

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

☒ **ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the Fiscal Year Ended December 31, 2023  
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 001-38128

**CHECKPOINT THERAPEUTICS, INC.**  
(Exact name of registrant as specified in its charter)

**Delaware**  
(State or Other Jurisdiction of Incorporation or Organization)

**47-2568632**  
(I.R.S. Employer Identification No.)

**95 Sawyer Road , Suite 110**  
**Waltham , Massachusetts 02453**  
(Address of Principal Executive Offices)

**02453**  
(Zip Code)

Registrant's telephone number, including area code: ( 781 ) 652-4500

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, par value \$0.0001 per	CKPT	NASDAQ Capital Market

Securities registered pursuant to section 12(g) of the Act: None.

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

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

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

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

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, 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 type="checkbox"/>	Accelerated filer <input type="checkbox"/>
Non-accelerated filer <input checked="" type="checkbox"/>	Smaller reporting company <input checked="" 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 has filed a report on and attestation to its management's assessment of the effectiveness of its internal control over financial reporting under Section 404(b) of the Sarbanes-Oxley Act (15 U.S.C. 7262(b)) by the registered public accounting firm that prepared or issued its audit report. ☐

If securities are registered pursuant to Section 12(b) of the Act, indicate by check mark whether the financial statements of the registrant included in the filing reflect the correction of an error to previously issued financial statements. ☐

Indicate by check mark whether any of those error corrections are restatements that required a recovery analysis of incentive-based compensation received by any of the registrant's executive officers during the relevant recovery period pursuant to § 240.10D-1(b). ☐

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

As of June 30, 2023, the last business day of the registrant's mostly recently completed second fiscal quarter, the aggregate market value of the voting stock held by non-affiliates of the registrant was \$ 33,088,814 based upon the closing sale price of our common stock of \$2.47 on that date. Common stock held by each officer and director and by each person known to own in excess of 5% of outstanding shares of our common stock has been excluded in that such persons may be deemed to be affiliates. The determination of affiliate status is not necessarily a conclusive determination for other purposes.

Indicate the number of shares outstanding of each of the registrant's classes of common stock, as of the latest practicable date.

Class of Common Stock	Outstanding Shares as of March 19, 2024
Class A Common Stock, \$0.0001 par value	700,000
Common Stock, \$0.0001 par value	34,986,279

**DOCUMENTS INCORPORATED BY REFERENCE**

Portions of the registrant's Proxy Statement for its 2024 Annual Meeting of Stockholders are incorporated by reference in Part III of this Annual Report on Form 10-K.

**CHECKPOINT THERAPEUTICS, INC.**  
**ANNUAL REPORT ON FORM 10-K**  
**TABLE OF CONTENTS**

	<b>Page</b>
<b><u>PART I</u></b>	<b><u>2</u></b>
<a href="#">Item 1. Business</a>	<a href="#">2</a>
<a href="#">Item 1A. Risk Factors</a>	<a href="#">16</a>
<a href="#">Item 1B. Unresolved Staff Comments</a>	<a href="#">46</a>
<a href="#">Item 1C. Cybersecurity</a>	<a href="#">46</a>
<a href="#">Item 2. Properties</a>	<a href="#">47</a>
<a href="#">Item 3. Legal Proceedings</a>	<a href="#">47</a>
<a href="#">Item 4. Mine Safety Disclosures</a>	<a href="#">47</a>
<b><u>PART II</u></b>	<b><u>48</u></b>
<a href="#">Item 5. Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities</a>	<a href="#">48</a>
<a href="#">Item 6. Reserved</a>	<a href="#">48</a>
<a href="#">Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations</a>	<a href="#">49</a>
<a href="#">Item 7A. Quantitative and Qualitative Disclosures About Market Risk</a>	<a href="#">55</a>
<a href="#">Item 8. Financial Statements and Supplementary Data</a>	<a href="#">55</a>
<a href="#">Item 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure</a>	<a href="#">55</a>
<a href="#">Item 9A. Controls and Procedures</a>	<a href="#">56</a>
<a href="#">Item 9B. Other Information</a>	<a href="#">56</a>
<a href="#">Item 9C. Disclosure Regarding Foreign Jurisdictions that Prevent Inspections</a>	<a href="#">56</a>
<b><u>PART III</u></b>	<b><u>56</u></b>
<a href="#">Item 10. Directors, Executive Officers and Corporate Governance</a>	<a href="#">56</a>
<a href="#">Item 11. Executive Compensation</a>	<a href="#">57</a>
<a href="#">Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters</a>	<a href="#">57</a>
<a href="#">Item 13. Certain Relationships and Related Transactions, and Director Independence</a>	<a href="#">57</a>
<a href="#">Item 14. Principal Accountant Fees and Services</a>	<a href="#">57</a>
<b><u>PART IV</u></b>	<b><u>58</u></b>
<a href="#">Item 15. Exhibits and Financial Statement Schedules</a>	<a href="#">58</a>
<a href="#">Item 16. Form 10-K Summary</a>	<a href="#">63</a>

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## **SPECIAL CAUTIONARY NOTICE REGARDING FORWARD-LOOKING STATEMENTS**

Certain matters discussed in this report may constitute forward-looking statements for purposes of the Securities Act of 1933, as amended (the “Securities Act”) and the Securities Exchange Act of 1934, as amended (the “Exchange Act”), and involve known and unknown risks, uncertainties and other factors that may cause our actual results, performance or achievements to be materially different from the future results, performance or achievements expressed or implied by such forward-looking statements. The words “anticipate,” “believe,” “estimate,” “may,” “expect,” “will,” “could,” “project,” “intend” and similar expressions are generally intended to identify forward-looking statements. Our actual results may differ materially from the results anticipated in these forward-looking statements due to a variety of factors, including, without limitation, those discussed under the captions “Risk Factors,” and elsewhere in this report. All written or oral forward-looking statements attributable to us are expressly qualified in their entirety by these cautionary statements. Such forward-looking statements include, but are not limited to, statements about our:

- expectations for increases or decreases in expenses;
- expectations for the clinical and preclinical development, manufacturing, regulatory approval, and commercialization of our pharmaceutical product candidates or any other products we may acquire or in-license;
- use of clinical research centers and other contractors;
- expectations as to the timing of commencing or completing preclinical and clinical trials and the expected outcomes of those trials, including the novel coronavirus (“COVID-19”) pandemic’s or other crises’ potentials to negatively affect the hospitals and clinical sites in which we may conduct any of our clinical trials, and patients’ willingness to access those sites to continue the trials;
- intention to use data from our ongoing Phase 1 clinical trial of cosibelimab to support the submissions of one or more U.S. Biologics License Applications (“BLAs”) and relatedly, our assumption that exclusively foreign clinical data may be acceptable to support marketing approval under U.S. Food and Drug Administration (“FDA”) regulations;
- ability to work with our third-party contract manufacturer and the FDA to address the issues raised in the cosibelimab complete response letter and execute on a pathway forward for the potential approval of cosibelimab for the treatment of patients with metastatic or locally advanced cutaneous squamous cell carcinoma who are not candidates for curative surgery or radiation, and our projections of BLA resubmission and regulatory review timelines;
- expectations regarding the potential differentiation of cosibelimab, including a potentially favorable study profile as compared to the currently available anti-PD-1 therapies, the two-fold mechanism of action of cosibelimab translating into potential enhanced efficacy, and the projections of publication and regulatory submission timelines;
- expectations for incurring capital expenditures to expand our research and development and manufacturing capabilities;
- expectations for generating revenue or becoming profitable on a sustained basis;
- expectations or ability to enter into marketing and other partnership agreements;
- expectations or ability to enter into product acquisition and in-licensing transactions;
- expectations or ability to build a commercial infrastructure to manufacture, market and sell our product candidates;
- expectations for the acceptance of our products by doctors, patients or payors;
- ability to compete against other companies and research institutions;
- ability to secure adequate protection for our intellectual property;
- ability to attract and retain key personnel;
- ability to obtain reimbursement for our products;
- estimates of the sufficiency of our existing cash and cash equivalents and investments to finance our operating requirements, including expectations regarding the value and liquidity of our investments;
- stock price and the volatility of the equity markets;
- expected losses; and
- expectations for future capital requirements.

The forward-looking statements contained in this report reflect our views and assumptions as of the effective date of this report. New risks and uncertainties arise from time to time, and it is impossible for us to predict these events or how they may affect us. Except as required by law, we assume no responsibility for updating any forward-looking statements.

We qualify all of our forward-looking statements by these cautionary statements. In addition, with respect to all of our forward-looking statements, we claim the protection of the safe harbor for forward-looking statements contained in the Private Securities Litigation Reform Act of 1995.

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## SUMMARY OF RISK FACTORS

Our business is subject to risks of which you should be aware before making an investment decision. The risks described below are a summary of the principal risks associated with an investment in us and are not the only risks we face. You should carefully consider these risk factors, the risk factors described in Item 1A, and the other reports and documents that we have filed with the Securities and Exchange Commission ("SEC").

### Risks Related to our Finances and Capital Requirements

- We have incurred significant losses since our inception and anticipate that we will incur continued losses for the foreseeable future. We have not generated any sales revenue from our development stage products, and we do not know when, or if, we will generate any revenue from sales of an approved product.
- There is substantial doubt about our ability to continue as a going concern, which may hinder our ability to obtain future financing.
- Our success is contingent upon raising additional capital for our development programs and commercialization efforts, which may fail. Even if successful, our future capital raising activities may dilute our current stockholders, restrict our operations, or require us to relinquish proprietary rights.
- Our limited resources may cause us to fail to capitalize on programs or product candidates presenting commercial opportunity or high likelihood of success.
- Weakness in the U.S. economy, including within our geographic footprint, has adversely affected us in the past and may adversely affect us in the future.

### Risks Pertaining to our Business Strategy, Structure and Organization

- Our future growth and success depend on our ability to successfully develop and commercialize our product candidates, which we have yet to do.
- Our future growth depends on our acquiring or in-licensing products or product candidates and integrating such products into our business.

### Risks Inherent in Drug Development and Commercialization

- Because results of preclinical studies and clinical trials are not necessarily predictive of future results, any product candidate we advance may not have favorable results in later clinical trials. Moreover, interim, "top-line," and preliminary data from our clinical trials that we announce or publish may change, or the perceived product profile may be impacted, as more patient data or additional endpoints are analyzed.
  - We may not receive the required regulatory approvals for any of our product candidates on our projected timelines, if at all, which may result in increased costs and delay our ability to generate revenue.
  - If a product candidate demonstrates lack of efficacy or adverse side effects, we may need to abandon or limit the development of such product candidate.
  - We may not obtain the desired labeling claims or intended uses for product promotion, or favorable scheduling classifications, to successfully promote our products.
  - Even if a product candidate is approved, it may be subject to various post-marketing requirements, including studies or clinical trials, and increased regulatory scrutiny.
  - Our competitors have developed or may develop treatments for our products' target indications, which could limit our product candidates' commercial opportunity and profitability.
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- If our products are not broadly accepted by the healthcare community, the revenues from any such product will likely be limited.
- Any successful products liability claim related to any of our current or future product candidates may cause us to incur substantial liability and limit the commercialization of such products.

#### **Risks Related to Reliance on Third Parties**

- We rely, and will rely in the future, on third-party contract research organizations and contract manufacturers for the conduct of our preclinical and clinical studies and trials, for the completion of commercial and pre-commercial manufacturing and, eventually, for commercialization. If such third parties fail to perform contractual obligations, pass regulatory inspections, meet deadlines, comply with applicable regulations, or if our relationships with such third parties are disrupted, our product candidates may be delayed, and our revenue potential may be limited.
- We rely on clinical data and results obtained by third parties, which may prove inaccurate or unreliable.

#### **Risks Relating to Legislation and Regulation Affecting the Biopharmaceutical and Other Industries**

- We operate in a heavily regulated industry, and we cannot predict the impact that any future legislation or administrative or executive action may have on our operations.
- We may be subject to anti-kickback, fraud and abuse, false claims, transparency, health information privacy and security and other healthcare laws and regulations, which could expose us to criminal sanctions, civil penalties, contractual damages, reputational harm, administrative burdens and diminished profits and future earnings.

#### **Risks Pertaining to Intellectual Property and Potential Disputes with Licensors Thereof**

- If we are unable to maintain sufficient patent protection for our technology and products, our competitors could develop and commercialize products similar or identical to ours, impairing our ability to successfully commercialize potential products.
- We or our licensors may be subject to costly and time-consuming litigation for infringement of third-party intellectual property rights or to enforce our or our licensors' patents.
- Any dispute with our licensors may affect our ability to develop or commercialize our product candidates.

#### **Risks Relating to Our Platform and Data**

- Our business and operations would suffer in the event of computer system failures, cyber-attacks, or deficiencies in our or third parties' cybersecurity.

#### **Risks Relating to Our Control by Fortress Biotech, Inc. ("Fortress")**

- Fortress controls a voting majority of our common stock and has the right to receive significant share grants annually, which will result in dilution of our other stockholders and could reduce the value of our common stock.
- We have entered into certain agreements with Fortress and may have received better terms from unaffiliated third parties.

#### **Risks Related to Conflicts of Interest**

- We share certain directors with Fortress, which could create conflicts of interest between us and Fortress.
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## PART I

### Item 1. Business

#### OVERVIEW

We are a clinical-stage immunotherapy and targeted oncology company focused on the acquisition, development and commercialization of novel treatments for patients with solid tumor cancers. We are evaluating our lead antibody product candidate, cosibelimab, an anti-programmed death-ligand 1 ("PD-L1") antibody licensed from the Dana-Farber Cancer Institute ("Dana-Farber"), in an ongoing global, open-label, multicohort Phase 1 clinical trial in checkpoint therapy-naïve patients with selected recurrent or metastatic cancers, including ongoing cohorts in locally advanced and metastatic cutaneous squamous cell carcinoma ("CSCC") intended to support one or more applications for marketing approval. Based on top-line and interim results in metastatic and locally advanced CSCC, respectively, we submitted a Biologics License Application ("BLA") to the U.S. Food and Drug Administration ("FDA") for these indications in January 2023. On December 15, 2023, the FDA issued a complete response letter ("CRL") for the cosibelimab BLA for the treatment of patients with metastatic or locally advanced CSCC who are not candidates for curative surgery or radiation. The CRL only cites findings that arose during a multi-sponsor inspection of our third-party contract manufacturing organization as approvability issues to address in a resubmission. Following resolution of the inspection issues at the third-party contract manufacturing organization raised in the CRL, a resubmission of the BLA is planned to support the marketing approval of cosibelimab. In addition, we are evaluating our lead small-molecule, targeted anti-cancer agent, olafertinib, a third-generation epidermal growth factor receptor ("EGFR") inhibitor, as a potential new treatment for patients with EGFR mutation-positive non-small cell lung cancer ("NSCLC").

In January 2022, we announced top-line results from a registration-enabling cohort of our multi-regional, Phase 1 clinical trial of cosibelimab in patients with metastatic CSCC. The cohort met its primary endpoint, with cosibelimab demonstrating a confirmed objective response rate ("ORR") of 47.4% (95% CI: 36.0, 59.1) based on independent central review of 78 patients enrolled in the metastatic CSCC cohort using Response Evaluation Criteria in Solid Tumors version 1.1 ("RECIST 1.1").

In June 2022, we announced interim results from a registration-enabling cohort of our multi-regional, Phase 1 clinical trial of cosibelimab in patients with locally advanced CSCC that are not candidates for curative surgery or radiation. Cosibelimab demonstrated a confirmed ORR of 54.8% (95% CI: 36.0, 72.7) based on independent central review of 31 patients enrolled in the cohort.

In July 2023, we announced longer-term results for cosibelimab from its pivotal studies in locally advanced and metastatic CSCC. These results demonstrated a deepening of response over time, resulting in complete response rates of 26% and 13% in locally advanced and metastatic CSCC, respectively. Additionally, the confirmed ORR in metastatic CSCC increased to 50.0% based on independent central review using RECIST 1.1. Furthermore, responses continue to remain durable over time with the median duration of response not yet reached in either group. Updated safety data across 247 patients enrolled and treated with cosibelimab in all cohorts of the ongoing study remain consistent with those previously reported.

We have also entered into various collaboration agreements with TG Therapeutics, Inc. ("TGTX"), a related party, to develop and commercialize certain assets in connection with our licenses in the field of hematological malignancies, while we retain the right to develop and commercialize these assets in solid tumors. Effective September 30, 2023, the Company and TGTX agreed to mutually terminate these collaborations, with full rights reverting back to us.

To date, we have not received approval for the sale of any product candidate in any market and, therefore, have not generated any product sales from any product candidates. In addition, we have incurred substantial operating losses since our inception, and expect to continue to incur significant operating losses for the foreseeable future and may never become profitable. As of December 31, 2023, we have an accumulated deficit of \$314.3 million.

We are a majority-controlled subsidiary of Fortress Biotech, Inc. ("Fortress").

#### CORPORATE INFORMATION

Checkpoint Therapeutics, Inc. was incorporated in Delaware on November 10, 2014 and commenced principal operations in March 2015. Our executive offices are located at 95 Sawyer Road, Suite 110, Waltham, MA 02453. Our telephone number is (781) 652-4500 and our email address is [ir@checkpointtx.com](mailto:ir@checkpointtx.com).

We maintain a website with the address [www.checkpointtx.com](http://www.checkpointtx.com). We make available free of charge through our Internet website our annual reports on Form 10-K, quarterly reports on Form 10-Q and current reports on Form 8-K, and any amendments to these reports, as soon as reasonably practicable after we electronically file such material with, or furnish such material to, the Securities and Exchange Commission ("SEC"). We are not including the information on our website as a part of, nor incorporating it by reference into, this report. Additionally, the SEC maintains a website that contains annual, quarterly, and current reports, proxy statements, and other information that issuers (including us) file electronically with the SEC. The SEC's website address is <http://www.sec.gov>.

In addition, we may disclose material non-public information by disseminating press releases, by disclosing information during publicly accessible meetings or conference calls, or through our website or social media accounts.

## PRODUCTS UNDER DEVELOPMENT

### Immuno-Oncology Agents

#### *Cosibelimab (Anti-PD-L1) Program*

Cosibelimab is a fully human monoclonal antibody of IgG1 subtype that directly binds to PD-L1 and blocks the PD-L1 interaction with the Programmed Death Receptor-1 ("PD-1") and B7.1 receptors. Cosibelimab's primary mechanism of action is based on the inhibition of the interaction between PD-L1 and its receptors PD-1 and B7.1, which removes the suppressive effects of PD-L1 on anti-tumor CD8+ T-cells to restore the cytotoxic T cell response. Additionally, cosibelimab has a functional Fc domain that may be capable of inducing antibody-dependent cellular cytotoxicity ("ADCC") and complement-dependent cytotoxicity ("CDC") against tumor cells.

Preclinical and clinical studies of PD-1 and PD-L1 blocking antibodies conducted by third parties have demonstrated that antibodies that block the interaction of PD-1 with its ligands, PD-L1 and PD-L2, or those that block only the interaction of PD-L1 with PD-1 can augment anti-tumor T-cell responses and lead to complete and lasting tumor eradication in a certain proportion of patients. Potent therapeutic anti-tumor responses due to blocking of PD-1/PD-L1 interaction have been demonstrated by these approved products in patients with numerous different solid tumors including, but not limited to, NSCLC, melanoma, RCC, head and neck cancer, CSCC and urothelial carcinoma.

We are initially developing cosibelimab in solid tumor oncology indications where studies of other PD-1/PD-L1 antibodies have shown to be effective. We licensed the exclusive worldwide rights to certain anti-PD-L1 antibodies from Dana-Farber in March 2015. Also in March 2015, we entered into a Global Collaboration Agreement with TGTX, a related party, to develop and commercialize anti-PD-L1 antibodies in the field of hematological malignancies. We retain the right to develop and commercialize our anti-PD-L1 antibodies in solid tumors. Effective September 30, 2023, the Company and TGTX agreed to mutually terminate these collaborations, with full rights reverting back to us.

We commenced a Phase 1, multi-center clinical study for cosibelimab in October 2017. The study is evaluating the safety and tolerability of ascending doses of cosibelimab in checkpoint therapy-naïve patients with selected recurrent or metastatic cancers. Following completion of dose escalation in March 2018, multiple dose expansion cohorts were initiated, including ongoing cohorts in locally advanced and metastatic CSCC intended to support one or more applications for marketing approval. The primary endpoint is ORR, and secondary endpoints include duration of response, progression-free survival ("PFS"), and overall survival ("OS"). In January 2022, we announced top-line results from a cohort of this study with cosibelimab administered as a fixed dose of 800 mg every two weeks in patients with metastatic CSCC. The cohort met its primary endpoint, with cosibelimab demonstrating a confirmed ORR of 47.4% (95% CI: 36.0, 59.1) based on independent central review of 78 patients enrolled in the metastatic CSCC cohort using RECIST 1.1. In June 2022, we announced interim results from another cohort of this study with cosibelimab administered as a fixed dose of 800 mg every two weeks in patients with locally advanced CSCC that are not candidates for curative surgery or radiation. Cosibelimab demonstrated a confirmed ORR of 54.8% (95% CI: 36.0, 72.7) based on independent central review of 31 patients enrolled in the cohort. The design of the interim analysis incorporated feedback from the FDA and is intended to potentially support the approval of cosibelimab in this indication. In July 2023, we announced longer-term results for cosibelimab from its pivotal studies in locally advanced and metastatic CSCC. These results demonstrated a deepening of response over time, resulting in complete response rates of 26% and 13% in locally advanced and metastatic CSCC, respectively. Additionally, the confirmed ORR in metastatic CSCC increased to 50.0% based on independent central review. Furthermore, responses continue to remain durable over time with the median duration of response not yet reached in either group. Updated safety data across 247 patients enrolled and treated with cosibelimab in all cohorts of the ongoing study remain consistent with those previously reported.

Based on these results, we submitted a BLA to the FDA for cosibelimab in January 2023. On December 15, 2023, the FDA issued a CRL for the cosibelimab BLA for the treatment of patients with metastatic or locally advanced CSCC who are not candidates for curative surgery or radiation. The CRL only cites findings that arose during a multi-sponsor inspection of our third-party contract manufacturing organization as approvability issues to address in a resubmission. Following resolution of the inspection issues at the third-party contract manufacturing organization raised in the CRL, a resubmission of the BLA is planned to support the marketing approval of cosibelimab. We intend to seek a partner to submit a marketing authorization application ("MAA") submission in Europe, as well as additional potential submissions in markets worldwide.

### ***CK-302 (Anti-GITR) Program***

Our anti-GITR monoclonal antibody, CK-302, is a fully human agonistic antibody that is designed to bind to and trigger signaling in GITR expressing cells. Scientific literature indicates that GITR is a co-stimulatory molecule of the TNF receptor family and is expressed on activated T cells, B cells, natural killer ("NK") and regulatory T-cells ("Treg"). As a co-stimulatory molecule, GITR engagement increases proliferation, activation, and cytokine production of CD4+ and CD8+ T-cells. We believe our anti-GITR monoclonal antibody has the potential to abrogate immunosuppressive activity of natural Treg on expansion of T-effector cells. GITR-specific agonistic monoclonal antibodies under development by third parties have been shown to induce tumor regression in vivo through the activation of CD4+ T-cells, CD8+ T-cells and NK cells in a number of tumor models.

We licensed the exclusive worldwide rights to anti-GITR antibodies from Dana-Farber in March 2015. Also in March 2015, we entered into a Global Collaboration Agreement with TGTX to develop and commercialize anti-GITR antibodies in the field of hematological malignancies. We retain the right to develop and commercialize anti-GITR antibodies in solid tumors. We believe that an anti-GITR antibody has the potential to be effective in one or more oncological indications as a monotherapy or in combination with an anti-PD-L1 antibody as well as other anti-tumor immune response potentiating compounds and targeted therapies. Effective September 30, 2023, the Company and TGTX agreed to mutually terminate these collaborations.

Currently, we are in preclinical development for this program.

### **Targeted Anti-Cancer Agents**

#### ***Olafertinib (also known as CK-101 and RX518) EGFR Inhibitor Program***

We are developing olafertinib as an oral, third-generation, irreversible kinase inhibitor against selective mutations of EGFR. Activating mutations in the tyrosine kinase domain of EGFR such as L858R and exon 19 deletion are found in approximately 20% of patients with advanced NSCLC. Compared to chemotherapy, first-generation EGFR inhibitors significantly improved ORR and PFS in previously untreated NSCLC patients carrying EGFR mutations. However, tumor progression could develop due to resistance mutations, often within months of treatment with first-generation EGFR inhibitors.

The EGFR T790M "gatekeeper" mutation is the most common resistance mutation found in patients treated with first-generation EGFR inhibitors. The mutation decreases the affinity of first-generation inhibitors to EGFR kinase domain, rendering the drugs ineffective. Second-generation EGFR inhibitors have improved in vitro potency against the T790M mutation but have not provided meaningful benefits in NSCLC patients due to toxicity from also inhibiting wild-type EGFR.

Third-generation EGFR inhibitors are designed to be highly selective against one or more EGFR activating mutations and the T790M resistance mutation with minimal inhibition of wild-type EGFR, thereby potentially improving tolerability and safety profiles. In November 2015, Tagrisso® (osimertinib), a third-generation EGFR inhibitor developed by AstraZeneca plc, received accelerated FDA approval for the treatment of patients with metastatic EGFR T790M mutation-positive NSCLC who have progressed on or after receiving EGFR tyrosine kinase inhibitor therapy. Tagrisso received full approval from the FDA in 2017 based on data from a randomized, Phase 3 trial, in which Tagrisso significantly improved PFS versus platinum-based doublet chemotherapy, providing 10.1 months of median PFS compared to 4.4 months from chemotherapy. Subsequently, in April 2018, Tagrisso received FDA approval for the first-line treatment of adult patients with metastatic NSCLC whose tumors have the EGFR exon 19 deletion or exon 21 L858R activating mutations based on data from a randomized, Phase 3 trial in which Tagrisso significantly improved PFS versus first-generation EGFR inhibitors, providing 18.9 months of median PFS compared to 10.2 months from the EGFR inhibitor comparators, erlotinib or gefitinib.



We are developing olafertinib for the potential treatment of adult patients with metastatic NSCLC whose tumors have EGFR exon 19 deletion mutations. We believe that olafertinib has the potential to be effective in this population as a monotherapy or in combination with other anti-tumor immune response potentiating compounds.

In March 2015, Fortress entered into an exclusive license agreement with NeuPharma, Inc., which agreement was assigned to us by Fortress on the same date, to develop and commercialize novel covalent third-generation EGFR inhibitors on a worldwide basis outside of certain Asian countries. In August 2016, the FDA accepted our Investigational New Drug application ("IND") and we initiated a Phase 1 clinical trial in September 2016, which was completed in September 2022. The trial evaluated the safety and tolerability of ascending doses of olafertinib in patients with advanced solid tumors to determine the maximum tolerated dose and the safety and efficacy of olafertinib in patients with EGFR mutation-positive NSCLC. In September 2018, we announced preliminary interim data in an oral presentation at the International Association for the Study of Lung Cancer 19th World Conference on Lung Cancer in Toronto. In November 2020, NeuPharma, Inc. commenced a Phase 3 clinical trial in China evaluating olafertinib in treatment-naïve locally advanced or metastatic NSCLC patients whose tumors have EGFR exon 19 deletion mutations. We have met with the FDA to discuss the adequacy of the ongoing Phase 3 trial in China.

#### ***CK-103 BET Inhibitor Program***

We are developing CK-103, a novel, selective and potent small molecule inhibitor of bromodomain and extra-terminal ("BET") bromodomains. CK-103 binds to the first and second bromodomains (BD1, BD2) of the BET protein family, BRD2, BRD3, BRD4, and BRDT. A bromodomain is an amino acid protein domain that recognizes acetylated-lysine. The binding of the drug prevents interaction between BET proteins and both acetylated histones and transcription factors. Therefore, BET proteins, such as BRD4, are considered potential therapeutic targets in cancer, as they may play a pivotal role in regulating the transcription of key regulators of cancer cell growth and survival, including the c-Myc oncogene. BRD4 is often required for expression of c-Myc. Scientific literature has shown that small molecule inhibition of BET bromodomains may lead to selective killing of tumor cells across a broad range of hematologic malignancies and certain targeted solid tumors. We plan to develop CK-103 for the treatment of various advanced and metastatic solid tumor cancers, including, but not limited to, those associated with elevated c-Myc expression.

In May 2016, we entered into an exclusive license agreement with Jubilant Biosys Limited ("Jubilant") to develop and commercialize novel compounds that inhibit BET bromodomains on a worldwide basis. Also in May 2016, we entered into a Sublicense Agreement with TGTX to develop and commercialize CK-103 in the field of hematological malignancies. We retained the right to develop and commercialize CK-103 in solid tumors. Effective September 30, 2023, the Company and TGTX agreed to mutually terminate the Sublicense Agreement. Currently, we have completed the required CMC, pharmacology and toxicology activities that we believe will support an IND application filing.

#### ***Anti-CAIX Research Program***

Our anti-carbonic anhydrase IX ("CAIX") antibody is a fully human preclinical antibody designed to recognize CAIX expressing cells and kill them via ADCC and CDC. Scientific literature indicates that CAIX is a well characterized tumor associated antigen with expression almost exclusively limited to the cells of renal cell carcinoma ("RCC"). More than 85% of RCC cases have been demonstrated to express high levels of CAIX expression. There is very limited expression of this antigen on healthy tissue which we believe will limit reactivity of this antibody against healthy tissues.

In 2015, preclinical data were published in the peer-reviewed journal, *Molecular Cancer*, that demonstrated that our anti-CAIX antibodies could trigger killing of CAIX-positive human RCC cell lines in tissue culture via ADCC and CDC. The killing activity correlated positively with the level of CAIX expression on RCC tumor cell lines. In addition, the study demonstrated that our anti-CAIX antibodies inhibited growth of CAIX-positive tumors in a mouse xenograft model as well as led to the activation of T-cells and NK cells.

We licensed the exclusive worldwide rights to certain anti-CAIX antibodies from Dana-Farber in March 2015. Currently, we are in preclinical development for this program.

## COSTS AND TIME TO COMPLETE PRODUCT DEVELOPMENT

The information below provides estimates regarding the costs associated with the completion of the current development phase and our current estimated range of the time that will be necessary to complete that development phase for our key product candidates. For a description of the risk factors that could significantly affect our ability to meet these cost and time estimates, see Item 1A of this report.

Product Candidate	Target Indication(s)	Development Status	Estimated Completion of Phase	Estimated Cost to Complete Phase
Cosibelimab	Locally advanced and metastatic cutaneous squamous cell carcinoma	Phase 1 registration-enabling	2024	\$3 to \$4 million

Completion dates and costs in the above table are estimates due to the uncertainties associated with clinical trials and the related requirements of development. In the cases where the requirements for clinical trials and development programs have not been fully defined, or are dependent on the success of other trials, we cannot estimate trial completion or cost with any certainty. The actual spending on each trial during the year is also dependent on funding.

## INTELLECTUAL PROPERTY AND PATENTS

### General

Our goal is to obtain, maintain and enforce patent protection for our products, formulations, processes, methods and other proprietary technologies, preserve our trade secrets, and operate without infringing on the proprietary rights of other parties, both in the United States and in other countries. Our policy is to actively seek to obtain, where appropriate, broad intellectual property protection for our product candidates, proprietary information and proprietary technology through a combination of contractual arrangements and patents, both in the U.S. and elsewhere in the world.

