations. No liability has been recorded under this agreement as of June 30, 2024.

## Contingencies

From time to time, we may be involved in claims, suits, and proceedings arising from the ordinary course of our business, including actions with respect to intellectual property claims, commercial claims, and other matters. Such claims, suits, and proceedings are inherently uncertain and their results cannot be predicted with certainty. Regardless of the outcome, such legal proceedings can have an adverse impact on us because of legal costs, diversion of management resources, and other factors. In addition, it is possible that a resolution of one or more such proceedings could result in substantial damages, fines, penalties or orders requiring a change in our business practices, which could in the future materially and adversely affect our financial position, results of operations, or cash flows in a particular period.

## 6. Collaborative Research, Development and License Agreements

### Coalition for Epidemic Preparedness Innovations

In January 2021, we entered into an agreement (together with subsequent amendments, the "CEPI Agreement") with Coalition for Epidemic Preparedness Innovations ("CEPI") for the manufacture and reservation of a specified quantity of CpG 1018 adjuvant ("CpG 1018 Materials"). In May 2021, we entered into the first amendment to the CEPI Agreement. The CEPI Agreement enables CEPI to direct the supply of CpG 1018 Materials to CEPI partner(s). CEPI partner(s) would purchase CpG 1018 Materials under separately negotiated agreements. The CEPI Agreement also allows us to sell CpG 1018 Materials to third parties if not purchased by a CEPI partner within a two-year term.

In exchange for reserving CpG 1018 Materials and agreeing to sell CpG 1018 Materials to CEPI partner(s) at pre-negotiated prices, CEPI agreed to provide payments in the form of an interest-free, unsecured, forgivable loan (the "Advance Payments"). We are obligated to repay the Advance Payments, in proportion to quantity sold, if and to the extent we receive payments from sales of CpG 1018 Materials reserved under the CEPI Agreement. If the vaccine programs pursued by CEPI partner(s) are unsuccessful and no alternative use is found for CpG 1018 Materials reserved under the CEPI Agreement, the applicable Advance Payments will be forgiven at the end of the two-year term.

On April 27, 2023, we entered into a waiver and second amendment to the CEPI Agreement by and between us and CEPI (the "CEPI-Bio E Assignment Agreement"). Pursuant to the CEPI-Bio E Assignment Agreement, CEPI has forgiven the entirety of the outstanding Advance Payments for CpG 1018 Materials allocated to and ordered by Bio E under the CEPI Agreement and has assumed our previous rights to \$47.4 million of Bio E accounts receivable.

Through June 30, 2024, we received Advance Payments totaling approximately \$175.0 million pursuant to the CEPI Agreement, of which \$67.3 million have been repaid and \$47.4 million have been forgiven (as discussed above). As of June 30, 2024, remaining Advance Payments totaling \$60.3 million in CEPI accrual long-term were reflected in our condensed consolidated balance sheets, representing the outstanding balance of the Advance Payments relating to the Clover Supply Agreement (as defined and discussed below). There were no deferred revenue balances related to the CEPI Agreement as of June 30, 2024 and December 31, 2023.

## **Zhejiang Clover Biopharmaceuticals, Inc. and Clover Biopharmaceuticals (Hong Kong) Co., Limited**

In June 2021, we entered into an agreement with Zhejiang Clover Biopharmaceuticals, Inc. and Clover Biopharmaceuticals (Hong Kong) Co., Limited (collectively, "Clover"), for the commercial supply of CpG 1018 adjuvant, for use with Clover's COVID-19 vaccine candidate, SCB-2019 (together with subsequent amendments, the "Clover Supply Agreement"). Under the Clover Supply Agreement, Clover committed to purchase specified quantities of CpG 1018 adjuvant, at pre-negotiated prices pursuant to the CEPI Agreement, for use in Clover's commercialization of vaccines containing SCB-2019 and CpG 1018 adjuvant ("Clover Product"). The Clover Supply Agreement also provides terms for Clover to order additional quantities of CpG 1018 adjuvant beyond the quantities reserved by CEPI. In 2022 and 2023, we signed four amendments to the Clover Supply Agreement. The terms and conditions of the Clover Supply Agreement were operative through December 2022, and as of December 31, 2022, we had satisfied all delivery obligations thereunder.

For CpG 1018 adjuvant reserved for Clover under the CEPI Agreement, Clover is obligated to pay us the purchase price upon the earliest of (i) the true-up exercise, (ii) within a specified period after Clover delivers Clover Product to a customer, or (iii) Clover's receipt of payment for Clover Product from a customer. When we transfer control of CpG 1018 adjuvant that is reserved under the CEPI Agreement, we recognize product revenue and a corresponding contract asset as our right to consideration is contingent on something other than the passage of time, as outlined above.

The contract asset of \$71.3 million relating to Clover was included in other assets (long term) as of June 30, 2024 and December 31, 2023. The contract asset was included in other assets (long term) to reflect the timing of expected long term demand for CpG 1018 adjuvant for Clover Product.

Corresponding Advance Payments of \$60.3 million relating to Clover are recorded in CEPI accrual long-term in our condensed consolidated balance sheets as of June 30, 2024. These Advance Payments may be repaid using cash collected from Clover or forgiven in accordance with the CEPI Agreement. We had no accounts receivable balance from Clover as of June 30, 2024 and December 31, 2023.

## **Biological E. Limited**

In July 2021, we entered into an agreement (together with subsequent amendments, the "Bio E Supply Agreement") with Biological E. Limited ("Bio E"), for the commercial supply of CpG 1018 adjuvant, for use with Bio E's subunit COVID-19 vaccine candidate, CORBEVAX™. Under the Bio E Supply Agreement, Bio E committed to purchase specified quantities of CpG 1018 adjuvant, at pre-negotiated prices pursuant to the CEPI Agreement, for use in Bio E's commercialization of its CORBEVAX vaccine ("Bio E Product") with specified delivery dates in 2021 and the first quarter of 2022. The Bio E Supply Agreement also provides terms for Bio E to order additional quantities of CpG 1018 adjuvant beyond the quantities reserved by CEPI. In June 2022 and in October 2022, we entered into amendments to the Bio E Supply Agreement (the "Bio E Amendment No. 1" and the "Bio E Amendment No. 2," together the "Bio E Amendments"). The Bio E Amendments primarily established: (i) a new payment schedule for certain outstanding invoices related to the CEPI product to be the earlier of December 31, 2022, or receipt of certain amounts from Bio E from the Government of India in connection with their advance purchase agreement for CORBEVAX, and (ii) further modified the scope of the Bio E Supply Agreement, by reducing certain quantities of CpG 1018 adjuvant to be delivered. The terms and conditions of the Bio E Supply Agreement were operative through December 2022, and as of December 31, 2022, we had satisfied all delivery obligations thereunder.

As of June 30, 2024, we had no net accounts receivable balance from Bio E. In 2023, we recorded an allowance for doubtful accounts of \$12.3 million, which was determined by assessing changes in Bio E's credit risk, contemplation of ongoing negotiations relating to Bio E Amendment No. 3 (defined below), and Bio E's dependence on cash collections from the Government of India, which have been delayed and significantly reduced in connection with the overall reduction in demand for CORBEVAX from the Government of India.

On April 26, 2023, we entered into a third amendment to the Bio E Supply Agreement (the "Bio E Amendment No. 3"), and on April 27, 2023, we entered into the CEPI-Bio E Assignment Agreement. Pursuant to the CEPI-Bio E Assignment Agreement, CEPI has forgiven the entirety of remaining amounts outstanding relating to a liability for Advance Payments of \$47.4 million (the "Bio E CEPI Advance Payments") for CpG 1018 Materials allocated to Bio E, and has assumed our previous rights to collect \$47.4 million of Bio E accounts receivable. Pursuant to the Bio E Amendment No. 3, we collected \$14.5 million from Bio E (including \$13.5 million in April 2023 and \$1.0 million in August 2023). Accordingly, as of June 30, 2024, the CEPI-Bio E Assignment Agreement resulted in: (i) no net accounts receivable balance, and (ii) the derecognition of \$47.4 million CEPI accrual in connection with the Bio E CEPI Advance Payments. The Bio E Amendment No. 3 provides for additional future payment of either \$5.5 million in the event that Bio E receives at least \$125.0 million, or \$12.3 million in the event that Bio E receives at least \$250.0 million in future payments from the Government of India associated with its CORBEVAX product on or before August 15, 2025. These additional amounts are not considered collectible until the achievement of these future milestones.



## U.S. Department of Defense

In September 2021, we entered into an agreement with the DoD for the development of a recombinant plague vaccine adjuvanted with CpG 1018 adjuvant for approximately \$22.0 million over two and a half years. Under the agreement, we are conducting a Phase 2 clinical trial combining our CpG 1018 adjuvant with the DoD's rF1V vaccine. In 2023 and 2024, we executed contract modifications with the DoD to support advancement into a nonhuman primate challenge study and a chemistry, manufacturing and control gap analysis, with the agreement now totaling \$38.7 million through 2025. We recognized revenue of \$3.6 million and \$6.4 million from our agreement with the DoD for the three and six months ended June 30, 2024, respectively. We recognized revenue of \$3.8 million and \$7.3 million from our agreement with the DoD for the three and six months ended June 30, 2023, respectively. Revenue from our agreement with the DoD is included in other revenue in our condensed consolidated statements of operations.

## 7. Convertible Notes

In May 2021, we issued \$225.5 million of Convertible Notes in a private placement. Total proceeds from the issuance of the Convertible Notes, net of debt issuance and offering costs of \$5.7 million, were \$219.8 million. We used \$190.2 million of the net proceeds to retire our previous loan agreement with CRG Servicing LLC and \$27.2 million of the net proceeds to pay the costs of the Capped Calls described below.

The Convertible Notes are general unsecured obligations and accrue interest at a rate of 2.50% per annum payable semiannually in arrears on May 15 and November 15 of each year, beginning on November 15, 2021. The Convertible Notes mature on May 15, 2026, unless converted, redeemed or repurchased prior to such date.

The Convertible Notes are convertible into cash, shares of our common stock or a combination of cash and shares of our common stock, at our election, at an initial conversion rate of 95.5338 shares of our common stock per \$1,000 principal amount of the Convertible Notes, which is equivalent to an initial conversion price of approximately \$10.47 per share of our common stock. The Convertible Notes are convertible at the option of the holders at any time prior to the close of business on the business day immediately preceding February 15, 2026, only under the following circumstances:

- During any calendar quarter (and only during such calendar quarter), if the last reported sale price of our common stock for at least 20 trading days (whether or not consecutive) during a period of 30 consecutive trading days ending on, and including, the last trading day of the immediately preceding calendar quarter is greater than or equal to 130% of the conversion price on each applicable trading day;
- During the five business day period after any ten consecutive trading day period (the "measurement period"), in which the "trading price" (as defined the indenture governing the Convertible Notes) per \$1,000 principal amount of the Convertible Notes for each trading day of the measurement period was less than 98% of the product of the last reported sale price of our common stock and the conversion rate on each such trading day;
- If we call such Convertible Notes for redemption, at any time prior to the close of business on the scheduled trading day immediately preceding the redemption date; or
- Upon the occurrence of specified corporate events as set forth in the indenture governing the Convertible Notes.

On or after February 15, 2026 until the close of business on the second scheduled trading day immediately preceding the maturity date, holders of the Convertible Notes may convert all or any portion of their Convertible Notes regardless of the foregoing circumstances.

Since we have the election of repaying the Convertible Notes in cash, shares of our common stock, or a combination of both, we continued to classify the Convertible Notes as long-term debt on the condensed consolidated balance sheets as of June 30, 2024.

We may redeem for cash all or any portion of the Convertible Notes (subject to the partial redemption limitation described in the indenture governing the Convertible Notes), at our option, on or after May 20, 2024 and prior to the 31st scheduled trading day immediately preceding the maturity date, if the last reported sale price of our common stock has been at least 130% of the conversion price then in effect for at least 20 trading days (whether or not consecutive) during any 30 consecutive trading day period (including the last trading day of such period) ending on the trading day immediately preceding the date on which we provide notice of redemption, at a redemption price equal to 100% of the principal amount of the Convertible Notes to be redeemed, plus accrued and unpaid interest to, but excluding, the redemption date.

If we undergo a fundamental change (as set forth in the indenture governing the Convertible Notes), noteholders may require us to repurchase for cash all or any portion of their Convertible Notes at a repurchase price equal to 100% of the principal amount of the notes to be repurchased, plus accrued and unpaid interest to, but excluding, the fundamental change repurchase date. In addition, following certain corporate events (as set forth in the indenture governing the Convertible Notes) or if we deliver a notice of redemption prior to the maturity date, we will, in certain circumstances, adjust the conversion rate for a noteholder who elects to convert its notes in connection with such a corporate event or such notice of redemption.

We accounted for the Convertible Notes as a single liability in accordance with ASU 2020-06 - *Accounting for Convertible Instruments and Contracts in an Entity's Own Equity* ("ASU 2020-06"). As of June 30, 2024, the Convertible Notes were recorded at the aggregate principal amount of \$225.5 million less unamortized issuance costs of \$2.2 million as a long-term liability on the condensed consolidated balance sheets. As of June 30, 2024, the fair value of the Convertible Notes was \$280 million. The fair value was estimated using a reputable third-party valuation model based on observable inputs and is considered Level 2 in the fair value hierarchy. The debt issuance costs are amortized to interest expense over the contractual term of the Convertible Notes at an effective interest rate of 3.1%.

The following table presents the components of interest expense related to Convertible Notes (in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2024	2023	2024	2023
Stated coupon interest	\$ 1,409	\$ 1,409	\$ 2,818	\$ 2,818
Amortization of debt issuance cost	289	279	575	556
Total interest expense	<u>\$ 1,698</u>	<u>\$ 1,688</u>	<u>\$ 3,393</u>	<u>\$ 3,374</u>

#### *Capped Calls*

In connection with the issuance of the Convertible Notes, we entered into capped call transactions with one of the initial purchasers of the Convertible Notes and other financial institutions, totaling \$27.2 million (the "Capped Calls"). The Capped Calls cover, subject to customary adjustments, the number of shares of our common stock that initially underlie the Convertible Notes (or 21,542,871 shares of our common stock). The Capped Calls have an initial strike price and an initial cap price of \$10.47 per share and \$15.80 per share, respectively, subject to certain adjustments. Conditions that cause adjustments to the initial strike price of the Capped Calls mirror conditions that result in corresponding adjustments to the conversion price of the Convertible Notes. The Capped Calls are expected to offset the potential dilution to our common stock as a result of any conversion of the Convertible Notes, subject to a cap based on the cap price.

For accounting purposes, the Capped Calls are considered separate financial instruments and not part of the Convertible Notes. As the Capped Calls transactions meet certain accounting criteria, we recorded the cost of the Capped Calls, totaling \$27.2 million, as a reduction to additional paid-in capital within the condensed consolidated statements of stockholders' equity.

## 8. Revenue Recognition

### Disaggregation of Revenues

The following table disaggregates our product revenue, net by product and geographic region and disaggregates our other revenues by geographic region (in thousands):

	Three Months Ended June 30, 2024			Three Months Ended June 30, 2023		
	U.S.	Non U.S.	Total	U.S.	Non U.S.	Total
Product revenue, net						
HEPLISAV-B	\$ 68,988	\$ 1,200	\$ 70,188	\$ 56,440	\$ -	\$ 56,440
Total product revenue, net	68,988	1,200	70,188	56,440	-	56,440
Other revenue	3,598	9	3,607	3,809	-	3,809
Total revenues	\$ 72,586	\$ 1,209	\$ 73,795	\$ 60,249	\$ -	\$ 60,249

  

	Six Months Ended June 30, 2024			Six Months Ended June 30, 2023		
	U.S.	Non U.S.	Total	U.S.	Non U.S.	Total
Product revenue, net						
HEPLISAV-B	\$ 115,685	\$ 2,347	\$ 118,032	\$ 99,891	\$ -	\$ 99,891
Total product revenue, net	115,685	2,347	118,032	99,891	-	99,891
Other revenue	6,400	152	6,552	7,283	-	7,283
Total revenues	\$ 122,085	\$ 2,499	\$ 124,584	\$ 107,174	\$ -	\$ 107,174

### Revenues from Major Customers and Collaboration Partners

All of our HEPLISAV-B sales in the U.S. are to certain wholesalers and specialty distributors whose principal customers include integrated delivery networks, retail pharmacies, independent hospitals and clinics, public health clinics and prisons, the Department of Defense, and the Department of Veterans Affairs. All of our HEPLISAV-B sales in Germany are to one distributor.

The following table summarizes HEPLISAV-B product revenue from each of our three largest customers (as a percentage of total HEPLISAV-B net product revenue):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2024	2023	2024	2023
Largest customer	28%	24%	28%	24%
Second largest customer	22%	21%	21%	23%
Third largest customer	18%	18%	18%	17%

### Contract Balances

The following table summarizes balances and activities in HEPLISAV-B product revenue allowance and reserve categories for the six months ended June 30, 2024 (in thousands):

	Balance at Beginning of Period	Provisions related to current period sales	Credit or payments made during the period	Adjustments related to prior periods	Balance at End of Period
Six months ended June 30, 2024:					
Accounts receivable reserves (1)	\$ 7,011	\$ 34,615	\$ (32,498)	\$ -	\$ 9,128
Revenue reserve accruals (2)	\$ 21,004	\$ 26,626	\$ (18,022)	\$ (709)	\$ 28,899

(1)Reserves are for chargebacks, discounts and other fees.

(2)Accruals are for returns, rebates and other fees.

When we perform services under our agreement with the DoD, we recognize product revenue and a corresponding contract asset as our right to consideration is conditioned on something other than the passage of time. See Note 6 for further discussion. The following table summarizes balances and activities in our contract asset account (in thousands):

	Balance at Beginning of Period	Additions	Subtractions	Balance at End of Period
Six months ended June 30, 2024				
Contract asset, included in other current assets (1)	\$ 1,389	\$ 6,400	\$ (5,396)	\$ 2,393
Contract asset, included in other assets (long term) (2)	\$ 71,307	\$ -	\$ -	\$ 71,307

(1) The \$2.4 million of contract asset is derived from our agreement with the DoD.

(2) The Clover contract asset was included in long term assets to reflect the timing of expected long term demand for CpG 1018 adjuvant for Clover Product. See Note 6 for further discussion.

## 9. Net Income (Loss) Per Share

Basic net income (loss) per share is computed by dividing net income (loss) attributable to common stockholders by the weighted-average number of shares of our common stock outstanding.

For the calculation of diluted net income per share, net income attributable to common stockholders for basic net income per share is adjusted by the effect of dilutive securities, including awards under our equity compensation plans and change in fair value of warrant liability. Diluted net income per share attributable to common stockholders is computed by dividing the resulting net income attributable to common stockholders by the weighted-average number of fully diluted common shares outstanding.

The numerators and denominators of the basic net income (loss) and diluted net income per share computations for our common stock are calculated as follows (in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2024	2023	2024	2023
<b>Numerator</b>				
Net income (loss) attributable to common stockholders, basic	\$ 11,386	\$ 3,431	\$ 2,665	\$ (20,901)
Add: interest expense on convertible notes	1,273	1,266	-	-
Net income (loss) attributable to common stockholders, diluted	\$ 12,659	\$ 4,697	\$ 2,665	\$ (20,901)
<b>Denominator</b>				
Weighted average common stock outstanding, basic	130,916	128,625	130,551	128,275
Effect of dilutive shares:				
Stock-based compensation plans	2,009	1,974	3,031	-
Convertible Notes (as converted to common stock)	21,543	21,543	-	-
Weighted average common stock outstanding, diluted	154,468	152,142	133,582	128,275
<b>Net income (loss) per share attributable to common stockholders</b>				
Basic	\$ 0.09	\$ 0.03	\$ 0.02	\$ (0.16)
Diluted	\$ 0.08	\$ 0.03	\$ 0.02	\$ (0.16)

The following were excluded from the calculation of diluted net income (loss) per share as the effect of their inclusion would have been anti-dilutive (in thousands).

	Three months ended June 30,		Six months ended June 30,	
	2024	2023	2024	2023
<b>Outstanding securities not included in diluted net income (loss) per share calculation:</b>				
Stock options and stock awards	8,891	6,900	6,966	15,532
Convertible Notes (as converted to common stock)	-	-	21,543	21,543
Total	8,891	6,900	28,509	37,075

## 10. Common Stock

### Common Stock Outstanding

As of June 30, 2024, there were 130,984,369 shares of our common stock outstanding.

We entered into an at-the-market Sales Agreement with Cowen and Company, LLC ("Cowen") on August 6, 2020 and an amendment to such agreement on August 3, 2023 (the sales agreement as amended, the "ATM Agreement"). Under the ATM Agreement, we may offer and sell from time to time, at our sole discretion, shares of our common stock having an aggregate offering price of up to \$120.0 million through Cowen as our sales agent. We agreed to pay Cowen a commission of up to 3% of the gross sales proceeds of any common stock sold through Cowen under the ATM Agreement. As of June 30, 2024, we had \$120.0 million remaining under the ATM Agreement.

## 11. Equity Plans and Stock-Based Compensation

### Equity Plans

In January 2021, we adopted the Dynavax Technologies Corporation 2021 Inducement Award Plan ("2021 Inducement Plan"), pursuant to which we reserved 1,500,000 shares of common stock for issuance under the plan to be used exclusively for grants of awards to individuals who were not previously our employees or directors. In June 2021, we amended the 2021 Inducement Plan ("Amended 2021 Inducement Plan") to increase the number of shares of common stock reserved under the 2021 Inducement Plan to 3,250,000. The Amended 2021 Inducement Plan was terminated effective as of April 3, 2022 and, therefore, there are no shares of our common stock available for grant.

In May 2024, our stockholders approved the amendment and restatement of our 2018 Equity Incentive Plan (the "Amended 2018 EIP") to, among other things, increase the authorized number of shares of common stock by 11,400,000. The maximum number of shares of common stock that may be issued under the Amended 2018 EIP, will not exceed 41,440,250 shares of common stock. As of June 30, 2024, the Amended 2018 EIP and the Amended and Restated 2014 Employee Stock Purchase Plan are our active plans (the "Plans").

The Amended 2018 EIP is administered by our Board of Directors, or a designated committee of the Board of Directors, and awards granted under the Amended 2018 EIP have a term of seven years unless earlier terminated by the Board of Directors. As of June 30, 2024, there were 14,193,145 shares of common stock reserved for issuance under the Amended 2018 EIP.

Under our Amended 2018 EIP, we may grant stock options, restricted stock units ("RSUs"), performance-based awards, and other awards that are settled in shares of our common stock. Our equity awards generally vest over a three-year period contingent

upon continuous service and unless exercised, expire seven or ten years from the date of grant (or earlier upon termination of continuous service). Activity under our Plans is set forth below:

### Stock Options

The following table summarizes the activity of stock options for the six months ended June 30, 2024:

	Shares Underlying Outstanding Options (in thousands)	Weighted- Average Exercise Price Per Share	Weighted- Average Remaining Contractual Term (years)	Aggregate Intrinsic Value (in thousands)
Balance as of December 31, 2023	10,120	\$ 10.78	4.18	\$ 37,388
Options granted	1,685	12.39		
Options exercised	(316)	7.28		
Options cancelled:				
Options forfeited (unvested)	(2)	9.52		
Options expired (vested)	(144)	14.63		
Balance as of June 30, 2024	11,343	\$ 11.07	4.22	\$ 14,929
Vested and expected to vest as of June 30, 2024	11,141	\$ 11.05	4.17	\$ 14,923
Exercisable as of June 30, 2024	8,118	\$ 10.65	3.51	\$ 14,696

### Restricted Stock Units

The following table summarizes the activity of RSUs for the six months ended June 30, 2024:

	Number of Shares (in thousands)	Weighted-Average Grant-Date Fair Value Per Share
Non-vested as of December 31, 2023	4,445	\$ 11.57
Granted	3,072	12.45
Vested (1)	(1,743)	11.07
Forfeited	(105)	12.48
Non-vested as of June 30, 2024	5,669	\$ 12.18

(1) Inclusive of approximately 676,958 RSUs for the six months ended June 30, 2024, which were not converted into shares due to net share settlement in order to cover the required amount of employee withholding taxes. The value of the withheld shares was classified as a reduction to additional paid-in capital.

### Market-based Performance Stock Units

We granted market-based performance restricted stock units ("PSUs") to certain executives. These PSUs vest upon a specified market condition. The summary of PSU activities for the six months ended June 30, 2024 is as follows:

	Number of Shares (in thousands)	Weighted-Average Grant-Date Fair Value Per Share
Non-vested as of December 31, 2023	557	\$ 15.95
Granted	558	17.23
Non-vested as of June 30, 2024	1,115	\$ 16.59

### Performance-based Options

As of June 30, 2024, approximately 36,000 shares underlying performance-based options were outstanding.

### Significant Assumptions in Estimating Option Fair Value

The fair value of each time-based option is estimated on the date of grant using the Black-Scholes option valuation model. The fair value of each RSU is determined at the date of grant using our closing stock price. The fair value of each PSU is estimated using the Monte Carlo simulation method on the date of grant. The weighted-average assumptions used in the calculations of these fair value measurements are as follows:

	Stock Options		Stock Options		Market-Based Performance Stock Units	
	Three Months Ended June 30,		Six Months Ended June 30,		Six Months Ended June 30,	
	2024	2023	2024	2023	2024	2023
Weighted-average fair value per share	\$ 7.48	\$ 7.13	\$ 7.84	\$ 7.26	\$ 17.23	\$ 18.25
Risk-free interest rate	4.3 %	3.8 %	4.2 %	4.0 %	4.3 %	4.3 %
Expected life (in years)	4.5	4.5	4.5	4.5	2.9	2.9
Volatility	0.8	0.8	0.8	0.8	0.6	0.9

#### Stock-based Compensation

Compensation expense is based on awards ultimately expected to vest and reflects estimated forfeitures. For equity awards with time-based vesting, the fair value is amortized to expense on a straight-line basis over the vesting periods.

We have also granted performance-based equity awards to certain of our employees. For equity awards with performance-based vesting criteria, the fair value is amortized to expense when the achievement of the vesting criteria becomes probable.

The following table summarizes stock-based compensation expense recorded in each component of operating expenses in our condensed consolidated statements of operations, and amounts capitalized to our inventories (in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2024	2023	2024	2023
Research and development	\$ 2,881	\$ 2,301	\$ 5,546	\$ 4,413
Selling, general and administrative	9,255	7,202	18,175	14,033
Cost of sales - product	549	399	1,108	1,094
Inventories	833	660	1,703	1,056
Total	\$ 13,518	\$ 10,562	\$ 26,532	\$ 20,596

## 12. Income Taxes

We are subject to U.S. federal, state and foreign income taxes. For the three and six months ended June 30, 2024, we recorded a provision for income taxes of approximately \$3.5 million and \$0.7 million, respectively. For the three and six months ended June 30, 2023, we recorded a provision for income taxes of approximately \$0.8 million and \$1.4 million, respectively. Our effective tax rate was approximately 23.6% and 21.8% for the three and six months ended June 30, 2024, respectively. Our effective tax rate was approximately (3.1)% and (5.7)% for the three and six months ended June 30, 2023, respectively. For the six months ended June 30, 2024, the primary difference between the effective tax rate and the federal statutory rate is driven by state and foreign tax expense. For the six months ended June 30, 2023, the primary difference between the effective tax rate and the federal statutory rate is due to the benefit of net operating losses utilized during the periods and the full valuation allowance we established on our federal, state, and certain foreign deferred tax assets.

The tax benefit of net operating losses, temporary differences and credit carryforwards is required to be recorded as an asset to the extent that management assesses that realization is "more likely than not." Realization of the future tax benefits is dependent on our ability to generate sufficient taxable income within the carryforward period. A high degree of judgment is required to determine if, and the extent to which, valuation allowances should be recorded against deferred tax assets. In making such determination, we consider all available positive and negative evidence, including future reversals of existing taxable temporary differences, projected future taxable income, tax planning strategies and recent financial operations. Based on all available evidence as of June 30, 2024, both positive and negative, and the weight of that evidence to the extent such evidence can be objectively verified, management believes that recognition of the deferred tax assets arising from the above-mentioned future tax benefits is currently not more likely than not to be realized, and, accordingly, has provided a valuation allowance.

## ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

*The following Management's Discussion and Analysis of Financial Condition and Results of Operations contains forward-looking statements that involve a number of risks and uncertainties. Our actual results could differ materially from those indicated by forward-looking statements as a result of various factors, including but not limited to, the period for which we estimate our cash resources are sufficient, the availability of additional funds, as well as those set forth under "Risk Factors" and those that may be identified from time to time in our reports and registration statements filed with the Securities and Exchange Commission.*

*The following discussion and analysis is intended to provide an investor with a narrative of our financial results and an evaluation of our financial condition and results of operations. This discussion should be read in conjunction with the unaudited Condensed Consolidated Financial Statements and related Notes included in Item 1 of this Quarterly Report on Form 10-Q and the Consolidated Financial Statements and the related Notes and Part II, Item 7 "Management's Discussion and Analysis of Financial Condition and Results of Operations" contained in our [Annual Report on Form 10-K for the year ended December 31, 2023](#).*

### Overview

We are a commercial stage biopharmaceutical company developing and commercializing innovative vaccines to help protect the world against infectious diseases. Our first marketed product, HEPLISAV-B® [Hepatitis B Vaccine (Recombinant), Adjuvanted], is approved in the United States, the European Union and Great Britain for the prevention of infection caused by all known subtypes of hepatitis B virus in adults aged 18 years and older. In May 2022, we commenced commercial shipments of HEPLISAV-B in Germany.

In April 2022, the CDC's Advisory Committee on Immunization Practices ("ACIP") published its universal recommendation for hepatitis B vaccination in adults, advising that all adults aged 19-59 should be vaccinated against hepatitis B. We believe this has helped create a significantly expanded total annual market opportunity that could grow to over \$800 million in the U.S. by 2027, with HEPLISAV-B well positioned to achieve a majority market share. Our annual revenue has continued to grow significantly since the recommendation was made, as a result of our successful efforts to capture a greater share of an expanding market.

We are advancing a pipeline of differentiated product candidates that leverage our CpG 1018 adjuvant to develop improved vaccines in indications with unmet medical needs. These programs include vaccine candidates under development for shingles, Tdap and plague. Additionally, we are working to advance product candidates utilizing our CpG 1018 adjuvant through discovery efforts and preclinical and clinical collaborations with third-party research organizations.

In addition, we manufacture and have supplied in the past, and could supply in the future, our CpG 1018 adjuvant to a number of global customers, including companies engaged in the development and manufacture of COVID-19 vaccines across a variety of vaccine platforms utilizing CpG 1018 adjuvant. While we did not recognize any CpG 1018 adjuvant revenue in 2023 or the first half of 2024, we could see new demand in the future if our collaborators work through their inventory on hand and need additional supply, or new programs utilizing our adjuvant advance to later stages up to and including commercialization. However, long-term demand, if any, for CpG 1018 adjuvant supporting COVID-19 or other vaccines will be highly dependent on each customer's ability to commercialize in respective territories and geographies where their respective COVID-19 or other vaccines are approved for use.

### **HEPLISAV-B® Vaccine [Hepatitis B Vaccine (Recombinant), Adjuvanted]**

In Phase 3 trials, HEPLISAV-B demonstrated faster and higher rates of protection with two doses in one month compared to another currently approved hepatitis B vaccine which requires three doses over six months, with a similar safety profile. HEPLISAV-B is the only two-dose hepatitis B vaccine for adults approved in the U.S., the European Union and Great Britain.

We have worldwide commercial rights to HEPLISAV-B and we market it in the United States and the European Union. There are four other vaccines approved for the prevention of hepatitis B in the U.S.: Engerix-B and Twinrix® from GlaxoSmithKline plc, Recombivax-HB® from Merck & Co and PreHevbrio™ from VBI Vaccines Inc. In February 2021, we received Marketing Authorization of HEPLISAV-B from the European Commission for prevention of infection caused by all known subtypes of hepatitis B virus in adults aged 18 years and older. In May 2021, we entered into a commercialization agreement with Bavarian Nordic for the marketing and distribution of HEPLISAV-B in Germany, and in May 2022, we commenced commercial shipments of HEPLISAV-B in Germany. In March 2023, we received marketing authorization in Great Britain for HEPLISAV-B for the active immunization against hepatitis B virus infection caused by all known subtypes of hepatitis B virus in adults aged 18 years and older.

All of our HEPLISAV-B sales in the U.S. are to certain wholesalers and specialty distributors whose principal customers include independent hospitals and clinics, integrated delivery networks, public health clinics and prisons, the Department of Defense, the Department of Veterans Affairs and retail pharmacies. All of our HEPLISAV-B sales in Germany are to one distributor. For the three and six months ended June 30, 2024, HEPLISAV-B product revenue, net was \$70.2 million and \$118.0 million, respectively.



### **CpG 1018® Adjuvant Supply for COVID-19 Vaccines**

In January 2021, we entered into an agreement (together with subsequent amendments, the "CEPI Agreement") with Coalition for Epidemic Preparedness Innovations ("CEPI") for the manufacture and reservation of a specified quantity of CpG 1018 adjuvant. In May 2021, we entered into the first amendment to the CEPI Agreement. The CEPI Agreement enabled CEPI to direct the supply of CpG 1018 adjuvant to CEPI partner(s). In exchange for reserving CpG 1018 adjuvant, CEPI agreed to provide advance payments in the form of an interest-free, unsecured, forgivable loan (the "Advance Payments") of up to \$176.4 million.

Through June 30, 2024, we have received Advance Payments totaling approximately \$175.0 million pursuant to the CEPI Agreement, of which \$67.3 million have been repaid and \$47.4 million have been forgiven (as discussed below). As of June 30, 2024, remaining Advance Payments totaling \$60.3 million were reflected in CEPI accrual long-term in our condensed consolidated balance sheets, representing the outstanding balance of the Advance Payments relating to the Clover Supply Agreement (as defined and discussed below). There were no deferred revenue balances related to the CEPI Agreement as of June 30, 2024 and December 31, 2023.

On April 27, 2023, we entered into a waiver and second amendment to the CEPI Agreement by and between us and CEPI (the "CEPI-Bio E Assignment Agreement"). Pursuant to the CEPI-Bio E Assignment Agreement, CEPI forgave the entirety of the outstanding Advance Payments for CpG 1018 Materials allocated to and ordered by Bio E under the CEPI Agreement and assumed our previous rights to \$47.4 million of Bio E accounts receivable.