We also depend upon the skills, knowledge and experience of our scientific and technical personnel, as well as that of our advisors, consultants and other contractors ("know-how"). To help protect our proprietary know-how which is not patentable, and for inventions for which patents may be difficult to enforce, we rely on trade secret protection and confidentiality agreements to protect our interests. To this end, we require all employees, consultants, advisors and other contractors to enter into confidentiality agreements that prohibit the disclosure of confidential information and, where applicable, require disclosure and assignment to us of the ideas, developments, discoveries and inventions important to our business.

Patents and other proprietary rights are crucial to the development of our business. We will be able to protect our proprietary technologies from unauthorized use by third parties only to the extent that our proprietary rights are covered by valid and enforceable patents, supported by regulatory exclusivity, or are effectively maintained as trade secrets. We cannot guarantee the scope of protection of the issued patents, or that such patents will survive a validity or enforceability challenge, or that any of the pending patent applications will issue as patents.

Generally, patent applications in the U.S. are maintained in secrecy for a period of 18 months or more. The patent positions of biotechnology and pharmaceutical companies are highly uncertain and involve complex legal and factual questions. Therefore, we cannot predict the breadth of claims allowed in biotechnology and pharmaceutical patents, the continued patent eligibility of the claimed subject matter, or their enforceability. To date, there has been no consistent policy regarding the breadth of claims allowed in biotechnology patents. Third parties or competitors may challenge or circumvent our patents or patent applications, if issued. If our competitors prepare and file patent applications in the U.S. that claim technology also claimed by us in a pending patent application or issued patent, we may have to participate in interference or derivation proceedings declared by the U.S. Patent and Trademark Office to determine priority of invention or inventorship, which could result in substantial cost, even if the eventual outcome is favorable to us. Because of the extensive time required for development, testing and regulatory review of a potential product, it is possible that before we commercialize any of our products, any related patent may expire or remain in existence for only a short period following commercialization, thus reducing any advantage of the patent. However, the life of a patent covering a product that has been subject to regulatory approval may have the ability to be extended through the patent restoration program, although any such extension could still be minimal and, in any case, is limited to a maximum of five additional years of patent term. But that maximum of five additional years is, itself, subject to a cap of a maximum of 14 years of patent protection from the date of marketing approval.

In March 2015, we licensed intellectual property related to certain antibodies from Dana-Farber. The intellectual property includes issued patents and pending patent applications in a number of countries. The issued patents and pending patent applications relate generally to compositions and methods of treatment involving antibodies against PD-L1, CAIX, and GITR.

The PD-L1 segment of the in-licensed portfolio from Dana-Farber includes two granted U.S. patents (U.S. Patent Nos. 9,828,434 and 10,604,581) directed to antibodies that bind to PD-L1 and methods of augmenting a patient's immune response by administering an anti-PD-L1 antibody, respectively. The '434 patent is scheduled to expire October 4, 2033, and the '581 patent is scheduled to expire November 18, 2033, not including any patent term restorations, which might become available under the provisions of U.S. patent laws, based on regulatory delays associated with obtaining marketing approval. Two Australian (AU 2013326901 and AU 2018226425), one Japanese (JP 6461800), one South Korean (KR 101947702), one Israeli (IL 237737), one Mexican (MX 370848), two Colombian (CO 34878 and CO 39049), one Canadian (CA 2886433), and two Chinese (CN 104994873 and CN 10782719) counterpart patents have issued, as well as registration of the two Chinese patents in Hong Kong (HK 1211223 and HK 1253723). Additional international counterpart applications are pending in Canada and China. The issued international patents and any patents maturing from these pending applications will expire no sooner than October 2033. Checkpoint has also licensed from Dana-Farber a further anti-PD-L1 antibody portfolio that claims variants of the antibodies disclosed in the earlier-filed in-licensed family. This additional portfolio includes PCT/US2020/062815, which was filed on December 2, 2020, and it had been nationalized in the US, Australia, Canada, Europe, and Japan. Any patents maturing from these pending applications will expire no sooner than December 2040.

In June 2016, Checkpoint also filed a company-owned U.S. provisional application (U.S. 62/356,105) directed to antibodies, including cosibelimab, and functional fragments thereof that bind to human PD-L1, and methods of inhibiting tumor cell proliferation in patients using such antibodies or functional fragments. The provisional application was converted into a PCT application (PCT/US2017/039810) in June 2017, and a U.S. non-provisional application (U.S. Appl. No. 15/636,610) was filed at the same time. This portfolio now includes two issued U.S. patents, U.S. Patent No. 10,590,199 and U.S. Patent No. 11,834,505. U.S. Patent No. 10,590,119 has claims directed to specific anti-PD-L1 antibodies, including cosibelimab, and fragments thereof, as well as methods of treating tumors/cancers with anti-PD-L1 antibodies and fragments thereof. U.S. Patent No. 11,834,505 has claims directed to treating cancer with anti-PD-L1 antibodies, including cosibelimab. Both of these patents (U.S. Patent Nos. 10,590,119 and 11,834,505) are scheduled to expire on May 31, 2038, not including any patent term restorations, which might become available under the provisions of U.S. patent laws, based on regulatory delays associated with obtaining marketing approval. A further U.S. application, U.S. Appl. No. 18/377,702, is currently pending. International counterpart patents have also granted in Israel (IL 263611), Japan (JP 7148414), South Korea (KR 10-2422411), Russia (RU 2749109), and Singapore (SG 11201810927Q), and additional applications are pending in Australia, Brazil, Canada, China, Europe, Hong Kong, Israel, India, Japan, South Korea, Mexico, New Zealand, Singapore and Thailand. Any patents maturing from these pending applications will expire no sooner than June 2037.

The CAIX segment of the in-licensed portfolio from Dana-Farber includes three granted U.S. patents (U.S. Patent Nos. 8,466,263, 10,450,383, and 11,174,323). The '263 patent is directed to isolated human monoclonal antibodies and scFv antibodies that bind to CAIX (G250) protein, and compositions and kits comprising such antibodies. The term of the '263 patent runs to July 9, 2029. The '383 patent is directed to methods of treating cancer with anti-CAIX antibodies, and its term runs until April 26, 2027. The '323 patent is directed to methods of treating renal cancer with anti-CAIX antibodies, and its term runs until February 11, 2027. The '263 patent, the '383 patent, the '323 patent may be entitled to any patent term restorations that might become available under the provisions of U.S. patent laws, based on regulatory delays associated with obtaining marketing approval. The European counterpart patent (EP 1979379) is in force in Switzerland, Liechtenstein, Germany, France and the United Kingdom. A Canadian counterpart patent (CA 2,632,094) has also been issued. Both the European and Canadian counterpart patents are scheduled to expire no sooner than December 2026.

The GTR segment of the in-licensed portfolio from Dana-Farber includes an International Application No. PCT/US2015/054010, filed in October 2015, and International Application No. PCT/US2017/043504, filed in July 2017. All of the national stage applications claiming priority to PCT/US2015/054010 have lapsed; however, there is one granted patent (U.S. Patent No. 10,463,732) in this family. The '732 patent will not expire until at least October 2035, barring any patent term restorations that might become available under the provisions of U.S. patent laws. National stage applications claiming priority to PCT/US2017/043504 have resulted in one US patent (U.S. 11,046,777), one Chinese patent (CN 109689689), one Japanese patent (JP 7082967), one South Korean patent (KR 2534568), and one patent in Singapore (SG 11201900500T). This family also includes pending patent applications in the U.S. (U.S. Appl. No. 17/316,141), Australia, Brazil, Canada, Europe, Israel, New Zealand, Thailand, and Mexico. Any of these national stage applications that issue or grant as patents would expire no earlier than July 2037. U.S. 11,046,777 will not expire until at least July 2037, barring any patent term restorations that might become available under the provisions of the U.S. patent laws.

In March 2015, Fortress in-licensed intellectual property from NeuPharma, assigned to us by Fortress on the same date, which is directed to technology involving small molecules that are inhibitors of EGFR and kinase mutants, including the compound olafertinib. EGFR is a receptor tyrosine kinase of the ErbB family and is also known as "Her1" and "ErbB1." The in-licensed patent estate includes six granted U.S. patents, a granted European patent, a granted patent in Hong Kong, a granted patent in Singapore, a granted patent in the Philippines, a granted Japanese patent, a granted South Korean patent, a granted Malaysian patent, three granted Australian patents, a granted New Zealand patent, two granted Israeli patents, a granted Mexican patent, a granted Russian patent, a granted Indian patent, a granted Canadian patent, and a granted Brazilian patent. U.S. Patent No. 9,550,770 is directed to a generic formula of small molecules of substituted quinazolines for inhibiting kinase activity, and also has a specific claim directed to the compound, olafertinib. The granted claims also cover pharmaceutically acceptable salts, pharmaceutical compositions, particular dosage forms and packaged goods. U.S. Patent No. 9,849,139 is directed to methods of inhibiting EGFR or an EGFR mutant in a subject in need thereof, comprising administering a therapeutically effective amount of the compounds of the '770 patent, including the compound, olafertinib. U.S. Patent No. 10,172,868 is directed to methods of treating non-small cell lung cancer with a specific list of compounds, including the compound, olafertinib. U.S. Patent No. 10,653,701 is directed to methods of treating cancer with a substituted quinazoline compound comprising an electrophilic group capable of forming a covalent bond with a nucleophile, which includes the compounds of the '868 patent (e.g., the compound, olafertinib). U.S. Patent No. 11,304,957 and U.S. Patent 11,865,120 are directed to processes for preparing compounds, including the compound, olafertinib. Additionally, there is a pending U.S. application in this family (U.S. Appl. No. 18/519,150). The granted foreign patents cover the compound, olafertinib, and a broad range of related compounds, salts, pharmaceutical compositions, including various dosage forms of such pharmaceutical compositions and certain uses of such compounds or salts thereof in treating cancer, a disorder mediated by EGFR, or NSCLC, either alone or in combination with an additional anti-cancer and/or cytotoxic agent. The term of granted U.S. and foreign patents runs to August 22, 2034, not including any patent term restorations in the U.S., which might become available under the provisions of U.S. patent laws, based on regulatory delays associated with obtaining marketing approval. Additional counterpart applications exist in jurisdictions around the world, including, Hong Kong, the Philippines, Singapore, South Korea, Malaysia, China and Europe. Any patents maturing from these pending applications would be scheduled to expire no sooner than August 2034. Checkpoint has also licensed from NeuPharma an additional international application, PCT/US2019/017117, which was filed on February 7, 2019, and it directed to additional EGFR inhibitors and methods of using the same. National stage applications claiming priority to PCT/US2019/017117 have resulted in one US patent (U.S. 11,465,975) and are pending in Australia, Canada, China, Europe, Hong Kong, the Philippines, Israel, Japan, South Korea, Singapore and New Zealand. Any of these national stage applications that issue or grant as patents would expire no earlier than February 2039.

In May 2016, we in-licensed intellectual property from Jubilant. Under the terms of the license agreement, Jubilant granted us exclusive, worldwide rights under Jubilant's patents and know-how covering small molecule inhibitors of BET, specifically targeting BRD4, a member of the BET family, which is often required for the expression of c-Myc. The in-licensed patent estate includes two international (PCT) applications, filed in March 2016 (PCT/IN2016/050098) and September 2016 (PCT/IN2016/050300), respectively, which claim the benefit of two earlier-filed Indian provisional applications. This patent estate has four granted U.S. patents, two granted Indian patents, two granted Japanese patents, two granted Australian patents, two granted Russian patents, two granted Israeli patents, two granted patents in Hong Kong, two granted Chinese patents, two granted Mexican patents, two Brazilian patents, one South Korean patent, and two granted European patents that have each been validated across a broad range of European countries. National stage applications claiming priority to PCT/IN2016/050098 or PCT/IN2016/050300 are pending in Canada, South Korea, New Zealand, and Thailand. U.S. Patent No. 10,689,390, which is the U.S. national phase entry of PCT/IN2016/050098, is directed to a generic formula of small molecule BET inhibitors and specifically claims exemplified small molecule BET inhibitors. The granted claims of the '390 patent also cover pharmaceutical compositions. U.S. Patent No. 11,319,326, which is a divisional of the '390 patent, is directed to methods of treatment with the compounds claimed in the '390 patent, including inhibiting one or more BET family bromodomains in the cell and treating a proliferative disorder or cancer. U.S. Patent No. 10,689,395, which is the U.S. national phase entry of PCT/IN2016/050300, is directed to a generic formula of small molecule BET inhibitors that cover half of the exemplified small molecule BET inhibitors disclosed in PCT/IN2016/050300. The granted claims of the '395 patent also cover pharmaceutical compositions and a method of treating cancer. U.S. Patent No. 11,267,820, which is a divisional of the '395 patent, is directed to the remaining half of the exemplified compounds disclosed in PCT/IN2016/050300 and has claims similar to those granted from the '395 patent. Any patents maturing from this patent estate are expected to expire in 2036.

#### ***Other Intellectual Property Rights***

We depend upon trademarks, trade secrets, know-how and continuing technological advances to develop and maintain our competitive position. To maintain the confidentiality of trade secrets and proprietary information, we require our employees, scientific advisors, consultants and collaborators, upon commencement of a relationship with us, to execute confidentiality agreements and, in the case of parties other than our research and development collaborators, to agree to assign their inventions to us. These agreements are designed to protect our proprietary information and to grant us ownership of technologies that are developed in connection with their relationship with us. These agreements may not, however, provide protection for our trade secrets in the event of unauthorized disclosure of such information.

In addition to patent protection, we may utilize orphan drug designation or other provisions of the Food, Drug and Cosmetic Act of 1938, as amended ("FDCA"), to provide market exclusivity for certain of our product candidates. Orphan drug regulations provide incentives to pharmaceutical and biotechnology companies to develop and manufacture drugs for the treatment of rare diseases, currently defined as diseases that exist in fewer than 200,000 individuals in the U.S., or diseases that affect more than 200,000 individuals in the U.S. but that the sponsor does not realistically anticipate will generate a net profit. Under these provisions, a manufacturer of a designated orphan drug can seek tax benefits, and the holder of the first FDA approval of a designated orphan drug product will be granted a seven-year period of marketing exclusivity for such FDA-approved orphan drug product. In September 2017, we received FDA Orphan Drug Designation for olafertinib for the treatment of EGFR mutation-positive NSCLC.

## LICENSING AGREEMENTS AND COLLABORATIONS

### *Dana-Farber Cancer Institute, Inc.*

In March 2015, we entered into a license agreement with Dana-Farber, which license was amended effective on October 5, 2015, April 12, 2016, and October 24, 2016, for an exclusive, worldwide license to Dana-Farber's patents for a portfolio of fully human immunology targeted antibodies targeting PD-L1, GITR and CAIX. The field of use license includes all prophylactic, therapeutic or diagnostic uses in humans or animals excluding use in chimeric antigen receptor technology. The Dana-Farber antibodies were generated in the laboratory of Dr. Wayne Marasco, MD, PhD, a Professor in the Department of Cancer Immunology and AIDS at Dana-Farber. Under the terms of the agreement, we paid Dana-Farber an up-front licensing fee of \$1.0 million and, on May 11, 2015, granted Dana-Farber five percent of our common stock on a fully diluted basis, equal to 50,000 shares valued at \$32,500 or \$0.65 per share. The agreement included an anti-dilution clause that maintained Dana-Farber's ownership at 5% until such time that we raised \$10 million in cash in exchange for common shares. Pursuant to this provision, on September 30, 2015, we granted to Dana-Farber an additional 13,683 shares of common stock valued at approximately \$0.6 million and the anti-dilution clause thereafter expired. Dana-Farber is eligible to receive payments of up to an aggregate of approximately \$21.5 million for each licensed product upon our successful achievement of certain clinical development, regulatory and first commercial sale milestones. As of December 31, 2023, \$5.0 million of these milestones have been achieved for the antibody targeting PD-L1. In addition, Dana-Farber is eligible to receive up to an aggregate of \$60.0 million upon our successful achievement of certain sales milestones based on aggregate net sales, in addition to royalty payments based on a tiered low to mid-single digit percentage of net sales. Dana-Farber also receives an annual license maintenance fee of \$50,000, which is creditable against milestone payments or royalties due to Dana-Farber. The license will terminate on a country-by-country and product-by-product basis until the royalty term in such country with respect to such product expires, at which time the agreement will expire in its entirety with respect to such product in such country. The royalty term, on a product-by-product and country-by-country basis, is the later of (i) ten years after first commercial sale of a given product in such country, or (ii) the expiration of the last-to-expire Dana-Farber patent containing a valid claim to the product in such country. To date, we have incurred \$6.2 million of upfront licensing and milestone payments under this license agreement.

In connection with the license agreement with Dana-Farber, in March 2015 we entered into a collaboration agreement with TGTX, which was amended and restated in June 2019, to develop and commercialize the anti-PD-L1 and anti-GITR antibody research programs in the field of hematological malignancies. We retained the right to develop and commercialize these antibodies in solid tumors. Michael Weiss, Chairman of the Board of Directors of Checkpoint and Fortress' Executive Vice Chairman, Strategic Development, is also the Executive Chairman, President and Chief Executive Officer and a stockholder of TGTX. Effective September 30, 2023, we mutually agreed with TGTX to terminate the collaboration agreement, with full rights reverting back to us. Under the terms of the original collaboration agreement, TGTX paid us \$0.5 million, representing an upfront licensing fee. Upon the signing of the amended and restated collaboration agreement in June 2019, TGTX paid us an additional \$1.0 million upfront licensing fee. We also received an annual license maintenance fee, which was creditable against milestone payments or royalties due to us. TGTX also paid us for our out-of-pocket costs of material used by TGTX for their development activities. For the years ended December 31, 2023 and 2022, we recognized approximately \$58,000 and \$121,000 respectively, in revenue from our collaboration agreement with TGTX in the Statements of Operations.

### ***Adimab, LLC***

In October 2015, Fortress entered into a collaboration agreement with Adimab to discover and optimize antibodies using their proprietary core technology platform. Under this agreement, Adimab optimized cosibelimab, our anti-PD-L1 antibody which we originally licensed from Dana-Farber. In January 2019, Fortress transferred the rights to the optimized antibody to us, and we entered into a collaboration agreement directly with Adimab on the same day. Under the terms of the agreement, Adimab is eligible to receive additional payments up to an aggregate of approximately \$2.5 million upon various filings for regulatory approvals to commercialize the product. In addition, Adimab is eligible to receive royalty payments based on a tiered low single digit percentage of net sales. The license will terminate on a country-by-country and product-by-product basis until the royalty term in such country with respect to such product expires, at which time the agreement will expire in its entirety with respect to such licensed product in such country. The royalty term, on a product-by-product and country-by-country basis, begins on the first commercial sale of a product in a country and ends on the later of (a) expiry of the last-to-expire licensor patent containing a valid claim to the compound in such country; or (b) twelve years after the first commercial sale of such licensed product in such country. In February 2023, the Company expensed a non-refundable milestone payment of \$2.2 million to research and development expenses upon the FDA's filing acceptance of the Company's BLA for cosibelimab in metastatic or locally advanced CSCC. To date, we have incurred \$6.0 million in milestone payments under our collaboration agreement with Adimab.

### ***NeuPharma, Inc.***

In March 2015, Fortress entered into an exclusive license agreement with NeuPharma to develop and commercialize novel irreversible, 3rd generation EGFR inhibitors, including olafertinib, on a worldwide basis other than certain Asian countries. On the same date, Fortress assigned all of its right and interest in the EGFR inhibitors to us. The license agreement was amended on February 21, 2017. Under the terms of the license agreement, we paid NeuPharma an up-front licensing fee of \$1.0 million, and NeuPharma is eligible to receive additional payments of up to an aggregate of approximately \$39.0 million upon our successful achievement of certain clinical development and regulatory milestones covering up to three indications, of which \$22.5 million are due upon various regulatory approvals to commercialize the products. In addition, NeuPharma is eligible to receive payments of up to an aggregate of \$40.0 million upon our successful achievement of certain sales milestones based on aggregate net sales across all indications, in addition to royalty payments based on a tiered mid to high-single digit percentage of net sales. The license will terminate on a country-by-country and product-by-product basis until the royalty term in such country with respect to such product expires, at which time the agreement will expire in its entirety with respect to such product in such country. Royalty term means, on a licensed product-by-licensed product and country-by-country basis, the period from the first commercial sale of a given licensed product in such country until the later of (a) expiry of the last-to-expire licensor patent containing a valid claim to the compound in such country; or (b) the 10th anniversary of the first commercial sale of such licensed product in such country. In a country where no licensor patent containing a valid claim with respect to the compound has ever existed nor ever exists, the royalty term means on a product-by-product and country-by-country basis, the period from the first commercial sale of such product in such country until the 10th anniversary of such first commercial sale of such product in such country. To date, we have incurred \$2.0 million of upfront licensing and milestone payments under the license agreement.

### ***Jubilant Biosys Limited***

In May 2016, we entered into a license agreement with Jubilant for an exclusive, worldwide license to Jubilant's family of patents covering compounds that inhibit BET proteins such as BRD4, including CK-103. The license agreement was amended on December 13, 2016 and March 31, 2017. Under the terms of the license agreement, we paid Jubilant an up-front licensing fee of \$2.0 million, and Jubilant is eligible to receive payments up to an aggregate of approximately \$88.4 million upon our successful achievement of certain clinical development and regulatory milestones covering two licensed products, of which \$59.5 million are due upon various regulatory approvals to commercialize the products. In addition, Jubilant is eligible to receive payments up to an aggregate of \$89.3 million upon our successful achievement of certain sales milestones based on aggregate net sales for two licensed products, in addition to royalty payments based on a tiered low to mid-single digit percentage of net sales. The license will terminate on a country-by-country and product-by-product basis until the royalty term in such country with respect to such product expires, at which time the agreement will expire in its entirety with respect to such licensed product in such country. The royalty term, on a product-by-product and country-by-country basis, begins on the first commercial sale of a product in a country and ends on the expiration of the last-to-expire Jubilant patent containing a valid claim to the product in such country. To date, we have incurred \$2.4 million of upfront licensing and milestone payments under the license agreement.



In connection with the license agreement with Jubilant, we entered into a sublicense agreement with TGTX, a related party, to develop and commercialize the compounds licensed in the field of hematological malignancies, while we retained the right to develop and commercialize these compounds in the field of solid tumors. Effective September 30, 2023, we mutually agreed with TGTX to terminate the sublicense agreement. Under the terms of the sublicense agreement, TGTX paid us \$1.0 million, representing an upfront licensing fee. TGTX also paid us for 50% of IND enabling costs and patent expenses. For each of the years ended December 31, 2023 and 2022, we recognized approximately \$46,000 and \$70,000, respectively, in revenue related to the sublicense agreement in the Statements of Operations.

## COMPETITION

Competition in the pharmaceutical and biotechnology industries is intense. Our competitors include pharmaceutical companies and biotechnology companies, as well as universities and public and private research institutions. In addition, companies that are active in different but related fields represent substantial competition for us. Many of our competitors have significantly greater capital resources, larger research and development staffs and facilities and greater experience in drug development, regulation, manufacturing and marketing than we do. These organizations also compete with us to recruit qualified personnel, attract partners for joint ventures or other collaborations, and license technologies that are competitive with ours. To compete successfully in this industry, we must identify novel and unique drugs or methods of treatment and then complete the development of those drugs as treatments.

The drugs that we are attempting to develop will have to compete with existing therapies. In addition, a large number of companies are pursuing the development of pharmaceuticals that target the same conditions that we are targeting. Other companies have products or product candidates in various stages of preclinical or clinical development, or with marketing approvals, to treat conditions for which we are also seeking to discover and develop product candidates. Some of these potential competing drugs are further advanced in development than our product candidates and may be commercialized earlier.

In the immuno-oncology area, several major pharmaceutical companies have a PD-1 and/or PD-L1 antibody on the market, including, without limitation, Merck & Co. (approved drug PD-1 with the brand name Keytruda®), Bristol-Myers Squibb (approved PD-1 with the brand name Opdivo®), Roche (approved PD-L1 with the brand name Tecentriq®), AstraZeneca (approved PD-L1 with the brand name Imfinzi®), Pfizer/Merck KGA (approved PD-L1 with the brand name Bavencio®), Regeneron (approved PD-1 with the brand name Libtayo®), GlaxoSmithKline (approved PD-1 with the brand name Jemperli®) and Coherus (approved PD-1 with the brand name Loqtorzi™). We are aware of several anti-GITR antibody development programs that are or were in preclinical or early clinical studies, including, without limitation, by Merck & Co., and an anti-CAIX antibody in clinical studies by Telix Pharmaceuticals.

In the targeted anti-cancer agent area, there are several companies with marketing approvals or in development with EGFR inhibitors that are targeting mutations similar to our programs. There are also a number of early stage programs developing BET inhibitors which could overlap with our upcoming programs.

In the EGFR inhibitor space, Tarceva®, Iressa®, Gilotrif®, Tagrisso® and Vizimpro® are currently approved drugs for the treatment of first-line EGFR mutation-positive NSCLC in the United States. AstraZeneca's Tagrisso is also approved by the FDA for the treatment of patients with metastatic EGFR T790M mutation-positive NSCLC who have progressed on or after EGFR tyrosine kinase inhibitor therapy and for the adjuvant treatment of patients with early stage EGFR mutation positive NSCLC. In addition, we are aware of a number of products in development targeting cancer-causing mutant forms of EGFR for the treatment of NSCLC patients, including, Novartis' nazartinib, and Janssen's lazertinib.

In the BET inhibitor space, there are a number of companies which have advanced to early stage clinical trials, including MorphoSys AG's pelabresib, Bristol-Myers Squibb's trotabresib, Abbvie's mivebresib, Incyte's INCB57643 and Zenith Epigenetics's ZEN003694.

Additional information can be found under Item 1A - Risk Factors - Risks Related to Our Business and Industry.

## EMPLOYEES

As of December 31, 2023, we had twenty-three full and part-time employees. None of our employees are represented by a labor union and we consider our employee relations to be good.



## **SUPPLY AND MANUFACTURING**

We have limited experience in manufacturing products for clinical or commercial purposes. We currently do not have any manufacturing capabilities. We have established, or intend to establish, contract manufacturing relationships for the supplies of our product candidates, in each case with a single manufacturer. As with any supply program, obtaining raw materials of a sufficient quality cannot be guaranteed and we cannot ensure that we will be successful in this endeavor.

At the time of commercial sale, if not prior, and to the extent possible and commercially practicable, we plan to seek to engage a back-up supplier for each of our product candidates. Until such time, we expect that we will rely on a single contract manufacturer to produce each of our product candidates under current GMP ("cGMP") regulations. Our third-party manufacturers have a limited number of facilities in which our product candidates can be produced and will have limited experience in manufacturing our product candidates in quantities sufficient for commercialization. Our third-party manufacturers will have other clients and may have other priorities that could affect their ability to perform the work satisfactorily and/or on a timely basis. Both of these occurrences would be beyond our control.

We expect to similarly rely on contract manufacturing relationships for any products that we may in-license or acquire in the future. However, there can be no assurance that we will be able to successfully contract with such manufacturers on terms acceptable to us, or at all.

Contract manufacturers are subject to ongoing periodic and unannounced inspections by the FDA, the Drug Enforcement Administration ("DEA") and corresponding state agencies to ensure strict compliance with cGMP and other state and federal regulations. Our contractors outside of the United States face similar challenges from the numerous local and regional agencies and authorized bodies. We do not have control over third-party manufacturers' compliance with these regulations and standards, other than through contractual obligations. If they are deemed out of compliance with cGMPs, product recalls could result, inventory could be destroyed, production could be stopped, and supplies could be delayed or otherwise disrupted.

If we need to change manufacturers after commercialization, the FDA and corresponding foreign regulatory agencies must approve these new manufacturers in advance, which will involve testing and additional inspections to ensure compliance with FDA and corresponding foreign regulatory agency regulations and standards and may require significant lead times and delay. Furthermore, switching manufacturers may be difficult because the number of potential manufacturers is limited. It may be difficult or impossible for us to find a replacement manufacturer quickly or on terms acceptable to us, or at all.

## **GOVERNMENT AND INDUSTRY REGULATIONS**

Governmental authorities, including the FDA and corresponding state and foreign regulatory agencies, regulate the clinical development, manufacture, approval and marketing of our product candidates, as well as our ongoing research and development activities. None of our product candidates have been approved for sale in any market in which we have marketing rights. Before marketing in the U.S., any drug that we develop must undergo rigorous preclinical testing and clinical trials and an extensive regulatory approval process implemented by the FDA under the FDCA. The FDA regulates, among other things, the pre-clinical and clinical testing, safety, efficacy, approval, manufacturing, record keeping, adverse event reporting, packaging, labeling, storage, advertising, promotion, export, sale and distribution of biopharmaceutical products.

The regulatory review and approval process is lengthy, expensive and uncertain. We are required to submit extensive preclinical and clinical data and supporting information to the FDA for each indication or use to establish a product candidate's safety and efficacy before we can secure FDA approval to market or sell a product in the U.S. The approval process takes many years, requires the expenditure of substantial resources and may involve ongoing requirements for post-marketing studies or surveillance. Before commencing clinical trials in humans, we must submit an IND to the FDA, or comparable filing outside the U.S., containing, among other things, pre-clinical data, chemistry, manufacturing and control information, and an investigative plan. Our submission of an IND may not result in FDA authorization to commence a clinical trial.

Where appropriate, the FDA may designate certain drug candidates as eligible for expedited review when they are intended to treat persons with serious or life-threatening conditions for which there is an unmet medical need. A sponsor can apply for such designation, including fast track review, at the time of submission of an IND, or at any time prior to receiving marketing approval of the new drug application ("NDA") or BLA. To receive fast track designation, an applicant must demonstrate:

- that the drug is intended to treat a serious or life-threatening condition;
- that the drug is intended to treat a serious aspect of the condition; and
- that the drug has the potential to address unmet medical needs, and this potential is being evaluated in the planned drug development program.

The FDA responds to a request for fast track designation within 60 calendar days of receipt of the request. Over the course of drug development, a product in a fast track development program must continue to meet the criteria for fast track designation. Sponsors of products in fast track drug development programs are in regular contact with the reviewing division of the FDA to ensure that the evidence necessary to support marketing approval will be developed and presented in a format conducive to an efficient review. Sponsors of products in fast track drug development programs may be eligible for priority review of a completed application in six months or less and also may be permitted to submit portions of an NDA or BLA to the FDA for review before the complete application is submitted.

Where applicable, sponsors of drugs may seek approval under the FDA's accelerated approval regulations. Under this authority, the FDA may grant marketing approval for a new drug product on the basis of adequate and well-controlled clinical trials establishing that the drug product has an effect on a surrogate endpoint that is reasonably likely, based on epidemiologic, therapeutic, pathophysiologic, or other evidence, to predict clinical benefit or on the basis of an effect on a clinical endpoint other than survival or irreversible morbidity. Accelerated approval will be subject to the requirement that the sponsor study the drug further to verify and describe its clinical benefit where there is uncertainty as to the relation of the surrogate endpoint to clinical benefit or uncertainty as to the relation of the observed clinical benefit to ultimate outcome. Post-marketing studies may be underway at the time a sponsor files the NDA or BLA. When required to be conducted, such post-marketing studies must also be adequate and well-controlled. The sponsor must carry out any such post-marketing studies with due diligence. Drug candidates that have received accelerated approval have subsequently failed to obtain approval. Moreover, negative or inconclusive results from the clinical trials we may conduct, or adverse medical events could cause us to have to repeat or terminate the clinical trials. Accordingly, we may not be able to complete the clinical trials within an acceptable time frame, if at all, and, therefore, could not submit the NDA or BLA to the FDA or foreign regulatory authorities for marketing approval.

Clinical testing must meet requirements for institutional review board or ethics committee oversight, informed consent and good clinical practices, among others, and must be conducted pursuant to an IND, unless exempted.

For purposes of NDA or BLA approval, clinical trials are typically conducted in the following sequential phases:

- *Phase 1:* The drug is administered to a small group of humans, either healthy volunteers or patients, to test for safety, dosage tolerance, absorption, metabolism, excretion and clinical pharmacology.
- *Phase 2:* Studies are conducted on a larger number of patients to assess the efficacy of the product, to ascertain dose tolerance and the optimal dose range, and to gather additional data relating to safety and potential adverse events.
- *Phase 3:* Studies establish safety and efficacy in an expanded patient population.
- *Phase 4:* The FDA may require Phase 4 post-marketing studies to find out more about the drug's long-term risks, benefits, and optimal use, or to test the drug in different populations.

The length of time necessary to complete clinical trials varies significantly and may be difficult to predict. Clinical results are frequently susceptible to varying interpretations that may delay, limit or prevent regulatory approvals. Additional factors that can cause delay or termination of our clinical trials, or that may increase the costs of these trials, include:

- slow patient enrollment due to the nature of the clinical trial plan, the proximity of patients to clinical sites, the eligibility criteria for participation in the study, external factors such as pandemics or geopolitical conflicts or other factors;
- inadequately trained or insufficient personnel at the study site to assist in overseeing and monitoring clinical trials or delays in approvals from a study site's review board;
- longer treatment time required to demonstrate efficacy or determine the appropriate product dose;

- insufficient supply of the product candidates;
- adverse medical events or side effects in treated patients; and
- ineffectiveness of the product candidates.

In addition, the FDA, equivalent foreign regulatory authority, or a data safety monitoring committee for a trial may place a clinical trial on hold or terminate it if it concludes that subjects are being exposed to an unacceptable health risk, or for futility, among other things. Any drug is likely to produce some toxicity or undesirable side effects in animals and in humans when administered at sufficiently high doses and/or for a sufficiently long period of time. Unacceptable toxicity or side effects may occur at any dose level at any time in the course of studies in animals designed to identify unacceptable effects of a product candidate, known as toxicological studies, or clinical trials of product candidates. The appearance of any unacceptable toxicity or side effect could cause us or regulatory authorities to interrupt, limit, delay or terminate the development of any of our product candidates and could ultimately prevent approval by the FDA or foreign regulatory authorities for any or all targeted indications.

Sponsors of drugs may apply for a special protocol assessment ("SPA") from the FDA. The SPA process is a procedure by which the FDA provides official evaluation and written guidance on the design and size of proposed protocols that are intended to form the basis for a new drug application. However, final marketing approval depends on, among other things, the results of efficacy, the adverse event profile and an evaluation of the benefit/risk of treatment demonstrated in the Phase 3 trial. The SPA agreement may only be changed through a written agreement between the sponsor and the FDA, or if the FDA becomes aware of a substantial scientific issue essential to product safety or efficacy.

Before receiving FDA approval to market a product, we must demonstrate that the product is safe and effective for its intended use by submitting to the FDA an NDA or BLA containing the pre-clinical and clinical data that have been accumulated, together with chemistry and manufacturing and controls specifications and information, and proposed labeling, among other things. The FDA may refuse to accept an NDA or BLA for filing if certain content criteria are not met and, even after accepting an NDA or BLA, the FDA may often require additional information, including clinical data, before approval of marketing a product.

It is also becoming more common for the FDA to request a Risk Evaluation and Mitigation Strategy ("REMS"), as part of an NDA or BLA. The REMS plan contains post-market obligations of the sponsor to train prescribing physicians, monitor off-label drug use, and conduct sufficient Phase 4 follow-up studies and registries to ensure the continued safe use of the drug.

As part of the approval process, the FDA must inspect and approve each manufacturing facility. Among the conditions of approval is the requirement that a manufacturer's quality control and manufacturing procedures conform to cGMP. Manufacturers must expend significant time, money and effort to ensure continued compliance, and the FDA conducts periodic inspections to certify compliance. It may be difficult for our manufacturers or us to comply with the applicable cGMP, as interpreted by the FDA, and other FDA regulatory requirements. If we, or our contract manufacturers, fail to comply, then the FDA may not allow us to market products that have been affected by the failure.

If the FDA grants approval, the approval will be limited to those conditions and patient populations for which the FDA has determined that the product is safe and effective, as demonstrated through data and information, including clinical studies. Further, a product may be marketed only in those dosage forms and for those indications approved in the NDA or BLA. Certain changes to an approved NDA or BLA, including, with certain exceptions, any significant changes to labeling, require approval of a supplemental application before the drug may be marketed as changed. Any products that we manufacture or distribute pursuant to FDA approvals are subject to continuing monitoring and regulation by the FDA, including compliance with cGMP and the reporting of adverse experiences with the drugs. The nature of marketing claims that the FDA will permit us to make in the labeling and advertising of our products will generally be limited to those specified in FDA approved labeling, and the advertising of our products will be subject to monitoring and regulation by the FDA. Drugs whose review was accelerated may carry additional restrictions on marketing activities, including the requirement that all promotional materials are pre-submitted to the FDA. Claims exceeding those contained in approved labeling may constitute a violation of the FDCA. Violations of the FDCA or regulatory requirements, including those related to drug manufacturing, at any time during the product development process, approval process, or marketing and sale following approval may result in agency enforcement actions, including withdrawal of approval, recall, seizure of products, warning letters, injunctions, fines and/or civil or criminal penalties. Any agency enforcement action could have a material adverse effect on our business.

Failure to comply with applicable federal, state and foreign laws and regulations would likely have a material adverse effect on our business. In addition, federal, state and foreign laws and regulations regarding the manufacture and sale of new drugs are subject to future changes.

#### **Other Healthcare Laws and Compliance Requirements**

In the United States, our activities are potentially subject to regulation by various federal, state and local authorities in addition to the FDA, including the Centers for Medicare and Medicaid Services (formerly the Health Care Financing Administration), other divisions of the United States Department of Health and Human Services (e.g., the Office of Inspector General), the United States Department of Justice and individual United States Attorney offices within the Department of Justice, and state and local governments.

#### **Pharmaceutical Coverage, Pricing and Reimbursement**

In the United States and markets in other countries, sales of any products for which we receive regulatory approval for commercial sale will depend in part on the availability of reimbursement from third-party payors, including government health administrative authorities, managed care providers, private health insurers and other organizations. Third-party payors are increasingly examining the medical necessity and cost-effectiveness of medical products and services, in addition to their safety and efficacy, and, accordingly, significant uncertainty exists as to the reimbursement status of newly approved therapeutics. Adequate third-party reimbursement may not be available for our products to enable us to realize an appropriate return on our investment in research and product development. In addition, in the U.S., the Inflation Reduction Act contains provisions that have the potential to substantially impact the profitability of drugs. For example, the Inflation Reduction Act authorizes the Centers for Medicare & Medicaid Services ("CMS") to negotiate drug prices for certain drugs in Medicare Part D, beginning in 2026, and Parts D and B, beginning in 2028. Additionally, the Inflation Reduction Act imposes inflation rebates on drugs reimbursed by Medicare Part B and Part D. Given the complexity of the Inflation Reduction Act and the uncertainty with respect to its impending implementation, the impact of the Inflation Reduction Act on our financial conditions and operations cannot be predicted, whether in its current form or as amended or repealed.

#### **International Regulation**

In addition to regulations in the United States, there are a variety of foreign regulations governing clinical trials and commercial sales and distribution of any product candidates. The approval process varies from country to country, and the time may be longer or shorter than that required for FDA approval.

#### **Item 1A. Risk Factors**

*The following information sets forth risk factors that could cause our actual results to differ materially from those contained in forward-looking statements we have made in this report and those we may make from time to time. You should carefully consider the risks described below, in addition to the other information contained in this report and our other public filings, before making an investment decision. Our business, financial condition or results of operations could be harmed by any of these risks. The risks and uncertainties described below are not the only ones we face. Additional risks not presently known to us or other factors not perceived by us to present significant risks to our business at this time also may impair our business operations.*

## Risks Related to Our Finances and Capital Requirements

***We have incurred significant losses since our inception and anticipate that we will incur continued losses for the foreseeable future. We may never achieve or maintain profitability.***

We have a limited operating history, and we have focused primarily on in-licensing and developing our product candidates, with the goal of supporting regulatory approval for these product candidates. We have incurred losses since our inception in November 2014 and have an accumulated deficit of \$314.3 million as of December 31, 2023. We expect to continue to incur significant operating losses for the foreseeable future. We also do not anticipate that we will achieve profitability for a period of time after generating material revenues, if ever. If we are unable to generate revenues, we will not become profitable and may be unable to continue operations without continued funding. Because of the numerous risks and uncertainties associated with developing pharmaceutical products, we are unable to predict the timing or amount of increased expenses or when or if, we will be able to achieve profitability. Our net losses may fluctuate significantly from quarter to quarter and year to year. We anticipate that our expenses will increase substantially if:

- one or more of our product candidates are submitted for marketing approval, as is the case with cosibelimab, or are approved for commercial sale, due to our need to establish the necessary commercial infrastructure to launch this product candidate without substantial delays, including manufacturing to build pre-commercial inventory, hiring sales and marketing personnel and contracting with third parties for warehousing, distribution, cash collection and related commercial activities;
- we are required by the FDA or foreign regulatory authorities, to perform studies in addition to those currently expected;
- we initiate one or more clinical trials to pursue additional indications for our product candidates, or if there are any delays in completing our clinical trials or the development of any of our product candidates;
- we execute other collaborative, licensing or similar arrangements and the timing of payments we may make or receive under these arrangements;
- there are variations in the level of expenses related to our current and future development programs;
- there are any product liability or intellectual property infringement lawsuits in which we may become involved;
- there are any regulatory developments affecting product candidates of our competitors; and
- one or more of our product candidates receives regulatory approval.

Our ability to become profitable depends upon our ability to generate revenue. To date, we have not generated any revenue from the sale of our development stage products, and we do not know when, or if, we will generate any revenue. To obtain revenues from sales of our product candidates, we must succeed, either alone or with third parties, in developing, obtaining regulatory approval for, manufacturing and marketing products with commercial potential. Our ability to generate revenue depends on a number of factors, including, but not limited to, our ability to:

- obtain regulatory approval for one or more of our product candidates, or any future product candidate that we may license or acquire;
- manufacture commercial quantities of one or more of our product candidates or any future product candidate, if approved, at acceptable cost levels; and
- develop a commercial organization and the supporting infrastructure required to successfully market and sell one or more of our product candidates or any future product candidate, if approved.

Even if we do achieve profitability, we may not be able to sustain or increase profitability on a quarterly or annual basis. Our failure to become and remain profitable would depress the value of our company and could impair our ability to raise capital, expand our business, maintain our research and development efforts, diversify our product offerings or even continue our operations. A decline in the value of our company could also cause you to lose all or part of your investment.

***We will require substantial additional funding which may not be available to us on acceptable terms, or at all. If we fail to raise the necessary additional capital, we may be unable to complete the development and commercialization of our product candidates, or continue our development programs.***

Our operations have consumed substantial amounts of cash since inception. We expect to significantly increase our spending to advance the preclinical and clinical development, and resulting regulatory approval request submissions, of our product candidates and launch and commercialize any product candidates for which we may receive regulatory approval, including building a commercial organization

to address certain markets. We will require additional capital for the further development and, if approved, commercialization of our product candidates, as well as to fund our other operating expenses and capital expenditures. We believe, assuming no business or corporate development transactions are consummated, that our cash and cash equivalents are only sufficient to fund our operating expenses into the third quarter of 2024. Accordingly, we intend to continue our active discussions with third party pharmaceutical and biotechnology companies to evaluate potential partnerships or other types of corporate development transactions, including strategic mergers.

We cannot be certain that additional funding will be available on acceptable terms, or at all. If we are unable to raise additional capital in sufficient amounts, or on terms acceptable to us, we may have to significantly delay, scale back or discontinue the development or, if approved, commercialization of one or more of our product candidates. We may also seek collaborators for one or more of our current or future product candidates at an earlier stage than otherwise would be desirable or on terms that are less favorable than might otherwise be available. Any of these events could significantly harm our business, financial condition and prospects.

Our future funding requirements will depend on many factors, including, but not limited to:

- the timing, design and conduct of, and results from, preclinical studies and clinical trials for our product candidates;
- the timing and process of regulatory approval reviews and potential for delays in our efforts to seek regulatory approval for our product candidates, and any costs associated with such delays;
- the costs of establishing a commercial organization to sell, market and distribute our product candidates;
- the rate of progress and costs of our efforts to prepare for the submission or resubmission of an NDA or BLA for any of our product candidates or any product candidates that we may in-license or acquire in the future, and the potential that we may need to conduct additional clinical trials to support applications for regulatory approval;
- the costs of filing, prosecuting, defending and enforcing any patent claims and other intellectual property rights associated with our product candidates, including any such costs we may be required to expend if our licensors are unwilling or unable to do so;
- the cost and timing of securing sufficient supplies of our product candidates from our third-party manufacturers for clinical trials and in preparation for commercialization;
- the effect of competing technological and market developments;
- the terms and timing of any collaborative, licensing, co-promotion or other arrangements that we may establish;
- if one or more of our product candidates are approved, the potential that we may be required to file a lawsuit to defend our patent rights or regulatory exclusivities from challenges by companies seeking to market generic versions of one or more of our product candidates; and
- the success of the commercialization of one or more of our product candidates, if approved.

Future capital requirements will also depend on the extent to which we acquire or invest in additional complementary businesses, products and technologies, but we currently have no commitments or agreements relating to any of these types of transactions.

In order to carry out our business plan and implement our strategy, we anticipate that we will need to obtain additional financing from time to time and may choose to raise additional funds through strategic collaborations, licensing arrangements, public or private equity or debt financing, bank lines of credit, asset sales, government grants, or other arrangements. We are also engaging in discussions with third party pharmaceutical and biotechnology companies to evaluate potential partnerships or other types of corporate development transactions, including a strategic merger. We cannot be sure that any additional funding, if needed, partnership or any other type of corporate development transaction, will be available on terms favorable to us or at all. Furthermore, any additional equity or equity-related financing, or equity that may be issued or sold in a corporate development transaction, may be dilutive to our stockholders, and debt or equity financing, if available, may subject us to restrictive covenants and significant interest costs. If we obtain funding through a strategic collaboration, merger, or licensing arrangement, we may be required to relinquish our rights to certain of our product candidates or marketing territories.

Our inability to raise capital when needed would harm our business, financial condition and results of operations, and could cause our stock price to decline or require that we wind down our operations altogether.

***There is substantial doubt about our ability to continue as a going concern, which may hinder our ability to obtain future financing.***

Our audited financial statements as of December 31, 2023, have been prepared under the assumption that we will continue as a going concern for the next twelve months. We do not believe that our cash and cash equivalents are sufficient for the next twelve months after the date that our financial statements are issued. As a result of our financial condition and other factors described herein, there is substantial doubt about our ability to continue as a going concern. Our ability to continue as a going concern will depend on our ability to obtain additional funding, as to which no assurances can be given. We continue to analyze various alternatives, including potentially obtaining debt or equity financings or other arrangements. Our future success depends on our ability to raise capital. We cannot be certain that raising additional capital, whether through selling additional debt or equity securities or obtaining a line of credit or other loan, will be available to us or, if available, will be on terms acceptable to us. If we issue additional securities to raise funds, these securities may have rights, preferences, or privileges senior to those of our common stock, and our current shareholders may experience dilution. If we are unable to obtain funds when needed or on acceptable terms, we may be required to curtail our current development programs, cut operating costs, forego future development and other opportunities or even terminate our operations. Additionally, we intend to continue our active discussions with third party pharmaceutical and biotechnology companies to evaluate potential partnerships or other types of corporate development transactions, including strategic mergers.

***Raising additional capital may cause dilution to our existing stockholders, restrict our operations or require us to relinquish proprietary rights.***

Until such time, if ever, as we can generate substantial product revenue, we expect to finance our cash needs through a combination of equity offerings, debt financings, grants and license and development agreements in connection with any collaborations. To the extent that we raise additional capital through the sale of equity or convertible debt securities, your ownership interest will be diluted, and the terms of these securities may include liquidation or other preferences that adversely affect your rights as a stockholder. Debt financing and preferred equity financing, if available, may involve agreements that include covenants limiting or restricting our ability to take specific actions, such as incurring additional debt, making capital expenditures or declaring dividends.

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

***We are a “smaller reporting company,” which means that the reduced disclosure requirements applicable to smaller reporting companies may make our common stock less attractive to investors.***

We will remain a smaller reporting company until the fiscal year following the determination that our voting and non-voting common shares held by non-affiliates is more than \$250 million measured on the last business day of our second fiscal quarter, or our annual revenues are more than \$100 million during the most recently completed fiscal year and our voting and non-voting common shares held by non-affiliates is more than \$700 million measured on the last business day of our second fiscal quarter. Smaller reporting companies are able to provide simplified executive compensation disclosure, are exempt from the auditor attestation requirements of Section 404, and have certain other reduced disclosure obligations, including, among other things, being required to provide only two years of audited financial statements and not being required to provide selected financial data, supplemental financial information or risk factors.

We have elected to take advantage of certain of the reduced reporting obligations. We cannot predict whether investors will find our common stock less attractive if we rely on these exemptions. If some investors find our common stock less attractive as a result, there may be a less active trading market for our common stock and our stock price may be reduced or more volatile.

***We no longer qualify as an “emerging growth company,” and as a result, we have to comply with increased disclosure and compliance requirements.***

We no longer qualify as an emerging growth company (“EGC”) as defined in the Jumpstart Our Business Startups Act (the “JOBS Act”) because in 2023, we reached the five-year anniversary of the first sale of our common stock pursuant to an effective registration statement under the Securities Act of 1933. As such, we are no longer exempt from certain disclosure and compliance requirements that apply to



other public companies but did not previously apply to us due to our status as an EGC. These requirements include, but are not limited to:

- compliance with any requirement that may be adopted by the PCAOB regarding mandatory audit firm rotation or a supplement to the auditor's report providing additional information about the audit and the financial statements, including critical audit matters;
- the requirement that we provide more detailed disclosures regarding executive compensation, although we are still able to take advantage of exemptions provided to smaller reporting companies; and
- the requirement that we obtain stockholder approval of any golden parachute payments not previously approved.

We anticipate increased expenses, including exchange listing and SEC requirements, director and officer insurance premiums, legal, audit and tax fees, regulatory compliance programs, and investor relations costs associated with being a public company and ceasing to be an emerging growth company.

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

Because we have limited financial and managerial resources, we focus on research programs and product candidates that we identify for specific indications. As a result, we may forego or delay pursuit of opportunities with other product candidates or for other indications that later prove to have greater commercial potential. Our resource allocation decisions may cause us to fail to capitalize on viable commercial products or profitable market opportunities. Our spending on current and future research and development programs and product candidates for specific indications may not yield any commercially viable products. If we do not accurately and/or effectively evaluate the commercial potential or target market for a particular product candidate, we may relinquish valuable rights to that product candidate through collaboration, licensing or other royalty arrangements in cases in which it would have been more advantageous for us to retain sole development and commercialization rights to such product candidate.

***Weakness in the U.S. economy, including within our geographic footprint, has adversely affected us in the past and may adversely affect us in the future.***

We have been, and will continue to be, impacted by general business and economic conditions in the United States. These conditions include short-term and long-term interest rates, inflation, money supply, political issues, war, legislative and regulatory changes, fluctuations in both debt and equity capital markets, broad trends in industry and finance, unemployment and the strength of the U.S. economy and the local economies in which we operate, all of which are beyond our control.

Worldwide financial markets have recently experienced periods of extraordinary disruption and volatility, which have been exacerbated by the COVID-19 pandemic, the Russia/Ukraine conflict and the evolving conflict in Israel and Gaza, resulting in heightened credit risk, reduced valuation of investments, decreased economic activity, heightened risk of cyberattacks, and inflation. Moreover, many companies have experienced reduced liquidity and uncertainty as to their ability to raise capital during such periods of market disruption and volatility. In the event that these conditions recur or result in a prolonged economic downturn, our results of operations, financial position and/or liquidity could be materially and adversely affected. In addition, as a result of recent financial and political events, we may face increased regulation.

#### **Risks Related to our Business Strategy, Structure, and Organization**

***We currently have no drug products for sale and are dependent on the future success of our product candidates. We can give no assurances that any of our product candidates will receive regulatory approval or be successfully commercialized.***

To date, we have invested a significant portion of our efforts and financial resources in the acquisition and development of our product candidates. As a development-stage company, we have limited experience and have not yet demonstrated an ability to successfully overcome many of the risks and uncertainties frequently encountered by companies in new and rapidly evolving fields, particularly in the biopharmaceutical area. Our future success is substantially dependent on our ability to successfully develop, obtain regulatory approval for, and then successfully commercialize such product candidates. Our product candidates are currently in preclinical development or in clinical trials. Our business depends entirely on the successful development and commercialization of our product



candidates, which may never occur. We currently have no drug products for sale, currently generate no revenues from sales of any drug products and may never be able to develop or commercialize a marketable drug.

The successful development, and any commercialization of our technologies and any product candidates that may occur, would require us to successfully perform a variety of functions, including:

- developing our technology platform;
- identifying, developing, formulating, manufacturing and commercializing product candidates;
- entering into and maintaining successful licensing and other arrangements with product development partners;
- achieving clinical endpoints to support preparation of approval applications;
- participating in regulatory approval processes, including ultimately gaining approval to market a drug product, which may not occur;
- obtaining sufficient quantities of our product candidates from our third-party manufacturers to meet clinical trial needs and, if approved, to meet commercial demand at launch and thereafter;
- establishing and maintaining agreements with wholesalers, distributors and group purchasing organizations on commercially reasonable terms;
- conducting sales and marketing activities including hiring, training, deploying and supporting a sales force and creating market demand for our product candidates through our own marketing and sales activities, and any other arrangements to promote our product candidates that we may establish;
- maintaining patent protection and regulatory exclusivity for our product candidates; and
- obtaining market acceptance for our product candidates.

Each of these requirements will require substantial time, effort and financial resources.

We intend to use data from our ongoing Phase 1 clinical trial of cosibelimab, conducted outside the United States, in checkpoint therapy-naïve patients with selected recurrent or metastatic cancers, including CSCC, to potentially support one or more U.S. BLAs and comparable applications for marketing approval outside the U.S. In January 2020, we announced that we had initial discussions with the FDA to execute this strategy in CSCC. Based on top-line and interim results in metastatic and locally advanced CSCC, respectively, we submitted a BLA to the U.S. FDA for these indications in January 2023. In December 2023, the FDA issued a complete response letter for the cosibelimab BLA due to inspection issues at the third - party contract manufacturing organization. Although no approvability issues regarding use of data from the Phase 1 clinical trial were noted in the complete response letter, upon resubmission of the BLA the FDA reserves the right to review the BLA again in its entirety. Similarly, we intend to use data from our licensor's ongoing Phase 3 clinical trial of olafertinib (formerly CK-101), conducted only in China, in patients with EGFR mutation-positive NSCLC, to potentially support a U.S. NDA and comparable applications for marketing approval outside the U.S. We believe, based on published FDA guidance documents, public statements of companies with comparable product candidates, and past interactions with the FDA, that exclusively foreign clinical data from a single study may be acceptable to support marketing approval(s) under FDA regulations. If we prove to be incorrect, running additional studies in the U.S. will require substantial time, effort and financial resources or may not be possible at all.

Our operations have been limited to organizing our company, acquiring, developing and securing our proprietary technologies and obtaining preclinical data or clinical data for various product candidates. These operations provide a limited basis for you to assess our ability to continue to identify product candidates, develop and commercialize product candidates in our portfolio and any product candidates we are able to identify and enter into successful collaborative arrangements with other companies in the future, as well as for you to assess the advisability of investing in our securities.

Each of our product candidates will require additional preclinical or clinical development, management of preclinical, clinical and manufacturing activities, regulatory approval in the jurisdictions in which we plan to market the product, obtaining manufacturing supply, building of a commercial organization, and significant marketing efforts before we generate any revenues from product sales, which may not occur. We are not permitted to market or promote any of our product candidates in the U.S. or any other jurisdiction before we receive regulatory approval from the FDA or comparable foreign regulatory authority, respectively, and we may never receive such regulatory approval for any of our product candidates.

***Our future growth depends on our ability to identify and acquire or in-license products and successfully integrating such acquired or in-licensed products into our existing operations.***

An important part of our business strategy is to continue to develop a pipeline of product candidates by acquiring or in-licensing products, businesses or technologies that we believe are a strategic fit with our focus on novel combinations of immuno-oncology antibodies and small molecule targeted anti-cancer agents. Future in-licenses or acquisitions, however, may entail numerous operational and financial risks, including:

- exposure to unknown liabilities;
- disruption of our business and diversion of our management's time and attention to develop acquired products or technologies;
- difficulty or inability to secure financing to fund development activities for such acquired or in-licensed technologies in the current economic environment;
- incurrence of substantial debt or dilutive issuances of securities to pay for acquisitions;
- higher than expected acquisition and integration costs;
- increased amortization expenses;
- difficulty and cost in combining the operations and personnel of any acquired businesses with our operations and personnel;
- impairment of relationships with key suppliers or customers of any acquired businesses due to changes in management and ownership; and
- inability to retain key employees of any acquired businesses.

We have limited resources to identify and execute the acquisition or in-licensing of third-party products, businesses and technologies and integrate them into our current infrastructure. In particular, we may compete with larger pharmaceutical companies and other competitors in our efforts to establish new collaborations and in-licensing opportunities. These competitors likely will have access to greater financial resources than us and may have greater expertise in identifying and evaluating new opportunities. Moreover, we may devote resources to potential acquisitions or in-licensing opportunities that are never completed, or we may fail to realize the anticipated benefits of such efforts.

**Risks Inherent in Drug Development and Commercialization**

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

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

Individually reported outcomes of patients treated in clinical trials may not be representative of the entire population of treated patients in such studies. In addition, registration trials or larger scale Phase 3 studies, which are often conducted internationally, are inherently subject to increased operational risks compared to earlier stage studies, including the risk that the results could vary on a region to region

or country to country basis, which could materially adversely affect the outcome of the study or the opinion of the validity of the study results by applicable regulatory agencies.

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

Further, from time to time, we may also disclose interim data from our preclinical studies and clinical trials. Interim data from clinical trials that we may complete are subject to the risk that one or more of the clinical outcomes may materially change as patient enrollment continues and more patient data become available. For example, many of the results reported in our early clinical trials rely on local investigator-assessed efficacy outcomes which may be subject to greater variability or subjectivity than results assessed in a blinded, independent, centrally reviewed manner, often required of final or later phase, adequate and well-controlled registration-directed clinical trials. If the results from our registration-directed trials are different from the results found in the earlier studies, we may need to terminate or revise our clinical development plan, which could extend the time for conducting our development program and could have a material adverse effect on our business. Also, time-to-event based endpoints such as duration of response and progression-free survival have the potential to change, sometimes drastically, with longer follow-up. In addition, as patients continue on therapy, there can be no assurance given that the final safety data from studies, once fully analyzed, will be consistent with prior safety data presented, will be differentiated from other similar agents in the same class, will support continued development, or will be favorable enough to support regulatory approvals for the indications studied. Further, others, including regulatory agencies, may not accept or agree with our assumptions, estimates, calculations, conclusions or analyses or may interpret or weigh the importance of data differently, which could impact the value of the particular program, the approvability or commercialization of the particular product candidate or product and our company in general. The information we choose to publicly disclose regarding a particular study or clinical trial is based on what is typically extensive information, and regulators or others may not agree with what we determine is material or otherwise appropriate information to include in our disclosure. If the interim, top-line or preliminary data that we report differ from final results, or if others, including regulatory authorities, disagree with the conclusions reached, our ability to obtain approval for, or successfully commercialize, our product candidates may be harmed, which could harm our business, operating results, prospects or financial condition.

***Delays in clinical testing could result in increased costs to us and delay our ability to generate revenue.***

Although we are conducting and planning for certain clinical trials relating to our product candidates, there can be no assurance that the FDA, or any comparable foreign regulatory authority, will accept our proposed trial designs. We may experience delays in our clinical trials and we do not know whether current or planned clinical trials will begin on time, need to be redesigned, enroll patients on time or be completed on schedule, if at all. Clinical trials can be delayed for a variety of reasons, including delays related to:

- obtaining regulatory approval to commence a trial;
- reaching agreement on acceptable terms with prospective contract research organizations (“CROs”), and clinical trial sites, the terms of which can be subject to extensive negotiation and may vary significantly among different CROs and trial sites;
- obtaining institutional review board (“IRB”), or ethics committee, as applicable, approval at each site;
- recruiting a sufficient number of suitable patients to participate in a trial;
- clinical sites deviating from trial protocol or dropping out of a trial;
- having patients complete a trial or return for post-treatment follow-up;
- developing and validating companion diagnostics on a timely basis, if required;
- obtaining resolution for any clinical holds that arise from the FDA or any comparable foreign regulatory authority;
- adding new clinical trial sites; or
- availability of raw materials or manufacturing sufficient quantities of product candidate for use in clinical trials.

We could encounter delays if a clinical trial is suspended or terminated by us, by the IRBs or ethics committees of the institutions in which such trials are being conducted, by the Data Safety Monitoring Board monitoring such trial or by the FDA or other regulatory authorities. Such authorities may impose such a suspension or termination due to a number of factors, including failure to conduct the clinical trial in accordance with regulatory requirements or our clinical protocols, inspection of the clinical trial operations or trial site by the FDA or other regulatory authorities resulting in the imposition of a clinical hold, unforeseen safety issues or adverse side effects, failure to demonstrate a benefit from using a drug candidate, changes in governmental regulations or administrative actions or lack of adequate funding to continue the clinical trial.

If we experience delays in the completion of, or termination of, any clinical trial of our product candidates, the commercial prospects of our product candidates will be harmed, and our ability to generate product revenues from any of these product candidates will be delayed, or such revenues may not be generated at all. In addition, any delays in completing our clinical trials will increase our costs, slow down our product candidate development and approval process and jeopardize our ability to commence product sales and generate revenues. Any of these occurrences may harm our business, financial condition and prospects significantly. In addition, many of the factors that cause, or lead to, a delay in the commencement or completion of clinical trials may also ultimately lead to the denial of regulatory approval of our product candidates.

***Difficulties in the enrollment of patients in clinical trials may prevent or delay receipt of necessary regulatory approvals.***

Patient enrollment, a significant factor in the timing of clinical trials, is affected by many factors including the size and nature of the patient population, the proximity of patients to clinical sites, the eligibility criteria for the trial, the design of the clinical trial, competing clinical trials and clinicians' and patients' perceptions as to the potential advantages of the drug being studied in relation to other available therapies, including any new drugs that may be approved for the indications we are investigating. Furthermore, we intend to rely on CROs and clinical trial sites to ensure the proper and timely conduct of our clinical trials and we intend to have agreements governing their committed activities, however, we will have limited influence over their actual performance.

We may not be able to initiate or continue clinical trials for one or more of our product candidates if we are unable to locate and enroll a sufficient number of eligible patients to participate in these trials as required by the FDA or similar regulatory authorities outside the United States. Some of our competitors have ongoing clinical trials for product candidates that treat the same indications that we are targeting for our product candidates, and patients who would otherwise be eligible for our clinical trials may instead enroll in clinical trials of our competitors' product candidates. Available therapies for the indications we are pursuing can also affect enrollment in our clinical trials. Patient enrollment is affected by other factors including:

- the severity of the disease under investigation;
- the eligibility criteria for the study in question;
- the perceived risks and benefits of the product candidate under study;
- the efforts to facilitate timely enrollment in clinical trials;
- the patient referral practices of physicians;
- the number of clinical trials sponsored by other companies for the same patient population;
- the ability to monitor patients adequately during and after treatment; and
- the proximity and availability of clinical trial sites for prospective patients.