In June 2021, we entered into an agreement (together with subsequent amendments, the "Clover Supply Agreement") with Zhejiang Clover Biopharmaceuticals, Inc. and Clover Biopharmaceuticals (Hong Kong) Co., Limited (collectively, "Clover") for the commercial supply of CpG 1018 adjuvant, for use with its protein-based COVID-19 vaccine candidate, SCB-2019. Under the Clover Supply Agreement, Clover committed to purchase specified quantities of CpG 1018 adjuvant, at pre-negotiated prices pursuant to the CEPI Agreement, for use in Clover's commercialization of vaccines containing SCB-2019 and CpG 1018 adjuvant ("Clover Product"). The Clover Supply Agreement also provided terms for Clover to order additional quantities of CpG 1018 adjuvant beyond the quantities reserved by CEPI. In 2022 and 2023, we signed four amendments to the Clover Supply Agreement. The terms and conditions of the Clover Supply Agreement were operative through December 2022, and as of December 31, 2022, we had satisfied all delivery obligations thereunder.

For CpG 1018 adjuvant reserved for Clover under the CEPI Agreement, Clover is obligated to pay us the purchase price upon the earliest of (i) the true-up exercise defined in the Clover Supply Agreement, (ii) within a specified period after Clover delivers Clover Product to a customer, or (iii) Clover's receipt of payment for Clover Product from a customer. When we transfer control of CpG 1018 adjuvant that is reserved under the CEPI Agreement, we recognize product revenue and a corresponding contract asset as our right to consideration is contingent on something other than the passage of time, as outlined above.

Approximately \$71.3 million relating to future amounts receivable representing a contract asset from Clover in connection with the CEPI Agreement is classified as other assets (long term) as of June 30, 2024. The classification as long term reflects the timing of expected utilization of CpG 1018 adjuvant for Clover Product expected to be sold under the CEPI Agreement. Corresponding Advance Payments of \$60.3 million relating to Clover are recorded in CEPI accrual long-term in our condensed consolidated balance sheets as of June 30, 2024. These Advance Payments may be repaid using cash collected from Clover or forgiven in accordance with the CEPI Agreement. We had no accounts receivable balance from Clover as of June 30, 2024 and December 31, 2023.

In July 2021, we entered into an agreement (together with subsequent amendments, the "Bio E Supply Agreement") with Biological E. Limited ("Bio E"), for the commercial supply of CpG 1018 adjuvant, for use with Bio E's subunit COVID-19 vaccine candidate, CORBEVAX™. Under the Bio E Supply Agreement, Bio E previously committed to purchase specified quantities of CpG 1018 adjuvant at pre-negotiated prices pursuant to the CEPI Agreement, for use in Bio E's commercialization of its CORBEVAX vaccine. The Bio E Supply Agreement also provided terms for Bio E to order additional quantities of CpG 1018 adjuvant beyond the quantities reserved by CEPI. In June 2022 and October 2022, we entered into two amendments to the Bio E Supply Agreement (the "Bio E Amendment No. 1" and the "Bio E Amendment No. 2," respectively, together the "Bio E Amendments"). The Bio E Amendments primarily established: (i) a new payment schedule for certain outstanding invoices related to the CEPI product to be the earlier of December 31, 2022, or receipt of certain amounts by Bio E from the Government of India in connection with their advance purchase agreement for CORBEVAX, and (ii) further modified the scope of the Bio E Supply Agreement, by reducing certain quantities of CpG 1018 adjuvant to be delivered. The terms and conditions of the Bio E Supply Agreement were operative through December 2022, and as of December 31, 2022, we had satisfied all delivery obligations thereunder.

As of June 30, 2024, we had no net accounts receivable balance from Bio E. During the first quarter of 2023, we recorded an allowance for doubtful accounts of \$12.3 million, which was determined by assessing changes in Bio E's credit risk, contemplation of ongoing negotiations relating to Bio E Amendment No. 3 (defined below), and Bio E's dependence on cash collections from the

Government of India, which were delayed and significantly reduced in connection with the overall reduction in demand for CORBEVAX from the Government of India.

On April 26, 2023, we entered into a third amendment to the Bio E Supply Agreement (the "Bio E Amendment No. 3"), and on April 27, 2023, we entered into the CEPI-Bio E Assignment Agreement. Pursuant to the CEPI-Bio E Assignment Agreement, CEPI forgave the entirety of remaining amounts outstanding relating to a liability for Advance Payments of \$47.4 million (the "Bio E CEPI Advance Payments") for CpG 1018 Materials allocated to Bio E, and assumed our previous rights to collect \$47.4 million of Bio E accounts receivable. Pursuant to the Bio E Amendment No. 3, we collected \$14.5 million from Bio E (including \$13.5 million in April 2023 and \$1.0 million in August 2023). Accordingly, as of June 30, 2024, the CEPI-Bio E Assignment Agreement resulted in: (i) no net accounts receivable balance, and (ii) the derecognition of \$47.4 million CEPI accrual in connection with the Bio E CEPI Advance Payments. The Bio E Amendment No. 3 provides for additional future payment of either \$5.5 million in the event that Bio E receives at least \$125.0 million, or \$12.3 million in the event that Bio E receives at least \$250.0 million in future payments from the Government of India associated with its CORBEVAX product on or before August 15, 2025. These additional amounts are not considered collectible until the achievement of these future milestones.

Past performance is not a reliable indicator of future performance, however, and future revenue and associated profit or loss may therefore vary significantly. Specifically, as our CpG 1018 adjuvant customers have purchased a significant quantity of CpG 1018 adjuvant as part of their initial COVID-19 vaccine development inventory, we currently expect minimal to no CpG 1018 adjuvant revenue for the remainder of 2024 associated with these arrangements. See Note 6 - Collaborative Research Development and License Agreements, in the accompanying notes to the unaudited condensed consolidated financial statements included in Part I, Item 1, "Financial Statements (unaudited)" of this Quarterly Report on Form 10-Q.

#### **Other**

In May 2021, we issued \$225.5 million aggregate principal amount of 2.50% convertible senior notes due 2026 (the "Convertible Notes") in a private placement. Total proceeds from the issuance of the Convertible Notes, net of debt issuance and offering costs of \$5.7 million, were \$219.8 million. We used \$190.2 million of the net proceeds to repay, in full, our outstanding debt and other obligations under our previous loan agreement with CRG Servicing LLC ("Loan Agreement") and \$27.2 million of the net proceeds to pay the costs of capped call transactions (the "Capped Calls").

In connection with the issuance of the Convertible Notes, we entered into the Capped Calls with one of the initial purchasers and other financial institutions, totaling \$27.2 million. The Capped Calls have an initial strike price and an initial cap price of \$10.47 per share and \$15.80 per share, respectively, subject to certain adjustments under the terms of the Capped Calls. The Capped Calls are freestanding and are considered separately exercisable from the Convertible Notes. The Capped Calls are expected to offset the potential dilution to our common stock as a result of any conversion of the Convertible Notes, subject to a cap based on the cap price.

#### **Seasonality**

HEPLISAV-B is currently our only revenue-producing product. We believe that HEPLISAV-B product revenue is, and will likely continue to be, subject to seasonal variations. Specifically, HEPLISAV-B product revenue has generally been, and will likely continue to be, lower in the fourth quarter of our fiscal year compared to the third quarter due to holiday schedules and increased focus by healthcare providers on respiratory disease vaccines, including vaccines for influenza, COVID-19 and respiratory syncytial virus, during the fall and winter months.

#### **Critical Accounting Estimates**

We prepare our unaudited condensed consolidated financial statements in accordance with U.S. generally accepted accounting principles. In doing so, we are required to make estimates and assumptions. Our critical accounting estimates are those estimates that involve a significant level of uncertainty at the time the estimate was made, and changes in them have had or are reasonably likely to have a material effect on our financial condition or results of operations. Actual results could differ materially from our estimates. We base our estimates on past experience and other assumptions that we believe are reasonable under the circumstances, and we evaluate these estimates on an ongoing basis.

We believe that there have been no significant changes in our critical accounting policies during the six months ended June 30, 2024, as compared with those disclosed in Part II, Item 7 "Management's Discussion and Analysis of Financial Condition and Results of Operations" in our [Annual Report on Form 10-K for the year ended December 31, 2023](#).

## Results of Operations

### Revenues

Revenues consist of amounts earned from product sales and other revenues. Product revenue, net, consists of sales of HEPLISAV-B.

Revenue from HEPLISAV-B product sales is recorded at the net sales price, which includes estimates of product returns, chargebacks, discounts, rebates and other fees. Overall, product revenue, net, reflects our best estimates of the amount of consideration to which we are entitled based on the terms of the contract.

Actual amounts of consideration ultimately received may differ from our estimates. If actual results in the future vary from our estimates, we will adjust these estimates, which would affect net product revenue and earnings in the period such variances become known.

The following is a summary of our revenues (in thousands, except for percentages):

Revenues:	Three Months Ended June 30,		Increase (Decrease) from 2023 to 2024		Six Months Ended June 30,		Increase (Decrease) from 2023 to 2024	
	2024	2023	\$	%	2024	2023	\$	%
HEPLISAV-B	\$ 70,188	\$ 56,440	\$ 13,74	24%	\$ 118,03	\$ 99,891	\$ 18,14	18%
Total product revenue, net	70,188	56,440	13,74	24%	118,03	99,891	18,14	18%
Other revenue	3,607	3,809	(202)	(5)%	6,552	7,283	(731)	(10)%
Total revenues	<u>\$ 73,795</u>	<u>\$ 60,249</u>	<u>\$ 13,54</u>	22%	<u>\$ 124,58</u>	<u>\$ 107,17</u>	<u>\$ 17,41</u>	16%

HEPLISAV-B product revenue increased by \$13.7 million and \$18.1 million for the three and six months ended June 30, 2024, respectively, compared to the same periods in 2023.

For the three and six months ended June 30, 2024, respectively, approximately \$11.3 million and \$12.7 million of the increase in product revenue was due to higher volume driven by continued improvement in market share, particularly in the integrated delivery networks and retail segments, and growth in the U.S. hepatitis-B vaccine market related to the Advisory Committee on Immunization Practices ("ACIP") universal recommendation. Increases in net sales price contributed approximately \$2.4 million and \$5.4 million for the three and six months ended June 30, 2024, respectively, compared to the same periods in 2023. Additionally, HEPLISAV-B product revenue, net included approximately \$1.2 million and \$2.3 million related to non-U.S. sales for the three and six months ended June 30, 2024, respectively.

Other revenue primarily includes revenue from our agreement with the DoD. We recognized \$3.6 million and \$6.4 million of revenue from our agreement with the DoD for the three and six months ended June 30, 2024, respectively.

### Cost of Sales - Product

Cost of sales - product consists primarily of raw materials, certain fill, finish and overhead costs and any inventory adjustment charges for HEPLISAV-B.

The following is a summary of our cost of sales - product (in thousands, except for percentages):

Cost of Sales - Product	Three Months Ended June 30,		Increase (Decrease) from 2023 to 2024		Six Months Ended June 30,		Increase (Decrease) from 2023 to 2024	
	2024	2023	\$	%	2024	2023	\$	%
HEPLISAV-B	\$ 11,985	\$ 13,537	\$ (1,552)	(11)%	\$ 22,952	\$ 28,249	\$ (5,297)	(19)%
Total cost of sales - product	<u>\$ 11,985</u>	<u>\$ 13,537</u>	<u>\$ (1,552)</u>	(11)%	<u>\$ 22,952</u>	<u>\$ 28,249</u>	<u>\$ (5,297)</u>	(19)%

HEPLISAV-B cost of sales-product decreased by \$1.6 million and \$5.3 million for the three and six months ended June 30, 2024, respectively, compared to the same periods in 2023. The decrease was primarily due to lower per-unit manufacturing costs as a result of previous process improvements, partially offset by the increase in HEPLISAV-B sales volume.

HEPLISAV-B cost of sales – product includes a \$1.3 million inventory write-off charge recorded during the six months ended June 30, 2024 for one manufacturing batch that did not meet approved release specifications. Comparatively, HEPLISAV-B cost of sales – product for the six months ended June 30, 2023 included a one-time charge in connection with improvement projects of \$2.1 million related to our facility in Düsseldorf.

### Research and Development Expenses

Research and development expenses are tracked on a program-by-program basis and consist primarily of costs incurred for the continued research and development of HEPLISAV-B and CpG 1018 adjuvant, clinical product candidates and preclinical studies, which include but are not limited to, compensation and related personnel costs (which include benefits, recruitment and travel costs), expenses incurred under agreements with contract research organizations, contract manufacturing organizations and service providers that assist in conducting clinical studies and costs associated with our preclinical activities, including engineering activities at our manufacturing facility in Düsseldorf related to functional improvements of our product and process advances, development activities and regulatory operations. We do not allocate stock-based compensation or facility expenses to specific programs because these costs are deployed across multiple programs.

The following is a summary of our research and development expenses (in thousands, except for percentages):

Program Expenses:	Three Months Ended June 30,		Increase (Decrease) from 2023 to 2024		Six Months Ended June 30,		Increase (Decrease) from 2023 to 2024	
	2024	2023	\$	%	2024	2023	\$	%
HEPLISAV-B development	\$ 900	\$ 27	\$ 873	3,233%	\$ 1,433	\$ 1,674	\$ (241)	(14)%
CpG 1018 adjuvant development	807	368	439	119%	1,565	875	690	79%
Shingles	3,882	4,401	(519)	(12)%	7,148	8,150	(1,002)	(12)%
Tdap	1,094	2,043	(949)	(46)%	2,686	3,671	(985)	(27)%
Plague (1)	1,755	1,829	(74)	(4)%	3,077	3,474	(397)	(11)%
Other	2,969	1,436	1,533	107%	5,670	3,251	2,419	74%
<b>Other research and development expenses:</b>								
Facility costs	662	641	21	3%	1,353	1,143	210	18%
Non-cash stock-based compensation	2,881	2,301	580	25%	5,546	4,413	1,133	26%
Total research and development	<u>\$ 14,950</u>	<u>\$ 13,046</u>	<u>\$ 1,904</u>	15%	<u>\$ 28,478</u>	<u>\$ 26,651</u>	<u>\$ 1,827</u>	7%

(1) In September 2021, we entered into an agreement with the DoD for the development of a recombinant plague vaccine utilizing CpG 1018 adjuvant. Under the agreement, we will conduct a Phase 2 clinical trial and studies combining our CpG 1018 adjuvant with the DoD's rF1V vaccine. We are being fully reimbursed by the DoD for the costs of this study which is recorded in other revenue in our condensed consolidated statements of operations.

Research and development expenses increased by \$1.9 million and \$1.8 million for the three and six months ended June 30, 2024, respectively, compared to the same periods in 2023.

- HEPLISAV-B development costs increased for the three months ended June 30, 2024 primarily due to continued investment in process improvements. HEPLISAV-B development costs decreased for the six months ended June 30, 2024 due to the non-recurrence of a \$1.0 million expense related to an engineering run performed for product testing purposes in 2023, partially offset by continued investment in process improvements.
- CpG 1018 adjuvant development costs increased for both periods due to investments in our preclinical and clinical research and collaborations.
- Shingles program costs decreased for both periods due to completion of activities related to the Phase 1 clinical trial in 2023, partially offset by costs in 2024 incurred for the initiation of a Phase 1/2 clinical trial, with the first participant being dosed in June 2024.
- Tdap program costs decreased for both periods as we completed the Phase 1 clinical trial in early 2023, and we are continuing to advance the program in 2024, including activities to support a long-term follow-up extension study of the Phase 1 trial.

- Plague program costs decreased for both periods as the Phase 2 clinical trial is nearing completion, as compared to higher costs incurred in early 2023 with our initiation of part 2 of the Phase 2 clinical trial.
- Other program costs increased for both periods as we continued to invest in product candidates utilizing our CpG 1018 adjuvant through discovery, preclinical and clinical efforts, including external collaborations.
- Non-cash stock-based compensation expense increased for both periods primarily due to incremental headcount to support the advancement of our clinical vaccine programs.

As we continue to progress our clinical-stage pipeline, we expect research and development expenses to continue to represent a substantial portion of our expenses and to continue to increase, both in dollar amount and proportion of total expense, in future years.

### **Selling, General and Administrative Expenses**

Selling, general and administrative expenses consist primarily of compensation and related costs for our commercial support personnel, medical education professionals and personnel in executive and other administrative functions, including legal, finance and information technology; costs for outside services such as sales and marketing, post-marketing studies of HEPLISAV-B, accounting, commercial development, consulting, business development, investor relations and insurance; legal costs that include corporate and patent-related expenses; allocated facility costs and non-cash stock-based compensation.

The following is a summary of our selling, general and administrative expenses (in thousands, except for percentages):

	Three Months Ended June 30,		Increase (Decrease) from 2023 to 2024		Six Months Ended June 30,		Increase (Decrease) from 2023 to 2024	
<b>Selling, General and Administrative:</b>	2024	2023	\$	%	2024	2023	\$	%
Compensation and related personnel costs	\$ 18,018	\$ 15,101	\$ 2,917	19%	\$ 36,677	\$ 30,975	\$ 5,702	18%
Outside services	11,760	11,772	(12)	—%	24,050	22,605	1,445	6%
Legal costs	862	897	(35)	(4)%	2,051	1,601	450	28%
Facility costs	1,767	2,099	(332)	(16)%	4,774	4,400	374	9%
Non-cash stock-based compensation	9,255	7,202	2,053	29%	18,175	14,033	4,142	30%
Total selling, general and administrative	<u>\$ 41,662</u>	<u>\$ 37,071</u>	<u>\$ 4,591</u>	12%	<u>\$ 85,727</u>	<u>\$ 73,614</u>	<u>\$ 12,113</u>	16%

Selling, general and administrative expenses increased by \$4.6 million and \$12.1 million for the three and six months ended June 30, 2024, respectively, compared to the same periods in 2023.

- Compensation and related personnel costs and non-cash stock-based compensation costs increased for both periods due to continued investments in headcount and personnel across field sales and administrative functions to support HEPLISAV-B and pipeline growth.
- Outside services for the three months period ended June 30, 2024 remained flat. Outside services for the six months period ended June 30, 2024 increased due to continued investments in commercial efforts designed to increase HEPLISAV-B market share and maximize the opportunities presented by the ACIP's universal recommendation.
- Legal costs for the three months period ended June 30, 2024 remained flat. Legal costs for the six months period ended June 30, 2024 increased due to support for our sublease termination, patent management for our growing pipeline and preclinical assets and increased securities and regulatory compliance.
- Facility costs varied for both periods due to the timing and amounts of lease maintenance credits.

### **Bad Debt Expense**

We did not record bad debt expense during the six months ended June 30, 2024. We recorded \$12.3 million of bad debt expense during the six months ended June 30, 2023 in connection with the allowance for doubtful accounts of \$12.3 million recorded with respect to outstanding accounts receivable from Bio E and relating to CpG 1018 Materials delivered under the Bio E Supply Agreement and CEPI Agreement. The allowance for doubtful accounts was determined by assessing changes in Bio E's credit risk, contemplation of ongoing negotiations relating to Bio E Amendment No 3, and Bio E's dependence on cash collections from the Government of India, which have been delayed significantly by the Government of India.

### Other Income (Expense)

Interest income is reported net of amortization of premiums and discounts on marketable securities and includes realized gains on investments. Interest expense includes the stated interest and accretion of discount of our Convertible Notes. Sublease income is recognized in connection with our sublease of office and laboratory space.

The following is a summary of our other income (expense) (in thousands, except for percentages):

	Three Months Ended June 30,		Increase (Decrease) from 2023 to 2024		Six Months Ended June 30,		Increase (Decrease) from 2023 to 2024	
	2024	2023	\$	%	2024	2023	\$	%
Interest income	\$ 9,201	\$ 7,378	\$ 1,823	25 %	\$ 18,668	\$ 13,975	\$ 4,693	34 %
Interest expense	\$ (1,698)	\$ (1,688)	\$ 10	1 %	\$ (3,393)	\$ (3,374)	\$ 19	1 %
Sublease income	\$ 2,205	\$ 1,993	\$ 212	11 %	\$ 603	\$ 3,591	\$ (2,988)	(83) %

- Interest income increased due to higher average yields and balances in our marketable securities portfolio.
- The decrease in sublease income for the six months ended June 30, 2024 is primarily due to the recognition of a net loss of \$3.5 million during the first quarter of 2024 in connection with a sublease termination, offset by sublease income of \$4.1 million during the six months ended June 30, 2024.

### Income Taxes

We are subject to U.S. federal, state and foreign income taxes. For the three and six months ended June 30, 2024, we recorded a provision for income taxes of approximately \$3.5 million and \$0.7 million, respectively. For the three and six months ended June 30, 2023, we recorded a provision for income taxes of approximately \$0.8 million and \$1.4 million, respectively. Our effective tax rate was approximately 23.6% and 21.8% for the three and six months ended June 30, 2024, respectively. Our effective tax rate was approximately (3.1)% and (5.7)% for the three and six months ended June 30, 2023, respectively. For the six months ended June 30, 2024, the primary difference between the effective tax rate and the federal statutory rate is driven by state and foreign tax expense. For the six months ended June 30, 2023, the primary difference between the effective tax rate and the federal statutory rate is due to the benefit of net operating losses utilized during the periods and the full valuation allowance we established on our federal, state, and certain foreign deferred tax assets.

### Liquidity and Capital Resources

As of June 30, 2024, we had \$735.6 million in cash and cash equivalents, and marketable securities. Since our inception, we have relied primarily on the proceeds from public and private sales of our equity securities, borrowings, government grants and revenues from product sales and collaboration agreements to fund our operations. Our funds are currently invested in money market funds, U.S. treasuries, U.S. government agency securities and corporate debt securities. We currently anticipate that our cash and cash equivalents, and short-term marketable securities as of June 30, 2024, and anticipated revenues from HEPLISAV-B will be sufficient to fund our operations for at least the next 12 months from the date of this filing and in the longer term.

Advanced payments received from CEPI to reserve a specified quantity of CpG 1018 adjuvant are initially accounted for as long-term deferred revenue. When we deliver CpG 1018 adjuvant to CEPI partner(s) or when we receive payment from CEPI partner(s), we reclassify the advanced payments from long-term deferred revenue to accrued liabilities. As of June 30, 2024, we had no CEPI-related net accounts receivable relating to Bio E. CEPI-related accruals and contract assets relating to Clover totaled \$60.3 million and \$71.3 million as of June 30, 2024, respectively. As of June 30, 2024, the CEPI-related accrual relating to Clover may be repaid using cash to be collected from Clover or forgiven in accordance with the CEPI Agreement.

On April 26, 2023, we entered into the Bio E Amendment No. 3, and on April 27, 2023, we entered into the CEPI-Bio E Assignment Agreement. Pursuant to the CEPI-Bio E Assignment Agreement, CEPI has forgiven the entirety of remaining amounts outstanding relating to the Bio E CEPI Advance Payments for CpG 1018 Materials allocated to Bio E and has assumed our previous rights to collect \$47.4 million of Bio E accounts receivable. The CEPI-Bio E Assignment Agreement resulted in no accounts receivable balance from Bio E. Pursuant to the Bio E Amendment No. 3, we collected \$13.5 million from Bio E in April 2023 and subsequently collected the remaining \$1.0 million in August 2023. The Bio E Amendment No. 3 provides for additional future payment of either \$5.5 million in the event that Bio E receives at least \$125.0 million, or \$12.3 million in the event that Bio E receives at least \$250.0 million in future payments from the Government of India associated with its CORBEVAX product on or before August 15, 2025. These additional amounts are not considered collectible until the achievement of these future milestones.

As of June 30, 2024, the aggregate principal amount of our Convertible Notes was \$225.5 million, excluding debt discount of \$2.2 million. The Convertible Notes bear interest at a rate of 2.50% per year, payable semiannually in arrears on May 15 and

November 15 of each year. The Convertible Notes mature on May 15, 2026, unless converted, redeemed or repurchased in accordance with their terms prior to such date. See Note 7 – Convertible Notes, in the accompanying notes to the unaudited condensed consolidated financial statements included in Part I, Item 1, “Financial Statements (unaudited)” of this Quarterly Report on Form 10-Q.

We entered into an at-the-market Sales Agreement with Cowen and Company, LLC (“Cowen”) on August 6, 2020 and an amendment to such agreement on August 3, 2023 (the sales agreement as amended, the “ATM Agreement”). Under the ATM Agreement, we may offer and sell from time to time, at our sole discretion, shares of our common stock having an aggregate offering price of up to \$120.0 million through Cowen as our sales agent. We agreed to pay Cowen a commission of up to 3% of the gross sales proceeds of any common stock sold through Cowen under the ATM Agreement. As of June 30, 2024, we had \$120.0 million remaining under the ATM Agreement.

Prior to January 1, 2021, we incurred net losses in each year since our inception. For the three and six months ended June 30, 2024, we recorded a net income of \$11.4 million and \$2.7 million, respectively. For the three and six months ended June 30, 2023, we recorded a net income of \$3.4 million and a net loss of \$20.9 million, respectively. We cannot be certain that sales of our products, and the revenue from our other activities will be sustainable. Further, we expect to continue to incur substantial expenses as we continue investing in commercialization of HEPLISAV-B, advancing our research and development pipeline, and investing in clinical trials and other development. If we cannot generate a sufficient amount of revenue from product sales, we will need to finance our operations through strategic alliance and licensing arrangements and/or future public or private debt and equity financings. Raising additional funds through the issuance of equity or debt securities could result in dilution to our existing stockholders, increased fixed interest payment obligations, or both. In addition, these securities may have rights senior to those of our common stock and could include covenants that would restrict our operations.

Our ability to raise additional capital in the equity and debt markets, should we choose to do so, is dependent on a number of factors, including, but not limited to, the market demand for our common stock, which itself is subject to a number of development and business risks and uncertainties, our creditworthiness and the uncertainty that we would be able to raise such additional capital at a price or on terms that are favorable to us or at all. In addition, our ability to raise additional funds may be adversely impacted by deteriorating global economic conditions and the recent or future disruptions to and volatility in the credit and financial markets in the United States and worldwide. Adequate financing may not be available to us on acceptable terms, or at all. If adequate funds are not available when needed, we may need to significantly reduce our operations while we seek strategic alternatives, which could have an adverse impact on our ability to achieve our intended business objectives.

During the six months ended June 30, 2024, we used \$6.0 million of cash in our operations, which consisted of a net income of \$2.7 million, \$28.6 million of net adjustments from non-cash items, which included stock-based compensation, sublease termination loss, depreciation and amortization, amortization of right-of-use assets, non-cash interest expense, accretion of discounts on marketable securities and inventory write off, and approximately \$37.2 million net changes from operating assets and liabilities, which included an increase of \$18.1 million in accounts and other receivables net driven by higher sales, an increase of \$10.4 million in inventories primarily related to higher number of batches produced, and an increase of \$6.3 million in prepaid assets and other current assets primarily related to interest receivable, prepaid taxes, and prepaid insurance. By comparison, during the six months ended June 30, 2023, we generated \$55.7 million of cash from our operations, which consisted of a net loss of \$20.9 million, a \$29.7 million of net adjustments from non-cash items, which included stock-based compensation, depreciation and amortization, amortization of right-of-use assets, non-cash interest expense, accretion of discounts on marketable securities and bad debt expense, and approximately \$46.9 million net changes from operating assets and liabilities, which included a decrease of \$42.4 million in accounts and other receivables, net, a decrease of \$6.4 million in inventories and an increase of \$3.2 million in prepaid assets and other current assets. Net cash used in operating activities is also impacted by changes in our operating assets and liabilities due to timing of cash receipts and expenditures.

During the six months ended June 30, 2024, net cash used by investing activities was \$25.9 million compared to \$27.6 million of cash used in investing activities for the six months ended June 30, 2023. Cash used by investing activities during the six months ended June 30, 2024 included \$24.4 million of net purchases of marketable securities compared to \$25.6 million of net purchases of marketable securities for the six months ended June 30, 2023.

During the six months ended June 30, 2024, net cash used in financing activities was \$5.6 million compared to \$3.4 million of cash used in financing activities for the six months ended June 30, 2024. Cash used in financing activities for the six months ended June 30, 2024 included \$8.6 million for the payments of taxes related to net share settlement of RSUs, partially offset by proceeds received from the exercise of options and from purchases under our employee stock purchase plan for approximately \$3.0 million combined. Cash used in financing activities for the six months ended June 30, 2023 included \$5.8 million for the payments of taxes

related to net share settlement of RSUs, partially offset by proceeds received from the exercise of options and from purchases under our employee stock purchase plan for \$2.4 million combined.

***Contractual Obligations***

As of June 30, 2024, our material non-cancelable purchase commitments for the supply of HEPLISAV-B totaled \$38.2 million. Included in the balance of our material non-cancelable purchase and other commitments for the supply of HEPLISAV-B, as of June 30, 2024, our aggregate minimum commitment for the supply of CpG 1018 adjuvant under the Avecia Supply Agreement was \$7.4 million for the 12 months following June 30, 2024.

On February 22, 2024, our third-party subtenant obtained the approval of a voluntary petition for relief under Chapter 11 of the United States Code. As a consequence, the sublease agreement with that third-party for the subleased premises (approximately 75,662 square feet of office/laboratory space located at 5959 Horton Street, Emeryville, California) was terminated effective March 7, 2024. Simultaneously, on March 7, 2024, we entered into a new sublease agreement with a different third-party under similar conditions and for the same premises. See Note 5 - Commitments and Contingencies, in the accompanying notes to the unaudited condensed consolidated financial statements included in Part I, Item 1, "Financial Statements (unaudited)" of this Quarterly Report on Form 10-Q.

There were no other material changes to the contractual obligations previously disclosed in Part II, Item 7 "Management's Discussion and Analysis of Financial Condition and Results of Operations" in our [Annual Report on Form 10-K for the year ended December 31, 2023](#).



### ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

During the six months ended June 30, 2024, there were no material changes to our market risk disclosures as set forth in Part II, Item 7A, "Quantitative and Qualitative Disclosures About Market Risk" in our [Annual Report on Form 10-K for the year ended December 31, 2023](#).

### ITEM 4. CONTROLS AND PROCEDURES

#### (a) Evaluation of disclosure controls and procedures

We maintain disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended (the "Exchange Act")) that are designed to ensure that information required to be disclosed in our Exchange Act reports is recorded, processed, summarized and reported within the time periods specified in the Securities and Exchange Commission rules and forms and that such information is accumulated and communicated to our management, including our Principal Executive Officer and Principal Financial Officer, as appropriate, to allow for timely decisions regarding required disclosure. In designing and evaluating the disclosure controls and procedures, management recognizes that any controls and procedures, no matter how well designed and operated, can only provide reasonable, not absolute, assurance of achieving the desired control objectives.

Based on their evaluation of the effectiveness of the design and operation of our disclosure controls and procedures as of the end of the period covered by this report, our management, with participation of our Chief Executive Officer and our Chief Financial Officer, concluded that our disclosure controls and procedures are effective and were operating at the reasonable assurance level to ensure that information required to be disclosed by us in reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the Securities and Exchange Commission rules and forms.

#### (b) Changes in internal controls

There have been no changes in our internal controls over financial reporting as defined in Rule 13a-15(f) under the Exchange Act during our most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, our internal controls over financial reporting.

## PART II. OTHER INFORMATION

### ITEM 1. LEGAL PROCEEDINGS

From time to time in the ordinary course of business, we receive claims or allegations regarding various matters, including employment, vendor and other similar situations in the conduct of our operations. We are not currently aware of any material legal proceedings involving the Company.

### ITEM 1A. RISK FACTORS

*Various statements in this Quarterly Report on Form 10-Q are forward-looking statements, including, but not limited to, statements concerning our future efforts to obtain regulatory approval, advance our collaborations and our pipeline, manufacture and commercialize approved products, or expectations about our anticipated expenses, revenues, liquidity and cash needs, as well as our plans and strategies. These forward-looking statements are based on current expectations and we assume no obligation to update this information. Numerous factors could cause our actual results to differ significantly from the results described in these forward-looking statements, including those in the risk factors that follow. There have been no material changes from, or additions to, the risks described under Part 1, Item 1A "Risk Factors" included in our [Annual Report on Form 10-K for the year ended December 31, 2023](#) that was filed with the Securities and Exchange Commission on February 22, 2024.*

## RISK FACTOR SUMMARY

Below is a summary of material factors that make an investment in our securities speculative or risky. Importantly, this summary does not address all of the risks and uncertainties that we face. Additional discussion of the risks and uncertainties summarized in this risk factor summary, as well as other risks and uncertainties that we face, can be found in the more detailed discussion that follows this summary, and the below summary is qualified in its entirety by that more complete discussion of such risks and uncertainties. You should carefully consider the risks and uncertainties described herein as part of your evaluation of an investment in our securities:

- HEPLISAV-B has been approved in the United States, the European Union and Great Britain and launched in the United States and Germany, and there is significant competition in these marketplaces. Since this is our first marketed product, the timing of uptake and distribution efforts are unpredictable and there is a risk that we may not achieve and sustain commercial success for HEPLISAV-B.
- Our financial results may vary significantly from quarter to quarter or may fall below the expectations of investors or securities analysts, each of which may adversely affect our stock price.
- We have incurred annual net losses in most years since our inception and could continue to incur significant losses if we do not successfully commercialize HEPLISAV-B, launch new products and/or significant sales of our CpG 1018 adjuvant do not resume. Until we are able to generate significant revenues or achieve profitability through product sales on a consistent basis, we may require substantial additional capital to finance our operations.
- Many of our competitors have greater financial resources and expertise than we do. If we are unable to successfully compete with existing or potential competitors as a result of these disadvantages, we may be unable to generate sufficient, or any, revenues and our business will be harmed.
- We rely on our facility in Düsseldorf, Germany and third parties to supply materials or perform processes necessary to manufacture our products and our product candidates. We rely on a limited number of suppliers to produce the oligonucleotides we require for development and commercialization. Additionally, we have limited experience in manufacturing our products or product candidates in commercial quantities. With respect to HEPLISAV-B, we use a pre-filled syringe presentation of the vaccine and our ability to meet future demand will depend on our ability to manufacture or have manufactured sufficient supply in this presentation.
- As we continue to focus on the commercialization of our HEPLISAV-B vaccine and our CpG 1018 adjuvant, we may encounter difficulties in managing our commercial growth and expanding our operations successfully.
- As we continue to grow as a commercial organization and enter into supply agreements with customers, those supply agreements will have obligations to deliver product that we are reliant upon third parties to manufacture on our behalf.
- We face uncertainty regarding coverage, pricing and reimbursement and the practices of third-party payors, which may make it difficult or impossible to sell certain of our products or product candidates on commercially reasonable terms.
- We are subject to ongoing United States Food and Drug Administration ("FDA"), EU and comparable foreign post-marketing obligations concerning HEPLISAV-B, which may result in significant additional expense, and we may be subject to penalties if we fail to comply with regulatory requirements or experience unanticipated regulatory issues with HEPLISAV-B. If HEPLISAV-B or any products we develop are not accepted by the market or if regulatory authorities limit our labeling indications, require labeling content that diminishes market uptake of HEPLISAV-B or any other products we develop, or limit our marketing claims, we may be unable to generate significant future revenues, if any.
- HEPLISAV-B and all of our clinical programs rely on oligonucleotide toll-like receptor ("TLR") agonists. In the event of serious adverse events relating to TLR agonists, we may be required to reduce the scope of, or discontinue, our operations, or reevaluate the viability of strategic alternatives.
- HEPLISAV-B is subject to regulatory obligations and continued regulatory review, and if we receive regulatory approval for our other product candidates, we will be subject to ongoing FDA and foreign regulatory obligations and continued regulatory review for such products.
- Regulatory authorities may require more clinical trials for our product candidates than we currently expect or are conducting before granting regulatory approval, if regulatory approval is granted at all. Our clinical trials may be extended which may lead to substantial delays in the regulatory approval process for our product candidates and may impair our ability to generate revenues.
- Clinical trials for our commercial product and product candidates are expensive and time consuming, may take longer than we expect or may not be completed at all, and have uncertain outcomes.

- A key part of our business strategy for products in development is to establish collaborative relationships to help fund or manage development and commercialization of our product candidates and research programs. We may not succeed in establishing and maintaining collaborative relationships, which may significantly limit our ability to continue to develop and commercialize those products and programs, if at all.
- As we plan for the broader commercialization of our HEPLISAV-B vaccine and for the requisite capacity to manufacture our CpG 1018 adjuvant, our financial commitments for manufacturing and supply capacity might outpace actual demand for our products.
- We may develop, seek regulatory approval for and market HEPLISAV-B or any other product candidates outside of the U.S., the European Union and Great Britain, requiring a significant additional commitment of resources. Failure to successfully manage our international operations could result in significant unanticipated costs and delays in regulatory approval or commercialization of our products or product candidates.
- We rely on clinical research organizations (“CROs”) and clinical sites and investigators for our clinical trials. If these third parties do not fulfill their contractual obligations or meet expected deadlines, our planned clinical trials may be delayed and we may fail to obtain the regulatory approvals necessary to commercialize our product candidates.
- As a biopharmaceutical company, we engage CROs to conduct clinical studies, and failure by us or our CROs to conduct a clinical study in accordance with good clinical practices (“GCP”) standards and other applicable regulatory requirements could result in disqualification of the applicable clinical trial from consideration in support of approval of a potential product.
- If third parties assert that we have infringed their patents or other proprietary rights or challenge our patents or other proprietary rights, we may become involved in disputes and litigation that would be costly, time consuming and have a negative impact on the commercialization of our current products and delay or prevent development or commercialization of our product candidates.
- Our stock price is subject to volatility, and your investment may suffer a decline in value.
- Future sales of our common stock or the perception that such sales may occur in the public market could cause our stock price to fall.
- Servicing our debt requires a significant amount of cash, and we may not have sufficient cash flow from our business to pay our substantial debt. Conversion of the Convertible Notes (defined below) may dilute the ownership interest of our stockholders or may otherwise depress the price of our common stock.
- The loss of key personnel could delay or prevent achieving our objectives. In addition, our continued growth to support commercialization may result in difficulties in managing our growth and expanding our operations successfully.
- If our information technology systems or those of third parties upon which we rely, or our data are or were compromised, we could experience adverse consequences resulting from such compromise, including but not limited to regulatory investigations or actions; litigation; fines and penalties; disruptions of our business operations; reputational harm; loss of revenue or profits; and other adverse consequences.

## Risks Related to our Business and Capital Requirements

***HEPLISAV-B has been approved in the United States, the European Union and Great Britain and launched in the United States and Germany, and there is significant competition in these marketplaces. Since this is our first marketed product, the timing of uptake and distribution efforts are unpredictable and there is a risk that we may not achieve and sustain commercial success for HEPLISAV-B.***

We have established sales, marketing and distribution capabilities and commercialized HEPLISAV-B in the United States and Germany. We have also received approval in the European Union and Great Britain for HEPLISAV-B. Successful commercialization of HEPLISAV-B in these regions or elsewhere will require significant resources and time, and there can be no certainty that we will succeed in these efforts. While our personnel are experienced with respect to marketing of healthcare products, because HEPLISAV-B is our first marketed product, the potential uptake of the product through distribution, and the timing, trajectory, rate and sustainability for growth in sales is unpredictable, and we may not be successful in commercializing HEPLISAV-B in the long term. In particular, successful commercialization of HEPLISAV-B will require that we continue to negotiate and enter into contracts with wholesalers, distributors, group purchasing organizations, and other parties, and that we maintain those contractual relationships. There is a risk

that we may fail to complete or maintain some or all of these important contracts on favorable terms or at all, or that in a potentially evolving reimbursement environment, our efforts may fail to overcome established competition at favorable pricing, or at all.

We have continued to expand our field sales force. As these teams expand, it will take time for our expanded teams to generate significant sales momentum, if they do so at all. Although we have had some success growing and developing our field sales force following the launch of HEPLISAV-B, there is no guarantee that we will be able to generate sales at the same or improved rates going forward, if at all. In addition, retention of capable sales personnel may be more difficult for us compared to our competitors, as we focus on a single product offering. We must retain our sales force in order for HEPLISAV-B to maintain or expand its commercial presence.

Moreover, we expect that we will need to divert resources in order to successfully market, sell and distribute HEPLISAV-B for use with dialysis patients, one of our targeted patient populations. We do not yet have approval to market the regimen for dialysis. Although the Centers for Disease Control and Prevention ("CDC") and the CDC's Advisory Committee on Immunization Practices ("ACIP") recommend that all adults aged 19-59, including patients on dialysis, receive hepatitis B vaccinations, our predictions of how many of those patients actually receive HEPLISAV-B may be inaccurate.

In addition to the risks with employing and maintaining our own commercial capabilities and with contracting, other factors that may inhibit our efforts to successfully commercialize HEPLISAV-B include:

- whether we are able to continue recruiting and retaining adequate numbers of effective sales and marketing personnel;
- whether we are able to access key health care providers to discuss HEPLISAV-B;
- whether we can continue to compete successfully as a relatively new entrant in established distribution channels for vaccine products; and
- whether we will maintain sufficient financial resources to cover the costs and expenses associated with sustaining a capable sales and marketing organization and related commercial infrastructure.

If we are not able to enter new markets ourselves, we may be required to collaborate or partner HEPLISAV-B with a third-party pharmaceutical or biotechnology company with existing products. To the extent we collaborate or partner, as we have done for HEPLISAV-B distribution in Germany, the product's financial value will be shared with another party and we will need to establish and maintain a successful collaboration arrangement, and we may not be able to enter into these arrangements on acceptable terms or in a timely manner in order to establish HEPLISAV-B in these new markets. To the extent that we enter into co-promotion or other arrangements, any revenues we receive will depend upon the efforts of third parties, which may not be successful and are only partially in our control. In that event, our product revenues may be lower than if we marketed and sold our products directly with the highest priority, and we may be required to reduce or eliminate much of our commercial infrastructure and personnel as a result of such collaboration or partnership.

Governments influence the price of medicinal products in the European Union through their pricing and reimbursement rules and control of national healthcare systems that fund a large part of the cost of those products to consumers. Even though we have been granted a marketing authorization in the European Union for HEPLISAV-B, we have yet to obtain broad reimbursements and pricing approval in any European Union Member State and rely on our distributor to do so, who currently only markets in Germany. Some jurisdictions operate positive and negative list systems under which products may only be marketed once a reimbursement price has been agreed. To obtain reimbursement or pricing approval, some of these countries may require the completion of clinical trials that compare the cost-effectiveness of a particular product candidate to currently available therapies. Other European Union Member States allow companies to fix their own prices for medicines, but monitor and control company profits. Any delay in being able to market our products in the European Union, Great Britain or elsewhere may adversely affect our business and financial condition.

If we, or our partners, are not successful in setting our marketing, pricing and reimbursement strategies, recruiting and maintaining effective sales and marketing personnel or building and maintaining the infrastructure to support commercial operations in the U.S., Germany and elsewhere, we will have difficulty successfully commercializing HEPLISAV-B, which would adversely affect our business and financial condition.

***Our financial results may vary significantly from quarter to quarter or may fall below the expectations of investors or securities analysts, each of which may adversely affect our stock price.***

Numerous factors, many of which are outside our control, may cause or contribute to significant fluctuations in our quarterly and annual operating results. For example, during the year ended December 31, 2022, we recognized \$587.7 million of CpG 1018 adjuvant revenue. However, our CpG 1018 adjuvant supply agreements expired at the end of 2022, and as a result, we did not recognize CpG 1018 adjuvant revenue for the year ended December 31, 2023 nor for the six months ended June 30, 2024. Similarly, if demand for HEPLISAV-B decreases from recent trends for any reason, that could also cause unexpected fluctuations in our quarterly and annual operating results.

The occurrence and timing of any transfer of control of product sold to customers can also be difficult to predict, and the recognition of revenue can vary widely depending on timing of product deliveries and satisfaction of other obligations. As an example, any future revenue we do receive from sales of our CpG 1018 adjuvant has been and will continue to be difficult to predict, if it materializes at all. Historically, we generally required customers to place orders for CpG 1018 adjuvant with at least six months lead time and to make an advance payment toward the finished order. Where we receive such advance payments, we record such payments as deferred revenue until we have delivered the adjuvant and met all criteria to recognize revenue. In accordance with our stated revenue policy, we historically recorded revenue for these contracts upon meeting all of the criteria for revenue recognition under Accounting Standards Codification 606, which includes, among other criteria, the transfer of control for CpG 1018 adjuvant to our customer. During the year ended December 31, 2023, we did not receive any advanced payments from any of our customers to purchase CpG 1018 adjuvant. Our collaborators in many cases have purchase agreements with government agencies. If our collaborators do not receive payment from these agencies for any past or future adjuvant orders, our ability to collect our own receivables may be adversely affected. For example, as of December 31, 2023, we had recorded an allowance for doubtful accounts of \$12.3 million in connection with our accounts receivable balance due from Bio E, which was determined by assessing changes in Bio E's credit risk, contemplation of ongoing negotiations relating to an amendment to the supply agreement with Bio E, and Bio E's dependence on cash collections from the Government of India, which have been delayed significantly by the Government of India.

We have in the past, and may in the future, adjust delivery dates, allow cancellations or give concessions on outstanding receivables in certain circumstances to better enable our customers to meet their obligations, which can impact the timing or amount of our revenue recognition, cash collections and transfer of control. For example, in August and October 2022, we entered into amendments to our Supply Agreement, dated June 29, 2021, with Zhejiang Clover Biopharmaceuticals, Inc. and Clover Biopharmaceuticals (Hong Kong) Co., Limited (the "Clover Supply Agreement"), which, among other things, modified the scope of the Clover Supply Agreement to reduce certain quantities of CpG 1018 adjuvant deliverable under the agreement and/or reduce amounts receivable, which we originally intended to deliver in accordance with a purchase order previously issued by Clover, and apply prepayments Clover previously made to us as payment for portions of pending outstanding purchase orders. In January 2023, we entered into another amendment to the Clover Supply Agreement to modify the price per dose of CpG 1018 adjuvant paid by Clover for adjuvant used in finished vaccine doses sold through government procurement programs relating to the booster program promoted by the China National Health Commission. In addition, in April 2023, we entered into the Bio E Amendment No. 3 and the CEPI-Bio E Assignment Agreement, pursuant to which CEPI forgave amounts outstanding relating to the Bio E CEPI Advance Payments and assumed our previous rights to collect \$47.4 million of Bio E accounts receivable. Among other things, the CEPI-Bio E Assignment Agreement resulted in no accounts receivable from Bio E, the derecognition of \$47.4 million CEPI accrual in connection with the Bio E CEPI Advance Payments, and certain additional future payments contingent on Bio E's receipt of payments from the Government of India associated with its CORBEVAX product on or before August 15, 2025, which may not materialize.

Moreover, our revenue or operating expenses in one period may be disproportionately higher or lower relative to the others due to, among other factors, revenue fluctuations or increases in expenses as we invest in our pipeline. Accordingly, comparing our operating results on a period-to-period basis may not be meaningful, and investors should not rely on any particular past results as an indication of our future performance. If such fluctuations occur or if our operating results deviate from our expectations or the expectations of investors or securities analysts, our stock price may be adversely affected.

***We have incurred annual net losses in most years since our inception and could continue to incur significant losses if we do not successfully commercialize HEPLISAV-B, launch new products and/or significant sales of our CpG 1018 adjuvant do not resume.***

Prior to January 1, 2021, we had incurred losses in each year since we commenced operations in 1996. We recognized a net income of \$11.4 million and \$2.7 million for the three and six months ended June 30, 2024, respectively. As of June 30, 2024, we had an accumulated deficit of \$927.9 million.

With our investment in the launch and commercialization of HEPLISAV-B in the United States and Germany, we have in the past, and could in the future, incur operating losses. Our expenses have increased substantially as we maintain our HEPLISAV-B commercial infrastructure, including investments in internal infrastructure to support our field sales force and investments in manufacturing and supply chain commitments to maintain commercial supply of HEPLISAV-B. Further, we expect to increase research and development costs as we invest in our pipeline. We are already advancing a multi-program clinical pipeline leveraging CpG 1018 adjuvant to develop improved vaccines in indications with unmet medical needs including a recently initiated Phase 1/2 clinical trial in shingles, a recently initiated Phase 1 extension study in Tdap, and a Phase 2 clinical trial for plague in collaboration with and fully funded by the U.S. Department of Defense ("DoD") expected to be completed in the fourth quarter of 2024. We expect research and development costs to increase further if we add additional programs to our pipeline.

Sales of CpG 1018 adjuvant generated significant revenue during the COVID-19 pandemic, but we do not expect such revenues to continue in the long term, and we did not recognize any CpG 1018 adjuvant revenue in the year ended December 31, 2023. The timing for uptake of our products in the U.S. and abroad may further affect costs or losses related to commercialization. Due to the numerous risks and uncertainties associated with developing and commercializing vaccine products or other products we may choose

to offer in the future, we are unable to predict the extent of any future losses or when, if ever, we will become profitable on an annual recurring basis, or, that if we are able to reach consistent profitability that it will be sustainable for any period of time.

***Many of our competitors have greater financial resources and expertise than we do. If we are unable to successfully compete with existing or potential competitors as a result of these disadvantages, we may be unable to generate sufficient, or any, revenues and our business will be harmed.***

We compete with pharmaceutical companies, biotechnology companies, academic institutions and research organizations, in developing and marketing vaccines and adjuvants. For example, HEPLISAV-B competes in the U.S. with established hepatitis B vaccines marketed by Merck, GlaxoSmithKline plc ("GSK") and VBI Vaccines Inc. ("VBI"), and with vaccines from those companies as well as several additional established pharmaceutical companies who market abroad. There are also modified schedules of conventional hepatitis B vaccines for limited age ranges that are approved in the United States, the European Union and Great Britain. Competition in European markets could affect our success or the success of our distributor in that market as well. In addition, HEPLISAV-B competes against Twinrix, a bivalent vaccine marketed by GSK for protection against hepatitis B and hepatitis A.

We are also in competition with companies developing vaccines and vaccine adjuvants, generally including, among others, GSK, Pfizer, Inc., Sanofi S.A., Merck, Bavarian Nordic A/S, Emergent BioSolutions, Inc., Novavax, Inc., Medicago Inc., Valneva, AstraZeneca plc, Moderna, Inc., Johnson & Johnson, VBI, BioNTech SE and Curevo Vaccine. We will likely compete with several of these companies in the hepatitis space, shingles space, Tdap space and other spaces occupied by any other product candidates we ultimately choose to advance through our pipeline in the future.

Products in our clinical pipeline, if approved, will also face competition from competitors who have competing clinical programs or already approved products. Existing and potential competitors or other market participants may also compete with us for qualified commercial, scientific and management personnel, as well as for technology that would otherwise be advantageous to our business. Our success in developing marketable products and achieving a competitive position will depend, in part, on our ability to attract and retain qualified personnel in the near-term, particularly with respect to HEPLISAV-B commercialization. If we do not succeed in attracting new personnel and retaining and motivating existing personnel, our operations may suffer and we may be unable to properly manage our business, obtain financing as needed, enter into collaborative arrangements, advance or sell our product candidates or generate revenues.

***We rely on our facility in Düsseldorf, Germany and third parties to supply materials or perform processes necessary to manufacture our products and our product candidates. We rely on a limited number of suppliers to produce the oligonucleotides we require for development and commercialization. Additionally, we have limited experience in manufacturing our products or product candidates in commercial quantities. With respect to HEPLISAV-B, we use a pre-filled syringe presentation of the vaccine and our ability to meet future demand will depend on our ability to manufacture or have manufactured sufficient supply in this presentation.***

We rely on our facility in Düsseldorf and third parties to perform the multiple processes involved in manufacturing hepatitis B surface antigen for use in HEPLISAV-B, the combination of the oligonucleotide and the antigens, and formulation, fill and finish. We may continue to do the same for any additional products we might add in the future through natural internal expansion of our pipeline, or in transactions with an external third-party or parties. The FDA approved our pre-filled syringe presentation of HEPLISAV-B in 2018 and we expect such presentation will be the sole presentation for HEPLISAV-B going forward. We have limited experience in manufacturing and supplying this presentation ourselves, and rely on a contract manufacturer to do so. Our contract manufacturer is the only approved provider that we have, and there can be no assurance that we or they can successfully manufacture sufficient quantities of pre-filled syringes in compliance with good manufacturing practice ("GMP") in order to meet market demand, whether because of problems with our supplier's own operations, operations of its sub-suppliers, issues with downstream supply chains or otherwise. If our contract manufacturer is unable to source components needed to complete fill and finish of our pre-filled syringes, we may be required to identify a second source which would have associated costs and regulatory requirements. Qualifying a second source could take more than a year to accomplish. If we are unable to do all this, on a timely basis or at all, our HEPLISAV-B sales could be materially and adversely impacted.

Historically, we have also relied on a limited number of suppliers to produce oligonucleotides for clinical trials and a single supplier to produce (i) our CpG 1018 adjuvant for manufacture of HEPLISAV-B and for sale to our collaborators and (ii) our pre-filled syringe presentation. In 2021, we qualified a second supplier to manufacture CpG 1018 adjuvant for our COVID business. If we are unable to maintain our existing suppliers for CpG 1018 adjuvant, we would have to establish an alternate qualified manufacturing capability ourselves, which would result in significant additional operating costs and delays in manufacturing HEPLISAV-B, or CpG 1018 adjuvant, and developing and commercializing our, and potentially our collaborators', product candidates. We or other third parties may not be able to produce product at a cost, quantity and quality that are available from our current third-party suppliers, or at all.

In countries outside of the U.S., we may not be able to comply with comparable foreign regulations, and our manufacturing process may be subject to delays, disruptions or quality control/quality assurance problems. Noncompliance with these regulations or other problems with our manufacturing process may limit or disrupt the commercialization of our products or our and our collaborators' product candidates and could result in significant expense.

***As we continue to focus on the commercialization of our HEPLISAV-B vaccine and our CpG 1018 adjuvant, we may encounter difficulties in managing our commercial growth and expanding our operations successfully.***

As our commercial operations expand, we expect that we will also need to manage additional relationships with various third parties, including sole source suppliers, distributors, collaboration partners, wholesalers and hospital customers. Future growth will impose significant added responsibilities on our organization, in particular on management. Our future financial performance and our ability to successfully commercialize our HEPLISAV-B vaccine and CpG 1018 adjuvant or any new products, and to compete effectively will depend, in part, on our ability to manage any future growth effectively. To that end, we may not be able to manage our growth efforts effectively, and hire, train, retain and integrate additional management, administrative and sales and marketing personnel, or secure sufficient or timely supply from third party service and product providers. Any failure to accomplish any of these activities could prevent us from successfully increasing or maintaining the same level of commercial growth as we have seen in the past.

***If HEPLISAV-B or any products we develop are not accepted by the market or if regulatory authorities limit our labeling indications, require labeling content that diminishes market uptake of HEPLISAV-B or any other products we develop, or limit our marketing claims, we may be unable to generate significant future revenues, if any.***

Even if we obtain regulatory approval for our product candidates, such as our U.S., European Union and Great Britain approvals of HEPLISAV-B, and are able to commercialize them as we have with HEPLISAV-B, our products may not gain market acceptance among physicians, patients, healthcare payors and the medical community.

The degree of market acceptance of HEPLISAV-B and any of our future approved products will depend upon a number of factors, including:

- the indication for which the product is approved and its approved labeling;
- the presence of other competing approved products;
- the potential advantages of the product over existing and future treatment methods;
- the relative convenience and ease of administration of the product;
- the strength of our sales, marketing and distribution efforts;
- the price and cost-effectiveness of the product; and
- third-party coverage and adequate reimbursement and the willingness of patients to pay out-of-pocket in the absence of sufficient reimbursement by third-party payors.

The FDA or other regulatory authorities could limit the labeling indication for which our product candidates may be marketed or could otherwise limit marketing efforts for our products. If we are unable to achieve approval or successfully market any of our products or product candidates, or marketing efforts are restricted by regulatory limits, our ability to generate revenue could be significantly impaired.

***As we continue to grow as a commercial organization and enter into supply agreements with customers, those supply agreements will have obligations to deliver product that we are reliant upon third parties to manufacture on our behalf.***

As our commercial business begins to expand in connection with commercial sales of HEPLISAV-B or CpG 1018 adjuvant, as applicable, the contracts we enter into with our customers will generally carry delivery obligations that require us to deliver product in certain quantities and meet certain quality thresholds, among other things, all within specified timeframes. If, for any reason, whether due to reliance on third-party manufacturers or otherwise, we are unable to deliver timely, compliant products to our customers in quantities that meet our contractual obligations, we could be subject to lost revenue, contractual penalties, suits for damages, harm to our reputation or other problems that could materially and adversely affect our business. To the extent we add new products in the future, these risks could be exacerbated by the added complexity of managing multiple product lines.



***We face uncertainty regarding coverage, pricing and reimbursement and the practices of third-party payors, which may make it difficult or impossible to sell certain of our products or product candidates on commercially reasonable terms.***

In both domestic and foreign markets, our ability to achieve profitability will depend in part on the negotiation of a favorable price, as well as the availability of coverage and adequate reimbursement, from third-party payors, in particular for HEPLISAV-B, where existing products are already marketed. In the U.S., pricing for hepatitis B vaccines is currently stable and reimbursement is favorable as we believe private and public payors recognize the value of prophylaxis in this setting given the high costs of potential morbidity and mortality, and we have achieved coverage with most third-party payors. However, there is a risk that some payors may limit coverage to specific products on an approved list, also known as a formulary, which might not include HEPLISAV-B. Reimbursement or pricing in jurisdictions outside the U.S. may be less favorable. Thus, there can be no assurance that HEPLISAV-B will achieve and sustain stable pricing and favorable reimbursement. Even if favorable coverage and reimbursement status is attained for one or more products for which we or our collaborators receive regulatory approval, less favorable coverage policies and reimbursement rates may be implemented in the future. Our ability to successfully obtain and retain market share and achieve and sustain profitability will be significantly dependent on the market's acceptance of a price for HEPLISAV-B sufficient to achieve profitability, and future acceptance of such pricing.

Third-party payors are increasingly challenging the price and cost-effectiveness of medical products and services, and pricing, as well as coverage and reimbursement decisions, may not allow our future products to compete effectively with existing competitive products. Because we intend to offer products, if approved, that involve new technologies, the willingness of third-party payors to reimburse for our products is uncertain. We will have to charge a price for HEPLISAV-B or any other products we commercialize that is sufficient to enable us to recover our considerable investment in product development and our operating costs. Further, coverage policies and third-party reimbursement rates may change at any time. Therefore, even if favorable coverage and reimbursement status is attained, less favorable coverage policies and reimbursement rates may be implemented in the future. Adequate third-party payor reimbursement may not be available to enable us to maintain price levels sufficient to achieve or maintain profitability, and such unavailability could harm our future prospects and reduce our stock price.

The United Kingdom ("UK") and many EU Member States periodically review their reimbursement procedures for medicinal products, which could have an adverse impact on reimbursement status. We expect that legislators, policymakers and healthcare insurance funds in European countries will continue to propose and implement cost-containing measures, such as lower maximum prices, lower or lack of reimbursement coverage and incentives to use cheaper, usually generic, products as an alternative to branded products, and/or branded products available through parallel import to keep healthcare costs down. Moreover, in order to obtain reimbursement for our products in some European countries, including some EU Member States, we may be required to compile additional data comparing the cost-effectiveness of our products to other available therapies. This Health Technology Assessment ("HTA") of medicinal products is becoming an increasingly common part of the pricing and reimbursement procedures in some EU Member States, including those representing the larger markets. The HTA process is the procedure to assess therapeutic, economic and societal impact of a given medicinal product in the national healthcare systems of the individual country. The outcome of an HTA will often influence the pricing and reimbursement status granted to these medicinal products by the competent authorities of individual EU Member States. The extent to which pricing and reimbursement decisions are influenced by the HTA of the specific medicinal product currently varies between EU Member States.

In December 2021, Regulation No 2021/2282 on HTA amending Directive 2011/24/EU, was adopted in the EU. This Regulation, which entered into force in January 2022 and will apply as of January 2025, is intended to boost cooperation among EU Member States in assessing health technologies, including new medicinal products, and providing the basis for cooperation at EU level for joint clinical assessments in these areas. The Regulation foresees a three-year transitional period and will permit EU Member States to use common HTA tools, methodologies, and procedures across the EU, working together in four main areas, including joint clinical assessment of the innovative health technologies with the most potential impact for patients, joint scientific consultations whereby developers can seek advice from HTA authorities, identification of emerging health technologies to identify promising technologies early, and continuing voluntary cooperation in other areas. Individual EU Member States will continue to be responsible for assessing non-clinical (e.g., economic, social, ethical) aspects of health technologies, and making decisions on pricing and reimbursement. If we are unable to maintain favorable pricing and reimbursement status in EU Member States for product candidates that we may successfully develop and for which we may obtain regulatory approval, any anticipated revenue from and growth prospects for those products in the EU could be negatively affected. In light of the fact that the United Kingdom has left the EU, Regulation No 2021/2282 on HTA will not apply in the United Kingdom. However, the UK Medicines and Healthcare products Regulation Agency ("MHRA") is working with UK HTA bodies and other national organizations, such as the Scottish Medicines Consortium ("SMC"), the National Institute for Health and Care Excellence ("NICE"), and the All-Wales Medicines Strategy Group, to introduce new pathways supporting innovative approaches to the safe, timely and efficient development of medicinal products. For example, in March 2021, the UK introduced the Innovative Licensing and Access Pathways ("ILAP") which brings together the

MHRA, NICE, SMC and the All Wales Therapeutics and Toxicology Centre, to accelerate time to market for certain innovative products.

Legislators, policymakers and healthcare insurance funds in the EU and the United Kingdom may continue to propose and implement cost-containing measures to keep healthcare costs down, particularly due to the financial strain that COVID-19 placed on national healthcare systems of European countries. These measures could include limitations on the prices we would be able to charge for product candidates that we may successfully develop and for which we may obtain regulatory approval or the level of reimbursement available for these products from governmental authorities or third-party payors. Further, an increasing number of EU and other foreign countries use prices for medicinal products established in other countries as “reference prices” to help determine the price of the product in their own territory. Consequently, a downward trend in prices of medicinal products in some countries could contribute to similar downward trends elsewhere.

***We are subject to ongoing FDA, EU and comparable foreign post-marketing obligations concerning HEPLISAV-B, which may result in significant additional expense, and we may be subject to penalties if we fail to comply with regulatory requirements or experience unanticipated regulatory issues with HEPLISAV-B.***

Our HEPLISAV-B regulatory approval in the United States is subject to certain post-marketing obligations and commitments to the FDA. For example, we were required to conduct an observational comparative study of HEPLISAV-B to Engerix-B to assess occurrence of acute myocardial infarction (“AMI”). This post-marketing study was initiated in August 2018 and concluded in November 2020. While the results of the study, announced in April 2021, indicated that there was no increased risk of AMI associated with vaccination with HEPLISAV-B compared to Engerix-B, we may be required to conduct further studies on HEPLISAV-B or our other product candidates in the future. Also, we received data from the autoimmune portion of our observational study, and the data indicated no association between HEPLISAV-B and any of the studied autoimmune diseases. In addition, we conducted a pregnancy registry study to provide information on outcomes following pregnancy exposure to HEPLISAV-B and submitted the information to the FDA in December 2023. Failure to complete the study to the satisfaction of the FDA could result in withdrawal of our biologics license application approval, which would have a material adverse effect on our business, results of operations, financial condition and prospects. As we advance our pipeline, similar studies may be required for other candidates. The results of post-marketing studies may also result in additional warnings or precautions for the HEPLISAV-B label or labels of any future products, if authorized, or expose additional safety concerns that may result in product liability and withdrawal of a product or products from the market, any of which would have a material adverse effect on our business, results of operations, financial condition and prospects.

Similar post-marketing obligations and commitments exist in the European Union and Great Britain. For example, we are required to submit periodic safety update reports to the European Medicines Agency (“EMA”) and the MHRA and to keep an up-to-date risk management plan that takes into account new information that may lead to a significant change in the risk/benefit profile of HEPLISAV-B. In addition, in accordance with our EU marketing authorization for HEPLISAV-B, HEPLISAV-B is subject to additional monitoring, meaning that it is monitored more intensively than other medicinal products. We may have similar obligations for future products if and when approved. Non-compliance with European Union or United Kingdom requirements regarding safety monitoring or pharmacovigilance can result in significant financial penalties.

In addition, the manufacturing processes, labelling, packaging, distribution, adverse event reporting, storage, advertising, promotion and recordkeeping for HEPLISAV-B are subject to extensive and ongoing regulatory requirements in the United States, the European Union and Great Britain. These requirements include submissions of safety and other post-marketing information and reports, registration, as well as continued compliance with current good manufacturing practices (“cGMP”), good clinical practices (“GCP”), International Conference on Harmonization guidelines, and good laboratory practices (“GLP”). If we are not able to meet and maintain regulatory compliance for HEPLISAV-B or any future product, if authorized, we may lose marketing approval and be required to withdraw our product. Withdrawal of our product would have a material adverse effect on our business.

***HEPLISAV-B and all of our clinical programs rely on oligonucleotide TLR agonists. In the event of serious adverse events relating to TLR agonists, we may be required to reduce the scope of, or discontinue, our operations, or reevaluate the viability of strategic alternatives.***

Our programs, including HEPLISAV-B, incorporate TLR9 agonist CpG oligonucleotides. If any of our product candidates in clinical trials or similar products from competitors or collaborators result in serious adverse events, we may be required to delay, discontinue or modify our clinical trials or our clinical trial strategy, or significantly reevaluate strategic alternatives. If a safety risk based on mechanism of action or the molecular structure were identified, it may hinder our ability to develop our product candidates or enter into potential collaboration or commercial arrangements. Rare diseases and a numerical imbalance in cardiac adverse events have been observed in patients in our clinical trials. If adverse events are found to relate to our TLR agonist as a whole, we may be required to significantly reduce or discontinue our operations.

***HEPLISAV-B is subject to regulatory obligations and continued regulatory review, and if we receive regulatory approval for our other product candidates, we will be subject to ongoing FDA and foreign regulatory obligations and continued regulatory review for such products.***

With respect to HEPLISAV-B and our other product candidates in development, we and our third-party manufacturers and suppliers are required to comply with applicable cGMP regulations and other international regulatory requirements. The regulations require that our products and product candidates be manufactured and records maintained in a prescribed manner with respect to manufacturing, testing and quality control/quality assurance activities. Manufacturers and suppliers of key components and materials must be named in a Biologics License Application ("BLA") submitted to the FDA for any product candidate for which we are seeking FDA approval. Additionally, third-party manufacturers and suppliers and any manufacturing facility must undergo a pre-approval inspection before we can obtain marketing authorization for any of our product candidates. Even after a manufacturer has been qualified by the FDA, the manufacturer must continue to expend time, money and effort in the area of production and quality control to ensure full compliance with GMP. Manufacturers are subject to regular, periodic inspections by the FDA following initial approval. Further, to the extent that we contract with third parties for the manufacture of our products or product candidates, our ability to control third-party compliance with FDA requirements will be limited to contractual remedies and rights of inspection.

If, as a result of the FDA's inspections, it determines that the equipment, facilities, laboratories or processes do not comply with applicable FDA regulations and conditions of product approval, the FDA may not approve the product or may suspend the manufacturing operations. If the manufacturing operations of any of the suppliers for our products or product candidates are suspended, we may be unable to generate sufficient quantities of commercial or clinical supplies of product to meet market demand, which would harm our business. In addition, if delivery of material from our suppliers is interrupted for any reason, we might be unable to ship our approved product for commercial supply or to supply our products in development for clinical trials. Significant and costly delays can occur if the qualification of a new supplier is required. Similar requirements and procedures apply outside of the United States.

Failure to comply with regulatory requirements could prevent or delay marketing approval or require the expenditure of money or other resources to correct. Failure to comply with applicable requirements may also result in warning letters, fines, injunctions, civil penalties, recall or seizure of products, total or partial suspension of production, refusal of the government to renew marketing applications and criminal prosecution, any of which could be harmful to our ability to generate revenues and to our stock price.