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

***Russian military action in Europe may impact foreign countries in which we enrolled patients in our clinical trials.***

In February 2022, Russia commenced a military invasion of Ukraine. Russia's invasion and the ensuing response by Ukraine may prevent the FDA from auditing our five clinical sites that enrolled a total of 17 patients in these countries during its review of our BLA for cosibelimab. If we are delayed or not able to obtain regulatory approval, our business may be adversely affected.

***We may not receive regulatory approval for our product candidates, or their approval may be delayed, which would have a material adverse effect on our business and financial condition.***

Our product candidates and the activities associated with their development and commercialization, including their design, testing, manufacture, safety, efficacy, recordkeeping, labeling, storage, approval, advertising, promotion, sale and distribution, are subject to comprehensive regulation by the FDA, by other regulatory agencies in the United States, by the European Medicines Agency and by comparable foreign regulatory authorities outside the United States. Failure to obtain marketing approval for one or more of our product candidates or any future product candidate will prevent us from commercializing the product candidate. We have not received approval to market any of our product candidates from regulatory authorities in any jurisdiction. We have only limited experience in filing and supporting the applications necessary to gain marketing approvals and expect to rely on third-party CROs and other third-party vendors to assist us in this process. Securing marketing approval requires the submission of extensive preclinical and clinical data and supporting information to regulatory authorities for each therapeutic indication to establish the product candidate's safety and efficacy. Securing marketing approval also requires the submission of information about the product manufacturing process to, and inspection of manufacturing facilities by, regulatory authorities. One or more of our product candidates or any future product candidate may not be effective, may be only moderately effective or may prove to have undesirable or unintended side effects, toxicities or other characteristics that may preclude our obtaining marketing approval or prevent or limit commercial use. If any of our product candidates or any future product candidate receives marketing approval, the accompanying label may limit the approved use of our drug by severity of disease, patient group, or include contraindications, interactions, or warnings, which could limit sales of the product.

The process of obtaining marketing approval, both in the United States and abroad, is expensive, may take many years if approval is obtained at all, and can vary substantially based upon a variety of factors, including the type, complexity and novelty of the product candidates involved. Changes in marketing approval policies during the development period, changes in available therapies and standards of care, changes in or the enactment of additional statutes or regulations, or changes in regulatory review for each submitted product application, may cause delays in the approval or rejection of an application. Regulatory authorities have substantial discretion in the approval process and may refuse to accept any application or may decide that our study design, including the control arm used in our study, or data are insufficient for approval and require additional preclinical studies or clinical trials. In addition, varying interpretations of the data obtained from preclinical and clinical testing could delay, limit or prevent marketing approval of a product candidate. Any marketing approval we ultimately obtain may be limited or subject to restrictions or post-approval commitments that render the approved product not commercially viable.

Under the FDA's accelerated approval regulations, which only apply to certain drug products, the FDA may grant marketing approval for a new drug product on the basis of adequate and well-controlled clinical trials establishing that the drug product has an effect on a surrogate endpoint that is reasonably likely, based on epidemiologic, therapeutic, pathophysiologic, or other evidence, to predict clinical benefit or on the basis of an effect on a clinical endpoint other than survival or irreversible morbidity. While we may undertake development programs for one or more of our product candidates that we believe, if successful, could support a submission for marketing approval under the accelerated approval regulations, we may ultimately fail to meet the criteria to do so, which may cause delays in the approval or rejection of an application.

If we experience delays in obtaining approval or if we fail to obtain approval of one or more of our product candidates or any future product candidate, the commercial prospects for our product candidates may be harmed and our ability to generate revenue will be materially impaired.

In addition, even if we were to obtain approval, regulatory authorities may approve any of our product candidates or any future product candidate for fewer or more limited indications than we request, may not approve the price we intend to charge for our products, may grant approval contingent on the performance of costly post-marketing studies, including clinical trials, or may approve a product candidate with a label that does not include the labeling claims necessary or desirable for the successful commercialization of that product candidate. The regulatory authority may also require the label to contain warnings, contraindications, or precautions that limit the commercialization of that product. Any of these scenarios could compromise the commercial prospects for one or more of our product candidates or any future product candidate.

***If serious adverse or unacceptable side effects are identified during the development of one or more of our product candidates or any future product candidate, we may need to abandon or limit our development of some of our product candidates.***

If one or more of our product candidates or any future product candidate are associated with undesirable side effects or adverse events in clinical trials or have characteristics that are unexpected, we may need to abandon their development or limit development to more narrow uses or subpopulations in which the adverse events, undesirable side effects or other characteristics are less prevalent, less severe or more acceptable from a risk-benefit perspective. In our industry, many compounds that initially showed promise in early-stage testing have later been found to cause serious adverse events that prevented further development of the compound. In the event that our clinical trials reveal a high or unacceptable severity and prevalence of adverse events, our trials could be suspended or terminated and the FDA or comparable foreign regulatory authorities could order us to cease further development or deny approval of one or more of our product candidates or any future product candidate for any or all targeted indications. The FDA could also issue a letter requesting additional data or information prior to making a final decision regarding whether to approve a product candidate. The number of requests for additional data or information issued by the FDA in recent years has increased and resulted in substantial delays in the approval of several new drugs. Adverse events or undesirable side effects caused by one or more of our product candidates or any future product candidate could also result in the inclusion of unfavorable information in our product labeling, denial of regulatory approval by the FDA or other regulatory authorities for any or all targeted indications, and in turn prevent us from commercializing and generating revenues from the sale of that product candidate. Adverse events or drug-related side effects could affect patient recruitment or the ability of enrolled patients to complete the trial and could result in potential product liability claims.

Additionally, if one or more of our product candidates or any future product candidate receives marketing approval and we or others later identify undesirable side effects caused by this product, a number of potentially significant negative consequences could result, including:

- regulatory authorities may require the addition of unfavorable labeling statements, including specific warnings, black box warnings, adverse reactions, precautions, and/or contraindications;
- regulatory authorities may suspend or withdraw their approval of the product, and/or require it to be removed from the market;
- we may be required to change the way the product is administered, conduct additional clinical trials or change the labeling of the product; or
- our reputation may suffer.

Any of these events could prevent us from achieving or maintaining market acceptance of any of our product candidates or any future product candidate or could substantially increase our commercialization costs and expenses, which in turn could delay or prevent us from generating significant revenues, or any revenues, from its sale.

***Public concern regarding the safety of drug products could delay or limit our ability to obtain regulatory approval, result in the inclusion of unfavorable information in our labeling, or require us to undertake other activities that may entail additional costs.***

In light of widely publicized events concerning the safety risk of certain drug products, the FDA, members of Congress, the Government Accountability Office, medical professionals and the general public have raised concerns about potential drug safety issues. These events have resulted in the withdrawal of drug products, revisions to drug labeling that further limit use of the drug products and the establishment of risk management programs. The Food and Drug Administration Amendments Act of 2007 ("FDAAA"), grants significant expanded authority to the FDA, much of which is aimed at improving the safety of drug products before and after approval. In particular, the new law authorizes the FDA to, among other things, require post-approval studies and clinical trials, mandate changes to drug labeling to reflect new safety information and require risk evaluation and mitigation strategies for certain drugs, including certain currently approved drugs. It also significantly expands the federal government's clinical trial registry and results databank, which we expect will result in significantly increased government oversight of clinical trials. Under the FDAAA, companies that violate these and other provisions of the new law are subject to substantial civil monetary penalties, among other regulatory, civil and criminal penalties. The increased attention to drug safety issues may result in a more cautious approach by the FDA in its review of data from our clinical trials. Data from clinical trials may receive greater scrutiny, particularly with respect to safety, which may make the FDA or other regulatory authorities more likely to require additional preclinical studies or clinical trials. If the FDA requires us to conduct additional preclinical studies or clinical trials prior to approving any of our product candidates, our ability to obtain approval of this product candidate will be delayed. If the FDA requires us to provide additional clinical or preclinical data following the approval of any of our product candidates, the indications for which this product candidate is approved may be limited or there may be specific warnings or limitations on dosing, and our efforts to commercialize our product candidates may be otherwise adversely impacted.

***Even if one or more of our product candidates receives regulatory approval, it and any other products we may market will remain subject to substantial regulatory scrutiny.***

If one or more of our product candidates that we may license or acquire is approved, the approved product candidate will be subject to ongoing requirements and review by the FDA and other regulatory authorities. These requirements include labeling, packaging, storage, advertising, promotion, record-keeping and submission of safety and other post-market information and reports, registration and listing requirements, cGMP requirements relating to manufacturing, quality control, quality assurance and corresponding maintenance of records and documents, requirements regarding the distribution of samples to physicians and recordkeeping of the drug, and requirements regarding company presentations and interactions with health care professionals.

The FDA, or other regulatory authorities, may also impose requirements for costly post-marketing studies or clinical trials and surveillance to monitor the safety or efficacy of the product. The FDA and other applicable regulatory authorities closely regulate the post-approval marketing and promotion of drugs to ensure drugs are marketed only for the approved indications and in accordance with the provisions of the approved labeling. The FDA and other applicable regulatory authorities impose stringent restrictions on manufacturers' communications regarding off-label use and if we do not market our products for only their approved indications, we may be subject to enforcement action for off-label marketing. Violations of the Federal Food, Drug and Cosmetic Act relating to the promotion of prescription drugs may lead to investigations, civil claims, and/or criminal charges alleging violations of federal and state health care fraud and abuse laws, as well as state consumer protection laws.

In addition, later discovery of previously unknown adverse events or other problems with our products, manufacturers or manufacturing processes, or failure to comply with regulatory requirements, may yield various results, including:

- restrictions on such products, operations, manufacturers or manufacturing processes;
- restrictions on the labeling or marketing of a product;
- restrictions on product distribution or use;
- requirements to conduct post-marketing studies or clinical trials;
- warning letters, untitled letters, import alerts, and/or inspection observations;
- withdrawal of the products from the market;
- refusal to approve pending applications or supplements to approved applications that we submit;
- recall of products;
- fines, restitution or disgorgement of profits;
- suspension or withdrawal of marketing or regulatory approvals;
- suspension of any ongoing clinical trials;
- refusal to permit the import or export of our products;
- product seizure; or
- injunctions, consent decrees, and/or the imposition of civil or criminal penalties.

The FDA's policies, or the policies of other applicable regulatory authorities, may change and additional government regulations may be enacted that could prevent, limit or delay regulatory approval of our product candidates, or negatively affect those products for which we may have already received regulatory approval, if any. If we are slow or unable to adapt to changes in existing requirements or the adoption of new requirements or policies, or if we are not able to maintain regulatory compliance, we may be subject to the various actions listed above, including losing any marketing approval that we may have obtained.

***Regulatory approval by the FDA, or any similar regulatory authorities outside the United States, is limited to those specific indications and conditions for which clinical safety and efficacy have been demonstrated.***

Any regulatory approval is limited to those indications for use for which a product is deemed to be safe and effective by the FDA, or other similar regulatory authorities outside the United States. In addition to the regulatory approval required for new drug products, new formulations or new or additional indications for use for an already approved product also require regulatory approval. If we are not able to obtain regulatory approval for any desired future indications for our products, our ability to effectively market and sell our products may be prevented or reduced, and our business may be adversely affected.



While physicians may choose to prescribe drugs for uses that are not described in the product's labeling and for uses that differ from those tested in clinical studies and approved by the regulatory authorities, our ability to promote products is limited to those indications that are specifically approved by the FDA, or similar regulatory authorities outside the United States. These "off-label" uses are common across medical specialties and may constitute an appropriate treatment for some patients in certain circumstances. Regulatory authorities in the U.S. generally do not regulate the practice of medicine or behavior of physicians in their choice of treatments. Regulatory authorities do, however, restrict promotion by pharmaceutical companies on the subject of off-label use. If our promotional activities fail to comply with these regulations or guidelines, we may be subject to warnings from, or enforcement action by, these authorities. In addition, our failure to follow FDA, or any applicable foreign regulatory authority, rules and guidelines relating to promotion and advertising may cause the FDA, or such applicable foreign regulatory authority, to suspend or withdraw an approved product from the market, require a recall or institute fines or penalties, or could result in disgorgement of money, operating restrictions, injunctions or criminal prosecution, any of which could harm our business.

***We will need to obtain FDA approval of any proposed product brand names, and any failure or delay associated with such approval may adversely impact our business.***

A pharmaceutical product cannot be marketed in the U.S. or other countries until we have completed a rigorous and extensive regulatory review process, including approval of a brand name. Any brand names we intend to use for our product candidates will require approval from the FDA regardless of whether we have secured a formal trademark registration from the United States Patent and Trademark Office ("USPTO"). The FDA typically conducts a review of proposed product brand names, including an evaluation of the potential for confusion with other product names. The FDA may also object to a product brand name if it believes the name inappropriately implies medical claims. If the FDA objects to any of our proposed product brand names, we may be required to adopt an alternative brand name for our product candidates. If we adopt an alternative brand name, we would lose the benefit of our existing trademark applications for such product candidate and may be required to expend significant additional resources in an effort to identify a suitable product brand name that would qualify under applicable trademark laws, not infringe the existing rights of third parties and be acceptable to the FDA. We may be unable to build a successful brand identity for a new trademark in a timely manner or at all, which would limit our ability to commercialize our product candidates.

***If our competitors develop treatments for any of our product candidates' target indications and those competitor products are approved more quickly, marketed more successfully or demonstrated to be more effective, the commercial opportunity for our product candidate will be reduced or eliminated.***

The biotechnology and pharmaceutical industries are subject to rapid and intense technological change. We face, and will continue to face, competition in the development and marketing of our product candidates from academic institutions, government agencies, research institutions and biotechnology and pharmaceutical companies. There can be no assurance that developments by others will not render one or more of our product candidates obsolete or noncompetitive. Furthermore, new developments, including the development of other drug technologies and methods of preventing the incidence of disease, occur in the pharmaceutical industry at a rapid pace. These developments may render one or more of our product candidates obsolete or noncompetitive.

Competitors may seek to develop alternative formulations that do not directly infringe on our in-licensed patent rights. The commercial opportunity for one or more of our product candidates could be significantly harmed if competitors are able to develop alternative formulations outside the scope of our in-licensed patents. Compared to us, many of our potential competitors have substantially greater:

- capital resources;
- development resources, including personnel and technology;
- clinical trial experience;
- regulatory experience;
- expertise in prosecution of intellectual property rights; and
- manufacturing, distributing and sales and marketing experience.

As a result of these factors, our competitors may obtain regulatory approval of their products more rapidly than we are able to or may obtain patent protection or other intellectual property rights that limit our ability to develop or commercialize one or more of our product candidates. Our competitors may also develop drugs that are more effective, safe, useful and less costly than ours and may be more successful than us in manufacturing and marketing their products. Smaller or early-stage companies may also prove to be significant competitors, particularly through collaborative arrangements with large and established companies. We will also face competition from



these third parties in establishing clinical trial sites, in patient registration for clinical trials, and in identifying and in-licensing new product candidates.

Further, generic therapies are typically sold at lower prices than branded therapies and are generally preferred by hospital formularies and managed care providers of health services. We anticipate that, if approved, our product candidates will face increasing competition in the form of generic versions of branded products of competitors, including those that have lost or will lose their patent exclusivity. In the future, we may face additional competition from a generic form of our own candidates when the patents covering them begin to expire, or earlier if the patents are successfully challenged. If we are unable to demonstrate to physicians and payers that the key differentiating features of our product candidates translate to overall clinical benefit or lower cost of care, we may not be able to compete with generic alternatives.

***If any of our product candidates are successfully developed but do not achieve broad market acceptance among physicians, patients, healthcare payors and the medical community, the revenues that any such product candidates generate from sales will be limited.***

Even if our product candidates receive regulatory approval, they may not gain market acceptance among physicians, patients, healthcare payors and the medical community. Coverage and reimbursement of our product candidates by third-party payors, including government payors, generally would also be necessary for commercial success. The degree of market acceptance of any approved products would depend on a number of factors, including, but not necessarily limited to:

- the efficacy and safety as demonstrated in clinical trials;
- the timing of market introduction of such product candidates as well as competitive products;
- the clinical indications for which the drug is approved;
- acceptance by physicians, major operators of hospitals and clinics and patients of the product as a safe and effective treatment;
- the potential and perceived advantages of product candidates over alternative treatments;
- the safety of product candidates in a broader patient group (i.e. based on actual use);
- the cost of treatment in relation to alternative treatments;
- the availability of adequate reimbursement and pricing by third parties and government authorities;
- changes in regulatory requirements by government authorities for our product candidates
- relative convenience and ease of administration;
- the prevalence and severity of side effects and adverse events;
- the effectiveness of our sales and marketing efforts; and
- unfavorable publicity relating to the product.

If any product candidate is approved but does not achieve an adequate level of acceptance by physicians, hospitals, healthcare payors and patients, we may not generate sufficient revenue from these products and in turn we may not become or remain profitable.

***Reimbursement may be limited or unavailable in certain market segments for our product candidates, which could make it difficult for us to sell our products profitably.***

There is significant uncertainty related to the third-party coverage and reimbursement of newly approved drugs. Such third-party payors include government health programs such as Medicare, managed care providers, private health insurers and other organizations. We intend to seek approval to market our product candidates in the U.S., Europe and other selected foreign jurisdictions. Market acceptance and sales of our product candidates in both domestic and international markets will depend significantly on the availability of adequate coverage and reimbursement from third-party payors for any of our product candidates and may be affected by existing and future health care reform measures.

Government and other third-party payors are increasingly attempting to contain healthcare costs by limiting both coverage and the level of reimbursement for new drugs and, as a result, they may not cover or provide adequate payment for our product candidates. These payors may conclude that our product candidates are less safe, less effective or less cost-effective than existing or future introduced products, and third-party payors may not approve our product candidates for coverage and reimbursement or may cease providing coverage and reimbursement for these product candidates.

Obtaining coverage and reimbursement approval for a product from a government or other third-party payor is a time consuming and costly process that could require us to provide to the payor supporting scientific, clinical and cost-effectiveness data for the use of our products. We may not be able to provide data sufficient to gain acceptance with respect to coverage and reimbursement. If reimbursement of our future products is unavailable or limited in scope or amount, or if pricing is set at unsatisfactory levels, it may impact the market acceptance of our products and we may be unable to achieve or sustain profitability.

In some foreign countries, particularly in the European Union, the pricing of prescription pharmaceuticals is subject to governmental control. In these countries, pricing negotiations with governmental authorities can take considerable time after the receipt of marketing approval for a product candidate. To obtain reimbursement or pricing approval in some countries, we may be required to conduct additional clinical trials that compare the cost-effectiveness of our product candidates to other available therapies. If reimbursement of our product candidates is unavailable or limited in scope or amount in a particular country, or if pricing is set at unsatisfactory levels, we may be unable to achieve or sustain profitability of our products in such country.

***If we are unable to establish sales, marketing, and distribution capabilities or to enter into agreements with third parties to market and sell our product candidates, we may be unsuccessful in commercializing our product candidates, if they are approved.***

We currently do not have a marketing or sales organization for the marketing, sales and distribution of pharmaceutical products. In order to commercialize any approved product candidate, we would need to build marketing, sales, distribution, managerial and other non-technical capabilities, or arrange for third parties to perform these services, and we may be unsuccessful in doing so. In the event of successful development and regulatory approval of any of our current or future product candidates, we expect to build a targeted specialist sales force to market or co-promote the product. There are risks involved with establishing our own sales, marketing and distribution capabilities. For example, recruiting and training a sales force is expensive and time consuming and could delay any product launch. If the commercial launch of a product candidate for which we recruit a sales force and establish marketing capabilities is delayed or does not occur for any reason, we would have prematurely or unnecessarily incurred these commercialization expenses. This may be costly, and our investment would be lost if we cannot retain or reposition our sales and marketing personnel.

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

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

***We face potential product liability exposure, and if successful claims are brought against us, we may incur substantial liability for one or more of our product candidates or a future product candidate we may license or acquire and may have to limit their commercialization.***

The use of one or more of our product candidates and any future product candidate we may license or acquire in clinical trials and the sale of any products for which we obtain marketing approval expose us to the risk of product liability claims. For example, we may be sued if any product we develop allegedly causes injury or is found to be otherwise unsuitable during clinical testing, manufacturing, marketing or sale. Any such product liability claims may include allegations of defects in manufacturing, defects in design, a failure to warn of dangers inherent in the product, negligence, strict liability or a breach of warranties. Product liability claims might be brought against us by consumers, health care providers or others using, administering or selling our products. If we cannot successfully defend ourselves against these claims, we will incur substantial liabilities. Regardless of merit or eventual outcome, liability claims may result in:

- withdrawal of clinical trial participants;
- suspension or termination of clinical trial sites or entire trial programs;
- decreased demand for any product candidates or products that we may develop;
- initiation of investigations by regulators;
- impairment of our business reputation;

- costs of related litigation;
- substantial monetary awards to patients or other claimants;
- loss of revenues;
- reduced resources of our management to pursue our business strategy; and
- the inability to commercialize our product candidate or future product candidates.

We have obtained, and will continue to obtain, limited product liability insurance coverage for any and all of our current and future clinical trials. However, our insurance coverage may not reimburse us or may not be sufficient to reimburse us for any expenses or losses we may suffer. Moreover, insurance coverage is becoming increasingly expensive, and, in the future, we may not be able to maintain insurance coverage at a reasonable cost or in sufficient amounts to protect us against losses due to liability. If we obtain marketing approval for one or more of our product candidates in development, we intend to expand our insurance coverage to include the sale of commercial products, but we may be unable to obtain commercially reasonable product liability insurance for any products approved for marketing. On occasion, large judgments have been awarded in class action lawsuits based on drugs that had unanticipated side effects. A successful product liability claim or series of claims brought against us could cause our stock price to fall and, if judgments exceed our insurance coverage, could decrease our cash and adversely affect our business.

#### **Risks Related to Reliance on Third Parties**

***We have contracted with third parties for the manufacture of our approved products, if any. If such contract manufacturer fails to timely produce sufficient product volume, to pass regulatory inspections, or to comply with applicable regulations, the commercialization of our product candidates may be delayed, we may be unable to meet market demand, and we may lose potential revenues.***

The manufacture of pharmaceutical products requires significant expertise and capital investment, including the development of advanced manufacturing techniques and process controls, and the use of specialized processing equipment. We have entered into development and supply agreements with one or more contract manufacturers for the completion of pre-commercialization manufacturing development activities and the manufacture of commercial supplies for each of our product candidates. Any termination or disruption of our relationships with our contract manufacturers may materially harm our business and financial condition and frustrate any commercialization efforts for each respective product candidate.

All of our contract manufacturers must comply with strictly enforced federal, state and foreign regulations, including cGMP requirements enforced by the FDA through its establishment inspection program. We are required by law to establish adequate oversight and control over raw materials, components and finished products furnished by our third-party suppliers and contract manufacturers, but we have little control over their compliance with these regulations.

Any failure to pass regulatory inspections or comply with applicable regulations may result in fines and civil penalties, suspension of production, restrictions on imports and exports, suspension or delay in product approval, product seizure or recall, or withdrawal of product approval, and would limit the availability of our product and customer confidence in our product. Any manufacturing defect or error discovered after products have been produced and distributed could result in even more significant consequences, including costly recall procedures, re-stocking costs, potential for breach of contract claims, damage to our reputation and potential for product liability claims.

If the contract manufacturers upon whom we rely to manufacture one or more of our product candidates, and any future product candidate we may in-license, fails to deliver the required commercial quantities on a timely basis at commercially reasonable prices, we would likely be unable to meet demand for our products and we would lose potential revenues.

***We rely, and expect to continue to rely, on third parties to conduct our preclinical studies and clinical trials. Those third parties may perform unsatisfactorily, fail to meet deadlines for trial completion, or to comply with applicable regulatory requirements.***

We rely on third-party CROs and site management organizations to conduct some of our preclinical studies and all our clinical trials for our product candidates, and plan to do the same for any future product candidate. We expect to continue to rely on third parties, such as CROs, site management organizations, image reading vendors, laboratories, clinical data management organizations, medical institutions and clinical investigators, to conduct some of our preclinical studies and all of our clinical trials. The agreements with these

third parties might terminate for a variety of reasons, including a failure to perform by the third parties. If we need to enter into alternative arrangements, that could delay our product development activities.

Our reliance on these third parties for research and development activities reduces our control over these activities but does not relieve us of our responsibilities. For example, we remain responsible for ensuring that each of our preclinical studies and clinical trials are conducted in accordance with the general investigational plan and protocols for the trial and for ensuring that our preclinical studies are conducted in accordance with good laboratory practices ("GLPs") as appropriate. Moreover, the FDA requires us to comply with standards, commonly referred to as good clinical practices ("GCPs"), for conducting, recording and reporting the results of clinical trials to assure that data and reported results are credible and accurate and that the rights, integrity and confidentiality of trial participants are protected. Regulatory authorities enforce these requirements through periodic inspections of trial sponsors, clinical investigators and trial sites. If we or any of our clinical research organizations or other third party vendors, institutions or investigators fail to pass regulatory inspections or fail to comply with applicable GCPs, the clinical data generated in our clinical trials may be deemed unreliable and the FDA or comparable foreign regulatory authorities may require us to perform additional clinical trials before approving our marketing applications. We cannot assure you that upon inspection by a regulatory authority, such regulatory authority will determine that any of our clinical trials complies with GCP regulations. In addition, our clinical trials must be conducted with product produced under cGMP regulations. Our failure to comply with these regulations may require us to repeat clinical trials, which would delay the regulatory approval process. We also are required to register ongoing clinical trials and post the results of completed clinical trials on a government-sponsored database, ClinicalTrials.gov, within specified timeframes. Failure to do so can result in fines, adverse publicity and civil and criminal sanctions.

The third parties with whom we have contracted to help perform our preclinical studies and/or clinical trials may also have relationships with other entities, some of which may be our competitors. If these third parties do not successfully carry out their contractual duties, meet expected deadlines or conduct our preclinical studies or clinical trials in accordance with regulatory requirements or our stated protocols, we will not be able to obtain, or may be delayed in obtaining, marketing approvals for our product candidates and will not be able to, or may be delayed in our efforts to, successfully commercialize our product candidates.

If any of our relationships with these third-party CROs or site management organizations terminate, we may not be able to enter into arrangements with alternative CROs or site management organizations or to do so on commercially reasonable terms. Switching or adding additional CROs or site management organizations involves additional cost and requires management time and focus. In addition, there is a natural transition period when a new CRO or site management organization commences work. As a result, delays could occur, which could compromise our ability to meet our desired development timelines. Though we carefully manage our relationships with our CROs or site management organizations, there can be no assurance that we will not encounter similar challenges or delays in the future. Forces beyond our control could disrupt the ability of our third-party CROs, site management organizations, image reading vendors, laboratories, clinical data management organizations, medical institutions and clinical investigators to conduct our preclinical studies and our clinical trials for our product candidates and for any future product candidate.

***We rely, and expect to continue to rely, on third parties for the manufacture of our product candidates for preclinical and clinical testing and for the future commercialization of our approved products, if any. Reliance on third parties increases the risk that we will not have sufficient quantities of our products or such quantities at an acceptable cost, which could delay, prevent or impair our development or commercialization efforts.***

We do not have any manufacturing facilities. We rely, and expect to continue to rely, on third parties for the manufacture of our product candidates for preclinical and clinical testing, and plan to do so for commercial manufacture of any of our product candidates that may receive marketing approval. This reliance on third parties increases the risk that we will not have sufficient quantities of our product candidates or any future product candidate or such quantities at an acceptable cost or quality, which could delay, prevent or impair our development or commercialization efforts.

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

- reliance on the third party for regulatory compliance and quality assurance, while still being required by law to establish adequate oversight and control over products furnished by that third party;

- the possible breach of the manufacturing agreement by the third party;
- manufacturing delays if our third-party manufacturers are unable to obtain raw materials due to supply chain disruptions, give greater priority to the supply of other products over our product candidates or otherwise do not satisfactorily perform according to the terms of the agreement between us;
- the possible misappropriation of our proprietary information, including our trade secrets and know-how; and
- the possible termination or nonrenewal of the agreement by the third party at a time that is costly or inconvenient for us.

We rely on our third-party manufacturers to produce or purchase from third-party suppliers the materials necessary to produce our product candidates for our preclinical and clinical trials. There are a limited number of suppliers for raw materials that we use to manufacture our drugs and there may be a need to assess alternate suppliers to prevent a possible disruption of the manufacture of the materials necessary to produce our product candidates for our preclinical and clinical trials, and if approved, ultimately for commercial sale. We do not have any control over the process or timing of the acquisition of these raw materials by our third-party manufacturers. Forces beyond our control could disrupt the global supply chain and impact our or our third-party manufacturers' ability to obtain raw materials or other products necessary to manufacture our product candidates. Any significant delay in the supply of a product candidate, or the raw material components thereof, for an ongoing preclinical or clinical trial due to the need to replace a third-party manufacturer could considerably delay completion of our preclinical or clinical trials, product testing and potential regulatory approval of our product candidates. If our third-party manufacturers or we are unable to purchase these raw materials after regulatory approval has been obtained for a product candidate, the commercial launch of that product candidate would be delayed or there would be a shortage in supply, which would impair our ability to generate revenues from the sale of our product candidates.

The facilities used by our third-party manufacturers to manufacture our product candidates must be approved by the FDA pursuant to inspections that will be conducted after we submit an NDA or BLA to the FDA. We are required by law to establish adequate oversight and control over raw materials, components and finished products furnished by our third-party manufacturers, but we do not control the day-to-day manufacturing operations of, and are dependent on, our third-party manufacturers for compliance with cGMP regulations for manufacture of our product candidates. Third-party manufacturers may not be able to comply with the cGMP regulations or similar regulatory requirements outside the United States. Our failure, or the failure of our third-party manufacturers, to comply with applicable regulations and pass regulatory inspections could result in sanctions being imposed on us, including clinical holds, fines, injunctions, restrictions on imports and exports, civil penalties, delays, suspension or withdrawal of approvals, license revocation, seizures or recalls of product candidates or products, operating restrictions and criminal prosecutions, any of which could significantly and adversely affect supplies of our products.

In 2023, our contract manufacturer for cosibelimab received certain observations from the FDA on Form 483 related to a multi - sponsor on - site inspection. In December 2023, the FDA issued a CRL for the cosibelimab BLA due to those inspection issues. Following resolution of the inspection issues at the third - party contract manufacturing organization raised in the CRL, a resubmission of the BLA is planned to support the marketing approval of cosibelimab. There is no guarantee that the FDA will agree with the response and remediations in a timely manner or at all, which could negatively impact our ability to obtain regulatory approval for cosibelimab or obtain approval within reasonable timelines. Any further delays in approval will continue to increase our costs and could further delay or impede our ability to commence product sales and generate revenues.

One or more of the product candidates that we may develop may compete with other product candidates and products for access to manufacturing facilities. There are a limited number of manufacturers that operate under cGMP regulations and that might be capable of manufacturing for us. Any performance failure on the part of our existing or future third-party manufacturers could delay clinical development or marketing approval. We do not currently have arrangements in place for redundant supply or a second source for bulk drug substance or the manufacture of drug product. If our current third-party manufacturers cannot perform as agreed, we may be required to replace such manufacturers. We may incur added costs and delays in identifying and qualifying any replacement manufacturers.