***Regulatory authorities may require more clinical trials for our product candidates than we currently expect or are conducting before granting regulatory approval, if regulatory approval is granted at all. Our clinical trials may be extended which may lead to substantial delays in the regulatory approval process for our product candidates and may impair our ability to generate revenues.***

Our registration and commercial timelines depend on further discussions with regulatory authorities and requirements and any requests that they may make for additional data or completion of additional clinical trials. Any such requirements or requests could:

- adversely affect our ability to timely and successfully commercialize or market these product candidates;
- result in significant additional costs;
- potentially diminish any competitive advantages for those products;
- potentially limit the markets for those products;
- adversely affect our ability to enter into collaborations or receive milestone payments or royalties from potential collaborators;
- cause us to abandon the development of the affected product candidate; or
- limit our ability to obtain additional financing on acceptable terms, if at all.

***Clinical trials for our commercial product and product candidates are expensive and time consuming, may take longer than we expect or may not be completed at all, and have uncertain outcomes.***

Clinical trials, including post-marketing studies, to generate sufficient data to meet FDA and other regulatory authority requirements are expensive and time consuming, may take more time to complete than expected, may not be completed at all, and may not have favorable outcomes if they are completed. In addition, results from smaller, earlier stage clinical studies may not be representative of larger, controlled clinical trials that would be required in order to obtain regulatory approval of a product candidate.

Each of our clinical trials requires the investment of substantial planning, expense and time and the timing of the commencement, continuation and completion of these clinical trials may be subject to significant delays relating to various causes, including scheduling conflicts with participating clinicians and clinical institutions, difficulties in identifying and enrolling participants who meet trial eligibility criteria, failure of participants to complete the clinical trial, delay or failure to obtain Institutional Review Board ("IRB"), Ethics Committee or regulatory approval to conduct a clinical trial at a prospective site, unexpected adverse events and shortages of available vaccine or component supply. Participant enrollment is a function of many factors, including the size of the relevant population, the proximity of participants to clinical sites, the eligibility criteria for the trial, the existence of competing clinical trials and the availability of alternative or new treatments. Failure of one or more product candidates to successfully advance through to approval and licensure could result in the loss of unrecoverable costs expended and impact our ability to generate future revenue from such products, either of which, or both of which, could have an adverse impact on our business.

***A key part of our business strategy for products in development is to establish collaborative relationships to help fund or manage development and commercialization of our product candidates and research programs. We may not succeed in establishing and maintaining collaborative relationships, which may significantly limit our ability to continue to develop and commercialize those products and programs, if at all.***

We have and may in the future need to establish collaborative relationships to obtain domestic and/or international sales, marketing, research, development and distribution capabilities for our products or product candidates and our discovery research programs. Failure to obtain a collaborative relationship for those products or product candidates and programs in markets outside the U.S. requiring extensive sales efforts may significantly impair the potential for those products and programs and we may be required to raise additional capital to continue them. The process of establishing and maintaining collaborative relationships is difficult and time-consuming, and even if we establish such relationships, they may involve significant uncertainty, including:

- our partners may seek to renegotiate or terminate their relationships with us due to unsatisfactory clinical results, manufacturing issues, a change in business strategy, a change of control or other reasons;
- our perceived shortage of capital resources may impact the willingness of companies to collaborate with us;
- our contracts for collaborative arrangements are often terminable at will on written notice and may otherwise expire or terminate and we may not have alternative funding available;
- our partners may choose to pursue alternative technologies, including those of our competitors;
- we may have disputes with a partner that could lead to litigation or arbitration;
- we have limited control over the decisions of our partners and they may change the priority of our programs in a manner that would result in termination of the agreement or add significant delay in the partnered program;
- our ability to generate future payments and royalties from our partners depends upon the abilities of our partners to establish the safety and efficacy of product candidates, obtain regulatory approvals and successfully manufacture and commercialize the products developed from product candidates;
- we or our partners may fail to properly initiate, maintain or defend our intellectual property rights, where applicable, or a party may use our proprietary information in such a way as to invite litigation that could jeopardize or potentially invalidate our intellectual property or other proprietary rights or expose us to potential liability;
- our partners may not devote sufficient capital or resources towards our product candidates; and
- our partners may not comply with applicable government regulatory requirements.

Supporting diligence activities conducted by potential collaborators and negotiating the financial and other terms of a collaboration agreement are long and complex processes with uncertain results. Despite our efforts, we may be unable to secure collaborative arrangements. If we are unable to establish and maintain collaborative relationships on acceptable terms or to successfully transition terminated collaborative agreements, we may have to delay or discontinue further development of one or more of our product candidates, undertake development and commercialization activities at our own expense or find alternative sources of capital.

Even when we are successful in entering into collaboration agreements, collaborations can involve greater uncertainty for us, as we have less control over certain aspects of our collaborative programs than we do over our solely-owned development and commercialization programs, and the financial terms upon which collaborators are willing to enter into such an arrangement cannot be certain. If any collaborator fails to fulfill its responsibilities in a timely manner, or at all, our research, clinical development,

manufacturing or commercialization efforts pursuant to that collaboration could be delayed or terminated, or it may be necessary for us to assume responsibility for expenses or activities that would otherwise have been the responsibility of our collaborator.

For example, we are working to develop our CpG 1018 adjuvant as a premier vaccine adjuvant through research collaborations, partnerships and supply arrangements. Current relationships and efforts are focused on adjuvanted vaccines for COVID-19, shingles, Tdap, plague and influenza. For some of these relationships, our collaborators have primary responsibility for the development, conduct of clinical trials, and for seeking and obtaining regulatory approval of potential vaccines containing our adjuvant. We have limited or no control over our collaborators' decisions, including the amount and timing of resources that any of these collaborators will dedicate to such activities. In circumstances where our collaborators do not purchase as much adjuvant as we anticipate or they delay placing orders or taking certain deliveries, there can be a negative impact on our revenue recognition. If a collaborator fails to conduct collaborative activities successfully, the development and commercialization of a vaccine could be delayed or may not occur at all. Lastly, the ability of our collaborators to deliver, sell and collect on receivables is not guaranteed and this could, in turn, impact our own ability to collect receivables.

***Until we are able to generate significant revenues or achieve profitability through product sales on a consistent basis, we may require substantial additional capital to finance our operations.***

As of June 30, 2024, we had \$735.6 million in cash and cash equivalents, and marketable securities. Prior to January 1, 2021, we incurred net losses in each year since our inception. We recorded a net income of \$11.4 million and \$2.7 million for the three and six months ended June 30, 2024, respectively. As of June 30, 2024, we had an accumulated deficit of \$927.9 million. We expect to continue to incur substantial expenses as we continue to invest in the commercialization and development of HEPLISAV-B and our CpG 1018 adjuvant, clinical trials for our pipeline candidates, and other development. If we cannot generate a sufficient amount of revenue from product sales, we may need to finance our operations through strategic alliance and licensing arrangements and/or future public or private debt and equity financings. Raising additional funds through the issuance of equity or debt securities could result in dilution to our existing stockholders, increased fixed payment obligations, or both. In addition, our 2.50% convertible senior notes due 2026 ("Convertible Notes") and other securities we issue in the future may have rights senior to those of our common stock and could include covenants that restrict our operations.

Our ability to raise additional capital in the equity and debt markets, should we choose to do so, is dependent on a number of factors, including, but not limited to, the market demand for our common stock, which itself is subject to a number of development and business risks and uncertainties, our creditworthiness and the uncertainty that we would be able to raise such additional capital at a price or on terms that are favorable to us. In addition, our ability to raise additional funds may be adversely impacted by deteriorating global economic conditions and disruptions to and volatility in the credit and financial markets in the United States and worldwide. Adequate financing may not be available to us on acceptable terms, or at all. If adequate funds are not available when needed, we may need to significantly reduce our operations while we seek strategic alternatives, which could have an adverse impact on our ability to achieve our intended business objectives and the value of our stock.

***As we plan for the broader commercialization of our HEPLISAV-B vaccine and for the requisite capacity to manufacture our CpG 1018 adjuvant, our financial commitments for manufacturing and supply capacity might outpace actual demand for our products.***

As we manage our production capabilities for HEPLISAV-B and CpG 1018 adjuvant to support recent market share gains and other initiatives, we have been, and in the future could be, required to make significant financial commitments at our contract manufacturing organizations ("CMOs"), including minimum purchase commitments and prepayments of purchase orders to facilitate the procurement of raw materials and the incurrence of various manufacturing costs. Because of minimum or advance purchase commitments and uncertainty about the expected demand for HEPLISAV-B or CpG 1018 adjuvant, the financial commitments we make to our CMOs to support manufacturing may not be recovered in their entirety, or at all, if our customers do not ultimately purchase from us at expected volumes, or other concessions are made by us. Capacity reservation fees are generally not recoverable if we do not use the capacity we have reserved as a result of lower than expected demand, or otherwise. Similarly, prepayments of purchase orders may not be recoverable if we do not ultimately require the entire volume subject to the applicable purchase order. As a result, we could end up making financial commitments that we never recover if demand for HEPLISAV-B or CpG 1018 adjuvant does not materialize in the volumes we are expecting or at all. This may require us to record certain charges or write-offs in one or more fiscal periods, which in turn could result in significant, unexpected fluctuations in our quarterly and annual operating results, and potentially have a material adverse effect on our results of operations, and financial condition.

For example, in August and October 2022, we entered into amendments to the Clover Supply Agreement, which, among other things, modified the scope of the Clover Supply Agreement to reduce certain quantities of CpG 1018 adjuvant that we originally intended to deliver in accordance with a purchase order previously issued by Clover. As a result of the concessions made in the amendments to the Clover Supply Agreement, prior financial commitments made to certain CMOs to manufacture quantities of CpG

1018 adjuvant to fulfill the original Clover purchase order, and reduced demand for CpG 1018 adjuvant, we recorded write-offs of \$13.9 million of CpG 1018 adjuvant raw materials inventory and \$20.4 million of finished goods inventory during the year ended December 31, 2022. Relating to our Bio E Supply Agreement, we entered into an amendment and an assignment agreement in April 2023, pursuant to which (i) CEPI forgave the entirety of remaining amounts outstanding relating to the Bio E CEPI Advance Payments for CpG 1018 Materials allocated to Bio E and has assumed our previous rights to collect \$47.4 million of Bio E accounts receivable, (ii) we collected \$14.5 million from Bio E, resulting in no accounts receivable balance as of December 31, 2023 and June 30, 2024, and (iii) we derecognized a \$47.4 million CEPI accrual in connection with the Bio E CEPI Advance Payments. It is possible we may have similar write-offs in the future.

***We may develop, seek regulatory approval for and market HEPLISAV-B or any other product candidates outside of the U.S., the European Union and Great Britain, requiring a significant additional commitment of resources. Failure to successfully manage our international operations could result in significant unanticipated costs and delays in regulatory approval or commercialization of our products or product candidates.***

We may seek to introduce HEPLISAV-B, or any other product candidates we may develop, to various additional markets in or outside of the U.S., the European Union and Great Britain. Developing, seeking regulatory approval for and marketing our product candidates in or outside of the U.S., the European Union and Great Britain in jurisdictions where we don't currently have approval could impose substantial costs, impose burdens on our personnel, and divert management's attention from domestic operations. International operations are subject to risk, including:

- the difficulty of managing geographically distant operations, including recruiting and retaining qualified employees, locating adequate facilities and establishing useful business support relationships in the local community;
- compliance with varying international regulatory requirements, laws and treaties;
- securing international distribution, marketing and sales capabilities upon favorable terms;
- adequate protection of our intellectual property rights;
- obtaining regulatory and pricing approvals at a level sufficient to justify commercialization;
- legal uncertainties and potential timing delays associated with tariffs, export licenses and other trade barriers;
- foreign tax compliance and diverse tax consequences;
- the fluctuation of conversion rates between foreign currencies and the U.S. dollar; and
- regional and geopolitical risks.

In the event that we determine to pursue commercialization of HEPLISAV-B outside the United States, the European Union and Great Britain, our opportunity will depend upon our receiving regulatory approval, which can be costly and time consuming, and there is a risk that one or more regulatory bodies may require that we conduct additional clinical trials and/or take other measures which will take time and require that we incur significant additional expense. In addition, we may not receive approval in one or more jurisdictions, even if we undertake these efforts.

The results of clinical trials conducted to support regulatory approval in one or more jurisdictions, and any failure or delay in obtaining regulatory approval in one or more jurisdictions, may have a negative effect on the regulatory approval process in other jurisdictions, including our existing regulatory approval in the United States, the European Union and Great Britain. If we are unable to successfully manage our international operations, we may incur significant unanticipated costs and delays in regulatory approval or commercialization of our products or product candidates, which would impair our ability to generate revenues.

***We rely on CROs and clinical sites and investigators for our clinical trials. If these third parties do not fulfill their contractual obligations or meet expected deadlines, our planned clinical trials may be delayed and we may fail to obtain the regulatory approvals necessary to commercialize our product candidates.***

We rely on CROs, clinical sites and investigators for our clinical trials. If these third parties do not perform their obligations or meet expected deadlines our planned clinical trials may be extended, delayed, modified or terminated. While we maintain oversight over our clinical trials and conduct regular reviews of the data, we are dependent on the processes and quality control efforts of our third-party contractors to ensure that clinical trials are conducted properly and that detailed, quality records are maintained to support the results of the clinical trials that they are conducting on our behalf. Any extension, delay, modification or termination of our clinical trials or failure to ensure adequate documentation and the quality of the results in the clinical trials could delay or otherwise adversely affect our ability to commercialize our product candidates and could have a material adverse effect on our business and operations.

***As a biopharmaceutical company, we engage CROs to conduct clinical studies, and failure by us or our CROs to conduct a clinical study in accordance with GCP standards and other applicable regulatory requirements could result in disqualification of the applicable clinical trial from consideration in support of approval of a potential product.***

We are responsible for conducting our clinical trials consistent with GCP standards and for oversight of our vendors to ensure that they comply with such standards. We depend on medical institutions and CROs to conduct our clinical trials in compliance with GCP. To the extent that we or they fail to comply with GCP standards, fail to enroll participants for our clinical trials, or are delayed for a significant time in the execution of our trials, including achieving full enrollment, we may be affected by increased costs, program delays or both, which may harm our business.

Clinical trials must be conducted in accordance with FDA or other applicable foreign government guidelines and are subject to oversight by the FDA, other foreign regulatory authorities, IRBs and the Ethics Committees at the medical institutions where the clinical trials are conducted. In addition, clinical trials must be conducted with supplies of our product candidates produced under GMP and other requirements in foreign countries and may require large numbers of participants.

In addition, we obtain guidance from regulatory authorities on certain aspects of our clinical development activities and seek to comply with written guidelines provided by the authorities. These discussions and written guidelines are not binding obligations on the part of the regulatory authorities and the regulatory authorities may require additional patient data or studies to be conducted. Regulatory authorities may revise or retract previous guidance during the course of a clinical trial or after completion of the trial. The authorities may also disqualify a clinical trial from consideration in support of approval of a potential product if they deem the guidelines have not been met. The FDA or foreign regulatory authorities may determine our clinical trials or other data regarding safety, efficacy or consistency of manufacture or compliance with GMP regulations are insufficient for regulatory approval.

The FDA or other foreign regulatory authorities or we ourselves could delay, suspend or halt our clinical trials of a product candidate for numerous reasons, including with respect to our product candidates and those of our partners in combination agent studies:

- deficiencies in the trial design;
- deficiencies in the conduct of the clinical trial including failure to conduct the clinical trial in accordance with regulatory requirements or clinical protocols;
- deficiencies in the clinical trial operations or trial sites resulting in the imposition of a clinical hold;
- a product candidate may have unforeseen adverse side effects, including fatalities, or a determination may be made that a clinical trial presents unacceptable health risks;
- the time required to determine whether a product candidate is effective may be longer than expected;
- fatalities or other adverse events arising during a clinical trial that may not be related to clinical trial treatments;
- a product candidate or combination study may appear to be no more effective than current therapies;
- the quality or stability of a product candidate may fail to conform to acceptable standards;
- the inability to produce or obtain sufficient quantities of a product candidate to complete the trials;
- our inability to reach agreement on acceptable terms with prospective CROs and trial sites, the terms of which can be subject to extensive negotiation and may vary significantly among different CROs and trial sites;
- our inability to obtain IRB or Ethics Committee approval to conduct a clinical trial at a prospective site;
- the inability to obtain regulatory approval to conduct a clinical trial;
- lack of adequate funding to continue a clinical trial, including the occurrence of unforeseen costs due to enrollment delays, requirements to conduct additional trials and studies and increased expenses associated with the services of our CROs and other third parties;
- the inability to recruit and enroll individuals to participate in clinical trials for reasons including competition from other clinical trial programs for the same or similar indications; or
- the inability to retain participants who have initiated a clinical trial but may withdraw due to side effects from the product, lack of efficacy or personal issues, or who are otherwise unavailable for further follow-up.

In addition, we may experience significant setbacks in advanced clinical trials, even after promising results in earlier trials, such as unexpected adverse events that occur when our product candidates are given to larger patient populations, which often occur in later-stage clinical trials, or less favorable clinical outcomes. Moreover, clinical results are frequently susceptible to varying interpretations that may delay, limit or prevent regulatory approvals.

Negative or inconclusive results or adverse medical events, including participant fatalities that may be attributable to our product candidates, during a clinical trial may necessitate that it be redesigned, repeated or terminated. Further, some of our clinical trials may be overseen by a Data Safety Monitoring Board ("DSMB"), and the DSMB may determine to delay or suspend one or more of these trials due to safety or futility findings based on events occurring during a clinical trial. Any such delay, suspension, termination or request to repeat or redesign a trial could increase our costs and prevent or significantly delay our ability to commercialize our product candidates. Even if we complete all such activities without issue, final results may not actually support approval of a particular product candidate.

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

We have incurred significant net operating losses ("NOLs") during our history, and despite prior profitability, may not be able to achieve sustained profitability over the long term. Unused U.S. federal NOLs for taxable years beginning before January 1, 2018 may be carried forward to offset future taxable income, if any, until such unused NOLs expire. Under legislation enacted in 2017, as modified by legislation enacted in 2020, U.S. federal NOLs incurred in taxable years beginning after December 31, 2017 can be carried forward indefinitely, but the deductibility of such U.S. federal NOLs in taxable years beginning after December 31, 2020 is limited to 80% of taxable income. It is uncertain if and to what extent various states will conform to the aforementioned U.S. tax law provisions.

As of December 31, 2023, we had U.S. federal and state NOL carryforwards of \$376.6 million and \$283.9 million, respectively. Of the \$376.6 million U.S. federal NOL carryforwards, \$353.5 million may be carried forward indefinitely with utilization limited to 80% of taxable income, and the remainder will begin to expire in 2024. The state NOL carryforwards will begin to expire in 2024.

In addition, under Section 382 of the Internal Revenue Code of 1986, as amended, and corresponding provisions of state law, if a corporation undergoes an "ownership change," which is generally defined as one or more stockholders or groups of stockholders who own at least 5% of our stock increasing their ownership by more than 50 percentage points over their lowest ownership percentage within a rolling three-year period, the corporation's ability to use its pre-change NOL carryforwards to offset its post-change income or taxes may be limited. We have experienced ownership changes as a result of shifts in our stock ownership in the past, and in the future it is possible that we may be deemed to have experienced additional ownership changes as a result of shifts in our stock ownership, some of which may be outside of our control. This could limit the amount of NOLs that we can utilize annually to offset future taxable income or tax liabilities. Subsequent ownership changes and changes to the U.S. tax rules in respect of the utilization of NOLs may further affect the limitation in future years. In addition, at the state level, there may be periods during which the use of NOLs is suspended or otherwise limited, which could accelerate or permanently increase state taxes owed.

***Tax law changes could adversely affect our business and financial condition.***

New income, sales, use or other tax laws, statutes, rules, regulations or ordinances could be enacted at any time, which could adversely affect our business operations and financial performance. Further, existing tax laws, statutes, rules, regulations or ordinances could be interpreted, changed, modified or applied adversely to us. For example, legislation informally titled the Tax Cuts and Jobs Act of 2017, the 2020 Coronavirus Aid, Relief, and Economic Security Act, and the 2022 Inflation Reduction Act enacted many significant changes to the U.S. tax laws. Future guidance from the Internal Revenue Service and other tax authorities with respect to such legislation may affect us, and certain aspects of the foregoing tax legislation could be repealed or modified in future legislation. In addition, it is uncertain if and to what extent various states will conform to such legislation or any newly enacted federal tax legislation. Changes in corporate tax rates, the realization of net deferred tax assets relating to our operations, the taxation of foreign earnings, and the deductibility of expenses under past or future reform legislation could have a material impact on the value of our deferred tax assets, could result in significant one-time charges, and could increase our future U.S. tax expense.

***We are subject to stringent and evolving U.S. and foreign laws, regulations, and rules, contractual obligations, industry standards, policies and other obligations related to data privacy and security. Our actual or perceived failure to comply with such obligations could lead to regulatory investigations or actions; litigation; fines and penalties; disruptions of our business operations; reputational harm; loss of revenue or profits; loss of customers or sales; and other adverse business consequences.***



In the ordinary course of business, we process personal data and other sensitive information, including our proprietary and confidential business data, trade secrets, intellectual property, data we may collect about trial participants in connection with clinical trials, and other sensitive data. Our data processing activities subject us to numerous data privacy and security obligations, such as various laws, regulations, guidance, industry standards, external and internal privacy and security policies, contracts, and other obligations that govern the processing of personal data by us and on our behalf.

In the United States, federal, state, and local governments have enacted numerous data privacy and security laws, including data breach notification laws, personal data privacy laws, consumer protection laws (e.g., Section 5 of the Federal Trade Commission Act), and other similar laws (e.g., wiretapping laws). In the past few years, numerous U.S. states—including California, Virginia, Colorado, Connecticut, and Utah—have enacted comprehensive privacy laws that impose certain obligations on covered businesses, including providing specific disclosures in privacy notices and affording residents with certain rights concerning their personal data. As applicable, such rights may include the right to access, correct, or delete certain personal data, and to opt-out of certain data processing activities, such as targeted advertising, profiling, and automated decision-making. The exercise of these rights may impact our business and ability to provide our products and services. Certain states also impose stricter requirements for processing certain personal data, including sensitive information, such as conducting data privacy impact assessments. These state laws allow for statutory fines for noncompliance. For example, the California Consumer Privacy Act of 2018, as amended by the California Privacy Rights Act of 2020 ("CPRA") (collectively, "CCPA") requires businesses to provide specific disclosures in privacy notices and honor requests of California residents to exercise certain privacy rights. The CCPA provides for civil penalties of up to \$7,500 per intentional violation and allows private litigants affected by certain data breaches to recover significant statutory damages. Similar laws are being considered in several other states, as well as at the federal and local levels. These developments may further complicate compliance efforts and may increase legal risk and compliance costs for us and the third parties upon whom we rely.

Outside the United States, an increasing number of laws, regulations, and industry standards may govern data privacy and security. For example, the European Union's General Data Protection Regulation ("EU GDPR"), the United Kingdom's General Data Protection Regulation ("UK GDPR"), Brazil's General Data Protection Law (Lei Geral de Proteção de Dados Pessoais, or "LGPD") (Law No. 13,709/2018), and China's Personal Information Protection Law ("PIPL") impose strict requirements for processing personal data. For example, under the EU GDPR, companies may face temporary or definitive bans on data processing and other corrective actions; fines of up to 20 million Euros or 4% of annual global revenue, whichever is greater; or private litigation related to processing of personal data brought by classes of data subjects or consumer protection organizations authorized at law to represent their interests.

In addition, we may be unable to transfer personal data from the EEA and other jurisdictions to the United States or other countries due to data localization requirements or limitations on cross-border data flows. Although there are various mechanisms that may be used in some cases to lawfully transfer personal data to the United States or other countries, these mechanisms are subject to legal challenges and may not be available to us. An inability or material limitation on our ability to transfer personal data to the United States or other countries could materially impact our business operations.

In the ordinary course of business, we may transfer personal data from the EEA and other jurisdictions to the United States or other countries. We may be unable to transfer personal data from Europe and other jurisdictions to the United States or other countries due to data localization requirements or limitations on cross-border data flows. Europe and other jurisdictions have enacted laws requiring data to be localized or limiting the transfer of personal data to other countries. In particular, the EEA and the United Kingdom have significantly restricted the transfer of personal data to the United States and other countries whose privacy laws it believes are inadequate. Other jurisdictions may adopt similarly stringent interpretations of their data localization and cross-border data transfer laws.

Although there are currently various mechanisms that may be used to transfer personal data from the EEA and UK to the United States in compliance with law, such as the EEA and UK's standard contractual clauses, these mechanisms are subject to legal challenges, and there is no assurance that we can satisfy or rely on these measures to lawfully transfer personal data to the United States.

If there is no lawful manner for us to transfer personal data from the EEA, the UK, or other jurisdictions to the United States, or if the requirements for a legally-compliant transfer are too onerous, we could face significant adverse consequences, including the interruption or degradation of our operations, the need to relocate part of or all of our business or data processing activities to other jurisdictions at significant expense, increased exposure to regulatory actions, substantial fines and penalties, the inability to transfer data and work with partners, vendors and other third parties, and injunctions against our processing or transferring of personal data necessary to operate our business. Additionally, companies that transfer personal data out of the EEA and UK to other jurisdictions, particularly to the United States, are subject to increased scrutiny from regulators, individual litigants, and activist groups. Some

regulators in the EEA have ordered certain companies to suspend or permanently cease certain transfers of data out of Europe for allegedly violating the GDPR's cross-border data transfer limitations.

On October 7, 2022, President Biden signed an Executive Order on "Enhancing Safeguards for United States Signals Intelligence Activities," which implements into United States law the agreement in principle announced in March 2022 on a new EU-U.S. Data Privacy Framework. However, if this new transatlantic data transfer framework is not adopted and we are unable to continue to rely on standard contractual clauses or alternative mechanisms of data transfers from the EEA to the United States, this may materially and adversely affect our business, financial condition, and results of operations.

Additional privacy advocates and industry groups have proposed, and may propose in the future, standards with which we are legally or contractually bound to comply.

In addition to data privacy and security laws, we may be contractually subject to industry standards adopted by industry groups and may become subject to such obligations in the future. We may be subject to contractual obligations and policies related to data privacy and security. We may also be bound by other contractual obligations related to data privacy and security, and our efforts to comply with such obligations may not be successful. For example, certain privacy laws, such as the EU GDPR and UK GDPR, require our customers to impose specific contractual restrictions on their service providers.

Data privacy and security laws are quickly changing, and compliance (and any perceived non-compliance) is costly. Although we endeavor to comply with all applicable data privacy and security obligations, these obligations are quickly changing in an increasingly stringent fashion, creating some uncertainty as to how to comply. Additionally, these obligations may be subject to differing applications and interpretations, which may be inconsistent or conflict among jurisdictions. If we or the third parties on which we rely fail, or are perceived to have failed, to address or comply with applicable data privacy and security obligations, we could face significant consequences, including but not limited to, government enforcement actions (e.g., investigations, fines, penalties, audits, inspections, and similar); litigation (including class-related claims); additional reporting requirements and/or oversight; bans on processing personal data; orders to destroy or not use personal data; and imprisonment of company officials.

Any of these events could have a material adverse effect on our reputation, business, or financial condition, including but not limited to: loss of customers; interruptions or stoppages in our business operations, including our clinical trials; expenditure of time and resources to defend any claim or inquiry; adverse publicity; or revision or restructuring of our operations.

***If we fail to comply with the extensive requirements applicable to biopharmaceutical manufacturers and marketers under the healthcare fraud and abuse, anticorruption, privacy, transparency and other laws of the jurisdictions in which we conduct our business, we may be subject to significant liability.***

Our activities, and the activities of our agents, including some contracted third parties, are subject to extensive government regulation and oversight both in the U.S. and in foreign jurisdictions. Our interactions with physicians and others in a position to prescribe or purchase our products are subject to a legal regime designed to prevent healthcare fraud and abuse and off-label promotion. We also are subject to laws pertaining to transparency of transfers of value to healthcare providers; privacy and data protection; compliance with industry voluntary compliance guidelines; and prohibiting the payment of bribes. Relevant U.S. laws include:

- the federal Anti-Kickback Statute, which prohibits persons from, among other things, knowingly and willfully soliciting, receiving, offering or paying remuneration, directly or indirectly, in exchange for or to induce either the referral of an individual for, or the purchase, order or recommendation of, any good or service for which payment may be made under federal health care programs, such as the Medicare and Medicaid programs;
- federal false claims laws, including the False Claims Act and Civil Monetary Penalties Law, which prohibit individuals or entities from, among other things, knowingly presenting, or causing to be presented, claims for payment to the government or its agents that are false or fraudulent;
- the Federal Food, Drug and Cosmetic Act and governing regulations which, among other things, prohibit off-label promotion of prescription drugs;
- the federal Physician Payments Sunshine Act created under the Patient Protection and Affordable Care Act of 2010, as amended by the Health Care and Education and Reconciliation Act of 2010 (collectively, "ACA") which requires certain manufacturers of drugs, devices, biologics and medical supplies to report annually to the Centers for Medicare & Medicaid Services, information related to payments and other transfers of value to physicians (defined to include doctors, dentists, optometrists, podiatrists and chiropractors), other health care professionals (such as physician assistants and

nurse practitioners), and teaching hospitals, and ownership and investment interests held by such physicians and their immediate family members;

- the federal Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), which created, among other things, new federal criminal statutes that prohibit knowingly and willfully executing, or attempting to execute, a scheme to defraud any healthcare benefit program, or knowingly and willfully falsifying, concealing or covering up a material fact or making any materially false statement, in connection with the delivery of, or payment for, healthcare benefits, items or services;

- HIPAA, as amended by the Health Information Technology for Economic and Clinical Health Act, and their implementing regulations, which imposes certain requirements on "covered entities," including certain healthcare providers, health plans, and healthcare clearinghouses, and their respective "business associates" that create, receive, maintain or transmit individually identifiable health information for or on behalf of a covered entity as well as their covered subcontractors relating to the privacy, security, and transmission of individually identifiable health information;

- the Foreign Corrupt Practices Act, which prohibits the payment of bribes to foreign government officials and requires that a company's books and records accurately reflect our transactions; and

- foreign and state law equivalents of each of the federal laws described above, such as anti-kickback and false claims laws which may apply to items or services reimbursed by state health insurance programs or any third-party payor, including commercial insurers; state laws that require pharmaceutical companies to comply with the pharmaceutical industry's voluntary compliance guidelines and the applicable compliance guidance promulgated by the federal government; state laws that require drug manufacturers to report information on the pricing of certain drugs; state and local laws that require the registration of pharmaceutical sales representatives; and state and foreign laws governing the privacy and security of health information, many of which differ from each other in significant ways and often are not preempted by HIPAA.

In the U.S., the Office of Inspector General for the Department of Health and Human Services, the Department of Justice, states' Attorneys General and other governmental authorities actively enforce the laws and regulations discussed above. These entities also coordinate extensively with the FDA, using legal theories that connect violations of the Federal Food, Drug and Cosmetic Act (such as off-label promotion) to the eventual submission of false claims to government healthcare programs. Prosecution of such promotion cases under the False Claims Act provides the potential for private parties (qui tam relators, or "whistleblowers") to initiate cases on behalf of the government and provides for significantly higher penalties upon conviction.

In the U.S., pharmaceutical and biotechnology companies have been the target of numerous government prosecutions and investigations alleging violations of law, including claims asserting impermissible off-label promotion of pharmaceutical products, payments intended to influence the referral of federal or state health care business, submission of false claims for government reimbursement, or submission of incorrect pricing information.

Violations of any of the laws described above or any other applicable governmental regulations and other similar foreign laws may subject us, our employees or our agents to significant criminal, civil and administrative penalties, including fines, civil monetary penalties, exclusion from participation in government health care programs (including, in the U.S., Medicare and Medicaid), disgorgement, imprisonment, additional reporting requirements and oversight if we become subject to a corporate integrity agreement or similar agreement to resolve allegations of non-compliance with these laws and the restriction or restructuring of our operations, any of which could adversely affect our ability to operate our business and our financial results. Additionally, whether or not we have complied with the law, an investigation into alleged unlawful conduct may cause us to incur significant expense, cause reputational damage, divert management time and attention, and otherwise adversely affect our business. While we have developed and instituted a corporate compliance program, we cannot guarantee that we, our employees, our consultants, contractors, or other agents are or will be in compliance with all applicable U.S. or foreign laws.

***We have applied for, and in some cases have received, grants that, if and when received, may involve pricing or other restrictions.***

We have applied for, and in some cases have received, grants from various charitable, philanthropic and other organizations that, if and when received, may come with certain pricing requirements, global access requirements, reporting requirements or other covenants that require us to make the funded product available worldwide and on a nondiscriminatory basis. For example, we received such an initial grant from the Bill and Melinda Gates Foundation in 2020 to help fund the potential scale-up of production of our CpG 1018 adjuvant that may be required in the event the CpG 1018 adjuvant is included in any approved and commercially available vaccine, whether a COVID-19 vaccine or otherwise. Covenants in these types of grants may limit the price we can charge for any funded product and may involve a license to use technology we own that is included in the funded products if we do not comply. Such price limitations or licenses, if invoked, could serve to limit the prices we charge, or our control over the manufacturing and distribution of grant-funded products. Failure to agree to such requirements, may result in us not receiving some or all of the grant.