The U.S. DEA restricts the importation of a controlled substance finished drug product when the same substance is commercially available in the United States, which could reduce the number of potential alternative manufacturers for one or more of our product candidates.

Our current and anticipated future dependence upon others for the manufacture of our product candidates or products may adversely affect our future profit margins and our ability to commercialize any products that may receive marketing approval on a timely and competitive basis.

We also expect to rely on other third parties to store and distribute drug supplies for our clinical trials. Any performance failure on the part of our distributors could delay clinical development or marketing approval of our product candidates or commercialization of our products, if approved, producing additional losses and depriving us of potential product revenue.

***We rely on clinical data and results obtained by third parties that could ultimately prove to be inaccurate or unreliable.***

As part of our strategy to mitigate development risk, we seek to develop product candidates with well-studied mechanisms of action and may utilize biomarkers to assess potential clinical efficacy early in the development process. This strategy necessarily relies upon clinical data and other results obtained by third parties that may ultimately prove to be inaccurate or unreliable. Further, such clinical data and results may be based on products or product candidates that are significantly different from our product candidates or any future product candidate. If the third-party data and results we rely upon prove to be inaccurate, unreliable or not applicable to our product candidates or future product candidate, we could make inaccurate assumptions and conclusions about our product candidates and our research and development efforts could be compromised.

**Risks Relating to Legislation and Regulation Affecting the Biopharmaceutical and Other Industries**

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

We cannot predict the likelihood, nature or extent of how government regulation that may arise from future legislation or administrative or executive action taken by the U.S. presidential administration may impact our business and industry. In particular, the U.S. President has taken several executive actions, specifically through rulemaking and guidance, that could impact the pharmaceutical business and industry. A few of the major administrative actions include:

1. On October 9, 2019, CMS issued a proposed rule entitled, *Modernizing and Clarifying the Physician Self-Referral Regulations* and on the same day the HHS Office of Inspector General issued a similar rule, entitled *Revisions to Safe Harbors Under the Anti-Kickback Statute, and Civil Monetary penalty Rules Regarding Beneficiary Inducements*. The proposed rules are an effort to reform regulations dealing with anti-kickback and self-referral laws. The proposals are attempting to allow certain financial arrangements that would otherwise violate anti-kickback and self-referral laws for providers that are participating in value-based payment arrangements. The proposed rule could impact drug purchasing behavior to ensure providers are within their budget and/or restructure existing payment structures between providers and manufacturers.
2. On October 30, 2019, the Administration issued an advanced notice of proposed rulemaking ("ANPRM") entitled, *International Pricing Index Model for Medicare Part B Drugs*. This ANPRM is soliciting feedback on a potential proposal to align United States drug prices in the Medicare Part B program with international prices. It also solicits public feedback on a policy that would allowing private-sector vendors to negotiate prices, take title to drugs, and improve competition for hospital and physician business. Although this is only a notice for a potential rule, it signals the Administration's desire to regulatorily influence the United States drug pricing system that could adversely affect the industry.
3. On November 15, 2019, CMS issued a proposed rule entitled, *Transparency in Coverage* and finalized the *Calendar Year ("CY") 2020 Outpatient Prospective Payment System ("OPPS") & Ambulatory Surgical Center Price Transparency Requirements for Hospitals to Make Standard Charges Rule*. Together the rules would increase price transparency through health plans and in hospitals. The affects may influence consumer purchasing habits in the health care sector as a whole. Although the transparency provisions are not yet in effect and the hospital price transparency requirements are subject to litigation, there could be implications for the industry related to drug pricing if or when it is enacted.
4. On November 18, 2019, CMS issued a proposed rule entitled, *Medicaid Fiscal Accountability Regulation ("MFAR")*. The proposed rule would significantly impact states' ability to finance their Medicaid programs. If finalized, the MFAR could force states to restructure their Medicaid financing that could disincentivize or change state prescription drug purchasing behavior that would adversely impact the industry.

5. On December 18, 2019, the FDA issued a proposed rule entitled, *Importation of Prescription Drugs*. The proposed rule would allow the importation of certain prescription drugs from Canada. If finalized, states or other non-federal government entities would be able to submit importation program proposals to FDA for review and authorization. This proposed rule could also influence pricing practices in the United States.
6. On January 30, 2020, CMS issued a state waiver option entitled, *Health Adult Opportunity ("HAO")*. The HAO would allow states to restructure benefits and coverage policies for their Medicaid programs. The HAO will provide states administrative flexibilities in exchange for a capped federal share. The cap on the federal share is commonly referred to as a "block grant." Importantly, the HAO allows states to set formularies that align with Essential Health Benefit requirements while still requiring manufacturers to participate in the Medicaid Rebate Program. Depending on utilization of the HAO by states, it could impact the industry – especially if states elect to use a formulary.

***We are subject to new legislation, regulatory proposals and managed care initiatives that may increase our costs of compliance and adversely affect our ability to market our products, obtain collaborators and raise capital.***

In the United States and certain foreign jurisdictions, there have been, and we expect there will continue to be, a number of legislative and regulatory changes to the healthcare system. In March 2010, the Patient Protection and Affordable Care Act, as amended by the Health Care and Education Reconciliation Act of 2010, or collectively, the ACA, was signed into law, which substantially changed the way healthcare is financed by both governmental and private insurers in the United States. By way of example, the ACA increased the minimum level of Medicaid rebates payable by manufacturers of brand name drugs from 15.1% to 23.1%; it required collection of rebates for drugs paid by Medicaid managed care organizations; it imposed a non-deductible annual fee on pharmaceutical manufacturers or importers who sell certain "branded prescription drugs" to specified federal government programs; it implemented a new methodology under which rebates owed by manufacturers under the Medicaid Drug Rebate Program are calculated for drugs that are inhaled, infused, instilled, implanted, or injected; it expanded the eligibility criteria for Medicaid programs; it created a new Patient-Centered Outcomes Research Institute to oversee, identify priorities in, and conduct comparative clinical effectiveness research, along with funding for such research; and it established a Center for Medicare and Medicaid Innovation ("CMMI") at CMS to test innovative payment and service delivery models to lower Medicare and Medicaid spending, potentially including prescription drug spending.

Since its enactment, there have been executive, judicial and Congressional challenges to certain aspects of the ACA, and we expect there will be additional challenges and amendments to the ACA in the future. President Trump signed several Executive Orders and other directives designed to delay the implementation of certain provisions of the ACA or otherwise circumvent some of the requirements for health insurance mandated by the ACA. Concurrently, Congress has considered legislation that would repeal or repeal and replace all or part of the ACA. While Congress has not passed comprehensive repeal legislation, several bills affecting the implementation of certain taxes under the ACA have been enacted. For example, in 2017, Congress enacted the Tax Cuts and Jobs Act, which eliminated the tax-based shared responsibility payment imposed by the ACA on certain individuals who fail to maintain qualifying health coverage for all or part of a year, a process that is commonly referred to as the "individual mandate." In addition, the Further Consolidated Appropriations Act, 2020 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, it also eliminated the health insurance tax. On December 14, 2018, the U.S. District Court for the Northern District of Texas ruled that the individual mandate is a critical and inseparable feature of the ACA, and therefore, because it was repealed as part of the Tax Act, the remaining provisions of the ACA are invalid as well. On December 18, 2019, the U.S. Court of Appeals for the Fifth Circuit ruled that the individual mandate was unconstitutional and remanded the case back to the District Court to determine whether the remaining provisions of the ACA are invalid as well. On June 17, 2021, the U.S. Supreme Court reversed the ruling of the Fifth Circuit, holding that the challengers lacked standing to sue and otherwise abstaining from reaching the merits of the case. Notwithstanding the resolution of this legal challenge, there may be other efforts to challenge, repeal, or replace the ACA. We are continuing to monitor any changes to the ACA that, in turn, may potentially impact our business in the future.

President Joseph R. Biden, Jr. signed an Executive Order on Strengthening Medicaid and the Affordable Care Act, stating his administration's intentions to reverse the actions of his predecessor and strengthen the ACA. As part of this Executive Order, the Department of Health and Human Services, United States Treasury, and the Department of Labor are directed to review all existing regulations, orders, guidance documents, policies, and agency actions and to consider if they are consistent with ensuring coverage under the ACA making high-quality healthcare affordable and accessible to Americans. We are unable to predict the likelihood of changes to the ACA or other healthcare laws which may negatively impact our profitability.



President Biden intends, as his predecessor did, to take action against drug prices which are considered “high.” Such measures could be addressed in a legislative package later in 2021 or with the reauthorization of the Prescription Drug User Fee Act (“PDUFA”) in 2022. Drug pricing continues to be a subject of debate at the executive and legislative levels of U.S. government and we expect to see legislation focusing on this in the coming year. The American Rescue Plan Act of 2021 signed into law by President Biden on March 14, 2021 includes a provision that will eliminate the statutory cap on rebates drug manufacturers pay to Medicaid beginning in January 2024. With the elimination of the rebate cap, manufacturers may be required to compensate states in an amount greater than what the state Medicaid programs pay for the drug.

Other legislative changes have been proposed and adopted since the ACA was enacted. These changes include aggregate reductions to Medicare payments to providers of up to 2% per fiscal year, effective April 1, 2013, which, due to subsequent legislative amendments, will stay in effect through 2030 with the exception of a temporary suspension implemented under various COVID-19 relief legislation from May 1, 2020 through December 31, 2021. Moreover, there has recently been heightened governmental scrutiny over the manner in which manufacturers set prices for their marketed products, which has resulted in several Congressional inquiries and proposed and enacted legislation designed, among other things, to bring more transparency to product pricing, to review the relationship between pricing and manufacturer patient assistance programs, and to reform government program reimbursement methodologies for pharmaceutical products. The Prescription Drug Pricing Reduction Act, or PDPRA, which was introduced in Congress in 2019, and again in 2020, proposed to, among other things, penalize pharmaceutical manufacturers for raising prices on drugs covered by Medicare Parts B and D faster than the rate of inflation, cap out-of-pocket expenses for Medicare Part D beneficiaries, and several changes to how drugs are reimbursed in Medicare Part B. A similar drug pricing bill, the Elijah E. Cummings Lower Drug Costs Now Act, proposes to enable direct price negotiations by the federal government for certain drugs (with the maximum price paid by Medicare capped based on an international index), requires manufacturers to offer these negotiated prices to other payers, and restricts manufacturers from raising prices on drugs covered by Medicare Parts B and D. This Act passed in the House of Representatives when it was introduced in 2019, and it has been introduced again in the 2021 term. We cannot predict whether any proposed legislation will become law and the effect of these possible changes on our business cannot be predicted at this time.

***Our current and future relationships with customers and third-party payors in the United States and elsewhere may be subject, directly or indirectly, to applicable anti-kickback, fraud and abuse, false claims, transparency, health information privacy and security and other healthcare laws and regulations, which could expose us to criminal sanctions, civil penalties, contractual damages, reputational harm, administrative burdens and diminished profits and future earnings.***

Healthcare providers, physicians and third-party payors in the United States and elsewhere will play a primary role in the recommendation and prescription of any product candidates for which we obtain marketing approval. Our future arrangements with third-party payors and customers may expose us to broadly applicable fraud and abuse and other healthcare laws and regulations, including, without limitation, the federal Anti-Kickback Statute and the federal False Claims Act, which may constrain the business or financial arrangements and relationships through which we sell, market and distribute any product candidates for which we obtain marketing approval. In addition, we may be subject to transparency laws and patient privacy regulation by U.S. federal and state governments and by governments in foreign jurisdictions in which we conduct our business. The applicable federal, state and foreign healthcare laws and regulations that may affect our ability to operate include:

- the federal Anti-Kickback Statute, which prohibits, among other things, persons from knowingly and willfully soliciting, offering, receiving or providing remuneration, directly or indirectly, in cash or in kind, to induce or reward, or in return for, either the referral of an individual for, or the purchase, order or recommendation of, any good or service, for which payment may be made under federal and state healthcare programs, such as Medicare and Medicaid;
- federal civil and criminal false claims laws and civil monetary penalty laws, including the federal False Claims Act, which impose criminal and civil penalties, including civil whistleblower or *qui tam* actions, against individuals or entities for knowingly presenting, or causing to be presented, to the federal government, including the Medicare and Medicaid programs, claims for payment that are false or fraudulent or making a false statement to avoid, decrease or conceal an obligation to pay money to the federal government; the federal Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), which imposes criminal and civil liability for executing a scheme to defraud any healthcare benefit program or making false statements relating to healthcare matters;
- HIPAA, as amended by the Health Information Technology for Economic and Clinical Health Act of 2009 (“HITECH”), and their respective implementing regulations, which impose obligations on covered healthcare providers, health plans, and healthcare clearinghouses, as well as their business associates that create, receive, maintain or transmit individually identifiable



health information for or on behalf of a covered entity, with respect to safeguarding the privacy, security and transmission of individually identifiable health information;

- the federal Open Payments program, which requires manufacturers of certain approved drugs, devices, biologics and medical supplies for which payment is available under Medicare, Medicaid or the Children's Health Insurance Program, with specific exceptions, to report annually to the Centers for Medicare & Medicaid Services ("CMS"), information related to "payments or other transfers of value" made to physicians, which is defined to include doctors, dentists, optometrists, podiatrists and chiropractors, and teaching hospitals and applicable manufacturers and applicable group purchasing organizations to report annually to CMS ownership and investment interests held by the physicians and their immediate family members. Data collection began on August 1, 2013 with requirements for manufacturers to submit reports to CMS by March 31, 2014 and 90 days after the end each subsequent calendar year. Disclosure of such information was made by CMS on a publicly available website beginning in September 2014; and
- analogous state and foreign laws and regulations, such as state anti-kickback and false claims laws, which may apply to sales or marketing arrangements and claims involving healthcare items or services reimbursed by non-governmental third-party payors, including private insurers; state and foreign laws that require pharmaceutical companies to comply with the pharmaceutical industry's voluntary compliance guidelines and the relevant compliance guidance promulgated by the federal government or otherwise restrict payments that may be made to healthcare providers; state and foreign laws that require drug manufacturers to report information related to payments and other transfers of value to physicians and other healthcare providers or marketing expenditures; and state and foreign laws governing the privacy and security of health information in certain circumstances, many of which differ from each other in significant ways and often are not preempted by HIPAA, thus complicating compliance efforts.

Efforts to ensure that our business arrangements with third parties will comply with applicable healthcare laws and regulations may involve substantial costs. It is possible that governmental authorities will conclude that our business practices may not comply with current or future statutes, regulations or case law involving applicable fraud and abuse or other healthcare laws and regulations. If our operations are found to be in violation of any of these laws or any other governmental regulations that may apply to us, we may be subject to significant civil, criminal and administrative penalties, including, without limitation, damages, fines, imprisonment, exclusion from participation in government healthcare programs, such as Medicare and Medicaid, and the curtailment or restructuring of our operations, which could have a material adverse effect on our business. If any of the physicians or other healthcare providers or entities with whom we expect to do business, including our collaborators, is found not to be in compliance with applicable laws, it may be subject to criminal, civil or administrative sanctions, including exclusions from participation in government healthcare programs, which could also materially affect our business.

#### **Risks Related to Intellectual Property and Potential Disputes with Licensors Thereof**

***If we are unable to obtain and maintain sufficient patent protection for our technology and products, our competitors could develop and commercialize technology and products similar or identical to ours, and our ability to successfully commercialize our technology and products may be impaired.***

Our commercial success will depend in part on obtaining and maintaining patent protection and trade secret protection in the United States and other countries with respect to our product candidates or any future product candidate that we may license or acquire and the methods we use to manufacture them, as well as successfully defending these patents and trade secrets against third-party challenges. We seek to protect our proprietary position by filing patent applications in the United States and abroad related to our novel technologies and product candidates, and by maintenance of our trade secrets through proper procedures. We will only be able to protect our technologies from unauthorized use by third parties to the extent that valid and enforceable patents or trade secrets cover them in the market they are being used or developed.

The patent prosecution process is expensive and time-consuming, and we may not be able to file and prosecute all necessary or desirable patent applications at a reasonable cost or in a timely manner. It is also possible that we will fail to identify any patentable aspects of our research and development output and methodology, and, even if we do, an opportunity to obtain patent protection may have passed. Given the uncertain and time-consuming process of filing patent applications and prosecuting them, it is possible that our product(s) or process(es) originally covered by the scope of our patent applications may change or be modified throughout the patent prosecution process, leaving our product(s) or process(es) without patent protection. If our licensors or we fail to obtain or maintain patent protection or trade secret protection for one or more product candidates or any future product candidate we may license or acquire, third parties may be able to leverage our proprietary information and products without risk of infringement, which could impair our ability to compete.

in the market and adversely affect our ability to generate revenues and achieve profitability. Moreover, should we enter into other collaborations we may be required to consult with or cede control to collaborators regarding the prosecution, maintenance, defense and enforcement of patents licensed or developed under such collaborations. Therefore, these patents and applications may not be prosecuted, defended, and enforced in a manner consistent with the best interests of our business.

The patent position of biotechnology and pharmaceutical companies generally is highly uncertain, involves complex legal and factual questions and has in recent years been the subject of much litigation. In addition, no consistent policy regarding the breadth of claims allowed in pharmaceutical or biotechnology patents has emerged to date in the U.S. The patent situation outside the U.S. is even more uncertain. The patent laws of foreign countries may not protect our patent rights to the same extent as the laws of the United States, and we may fail to seek or obtain patent protection in all major markets. For example, European patent law restricts the patentability of methods of treatment of the human body more than United States patent law does. Publications of discoveries in the scientific literature often lag behind the actual discoveries, and patent applications in the United States and other jurisdictions are typically not published until 18 months after a first filing, or in some cases not at all. Therefore, we cannot know with certainty whether we or our licensors were the first to make the inventions claimed in patents or pending patent applications that we own or licensed, or that we or our licensors were the first to file for patent protection of such inventions. In the event that a third party has also filed a U.S. patent application relating to our product candidates or a similar invention, depending upon the priority dates claimed by the competing parties, we may have to participate in interference proceedings declared by the USPTO to determine priority of invention in the U.S. The costs of these proceedings could be substantial and it is possible that our efforts to establish priority of invention would be unsuccessful, resulting in a material adverse effect on our U.S. patent position. As a result, the issuance, scope, validity, enforceability and commercial value of our or any of our respective licensors' patent rights are highly uncertain. Our pending and future patent applications may not result in patents being issued which protect our technology or products, in whole or in part, or which effectively prevent others from commercializing competitive technologies and products. Changes in either the patent laws or interpretation of the patent laws in the United States and other countries may diminish the value of our patents or narrow the scope of our patent protection. For example, the federal courts of the United States have taken an increasingly dim view of the patent eligibility of certain subject matter, such as naturally occurring nucleic acid sequences, amino acid sequences and certain methods of utilizing the same, which include their detection in a biological sample and diagnostic conclusions arising from their detection. Such subject matter, which had long been a staple of the biotechnology and biopharmaceutical industry to protect their discoveries, is now considered, with few exceptions, ineligible in the first instance for protection under the patent laws of the United States. Accordingly, we cannot predict the breadth of claims that may be allowed or enforced in our patents or in those licensed from a third-party.

In addition, U.S. patent laws may change, which could prevent or limit us from filing patent applications or patent claims to protect products and/or technologies or limit the exclusivity periods that are available to patent holders, as well as affect the validity, enforceability, or scope of issued patents.

Moreover, the patents or patent applications owned or filed by us, or by our licensors or other collaborators, may be subject to a third-party pre-issuance submission of prior art to the USPTO, or to opposition, derivation, reexamination, *inter partes* review, post-grant review or interference proceedings challenging our patent rights or the patent rights of our licensors or collaborators. The costs of these proceedings could be substantial and it is possible that our efforts to establish priority of invention would be unsuccessful, resulting in a material adverse effect on our U.S. patent position. An adverse determination in any such submission, patent office trial, proceeding or litigation could reduce the scope of, render unenforceable, or invalidate, our patent rights, allow third parties to commercialize our technology or products and compete directly with us, without payment to us, or result in our inability to manufacture or commercialize products without infringing third-party patent rights. In addition, if the breadth or strength of protection provided by our patents and patent applications is threatened, it could dissuade companies from collaborating with us to license, develop or commercialize current or future product candidates.

Even if our patent applications issue as patents, they may not issue in a form that will provide us with any meaningful protection, prevent competitors from competing with us or otherwise provide us with any competitive advantage. Our competitors may be able to circumvent our owned or licensed patents by developing similar or alternative technologies or products in a non-infringing manner.

The issuance of a patent does not foreclose challenges to its inventorship, scope, validity or enforceability. Therefore, our owned and licensed patents may be challenged in the courts or patent offices in the United States and abroad. Such challenges may result in loss of exclusivity or in patent claims being narrowed, invalidated or held unenforceable, in whole or in part, which could limit our ability to stop others from using or commercializing similar or identical technology and products, or limit the duration of the patent protection of our technology and products. Given the amount of time required for the development, testing and regulatory review of new product

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

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

A third party may hold intellectual property, including patent rights that are important or necessary to the development and commercialization of our products. It may be necessary for us to use the patented or proprietary technology of third parties, whom may or may not be interested in granting such a license, to commercialize our products, in which case we would be required to obtain a license from these third parties on commercially reasonable terms, or our business could be harmed, possibly materially.

***We depend on our licensors to maintain and enforce the intellectual property covering certain of our product candidates. We have limited, if any, control over the resources that our licensors can or will devote to securing, maintaining, and enforcing patents protecting our product candidates.***

We depend on our licensors to protect the proprietary rights covering our antibody and certain of our small molecule product candidates and we have limited, if any, control over the amount or timing of resources that they devote on our behalf, or the priority they place on, maintaining patent rights and prosecuting patent applications to our advantage. Moreover, we have limited, if any, control over the strategies and arguments employed in the maintenance of patent rights and the prosecution of patent applications to our advantage.

Our licensors, depending on the patent or application, are responsible for maintaining issued patents and prosecuting patent applications for our antibody and certain of our small molecule product candidates. We cannot be sure that they will perform as required. Should they decide they no longer want to maintain any of the patents licensed to us, they are required to afford us the opportunity to do so at our expense. If our licensors do not perform, and if we do not assume the maintenance of the licensed patents in sufficient time to make required payments or filings with the appropriate governmental agencies, we risk losing the benefit of all or some of those patent rights. Moreover, and possibly unbeknownst to us, our licensors may experience serious difficulties related to their overall business or financial stability, and they may be unwilling or unable to continue to expend the financial resources required to maintain and prosecute these patents and patent applications. While we intend to take actions reasonably necessary to enforce our patent rights, we depend, in part, on our licensors to protect a substantial portion of our proprietary rights and to inform us of the status of those protections and efforts thereto.

Our licensors may also be notified of alleged infringement and be sued for infringement of third-party patents or other proprietary rights. We may have limited, if any, control or involvement over the defense of these claims, and our licensors could be subject to injunctions and temporary or permanent exclusionary orders in the U.S. or other countries. Our licensors are not obligated to defend or assist in our defense against third-party claims of infringement. We have limited, if any, control over the amount or timing of resources, if any, that our licensors devote on our behalf or the priority they place on defense of such third-party claims of infringement.

Because of the uncertainty inherent in any patent or other litigation involving proprietary rights, we or our licensors may not be successful in defending claims of intellectual property infringement alleged by third parties, which could have a material adverse effect on our results of operations. Regardless of the outcome of any litigation, defending the litigation may be expensive, time-consuming and distracting to management.

***Protecting our proprietary rights is difficult and costly, and we may be unable to ensure their protection.***

The degree of future protection for our proprietary rights is uncertain, because legal means afford only limited protection and may not adequately protect our rights or permit us to gain or keep our competitive advantage, in addition to being costly and time consuming to undertake. For example:

- our licensors might not have been the first to make the inventions covered by each of our pending patent applications and issued patents;
- our licensors might not have been the first to file patent applications for these inventions;
- others may independently develop similar or alternative technologies or duplicate our product candidates or any future product candidate technologies;

- it is possible that none of the pending patent applications licensed to us will result in issued patents;
- the scope of our issued patents may not extend to competitive products developed or produced by others;
- the issued patents covering our product candidates or any future product candidate may not provide a basis for market exclusivity for active products, may not provide us with any competitive advantages, or may be challenged by third parties;
- we may not develop additional proprietary technologies that are patentable; or
- intellectual property rights of others may have an adverse effect on our business.

***We may become involved in lawsuits to protect or enforce our patents or other intellectual property, which could be expensive, time consuming and unsuccessful, and an unfavorable outcome in any litigation would harm our business.***

Competitors may infringe our issued patents or other intellectual property. To counter infringement or unauthorized use, we may be required to file one or more actions for patent infringement, which can be expensive and time consuming. Any claims we assert against accused infringers could provoke these parties to assert counterclaims against us alleging invalidity of our patents or that we infringe their patents; or provoke those parties to petition the USPTO to institute *inter partes* review against the asserted patents, which may lead to a finding that all or some of the claims of the asserted patents are invalid. In addition, in a patent infringement proceeding, a court may decide that a patent of ours is invalid or unenforceable, in whole or in part, construe the patent's claims narrowly or refuse to stop the other party from using the technology at issue on the grounds that our patents do not cover the technology in question. An adverse result in any litigation proceeding could put one or more of our pending patents at risk of being invalidated, rendered unenforceable, or interpreted narrowly. Because of the substantial amount of discovery required in connection with intellectual property litigation, there is a risk that some of our confidential information could be compromised by disclosure during this type of litigation. Furthermore, adverse results on U.S. patents may affect related patents in our global portfolio.

Our ability to develop, manufacture, market and sell one or more of our product candidates or any future product candidate that we may license or acquire depends upon our ability to avoid infringing the proprietary rights of third parties. Numerous U.S. and foreign issued patents and pending patent applications, which are owned by third parties, exist in the general fields of fully human immuno-oncology targeted antibodies and targeted anti-cancer agents and cover the use of numerous compounds and formulations in our targeted markets. Because of the uncertainty inherent in any patent or other litigation involving proprietary rights, we and our licensors may not be successful in defending intellectual property claims asserted by third parties, which could have a material adverse effect on our results of operations. Regardless of the outcome of any litigation, defending the litigation may be expensive, time-consuming and distracting to management. In addition, because patent applications can take many years to issue, there may be currently pending applications that are unknown to us, which may later result in issued patents that one or more of our product candidates may infringe. There could also be existing patents of which we are not aware that one or more of our product candidates may infringe, even if only inadvertently.

Even if resolved in our favor, litigation or other legal proceedings relating to intellectual property claims may cause us to incur significant expenses and could distract our technical and management personnel from their normal responsibilities. In addition, there could be public announcements of the results of hearings, motions or other interim proceedings or developments and if securities analysts or investors perceive these results to be negative, it could have a substantial adverse effect on the price of our common stock. Such litigation or proceedings could substantially increase our operating losses and reduce the resources available for development activities or any future sales, marketing or distribution activities. We may not have sufficient financial or other resources to conduct such litigation or proceedings adequately. Some of our competitors may be able to sustain the costs of such litigation or proceedings more effectively than we can because of their greater financial resources. Uncertainties resulting from the initiation and continuation of patent litigation or other proceedings could compromise our ability to compete in the marketplace.

There is a substantial amount of litigation involving patent and other intellectual property rights in the biotechnology and biopharmaceutical industries generally. If a third-party claims that we infringe their patents or misappropriated their technology, we could face a number of issues, including:

- infringement and other intellectual property claims which, with or without merit, can be expensive and time consuming to litigate and can divert management's attention from our core business;
- substantial damages for past infringement which we may have to pay if a court decides that our product infringes a competitor's patent;
- a court prohibiting us from selling or licensing our product unless the patent holder licenses the patent to us, which it would not be required to do;

- if a license is available from a patent holder, we may have to pay substantial royalties or grant cross licenses to our patents; and
- redesigning our processes so they do not infringe, which may not be possible or could require substantial funds, time, and may result in an inferior or less-desirable process or product.

***If we fail to comply with our obligations under our intellectual property licenses and third-party funding arrangements, we could lose rights that are important to our business.***

We have in-licensed the rights to all of our product candidates from third parties. Any disputes between us and any of our licensors regarding our rights under our license agreements may impact our ability to develop and commercialize these product candidates. Any uncured, material breach under any of our license agreements could result in our loss of exclusive rights to one or more of our product candidates and may lead to a complete termination of our related product development efforts.

We are currently a party to license agreements with Dana-Farber, Adimab, NeuPharma and Jubilant. In the future, we may become party to additional licenses that are important for product development and commercialization. If we fail to comply with our obligations under current or future license and funding agreements, our counterparties may have the right to terminate these agreements, in which event we might not be able to develop, manufacture or market any product or utilize any technology that is covered by these agreements or may face other penalties under the agreements. Such an occurrence could materially and adversely affect the value of a product candidate being developed under any such agreement or could restrict our drug discovery activities. Termination of these agreements or reduction or elimination of our rights under these agreements may result in our having to negotiate new or reinstated agreements with less favorable terms, or cause us to lose our rights under these agreements, including our rights to important intellectual property or technology.

***We may be subject to claims that our employees have wrongfully used or disclosed alleged trade secrets of their former employers.***

As is common in the biotechnology and pharmaceutical industry, we employ individuals who were previously employed at other biotechnology or pharmaceutical companies, including our competitors or potential competitors. Although no claims against us are currently pending, we may be subject to claims that we or these employees have inadvertently or otherwise used or disclosed trade secrets or other proprietary information of their former employers. Even if frivolous or unsubstantiated in nature, litigation may be necessary to defend against these claims. Even if we are successful in defending against these claims, litigation could result in substantial costs and be a distraction to management and the implicated employee(s).

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

In addition to seeking patent protection for our product candidates or any future product candidate, we also rely on trade secrets, including unpatented know-how, technology and other proprietary information, to maintain our competitive position, particularly where we do not believe patent protection is appropriate or obtainable. However, trade secrets are difficult to protect. We limit disclosure of such trade secrets where possible but we also seek to protect these trade secrets, in part, by entering into non-disclosure and confidentiality agreements with parties who do have access to them, such as our employees, our licensors, corporate collaborators, outside scientific collaborators, contract manufacturers, consultants, advisors and other third parties. We also enter into confidentiality and invention or patent assignment agreements with our employees and consultants. Despite these efforts, any of these parties may breach the agreements and may unintentionally or willfully disclose our proprietary information, including our trade secrets, and we may not be able to obtain adequate remedies for such breaches. Enforcing a claim that a party illegally disclosed or misappropriated a trade secret is difficult, expensive and time-consuming, and the outcome is unpredictable. In addition, some courts inside and outside the United States are less willing or unwilling to protect trade secrets. Moreover, if any of our trade secrets were to be lawfully obtained or independently developed by a competitor, we would have no right to prevent them, or those to whom they communicate it, from using that technology or information to compete with us. If any of our trade secrets were to be disclosed to or independently developed by a competitor, our competitive position would be harmed.

#### **Risks Relating to Our Platform and Data**

***Our business and operations would suffer in the event of computer system failures, cyber-attacks, or deficiencies in our or third parties' cybersecurity.***

We are increasingly dependent upon information technology systems, infrastructure, and data to operate our business. In the ordinary course of business, we collect, store, and transmit confidential information, including, but not limited to, information related to our

intellectual property and proprietary business information, personal information, and other confidential information. It is critical that we maintain such confidential information in a manner that preserves its confidentiality and integrity. Furthermore, we have outsourced elements of our operations to third party vendors, who each have access to our confidential information, which increases our disclosure risk.