**Enacted or future legislation, including potentially unfavorable pricing regulations or other healthcare reform initiatives, may have an adverse effect on our operations and business.**

We expect there will continue to be federal and state laws and/or regulations, proposed and implemented, that could impact our operations and business. For example, the ACA, among other things, imposes a significant annual fee on companies that manufacture or import branded prescription drug products. It also contains substantial provisions intended to broaden access to health insurance, reduce or constrain the growth of healthcare spending, and impose additional health policy reforms, any or all of which may affect our business. There have been executive, legal and political challenges to certain aspects of ACA. For example, President Trump signed several executive orders and other directives designed to delay, circumvent, or loosen certain requirements mandated by ACA. Concurrently, Congress considered legislation that would repeal or repeal and replace all or part of ACA. While Congress has not passed comprehensive repeal legislation, several bills affecting the implementation of certain taxes under the ACA have been signed into law. The Tax Cuts and Jobs Act of 2017 included a provision repealing, effective January 1, 2019, the tax-based shared responsibility payment imposed by ACA on certain individuals who fail to maintain qualifying health coverage for all or part of a year that is commonly referred to as the "individual mandate." In addition, the 2020 federal spending package permanently eliminated, effective January 1, 2020, the ACA-mandated "Cadillac" tax on high-cost employer-sponsored health coverage and medical device tax and, effective January 1, 2021, also eliminated the health insurer tax. The Bipartisan Budget Act of 2018 among other things, amended the ACA, effective January 1, 2019, to increase from 50 percent to 70 percent the point-of-sale discount that is owed by pharmaceutical manufacturers who participate in Medicare Part D and close the coverage gap in most Medicare drug plans, commonly referred to as the "donut hole." On June 17, 2021, the U.S. Supreme Court dismissed a challenge on procedural grounds that argued the ACA is unconstitutional in its entirety because the "individual mandate" was repealed by Congress. In addition, the ACA has been subject to various health reform measures. For example, on August 16, 2022, President Biden signed the Inflation Reduction Act of 2022 ("IRA") into law, which among other things, extends enhanced subsidies for individuals purchasing health insurance coverage in ACA marketplaces through plan year 2025. The IRA also eliminates the "donut hole" under the Medicare Part D program beginning in 2025 by significantly lowering the beneficiary maximum out-of-pocket cost and through a newly established manufacturer discount program. It is unclear how any such challenges and additional healthcare reform measures by the Biden administration will impact the ACA and our business.

Other legislative changes have also been proposed and adopted since the ACA was enacted. For example, the Budget Control Act of 2011 resulted in aggregate reductions in Medicare payments to providers of up to two percent per fiscal year, starting in 2013 and, due to subsequent legislative amendments to the statute, will remain in effect until 2032 unless additional Congressional action is taken. Additionally, on March 11, 2021, President Biden signed the American Rescue Plan Act of 2021 into law, which eliminates the statutory Medicaid drug rebate cap, currently set at 100% of a drug's average manufacturer price, for single source and innovator multiple source drugs, effective January 1, 2024. In addition, the American Taxpayer Relief Act of 2012, among other things, reduced Medicare payments to several types of providers and increased the statute of limitations period for the government to recover overpayments to providers from three to five years. Such laws, and others that may affect our business that have been recently enacted or may in the future be enacted, may result in additional reductions in Medicare and other healthcare funding.

Also, there has been heightened governmental scrutiny recently in the U.S. over pharmaceutical pricing practices in light of the rising cost of prescription drugs and biologics. Such scrutiny has resulted in several recent Congressional inquiries and proposed and enacted federal and state legislation designed to, among other things, bring more transparency to product pricing, review the relationship between pricing and manufacturer patient programs, and reform government program reimbursement methodologies for products. At the federal level, in July 2021, the Biden administration released an executive order, "Promoting Competition in the American Economy," with multiple provisions aimed at prescription drugs. In response to Biden's executive order, on September 9, 2021, the U.S. Department of Health and Human Services ("HHS") released a Comprehensive Plan for Addressing High Drug Prices that outlines principles for drug pricing reform and sets out a variety of potential legislative policies that Congress could pursue to advance these principles. In addition, the IRA, among other things, (i) directs HHS to negotiate the price of certain drugs and biologics covered under Medicare, and subjects drug manufacturers to civil monetary penalties and a potential excise tax by offering a price that is not equal to or less than the negotiated "maximum fair price" under the law, and (ii) imposes rebates under Medicare Part B and Medicare Part D to penalize price increases that outpace inflation. The IRA permits HHS to implement many of these provisions through guidance, as opposed to regulation, for the initial years. These provisions take effect progressively starting in 2023. On August 29, 2023, HHS announced the list of the first ten drugs that will be subject to price negotiations, although the Medicare drug pricing negotiation program is currently subject to legal challenges. It is currently unclear how the IRA will be effectuated but is likely to have a significant impact on the pharmaceutical industry. Further, in response to the Biden administration's October 2022 executive order, on February 14, 2023, HHS released a report outlining three new models for testing by the Centers for Medicare & Medicaid Services ("CMS") Innovation Center which will be evaluated on their ability to lower the cost of drugs, promote accessibility, and improve quality of care. It is unclear whether the models will be utilized in any health reform measures in the future. Further, on December 7, 2023, the Biden administration announced an initiative to control the price of prescription drugs through the use of

march-in rights under the Bayh-Dole Act. On December 8, 2023, the National Institute of Standards and Technology published for comment a Draft Interagency Guidance Framework for Considering the Exercise of March-In Rights which for the first time includes the price of a product as one factor an agency can use when deciding to exercise march-in rights. While march-in rights have not previously been exercised, it is uncertain if that will continue under the new framework.

At the state level, legislatures have increasingly passed legislation and implemented regulations designed to control pharmaceutical and biological product pricing, including price or patient reimbursement constraints, discounts, and restrictions on certain product access. In some cases, such legislation and regulations have been designed to encourage importation from other countries and bulk purchasing. For example, on January 5, 2024, the FDA approved Florida's Section 804 Importation Program (SIP) proposal to import certain drugs from Canada for specific state healthcare programs. It is unclear how this program will be implemented, including which drugs will be chosen, and whether it will be subject to legal challenges in the United States or Canada. Other states have also submitted SIP proposals that are pending review by the FDA. Any such approved importation plans, when implemented, may result in lower drug prices for products covered by those programs.

Many EU Member States periodically review their reimbursement procedures for medicinal products, which could have an adverse impact on reimbursement status. We expect that legislators, policymakers and healthcare insurance funds in the EU Member States will continue to propose and implement cost-containing measures, such as lower maximum prices, lower or lack of reimbursement coverage and incentives to use cheaper, usually generic, products as an alternative to branded products, and/or branded products available through parallel import to keep healthcare costs down.

We cannot predict the initiatives that may be adopted in the future or the effect any such initiatives may have on our business. However, in the future, there will likely continue to be additional proposals relating to the reform of the U.S. healthcare system, and other equivalent foreign systems, some of which could further limit coverage and reimbursement of products, including our product candidates. Any reduction in reimbursement from Medicare or other government programs may result in a similar reduction in payments from private payors. The implementation of cost containment measures or other healthcare reforms may prevent us from being able to generate revenue, attain profitability or commercialize our products.

***In connection with our work with the U.S. Department of Defense ("DoD"), we have become a defense contractor, and are therefore subject to additional administrative burdens and control requirements in connection with the maintenance of that relationship.***

In September 2021, we entered into an agreement with the DoD relating to the conduct of a clinical trial and studies in connection with the development of an improved plague vaccine. In connection with this agreement, we became subject to new administrative and control requirements, including certain reporting obligations as well as a requirement to develop, implement and maintain an International Traffic in Arms Regulations compliance program, among other things. Further, if our efforts result in an improved plague vaccine and we enter into a supply agreement for finished plague vaccines with the DoD, we expect that such a supply contract would impose additional administrative, control, compliance and other obligations. We have limited experience developing and administering such programs. Development and maintenance of such programs can be burdensome and costly and there can be no guarantee that we will be able to maintain compliance with all of the terms of such an agreement. Failure to comply with these requirements could have a significant reputational or financial impact on our business and on our stock price.

***We face product liability exposure, which, if not covered by insurance, could result in significant financial liability.***

While we have not experienced any product liability claims to date, the use of any of our product candidates in clinical trials and the sale of any approved products, including HEPLISAV-B, will subject us to potential product liability claims and may raise questions about a product's safety and efficacy. As a result, we could experience a delay in our ability to commercialize one or more of our product candidates or reduced sales of any approved product candidates. In addition, a product liability claim may exceed the limits of our insurance policies and exhaust our internal resources. We have obtained limited clinical trial liability and umbrella insurance coverage for our clinical trials. This coverage may not be adequate or may not continue to be available in sufficient amounts, at an acceptable cost, or at all. While we have obtained product liability insurance coverage for HEPLISAV-B, there is a risk that this coverage may not be adequate or may not continue to be available in sufficient amounts, at an acceptable cost or at all. We also may not be able to obtain commercially reasonable product liability insurance for any product approved for marketing in the future. A product liability claim, product recalls or other claims, as well as any claims for uninsured liabilities or in excess of insured liabilities, would divert our management's attention from our business and could result in significant financial liability.

## Risks Related to our Intellectual Property

***If third parties assert that we have infringed their patents or other proprietary rights or challenge our patents or other proprietary rights, we may become involved in disputes and litigation that would be costly, time consuming and have a negative impact on the commercialization of our current products and delay or prevent development or commercialization of our product candidates.***

We may be exposed to future litigation or other dispute with third parties based on claims that our products, product candidates or proprietary technologies infringe their intellectual property rights, or we may be required to enter into litigation to enforce patents issued or licensed to us or to determine the ownership, scope or validity of our or another party's proprietary rights, including a challenge as to the validity and scope of our issued and pending claims. From time to time, we have been, and in the future may become, involved in various administrative proceedings related to our intellectual property which can cause us to incur certain legal expenses. If we become involved in any litigation and/or other administrative proceedings related to our intellectual property or the intellectual property of others, we will incur substantial additional expenses and it will divert the efforts of our technical and management personnel.

If we or our collaborators are unsuccessful in defending or prosecuting our issued and pending claims or in defending potential claims against our products, for example, as may arise in connection with the commercialization of HEPLISAV-B or any similar or other product candidate, we or our collaborators could be required to pay substantial damages or be unable to commercialize our product candidates or use our proprietary technologies without a license from such third party. A license may require the payment of substantial fees or royalties, require a grant of a cross-license to our intellectual property or technologies or may not be available on acceptable terms, if at all. Any of these outcomes could require us to change our business strategy and could materially impact our business, operations or financial condition.

***If the combination of patents, trade secrets and contractual provisions that we rely on to protect our intellectual property is inadequate, the value of our products or product candidates may decrease, and we may be unable to realize any commercial benefit from the development of our products or product candidates.***

Our success depends on our ability to:

- obtain and protect commercially valuable patents or the rights to patents both domestically and abroad;
- operate without infringing upon the proprietary rights of others; and
- prevent others from successfully challenging or infringing our proprietary rights.

We will be able to protect our proprietary rights from unauthorized use only to the extent that these rights are covered by valid and enforceable patents for a commercially sufficient term or are otherwise effectively maintained as trade secrets. We try to protect our proprietary rights by filing and prosecuting U.S. and foreign patent applications. However, in certain cases such protection may be limited, depending in part on existing patents held by third parties, or other disclosures which impact patentability, which may only allow us to obtain relatively narrow patent protection, if any at all. In the U.S., and worldwide, legal standards relating to the validity and scope of patent claims in the biopharmaceutical field can be highly uncertain, are still evolving and involve complex legal and factual questions for which important legal principles remain unresolved. Changes in U.S. patent and ex-U.S. patent laws could diminish the value of patents in general, thereby impairing us and our collaborators' ability to protect our products.

Our HEPLISAV-B vaccine and CpG 1018 adjuvant have no composition of matter patent protection in the United States or elsewhere. We must therefore rely primarily on the protection afforded by method of use patent claims relating to HEPLISAV-B vaccine and the use of CpG 1018 adjuvant in vaccines, and trade secret protection and confidentiality and other agreements to protect our interests in proprietary know-how related to HEPLISAV-B vaccine and CpG 1018 adjuvant. We have three issued U.S. patents relating to certain uses of HEPLISAV-B that are projected to expire in 2032. We have filed patent applications claiming compositions and methods of use of CpG 1018 adjuvant for COVID-19 and other vaccines, but we cannot provide any assurances that we will receive an issued patent for any of these patent applications or that, if issued, any of these patents will provide adequate protection for any intended use of CpG 1018 adjuvant in vaccines. In addition, we are or may be subject to co-ownership of the underlying intellectual property with our collaborators and, therefore, may not be the sole owner and be in a position to diligently control patent prosecution, or enforce our rights. If we are unable to adequately obtain patent protection or enforce our other proprietary rights relating to CpG 1018 adjuvant, we may be unable to realize any recurring commercial benefit from the development of a vaccine containing CpG 1018 adjuvant, and we may not have the ability to prevent others from developing or commercializing a vaccine containing CpG 1018 adjuvant.

We also rely on trade secret protection and confidentiality and other agreements to protect our interests in proprietary know-how related to CpG 1018 adjuvant. If we or our collaborators are unable to adequately obtain, protect or enforce our proprietary rights

relating to CpG 1018 adjuvant, we may be unable to realize recurring commercial benefit from the development of a vaccine containing CpG 1018 adjuvant, and we or our collaborators may not have the ability to prevent others from developing or commercializing a vaccine containing the adjuvant. Disputes or litigation may also arise with our collaborators (with us and/or with one or more third parties), including disputes over ownership rights to intellectual property, know-how or technologies developed with our collaborators.

Because patent applications in the U.S. and many foreign jurisdictions typically are not published until 18 months after filing and publications of discoveries in the scientific literature lag behind actual discoveries, we cannot be certain that we were the first to file for protection of the inventions set forth in these patent applications or in our issued patents. Further, there could be post-grant proceedings such as inter partes review ("IPR"), post grant review ("PGR"), reexamination, reissue or opposition which could result in claims in our patents being narrowed or invalidated.

Our commercial success depends significantly on our ability to operate without infringing patents and other proprietary rights of third parties. A number of pharmaceutical companies and biotechnology companies, as well as universities and research institutions, may have filed patent applications or may have been granted patents that cover inventions similar to the inventions owned by or licensed to us. We may not be able to determine with certainty whether patents or patent applications of other parties may materially affect our ability to make, use, offer to sell, or sell any products. If another party controls patents or patent applications covering our products, we may not be able to obtain the rights we need to those patents or patent applications in order to commercialize our products.

Litigation may be necessary to enforce patents issued or licensed to us or to determine the scope or validity of another party's proprietary rights. The existence of third-party patent applications and patents could significantly reduce the coverage of the patents owned by or licensed to us and limit our ability to obtain meaningful patent protection. Litigation or any other proceedings could result in substantial costs to and diversion of effort by us, and an adverse outcome in a court or patent office could subject us to significant liabilities, require disputed rights to be licensed from other parties, or require us to cease using some of our technology. We may not prevail in these actions or proceedings if they arise.

In addition, other parties may duplicate, design around or independently develop similar or alternative technologies to ours or our licensors.

The risks and uncertainties that we face with respect to our patents and other proprietary rights include the following:

- we may not receive an issued patent for any of our patent applications or for any patent applications that we may have exclusively licensed, now or in the future;
- the pending patent applications we have filed or to which we have exclusive rights may take longer than we expect to result in issued patents;
- the claims of any patents that are issued may not provide meaningful protection or may not be valid or enforceable;
- we might not be able to develop additional proprietary technologies that are patentable;
- the patents licensed or issued to us or our collaborators may not provide a competitive advantage;
- patents issued to other parties may limit our intellectual property protection or harm our ability to do business;
- other parties may independently develop similar or alternative technologies or duplicate our technologies and commercialize discoveries that we attempt to patent;
- other parties may design around technologies we have licensed, patented or developed;
- pending patent applications or issued patents may be challenged by third parties in litigation or other proceedings, such as inter partes reviews, pre- and post-grant oppositions, reexaminations, derivation proceedings and post-grant review, in the U.S or abroad;
- we may be subject to claims that our employees or consultants have used or disclosed trade secrets or other proprietary information of their former employers or clients, thus putting our intellectual property at risk;
- our reliance on trade secret protection and confidentiality and other agreements may not be sufficient to protect our interests and proprietary know-how related to our products and processes; and
- it may be found that we or our collaborators have not complied with various procedural, document submission, fee payment and other requirements imposed by patent offices, and our patent protection could be reduced or eliminated.

We also rely on trade secret protection and confidentiality agreements to protect our interests in proprietary know-how that may not be directed to what is considered to be patentable subject matter, and for processes for which patents are difficult to enforce. We cannot be certain that we will be able to protect our trade secrets or other proprietary know-how adequately. Any disclosure of confidential data in the public domain or to third parties could allow our competitors to learn our trade secrets. If we are unable to adequately obtain or enforce proprietary rights, we may be unable to commercialize or continue to commercialize our products, enter into or maintain collaborations, generate revenues or maintain any advantage we may have with respect to existing or potential competitors.

***We have in the past, and may in the future, rely on licenses to intellectual property from third parties. Impairment of these licenses or our inability to obtain or maintain them could severely harm our business.***

Our current or future research and development efforts may depend in part upon our license arrangements for certain intellectual property owned by or co-owned with third parties. Our dependence on these licenses could subject us to numerous risks, such as disputes regarding the use of the licensed intellectual property and the creation and ownership of new discoveries under such license agreements. In addition, these license arrangements could require us to make timely payments to maintain our licenses and typically contain diligence or milestone-based termination provisions. Our failure to meet any obligations pursuant to such agreements could allow licensors to terminate our agreements or undertake other remedies such as converting exclusive to non-exclusive licenses if we are unable to cure or obtain waivers for such failures or amend such agreements on terms acceptable to us or at all. In addition, license agreements may be terminated or may expire by their terms, and we may not be able to maintain the exclusivity of these licenses or any rights to the underlying intellectual property. If we cannot obtain and maintain licenses that are advantageous or necessary to the development or the commercialization of our products or product candidates, we may be required to expend significant time and resources to develop or license similar technology or to find other alternatives to maintaining the competitive position of our products or product candidates. If such alternatives are not available to us in a timely manner or on acceptable terms, we may be unable to develop or commercialize certain of our products or product candidates. In the absence of a current license, we may be required to redesign our technology so it does not infringe a third-party's intellectual property (including patents), which may not be possible or could require substantial funds and time.

***We may be subject to claims that we or our employees or consultants have wrongfully used or disclosed alleged trade secrets of our employees' or consultants' former employers or their clients. These claims may be costly to defend and if we do not successfully do so, we may be required to pay monetary damages and may lose valuable intellectual property rights or personnel.***

Many of our employees or consultants may have been previously employed in other biopharmaceutical companies, including our competitors or potential competitors. Some of these individuals executed proprietary rights, non-disclosure and non-competition agreements in connection with such previous employment or engagements. Although no claims against us are currently pending, we may be subject to claims that these employees or consultants or we have inadvertently or otherwise used or disclosed trade secrets or other proprietary information of their former employers or clients. Litigation may be necessary to defend against these claims. If we fail in defending such claims, in addition to paying monetary damages, we may lose valuable intellectual property rights or personnel. A loss of key research personnel or their work product could hamper our ability to develop and ultimately commercialize, or prevent us from developing and commercializing, our product candidates, which could severely harm our business. Even if we are successful in defending against these claims, litigation could result in substantial costs and be a distraction to management.

We may rely, in some circumstances, on trade secrets and confidentiality agreements to protect our technology. Although trade secrets are difficult to protect, wherever possible, we use confidential disclosure agreements to protect the proprietary nature of our technology. Our standard practice is to require each of our collaborators, commercial partners, employees, consultants, contractors and advisors to enter into an agreement before beginning their employment, consulting or advisory relationship with us that in general provides that the individuals must keep confidential and not disclose to other parties any of our confidential information developed or learned by the individuals during the course of their relationship with us except in limited circumstances. These agreements with employees, consultants and contractors also generally provide that we own all inventions conceived by the individuals in the course of rendering their employment or services to us. However, there can be no assurance that these agreements will not be breached, that we will have adequate remedies for any breach, or that our trade secrets and/or proprietary information will not otherwise become known or be independently discovered by competitors. To the extent that our employees, consultants or contractors use intellectual property owned by others in their work for us, disputes may also arise as to the rights in related or resulting know-how and inventions, which could result in substantial costs which could severely harm our business.



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

Periodic maintenance fees, renewal fees, annuity fees and various other governmental fees on patents and/or applications are due to be paid to the United States Patent and Trademark Office and various governmental patent agencies outside of the United States in several stages over the lifetime of the patents and/or applications. We employ reputable law firms and other professionals to help us comply, and in many cases an inadvertent lapse can be cured by payment of a late fee or by other means in accordance with the applicable rules. However, there are situations in which non-compliance can result in abandonment or lapse of the patent or patent application, resulting in partial or complete loss of patent rights in the relevant jurisdictions, and in such an event, our competitors might be able to enter the market.

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

The biopharmaceutical patent environment outside the U.S. is also uncertain. We may be particularly affected by this uncertainty since several of our product candidates or our collaborators' vaccine candidates may initially address market opportunities outside the U.S., where we may only be able to obtain limited patent protection, if any at all. For example, while many countries such as the U.S. permit method of use patents or patent claims relating to the use of drug products, in some countries the law relating to patentability of such use claims is evolving, or may prohibit certain activities, and may be unfavorably interpreted to prevent us from successfully prosecuting some or all of our pending patent applications. There are some countries that currently do not allow such method of use patents or patent claims, or that significantly limit the types of uses, claims or subject matter that are patentable.

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

Geo-political actions in the U.S. and in foreign countries could increase the uncertainties and costs surrounding the prosecution or maintenance of our patent applications or those of any current or future licensors and the maintenance, enforcement or defense of our issued patents or those of any current or future licensors.

Various companies have encountered significant problems in protecting and defending intellectual property rights in foreign jurisdictions. The legal systems of many countries do not favor the enforcement of patents and other intellectual property protection, particularly those relating to pharmaceuticals, which could make it difficult for us to stop the infringement of our patents or marketing of competing products in violation of our proprietary rights.

Various countries outside the U.S. have compulsory licensing laws under which a patent owner may be compelled to grant licenses to third parties. In addition, many countries limit the enforceability of patents against government agencies or government contractors. As a result, a patent owner may have limited remedies in certain circumstances, which could materially diminish the value of such patent. If we are forced to grant a license to third parties with respect to any patents relevant to our business, our competitive position may be impaired, and our business, financial condition, results of operations and prospects may be adversely affected. Accordingly, our efforts to enforce our intellectual property rights around the world may be inadequate to obtain a significant commercial advantage from the intellectual property that we develop or license.

Further, the standards applied by the USPTO, foreign patent offices and other adjudicating bodies in granting and/or adjudicating patents are not always applied uniformly or predictably. As such, we do not know the degree of future protection that we will have on our products and product candidates.

***Changes in U.S. patent law or the patent law of other countries or jurisdictions could diminish the value of patents in general, thereby impairing our ability to protect our products.***

Changes in either the patent laws or interpretation of the patent laws in the U.S. or in other jurisdictions could increase the uncertainties and costs surrounding the prosecution of patent applications and the enforcement or defense of issued patents. In the

U.S., numerous recent changes to the patent laws and proposed changes to the rules of the USPTO may have a significant impact on our ability to protect our technology and enforce our intellectual property rights.

For example, the America Invents Act, involved significant changes in patent legislation. Additionally, the U.S. Supreme Court has ruled on several patent cases in recent years, some of which cases either narrow the scope of patent protection available in certain circumstances or weaken the rights of patent owners in certain situations.

For example, in Europe, a new unitary patent system took effect June 1, 2023, which will significantly impact European patents, including those granted before the introduction of such a system. Under the unitary patent system, European applications have the option, upon grant of a patent, of becoming a Unitary Patent which will be subject to the jurisdiction of the Unitary Patent Court ("UPC"). As the UPC is a new court system, there is no precedent for the court, increasing the uncertainty of any litigation. Patents granted before the implementation of the UPC will have the option of opting out of the jurisdiction of the UPC and remaining as national patents in the UPC countries. Patents that remain under the jurisdiction of the UPC will be potentially vulnerable to a single UPC-based revocation challenge that, if successful, could invalidate the patent in all countries who are signatories to the UPC. We cannot predict with certainty the long-term effects of any potential changes.

## **Risks Related to our Common Stock**

### ***Our stock price is subject to volatility, and your investment may suffer a decline in value.***

The market prices for securities of biopharmaceutical companies have in the past been, and are likely to continue in the future to be, very volatile. The market price of our common stock is subject to substantial volatility depending upon many factors, many of which are beyond our control, including:

- impact of COVID-19 or other respiratory or seasonal vaccination initiatives on our HEPLISAV-B vaccine, CpG 1018 adjuvant, or other product revenue;
- progress or results of any of our clinical trials or regulatory or manufacturing efforts, in particular any announcements regarding the progress or results of our planned trials and BLA filing and communications, from the FDA or other regulatory authorities;
- our ability to receive timely regulatory approval for our product candidates;
- our ability to establish and maintain collaborations for the development and commercialization of our product candidates;
- our ability to raise additional capital to fund our operations, to the extent needed;
- technological innovations, new commercial products or drug discovery efforts and preclinical and clinical activities by us or our competitors;
- changes in our intellectual property portfolio or developments or disputes concerning the proprietary rights of our products or product candidates;
- our ability to obtain component materials and successfully enter into manufacturing relationships for our products or product candidates or establish manufacturing capacity on our own;
- our ability to establish and maintain licensing agreements for intellectual property necessary for the development of our product candidates;
- changes in government regulations, general economic conditions or industry announcements;
- changes in the structure of healthcare payment systems;
- issuance of new or changed securities analysts' reports or recommendations;
- actual or anticipated fluctuations in our quarterly financial and operating results;
- the volume of trading in our common stock;
- investor perceptions or negative announcements by our customers, competitors or suppliers regarding their own performance; and
- industry conditions and general financial, economic and political instability.

The stock markets in general, and the markets for biotechnology and pharmaceutical stocks in particular, have historically experienced significant volatility that has often been unrelated or disproportionate to the operating performance of particular companies. Changes in the broader macroeconomic condition, including historically high inflation, changes in interest rates, government tapering policies, impact of pandemics or endemics and instances of geopolitical instability, such as that resulting from the conflicts in the Middle East and Ukraine, can and have caused changes in market prices, notwithstanding a lack of fundamental change in the underlying business models or prospects of companies. These broad market fluctuations have adversely affected and may in the future adversely affect the market price of our common stock, regardless of our actual operating performance.

One or more of these factors could cause a substantial decline in the price of our common stock. In addition, securities class action and shareholder derivative litigation have often been brought against a company following a decline in the market price of its securities. We have in the past been, and we may in the future be, the target of such litigation. Securities and shareholder derivative litigation could result in substantial costs, and divert management's attention and resources, which could harm our business, operating results and financial condition.

***Future sales of our common stock or the perception that such sales may occur in the public market could cause our stock price to fall.***

Sales of a substantial number of shares of our common stock in the public market, or the perception that these sales might occur, could depress the market price of our common stock and could impair our ability to raise capital through the sale of additional equity securities.

Under our universal shelf registration statement, we may sell any combination of common stock, preferred stock, debt securities and warrants in one or more offerings, including pursuant to our sales agreement with Cowen & Company, LLC, under which we can offer and sell our common stock from time to time up to aggregate sales proceeds of \$120.0 million. As of June 30, 2024, we had \$120.0 million of our common stock remaining available for future issuance under our sales agreement with Cowen & Company, LLC. The sale or issuance of our securities, including those issuable upon exercise of the outstanding warrants or conversion of the preferred stock, as well as the existence of outstanding options and shares of common stock reserved for issuance under our option and equity incentive plans also may adversely affect the terms upon which we are able to obtain additional capital through the sale of equity securities.

**Risks Related to Our Outstanding Convertible Notes**

***Servicing our debt requires a significant amount of cash, and we may not have sufficient cash flow from our business to pay our substantial debt.***

Our ability to make scheduled payments of the principal of, to pay interest on or to refinance our indebtedness, including the \$225.5 million in Convertible Notes, depends on our future performance, which is subject to economic, financial, competitive and other factors beyond our control. Our business may not continue to generate cash flow from operations in the future sufficient to service our debt and make necessary capital expenditures. If we are unable to generate such cash flow, we may be required to adopt one or more alternatives, such as selling assets, restructuring debt or obtaining additional equity capital on terms that may be onerous or highly dilutive. Our ability to refinance our indebtedness will depend on the capital markets and our financial condition at such time. We may not be able to engage in any of these activities or engage in these activities on desirable terms, which could result in a default on our debt obligations.

***We may not have the ability to generate or raise the funds necessary to settle conversions of the Convertible Notes in cash or to repurchase the notes for cash upon a fundamental change, and our future debt may contain limitations on our ability to pay cash upon conversion or repurchase of the Convertible Notes.***

Holders of the Convertible Notes will have the right, subject to certain conditions and limited exceptions, to require us to repurchase all or a portion of their Convertible Notes upon the occurrence of a fundamental change at a fundamental change repurchase price equal to 100% of the principal amount of the Convertible Notes to be repurchased, plus accrued and unpaid interest, if any, to, but excluding, the fundamental change repurchase date. In addition, upon conversion of the Convertible Notes, unless we elect to deliver solely shares of our common stock to settle such conversion (other than paying cash in lieu of delivering any fractional share), we will be required to make cash payments in respect of the Convertible Notes being converted. Moreover, we will be required to repay the Convertible Notes in cash at their maturity unless earlier converted, redeemed or repurchased. However, we may not have enough available cash or be able to obtain financing at the time we are required to make repurchases of Convertible Notes surrendered therefore or pay cash with respect to Convertible Notes being converted. In addition, our ability to repurchase the Convertible Notes or to pay cash upon conversions of the Convertible Notes may be limited by law, by regulatory authority or by agreements governing our

future indebtedness. Our failure to repurchase Convertible Notes at a time when the repurchase is required by the indenture governing the Convertible Notes or to pay any cash payable on future conversions of the Convertible Notes as required by the indenture governing the Convertible Notes would constitute a default under the indenture governing the Convertible Notes. A default under the indenture governing the Convertible Notes or the occurrence of a fundamental change itself could also lead to a default under agreements governing our future indebtedness. Moreover, the occurrence of a fundamental change under the indenture governing the Convertible Notes could constitute an event of default under any agreements governing our future indebtedness. If the repayment of the related indebtedness were to be accelerated after any applicable notice or grace periods, we may not have sufficient funds to repay the indebtedness and repurchase the Convertible Notes or make cash payments upon conversions thereof.

***The conditional conversion feature of the Convertible Notes may adversely affect our financial condition and operating results.***

From January 1 through June 30, 2024, the conditions allowing holders to convert all or any portion of their Convertible Notes were not met. In the event the conditional conversion feature of the Convertible Notes is triggered, holders of Convertible Notes will be entitled to convert their Convertible Notes at any time during specified periods at their option. If one or more holders elect to convert their Convertible Notes, unless we elect to satisfy our conversion obligation by delivering solely shares of our common stock (other than paying cash in lieu of delivering any fractional share), we would be required to settle a portion or all of our conversion obligation through the payment of cash, which could adversely affect our liquidity. In addition, even if holders do not elect to convert their Convertible Notes, we could be required under applicable accounting rules to reclassify all or a portion of the outstanding principal of the Convertible Notes as a current rather than long-term liability, which would result in a material reduction of our net working capital.

***Conversion of the Convertible Notes may dilute the ownership interest of our stockholders or may otherwise depress the price of our common stock.***

From January 1 through June 30, 2024, the conditions allowing holders to convert all or any portion of their Convertible Notes have not been met. In the event the conditional conversion feature of the Convertible Notes is triggered, the conversion of some or all of the Convertible Notes to shares of common stock may dilute the ownership interests of our stockholders. Upon conversion of the Convertible Notes, we have the option to pay or deliver, as the case may be, cash, shares of our common stock, or a combination of cash and shares of our common stock. If we elect to settle our conversion obligation in shares of our common stock or a combination of cash and shares of our common stock, any sales in the public market of our common stock issuable upon such conversion could adversely affect prevailing market prices of our common stock. In addition, the existence of the Convertible Notes may encourage short selling by market participants because the conversion of the Convertible Notes could be used to satisfy short positions, or anticipated conversion of the Convertible Notes into shares of our common stock could depress the price of our common stock.

***Certain provisions in the indenture governing the Convertible Notes may delay or prevent an otherwise beneficial takeover attempt of us.***

Certain provisions in the indenture governing the Convertible Notes may make it more difficult or expensive for a third party to acquire us. For example, the indenture governing the Convertible Notes will require us, subject to certain exceptions, to repurchase the Convertible Notes for cash upon the occurrence of a fundamental change and, in certain circumstances, to increase the conversion rate for a holder that converts its Convertible Notes in connection with a make-whole fundamental change. A takeover of us may trigger the requirement that we repurchase the Convertible Notes and/or increase the conversion rate, which could make it more costly for a potential acquirer to engage in such takeover. Such additional costs may have the effect of delaying or preventing a takeover of us that would otherwise be beneficial to investors.

***The Capped Calls may affect the value of the Convertible Notes and our common stock.***

In connection with the issuance of the Convertible Notes, we have entered into capped call transactions with the option counterparties totaling \$27.2 million (the "Capped Calls"). The Capped Calls cover, subject to customary adjustments under the terms of the Capped Calls, the number of shares of common stock that initially underlie the Capped Calls. The Capped Calls are expected to offset the potential dilution to our common stock as a result of any conversion of the Convertible Notes, subject to a cap based on the cap price.

In connection with establishing their initial hedges of the Capped Calls, we have been advised that the option counterparties and/or their respective affiliates entered into various derivative transactions with respect to our common stock concurrently with or shortly after the pricing of the Convertible Notes and/or purchased shares of our common stock concurrently with or shortly after the pricing of the Convertible Notes. In addition, the option counterparties and/or their respective affiliates may modify their hedge positions by entering into or unwinding various derivatives with respect to our common stock and/or purchasing or selling our

common stock or other securities of ours in secondary market transactions following the pricing of the Convertible Notes and prior to the maturity of the Convertible Notes (and are likely to do so on each exercise date of the Capped Calls, which are expected to occur during the 30 trading day period beginning on the 31st scheduled trading day prior to the maturity date of the Convertible Notes, or following any termination of any portion of the Capped Calls in connection with any repurchase, redemption or early conversion of the Convertible Notes). This activity could also cause or avoid an increase or a decrease in the market price of our common stock or the Convertible Notes.

***We are subject to counterparty risk with respect to the capped call transactions.***

The option counterparties are financial institutions, and we will be subject to the risk that any or all of them might default under the Capped Calls. Our exposure to the credit risk of the option counterparties will not be secured by any collateral.

If an option counterparty becomes subject to insolvency proceedings, we will become an unsecured creditor in those proceedings with a claim equal to our exposure at that time under the Capped Calls with such option counterparty. Our exposure will depend on many factors but, generally, an increase in our exposure will be correlated to an increase in the market price and in the volatility of our common stock. In addition, upon a default by an option counterparty, we may suffer adverse tax consequences and more dilution than we currently anticipate with respect to our common stock. We can provide no assurances as to the financial stability or viability of the option counterparties.

**General Risk Factors**

***The loss of key personnel could delay or prevent achieving our objectives. In addition, our continued growth to support commercialization may result in difficulties in managing our growth and expanding our operations successfully.***

We depend on our senior executive officers, as well as other key scientific personnel. Our commercial and business efforts could be adversely affected by the loss of one or more key members of our commercial or management staff, including our senior executive officers. We currently have no key person insurance on any of our employees.

As our operations expand, we expect that we will need to manage additional relationships with various vendors, partners, suppliers and other third parties. Future growth will impose significant added responsibilities on members of management. Our future financial performance and our ability to successfully commercialize HEPLISAV-B, or other future products we may attempt to commercialize, and to compete effectively will depend, in part, on our ability to manage any future growth effectively. To that end, we must be able to effectively manage our commercialization efforts, research efforts and clinical trials and hire, train and integrate additional regulatory, manufacturing, administrative, and sales and marketing personnel. We may not be able to accomplish these tasks, and our failure to accomplish any of them could prevent us from successfully growing and achieving profitability.

***Our business operations are vulnerable to interruptions by natural disasters, health epidemics and other catastrophic events beyond our control, the occurrence of which could materially harm our manufacturing, distribution, sales, business operations and financial results.***

Our business operations are subject to interruption by natural disasters and other catastrophic events beyond our control, including, but not limited to, earthquakes, hurricanes, fires, droughts, tornadoes, electrical blackouts, public health crises and pandemics, war, terrorism, bank failures and geo-political unrest and uncertainties. We have not undertaken a systematic analysis of the potential consequences to our business that might result from any such natural disaster or other catastrophic event and have limited recovery plans in place. If any of these events occur, our manufacturing and supply chain, distribution, sales and marketing efforts and other business operations could be subject to business shutdowns or disruptions and financial results could be adversely affected. We cannot presently predict the scope and severity of any potential business shutdowns or disruptions resulting from these events, but if we or any of the third parties with whom we engage, including the suppliers, contract manufacturers, distributors and other third parties with whom we conduct business, were to experience shutdowns or other business disruptions, our ability to conduct our business in the manner and on the timelines presently planned could be materially and adversely affected in a number of ways, some of which are not predicable.

Our business could be adversely affected by health epidemics in regions where we have manufacturing facilities, sales activities or other business operations. For example, outbreaks of epidemic or pandemic diseases, such as COVID-19, or the fear of such events, have and could again in the future cause restrictions on supply chains, restrict access to workplaces and affect employee health and availability. Furthermore, during the peak of the COVID-19 pandemic there was a significantly reduced utilization of all adult vaccines (other than COVID-19 vaccines), including a reduced utilization of HEPLISAV-B.

Although we maintain inventories of HEPLISAV-B and its components, our ability and those of our contractors and distributors to produce and distribute HEPLISAV-B could be adversely affected. A pandemic or similar health challenge could severely impact the U.S. healthcare system, which may have an adverse effect on usage and sales of HEPLISAV-B. In addition, any such event could result in widespread global health crisis that could adversely affect global economies and financial markets resulting in an economic downturn that could affect the demand for HEPLISAV-B and future revenue and operating results and our ability to raise additional capital when needed on acceptable terms, if at all.

Additionally, our corporate headquarters in Emeryville, California, is located in a seismically active region that also is subject to possible electrical shutdowns and wildfires. Because we do not carry earthquake insurance for earthquake-related losses and significant recovery time could be required to resume operations, our financial condition and operating results could be materially adversely affected in the event of a major earthquake or catastrophic event. We carry only limited business interruption insurance that would compensate us for actual losses from interruption of our business that may occur, and any losses or damages incurred by us in excess of insured amounts could adversely affect our business and operations.

***If our information technology systems or those of third parties upon which we rely, or our data are or were compromised, we could experience adverse consequences resulting from such compromise, including but not limited to regulatory investigations or actions; litigation; fines and penalties; disruptions of our business operations; reputational harm; loss of revenue or profits; and other adverse consequences.***

Our business is increasingly dependent on critical, complex and interdependent information technology systems, including internet-based systems, to support business processes as well as internal and external communications. In addition, our dependence on information technology systems has intensified because many of our critical business activities are now being conducted remotely in our remote-first work environment. The size and complexity of our computer systems make them potentially vulnerable to breakdown, malicious intrusion and computer viruses that may result in the impairment of key business processes.

In addition, our systems, along with those of our customers, suppliers, or third-party service providers which operate critical business systems to process sensitive information in a variety of contexts are potentially vulnerable to a variety of evolving threats and data security breaches—whether by employees or others—that may expose sensitive data to unauthorized persons. Such threats could include, but not be limited to social-engineering attacks (including through phishing attacks), online and offline fraud, malicious code (such as viruses and worms), malware (including as a result of advanced persistent threat intrusions), denial-of-service attacks, access attacks (such as credential stuffing or credential harvesting), personnel misconduct or error, ransomware attacks, supply-chain attacks, software bugs, server malfunctions, software or hardware failures, loss of data or other information technology assets, adware, telecommunications failures, earthquakes, fires, floods, and other similar threats. Such threats are prevalent and continue to rise, are increasingly difficult to detect, and come from a variety of sources, including traditional computer “hackers,” threat actors, “hacktivists,” organized criminal threat actors, personnel (such as through theft or misuse), sophisticated nation states, and nation-state-supported actors.

Ransomware attacks, including by organized criminal threat actors, nation-states, and nation-state-supported actors, are becoming increasingly prevalent and severe and can lead to significant interruptions in our operations, loss of data and income, reputational harm, and diversion of funds. Extortion payments may alleviate the negative impact of a ransomware attack, but we may be unwilling or unable to make such payments due to, for example, applicable laws or regulations prohibiting such payments. Similarly, supply-chain attacks have increased in frequency and severity, and we cannot guarantee that third parties and infrastructure in our supply chain or our third-party partners' supply chains have not been compromised or that they do not contain exploitable flaws or bugs that could result in a breach of or disruption to our information technology systems (including our products or the third-party information technology systems that support us and our goods). If our third-party service providers experience a security incident or other interruption, we could experience adverse consequences. While we may be entitled to damages if our third-party service providers fail to satisfy their privacy or security-related obligations to us, any award may be insufficient to cover our damages, or we may be unable to recover such award.

The potential liability and associated consequences we could suffer as a result of any such cyber events could be catastrophic and result in irreparable harm including (a) the loss of trade secrets or other intellectual property, or (b) the public exposure of personally identifiable information (including sensitive personal information) of our employees, collaborators, clinical trial patients, and others, (c) extortion and other monetary damages due to malware or business email compromise, (d) significant interruptions in our operations, or (e) other significant damages. A data security breach or privacy violation that leads to disclosure or modification of or prevents access to patient information, including personally identifiable information or protected health information, could harm our reputation, compel us to comply with federal, state and/or international data breach notification laws, subject us to mandatory corrective action, require us to verify the correctness of database contents and otherwise subject us to liability under laws and regulations that protect personal data, including, but not limited to, HIPAA, similar state data protection regulations, and the EU GDPR and UK GDPR, resulting in significant penalties; increased costs; loss of revenue; expenses of computer or forensic

investigations; material fines and penalties; compensatory, special, punitive or statutory damages; litigation; consent orders regarding our privacy and security practices; requirements that we provide notices, credit monitoring services and/or credit restoration services or other relevant services to impacted individuals; adverse actions against our licenses to do business; or injunctive relief.

Compliance with these and any other applicable privacy and data security laws and regulations is a rigorous and time-intensive process, and we may be required to put in place additional mechanisms ensuring compliance with the new data protection rules. If we fail to comply with any such laws or regulations, we may face significant fines and penalties that could adversely affect our business, financial condition and results of operations. Furthermore, the laws are not consistent, and compliance in the event of a widespread data breach is costly.

U.S. and equivalent foreign authorities and international authorities warned businesses of increased cybersecurity threats from actors seeking to exploit the COVID-19 pandemic. In 2020, we experienced a cybersecurity incident known as a phishing e-mail scam, and although we do not consider its impact on us to be material, if we are unable to prevent this or other such data security breaches or privacy violations or implement satisfactory remedial measures, our operations could be disrupted, and we may suffer loss of reputation, financial loss and other regulatory penalties because of lost or misappropriated information, including sensitive patient data. Moreover, failure to maintain effective internal accounting controls related to data security breaches and cybersecurity in general could impact our ability to produce timely and accurate financial statements and could subject us to regulatory scrutiny. In addition, these breaches and other inappropriate access can be difficult to detect, and any delay in identifying them may lead to increased harm of the type described above. Moreover, the prevalent use of mobile devices that access confidential information increases the risk of data security breaches, which could lead to the loss of confidential information, trade secrets or other intellectual property. While we have implemented security measures that are intended to protect our data security and information technology systems, there can be no assurance that these measures will be effective. We take steps designed to detect, mitigate, and remediate vulnerabilities in our information systems (such as our hardware and/or software, including that of third parties upon which we rely). We may not, however, detect and remediate all such vulnerabilities including on a timely basis. Further, we may experience delays in deploying remedial measures and patches designed to address identified vulnerabilities.

Such disruptions and breaches of security could have a material adverse effect on our business, financial condition and results of operations. Our contracts may not contain limitations of liability, and even where they do, there can be no assurance that limitations of liability in our contracts are sufficient to protect us from liabilities, damages, or claims related to our data privacy and security obligations. We cannot be sure that our insurance coverage will be adequate or sufficient to protect us from or to mitigate liabilities arising out of our privacy and security practices, that such coverage will continue to be available on commercially reasonable terms or at all, or that such coverage will pay future claims.

***Adverse developments affecting the financial services industry may have adverse consequences on our business, financial condition and stock price.***

We regularly maintain cash balances at third-party financial institutions in excess of the FDIC insurance limit. Although we assess our banking relationships as we believe necessary or appropriate, our access to funding sources in amounts adequate to finance or capitalize our current and projected future business operations could be significantly impaired by factors that affect us, the financial institutions with which we have arrangements directly, or the financial services industry or economy in general. These factors could involve financial institutions or financial services industry companies with which we have financial or business relationships, but could also include factors involving financial markets or the financial services industry generally.

## **ITEM 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS**

None.

## **ITEM 3. DEFAULTS UPON SENIOR SECURITIES**

None.

## **ITEM 4. MINE SAFETY DISCLOSURES**

None.

## **ITEM 5. OTHER INFORMATION**

*Trading Arrangements*

During our last fiscal quarter, our directors and officers (as defined in Rule 16a-1(f) under the Exchange Act) adopted or terminated the contracts, instructions or written plans for the purchase or sale of our securities set forth in the table below.

Name and Position	Action	Adoption/ Termination Date	Type of Trading Arrangement		Total Shares of Common Stock to be Sold	Total Shares of Common Stock to be Purchased	Expiration Date
			Rule 10b5-1*	Non-Rule 10b5-1**			
Robert Janssen, M.D., <i>Chief Medical Officer and Senior Vice President, Clinical Development, Medical and Regulatory Affairs</i>	Adoption	May 30, 2024	X		311,535 shares of common stock underlying stock options		September 12, 2025, unless earlier terminated as outlined in the plan

\* Contract, instruction or written plan intended to satisfy the affirmative defense conditions of Rule 10b5-1(c) under the Exchange Act.

\*\* "Non-Rule 10b5-1 trading arrangement" as defined in Item 408(c) of Regulation S-K under the Exchange Act.



## ITEM 6. EXHIBITS

Exhibit Number	Document	Incorporated by Reference				Filed Herewith
		Exhibit Number	Filing	Filing Date	File No.	
3.1	<a href="#">Sixth Amended and Restated Certificate of Incorporation</a>	3.1	S-1/A	February 5, 2004	333-109965	
3.2	<a href="#">Certificate of Amendment of Amended and Restated Certificate of Incorporation</a>	3.1	8-K	January 4, 2010	001-34207	
3.3	<a href="#">Certificate of Amendment of Amended and Restated Certificate of Incorporation</a>	3.1	8-K	January 5, 2011	001-34207	
3.4	<a href="#">Certificate of Amendment of Amended and Restated Certificate of Incorporation</a>	3.6	8-K	May 30, 2013	001-34207	
3.5	<a href="#">Certificate of Amendment of the Sixth Amended and Restated Certificate of Incorporation</a>	3.1	8-K	November 10, 2014	001-34207	
3.6	<a href="#">Certificate of Amendment of the Sixth Amended and Restated Certificate of Incorporation</a>	3.1	8-K	June 2, 2017	001-34207	
3.7	<a href="#">Certificate of Amendment of the Sixth Amended and Restated Certificate of Incorporation</a>	3.1	8-K	July 31, 2017	001-34207	
3.8	<a href="#">Certificate of Amendment of the Sixth Amended and Restated Certificate of Incorporation</a>	3.1	8-K	May 29, 2020	001-34207	
3.9	<a href="#">Amended and Restated Bylaws</a>	3.8	10-Q	November 6, 2018	001-34207	
4.1	Reference is made to Exhibits <a href="#">3.1</a> , <a href="#">3.2</a> , <a href="#">3.3</a> , <a href="#">3.4</a> , <a href="#">3.5</a> , <a href="#">3.6</a> , <a href="#">3.7</a> , <a href="#">3.8</a> , and <a href="#">3.9</a>					
4.2	<a href="#">Form of Specimen Common Stock Certificate</a>	4.2	S-1/A	January 16, 2004	333-109965	
4.3	<a href="#">Indenture between Company and U.S. Bank National Association, as trustee, dated May 13, 2021</a>	4.1	8-K	May 13, 2021	001-34207	
4.4	<a href="#">Form of Global Note, representing Dynavax Technologies Corporation's 2.50% Convertible Senior Notes due 2026</a>	4.2	8-K	May 13, 2021	001-34207	
10.1+	<a href="#">Dynavax Technologies Corporation 2018 Equity Incentive Plan</a>					X
10.2+	<a href="#">Dynavax Technologies Corporation Annual Bonus Plan</a>					X
31.1	<a href="#">Certification of Principal Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002</a>					X
31.2	<a href="#">Certification of Principal Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002</a>					X
32.1*	<a href="#">Certification of Principal Executive Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002</a>					X
32.2*	<a href="#">Certification of Principal Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002</a>					X

EX—101.INS	Inline XBRL Instance Document - the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document.
EX—101.SCH	Inline XBRL Taxonomy Extension Schema Document
EX—104	Cover Page Interactive Data File (formatted as inline XBRL and contained in Exhibit 101)

+ Indicates management contract, compensatory plan or arrangement.

\* The certifications attached as Exhibits 32.1 and 32.2 that accompany this Quarterly Report on Form 10-Q, are not deemed filed with the Securities and Exchange Commission and are not to be incorporated by reference into any filing of the Company under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended (whether made before or after the date of this Form 10-Q), irrespective of any general incorporation language contained in such filing.

## SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the Registrant has caused this report to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Emeryville, State of California.

### DYNAVAX TECHNOLOGIES CORPORATION

Date: August 6, 2024

By: /s/ RYAN SPENCER  
Ryan Spencer  
Chief Executive Officer and Director  
(Principal Executive Officer)

Date: August 6, 2024

By: /s/ KELLY MACDONALD  
Kelly MacDonald  
Chief Financial Officer  
(Principal Financial Officer)

Date: August 6, 2024

By: /s/ JUSTIN BURGESS  
Justin Burgess  
Vice President Finance, Chief Accounting Officer  
(Principal Accounting Officer)

**DYNAVAX TECHNOLOGIES CORPORATION  
2018 EQUITY INCENTIVE PLAN**

ADOPTED BY THE BOARD OF DIRECTORS: APRIL 8, 2018  
 APPROVED BY THE STOCKHOLDERS: MAY 31, 2018  
 AMENDED AND RESTATED BY THE BOARD OF DIRECTORS: APRIL 9, 2019  
 APPROVED BY THE STOCKHOLDERS: MAY 30, 2019  
 AMENDED AND RESTATED BY THE BOARD OF DIRECTORS: APRIL 3, 2020  
 APPROVED BY THE STOCKHOLDERS: MAY 28, 2020  
 AMENDED AND RESTATED BY THE BOARD OF DIRECTORS: APRIL 1, 2022  
 APPROVED BY THE STOCKHOLDERS: MAY 26, 2022  
 AMENDED AND RESTATED BY THE COMPENSATION COMMITTEE: MARCH 19, 2024  
 APPROVED BY THE STOCKHOLDERS: MAY 23, 2024

**1. GENERAL.**

**(a) Successor to and Continuation of 2011 Plan.** The Plan is intended as the successor to and continuation of the Dynavax Technologies Corporation 2011 Equity Incentive Plan (the “**2011 Plan**”). Following the Effective Date, no additional awards may be granted under the 2011 Plan or the Dynavax Technologies Corporation 2017 Inducement Award Plan (the “**2017 Inducement Plan**”), and following April 3, 2022, no additional awards may be granted under the Dynavax Technologies Corporation 2021 Inducement Award Plan (the “**2021 Inducement Plan**”) (each of the 2011 Plan, 2017 Inducement Plan and 2021 Inducement Plan, a “**Prior Plan**”). Any unallocated shares remaining available for grant under the 2011 Plan as of 12:01 a.m. Pacific Time on the Effective Date (the “**2011 Plan's Available Reserve**”) will cease to be available under the 2011 Plan at such time and will be added to the Share Reserve (as defined in Section 3(a)(i)) and be then immediately available for grant and issuance pursuant to Awards granted under this Plan. From and after 12:01 a.m. Pacific Time on the Effective Date with respect to awards granted under the 2011 Plan or 2017 Inducement Plan, and from and after 12:01 a.m. Pacific Time on the date of the Company's 2022 Annual Meeting of Stockholders with respect to awards granted under the 2021 Inducement Plan, except as provided in Sections 9(c), 9(d) and 9(e), all outstanding stock awards granted under any of the Prior Plans (each, a “**Prior Plan Award**”) will remain subject to the terms of the applicable Prior Plan; *provided, however*, that the following shares of Common Stock subject to any outstanding Prior Plan Award (collectively, the “**Prior Plans' Returning Shares**”) will immediately be added to the Share Reserve (as defined in Section 3(a)(i)) as and when such shares become Prior Plans' Returning Shares and will become available for grant and issuance pursuant to Awards granted under this Plan: (i) any shares subject to such stock award that are not issued because such stock award or any portion thereof expires or otherwise terminates without all of the shares covered by such stock award having been issued; (ii) any shares subject to such stock award that are not issued because such stock award or any portion thereof is settled in cash; and (iii) any shares issued pursuant to such stock award that are forfeited back to or repurchased by the Company because of the failure to meet a contingency or condition required

for the vesting of such shares. All Awards granted on or after 12:01 a.m. Pacific Time on the Effective Date will be subject to the terms of this Plan.

**(b)Eligible Award Recipients.** Subject to Section 4, Employees and Directors are eligible to receive Awards.

**(c)Available Awards.** The Plan provides for the grant of the following types of Awards: (i) Incentive Stock Options; (ii) Nonstatutory Stock Options; (iii) Stock Appreciation Rights; (iv) Restricted Stock Awards; (v) Restricted Stock Unit Awards; (vi) Performance Stock Awards; and (vii) Other Stock Awards.

**(d)Purpose.** The Plan, through the granting of Awards, is intended to help the Company and any Affiliate secure and retain the services of eligible award recipients, provide incentives for such persons to exert maximum efforts for the success of the Company and any Affiliate and provide a means by which such persons may benefit from increases in value of the Common Stock.

## **2.ADMINISTRATION.**

**(a)Administration by Board.** The Board will administer the Plan. The Board may delegate administration of the Plan to a Committee or Committees, as provided in Section 2(c).

**(b)Powers of Board.** The Board will have the power, subject to, and within the limitations of, the express provisions of the Plan:

**(i)**To determine (A) who will be granted Awards, (B) when and how each Award will be granted, (C) what type of Award will be granted, (D) the provisions of each Award (which need not be identical), including when a Participant will be permitted to exercise or otherwise receive cash or Common Stock under the Award, (E) the number of shares of Common Stock subject to, or the cash value of, an Award, and (F) the Fair Market Value applicable to an Award.

**(ii)**To construe and interpret the Plan and Awards granted under it, and to establish, amend and revoke rules and regulations for administration of the Plan and Awards. The Board, in the exercise of these powers, may correct any defect, omission or inconsistency in the Plan or in any Award Agreement, in a manner and to the extent it will deem necessary or expedient to make the Plan or Award fully effective.

**(iii)**To settle all controversies regarding the Plan and Awards granted under it.

**(iv)**To accelerate, in whole or in part, the time at which an Award may be exercised or vest (or at which cash or shares of Common Stock may be issued in settlement thereof).

**(v)**To suspend or terminate the Plan at any time. Except as otherwise provided in the Plan (including Section 2(b)(viii)) or an Award Agreement, suspension or termination of the

Plan will not materially impair a Participant's rights under an outstanding Award without his or her written consent.

**(vi)**To amend the Plan in any respect the Board deems necessary or advisable, including, without limitation, by adopting amendments relating to Incentive Stock Options and certain nonqualified deferred compensation under Section 409A of the Code and/or to make the Plan or Awards granted under the Plan compliant with the requirements for Incentive Stock Options or exempt from or compliant with the requirements for nonqualified deferred compensation under Section 409A of the Code, subject to the limitations, if any, of applicable law. However, if required by applicable law or listing requirements, and except as provided in Section 9(a) relating to Capitalization Adjustments, the Company will seek stockholder approval of any amendment of the Plan that (A) materially increases the number of shares of Common Stock available for issuance under the Plan, (B) materially expands the class of individuals eligible to receive Awards under the Plan, (C) materially increases the benefits accruing to Participants under the Plan, (D) materially reduces the price at which shares of Common Stock may be issued or purchased under the Plan, or (E) materially expands the types of Awards available for issuance under the Plan. Except as otherwise provided in the Plan (including Section 2(b)(viii)) or an Award Agreement, no amendment of the Plan will materially impair a Participant's rights under an outstanding Award without his or her written consent.

**(vii)**To submit any amendment to the Plan for stockholder approval, including, but not limited to, amendments to the Plan intended to satisfy the requirements of (A) Section 422 of the Code regarding incentive stock options or (B) Rule 16b-3.

**(viii)**To approve forms of Award Agreements for use under the Plan and to amend the terms of any one or more outstanding Awards, including, but not limited to, amendments to provide terms more favorable to the Participant than previously provided in the Award Agreement, subject to any specified limits in the Plan that are not subject to Board discretion; *provided, however*, that except as otherwise provided in the Plan (including this Section 2(b)(viii)) or an Award Agreement, no amendment of an outstanding Award will materially impair a Participant's rights under such Award without his or her written consent.

Notwithstanding the foregoing or anything in the Plan to the contrary, unless prohibited by applicable law, the Board may amend the terms of any outstanding Award or the Plan, or may suspend or terminate the Plan, without the affected Participant's consent, (A) to maintain the qualified status of the Award as an Incentive Stock Option under Section 422 of the Code, (B) to change the terms of an Incentive Stock Option, if such change results in impairment of the Award solely because it impairs the qualified status of the Award as an Incentive Stock Option under Section 422 of the Code, (C) to clarify the manner of exemption from, or to bring the Award or the Plan into compliance with, Section 409A of the Code or (D) to comply with other applicable laws or listing requirements.

**(ix)**Generally, to exercise such powers and to perform such acts as the Board deems necessary or expedient to promote the best interests of the Company and that are not in conflict with the provisions of the Plan or Awards.

(x) To adopt such procedures and sub-plans as are necessary or appropriate to permit participation in the Plan by Employees or Directors who are foreign nationals or employed outside the United States (provided that Board approval will not be necessary for immaterial modifications to the Plan or any Award Agreement that are required for compliance with the laws of the relevant foreign jurisdiction).

**(c) Delegation to Committee.**

**(i) General.** The Board may delegate some or all of the administration of the Plan to a Committee or Committees. If administration of the Plan is delegated to a Committee, the Committee will have, in connection with the administration of the Plan, the powers theretofore possessed by the Board that have been delegated to the Committee, including the power to delegate to a subcommittee of the Committee any of the administrative powers the Committee is authorized to exercise (and references in this Plan to the Board will thereafter be to the Committee or subcommittee, as applicable). Any delegation of administrative powers will be reflected in resolutions, not inconsistent with the provisions of the Plan, adopted from time to time by the Board or Committee (as applicable). The Committee may, at any time, abolish the subcommittee and/or revest in the Committee any powers delegated to the subcommittee. The Board may retain the authority to concurrently administer the Plan with the Committee and may, at any time, revest in the Board some or all of the powers previously delegated.

**(ii) Rule 16b-3 Compliance.** The Committee may consist solely of two or more Non-Employee Directors in accordance with Rule 16b-3.

**(d) Delegation to an Officer.** The Board may delegate to one or more Officers the authority to do one or both of the following: (i) designate Employees who are not Officers to be recipients of Options and SARs (and, to the extent permitted by applicable law, other Awards) and, to the extent permitted by applicable law, the terms of such Awards; and (ii) determine the number of shares of Common Stock to be subject to such Awards granted to such Employees; *provided, however*, that the Board resolutions regarding such delegation will specify the total number of shares of Common Stock that may be subject to the Awards granted by such Officer and that such Officer may not grant an Award to himself or herself. Any such Awards will be granted on the form of Award Agreement most recently approved for use by the Committee or the Board, unless otherwise provided in the resolutions approving the delegation of authority. The Board may not delegate authority to an Officer who is acting solely in the capacity of an Officer (and not also as a Director) to determine the Fair Market Value of the Common Stock pursuant to Section 13(w)(iii).

**(e) Effect of Board's Decision.** All determinations, interpretations and constructions made by the Board in good faith will not be subject to review by any person and will be final, binding and conclusive on all persons.

**(f) Cancellation and Re-Grant of Awards.** Neither the Board nor any Committee will have the authority to (i) reduce the exercise or strike price of any outstanding Option or SAR or (ii) cancel any outstanding Option or SAR that has an exercise or strike price (per share) greater than the then-current Fair Market Value of the Common Stock in exchange for cash or other

Awards under the Plan, unless the stockholders of the Company have approved such an action within 12 months prior to such an event.

**(g)Minimum Vesting Requirements.** No Award may vest (or, if applicable, be exercisable) until at least 12 months following the date of grant of the Award; *provided, however*, that shares of Common Stock up to 5% of the Share Reserve (as defined in Section 3(a)(i)) may be issued pursuant to Awards that do not meet such vesting (and, if applicable, exercisability) requirements.

**(h)Dividends and Dividend Equivalents.** Dividends or dividend equivalents may be paid or credited, as applicable, with respect to any shares of Common Stock subject to an Award, as determined by the Board and contained in the applicable Award Agreement; *provided, however*, that (i) no dividends or dividend equivalents may be paid with respect to any such shares before the date such shares have vested under the terms of such Award Agreement, (ii) any dividends or dividend equivalents that are credited with respect to any such shares will be subject to all of the terms and conditions applicable to such shares under the terms of such Award Agreement (including, but not limited to, any vesting conditions), and (iii) any dividends or dividend equivalents that are credited with respect to any such shares will be forfeited to the Company on the date, if any, such shares are forfeited to or repurchased by the Company due to a failure to meet any vesting conditions under the terms of such Award Agreement.

### **3.SHARES SUBJECT TO THE PLAN.**

#### **(a)Share Reserve.**

**(i)**Subject to Section 3(a)(iii) and Section 9(a) relating to Capitalization Adjustments, the aggregate number of shares of Common Stock that may be issued pursuant to Awards from and after the Effective Date will not exceed (A) 41,440,250 shares (which number is the sum of (i) the number of shares (140,250) subject to the 2011 Plan's Available Reserve, (ii) an additional 5,000,000 shares that were approved at the Company's 2018 Annual Meeting of Stockholders, (iii) an additional 2,300,000 shares that were approved at the Company's 2019 Annual Meeting of Stockholders, (iv) an additional 7,600,000 shares that were approved at the Company's 2020 Annual Meeting of Stockholders, (v) an additional 15,000,000 shares that were approved at the Company's 2022 Annual Meeting of Stockholders), and (vi) an additional 11,400,000 shares that were approved at the Company's 2024 Annual Meeting of Stockholders), *plus* (B) the Prior Plans' Returning Shares, if any, which become available for issuance under this Plan from time to time (such aggregate number of shares described in (A) and (B), the "**Share Reserve**").

**(ii)**Subject to Section 3(b), the number of shares of Common Stock available for issuance under the Plan will be reduced by: (A) one share for each share of Common Stock issued pursuant to an Appreciation Award granted under the Plan; (B) 1.28 shares for each share of Common Stock issued pursuant to a Full Value Award granted under the Plan prior to May 30, 2019; and (C) 1.40 shares for each share of Common Stock issued pursuant to a Full Value Award granted under the Plan on or after May 30, 2019.



(iii) Subject to Section 3(b), the number of shares of Common Stock available for issuance under the Plan will be increased by: (A) one share for each Prior Plans' Returning Share or 2018 Plan Returning Share (as defined in Section 3(b)(i)) subject to an Appreciation Award; (B) 1.28 shares for each Prior Plans' Returning Share or 2018 Plan Returning Share subject to a Full Value Award that returns to the Plan prior to May 30, 2019; and (C) 1.40 shares for each Prior Plans' Returning Share or 2018 Plan Returning Share subject to a Full Value Award that returns to the Plan on or after May 30, 2019.

(iv) For clarity, the Share Reserve in this Section 3(a) is a limitation on the number of shares of Common Stock that may be issued pursuant to the Plan. Accordingly, this Section 3(a) does not limit the granting of Awards except as provided in Section 7(a). Shares may be issued in connection with a merger or acquisition as permitted by Nasdaq Listing Rule 5635(c) or, if applicable, NYSE Listed Company Manual Section 303A.08, AMEX Company Guide Section 711 or other applicable rule, and such issuance will not reduce the number of shares available for issuance under the Plan.

**(b) Reversion of Shares to the Share Reserve.**

(i) **Shares Available for Subsequent Issuance.** The following shares of Common Stock (collectively, the "**2018 Plan Returning Shares**") will become available again for issuance under the Plan: (A) any shares subject to an Award that are not issued because such Award or any portion thereof expires or otherwise terminates without all of the shares covered by such Award having been issued; (B) any shares subject to an Award that are not issued because such Award or any portion thereof is settled in cash; and (C) any shares issued pursuant to an Award that are forfeited back to or repurchased by the Company because of the failure to meet a contingency or condition required for the vesting of such shares.

(ii) **Shares Not Available for Subsequent Issuance.** The following shares of Common Stock will not become available again for issuance under the Plan: (A) any shares that are reacquired or withheld (or not issued) by the Company to satisfy the exercise, strike or purchase price of an Award or a Prior Plan Award (including any shares subject to such award that are not delivered because such award is exercised through a reduction of shares subject to such award (i.e., "net exercised")); (B) any shares that are reacquired or withheld (or not issued) by the Company to satisfy a tax withholding obligation in connection with an Award or a Prior Plan Award; (C) any shares repurchased by the Company on the open market with the proceeds of the exercise, strike or purchase price of an Award or a Prior Plan Award; and (D) in the event that a Stock Appreciation Right granted under the Plan or a stock appreciation right granted under any of the Prior Plans is settled in shares of Common Stock, the gross number of shares of Common Stock subject to such award.

(c) **Incentive Stock Option Limit.** Subject to the Share Reserve and Section 9(a) relating to Capitalization Adjustments, the aggregate maximum number of shares of Common Stock that may be issued pursuant to the exercise of Incentive Stock Options will be 44,000,000 shares.

**(d)Non-Employee Director Compensation Limit.** The aggregate value of all cash and equity-based compensation granted or paid, as applicable, by the Company to any individual for service as a Non-Employee Director with respect to any fiscal year of the Company will not exceed: (i) a total of \$200,000 with respect to any such cash compensation; and (ii) \$800,000 in total value with respect to any such equity-based compensation (including Awards and any other equity-based awards), provided that for any individual who is first appointed or elected to the Board as a Non-Employee Director during any fiscal year of the Company, the limit for such individual's equity-based compensation will be \$1,200,000 with respect to such fiscal year, in each case calculating the value of any such awards based on the grant date fair value of such awards for financial reporting purposes.

**(e)Source of Shares.** The stock issuable under the Plan will be shares of authorized but unissued or reacquired Common Stock, including shares repurchased by the Company on the open market or otherwise.

#### **4.ELIGIBILITY.**

**(a)Eligibility for Specific Awards.** Incentive Stock Options may be granted only to employees of the Company or a "parent corporation" or "subsidiary corporation" thereof (as such terms are defined in Sections 424(e) and 424(f) of the Code). Awards other than Incentive Stock Options may be granted to Employees and Directors; *provided, however*, that Awards may not be granted to Employees and Directors who are providing Continuous Service only to any "parent" of the Company, as such term is defined in Rule 405, unless (i) the stock underlying such Awards is treated as "service recipient stock" under Section 409A of the Code (for example, because the Awards are granted pursuant to a corporate transaction such as a spin off transaction) or (ii) the Company, in consultation with its legal counsel, has determined that such Awards are otherwise exempt from or alternatively comply with Section 409A of the Code.

**(b)Ten Percent Stockholders.** A Ten Percent Stockholder will not be granted an Incentive Stock Option unless the exercise price (per share) of such Option is at least 110% of the Fair Market Value of the Common Stock on the date of grant of such Option and the Option is not exercisable after the expiration of five years from the date of grant.

#### **5.PROVISIONS RELATING TO OPTIONS AND STOCK APPRECIATION RIGHTS.**

Each Option or SAR Agreement will be in such form and will contain such terms and conditions as the Board deems appropriate. All Options will be separately designated Incentive Stock Options or Nonstatutory Stock Options at the time of grant, and, if certificates are issued, a separate certificate or certificates will be issued for shares of Common Stock purchased on exercise of each type of Option. If an Option is not specifically designated as an Incentive Stock Option, or if an Option is designated as an Incentive Stock Option but some portion or all of the Option fails to qualify as an Incentive Stock Option under the applicable rules, then the Option (or portion thereof) will be a Nonstatutory Stock Option. The terms and conditions of separate Option or SAR Agreements need not be identical; *provided, however*, that each Award Agreement will conform to (through incorporation of the provisions hereof by reference in the applicable Award Agreement or otherwise) the substance of each of the following provisions:

**(a)Term.** Subject to the provisions of Section 4(b) regarding Ten Percent Stockholders, no Option or SAR will be exercisable after the expiration of seven years from the date of its grant or such shorter period specified in the Award Agreement.