Although we have implemented internal security and business continuity measures and have developed an information technology infrastructure, our internal computer systems, as well as those of current and future third parties on which we rely, are vulnerable to damage from computer viruses and unauthorized access and may fail. Our information technology and other internal infrastructure systems, including corporate firewalls, servers, data center facilities, lab equipment, and internet connection, face the risk of breakdown or other damage or interruption from service interruptions, system malfunctions, natural disasters, terrorism, war, and telecommunication and electrical failures, as well as security breaches from inadvertent or intentional actions by our employees, contractors, consultants, business partners, and/or other third parties, or from cyber-attacks by malicious third parties (including the deployment of harmful malware, ransomware, denial-of-service attacks, social engineering and other means to affect service reliability and threaten the confidentiality, integrity and availability of information), each of which could compromise our system infrastructure or lead to the loss, destruction, alteration, disclosure, or dissemination of, or damage or unauthorized access to, our data or data that is processed or maintained on our behalf, or other assets.

In addition, the loss or corruption of, or other damage to, clinical trial data from completed or future clinical trials could result in delays in our regulatory approval efforts and could significantly increase our costs to recover or reproduce the data. Likewise, we will rely on third parties for the manufacture of our current or future drug candidates and to conduct clinical trials, and similar events relating to their systems and operations could also have a material adverse effect on our business and lead to regulatory agency actions. The risk of a security breach or disruption, particularly through cyber-attacks or cyber intrusion, including by computer hackers, foreign governments, and cyber terrorists, has generally increased as the number, intensity, and sophistication of attempted attacks and intrusions from around the world have increased.

Sophisticated cyber attackers (including foreign adversaries engaged in industrial espionage) are skilled at adapting to existing security technology and developing new methods of gaining access to organizations' sensitive business data, which could result in the loss of proprietary information, including trade secrets. We may be unable to anticipate all types of security threats and to implement preventive measures effective against all such security threats. The techniques used by cyber criminals change frequently, may not be recognized until launched, and can originate from a wide variety of sources, including outside groups such as external service providers, organized crime affiliates, terrorist organizations, or hostile foreign governments or agencies.

Any security breach or other event leading to the loss or damage to, or unauthorized access, use, alteration, disclosure, or dissemination of, personal information, including personal information regarding clinical trial subjects, contractors, directors, or employees, our intellectual property, proprietary business information, or other confidential or proprietary information, could directly harm our reputation, enable competitors to compete with us more effectively, compel us to comply with federal and/or state breach notification laws and foreign law equivalents, subject us to mandatory corrective action, or otherwise subject us to liability under laws and regulations that protect the privacy and security of personal information.

Each of the foregoing could result in significant legal and financial exposure and reputational damage that could adversely affect our business. Notifications and follow-up actions related to a security incident could impact our reputation or cause us to incur substantial costs, including legal and remediation costs, in connection with these measures and otherwise in connection with any actual or suspected security breach. Our efforts to detect and prevent security incidents and otherwise implement our internal security and business continuity measures, including those connected with any actual, potential, or anticipated attack, may cause us to incur significant cost, including those connected with the engagement of additional personnel (including third-party experts and consultants), employment protection technologies, and employee training.

The costs related to significant security breaches or disruptions could be material and our insurance policies may not be adequate to compensate us for the potential losses arising from any such disruption in, or failure or security breach of, our systems or third-party systems where information important to our business operations or commercial development is stored or processed. In addition, such insurance may not be available to us in the future on economically reasonable terms, or at all. Further, our insurance may not cover all claims made against us and could have high deductibles in any event, and defending a suit, regardless of its merit, could be costly and divert management attention. Furthermore, if the information technology systems of our third-party vendors and other contractors and consultants become subject to disruptions or security breaches, we may have insufficient recourse against such third parties and we may

have to expend significant resources to mitigate the impact of such an event, and to develop and implement protections to prevent future events of this nature from occurring.

The occurrence of such a cybersecurity breach could result in interruptions in our operations, material disruption of our development programs or our business operations, and may cause us financial, legal, business, or reputational harm.

#### **Risks Relating to Our Control by Fortress Biotech Inc.**

##### ***Fortress controls a voting majority of our common stock.***

Pursuant to the terms of the Class A common stock held by Fortress, Fortress is entitled to cast, for each share of Class A common stock held by Fortress, the number of votes that is equal to one and one-tenth (1.1) times a fraction, the numerator of which is the sum of the shares of outstanding common stock and the denominator of which is the number of shares of outstanding Class A common stock. Accordingly, as long as Fortress owns any shares of Class A common stock, they will be able to control or significantly influence all matters requiring approval by our stockholders, including the election of directors and the approval of mergers or other business combination transactions. The interests of Fortress may not always coincide with the interests of other stockholders, and Fortress may take actions that advance its own interests and are contrary to the desires of our other stockholders. Moreover, this concentration of voting power may delay, prevent or deter a change in control of us even when such a change may be in the best interests of all stockholders, could deprive our stockholders of an opportunity to receive a premium for their common stock as part of a sale of Checkpoint or our assets, and might affect the prevailing market price of our common stock.

##### ***Fortress has the right to receive a significant grant of shares of our common stock annually which will result in the dilution of your holdings of common stock upon each grant, which could reduce their value.***

Under the terms of the Founders Agreement, which became effective as of March 17, 2015 and was amended and restated on July 11, 2016 (the "Founders Agreement"), Fortress has the right to receive an annual grant of shares of our common stock equal to 2.5% of the fully diluted outstanding equity at the time of issuance on January 1 of each year. This annual issuance of shares to Fortress will dilute your holdings in our common stock and, if the value of Checkpoint has not grown over the prior year, would result in a reduction in the value of your shares.

##### ***We might have received better terms from unaffiliated third parties than the terms we receive in our agreements with Fortress.***

The agreements we entered into with Fortress in connection with the separation include a Management Services Agreement and the Founders Agreement. While we believe the terms of these agreements are reasonable, they might not reflect terms that would have resulted from arm's-length negotiations between unaffiliated third parties. The terms of the agreements relate to, among other things, payment of a royalty on product sales and the provision of employment and transition services. We might have received better terms from third parties because, among other things, third parties might have competed with each other to win our business.

#### **Risks Related to Conflicts of Interest**

##### ***The Chairman of our Board of Directors is also the Executive Chairman, President and Chief Executive Officer of TGTX, with whom we previously had a collaboration agreement and a sublicense agreement. As a result, during the terms of these agreements, certain conflicts of interest could have arisen which would have required the attention of our officers and independent directors who are unaffiliated with TGTX.***

In connection with our license agreement with Dana-Farber and Adimab, we entered into a collaboration agreement with TGTX to develop and commercialize the anti-PD-L1 and anti-GITR antibody research programs, including cosibelimab in the field of hematological malignancies. In connection with our license agreement with Jubilant, we entered into a sublicense agreement with TGTX to develop and commercialize the Jubilant family of patents covering compounds that inhibit BET proteins such as BRD4, including CK-103, in the field of hematological malignancies. Michael S. Weiss, our Chairman of the Board of Directors, is also the Executive Chairman, President and Chief Executive Officer of TGTX.

Effective September 30, 2023, the Company and TGTX agreed to mutually terminate these collaborations.



***The dual roles of our directors who also serve in similar roles with Fortress could create a conflict of interest and will require careful monitoring by our independent directors.***

We share some directors with Fortress which could create conflicts of interest between the two companies in the future. While we believe that the Founders Agreement and the Management Services Agreement were negotiated by independent parties on both sides on arm's length terms, and the fiduciary duties of both parties were thereby satisfied, in the future situations may arise under the operation of both agreements that may create a conflict of interest. We will have to be diligent to ensure that any such situation is resolved by independent parties. In particular, under the Management Services Agreement, Fortress and its affiliates are free to pursue opportunities which could potentially be of interest to Checkpoint, and they are not required to notify Checkpoint prior to pursuing the opportunity. Any such conflict of interest or pursuit by Fortress of a corporate opportunity independent of Checkpoint could expose us to claims by our investors and creditors and could harm our results of operations.

#### **General Risks**

***Major public health issues, and specifically the pandemic caused by the spread of COVID-19, could have an adverse impact on our financial condition and results of operations and other aspects of our business.***

On March 11, 2020, the World Health Organization declared that the rapidly spreading COVID-19 outbreak had evolved into a pandemic.

The COVID-19 pandemic negatively impacted the global economy, disrupted global supply chains, and created significant volatility and disruption of financial markets. Although COVID-19 has not had a material adverse effect on our business to date, if the coronavirus were to worsen, our business operations could be delayed or interrupted. For instance, our clinical trials may be affected by the pandemic. Site initiation, participant recruitment and enrollment, participant dosing, distribution of clinical trial materials, study monitoring and data analysis may be paused or delayed due to changes in hospital or university policies, federal, state or local regulations, prioritization of hospital resources toward pandemic efforts, or other reasons related to the pandemic. If the coronavirus continues to spread, or if new variants emerge, some participants and clinical investigators may not be able to comply with clinical trial protocols.

We currently rely on third parties, such as contract laboratories, contract research organizations, medical institutions and clinical investigators to conduct these studies and clinical trials. If these third parties themselves are adversely impacted by restrictions resulting from the coronavirus outbreak, we will likely experience delays and/or realize additional costs. We also rely on third parties for the manufacture of our product candidates for preclinical and clinical testing. Disruptions to the global supply chain could impact our or our third-party manufacturers' ability to obtain raw materials or other products necessary to manufacture and distribute our product candidates. As a result, our efforts to obtain regulatory approvals for, and to commercialize, our product candidates may be delayed or disrupted.

***We may not be able to manage our business effectively if we are unable to attract and retain key personnel.***

We may not be able to attract and/or retain qualified management and commercial, scientific and clinical personnel in the future due to the intense competition for qualified personnel among biotechnology, pharmaceutical and other businesses. If we are not able to attract and retain necessary personnel to accomplish our business objectives, we may experience constraints that will significantly impede the achievement of our development objectives, our ability to raise additional capital and our ability to implement our business strategy.

***Our employees or third-party contractors may engage in misconduct or other improper activities, including noncompliance with regulatory standards and requirements, which could have a material adverse effect on our business.***

We are exposed to the risk of employee fraud or other misconduct. Misconduct by employees or third-party contractors could include intentional failures to comply with FDA regulations, provide accurate information to the FDA, comply with manufacturing standards we have established, comply with federal and state health-care fraud and abuse laws and regulations, report financial information or data accurately or disclose unauthorized activities to us. In particular, sales, marketing and business arrangements in the healthcare industry are subject to extensive laws and regulations intended to prevent fraud, kickbacks, bribery, self-dealing and other abusive practices. These laws and regulations may restrict or prohibit a wide range of pricing, discounting, marketing and promotion, sales commission, customer incentive programs and other business arrangements. Employee or third-party contractors misconduct could also involve the improper use of information obtained in the course of clinical trials, which could result in regulatory sanctions and serious

harm to our reputation, as well as civil and criminal liability. The precautions we take to detect and prevent this activity may not be effective in controlling unknown or unmanaged risks or losses or in protecting us from governmental investigations or other actions or lawsuits stemming from a failure to be in compliance with such laws or regulations. If any such actions are instituted against us, and we are not successful in defending ourselves or asserting our rights, those actions could have a significant impact on our business and results of operations, including the imposition of significant fines and/or other civil and/or criminal sanctions.

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

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

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

In addition, we may incur substantial costs in order to comply with current or future environmental, health and safety laws and regulations. These current or future laws and regulations may impair our research, development or production efforts. Our failure to comply with these laws and regulations also may result in substantial fines, penalties or other sanctions.

***Our business and operations would suffer in the event of system failures.***

Despite the implementation of security measures, our internal computer systems are vulnerable to damage from computer viruses, unauthorized access, natural disasters, terrorism, war and telecommunication and electrical failures. Any system failure, accident or security breach that causes interruptions in our operations could result in a material disruption of our drug development programs. For example, the loss of clinical trial data from completed clinical trials for one or more of our product candidates could result in delays in our regulatory approval efforts and significantly increase our costs to recover or reproduce the data. To the extent that any disruption or security breach results in a loss or damage to our data or applications, or inappropriate disclosure of confidential or proprietary information, we may incur liability and the further development of one or more of our product candidates may be delayed.

***The market price and trading volume of our common stock has been volatile. Our stock may continue to be subject to substantial price and volume fluctuations due to a number of factors, many of which are beyond our control and may prevent our stockholders from reselling our common stock at a profit.***

The market prices for securities of biotechnology and pharmaceutical companies have historically been highly volatile, and the market has from time to time experienced significant price and volume fluctuations that are unrelated to the operating performance of particular companies.

The market price and trading volume of our common stock has been highly volatile and is likely to continue to be highly volatile and may fluctuate substantially due to many factors, including:

- announcements relating to the clinical development of our product candidates;
- announcements concerning the progress of our efforts to obtain regulatory approval for and commercialize our product candidates or any future product candidate, including any requests we receive from the FDA, or comparable regulatory authorities outside the United States, for additional studies or data that result in delays or additional costs in obtaining regulatory approval or launching these product candidates, if approved;

- the depth and liquidity of the market for our common stock;
- investor perceptions about us and our business;
- market conditions in the pharmaceutical and biotechnology sectors or the economy as a whole, which may be impacted by economic or other crises or external factors, including the effects of the COVID-19 pandemic on the global economy;
- price and volume fluctuations in the overall stock market;
- the failure of one or more of our product candidates or any future product candidate, if approved, to achieve commercial success;
- announcements of the introduction of new products by us or our competitors;
- developments concerning product development results or intellectual property rights of others;
- litigation or public concern about the safety of our potential products;
- actual fluctuations in our quarterly operating results, and concerns by investors that such fluctuations may occur in the future;
- deviations in our operating results from the estimates of securities analysts or other analyst comments;
- additions or departures of key personnel;
- health care reform legislation, including measures directed at controlling the pricing of pharmaceutical products, and third-party coverage and reimbursement policies;
- developments concerning current or future strategic collaborations; and
- discussion of us or our stock price by the financial and scientific press and in online investor communities.

***We may become involved in securities class action litigation that could divert management's attention and harm our business.***

The market price and trading volume of our common stock has been highly volatile and is likely to continue to be highly volatile. In addition, the stock markets have from time to time experienced significant price and volume fluctuations that have affected the market prices for the common stock of biotechnology and pharmaceutical companies. These broad market fluctuations may cause the market price of our stock to decline. In the past, securities class action litigation has often been brought against a company following a decline in the market price of its securities. This risk is especially relevant for us because biotechnology and biopharmaceutical companies have experienced significant stock price volatility in recent years. We may become involved in this type of litigation in the future. Litigation often is expensive and diverts management's attention and resources, which could adversely affect our business.

**Item 1B. Unresolved Staff Comments**

None.

**Item  
1C. Cybersecurity**

***Cybersecurity Risk Management and Strategy***

We have established certain processes for identifying, evaluating, and managing material risks from cybersecurity threats as a part of our overall technology management strategy. These processes are designed and reassessed on a periodic basis to help protect our technology assets and operations from internal and external security threats. We also engage with third parties, including consultants, to enhance our security processes.

We have previously engaged and currently engage third parties to assess the effectiveness of our cybersecurity and technology management strategy and continue to seek to implement new, and improve existing, processes regularly to adjust for changes in technology, internal or external threats, business strategy, and regulatory requirements. We, and our third parties, have deployed managed detection and response services to monitor our technology infrastructure and information systems for possible threats. Our technology management strategy also includes ongoing security training and education for employees regarding threats, including their role and responsibility in detecting and responding to such threats.

We review the processes of our third-party vendors and consider their ability to adhere to relevant industry practices and maintain adequate technology risk programs. In addition, we maintain cyber and cyber-related crime insurance coverage policies as part of our overall risk management strategy, however, our policies may not be sufficient to cover against all potential future claims, if any.

In the last two fiscal years, we have not identified cybersecurity threats that have materially affected, or are reasonably likely to materially affect, our business, results of operations, or financial condition. Although we proactively attempt to prevent all threats, we are unable to eliminate all risk from cybersecurity threats or provide assurance that we have not experienced an undetected cybersecurity incident. For more information about these risks, please see Item 1A. Risk Factors “Our business and operations would suffer in the event of computer system failures”.

### **Cybersecurity Governance**

While our board of directors is responsible for oversight and risk management in general, our Audit Committee provides oversight of our technology management strategy to ensure that cybersecurity threats and risks are identified, evaluated, and managed. The Audit Committee receives periodic updates from our management team regarding the overall state of our technology management strategy and any relevant risks from cybersecurity threats and cybersecurity incidents.

Our management team is responsible for assessing and managing the material risks from cybersecurity threats. Our management team members have expertise in information systems, compliance and corporate governance, which we believe are disciplines that are effective in the management of the Company's cybersecurity risk. Our management team is informed of and monitors the prevention, detection, and mitigation of cybersecurity threats and incidents.

### **Item 2. Properties**

Our corporate and executive office is located at 95 Sawyer Road, Suite 110, Waltham, MA, 02453. We are not currently under a lease agreement at 95 Sawyer Road. We believe that our existing facilities are adequate to meet our current requirements. We do not own any real property.

### **Item 3. Legal Proceedings**

We are not involved in any litigation that we believe could have a material adverse effect on our financial position or results of operations. There is no action, suit, proceeding, inquiry or investigation before or by any court, public board, government agency, self-regulatory organization or body pending or, to the knowledge of our executive officers, threatened against or affecting our company or our officers or directors in their capacities as such.

### **Item 4. Mine Safety Disclosures**

Not applicable.

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

Our common stock is listed on the NASDAQ Capital Market and trades under the symbol "CKPT."

**Equity Compensation Plans**

On March 21, 2017, November 9, 2017, November 27, 2020, December 9, 2022, and November 17, 2023, we filed registration statements on Form S-8 under the Securities Act registering the common stock issued, issuable or reserved for issuance under our Amended and Restated 2015 Incentive Plan ("2015 Plan"). The registration statements became effective immediately upon filing, and shares covered by the registration statements are eligible for sale in the public markets, subject to grant of the underlying awards, vesting provisions and Rule 144 limitations applicable to our affiliates.

**Holders**

As of March 19, 2024, there were approximately 63 holders of record for our common stock and 1 holder of record for our Class A common stock. The number of beneficial holders of our common stock does not reflect shareholders who hold shares in street name through brokerage accounts or other nominees.

**Dividends**

We have never paid cash dividends on any of our capital stock and currently intend to retain our future earnings, if any, to fund the development and growth of our business.

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

Subject to adjustment as provided in the 2015 Plan, the total aggregate number of shares of our common stock reserved and available for issuance pursuant to awards granted under the 2015 Plan is 6,000,000. The following table provides information as of December 31, 2023, regarding the securities authorized for issuance under our equity compensation plan, the 2015 Plan.

Plan Category	Number of securities to be issued upon exercise of outstanding options	Weighted-average exercise price of outstanding options	Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in column 1)
Equity compensation plans approved by security holders	127,000	\$ 8.88	3,510,830
Equity compensation plans not approved by security holders	—	—	—
<b>Total</b>	<b>127,000</b>		<b>3,510,830</b>

**Item 6. RESERVED**

## Item 7. Management's Discussion and Analysis of the Results of Operations

### Forward-Looking Statements

*Statements in the following discussion and throughout this report that are not historical in nature are "forward-looking statements." You can identify forward-looking statements by the use of words such as "expect," "anticipate," "estimate," "may," "will," "should," "intend," "believe," and similar expressions. Although we believe the expectations reflected in these forward-looking statements are reasonable, such statements are inherently subject to risk and we can give no assurances that our expectations will prove to be correct. Actual results could differ from those described in this report because of numerous factors, many of which are beyond our control. These factors include, without limitation, those described under Item 1A "Risk Factors." We undertake no obligation to update these forward-looking statements to reflect events or circumstances after the date of this report or to reflect actual outcomes. Please see "Forward-Looking Statements" at the beginning of this Form 10-K.*

*The following discussion of our financial condition and results of operations should be read in conjunction with our financial statements and the related notes thereto and other financial information appearing elsewhere in this Form 10-K. We undertake no obligation to update any forward-looking statements in the discussion of our financial condition and results of operations to reflect events or circumstances after the date of this report or to reflect actual outcomes.*

### Overview

We are a clinical-stage immunotherapy and targeted oncology company focused on the acquisition, development and commercialization of novel treatments for patients with solid tumor cancers. We are evaluating our lead antibody product candidate, cosibelimab, an anti-programmed death-ligand 1 ("PD-L1") antibody licensed from the Dana-Farber Cancer Institute, in an ongoing global, open-label, multicohort Phase 1 clinical trial in checkpoint therapy-naïve patients with selected recurrent or metastatic cancers, including ongoing cohorts in locally advanced and metastatic cutaneous squamous cell carcinoma ("CSCC") intended to support one or more applications for marketing approval. Based on top-line and interim results in metastatic and locally advanced CSCC, respectively, we submitted a Biologics License Application ("BLA") to the U.S. Food and Drug Administration ("FDA") for these indications in January 2023. On December 15, 2023, the FDA issued a complete response letter ("CRL") for the cosibelimab BLA for the treatment of patients with metastatic or locally advanced CSCC who are not candidates or curative surgery or radiation. The CRL only cites findings that arose during a multi-sponsor inspection of our third-party contract manufacturing organization as approvability issues to address in a resubmission. Following resolution of the inspection issues at the third-party contract manufacturing organization raised in the CRL, a resubmission of the BLA is planned to support the marketing approval of cosibelimab. In addition, we are evaluating our lead small-molecule, targeted anti-cancer agent, olafertinib, a third-generation epidermal growth factor receptor ("EGFR") inhibitor, as a potential new treatment for patients with EGFR mutation-positive non-small cell lung cancer ("NSCLC").

In January 2022, we announced top-line results from a registration-enabling cohort of our multi-regional, Phase 1 clinical trial of cosibelimab in patients with metastatic CSCC. The cohort met its primary endpoint, with cosibelimab demonstrating a confirmed objective response rate ("ORR") of 47.4% (95% CI: 36.0, 59.1) based on independent central review of 78 patients enrolled in the metastatic CSCC cohort using Response Evaluation Criteria in Solid Tumors version 1.1 ("RECIST 1.1").

In June 2022, we announced interim results from a registration-enabling cohort of our multi-regional, Phase 1 clinical trial of cosibelimab in patients with locally advanced CSCC that are not candidates for curative surgery or radiation. Cosibelimab demonstrated a confirmed ORR of 54.8% (95% CI: 36.0, 72.7) based on independent central review of 31 patients enrolled in the cohort.

In July 2023, we announced longer-term results for cosibelimab from its pivotal studies in locally advanced and metastatic CSCC. These results demonstrated a deepening of response over time, resulting in complete response rates of 26% and 13% in locally advanced and metastatic CSCC, respectively. Additionally, the confirmed ORR in metastatic CSCC increased to 50.0% based on independent central review using RECIST 1.1. Furthermore, responses continue to remain durable over time with the median duration of response not yet reached in either group. Updated safety data across 247 patients enrolled and treated with cosibelimab in all cohorts of the ongoing study remain consistent with those previously reported.

We have also entered into various collaboration agreements with TGTX, a related party, to develop and commercialize certain assets in connection with our licenses in the field of hematological malignancies, while we retain the right to develop and commercialize these

assets in solid tumors. Effective September 30, 2023, the Company and TGTX agreed to mutually terminate these collaborations, with full rights reverting back to us.

To date, we have not received approval for the sale of any product candidate in any market and, therefore, have not generated any product sales from any product candidates. In addition, we have incurred substantial operating losses since our inception, and expect to continue to incur significant operating losses for the foreseeable future and may never become profitable. As of December 31, 2023, we have an accumulated deficit of \$314.3 million.

We are a majority-controlled subsidiary of Fortress.

Checkpoint Therapeutics, Inc. was incorporated in Delaware on November 10, 2014 and commenced principal operations in March 2015. Our executive offices are located at 95 Sawyer Road, Suite 110, Waltham, MA 02453. Our telephone number is (781) 652-4500 and our email address is [ir@checkpointtx.com](mailto:ir@checkpointtx.com).

### **Critical Accounting Policies and Use of Estimates**

Our discussion and analysis of our financial condition and results of operations are based on our financial statements, which have been prepared in accordance with accounting principles generally accepted in the United States ("GAAP"). The preparation of these financial statements requires us to make estimates and judgments that affect the reported amounts of assets, liabilities, revenues and expenses and the disclosure of contingent assets and liabilities in our financial statements. On an ongoing basis, we evaluate our estimates and judgments, including, but not limited to, those related to research and development expenses, accrued research and development expenses, stock-based compensation and common stock warrant liabilities. We base our estimates on historical experience, known trends and events and various other factors that are believed to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions.

Our significant accounting policies are described in the notes to our financial statements appearing elsewhere in this Form 10-K. We believe that the accounting policies discussed below are critical to understanding our historical and future performance, as these policies relate to the more significant areas involving management's judgments and estimates.

#### *Research and Development*

Research and development costs are expensed as incurred. Advance payments for goods and services that will be used in future research and development activities are expensed when the activity has been performed or when the goods have been received rather than when the payment is made. Upfront and milestone payments due to third parties that perform research and development services on our behalf will be expensed as services are rendered or when the milestone is achieved.

Research and development costs primarily consist of personnel related expenses, including salaries, benefits, travel, and other related expenses, stock-based compensation, payments made to third parties for license and milestone costs related to in-licensed products and technology, payments made to third party contract research organizations for preclinical and clinical studies, investigative sites for clinical trials, consultants, the cost of acquiring and manufacturing clinical trial materials, and costs associated with regulatory filings, laboratory costs and other supplies.

In accordance with Accounting Standards Codification ("ASC") 730-10-25-1, *Research and Development*, costs incurred in obtaining technology licenses are charged to research and development expense if the technology licensed has not reached commercial feasibility and has no alternative future use. In each case, we evaluate if the license agreement results in the acquisition of an asset or a business. Such licenses we purchased require substantial completion of research and development, regulatory and marketing approval efforts in order to reach commercial feasibility and has no alternative future use. Accordingly, the total purchase price for the licenses acquired during the period is reflected as research and development on the Statements of Operations.

#### *Accrued Research and Development Expense*

We record accruals for estimated costs of research, preclinical, clinical and manufacturing development within accrued expenses which are significant components of research and development expenses. A substantial portion of our ongoing research and development



activities is conducted by third-party service providers such as contract research organizations in connection with our clinical studies, contract manufacturing organizations, trial sites in connection with our clinical studies and vendors associated with licenses/milestones. We accrue the costs incurred under agreements with these third parties based on estimates of actual work completed in accordance with the respective agreements. We determine the estimated costs through the reviewing of open contracts, communicating with our personnel to identify services that have been performed on our behalf and estimating the level of service performed and the associated cost incurred for the service when we have not yet been invoiced or otherwise notified of the actual cost. The majority of our service providers invoice us monthly for services performed or when contractual milestones are met. Payments made to third parties under these arrangements in advance of the performance of the related services are recorded as prepaid expenses until the services are rendered.

If the actual timing of the performance of services or the level of effort varies from the estimate, we adjust accrued expenses or prepaid expenses accordingly, which impact research and development expenses. Although we do not expect our estimates to be materially different from amounts actually incurred, our understanding of the status and timing of services performed relative to the actual status and timing of services performed may vary and may result in reporting amounts that are too high or too low in any particular period.

#### *Stock-Based Compensation*

We expense stock-based compensation to employees and non-employees over the requisite service period based on the estimated grant-date fair value of the awards and forfeitures, which are recorded upon occurrence. Stock-based compensation for milestone awards will be measured and recorded if and when it is probable that the milestone will be achieved. We estimate the fair value of stock option grants using the Black-Scholes Model. The assumptions used in calculating the fair value of stock-based awards represent management's best estimates and involve inherent uncertainties and the application of management's judgment.

We will continue to use judgment in evaluating the expected volatility, expected terms and interest rates utilized for our stock-based compensation expense calculations on a prospective basis. The assumptions underlying these valuations represent management's best estimate, which involve inherent uncertainties and the application of management judgment. As a result, if factors or expected outcomes change and we use significantly different assumptions or estimates, our stock-based compensation expense could be materially different. We expect to continue to grant options and other stock-based awards in the future, and to the extent that we do, our stock-based compensation expense recognized in future periods will likely increase.

#### *Common Stock Warrant Liabilities*

We have issued freestanding warrants to purchase shares of our common stock in connection with financing activities. Our outstanding common stock warrants issued in connection with the registered direct financing completed in December 2022 (the "December 2022 Registered Direct Offering") are classified as liabilities on the balance sheet as they contain terms for redemption of the underlying security that are outside our control. We estimate the fair value of warrants using the Black-Scholes Model. The assumptions used in calculating the fair value of warrants represent management's best estimates and involve inherent uncertainties and the application of management's judgment. We will continue to use judgment in evaluating the expected volatility, expected terms and interest rates utilized for our common stock warrant liability calculations on a prospective basis. The assumptions underlying these valuations represent management's best estimate, which involve inherent uncertainties and the application of management judgment. As a result, if factors or expected outcomes change and we use significantly different assumptions or estimates, our common stock warrant liabilities could be materially different.

The fair value of common stock warrant liabilities is re-measured at each financial reporting date and upon exercise with any changes in fair value being recognized in gain (loss) on common stock warrant liabilities, a component of other income (loss), in the Statements of Operations. We will continue to re-measure the fair value of the warrant liabilities until exercise or expiration of the related warrant.

#### **Results of Operations**

In this section, we discuss the results of our operations for the year ended December 31, 2023 compared to the year ended December 31, 2022. For a discussion of the year ended December 31, 2022 compared to the year ended December 31, 2021, please refer to 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, 2022.

## **Comparison of the Years Ended December 31, 2023 and 2022**

### **Revenue**

For the year ended December 31, 2023, revenue was approximately \$0.1 million compared to approximately \$0.2 million for the year ended December 31, 2022, a decrease of approximately \$0.1 million. The current and prior period revenue primarily consisted of the reimbursement of patent costs related to the collaboration agreement with TGTX.

### **Research and Development Expenses**

Research and development expenses primarily consist of personnel related expenses, including salaries, benefits, travel, and other related expenses, stock-based compensation, payments made to third parties for license and milestone costs related to in-licensed products and technology, payments made to third party CROs for preclinical and clinical studies, investigative sites for clinical trials, consultants, the cost of acquiring and manufacturing clinical trial materials, costs associated with regulatory filings and patents, laboratory costs and other supplies.

For the year ended December 31, 2023, research and development expenses were approximately \$43.6 million, compared to approximately \$49.8 million for the year ended December 31, 2022, a decrease of \$6.2 million. The current period research and development expenses primarily consisted of \$19.0 million related to commercial manufacturing costs and inventory build, which is expensed prior to approval, to support a potential launch of cosibelimab, \$7.0 million related to clinical costs for our product candidates, \$3.6 million related to regulatory costs, including \$3.2 million for the PDUFA fee to the FDA for the BLA filing for cosibelimab in the first quarter of 2023, \$2.3 million in license fees due upon the FDA filing acceptance of the BLA, \$3.4 million related to the non-cash annual equity fee in connection with the Founders Agreement, \$5.1 million related to salary expenses and \$1.2 million related to stock compensation expense. For the year ended December 31, 2022, research and development expenses primarily consisted of \$25.3 million related to the manufacturing costs of our product candidates, including process characterization, validation and BLA enabling studies for cosibelimab, \$12.5 million related to clinical costs for our product candidates, including costs related to the since terminated phase 3 CONTERNO study, \$1.9 million related to the non-cash annual equity fee in connection with the Founders Agreement, \$2.6 million related to regulatory costs, \$4.5 million related to salary expenses and \$0.9 million related to stock compensation expense.