**(b)Exercise or Strike Price.** Subject to the provisions of Section 4(b) regarding Ten Percent Stockholders, the exercise or strike price (per share) of each Option or SAR will be not less than 100% of the Fair Market Value of the Common Stock on the date the Award is granted. Notwithstanding the foregoing, an Option or SAR may be granted with an exercise or strike price (per share) less than 100% of the Fair Market Value of the Common Stock on the date the Award is granted if such Award is granted pursuant to an assumption of, or substitution for, another option or stock appreciation right pursuant to a Transaction and in a manner consistent with the provisions of Section 409A of the Code and, if applicable, Section 424(a) of the Code. Each SAR will be denominated in shares of Common Stock equivalents.

**(c)Payment of Exercise Price for Options.** The exercise price of an Option may be paid, to the extent permitted by applicable law and as determined by the Board in its sole discretion, by one or more of the methods of payment set forth below that are specified in the Option Agreement. The Board has the authority to grant Options that do not permit all of the following methods of payment (or that otherwise restrict the ability to utilize certain methods) and to grant Options that require the consent of the Company to utilize a particular method of payment.

**(i)**By cash (including electronic funds transfers), check, bank draft or money order payable to the Company;

**(ii)**Pursuant to a program developed under Regulation T as promulgated by the Federal Reserve Board that, prior to the issuance of the Common Stock subject to the Option, results in either the receipt of cash (or check) by the Company or the receipt of irrevocable instructions to pay the aggregate exercise price to the Company from the sales proceeds;

**(iii)**By delivery to the Company (either by actual delivery or attestation) of shares of Common Stock;

**(iv)**If an Option is a Nonstatutory Stock Option, by a "net exercise" arrangement pursuant to which the Company will reduce the number of shares of Common Stock issuable upon exercise by the largest whole number of shares with a Fair Market Value that does not exceed the aggregate exercise price; *provided, however*, that the Company will accept a cash or other payment from the Participant to the extent of any remaining balance of the aggregate exercise price not satisfied by such reduction in the number of whole shares to be issued. Shares of Common Stock will no longer be subject to an Option and will not be exercisable thereafter to the extent that (A) shares issuable upon exercise are used to pay the exercise price pursuant to the "net exercise," (B) shares are delivered to the Participant as a result of such exercise, and (C) shares are withheld to satisfy tax withholding obligations; or

**(v)**In any other form of legal consideration that may be acceptable to the Board and specified in the applicable Award Agreement.

**(d)Exercise and Payment of a SAR.** To exercise any outstanding SAR, the Participant must provide written notice of exercise to the Company in compliance with the provisions of the Award Agreement evidencing such SAR. The appreciation distribution payable on the exercise of a SAR will be not greater than an amount equal to the excess of (A) the aggregate Fair Market Value (on the date of the exercise of the SAR) of a number of shares of Common Stock equal to the number of Common Stock equivalents in which the Participant is vested under such SAR, and with respect to which the Participant is exercising the SAR on such date, over (B) the aggregate strike price of the number of Common Stock equivalents with respect to which the Participant is exercising the SAR on such date. The appreciation distribution may be paid in Common Stock, in cash, in any combination of the two or in any other form of consideration, as determined by the Board and contained in the Award Agreement evidencing such SAR.

**(e)Transferability of Options and SARs.** The Board may, in its sole discretion, impose such limitations on the transferability of Options and SARs as the Board will determine. In the absence of such a determination by the Board to the contrary, the restrictions set forth in this Section 5(e) on the transferability of Options and SARs will apply. Notwithstanding the foregoing or anything in the Plan or an Award Agreement to the contrary, no Option or SAR may be transferred to any financial institution without prior stockholder approval.

**(i)Restrictions on Transfer.** An Option or SAR will not be transferable, except by will or by the laws of descent and distribution (and pursuant to Sections 5(e)(ii) and 5(e)(iii) below), and will be exercisable during the lifetime of the Participant only by the Participant. Subject to the foregoing paragraph, the Board may, in its sole discretion, permit transfer of the Option or SAR in a manner that is not prohibited by applicable tax and securities laws. Except as explicitly provided in the Plan, neither an Option nor a SAR may be transferred for consideration.

**(ii)Domestic Relations Orders.** Subject to the approval of the Board or a duly authorized Officer, an Option or SAR may be transferred pursuant to the terms of a domestic relations order, official marital settlement agreement or other divorce or separation instrument as permitted by Treasury Regulations Section 1.421-1(b)(2). If an Option is an Incentive Stock Option, such Option may be deemed to be a Nonstatutory Stock Option as a result of such transfer.

**(iii)Beneficiary Designation.** Subject to the approval of the Board or a duly authorized Officer, a Participant may, by delivering written notice to the Company, in a form approved by the Company (or the designated broker), designate a third party who, upon the death of the Participant, will thereafter be entitled to exercise the Option or SAR and receive the Common Stock or other consideration resulting from such exercise. In the absence of such a designation, upon the death of the Participant, the executor or administrator of the Participant's estate will be entitled to exercise the Option or SAR and receive the Common Stock or other consideration resulting from such exercise. However, the Company may prohibit designation of a beneficiary at any time, including due to any conclusion by the Company that such designation would be inconsistent with the provisions of applicable laws.

**(f)Vesting.** The total number of shares of Common Stock subject to an Option or SAR may vest and become exercisable in periodic installments that may or may not be equal. The

Option or SAR may be subject to such other terms and conditions on the time or times when it may or may not be exercised (which may be based on the satisfaction of Performance Goals or other criteria) as the Board may deem appropriate. The vesting provisions of individual Options or SARs may vary. The provisions of this Section 5(f) are subject to Section 2(g) and any Option or SAR provisions governing the minimum number of shares of Common Stock as to which an Option or SAR may be exercised.

**(g)Termination of Continuous Service.** Except as otherwise provided in the applicable Award Agreement or other written agreement between a Participant and the Company or an Affiliate, if a Participant's Continuous Service terminates (other than for Cause and other than upon the Participant's death or Disability), the Participant may exercise his or her Option or SAR (to the extent that the Participant was entitled to exercise such Option or SAR as of the date of termination of Continuous Service), but only within such period of time ending on the earlier of (i) the date that is three months following such termination of Continuous Service (or such longer or shorter period specified in the Award Agreement), and (ii) the expiration of the term of the Option or SAR as set forth in the Award Agreement. If, after such termination of Continuous Service, the Participant does not exercise his or her Option or SAR (as applicable) within the applicable time period, the Option or SAR (as applicable) will terminate.

**(h)Extension of Termination Date.** Except as otherwise provided in the applicable Award Agreement or other written agreement between a Participant and the Company or an Affiliate, if the exercise of an Option or SAR following the termination of a Participant's Continuous Service (other than for Cause and other than upon the Participant's death or Disability) would be prohibited at any time solely because the issuance of shares of Common Stock would violate the registration requirements under the Securities Act, then the Option or SAR will terminate on the earlier of (i) the expiration of a total period of time (that need not be consecutive) equal to the applicable post-termination exercise period after the termination of the Participant's Continuous Service during which the exercise of the Option or SAR would not be in violation of such registration requirements or (ii) the expiration of the term of the Option or SAR as set forth in the applicable Award Agreement. In addition, except as otherwise provided in the applicable Award Agreement or other written agreement between a Participant and the Company or an Affiliate, if the sale of any Common Stock received upon exercise of an Option or SAR following the termination of a Participant's Continuous Service (other than for Cause) would violate the Company's insider trading policy, then the Option or SAR will terminate on the earlier of (i) the expiration of a total period of time (that need not be consecutive) equal to the applicable post-termination exercise period after the termination of the Participant's Continuous Service during which the sale of the Common Stock received upon exercise of the Option or SAR would not be in violation of the Company's insider trading policy or (ii) the expiration of the term of the Option or SAR as set forth in the applicable Award Agreement.

**(i)Disability of Participant.** Except as otherwise provided in the applicable Award Agreement or other written agreement between a Participant and the Company or an Affiliate, if a Participant's Continuous Service terminates as a result of the Participant's Disability, the Participant may exercise his or her Option or SAR (to the extent that the Participant was entitled to exercise such Option or SAR as of the date of termination of Continuous Service), but only within such period of time ending on the earlier of (i) the date that is 12 months following such

termination of Continuous Service (or such longer or shorter period specified in the Award Agreement), and (ii) the expiration of the term of the Option or SAR as set forth in the Award Agreement. If, after such termination of Continuous Service, the Participant does not exercise his or her Option or SAR (as applicable) within the applicable time period, the Option or SAR (as applicable) will terminate.

**(j)Death of Participant.** Except as otherwise provided in the applicable Award Agreement or other written agreement between a Participant and the Company or an Affiliate, if (i) a Participant's Continuous Service terminates as a result of the Participant's death, or (ii) a Participant dies within the period (if any) specified in the Award Agreement for exercisability after the termination of the Participant's Continuous Service (for a reason other than death), then the Participant's Option or SAR may be exercised (to the extent that the Participant was entitled to exercise such Option or SAR as of the date of death) by the Participant's estate, by a person who acquired the right to exercise the Option or SAR by bequest or inheritance, or by a person designated to exercise the Option or SAR upon the Participant's death, but only within such period of time ending on the earlier of (i) the date that is 18 months following the date of death (or such longer or shorter period specified in the Award Agreement), and (ii) the expiration of the term of the Option or SAR as set forth in the Award Agreement. If, after the Participant's death, the Option or SAR (as applicable) is not exercised within the applicable time period, the Option or SAR (as applicable) will terminate.

**(k)Termination for Cause.** Except as explicitly provided otherwise in the applicable Award Agreement or other individual written agreement between a Participant and the Company or an Affiliate, if a Participant's Continuous Service is terminated for Cause, the Participant's Option or SAR will terminate immediately upon such termination of Continuous Service, and the Participant will be prohibited from exercising his or her Option or SAR from and after the time of such termination of Continuous Service.

**(l)Non-Exempt Employees.** If an Option or SAR is granted to an Employee who is a non-exempt employee for purposes of the Fair Labor Standards Act of 1938, as amended, the Option or SAR will not be first exercisable for any shares of Common Stock until at least six months following the date of grant of the Option or SAR (although the Award may vest prior to such date). Consistent with the provisions of the Worker Economic Opportunity Act, (i) if such non-exempt employee dies or suffers a Disability, (ii) upon a Transaction in which such Option or SAR is not assumed, continued or substituted, (iii) upon a Change in Control, or (iv) upon the Participant's retirement (as such term may be defined in the Participant's Award Agreement, in another written agreement between the Participant and the Company or an Affiliate, or, if no such definition, in accordance with the Company's or Affiliate's then current employment policies and guidelines), the vested portion of any Options and SARs may be exercised earlier than six months following the date of grant. The foregoing provision is intended to operate so that any income derived by a non-exempt employee in connection with the exercise or vesting of an Option or SAR will be exempt from his or her regular rate of pay. To the extent permitted and/or required for compliance with the Worker Economic Opportunity Act to ensure that any income derived by a non-exempt employee in connection with the exercise, vesting or issuance of any shares under any other Award will be exempt from the employee's regular rate of pay, the provisions of this Section

5(l) will apply to all Awards and are hereby incorporated by reference into such Award Agreements.

## **6. PROVISIONS OF AWARDS OTHER THAN OPTIONS AND SARs.**

**(a) Restricted Stock Awards.** Each Restricted Stock Award Agreement will be in such form and will contain such terms and conditions as the Board deems appropriate. To the extent consistent with the Company's bylaws, at the Board's election, shares of Common Stock underlying a Restricted Stock Award may be (i) held in book entry form subject to the Company's instructions until any restrictions relating to the Restricted Stock Award lapse, or (ii) evidenced by a certificate, which certificate will be held in such form and manner as determined by the Board. The terms and conditions of separate Restricted Stock Award Agreements need not be identical; *provided, however*, that each Restricted Stock Award Agreement will conform to (through incorporation of the provisions hereof by reference in the applicable Award Agreement or otherwise) the substance of each of the following provisions:

**(i) Consideration.** A Restricted Stock Award may be awarded in consideration for (A) cash (including electronic funds transfers), check, bank draft or money order payable to the Company, (B) past services to the Company or an Affiliate or (C) any other form of legal consideration (including future services) that may be acceptable to the Board, in its sole discretion, and permissible under applicable law.

**(ii) Vesting.** Subject to Section 2(g), shares of Common Stock awarded under a Restricted Stock Award Agreement may be subject to forfeiture to or repurchase by the Company in accordance with a vesting schedule to be determined by the Board.

**(iii) Termination of Continuous Service.** If a Participant's Continuous Service terminates, the Company may receive through a forfeiture condition or a repurchase right any or all of the shares of Common Stock held by the Participant that have not vested as of the date of such termination under the terms of the Participant's Restricted Stock Award Agreement.

**(iv) Transferability.** Rights to acquire shares of Common Stock under a Restricted Stock Award Agreement will be transferable by the Participant only upon such terms and conditions as are set forth in the Restricted Stock Award Agreement, as the Board will determine in its sole discretion, so long as Common Stock awarded under the Restricted Stock Award Agreement remains subject to the terms of the Restricted Stock Award Agreement. Notwithstanding the foregoing or anything in the Plan or a Restricted Stock Award Agreement to the contrary, no Restricted Stock Award may be transferred to any financial institution without prior stockholder approval.

**(b) Restricted Stock Unit Awards.** Each Restricted Stock Unit Award Agreement will be in such form and will contain such terms and conditions as the Board deems appropriate. The terms and conditions of separate Restricted Stock Unit Award Agreements need not be identical; *provided, however*, that each Restricted Stock Unit Award Agreement will conform to (through incorporation of the provisions hereof by reference in the applicable Award Agreement or otherwise) the substance of each of the following provisions:

**(i)Consideration.** At the time of grant of a Restricted Stock Unit Award, the Board will determine the consideration, if any, to be paid by the Participant upon delivery of each share of Common Stock subject to the Restricted Stock Unit Award. The consideration to be paid (if any) by the Participant for each share of Common Stock subject to a Restricted Stock Unit Award may be paid in any form of legal consideration that may be acceptable to the Board, in its sole discretion, and permissible under applicable law.

**(ii)Vesting.** Subject to Section 2(g), at the time of the grant of a Restricted Stock Unit Award, the Board may impose such restrictions on or conditions to the vesting of the Restricted Stock Unit Award as it, in its sole discretion, deems appropriate.

**(iii)Payment.** A Restricted Stock Unit Award may be settled by the delivery of shares of Common Stock, their cash equivalent, any combination thereof or in any other form of consideration, as determined by the Board and contained in the Restricted Stock Unit Award Agreement.

**(iv)Additional Restrictions.** At the time of the grant of a Restricted Stock Unit Award, the Board, as it deems appropriate, may impose such restrictions or conditions that delay the delivery of the shares of Common Stock (or their cash equivalent) subject to the Restricted Stock Unit Award to a time after the vesting of the Restricted Stock Unit Award.

**(v)Termination of Continuous Service.** Except as otherwise provided in the applicable Restricted Stock Unit Award Agreement or other written agreement between a Participant and the Company or an Affiliate, if a Participant's Continuous Service terminates, any portion of the Participant's Restricted Stock Unit Award that has not vested as of the date of such termination will be forfeited upon such termination.

**(c)Performance Stock Awards.**

**(i)General.** A Performance Stock Award is an Award that is payable (including that may be granted, vest or be exercised) contingent upon the attainment during a Performance Period of specified Performance Goals. A Performance Stock Award may, but need not, require the Participant's completion of a specified period of Continuous Service. Subject to Section 2(g), the length of any Performance Period, the Performance Goals to be achieved during the Performance Period, and the measure of whether and to what degree such Performance Goals have been attained will be conclusively determined by the Board, in its sole discretion. In addition, to the extent permitted by applicable law and the applicable Award Agreement, the Board may determine that cash may be used in payment of Performance Stock Awards.

**(ii)Board Discretion.** With respect to any Performance Stock Award, the Board retains the discretion to (A) reduce or eliminate the compensation or economic benefit due upon the attainment of any Performance Goals on the basis of any considerations as the Board, in its sole discretion, may determine and (B) define the manner of calculating the Performance Criteria it selects to use for a Performance Period.



**(d)Other Stock Awards.** Other forms of Awards valued in whole or in part by reference to, or otherwise based on, Common Stock, including the appreciation in value thereof may be granted either alone or in addition to Awards granted under Section 5 and this Section 6. Subject to the provisions of the Plan (including, but not limited to, Sections 2(g) and 2(h)), the Board will have sole and complete authority to determine the persons to whom and the time or times at which such Other Stock Awards will be granted, the number of shares of Common Stock (or the cash equivalent thereof) to be granted pursuant to such Other Stock Awards and all other terms and conditions of such Other Stock Awards.

## **7.COVENANTS OF THE COMPANY.**

**(a)Availability of Shares.** The Company will keep available at all times the number of shares of Common Stock reasonably required to satisfy then-outstanding Awards.

**(b)Securities Law Compliance.** The Company will seek to obtain from each regulatory commission or agency having jurisdiction over the Plan the authority required to grant Awards and to issue and sell shares of Common Stock upon exercise of the Awards; *provided, however*, that this undertaking will not require the Company to register under the Securities Act the Plan, any Award or any Common Stock issued or issuable pursuant to any such Award. If, after reasonable efforts and at a reasonable cost, the Company is unable to obtain from any such regulatory commission or agency the authority that counsel for the Company deems necessary for the lawful issuance and sale of Common Stock under the Plan, the Company will be relieved from any liability for failure to issue and sell Common Stock upon exercise of such Awards unless and until such authority is obtained. A Participant will not be eligible for the grant of an Award or the subsequent issuance of cash or Common Stock pursuant to the Award if such grant or issuance would be in violation of any applicable securities law.

**(c)No Obligation to Notify or Minimize Taxes.** The Company will have no duty or obligation to any Participant to advise such holder as to the time or manner of exercising an Award. Furthermore, the Company will have no duty or obligation to warn or otherwise advise such holder of a pending termination or expiration of an Award or a possible period in which the Award may not be exercised. The Company has no duty or obligation to minimize the tax consequences of an Award to the holder of such Award.

## **8.MISCELLANEOUS.**

**(a)Use of Proceeds from Sales of Common Stock.** Proceeds from the sale of shares of Common Stock issued pursuant to Awards will constitute general funds of the Company.

**(b)Corporate Action Constituting Grant of Awards.** Corporate action constituting a grant by the Company of an Award to any Participant will be deemed completed as of the date of such corporate action, unless otherwise determined by the Board, regardless of when the instrument, certificate or letter evidencing the Award is communicated to, or actually received or accepted by, the Participant. In the event that the corporate records (*e.g.*, Board consents, resolutions or minutes) documenting the corporate action constituting the grant contain terms (*e.g.*, exercise price, vesting schedule or number of shares) that are inconsistent with those in the Award

Agreement or related grant documents as a result of a clerical error in the papering of the Award Agreement or related grant documents, the corporate records will control and the Participant will have no legally binding right to the incorrect term in the Award Agreement or related grant documents.

**(c) Stockholder Rights.** No Participant will be deemed to be the holder of, or to have any of the rights of a holder with respect to, any shares of Common Stock subject to an Award unless and until (i) such Participant has satisfied all requirements for exercise of, or the issuance of shares of Common Stock under, the Award pursuant to its terms, and (ii) the issuance of the Common Stock subject to such Award has been entered into the books and records of the Company.

**(d) No Employment or Other Service Rights.** Nothing in the Plan, any Award Agreement or any other instrument executed thereunder or in connection with any Award granted pursuant thereto will confer upon any Participant any right to continue to serve the Company or an Affiliate in the capacity in effect at the time the Award was granted or will affect the right of the Company or an Affiliate to terminate (i) the employment of an Employee with or without notice and with or without cause, or (ii) the service of a Director pursuant to the bylaws of the Company or an Affiliate, and any applicable provisions of the corporate law of the state in which the Company or the Affiliate is incorporated, as the case may be.

**(e) Change in Time Commitment.** In the event a Participant's regular level of time commitment in the performance of his or her services for the Company or any Affiliate is reduced (for example, and without limitation, if the Participant is an Employee of the Company and the Employee has a change in status from a full-time Employee to a part-time Employee or takes an extended leave of absence) after the date of grant of any Award to the Participant, the Board has the right in its sole discretion to (i) make a corresponding reduction in the number of shares or cash amount subject to any portion of such Award that is scheduled to vest or become payable after the date of such change in time commitment, and (ii) in lieu of or in combination with such a reduction, extend the vesting or payment schedule applicable to such Award. In the event of any such reduction, the Participant will have no right with respect to any portion of the Award that is so reduced or extended.

**(f) Incentive Stock Option Limitation.** To the extent that the aggregate Fair Market Value (determined at the time of grant) of Common Stock with respect to which Incentive Stock Options are exercisable for the first time by any Participant during any calendar year (under all plans of the Company and any Affiliates) exceeds \$100,000 (or such other limit established in the Code) or otherwise does not comply with the rules governing Incentive Stock Options, the Options or portions thereof that exceed such limit (according to the order in which they were granted) or otherwise do not comply with such rules will be treated as Nonstatutory Stock Options, notwithstanding any contrary provision of the applicable Option Agreement(s).

**(g) Investment Assurances.** The Company may require a Participant, as a condition of exercising or acquiring Common Stock under any Award, (i) to give written assurances satisfactory to the Company as to the Participant's knowledge and experience in financial and business matters and/or to employ a purchaser representative reasonably satisfactory to the

Company who is knowledgeable and experienced in financial and business matters and that he or she is capable of evaluating, alone or together with the purchaser representative, the merits and risks of exercising the Award and (ii) to give written assurances satisfactory to the Company stating that the Participant is acquiring Common Stock subject to the Award for the Participant's own account and not with any present intention of selling or otherwise distributing the Common Stock. The foregoing requirements, and any assurances given pursuant to such requirements, will be inoperative if (A) the issuance of the shares upon the exercise or acquisition of Common Stock under the Award has been registered under a then currently effective registration statement under the Securities Act or (B) as to any particular requirement, a determination is made by counsel for the Company that such requirement need not be met in the circumstances under the then applicable securities laws. The Company may, upon advice of counsel to the Company, place legends on stock certificates issued under the Plan as such counsel deems necessary or appropriate in order to comply with applicable securities laws, including, but not limited to, legends restricting the transfer of the Common Stock.

**(h)Withholding Obligations.** Unless prohibited by the terms of an Award Agreement, the Company may, in its sole discretion, satisfy any federal, state, local or foreign tax withholding obligation relating to an Award by any of the following means or by a combination of such means: (i) causing the Participant to tender a cash payment; (ii) withholding shares of Common Stock from the shares of Common Stock issued or otherwise issuable to the Participant in connection with the Award; (iii) withholding cash from an Award settled in cash; (iv) withholding payment from any amounts otherwise payable to the Participant; or (v) by such other method as may be set forth in the Award Agreement.

**(i)Electronic Delivery.** Any reference herein to a "written" agreement or document will include any agreement or document delivered electronically, filed publicly at [www.sec.gov](http://www.sec.gov) (or any successor website thereto) or posted on the Company's intranet (or other shared electronic medium controlled by the Company to which the Participant has access).

**(j)Deferrals.** To the extent permitted by applicable law, the Board, in its sole discretion, may determine that the delivery of Common Stock or the payment of cash, upon the exercise, vesting or settlement of all or a portion of any Award may be deferred and may establish programs and procedures for deferral elections to be made by Participants. Deferrals by Participants will be made in accordance with Section 409A of the Code. Consistent with Section 409A of the Code, the Board may provide for distributions while a Participant is still an employee or otherwise providing services to the Company or an Affiliate. The Board is authorized to make deferrals of Awards and determine when, and in what annual percentages, Participants may receive payments, including lump sum payments, following the Participant's termination of Continuous Service, and implement such other terms and conditions consistent with the provisions of the Plan and in accordance with applicable law.

**(k)Section 409A.** Unless otherwise expressly provided for in an Award Agreement, the Plan and Award Agreements will be interpreted to the greatest extent possible in a manner that makes the Plan and the Awards granted hereunder exempt from Section 409A of the Code, and, to the extent not so exempt, in compliance with Section 409A of the Code. If the Board determines that any Award granted hereunder is not exempt from and is therefore subject to Section 409A of

the Code, the Award Agreement evidencing such Award will incorporate the terms and conditions necessary to avoid the consequences specified in Section 409A(a)(1) of the Code, and to the extent an Award Agreement is silent on terms necessary for compliance with Section 409A of the Code, such terms are hereby incorporated by reference into the Award Agreement. Notwithstanding anything to the contrary in this Plan (and unless the Award Agreement specifically provides otherwise), if the shares of Common Stock are publicly traded, and if a Participant holding an Award that constitutes "deferred compensation" under Section 409A of the Code is a "specified employee" for purposes of Section 409A of the Code, no distribution or payment of any amount under such Award that is due because of a "separation from service" (as defined in Section 409A of the Code without regard to alternative definitions thereunder) will be issued or paid before the date that is six months and one day following the date of such Participant's "separation from service" or, if earlier, the date of the Participant's death, unless such distribution or payment may be made in a manner that complies with Section 409A of the Code, and any amounts so deferred will be paid in a lump sum on the day after such six-month period elapses, with the balance paid thereafter on the original schedule.

**(l) Clawback/Recovery.** All Awards granted under the Plan will be subject to recoupment in accordance with the following, as applicable: (i) the Dynavax Technologies Corporation Incentive Compensation Recoupment Policy; (ii) any clawback policy that the Company is required to adopt pursuant to the listing standards of any national securities exchange or association on which the Company's securities are listed or as is otherwise required by the Dodd-Frank Wall Street Reform and Consumer Protection Act or other applicable law; and (iii) any other clawback policy that the Company adopts. In addition, the Board may impose such other clawback, recovery or recoupment provisions in an Award Agreement as the Board, in its discretion, determines necessary or appropriate, including, but not limited to, a reacquisition right in respect of previously acquired shares of Common Stock or other cash or property upon the occurrence of Cause. No clawback, recovery or recoupment of compensation pursuant to any such policy or Award Agreement will be deemed an event giving rise to a right to resign for "good reason" or "constructive termination" (or similar term) under any agreement with the Company or an Affiliate.

#### **9. ADJUSTMENTS UPON CHANGES IN COMMON STOCK; OTHER CORPORATE EVENTS.**

**(a) Capitalization Adjustments.** In the event of a Capitalization Adjustment, the Board will appropriately and proportionately adjust: (i) the class(es) and maximum number of securities subject to the Plan pursuant to Section 3(a); (ii) the class(es) and maximum number of securities that may be issued pursuant to the exercise of Incentive Stock Options pursuant to Section 3(c); and (iii) the class(es) and number of securities and price per share of stock subject to outstanding Awards. The Board will make such adjustments and its determination will be final, binding and conclusive.

**(b) Dissolution or Liquidation.** Except as otherwise provided in the applicable Award Agreement or other written agreement between a Participant and the Company or an Affiliate, in the event of a dissolution or liquidation of the Company, all outstanding Awards (other than Awards consisting of vested and outstanding shares of Common Stock not subject to a forfeiture condition or the Company's right of repurchase) will terminate immediately prior to the

completion of such dissolution or liquidation, and the shares of Common Stock subject to a forfeiture condition or the Company's right of repurchase may be reacquired or repurchased by the Company notwithstanding the fact that the holder of such Award is providing Continuous Service.

**(c)Transactions.** In the event of a Transaction, the provisions of this Section 9(c) will apply to each outstanding Award and Prior Plan Award, in each case unless otherwise provided in the instrument evidencing the Award or Prior Plan Award (as applicable), in any other written agreement between the Company or any Affiliate and the Participant, or in any director compensation policy of the Company.

**(i)Awards May Be Assumed.** In the event of a Transaction, any surviving corporation or acquiring corporation (or the surviving or acquiring corporation's parent company) may assume or continue any or all outstanding Awards and/or Prior Plan Awards or may substitute similar stock awards for any or all outstanding Awards and/or Prior Plan Awards (including, but not limited to, awards to acquire the same consideration paid to the stockholders of the Company pursuant to the Transaction), and any reacquisition or repurchase rights held by the Company in respect of Common Stock issued pursuant to any outstanding Awards and/or Prior Plan Awards may be assigned by the Company to the surviving corporation or acquiring corporation (or the surviving or acquiring corporation's parent company). For clarity, in the event of a Transaction, any surviving corporation or acquiring corporation (or the surviving or acquiring corporation's parent company) may choose to assume or continue only a portion of an outstanding Award or Prior Plan Award, to substitute a similar stock award for only a portion of an outstanding Award or Prior Plan Award, or to assume or continue, or substitute similar stock awards for, the outstanding Awards and/or Prior Plan Awards held by some, but not all, Participants. The terms of any such assumption, continuation or substitution will be set by the Board.

**(ii)Awards Held by Current Participants.** In the event of a Transaction in which the surviving corporation or acquiring corporation (or the surviving or acquiring corporation's parent company) does not assume or continue outstanding Awards and/or Prior Plan Awards, or substitute similar stock awards for outstanding Awards and/or Prior Plan Awards, then with respect to any such Awards and/or Prior Plan Awards that have not been assumed, continued or substituted and that are held by Participants whose Continuous Service has not terminated prior to the effective time of the Transaction (referred to as the "**Current Participants**"), the vesting (and exercisability, if applicable) of such Awards and Prior Plan Awards will be accelerated in full (and with respect to Performance Stock Awards, vesting will be deemed to be satisfied at the target level of performance) to a date prior to the effective time of the Transaction (contingent upon the closing or completion of the Transaction) as the Board will determine (or, if the Board does not determine such a date, to the date that is five days prior to the effective time of the Transaction), and such Awards and Prior Plan Awards will terminate if not exercised (if applicable) prior to the effective time of the Transaction in accordance with the exercise procedures determined by the Board, and any reacquisition or repurchase rights held by the Company with respect to such Awards and Prior Plan Awards will lapse (contingent upon the closing or completion of the Transaction).

**(iii) Awards Held by Participants other than Current Participants.** In the event of a Transaction in which the surviving corporation or acquiring corporation (or the surviving or acquiring corporation's parent company) does not assume or continue outstanding Awards and/or Prior Plan Awards, or substitute similar stock awards for outstanding Awards and/or Prior Plan Awards, then with respect to any such Awards and/or Prior Plan Awards that have not been assumed, continued or substituted and that are held by Participants other than Current Participants, such Awards and Prior Plan Awards will terminate if not exercised (if applicable) prior to the effective time of the Transaction in accordance with the exercise procedures determined by the Board; *provided, however*, that any reacquisition or repurchase rights held by the Company with respect to such Awards and Prior Plan Awards will not terminate and may continue to be exercised notwithstanding the Transaction.

**(iv) Payment for Awards in Lieu of Exercise.** Notwithstanding the foregoing, in the event any outstanding Award or Prior Plan Award held by a Participant will terminate if not exercised prior to the effective time of a Transaction, the Board may provide that the Participant may not exercise such Award or Prior Plan Award but instead will receive a payment, in such form as may be determined by the Board, equal in value to the excess, if any, of (A) the value of the property the Participant would have received upon the exercise of such Award or Prior Plan Award immediately prior to the effective time of the Transaction, over (B) any exercise price payable by the Participant in connection with such exercise. For clarity, such payment may be zero if the value of such property is equal to or less than the exercise price. Payments under this provision may be delayed to the same extent that payment of consideration to the holders of the Common Stock in connection with the Transaction is delayed as a result of escrows, earn outs, holdbacks or any other contingencies.

**(d) Change in Control.** Unless provided otherwise in the Award Agreement for an Award or award agreement for a Prior Plan Award (as applicable), in any other written agreement or plan between the Company or any Affiliate and the Participant, or in any director compensation policy of the Company, an Award or Prior Plan Award will not be subject to additional acceleration of vesting and exercisability upon or after a Change in Control.

**(e) Prior Plan Awards.** For clarity, with respect to any Prior Plan Award, the terms set forth in Sections 9(c) and 9(d) will supersede any terms set forth in the applicable Prior Plan regarding the treatment of such Prior Plan Award in the event of a Corporate Transaction (as defined in the applicable Prior Plan) or Change in Control (as defined in the applicable Prior Plan).

**(f) Parachute Payments.** Except as otherwise provided in the applicable Award Agreement or other written agreement between a Participant and the Company or an Affiliate, if any payment or benefit the Participant would receive pursuant to a Change in Control from the Company or otherwise ("**Payment**") would (i) constitute a "parachute payment" within the meaning of Section 280G of the Code, and (ii) but for this sentence, be subject to the excise tax imposed by Section 4999 of the Code (the "**Excise Tax**"), then such Payment will be equal to the Reduced Amount. The "**Reduced Amount**" will be either (x) the largest portion of the Payment that would result in no portion of the Payment being subject to the Excise Tax or (y) the largest portion, up to and including the total, of the Payment, whichever amount, after taking into account all applicable federal, state and local employment taxes, income taxes, and the Excise Tax (all

computed at the highest applicable marginal rate), results in the Participant's receipt, on an after-tax basis, of the greater amount of the Payment notwithstanding that all or some portion of the Payment may be subject to the Excise Tax. If a reduction in payments or benefits constituting "parachute payments" is necessary so that the Payment equals the Reduced Amount, reduction will occur in the following order: (A) reduction of cash payments; (B) cancellation of accelerated vesting of equity awards other than stock options; (C) cancellation of accelerated vesting of stock options; and (D) reduction of other benefits paid to the Participant. Within any such category of payments and benefits (that is, (A), (B), (C) or (D)), a reduction will occur first with respect to amounts that are not "deferred compensation" within the meaning of Section 409A of the Code and then with respect to amounts that are. In the event that acceleration of compensation from a Participant's equity awards is to be reduced, such acceleration of vesting will be canceled, subject to the immediately preceding sentence, in the reverse order of the date of grant. The accounting firm engaged by the Company for general audit purposes as of the day prior to the effective date of the Change in Control will perform the foregoing calculations. If the accounting firm so engaged by the Company is serving as accountant or auditor for the individual, entity or group effecting the Change in Control, the Company will appoint a nationally recognized accounting firm to make the determinations required hereunder. The Company will bear all expenses with respect to the determinations by such accounting firm required to be made hereunder. The accounting firm engaged to make the determinations hereunder will provide its calculations, together with detailed supporting documentation, to the Participant and the Company within 15 calendar days after the date on which the Participant's right to a Payment is triggered (if requested at that time by the Participant or the Company) or such other time as reasonably requested by the Participant or the Company. Any good faith determinations of the accounting firm made hereunder will be final, binding and conclusive upon the Participant and the Company.

#### **10.TERMINATION OR SUSPENSION OF THE PLAN.**

**(a)Termination or Suspension.** The Board may suspend or terminate the Plan at any time. No Incentive Stock Option may be granted after the tenth anniversary of the earlier of (i) the Adoption Date or (ii) the date the Plan is approved by the stockholders of the Company. No Awards may be granted under the Plan while the Plan is suspended or after it is terminated.

**(b)No Impairment of Rights.** Suspension or termination of the Plan will not materially impair rights and obligations under any Award granted while the Plan is in effect except with the written consent of the affected Participant or as otherwise permitted in the Plan (including Section 2(b)(viii)) or an Award Agreement.

#### **11.EFFECTIVE DATE OF PLAN.**

This Plan will become effective on the Effective Date.

#### **12.CHOICE OF LAW.**

The laws of the State of Delaware will govern all questions concerning the construction, validity and interpretation of this Plan, without regard to that state's conflict of laws rules.

**13.D**EFINITIONS. As used in the Plan, the following definitions will apply to the capitalized terms indicated below:

**(a) "Adoption Date"** means April 8, 2018, which is the date the Plan was adopted by the Board.

**(b) "Affiliate"** means, at the time of determination, any "parent" or "subsidiary" of the Company as such terms are defined in Rule 405. The Board will have the authority to determine the time or times at which "parent" or "subsidiary" status is determined within the foregoing definition.

**(c) "Appreciation Award"** means (i) a stock option or stock appreciation right granted under any of the Prior Plans or (ii) an Option or Stock Appreciation Right, in each case with respect to which the exercise or strike price is at least 100% of the Fair Market Value of the Common Stock subject to the stock option or stock appreciation right, or Option or Stock Appreciation Right, as applicable, on the date of grant.

**(d) "Award"** means an Incentive Stock Option, a Nonstatutory Stock Option, a Stock Appreciation Right, a Restricted Stock Award, a Restricted Stock Unit Award, a Performance Stock Award or any Other Stock Award.

**(e) "Award Agreement"** means a written agreement between the Company and a Participant evidencing the terms and conditions of an Award.

**(f) "Board"** means the Board of Directors of the Company.

**(g) "Capitalization Adjustment"** means any change that is made in, or other events that occur with respect to, the Common Stock subject to the Plan or subject to any Award after the Adoption Date without the receipt of consideration by the Company through merger, consolidation, reorganization, recapitalization, reincorporation, stock dividend, dividend in property other than cash, large nonrecurring cash dividend, stock split, reverse stock split, liquidating dividend, combination of shares, exchange of shares, change in corporate structure or any similar equity restructuring transaction, as that term is used in Statement of Financial Accounting Standards No. 123 (revised). Notwithstanding the foregoing, the conversion of any convertible securities of the Company will not be treated as a Capitalization Adjustment.

**(h) "Cause"** will have the meaning ascribed to such term in any written agreement between a Participant and the Company or an Affiliate defining such term and, in the absence of such agreement, such term means, with respect to a Participant, the occurrence of one or more of the following: (i) the Participant's theft, dishonesty, willful misconduct, breach of fiduciary duty for personal profit, or falsification of any Company or Affiliate documents or records; (ii) the Participant's material failure to abide by the code of conduct or other policies (including, without limitation, policies relating to confidentiality and reasonable workplace conduct) of the Company or an Affiliate; (iii) the Participant's unauthorized use, misappropriation, destruction or diversion of any tangible or intangible asset or corporate opportunity of the Company or an Affiliate (including, without limitation, the Participant's improper use or disclosure of confidential or



proprietary information of the Company or an Affiliate); (iv) any intentional act by the Participant which has a material detrimental effect on the reputation or business of the Company or an Affiliate; (v) the Participant's repeated failure or inability to perform any reasonable assigned duties after written notice from the Company or an Affiliate, and a reasonable opportunity to cure, such failure or inability; (vi) any material breach by the Participant of any employment or service agreement between the Participant and the Company or an Affiliate, which breach is not cured pursuant to the terms of such agreement; or (vii) the Participant's conviction (including any plea of guilty or nolo contendere) of any criminal act involving fraud, dishonesty, misappropriation or moral turpitude, or which impairs the Participant's ability to perform his or her duties. The determination that a termination of a Participant's Continuous Service is either for Cause or without Cause will be made by the Company, in its sole discretion. Any determination by the Company that the Continuous Service of a Participant was terminated with or without Cause for the purposes of outstanding Awards held by the Participant will have no effect upon any determination of the rights or obligations of the Company or the Participant for any other purpose.

(i) "**Change in Control**" means the occurrence, in a single transaction or in a series of related transactions, of any one or more of the following events:

(i) any Exchange Act Person becomes the Owner, directly or indirectly, of securities of the Company representing more than 50% of the combined voting power of the Company's then outstanding securities other than by virtue of a merger, consolidation or similar transaction. Notwithstanding the foregoing, a Change in Control will not be deemed to occur (A) on account of the acquisition of securities of the Company directly from the Company, (B) on account of the acquisition of securities of the Company by an investor, any affiliate thereof or any other Exchange Act Person that acquires the Company's securities in a transaction or series of related transactions the primary purpose of which is to obtain financing for the Company through the issuance of equity securities, or (C) solely because the level of Ownership held by any Exchange Act Person (the "**Subject Person**") exceeds the designated percentage threshold of the outstanding voting securities as a result of a repurchase or other acquisition of voting securities by the Company reducing the number of shares outstanding, provided that if a Change in Control would occur (but for the operation of this sentence) as a result of the acquisition of voting securities by the Company, and after such share acquisition, the Subject Person becomes the Owner of any additional voting securities that, assuming the repurchase or other acquisition had not occurred, increases the percentage of the then outstanding voting securities Owned by the Subject Person over the designated percentage threshold, then a Change in Control will be deemed to occur;

(ii) there is consummated a merger, consolidation or similar transaction involving (directly or indirectly) the Company and, immediately after the consummation of such merger, consolidation or similar transaction, the stockholders of the Company immediately prior thereto do not Own, directly or indirectly, either (A) outstanding voting securities representing more than 50% of the combined outstanding voting power of the surviving Entity in such merger, consolidation or similar transaction or (B) more than 50% of the combined outstanding voting power of the parent of the surviving Entity in such merger, consolidation or similar transaction, in each case in substantially the same proportions as their Ownership of the outstanding voting securities of the Company immediately prior to such transaction;

(iii) there is consummated a sale, lease, exclusive license or other disposition of all or substantially all of the consolidated assets of the Company and its Subsidiaries, other than a sale, lease, license or other disposition of all or substantially all of the consolidated assets of the Company and its Subsidiaries to an Entity, more than 50% of the combined voting power of the voting securities of which are Owned by stockholders of the Company in substantially the same proportions as their Ownership of the outstanding voting securities of the Company immediately prior to such sale, lease, license or other disposition; or

(iv) over a period of 12 months or less, individuals who, on the Adoption Date, are members of the Board (the “**Incumbent Board**”) cease for any reason to constitute at least a majority of the members of the Board; *provided, however*, that if the appointment or election (or nomination for election) of any new Board member was approved or recommended by a majority vote of the members of the Incumbent Board then still in office, such new member will, for purposes of this Plan, be considered as a member of the Incumbent Board.

Notwithstanding the foregoing or any other provision of this Plan, (A) the term Change in Control will not include a sale of assets, merger or other transaction effected exclusively for the purpose of changing the domicile of the Company, and (B) the definition of Change in Control (or any analogous term) in an individual written agreement between a Participant and the Company or an Affiliate will supersede the foregoing definition with respect to Awards and/or Prior Plan Awards (as applicable) subject to such agreement; *provided, however*, that (1) if no definition of Change in Control (or any analogous term) is set forth in such an individual written agreement, the foregoing definition will apply; and (2) no Change in Control (or any analogous term) will be deemed to occur with respect to Awards and/or Prior Plan Awards (as applicable) subject to such an individual written agreement without a requirement that the Change in Control (or any analogous term) actually occur.

If required for compliance with Section 409A of the Code, in no event will an event be deemed a Change in Control if such event is not also a “change in the ownership of” the Company, a “change in the effective control of” the Company or a “change in the ownership of a substantial portion of the assets of” the Company, each as determined under Treasury Regulations Section 1.409A-3(i)(5) (without regard to any alternative definition thereunder). The Board may, in its sole discretion and without a Participant’s consent, amend the definition of “Change in Control” to conform to the definition of a “change in control event” under Section 409A of the Code and the regulations thereunder.

(j) “**Code**” means the Internal Revenue Code of 1986, as amended, including any applicable regulations and guidance thereunder.

(k) “**Committee**” means a committee of one or more Directors to whom authority has been delegated by the Board in accordance with Section 2(c).

(l) “**Common Stock**” means the common stock of the Company.

(m) “**Company**” means Dynavax Technologies Corporation, a Delaware corporation.

**(n) "Continuous Service"** means that the Participant's service with the Company or an Affiliate, whether as an Employee or Director, is not interrupted or terminated. A change in the capacity in which the Participant renders service to the Company or an Affiliate as an Employee or Director or a change in the Entity for which the Participant renders such service, provided that there is no interruption or termination of the Participant's service with the Company or an Affiliate, will not terminate a Participant's Continuous Service; *provided, however*, that if the Entity for which a Participant is rendering services ceases to qualify as an Affiliate, as determined by the Board, in its sole discretion, such Participant's Continuous Service will be considered to have terminated on the date such Entity ceases to qualify as an Affiliate. For example, a change in status from an Employee of the Company to a Director will not constitute an interruption of Continuous Service. To the extent permitted by law, the Board or the chief executive officer of the Company, in that party's sole discretion, may determine whether Continuous Service will be considered interrupted in the case of (i) any leave of absence approved by the Board or chief executive officer, including sick leave, military leave or any other personal leave, or (ii) transfers between the Company, an Affiliate or their successors. Notwithstanding the foregoing, a leave of absence will be treated as Continuous Service for purposes of vesting in an Award only to such extent as may be provided in the Company's or Affiliate's leave of absence policy, in the written terms of any leave of absence agreement or policy applicable to the Participant, or as otherwise required by law.

**(o) "Corporate Transaction"** means the occurrence, in a single transaction or in a series of related transactions, of any one or more of the following events:

**(i)** the consummation of a sale or other disposition of all or substantially all, as determined by the Board, in its sole discretion, of the consolidated assets of the Company and its Subsidiaries;

**(ii)** the consummation of a sale or other disposition of at least 90% of the outstanding securities of the Company;

**(iii)** the consummation of a merger, consolidation or similar transaction following which the Company is not the surviving corporation; or

**(iv)** the consummation of a merger, consolidation or similar transaction following which the Company is the surviving corporation but the shares of Common Stock outstanding immediately preceding the merger, consolidation or similar transaction are converted or exchanged by virtue of the merger, consolidation or similar transaction into other property, whether in the form of securities, cash or otherwise.

If required for compliance with Section 409A of the Code, in no event will an event be deemed a Corporate Transaction if such event is not also a "change in the ownership of" the Company, a "change in the effective control of" the Company or a "change in the ownership of a substantial portion of the assets of" the Company, each as determined under Treasury Regulations Section 1.409A-3(i)(5) (without regard to any alternative definition thereunder). The Board may, in its sole discretion and without a Participant's consent, amend the definition of "Corporate

Transaction” to conform to the definition of a “change in control event” under Section 409A of the Code and the regulations thereunder.

**(p) “Director”** means a member of the Board.

**(q) “Disability”** means, with respect to a Participant, the inability of such Participant to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months, as provided in Sections 22(e)(3) and 409A(a)(2)(c)(i) of the Code, and will be determined by the Board on the basis of such medical evidence as the Board deems warranted under the circumstances.

**(r) “Effective Date”** means the effective date of this Plan, which is the date of the Annual Meeting of Stockholders of the Company held in 2018, provided that this Plan is approved by the Company’s stockholders at such meeting.

**(s) “Employee”** means any person employed by the Company or an Affiliate. However, service solely as a Director, or payment of a fee for such services, will not cause a Director to be considered an “Employee” for purposes of the Plan.

**(t) “Entity”** means a corporation, partnership, limited liability company or other entity.

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

**(v) “Exchange Act Person”** means any natural person, Entity or “group” (within the meaning of Section 13(d) or 14(d) of the Exchange Act), except that “Exchange Act Person” will not include (i) the Company or any Subsidiary of the Company, (ii) any employee benefit plan of the Company or any Subsidiary of the Company or any trustee or other fiduciary holding securities under an employee benefit plan of the Company or any Subsidiary of the Company, (iii) an underwriter temporarily holding securities pursuant to a registered public offering of such securities, (iv) an Entity Owned, directly or indirectly, by the stockholders of the Company in substantially the same proportions as their Ownership of stock of the Company, or (v) any natural person, Entity or “group” (within the meaning of Section 13(d) or 14(d) of the Exchange Act) that, as of the Effective Date, is the Owner, directly or indirectly, of securities of the Company representing more than fifty percent 50% of the combined voting power of the Company’s then outstanding securities.

**(w) “Fair Market Value”** means, as of any date, the value of the Common Stock determined as follows:

**(i)** Unless otherwise provided by the Board, if the Common Stock is listed on any established stock exchange or traded on any established market, then the Fair Market Value of a share of Common Stock will be the closing sales price for such stock as quoted on such exchange or market (or the exchange or market with the greatest volume of trading in the Common Stock) on the date of determination, as reported in a source the Board deems reliable.

(ii) Unless otherwise provided by the Board, if there is no closing sales price for the Common Stock on the date of determination, then the Fair Market Value of a share of Common Stock will be the closing sales price for such stock on the last preceding date for which such quotation exists.

(iii) In the absence of such markets for the Common Stock, the Fair Market Value of a share of Common Stock will be determined by the Board in good faith and in a manner that complies with Sections 409A and 422 of the Code.

(x) **"Full Value Award"** means (i) a stock award granted under any of the Prior Plans or (ii) an Award, in each case that is not an Appreciation Award.

(y) **"Incentive Stock Option"** means an option granted pursuant to Section 5 that is intended to be, and that qualifies as, an "incentive stock option" within the meaning of Section 422 of the Code.

(z) **"Non-Employee Director"** means a Director who either (i) is not a current employee or officer of the Company or an Affiliate, does not receive compensation, either directly or indirectly, from the Company or an Affiliate for services rendered as a consultant or in any capacity other than as a Director (except for an amount as to which disclosure would not be required under Item 404(a) of Regulation S-K promulgated pursuant to the Securities Act ("**Regulation S-K**")), does not possess an interest in any other transaction for which disclosure would be required under Item 404(a) of Regulation S-K, and is not engaged in a business relationship for which disclosure would be required pursuant to Item 404(b) of Regulation S-K, or (ii) is otherwise considered a "non-employee director" for purposes of Rule 16b-3.

(aa) **"Nonstatutory Stock Option"** means an option granted pursuant to Section 5 that does not qualify as an Incentive Stock Option.

(bb) **"Officer"** means a person who is an officer of the Company within the meaning of Section 16 of the Exchange Act.

(cc) **"Option"** means an Incentive Stock Option or a Nonstatutory Stock Option to purchase shares of Common Stock granted pursuant to the Plan.

(dd) **"Option Agreement"** means a written agreement between the Company and a holder of an Option evidencing the terms and conditions of an Option grant. Each Option Agreement will be subject to the terms and conditions of the Plan.

(ee) **"Other Stock Award"** means an award based in whole or in part by reference to the Common Stock which is granted pursuant to the terms and conditions of Section 6(d).

(ff) **"Other Stock Award Agreement"** means a written agreement between the Company and a holder of an Other Stock Award evidencing the terms and conditions of an Other Stock Award grant. Each Other Stock Award Agreement will be subject to the terms and conditions of the Plan.

**(gg)“Own,” “Owned,” “Owner,” “Ownership”** A person or Entity will be deemed to “Own,” to have “Owned,” to be the “Owner” of, or to have acquired “Ownership” of securities if such person or Entity, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has or shares voting power, which includes the power to vote or to direct the voting, with respect to such securities.

**(hh)“Participant”** means (i) with respect to any Award, a person to whom such Award is granted pursuant to the Plan or, if applicable, such other person who holds an outstanding Award, and (ii) with respect to any Prior Plan Award, a person to whom such Prior Plan Award is granted pursuant to any Prior Plan or, if applicable, such other person who holds an outstanding Prior Plan Award.

**(ii)“Performance Criteria”** means the one or more criteria that the Board will select for purposes of establishing the Performance Goals for a Performance Period. The Performance Criteria that will be used to establish such Performance Goals may be based on any one of, or combination of, the following, as determined by the Board: (i) earnings (including earnings per share and net earnings); (ii) earnings before interest, taxes and depreciation; (iii) earnings before interest, taxes, depreciation and amortization (EBITDA); (iv) total stockholder return; (v) return on equity or average stockholder's equity; (vi) return on assets, investment, or capital employed; (vii) stock price or stock price performance; (viii) margin (including gross margin); (ix) net income (before or after taxes); (x) operating income; (xi) operating income after taxes; (xii) pre-tax profit; (xiii) operating cash flow; (xiv) sales or revenue targets; (xv) increases in revenue or product revenue; (xvi) expenses and cost reduction goals; (xvii) improvement in or attainment of working capital levels; (xviii) economic value added (or an equivalent metric); (xix) market share; (xx) cash flow; (xxi) cash flow per share; (xxii) share price performance; (xxiii) debt reduction; (xxiv) implementation or completion of projects or processes; (xxv) customer satisfaction; (xxvi) stockholders' equity; (xxvii) capital expenditures; (xxviii) debt levels; (xxix) operating profit or net operating profit; (xxx) workforce diversity; (xxxi) growth of net income or operating income; (xxxii) billings; (xxxiii) submission to, or approval by, a regulatory body (including but not limited to the U.S. Food and Drug Administration) of an applicable filing for a product candidate or other product development milestones; (xxxiv) acquisitions, divestitures, joint ventures, strategic alliances, licenses or collaborations; (xxxv) spin-offs, split-ups, reorganizations, recapitalizations, restructurings, financings (debt or equity) or refinancings; (xxxvi) manufacturing or process development, clinical trial, regulatory, intellectual property, compliance or research objectives; and (xxxvii) any other measures of performance selected by the Board. Partial achievement of the specified criteria may result in the payment or vesting corresponding to the degree of achievement as specified in the applicable Award Agreement.

**(jj)“Performance Goals”** means, for a Performance Period, the one or more goals established by the Board for the Performance Period based upon the Performance Criteria. Performance Goals may be based on a Company-wide basis, with respect to one or more business units, divisions, Affiliates, or business segments, and in either absolute terms or relative to the performance of one or more comparable companies or the performance of one or more relevant indices. The Board is authorized to make appropriate adjustments in the method of calculating the attainment of Performance Goals for a Performance Period as follows: (i) to exclude restructuring and/or other nonrecurring charges; (ii) to exclude exchange rate effects, as applicable, for

non-U.S. dollar denominated Performance Goals; (iii) to exclude the effects of changes to generally accepted accounting principles; (iv) to exclude the effects of any statutory adjustments to corporate tax rates; (v) to exclude the effects of items that are “unusual” in nature or occur “infrequently” as determined under generally accepted accounting principles; (vi) to exclude the dilutive effects of acquisitions or joint ventures; (vii) to assume that any business divested by the Company achieved performance objectives at targeted levels during the balance of a Performance Period following such divestiture; (viii) to exclude the effect of any change in the outstanding shares of common stock of the Company by reason of any stock dividend or split, stock repurchase, reorganization, recapitalization, merger, consolidation, spin-off, combination or exchange of shares or other similar corporate change, or any distributions to common stockholders other than regular cash dividends; (ix) to exclude the effects of stock based compensation and/or the award of an annual cash incentive under the Company’s Annual Incentive Program; (x) to exclude the effect of any other unusual, non-recurring gain or loss or other extraordinary item; and (xi) to make other appropriate adjustments selected by the Board.

**(kk)“Performance Period”** means the period of time selected by the Board over which the attainment of one or more Performance Goals will be measured for the purpose of determining a Participant’s right to and the payment of a Performance Stock Award. Performance Periods may be of varying and overlapping duration, at the sole discretion of the Board.

**(ll)“Performance Stock Award”** means an Award granted under the terms and conditions of Section 6(c).

**(mm)“Plan”** means this Dynavax Technologies Corporation 2018 Equity Incentive Plan.

**(nn)“Restricted Stock Award”** means an award of shares of Common Stock which is granted pursuant to the terms and conditions of Section 6(a).

**(oo)“Restricted Stock Award Agreement”** means a written agreement between the Company and a holder of a Restricted Stock Award evidencing the terms and conditions of a Restricted Stock Award grant. Each Restricted Stock Award Agreement will be subject to the terms and conditions of the Plan.

**(pp)“Restricted Stock Unit Award”** means a right to receive shares of Common Stock which is granted pursuant to the terms and conditions of Section 6(b).

**(qq)“Restricted Stock Unit Award Agreement”** means a written agreement between the Company and a holder of a Restricted Stock Unit Award evidencing the terms and conditions of a Restricted Stock Unit Award grant. Each Restricted Stock Unit Award Agreement will be subject to the terms and conditions of the Plan.

**(rr)“Rule 16b-3”** means Rule 16b-3 promulgated under the Exchange Act or any successor to Rule 16b-3, as in effect from time to time.

**(ss)“Rule 405”** means Rule 405 promulgated under the Securities Act.

**(tt)“Securities Act”** means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

**(uu)“Stock Appreciation Right”** or **“SAR”** means a right to receive the appreciation on Common Stock that is granted pursuant to the terms and conditions of Section 5.

**(vv)“Stock Appreciation Right Agreement”** or **“SAR Agreement”** means a written agreement between the Company and a holder of a Stock Appreciation Right evidencing the terms and conditions of a Stock Appreciation Right grant. Each Stock Appreciation Right Agreement will be subject to the terms and conditions of the Plan.

**(ww)“Subsidiary”** means, with respect to the Company, (i) any corporation of which more than 50% of the outstanding capital stock having ordinary voting power to elect a majority of the board of directors of such corporation (irrespective of whether, at the time, stock of any other class or classes of such corporation will have or might have voting power by reason of the happening of any contingency) is at the time, directly or indirectly, Owned by the Company, and (ii) any partnership, limited liability company or other entity in which the Company has a direct or indirect interest (whether in the form of voting or participation in profits or capital contribution) of more than 50%.

**(xx)“Ten Percent Stockholder”** means a person who Owns (or is deemed to Own pursuant to Section 424(d) of the Code) stock possessing more than 10% of the total combined voting power of all classes of stock of the Company or any Affiliate.

**(yy)“Transaction”** means a Corporate Transaction or a Change in Control.



**Dynavax Technologies Corporation****Annual Bonus Plan****Purpose and Effective Date**

Dynavax Technologies Corporation ("Dynavax" or the "Company") has established this Annual Bonus Plan (the "Bonus Plan") to align employee performance with annual corporate and individual goals and to reward the achievement of such goals during a performance year. The Bonus Plan will become effective on January 1, 2020, beginning with the 2020 performance year.

**Administration**

The Board and the Compensation Committee shall have the sole discretion and authority to administer and interpret the Bonus Plan. The decisions of the Board and the Compensation Committee shall in every case be final and binding on all persons having an interest in the Bonus Plan. The Board and Compensation Committee may, with respect to any performance year, determine the level of achievement of corporate and individual goals or choose not to fund the Bonus Plan, all at its sole discretion. Notwithstanding the foregoing, the Bonus Plan may be administered by the Company's management if the Board or Compensation Committee delegates such authority, and in such event, the Company's management shall have the discretion and authority to administer and interpret such aspects of the Bonus Plan, and the decisions of the Company's management shall in such cases be final and binding.

**Eligibility**

In order to be eligible to participate in the Bonus Plan for a performance year, an individual must (a) be a Dynavax employee in the United States who works at least 20 hours per week, including Executive Officers, (b) have become an employee of Dynavax before or on the first business day in October of such performance year, and (c) not be a participant in Dynavax's Sales Incentive Compensation program.

Because Dynavax intends to incentivize successful Participants to remain with Dynavax, Participants must be employed by Dynavax on the day payment is made to earn and be eligible for a bonus payment under the Bonus Plan.

**Application of Bonus Targets**

Dynavax sets a "Bonus Target" for each Participant measured as a percentage of the Participant's Base Salary for the applicable performance year as set forth in the Annual Criteria.

Unless determined otherwise, Bonus Targets are applied as follows:

- If a Participant is promoted during a performance year and the Participant's Bonus Target percentage increases in connection with the promotion, then the Bonus Target for such Participant will equal the greater Bonus Target in effect after such promotion and will be measured as a percentage of the Participant's Base Salary.
  - If a Participant moves to a position and/or responsibility level with a lower Bonus Target during a performance year, then the Bonus Target for such Participant will equal the lower
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Bonus Target in effect after such move and will be measured as a percentage of the Participant's Base Salary.

### **Weighting of Performance Objectives**

The Bonus Target for the CEO is based solely on Dynavax's achievement of corporate goals ("*Corporate Performance*"). The Bonus Target for each employee other than the CEO is based on Corporate Performance and each Participant's individual performance, including each Participant's contribution to Corporate Performance (collectively, "*Individual Performance*"). Dynavax's Board or Compensation Committee periodically reviews and determines the weighting between these two elements in determining bonuses under the Bonus Plan, with input from Dynavax's management, as set forth in the Annual Criteria. The weighting between Corporate Performance and Individual Performance varies by level within Dynavax.

### **Corporate Performance**

After the end of a performance year, Corporate Performance will be assessed by the Board or Compensation Committee, who will determine the "*Corporate Performance Multiplier*" for the performance year, which will reflect this assessment, as well as other successes and considerations the Board or Compensation Committee may deem relevant for the performance year. Unless determined otherwise, Dynavax will apply the same Corporate Performance Multiplier for all Participants for a given performance year. The Board or Compensation Committee may set the Corporate Performance Multiplier above 100%, but in any event not above 175%.

For each performance year, the corporate goals may be based on criteria such as the following: sales or commercial goals; research, development and clinical activities; financial metrics, including revenue, cash flow and net income, cash balance, operating expenses and stock price performance; hiring, retention, development of plans and other operational goals; commercial, clinical and strategic collaborations and alliance management; acquisitions and licensing or partnering transactions; manufacturing and supply goals; quality goals; regulatory goals; and government affairs and public policy goals.

### **Individual Performance**

After the end of a performance year, each Participant's Individual Performance will be assessed by the Board, Compensation Committee and/or management, as applicable, who will determine the "*Individual Performance Multiplier*," which will reflect this assessment, as well as other successes and considerations as determined after the end of each performance year by management or, in the case of Executive Officers (other than the CEO), by the Board or Compensation Committee, as set forth in the Annual Criteria. The Board or Compensation Committee will take into account the recommendations and evaluation of each Executive Officer's Individual Performance by the CEO or the Office of the President. A Participant's Individual Performance Multiplier may be above 100% but, in any event, not above 175%.

For each performance year, the individual goals for a Participant may be based on such Participant's contributions toward the achievement of the corporate goals for such performance year, department goals for such Participant's area of accountability or responsibility, or other individual goals derived from or related to the corporate goals or department goals for such performance year.

## **Determination and Payment of Bonuses**

The bonus amount paid to each Participant will be determined as follows:

<b>Corporate Performance Portion</b>		<b>Individual Performance Portion</b>		<b>Total</b>
Base Salary x Bonus Target x Corporate Performance Multiplier x Weighting	+	Base Salary x Bonus Target x Individual Performance Multiplier x Weighting	=	

Dynavax maintains absolute discretion in determining the scope and impact of accomplishments as well as the final bonus payout for all Participants. Participants who have received formal disciplinary action during or after a performance year may have their bonus payout reduced or eliminated for that performance year, at the sole discretion of management or the Board or the Compensation Committee, as applicable.

All payments made under this Bonus Plan will be subject to recoupment in accordance with any clawback policy that Dynavax adopts pursuant to the listing standards of any national securities exchange or association on which Dynavax's securities are listed or otherwise, whether before or after the date of any payment made under this Bonus Plan. No recovery of compensation under such a clawback policy will be an event giving rise to a right to resign for "good reason" or "constructive termination" (or similar term) under any agreement with Dynavax or any of Dynavax's affiliates.

Bonuses for a performance year will be paid in cash to each Participant (or his/her beneficiary, in the event of death) by March 15<sup>th</sup> of the following year, except (i) as is otherwise determined in the sole discretion of the Board, the Compensation Committee or management, as appropriate, or (ii) as may be necessary or advisable to comply with regulations, laws, employment agreements or employment contracts applicable to a particular Participant; *provided, however*, that in all cases, the payment date of any bonus for any Participant who is subject to Section 409A of the Internal Revenue Code of 1986, as amended, or any state law of similar effect ("Section 409A") will be designed to either comply with Section 409A or satisfy an exemption from application of Section 409A, and the Bonus Plan will be administered and interpreted to the greatest extent possible in compliance with Section 409A or in accordance with such exemption, as applicable. Benefits under this Bonus Plan are not transferable, and the Bonus Plan is unfunded.

## **Miscellaneous**

The establishment of this Bonus Plan, any provisions of this Bonus Plan, and/or any action of the Board, Compensation Committee or management with respect to this Bonus Plan, does not confer upon any Participant the right to continued employment with Dynavax. Dynavax reserves the right to dismiss any Participant at will (at any time, with or without prior notice, with or without cause).

All bonus payments made under this Bonus Plan shall be subject to income and employment tax withholding as required by applicable federal, state or local law.

This Bonus Plan and any amendments thereto shall be construed, administered and governed in all respects in accordance with the laws of the State of Delaware (regardless of the law that might

otherwise govern under applicable principles of conflict of laws). If any provision of this Bonus Plan shall be determined to be illegal, invalid or unenforceable, such determination shall in no manner affect the legality, validity or enforceability of any other provision hereof.

### **Definitions**

**"Annual Criteria"** means the terms and conditions applicable to a specific performance year, as approved by the Board or Compensation Committee. The Annual Criteria will include the Bonus Targets, the weighting between Corporate Performance and Individual Performance for Participants, corporate goals and individual goals, if any, and other terms approved by the Board or Compensation Committee for such performance year as not inconsistent with the Bonus Plan.

**"Base Salary"** means the total amount of base salary or hourly wages actually paid to the Participant during the period of his or her participation in the Bonus Plan for the applicable performance year, rather than the Participant's base salary level or hourly wage rate at any particular point during the applicable performance year (e.g., the Base Salary for an employee whose base salary or hourly wage rate is adjusted during the applicable performance year or for an employee who is hired during the applicable performance year will be the total amount of base salary or hourly wage rate actually paid to the employee during the period of his or her participation in the Bonus Plan for the applicable performance period). Base Salary includes (a) any amounts paid by Dynavax during periods of absence and/or leave (e.g., PTO or paid leave benefits from the Company) and (b) with respect to non-exempt employees, any overtime payments. Base Salary does not include any expense reimbursements, relocation payments, incentive compensation, commissions, bonuses (including signing bonuses), amounts received as a result of equity awards, short-term or long-term disability benefits from the state or through a third party benefit plan, or shift differential payments, "on call" pay or similar one-time or unusual payments.

**"Board"** means the Board of Directors of Dynavax Technologies Corporation.

**"Compensation Committee"** means the Compensation Committee of the Board.

**"Executive Officers"** means the Company's executive officers as that term is defined in Section 16 of the Securities Exchange Act of 1934, as amended from time to time, and Rule 16a-1 thereunder.

**"Participant"** means an individual who meets the eligibility requirements in the section above entitled, "Eligibility."

*Adopted by the Compensation Committee on November 12, 2019.*

**Rule 13a-14(a) Certification of Principal Executive Officer**

## CERTIFICATIONS

I, Ryan Spencer, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Dynavax Technologies Corporation (the "registrant");
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

By:

/s/ RYAN SPENCER  
Ryan Spencer  
Chief Executive Officer and Director  
(Principal Executive Officer)

Date: August 6, 2024

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**Rule 13a-14(a) Certification of Principal Financial Officer**

## CERTIFICATIONS

I, Kelly MacDonald, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Dynavax Technologies Corporation (the "registrant");
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

By: /s/ KELLY MACDONALD  
Kelly MacDonald  
Chief Financial Officer  
(Principal Financial Officer)

Date: August 6, 2024

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(ii) The information contained in the Periodic Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

By: /s/ RYAN SPENCER  
Ryan Spencer  
Chief Executive Officer and Director  
(Principal Executive Officer)

This certification accompanies the Form 10-Q to which it relates, is not deemed filed with the Securities and Exchange Commission and is not to be incorporated by reference into any filing of Dynavax Technologies Corporation under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended (whether made before or after the date of the Form 10-Q), irrespective of any general incorporation language contained in such filing.

**Certification Pursuant to Section 1350 of Chapter 63  
of Title 18 of the United States Code**

Pursuant to the requirement set forth in Rule 13a-14(b) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and Section 1350 of Chapter 63 of Title 18 of the United States Code (18 U.S.C. §1350), I, Kelly MacDonald, Chief Financial Officer of Dynavax Technologies Corporation (the "Company"), hereby certify that, to the best of my knowledge:

(i) The Company's Quarterly Report on Form 10-Q for the period ended June 30, 2024 (the "Periodic Report"), to which this Certificate is attached as Exhibit 32.2, fully complies with the requirements of Section 13(a) or Section 15(d) of the Exchange Act; and

(ii) The information contained in the Periodic Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

**In Witness Whereof**, the undersigned has set her hand hereto as of the 6th day of August 2024.

By:

/s/ KELLY MACDONALD  
Kelly MacDonald  
**Chief Financial Officer**  
**(Principal Financial Officer)**

This certification accompanies the Form 10-Q to which it relates, is not deemed filed with the Securities and Exchange Commission and is not to be incorporated by reference into any filing of Dynavax Technologies Corporation under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended (whether made before or after the date of the Form 10-Q), irrespective of any general incorporation language contained in such filing.

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