We anticipate research and development expenses in 2024 to decrease as compared to 2023 due primarily to decreased manufacture of cosibelimab drug substance in 2024 and decreased clinical costs for our product candidates.

### **General and Administrative Expenses**

General and administrative expenses consist primarily of salaries and related expenses, including stock-based compensation, for executives and other administrative personnel, recruitment expenses, professional fees and other corporate expenses, including investor relations, legal activities, and facilities-related expenses.

For the years ended December 31, 2023 and 2022, general and administrative expenses were approximately \$8.7 million. The current period general and administrative expenses primarily consisted of stock compensation expense of \$1.7 million, \$1.6 million related to salary expenses, \$1.0 million related to our issuance of shares to Fortress pursuant to the Founders Agreement in connection with the sale of shares of our common stock, \$1.8 million related to legal and accounting fees, \$0.3 million related to marketing costs and \$0.3 million related to investor relation fees. The prior period general and administrative expenses primarily consisted of stock compensation expense of \$2.0 million, \$1.5 million related to salary expenses, \$1.9 million related to legal and accounting fees, \$0.4 million related to our issuance of shares to Fortress pursuant to the Founders Agreement in connection with the sale of shares of our common stock, \$0.3 million related to marketing costs and \$0.4 million related to investor relation fees.

We anticipate general and administrative expenses in 2024 will remain relatively consistent with 2023.

### **Other Income (loss)**

For the year ended December 31, 2023, interest income was approximately \$0.1 million compared to approximately \$0.2 million for the year ended December 31, 2022, a decrease of approximately \$0.1 million. The decrease was primarily due to our cash balances between the periods.

For the year ended December 31, 2023, the gain on common stock warrant liabilities were approximately \$0.2 million, compared to a loss of approximately \$4.5 million for the year ended December 31, 2022. The gain on common stock warrant liabilities in the current period is comprised of net gains of approximately \$7.9 million resulting from the fair value remeasurement of the common stock warrant liabilities at each reporting period in 2023 and upon exercise of a portion of the warrants associated with the December 2022 Registered Direct Offering. The gain on common stock warrant liabilities in the current period was partially offset by a loss of approximately \$7.7 million recorded on October 4, 2023 as part of the October 2023 warrant exercise inducement associated with a portion of the warrants issued in the December 2022 Registered Direct Offering as a result of offering additional warrants to the holder as part of the inducement. The loss on common stock warrant liabilities as of December 31, 2022 was comprised of the total initial fair value of the liability exceeding the total proceeds and the fair value remeasurement of the common stock warrant liabilities on December 31, 2022, associated with the December 2022 Registered Direct Offering.

### **Liquidity and Capital Resources**

We have incurred substantial operating losses since our inception and expect to continue to incur significant operating losses for the foreseeable future and may never become profitable. As of December 31, 2023, we had an accumulated deficit of \$314.3 million.

During the year ended December 31, 2022, we sold a total of 532,816 shares of common stock under an At-the-Market Issuance Sales Agreement (the "ATM") for aggregate total gross proceeds of approximately \$10.1 million at an average selling price of \$18.99 per share, resulting in net proceeds of approximately \$9.9 million after deducting commissions and other transaction costs.

In December 2022, we closed on the December 2022 Registered Direct Offering for the issuance and sale of an aggregate of 950,000 shares of our common stock at a purchase price of \$4.325 per share. In addition, the offering included 784,105 shares of common stock in the form of pre-funded warrants at a price of \$4.3249. The common stock and the pre-funded warrants were sold together with Series A warrants to purchase up to 1,734,105 shares of common stock and Series B warrants to purchase up to 1,734,105 shares of common stock. The Series A warrants are exercisable immediately upon issuance and will expire five years following the issuance date and have an exercise price of \$4.075 per share and the Series B warrants are exercisable immediately upon issuance and will expire eighteen months following the issuance date and have an exercise price of \$4.075 per share. Total gross proceeds from the December 2022 Registered Direct Offering were \$7.5 million with net proceeds of approximately \$6.7 million after deducting approximately \$0.8 million in commissions and other transaction costs. In January 2023, the pre-funded warrants from the December 2022 Registered Direct Offering were fully exercised. In October 2023, the Series A and Series B warrants from the December 2022 Registered Direct Offering were fully exercised at a reduced exercise price of \$1.76 per share as part of the October 2023 inducement offer letter agreement (see below).

In February 2023, we closed on a registered direct offering (the "February 2023 Registered Direct Offering") for the issuance and sale of an aggregate of 1,428,572 shares of our common stock at a purchase price of \$5.25 per share. In addition, the offering included 248,572 shares of common stock in the form of pre-funded warrants at a price of \$5.2499. In a concurrent private placement, we issued and sold Series A warrants to purchase up to 1,428,572 shares of common stock and Series B warrants to purchase up to 1,428,572 shares of common stock. The Series A and B warrants are exercisable immediately upon issuance with an exercise price of \$5.00 per share. The Series A warrants will expire five years following the issuance date and the Series B warrants will expire eighteen months following the issuance date. The total gross proceeds from the offering were approximately \$7.5 million with net proceeds of approximately \$6.7 million after deducting approximately \$0.8 million in commissions and other transaction costs. In February 2023, the pre-funded warrants from the February 2023 Registered Direct Offering were fully exercised. In October 2023, the Series A and Series B warrants from the February 2023 Registered Direct Offering were fully exercised at a reduced exercise price of \$1.76 per share as part of the October 2023 inducement offer letter agreement (see below).

In April 2023, we closed on a registered direct offering (the "April 2023 Registered Direct Offering") for the issuance and sale of an aggregate of 1,700,000 shares of our common stock at a purchase price of \$3.60 per share. In a concurrent private placement, we issued and sold Series A warrants to purchase up to 1,700,000 shares of common stock and Series B warrants to purchase up to 1,700,000 shares of common stock. The Series A and B warrants are exercisable immediately upon issuance with an exercise price of \$3.35 per share. The Series A warrants will expire five years following the issuance date and the Series B warrants will expire eighteen months following the issuance date. The total gross proceeds from the offering were approximately \$6.1 million with net proceeds of approximately \$5.5 million after deducting approximately \$0.6 million in commissions and other transaction costs.

In May 2023, we closed on a registered direct offering (the “May 2023 Registered Direct Offering”) for the issuance and sale of an aggregate of 1,650,000 shares of our common stock at a purchase price of \$3.071 per share. In addition, the offering included 1,606,269 shares of common stock in the form of pre-funded warrants at a price of \$3.0709. The common stock and the pre-funded warrants were sold together with Series A warrants to purchase up to 3,256,269 shares of common stock and Series B warrants to purchase up to 3,256,269 shares of common stock. The Series A and B warrants are exercisable immediately upon issuance with an exercise price of \$2.821 per share. The Series A warrants will expire five years following the issuance date and the Series B warrants will expire eighteen months following the issuance date. The total gross proceeds from the offering were approximately \$10.0 million with net proceeds of approximately \$9.1 million after deducting approximately \$0.9 million in commissions and other transaction costs. In August 2023, the pre-funded warrants from the May 2023 Registered Direct Offering were fully exercised.

In July 2023, we closed on a registered direct offering (the “July 2023 Registered Direct Offering”) for the issuance and sale of an aggregate of 2,427,186 shares of our common stock at a purchase price of \$3.09 per share. In addition, the offering included 809,062 shares of common stock in the form of pre-funded warrants at a price of \$3.0899. The common stock and the pre-funded warrants were sold together with Series A warrants to purchase up to 3,236,248 shares of common stock and Series B warrants to purchase up to 3,236,248 shares of common stock. The Series A and B warrants are exercisable immediately upon issuance with an exercise price of \$2.84 per share. The Series A warrants will expire five years following the issuance date and the Series B warrants will expire eighteen months following the issuance date. The total gross proceeds from the offering were approximately \$10.0 million with net proceeds of approximately \$9.1 million after deducting approximately \$0.9 million in commissions and other transaction costs. In September 2023, the pre-funded warrants from the July 2023 Registered Direct Offering were fully exercised.

In October 2023, we entered into an inducement offer letter agreement (the “October 2023 Inducement”) with a certain holder of our existing warrants to exercise for cash an aggregate of 6,325,354 shares of our common stock at a reduced exercise price of \$1.76 per share. The warrants were issued to the holder on December 16, 2022 with an exercise price of \$4.075 per share and on February 22, 2023 with an exercise price of \$5.00 per share as part of registered direct offerings. As part of the inducement, we agreed to issue new unregistered Series A warrants to purchase up to 6,325,354 shares of Common Stock and new unregistered Series B warrants to purchase up to 6,325,354 shares of Common Stock (collectively, the “October 2023 Common Stock Warrants”). The Series A and B warrants are exercisable immediately upon issuance with an exercise price of \$1.51 per share. The Series A warrants will expire five years following the issuance date and the Series B warrants will expire twenty-four months following the issuance date. The total gross proceeds from the exercise were approximately \$11.1 million with net proceeds of approximately \$10.0 million after deducting approximately \$1.1 million in commissions and other transaction costs. Upon the close of the transaction, we issued the holder 110,000 of the 6,325,354 shares of common stock that were issuable upon exercise of the existing warrants. Due to the beneficial ownership limitation provisions in the inducement offer letter agreement, the remaining 6,215,354 shares were initially unissued, and held in abeyance for the benefit of the holder until notice from the holder that the shares may be issued in compliance with the agreement. As of December 31, 2023, 1,134,000 shares remained in abeyance. These shares were fully issued to the holder in January 2024.

As a result of the October 2023 Inducement, the Company presents a deemed dividend for the modification of certain of its existing warrants and issuance of the October 2023 Common Stock Warrants of \$7.5 and \$0 million for the years ended December 31, 2023 and 2022, respectively. The deemed dividend was included in net loss attributable to common stockholders in the calculation of net loss per share in the consolidated statements of operations.

Our major sources of cash have been proceeds from the sale of equity securities and the exercise of warrants. We expect to use these proceeds primarily for general corporate purposes, which may include financing our growth, developing new or existing product candidates, and funding capital expenditures, acquisitions and investments.

We believe that our cash and cash equivalents are only sufficient to fund our operating expenses into the third quarter of 2024. We will need to secure additional funds through equity or debt offerings, or other potential sources such as partnerships to fully develop and commercialize, if approved, our product candidates. Our estimate as to how long we expect our existing cash to be able to continue to fund our operations is based on assumptions that may prove to be wrong, and we could use our available capital resources sooner than we currently expect. Further, changing circumstances, some of which may be beyond our control, could cause us to consume capital faster than we currently anticipate, and we may need to seek additional funds sooner than planned. We cannot be certain that additional funding will be available on acceptable terms, or at all. These factors individually and collectively raise substantial doubt about our ability to continue as a going concern.

## **Off-Balance Sheet Arrangements**

We are not party to any off-balance sheet transactions. We have no guarantees or obligations other than those which arise out of normal business operations.

## **Cash Flows for the Years Ended December 31, 2023 and 2022**

### *Operating Activities*

Net cash used in operating activities was \$47.6 million for the year ended December 31, 2023, compared to \$57.6 million for the year ended December 31, 2022. The decrease in net cash used in operating activities was due primarily to greater manufacturing costs to support the BLA filing of cosibelimab in the prior period as well as a reduction in clinical costs between the two periods.

### *Investing Activities*

There were no investing activities for the years ended December 31, 2023 and 2022.

### *Financing Activities*

Net cash provided by financing activities was \$40.5 million for the year ended December 31, 2023, which related to net proceeds of \$30.3 million from the issuance of common shares and warrants from the February 2023 Registered Direct Offering, April 2023 Registered Direct Offering, May 2023 Registered Direct Offering and July 2023 Registered Direct Offering, as well as \$10.1 million from the October 2023 Inducement. Net cash provided by financing activities was \$14.9 million for the year ended December 31, 2022, which related to net proceeds of \$9.9 million from the issuance of common stock as part of our ATM offerings, as well as net proceeds of \$6.7 million from the issuance of common shares and warrants from the December 2022 Registered Direct Offering. The prior year's amount was partially offset by \$1.7 million paid for taxes related to the net settlement of shares for employee stock vestings.

## **Recently Issued Accounting Standards**

See Note 2 to our Financial Statements.

## **Item 7A. Quantitative and Qualitative Disclosures About Market Risks**

Market risk represents the risk of loss that may result from the change in value of financial instruments due to fluctuations in their market price. Market risk is inherent in all financial instruments. Market risk may be exacerbated in times of trading illiquidity when market participants refrain from transacting in normal quantities and/or at normal bid-offer spreads. The primary quantifiable market risk associated with our financial instruments is sensitivity to changes in interest rates. Interest rate risk represents the potential loss from adverse changes in market interest rates. The primary objective of our investment activities is to preserve principal while maximizing our income from investments and minimizing our market risk. As of December 31, 2023, our portfolio of financial instruments consists of cash equivalents, including money market funds. Due to the short-term nature of these financial instruments, we believe there is no material exposure to interest rate risk, and/or credit risk, arising from our portfolio of financial instruments.

Our assets and liabilities are denominated in U.S. dollars. Consequently, we have not considered it necessary to use foreign currency contracts or other derivative instruments to manage changes in currency rates. We do not now, nor do we plan to, use derivative financial instruments for speculative or trading purposes. However, these circumstances might change.

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

The information required by this Item is set forth in the financial statements and notes thereto beginning at page F-1 of this Annual Report on Form 10-K.

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

None.

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

*Evaluation of Disclosure Controls and Procedures.*

As of December 31, 2023, management carried out, under the supervision and with the participation of our principal executive officer and principal financial officer, an evaluation of the effectiveness of the design and operation of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act). Our disclosure controls and procedures are designed to provide reasonable assurance that information we are required to disclose in the reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in applicable rules and forms. Based upon that evaluation, our principal executive officer and principal financial officer concluded that, as of December 31, 2023, our disclosure controls and procedures were effective.

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

Our management is responsible for establishing and maintaining adequate internal control over financial reporting (as defined in Rule 13a-15(f) or Rule 15d-15(f) under the Exchange Act). Our management assessed the effectiveness of our internal control over financial reporting as of December 31, 2023. In making this assessment, our management used the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission, known as COSO, in Internal Control-Integrated Framework (2013). Our management has concluded that, as of December 31, 2023, our internal control over financial reporting was effective based on these criteria.

*Changes in Internal Control Over Financial Reporting.*

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

*Limitations on the Effectiveness of Controls.*

Our management, including our principal executive officer and principal financial officer, does not expect that our disclosure controls and procedures or our internal control over financial reporting will prevent all errors and all fraud. A control system, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met. Further, the design of a control system must reflect the fact that there are resource constraints, and the benefits of controls must be considered relative to their costs. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues and instances of fraud, if any, within our company have been detected.

**Item  
9B. Other Information**

During the three months ended December 31, 2023, none of our directors or officers (as defined in Rule 16a-1(f) of the Securities Exchange Act of 1934, as amended) adopted, modified or terminated a Rule 10b5-1 trading arrangement or non-Rule 10b5-1 trading arrangement (as such terms are defined in Item 408 of Regulation S-K of the Securities Act of 1933).

**Item 9C. Disclosure Regarding Foreign Jurisdictions that Prevent Inspections**

Not applicable.

**PART III**

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

The information required by this Item is incorporated herein by reference from our Proxy Statement for our 2024 Annual Meeting of Stockholders.

**Item 11. Executive Compensation**

The information required by this Item is incorporated herein by reference from our Proxy Statement for our 2024 Annual Meeting of Stockholders.

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

The information required by this Item is incorporated herein by reference from our Proxy Statement for our 2024 Annual Meeting of Stockholders.

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

The information required by this Item is incorporated herein by reference from our Proxy Statement for our 2024 Annual Meeting of Stockholders.

**Item 14. Principal Accounting Fees and Services**

The information required by this Item is incorporated herein by reference from our Proxy Statement for our 2024 Annual Meeting of Stockholders.



**PART IV**

**Item 15. Exhibits and Financial Statement Schedules**

**(a) Financial Statements.**

The following financial statements are filed as part of this report:

<a href="#">Report of Independent Registered Public Accounting Firm</a> (KPMG, LLP; Boston, MA; PCAOB ID#185)	F-2
Financial Statements:	
<a href="#">Balance Sheets as of December 31, 2023 and 2022</a>	F-4
<a href="#">Statements of Operations for the Years Ended December 31, 2023 and 2022</a>	F-5
<a href="#">Statements of Stockholders' Equity for the Years Ended December 31, 2023 and 2022</a>	F-6
<a href="#">Statements of Cash Flows for the Years Ended December 31, 2023 and 2022</a>	F-7
<a href="#">Notes to Financial Statements</a>	F-8 - F-27

**(b)Exhibits.**

<b>Exhibit No.</b>	<b>Description</b>
3.1	<a href="#">Amended and Restated Certificate of Incorporation of Checkpoint Therapeutics, Inc., filed as Exhibit 3.1 to Form 10-12G filed on July 11, 2016 (File No. 000-55506) and incorporated herein by reference.</a>
3.2	<a href="#">Certificate of Amendment to Amended and Restated Certificate of Incorporation of Checkpoint Therapeutics, Inc., filed as Exhibit 3.2 to Form 10-12G filed on July 11, 2016 (File No. 000-55506) and incorporated herein by reference.</a>
3.2.1	<a href="#">Certificate of Amendment to Amended and Restated Certificate of Incorporation of Checkpoint Therapeutics, Inc., filed as Exhibit 10.1 to Quarterly Report on Form 10-Q filed on August 7, 2018 (File No. 001-38128) and incorporated herein by reference.</a>
3.2.2	<a href="#">Certificate of Amendment to Amended and Restated Certificate of Incorporation of Checkpoint Therapeutics, Inc., filed as Exhibit 3.1 to Form 8-K filed on June 4, 2020 (File No. 001-38128) and incorporated herein by reference.</a>
3.2.3	<a href="#">Certificate of Amendment to Amended and Restated Certificate of Incorporation of Checkpoint Therapeutics, Inc., filed as Exhibit 3.1 to Form 8-K filed on June 11, 2021 (File No. 001-38128) and incorporated herein by reference.</a>
3.2.4	<a href="#">Certificate of Amendment to Amended and Restated Certificate of Incorporation of Checkpoint Therapeutics, Inc., filed as Exhibit 3.1 to Form 8-K filed on December 5, 2022 (File No. 001-38128) and incorporated herein by reference.</a>
3.2.5	<a href="#">Certificate of Amendment to Amended and Restated Certificate of Incorporation of Checkpoint Therapeutics, Inc., filed as Exhibit 3.1 to Form 8-K filed on June 13, 2023 (File No. 001-38128) and incorporated herein by reference.</a>
3.3	<a href="#">Bylaws of Checkpoint Therapeutics, Inc., filed as Exhibit 3.3 to Form 10-12G filed on July 11, 2016 (File No. 000-55506) and incorporated herein by reference.</a>
4.1	<a href="#">Specimen certificate evidencing shares of common stock, filed as Exhibit 4.1 to Form 10-12G filed on July 11, 2016 (File No. 000-55506) and incorporated herein by reference.</a>
4.2	<a href="#">Form of warrant agreement, filed as Exhibit 4.2 to Form 10-12G filed on July 11, 2016 (File No. 000-55506) and incorporated herein by reference.</a>
4.3	<a href="#">Form of pre-funded common stock purchase warrant, filed as Exhibit 4.1 to Form 8-K filed on December 16, 2022 (File No. 001-38128) and incorporated herein by reference.</a>
4.4	<a href="#">Form of Series A/B common stock purchase warrant, filed as Exhibit 4.2 to Form 8-K filed on December 16, 2022 (File No. 001-38128) and incorporated herein by reference.</a>
4.5	<a href="#">Form of placement agent warrant, filed as Exhibit 4.3 to Form 8-K filed on December 15, 2022 (File No. 001-38128) and incorporated herein by reference.</a>
4.6	<a href="#">Description of Securities of Checkpoint Therapeutics, Inc. *</a>
4.7	<a href="#">Form of pre - funded common stock purchase warrant, filed as Exhibit 4.1 to Form 8 - K filed on February 22, 2023 (File No. 001 - 38128) and incorporated herein by reference.</a>
4.8	<a href="#">Form of Series A/B common stock purchase warrant, filed as Exhibit 4.2 to Form 8 - K filed on February 22, 2023 (File No. 001 - 38128) and incorporated herein by reference.</a>
4.9	<a href="#">Form of placement agent warrant, filed as Exhibit 4.3 to Form 8 - K filed on February 22, 2023 (File No. 001 - 38128) and incorporated herein by reference.</a>
4.10	<a href="#">Form of Series A/B common stock purchase warrant, filed as Exhibit 4.1 to Form 8 - K filed on April 4, 2023 (File No. 001 - 38128) and incorporated herein by reference.</a>
4.11	<a href="#">Form of placement agent warrant, filed as Exhibit 4.2 to Form 8 - K filed on April 4, 2023 (File No. 001 - 38128) and incorporated herein by reference.</a>

## Table of Contents

4.12	<a href="#"><u>Form of pre - funded common stock purchase warrant, filed as Exhibit 4.1 to Form 8 - K filed on May 24, 2023 (File No. 001 - 38128) and incorporated herein by reference.</u></a>
4.13	<a href="#"><u>Form of Series A/B common stock purchase warrant, filed as Exhibit 4.2 to Form 8 - K filed on May 24, 2023 (File No. 001 - 38128) and incorporated herein by reference.</u></a>
4.14	<a href="#"><u>Form of placement agent warrant, filed as Exhibit 4.3 to Form 8 - K filed on May 24, 2023 (File No. 001 - 38128) and incorporated herein by reference.</u></a>
4.15	<a href="#"><u>Form of pre - funded common stock purchase warrant, filed as Exhibit 4.1 to Form 8 - K filed on July 31, 2023 (File No. 001 - 38128) and incorporated herein by reference.</u></a>
4.16	<a href="#"><u>Form of Series A/B common stock purchase warrant, filed as Exhibit 4.2 to Form 8 - K filed on July 31, 2023 (File No. 001 - 38128) and incorporated herein by reference.</u></a>
4.17	<a href="#"><u>Form of placement agent warrant, filed as Exhibit 4.3 to Form 8 - K filed on July 31, 2023 (File No. 001 - 38128) and incorporated herein by reference.</u></a>
4.18	<a href="#"><u>Form of Series A/B common stock purchase warrant, filed as Exhibit 4.1 to Form 8 - K filed on October 3, 2023 (File No. 001 - 38128) and incorporated herein by reference.</u></a>
4.19	<a href="#"><u>Form of placement agent warrant, filed as Exhibit 4.2 to Form 8 - K filed on October 3, 2023 (File No. 001 - 38128) and incorporated herein by reference.</u></a>
4.20	<a href="#"><u>Form of Indenture, filed as Exhibit 4.4 to Form S - 3 filed on March 24, 2023 (File No. 001 - 38128) and incorporated herein by reference.</u></a>
10.1	<a href="#"><u>Founders Agreement between Fortress Biotech, Inc. and Checkpoint Therapeutics, Inc. dated March 17, 2015, filed as Exhibit 10.1 to Form 10-12G filed on July 11, 2016 (File No. 000-55506) and incorporated herein by reference.</u></a>
10.2	<a href="#"><u>Amended and Restated Founders Agreement between Fortress Biotech, Inc. and Checkpoint Therapeutics, Inc. dated July 11, 2016 and effective as of March 17, 2015, filed as Exhibit 10.2 to Form 10-12G filed on July 11, 2016 (File No. 000-55506) and incorporated herein by reference.</u></a>
10.3	<a href="#"><u>Amendment 1 to Amended and Restated Founders Agreement between Fortress Biotech, Inc. and Checkpoint Therapeutics, Inc., dated October 5, 2017 filed as Exhibit 10.1 to Quarterly Report on Form 10-Q filed on November 3, 2017 (File No. 001-38128) and incorporated herein by reference.</u></a>
10.4	<a href="#"><u>Management Services Agreement between Fortress Biotech, Inc. and Checkpoint Therapeutics, Inc. dated March 17, 2015, filed as Exhibit 10.3 to Form 10-12G filed on July 11, 2016 (File No. 000-55506) and incorporated herein by reference.</u></a>
10.5	<a href="#"><u>Common Stock Warrant issued by Checkpoint Therapeutics, Inc. to NSC Biotech Venture Fund I, LLC dated July 30, 2015, filed as Exhibit 10.5 to Form 10-12G filed on July 11, 2016 (File No. 000-55506) and incorporated herein by reference.</u></a>
10.6	<a href="#"><u>License Agreement by and between Checkpoint Therapeutics, Inc. and Dana-Farber Cancer Institute, Inc. dated March 2, 2015, filed as Exhibit 10.6 to Form 10-12G filed on July 11, 2016 (File No. 000-55506) and incorporated herein by reference. **</u></a>
10.7	<a href="#"><u>Amendment 1 to License Agreement by and between Checkpoint Therapeutics, Inc. and Dana-Farber Cancer Institute dated October 5, 2015, filed as Exhibit 10.7 to Form 10-12G filed on July 11, 2016 (File No. 000-55506) and incorporated herein by reference. **</u></a>
10.8	<a href="#"><u>Amendment 2 to License Agreement by and between Checkpoint Therapeutics, Inc. and Dana-Farber Cancer Institute dated April 12, 2016, filed as Exhibit 10.8 to Annual Report on Form 10-K filed on March 17, 2017 (File No. 000-55506) and incorporated herein by reference.</u></a>

## Table of Contents

10.9	<a href="#"><u>Amendment 3 to License Agreement by and between Checkpoint Therapeutics, Inc. and Dana-Farber Cancer Institute dated October 24, 2016, filed as Exhibit 10.9 to Annual Report on Form 10-K filed on March 17, 2017 (File No. 000-55506) and incorporated herein by reference.</u></a>
10.10	<a href="#"><u>License Agreement by and between NeuPharma Inc. and Coronado Biosciences, Inc. (Fortress' predecessor) dated March 17, 2015 (assigned to Checkpoint Therapeutics, Inc. under the Assignment and Assumption Agreement by and between Fortress Biotech, Inc. and Checkpoint Therapeutics, Inc. dated March 17, 2015), filed as Exhibit 10.8 to Form 10-12G filed on July 11, 2016 (File No. 000-55506) and incorporated herein by reference. **</u></a>
10.11	<a href="#"><u>Amendment 1 to License Agreement by and between NeuPharma Inc. and Checkpoint Therapeutics, Inc. dated February 21, 2017, filed as Exhibit 10.11 to Annual Report on Form 10-K filed on March 17, 2017 (File No. 000-55506) and incorporated herein by reference.</u></a>
10.12	<a href="#"><u>Collaboration Agreement by and between Checkpoint Therapeutics, Inc. and TG Therapeutics, Inc. dated March 3, 2015, filed as Exhibit 10.9 to Form 10-12G filed on July 11, 2016 (File No. 000-55506) and incorporated herein by reference. **</u></a>
10.12.1	<a href="#"><u>Amended and Restated Collaboration Agreement by and between Checkpoint Therapeutics, Inc. and TG Therapeutics, Inc. dated June 19, 2019, filed as Exhibit 10.1 to Quarterly Report on Form 10-Q filed on August 8, 2019 (File No. 001-38128) and incorporated herein by reference. **</u></a>
10.12.2	<a href="#"><u>Mutual Termination Agreement (Sublicense) by and between Checkpoint Therapeutics, Inc. and TG Therapeutics, Inc. dated September 30, 2023.</u></a>
10.12.3	<a href="#"><u>Mutual Termination Agreement (Collaboration) by and between Checkpoint Therapeutics, Inc. and TG Therapeutics, Inc. dated September 30, 2023.</u></a>
10.13	<a href="#"><u>Checkpoint Therapeutics, Inc. Amended and Restated 2015 Incentive Plan, filed as Exhibit 10.10 to Form 10-12G filed on July 11, 2016 (File No. 000-55506) and incorporated herein by reference. #</u></a>
10.13.1	<a href="#"><u>Checkpoint Therapeutics, Inc. Amended and Restated 2015 Incentive Plan, filed as Exhibit 10.1 to Quarterly Report on Form 10-Q filed on August 9, 2017 (File No. 001-38128) and incorporated herein by reference. #</u></a>
10.14	<a href="#"><u>Checkpoint Therapeutics, Inc. Amended and Restated 2015 Incentive Plan, filed as Exhibit 10.1 to Form 8-K filed on June 4, 2020 (File No. 001-38128) and incorporated herein by reference. #</u></a>
10.14.1	<a href="#"><u>Amendment to Checkpoint Therapeutics, Inc. Amended and Restated 2015 Incentive Plan, filed as Exhibit 10.1 to Form 8-K on December 5, 2022 (File No. 001-38128) and incorporated herein by reference. #</u></a>
10.15	<a href="#"><u>Checkpoint Therapeutics, Inc. Amended and Restated 2015 Incentive Plan, filed as Exhibit 10.1 to Form 8 - K filed on June 13, 2023 (File No. 001 - 38128) and incorporated herein by reference. #</u></a>
10.16	<a href="#"><u>Executive Employment Agreement by and between James F. Oliviero III and Checkpoint Therapeutics, Inc. dated October 13, 2015, filed as Exhibit 10.11 to Form 10-12G filed on July 11, 2016 (File No. 000-55506) and incorporated herein by reference. #</u></a>
10.17	<a href="#"><u>Amendment to Executive Employment Agreement by and between James F. Oliviero III and Checkpoint Therapeutics, Inc. dated September 27, 2016, filed as Exhibit 10.1 to Form 8-K filed on October 3, 2016 (File No. 000-55506) and incorporated herein by reference. #</u></a>
10.18	<a href="#"><u>Amendment No. 2, dated December 15, 2016, to the Executive Employment Agreement dated October 13, 2015, by and between Checkpoint Therapeutics, Inc. and James F. Oliviero III, filed as Exhibit 10.16 to Annual Report on Form 10-K filed on March 17, 2017 (File No. 000-55506) and incorporated herein by reference. #</u></a>
10.19	<a href="#"><u>Amendment No. 3, dated January 30, 2018, to the Executive Employment Agreement dated October 13, 2015, by and between Checkpoint Therapeutics, Inc. and James F. Oliviero III, filed as Exhibit 10.21 to Annual Report on Form 10-K filed on March 16, 2018 (File No. 001-38128) and incorporated herein by reference. #</u></a>

## Table of Contents

10.20	<a href="#"><u>Amendment No. 4, dated October 7, 2019, to the Executive Employment Agreement dated October 13, 2015, by and between Checkpoint Therapeutics, Inc. and James F. Oliviero III, filed as Exhibit 10.1 to Quarterly Report on Form 10-Q filed on November 12, 2019 (File No. 001-38128) and incorporated herein by reference. #</u></a>
10.21	<a href="#"><u>Amendment No. 5, dated September 24, 2020, to the Executive Employment Agreement dated October 13, 2015, by and between Checkpoint Therapeutics, Inc. and James F. Oliviero III, filed as Exhibit 10.1 to Quarterly Report on Form 10-Q filed on November 6, 2020 (File No. 001-38128) and incorporated herein by reference. #</u></a>
10.22	<a href="#"><u>Non-Employee Directors Compensation Plan, filed as Exhibit 10.13 to Form 10-12G filed on July 11, 2016 (File No. 000-55506) and incorporated herein by reference. #</u></a>
10.23	<a href="#"><u>Amended and Restated Non-Employee Directors Compensation Plan, filed as Exhibit 10.2 to Quarterly Report on Form 10-Q filed on August 9, 2017 (File No. 001-38128) and incorporated herein by reference. #</u></a>
10.24	<a href="#"><u>Amended and Restated Non - Employee Directors Compensation Plan, filed as Exhibit 10.1 to Quarterly Report on Form 10 - Q filed on August 14, 2023 (File No. 001 - 38128) and incorporated herein by reference. #</u></a>
10.25	<a href="#"><u>Board Advisory Services Agreement by and between Caribe BioAdvisors, LLC and Checkpoint Therapeutics, Inc., dated January 1, 2017, filed as Exhibit 10.19 to Annual Report on Form 10-K filed on March 17, 2017 (File No. 000-55506) and incorporated herein by reference. #</u></a>
10.26	<a href="#"><u>License Agreement by and between Jubilant Biosys Limited and Checkpoint Therapeutics, Inc., dated May 26, 2016, filed as Exhibit 10.18 to Form 10-12G filed on July 11, 2016 (File No. 000-55506) and incorporated herein by reference. **</u></a>
10.27	<a href="#"><u>Amendment 1 to License Agreement by and between Jubilant Biosys Limited and Checkpoint Therapeutics, Inc. dated December 13, 2016, filed as Exhibit 10.26 to Annual Report on Form 10-K filed on March 17, 2017 (File No. 000-55506) and incorporated herein by reference.</u></a>
10.28	<a href="#"><u>Amendment 2 to License Agreement by and between Jubilant Biosys Limited and Checkpoint Therapeutics, Inc. dated March 31, 2017, filed as Exhibit 10.2 to Quarterly Report on Form 10-Q filed on May 10, 2017 (File No. 000-55506) and incorporated herein by reference.</u></a>
10.29	<a href="#"><u>Sublicense Agreement by and between TG Therapeutics, Inc. and Checkpoint Therapeutics, Inc., dated May 26, 2016, filed as Exhibit 10.19 to Form 10-12G/A filed on August 19, 2016 (File No. 000-55506) and incorporated herein by reference. **</u></a>
10.30	<a href="#"><u>Amendment 1 to Sublicense Agreement by and between TG Therapeutics, Inc. and Checkpoint Therapeutics, Inc. dated December 13, 2016, filed as Exhibit 10.28 to Annual Report on Form 10-K filed on March 17, 2017 (File No. 000-55506) and incorporated herein by reference.</u></a>
10.31	<a href="#"><u>Amendment 2 to Sublicense Agreement by and between TG Therapeutics, Inc. and Checkpoint Therapeutics, Inc. dated March 17, 2017, filed as Exhibit 10.1 to Quarterly Report on Form 10-Q filed on May 10, 2017 (File No. 000-55506) and incorporated herein by reference.</u></a>
10.32	<a href="#"><u>Assignment and Assumption Agreement by and between Fortress Biotech, Inc. and Checkpoint Therapeutics, Inc. dated March 17, 2015, filed as Exhibit 10.21 to Form 10-12G/A filed on August 19, 2016 (File No. 000-55506) and incorporated herein by reference.</u></a>
10.33	<a href="#"><u>Collaboration Agreement by and between Adimab, LLC and Checkpoint Therapeutics, Inc., dated January 22, 2019, filed as exhibit 10.31 to Annual Report on Form 10-K filed on March 18, 2019 (File No. 001-38128) and incorporated herein by reference. **</u></a>
10.34	<a href="#"><u>Master Services Agreement, dated November 8, 2017, between Checkpoint Therapeutics, Inc. and Samsung Biologics Co., Ltd., filed as Exhibit 10.2 to Quarterly Report on Form 10-Q filed on November 6, 2020 (File No. 001-38128) and incorporated herein by reference. **</u></a>

## Table of Contents

10.35	<a href="#"><u>Securities Purchase Agreement, dated December 14, 2022, between Checkpoint Therapeutics, Inc. and the Purchaser named therein, filed as Exhibit 10.1 to Form 8-K filed on December 16, 2022 (File No. 001-38128) and incorporated herein by reference.</u></a>
10.36	<a href="#"><u>Securities Purchase Agreement, dated February 20, 2023, between Checkpoint Therapeutics, Inc. and the Purchaser named therein, filed as Exhibit 10.1 to Form 8-K filed on February 22, 2023 (File No. 001-38128) and incorporated herein by reference.</u></a>
10.37	<a href="#"><u>Securities Purchase Agreement, dated March 30, 2023, between Checkpoint Therapeutics, Inc. and the Purchasers named therein, filed as Exhibit 10.1 to Form 8-K filed on April 4, 2023 (File No. 001-38128) and incorporated herein by reference.</u></a>
10.38	<a href="#"><u>Securities Purchase Agreement, dated May 23, 2023, between Checkpoint Therapeutics, Inc. and the Purchaser named therein, filed as Exhibit 10.1 to Form 8-K filed on May 24, 2023 (File No. 001-38128) and incorporated herein by reference.</u></a>
10.39	<a href="#"><u>Securities Purchase Agreement, dated July 28, 2023, between Checkpoint Therapeutics, Inc. and the Purchasers named therein, filed as Exhibit 10.1 to Form 8-K filed on July 31, 2023 (File No. 001-38128) and incorporated herein by reference.</u></a>
10.40	<a href="#"><u>Inducement Offer to Exercise Warrants Issued in December 2022 and February 2023, filed as Exhibit 10.1 to Form 8-K filed on October 3, 2023 (File No. 001-38128) and incorporated herein by reference.</u></a>
23.1	<a href="#"><u>Consent of Independent Registered Public Accounting Firm, KPMG, LLP. *</u></a>
24.1	<a href="#"><u>Power of Attorney (included on signature page). *</u></a>
31.1	<a href="#"><u>Certification of Principal Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002. *</u></a>
31.2	<a href="#"><u>Certification of Principal Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002. *</u></a>
32.1	<a href="#"><u>Certification of Principal Executive Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002. *</u></a>
32.2	<a href="#"><u>Certification of Principal Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002. *</u></a>
97.1	<a href="#"><u>Policy Related to Recovery of Erroneously Awarded Compensation. *</u></a>
101	The following financial information from the Company's Annual Report on Form 10-K for the period ended December 31, 2023, formatted in Extensible Business Reporting Language (XBRL): (i) the Consolidated Balance Sheets, (ii) the Consolidated Statements of Operations, (iii) the Consolidated Statement of Stockholders' Equity, (iv) the Consolidated Statements of Cash Flows, and (v) Notes to the Consolidated Financial Statements.
104	Cover page from the Company's Annual Report on Form 10-K for the year ended December 31, 2023, formatted in Inline XBRL.

\* Filed herewith.

\*\* Certain portions of this exhibit have been omitted pursuant to Item 601(b)(10) of Regulation S-K.

# Management Compensation Arrangement.

### **Item**

### **16. Form 10-K Summary**

None.

**INDEX TO FINANCIAL STATEMENTS**

<a href="#">Report of Independent Registered Public Accounting Firm ( KPMG, LLP ; Boston, MA ; PCAOB ID# 185 )</a>	F-2
<a href="#">Balance Sheets as of December 31, 2023 and 2022</a>	F-4
<a href="#">Statements of Operations for the Years Ended December 31, 2023 and 2022</a>	F-5
<a href="#">Statements of Changes in Stockholders' Equity (Deficit) for the Years Ended December 31, 2023 and 2022</a>	F-6
<a href="#">Statements of Cash Flows for the Years Ended December 31, 2023 and 2022</a>	F-7
<a href="#">Notes to Financial Statements</a>	F-8 - F-27



## **Report of Independent Registered Public Accounting Firm**

To the Stockholders and Board of Directors  
Checkpoint Therapeutics, Inc.

### *Opinion on the Financial Statements*

We have audited the accompanying balance sheets of Checkpoint Therapeutics, Inc. (the Company) as of December 31, 2023 and 2022, the related statements of operations, stockholders' equity (deficit), and cash flows for each of the years in the two-year period ended December 31, 2023, and the related notes (collectively, the financial statements). In our opinion, the financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2023, and the results of its operations and its cash flows for each of the years in the two-year period ended December 31, 2023, in conformity with U.S. generally accepted accounting principles.

### *Going Concern*

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

### *Basis for Opinion*

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

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

### *Critical Audit Matter*

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

*Accounting for and fair value of the warrant inducement transaction*

As discussed in Notes 6 and 7 to the financial statements, in October 2023, the Company entered into a warrant inducement transaction with a holder of certain existing warrants. As part of the inducement, the Company issued new unregistered Series A and Series B warrants. The Series A and B warrants are exercisable immediately upon issuance with an exercise price of \$1.51 per share. The total gross proceeds from the inducement were approximately \$11.1 million with net proceeds of approximately \$10.0 million after deducting commissions and other transaction costs. Prior to the inducement, some of the existing warrants were liability classified and accounted for at fair value. At the date of the inducement, the Company revalued the existing liability classified warrants which resulted in a loss on common stock warrant liabilities. The other existing warrants, which were equity classified, were revalued to calculate the difference in fair value as a result of the change in exercise price, which was recorded as a deemed dividend. The Company also calculated the fair value of the Series A and Series B warrants and allocated that fair value to the existing warrants on a weighted basis. The Company used the Black-Scholes model to determine the estimated fair value of the warrants.

We identified the evaluation of the Company's accounting for the inducement transaction and the determination of the fair value of the warrants as a critical audit matter. Specifically, challenging and complex auditor judgment and specialized skills and knowledge were required in evaluating 1) the application of the relevant accounting guidance for equity and liability classified warrants and 2) the estimated fair value of the warrants due to the degree of subjectivity associated with the volatility assumption. The following are the primary procedures we performed to address this critical audit matter.

We inspected the Company's accounting analysis for the transaction. We involved professionals with specialized skills and knowledge, who assisted in inspecting the underlying agreements to understand the relevant terms and conditions of the transaction and evaluating whether the Company's accounting for the transaction is in accordance with the relevant accounting guidance. We also involved valuation professionals with specialized skills and knowledge who assisted in:

- developing an independent expectation of the volatility assumption based on consideration of implied share price volatility information
- developing an independent range of the fair value of the warrant liability for the December 2022 warrants, the fair value of the February 2023 equity classified warrants, and the fair value of both the Series A and Series B warrants as of the inducement date using publicly available market data and the independently developed volatility assumption
- comparing the independently developed ranges of the fair value to the respective fair value of the warrant liability and the equity classified awards determined by the Company.

*KPMG LLP*

We have served as the Company's auditor since 2022.  
Boston, Massachusetts  
March 22, 2024

**CHECKPOINT THERAPEUTICS, INC.**  
**BALANCE SHEETS**  
(in thousands, except share and per share amounts)

	December 31,	
	2023	2022
<b>ASSETS</b>		
Current Assets:		
Cash and cash equivalents	\$ 4,928	\$ 12,068
Prepaid expenses and other assets	450	1,149
Other receivables - related party	—	73
Total current assets	5,378	13,290
<b>Total Assets</b>	<b>\$ 5,378</b>	<b>\$ 13,290</b>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY (DEFICIT)</b>		
Current Liabilities:		
Accounts payable and accrued expenses	\$ 15,485	\$ 20,297
Accounts payable and accrued expenses - related party	2,815	1,306
Common stock warrant liabilities	125	11,170
Total current liabilities	18,425	32,773
<b>Total Liabilities</b>	<b>18,425</b>	<b>32,773</b>
<b>Commitments and Contingencies</b>		
<b>Stockholders' Equity (Deficit)</b>		
Common Stock (\$ 0.0001 par value), 80,000,000 and 50,000,000 shares authorized as of December 31, 2023 and 2022, respectively		
Class A common shares, 700,000 shares issued and outstanding as of December 31, 2023 and December 31, 2022	—	—
Common shares, 27,042,035 and 9,586,683 shares issued and outstanding as of December 31, 2023 and December 31, 2022, respectively	3	1
Common stock issuable, 1,492,915 and 368,907 shares as of December 31, 2023 and December 31, 2022, respectively	3,419	1,885
Additional paid-in capital	297,864	241,117
Accumulated deficit	( 314,333 )	( 262,486 )
Total Stockholders' Equity (Deficit)	( 13,047 )	( 19,483 )
<b>Total Liabilities and Stockholders' Equity (Deficit)</b>	<b>\$ 5,378</b>	<b>\$ 13,290</b>

*The accompanying notes are an integral part of these financial statements.*

**CHECKPOINT THERAPEUTICS, INC.**  
**STATEMENTS OF OPERATIONS**  
(in thousands, except share and per share amounts)

	For the year ended December 31,	
	2023	2022
Revenue - related party	\$ 103	\$ 192
Operating expenses:		
Research and development	43,566	49,825
General and administrative	8,685	8,700
Total operating expenses	52,251	58,525
Loss from operations	( 52,148 )	( 58,333 )
Other income (loss):		
Interest income	84	160
Gain (loss) on common stock warrant liabilities	217	( 4,451 )
Total other income (loss)	301	( 4,291 )
<b>Net Loss</b>	<b>\$ ( 51,847 )</b>	<b>\$ ( 62,624 )</b>
<b>Loss per Share:</b>		
Basic and diluted net loss per common share outstanding	\$ ( 3.17 )	\$ ( 7.09 )
Basic and diluted weighted average number of common shares outstanding	18,742,494	8,835,521

*The accompanying notes are an integral part of these financial statements.*

**CHECKPOINT THERAPEUTICS, INC.**  
**STATEMENTS OF STOCKHOLDERS' EQUITY (DEFICIT)**  
(in thousands, except share amounts)

	Class A Common Shares		Common Shares		Common Stock Issuable	Additional Paid-in Capital	Accumulated Deficit	Total Stockholders' Equity (Deficit)
	Shares	Amount	Shares	Amount				
<b>Balances at December 31, 2021</b>	<b>700,000</b>	<b>\$ —</b>	<b>7,757,440</b>	<b>\$ 1</b>	<b>\$ 6,598</b>	<b>\$223,009</b>	<b>\$( 199,862 )</b>	<b>\$ 29,746</b>
Issuance of common shares, net of offering costs - At-the-market offering	—	—	532,816	—	—	9,872	—	9,872
Stock-based compensation expense	—	—	143,571	—	—	2,924	—	2,924
Issuance of common shares, net of offering costs - Registered direct offering	—	—	950,000	—	—	—	—	—
Issuance of common shares - Founders Agreement	—	—	268,813	—	( 6,598 )	7,016	—	418
Common shares issuable - Founders Agreement	—	—	—	—	1,885	—	—	1,885
Net settlement of shares withheld for payment of employee taxes	—	—	( 64,856 )	—	—	( 1,698 )	—	( 1,698 )
Fractional share adjustment	—	—	( 1,101 )	—	—	( 6 )	—	( 6 )
Net loss	—	—	—	—	—	—	( 62,624 )	( 62,624 )
<b>Balances at December 31, 2022</b>	<b>700,000</b>	<b>\$ —</b>	<b>9,586,683</b>	<b>\$ 1</b>	<b>\$ 1,885</b>	<b>\$241,117</b>	<b>\$( 262,486 )</b>	<b>\$ ( 19,483 )</b>
Stock-based compensation expense	—	—	1,091,098	—	—	2,897	—	2,897
Issuance of common shares, net of offering costs - Registered direct offerings	—	—	6,957,186	1	—	30,124	—	30,125
Issuance of common shares - Founders Agreement	—	—	767,567	—	( 1,885 )	2,837	—	952
Common shares issuable - Founders Agreement	—	—	—	—	3,419	—	—	3,419
Exercise of prefunded and common stock warrants, including inducement	—	—	8,639,501	1	—	20,889	—	20,890
Net loss	—	—	—	—	—	—	( 51,847 )	( 51,847 )
<b>Balances at December 31, 2023</b>	<b>700,000</b>	<b>\$ —</b>	<b>27,042,035</b>	<b>\$ 3</b>	<b>\$ 3,419</b>	<b>\$297,864</b>	<b>\$( 314,333 )</b>	<b>\$ ( 13,047 )</b>

*The accompanying notes are an integral part of these financial statements.*

**CHECKPOINT THERAPEUTICS, INC.**  
**STATEMENTS OF CASH FLOWS**  
(in thousands)

	For the year ended December 31,	
	2023	2022
<b>Cash Flows from Operating Activities:</b>		
Net loss	\$ ( 51,847 )	\$ ( 62,624 )
Adjustments to reconcile net loss to net cash used in operating activities:		
Stock-based compensation expense	2,897	2,924
Issuance of common shares - Founders Agreement	952	418
Common shares issuable - Founders Agreement	3,419	1,885
(Gain) loss on common stock warrant liabilities	( 217 )	4,451
Changes in operating assets and liabilities:		
Prepaid expenses and other assets	699	( 173 )
Other receivables - related party	73	( 56 )
Accounts payable and accrued expenses	( 5,075 )	( 4,622 )
Accounts payable and accrued expenses - related party	1,509	243
Net cash used in operating activities	( 47,590 )	( 57,554 )
<b>Cash Flows from Financing Activities:</b>		
Issuance of common shares - Registered direct offerings	33,621	7,500
Payment of offering costs for the issuance of common shares - Registered direct offerings	( 3,289 )	( 781 )
Issuance of common shares - At-the-market offering	—	10,120
Payment of offering costs for the issuance of common shares - At-the-market offering	—	( 248 )
Net settlement of shares withheld for payment of employee taxes	—	( 1,698 )
Payment of Fractional shares	—	( 6 )
Cash received for exercise of warrants	11,134	—
Payment of transactional costs for exercise of warrants	( 1,016 )	—
Net cash provided by financing activities	40,450	14,887
Net decrease in cash and cash equivalents	( 7,140 )	( 42,667 )
Cash and cash equivalents at beginning of period	12,068	54,735
<b>Cash and cash equivalents at end of period</b>	<b>\$ 4,928</b>	<b>\$ 12,068</b>
<b>Supplemental disclosure of noncash investing and financing activities:</b>		
Issuance of common shares - Founders Agreement	\$ 1,885	\$ 6,598
Issuance of common shares - Registered direct offerings (offering costs incurred but not paid)	\$ 207	\$ —
Warrant inducement (transactional costs incurred but not paid)	\$ 56	\$ —

*The accompanying notes are an integral part of these financial statements.*

**CHECKPOINT THERAPEUTICS, INC.**  
**Notes to Financial Statements**

**Note 1 - Organization and Description of Business Operations**

Checkpoint Therapeutics, Inc. (the "Company" or "Checkpoint") was incorporated in Delaware on November 10, 2014. Checkpoint is a clinical-stage immunotherapy and targeted oncology company focused on the acquisition, development and commercialization of novel treatments for patients with solid tumor cancers. The Company may acquire rights to these technologies by licensing the rights or otherwise acquiring an ownership interest in the technologies, funding their research and development and eventually either out-licensing or bringing the technologies to market.

The Company is a majority-controlled subsidiary of Fortress Biotech, Inc. ("Fortress").

The Company's common stock is listed on the NASDAQ Capital Market and trades under the symbol "CKPT."

***December 2022 Reverse Stock Split***

On November 3, 2022, the holders of a majority of the voting power of the common stock of the Company executed a written consent approving a grant of discretionary authority to the board of directors of the Company (the "Board") to, without further stockholder approval, (i) effect a 1:10 reverse stock split of the Company's issued and outstanding common stock (the "Reverse Stock Split"), (ii) effect a change in the number of the Company's authorized shares from 13,500,000 to 50,000,000 by filing an amendment (the "Certificate Amendment") to the Company's Amended and Restated Certificate of Incorporation with the Secretary of State of the State of Delaware, and (iii) effect an amendment to the Company's Amended and Restated 2015 Incentive Plan to increase the number of shares issuable thereunder, after giving effect to the Reverse Stock Split, from 900,000 to 3,000,000 (the "Plan Amendment"). The Board also approved the Reverse Stock Split, the Certificate Amendment, and the Plan Amendment.

Pursuant to rules adopted by the Securities and Exchange Commission ("SEC") under the Securities Exchange Act of 1934, a Schedule 14C information statement was filed with the SEC and provided to the stockholders of the Company. The Reverse Stock Split became effective on December 6, 2022, or twenty ( 20 ) days from the mailing of the information statement to the common stockholders of record. The Authorized Share Reduction also became effective on December 6, 2022 per the Certificate Amendment filed with the Secretary of State of the State of Delaware.

All share and per share information has been retroactively adjusted to give effect to the Reverse Stock Split for all periods presented, unless otherwise indicated. Proportionate adjustments were made to the per share exercise price and/or the number of shares issuable upon the exercise or vesting of all stock options, restricted stock and warrants outstanding at December 6, 2022, which resulted in a proportional decrease in the number of shares of the Company's common stock reserved for issuance upon exercise or vesting of such stock options, restricted stock and warrants, and, in the case of stock options and warrants, a proportional increase in the exercise price of all such stock options and warrants.

No fractional shares were issued in connection with the Reverse Stock Split and stockholders who would otherwise be entitled to a fraction of one share received a proportional cash payment.

***Liquidity, Capital Resources and Going Concern***

The Company has incurred substantial operating losses since its inception and expects to continue to incur significant operating losses for the foreseeable future and may never become profitable. As of December 31, 2023, the Company had an accumulated deficit of \$ 314.3 million.

In December 2022, the Company closed on a registered direct offering (the "December 2022 Registered Direct Offering") for the issuance and sale of an aggregate of 950,000 shares of our common stock at a purchase price of \$ 4.325 per share. In addition, the offering included 784,105 shares of common stock in the form of pre - funded warrants at a price of \$ 4.3249 . The common stock and the pre - funded warrants were sold together with Series A warrants to purchase up to 1,734,105 shares of common stock and Series B warrants to purchase up to 1,734,105 shares of common stock. The Series A warrants are exercisable immediately upon issuance and will expire five years following the issuance date and have an exercise price of \$ 4.075 per share and the Series B warrants are exercisable immediately upon issuance and will expire eighteen months following the issuance date and have an exercise price of \$ 4.075 per share.



**CHECKPOINT THERAPEUTICS, INC.**  
**Notes to Financial Statements**

Total gross proceeds from the December 2022 Registered Direct Offering were \$ 7.5 million with net proceeds of approximately \$ 6.7 million after deducting approximately \$ 0.8 million in commissions and other transaction costs.

In February 2023, the Company closed on a registered direct offering (the "February 2023 Registered Direct Offering") for the issuance and sale of an aggregate of 1,180,000 shares of its common stock at a purchase price of \$ 5.25 per share in a registered direct offering. In addition, the offering includes 248,572 shares of common stock in the form of pre-funded warrants at a price of \$ 5.2499 . In a concurrent private placement, Checkpoint issued and sold Series A warrants to purchase up to 1,428,572 shares of common stock and Series B warrants to purchase up to 1,428,572 shares of common stock. The Series A and B warrants are exercisable immediately upon issuance with an exercise price of \$ 5.00 per share. The Series A warrants will expire five years following the issuance date and the Series B warrants will expire eighteen months following the issuance date. The total gross proceeds from the offering were approximately \$ 7.5 million with net proceeds of approximately \$ 6.7 million after deducting approximately \$ 0.8 million in commissions and other transaction costs.

In April 2023, the Company closed on a registered direct offering (the "April 2023 Registered Direct Offering") for the issuance and sale of an aggregate of 1,700,000 shares of its common stock at a purchase price of \$ 3.60 per share of common stock in a registered direct offering. In a concurrent private placement, Checkpoint issued and sold Series A warrants to purchase up to 1,700,000 shares of common stock and Series B warrants to purchase up to 1,700,000 shares of common stock. The Series A and B warrants are exercisable immediately upon issuance with an exercise price of \$ 3.35 per share. The Series A warrants will expire five years following the issuance date and the Series B warrants will expire eighteen months following the issuance date. The total gross proceeds from the offering were approximately \$ 6.1 million with net proceeds of approximately \$ 5.5 million after deducting approximately \$ 0.6 million in commissions and other transaction costs.

In May 2023, the Company closed on a registered direct offering (the "May 2023 Registered Direct Offering") for the issuance and sale of an aggregate of 1,650,000 shares of its common stock at a purchase price of \$ 3.071 per share of common stock in a registered direct offering. In addition, the offering includes 1,606,269 shares of common stock in the form of pre-funded warrants at a price of \$ 3.0709 . The common stock and the pre-funded warrants were sold together with Series A warrants to purchase up to 3,256,269 shares of common stock and Series B warrants to purchase up to 3,256,269 shares of common stock. The Series A and B warrants are exercisable immediately upon issuance with an exercise price of \$ 2.821 per share. The Series A warrants will expire five years following the issuance date and the Series B warrants will expire eighteen months following the issuance date. The total gross proceeds from the offering were approximately \$ 10.0 million with net proceeds of approximately \$ 9.1 million after deducting approximately \$ 0.9 million in commissions and other transaction costs.

In July 2023, the Company closed on a registered direct offering (the "July 2023 Registered Direct Offering") for the issuance and sale of an aggregate of 2,427,186 shares of its common stock at a purchase price of \$ 3.09 per share of common stock in a registered direct offering. In addition, the offering includes 809,062 shares of common stock in the form of pre-funded warrants at a price of \$ 3.0899 . The common stock and the pre-funded warrants were sold together with Series A warrants to purchase up to 3,236,248 shares of common stock and Series B warrants to purchase up to 3,236,248 shares of common stock. The Series A and B warrants are exercisable immediately upon issuance with an exercise price of \$ 2.84 per share. The Series A warrants will expire five years following the issuance date and the Series B warrants will expire eighteen months following the issuance date. The total gross proceeds from the offering were approximately \$ 10.0 million with net proceeds of approximately \$ 9.1 million after deducting approximately \$ 0.9 million in commissions and other transaction costs.

In October 2023, the Company entered into an inducement offer letter agreement (the "October 2023 Inducement") with a certain holder of its existing warrants to exercise for cash an aggregate of 6,325,354 shares of the Company's common stock at a reduced exercise price of \$ 1.76 per share. The warrants were issued to the holder as part of the December 2022 Registered Direct Offering with an exercise price of \$ 4.075 per share and as part of the February 2023 Registered Direct Offering with an exercise price of \$ 5.00 per share. As part of the October 2023 Inducement, the Company agreed to issue new unregistered Series A Warrants to purchase up to 6,325,354 shares of Common Stock and new unregistered Series B Warrants to purchase up to 6,325,354 shares of Common Stock (collectively, the "October 2023 Common Stock Warrants"). The October 2023 Common Stock Warrants are exercisable immediately upon issuance with an exercise price of \$ 1.51 per share. The Series A warrants will expire five years following the issuance date and the Series B warrants will expire twenty-four months following the issuance date. The total gross proceeds from the exercise were approximately

**CHECKPOINT THERAPEUTICS, INC.**  
**Notes to Financial Statements**

\$ 11.1 million with net proceeds of approximately \$ 10.0 million after deducting approximately \$ 1.1 million in commissions and other transaction costs.

The Company expects to continue to use the proceeds from previous financing transactions primarily for general corporate purposes, which may include financing the Company's growth, developing new or existing product candidates, and funding capital expenditures, acquisitions and investments.

In accordance with Accounting Standards Codification ("ASC") 205-40, *Going Concern*, the Company evaluated whether there are conditions and events, considered in the aggregate, that raise substantial doubt about its ability to continue as a going concern within one year after the date that these financial statements are issued. This evaluation initially does not take into consideration the potential mitigating effect of management's plans that have not been fully implemented as of the date the financial statements are issued. When substantial doubt exists under this methodology, management evaluates whether the mitigating effect of its plans sufficiently alleviates substantial doubt about the Company's ability to continue as a going concern. The mitigating effect of management's plans, however, is only considered if both (1) it is probable that the plans will be effectively implemented within one year after the date that the financial statements are issued, and (2) it is probable that the plans, when implemented, will mitigate the relevant conditions or events that raise substantial doubt about the entity's ability to continue as a going concern within one year after the date that these consolidated financial statements are issued. In performing its analysis, management excluded certain elements of its operating plan that cannot be considered probable. Under ASC 205-40, the future receipt of potential funding from future equity or debt issuances and other potential sources such as partnerships cannot be considered probable at this time because these plans are not entirely within the Company's control nor have these plans been approved by the Board as of the date of these financial statements.

The Company believes that its cash and cash equivalents are only sufficient to fund its operating expenses into the third quarter of 2024. The Company has suffered recurring losses from operations and has a net capital deficiency that raise substantial doubt regarding the Company's ability to continue as a going concern for a period of one year after the date that these financial statements are issued. Management's plans to alleviate the conditions that raise substantial doubt include reduced 2024 spending, including projected savings through delaying the development timelines of certain programs and the pursuit of additional cash resources through public or private equity or debt financings and potential partnerships. Management has concluded the likelihood that its plan to successfully obtain sufficient funding from one or more of these sources, or adequately reduce expenditures, while reasonably possible, is less than probable. Accordingly, the Company has concluded that substantial doubt exists about the Company's ability to continue as a going concern for a period of at least 12 months from the date of issuance of these financial statements. The Company's estimate as to how long it expects its existing cash to be able to continue to fund its operations is based on assumptions that may prove to be wrong, and it could use its available capital resources sooner than it currently expects. Further, changing circumstances, some of which may be beyond its control, could cause the Company to consume capital faster than it currently anticipates, and it may need to seek additional funds sooner than planned. The Company cannot be certain that additional funding will be available to it on acceptable terms, or at all.

The accompanying financial statements have been prepared on a going concern basis, which contemplates the realization of assets and satisfaction of liabilities in the ordinary course of business. The financial statements do not include any adjustments relating to the recoverability and classification of recorded asset amounts or the amounts and classification of liabilities that might result from the outcome of the uncertainties described above.

## **Note 2 - Significant Accounting Policies**

### ***Basis of Presentation***

The Company's financial statements have been prepared in conformity with accounting principles generally accepted in the United States of America ("GAAP") and include all adjustments necessary for the fair presentation of the Company's financial position for the periods presented. The Company has no subsidiaries.

**CHECKPOINT THERAPEUTICS, INC.**  
**Notes to Financial Statements**

**Segments**

Operating segments are defined as components of an enterprise about which separate discrete information is available for evaluation by the chief operating decision maker, or decision-making group, in deciding how to allocate resources and in assessing performance. The Company views its operations and manages its business in one operating and reporting segment.

**Use of Estimates**

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of expenses during the reporting period. Actual results could differ from those estimates.

**Cash and Cash Equivalents**

The Company considers highly liquid investments with an original maturity of three months or less when purchased to be cash equivalents.

**Other Receivables - Related Party**

Other receivables consist of amounts due to the Company from TG Therapeutics, Inc. ("TGTX"), a related party, and are recorded at the invoiced amount. Effective September 30, 2023, the Company and TGTX agreed to mutually terminate the collaboration agreements.

**Research and Development Costs**

Research and development costs are expensed as incurred. Advance payments for goods and services that will be used in future research and development activities are expensed when the activity has been performed or when the goods have been received rather than when the payment is made. Upfront and milestone payments due to third parties that perform research and development services on the Company's behalf will be expensed as services are rendered or when the milestone is achieved.

Research and development costs primarily consist of personnel related expenses, including salaries, benefits, travel, and other related expenses, stock-based compensation, payments made to third parties for license and milestone costs related to in-licensed products and technology, payments made to third party contract research organizations for preclinical and clinical studies, investigative sites for clinical trials, consultants, the cost of acquiring and manufacturing clinical trial materials, costs associated with regulatory filings, laboratory costs and other supplies.

In accordance with ASC 730-10-25-1, *Research and Development*, costs incurred in obtaining technology licenses are charged to research and development expense if the technology licensed has not reached commercial feasibility and has no alternative future use. Such licenses purchased by the Company require substantial completion of research and development, regulatory and marketing approval efforts in order to reach commercial feasibility and have no alternative future use.

**Annual Equity Fee**

Under the Founders Agreement with Checkpoint dated March 17, 2015 and amended and restated in July 2016 and October 2017 (the "Founders Agreement"), Fortress is entitled to an annual equity fee on January 1 of each year equal to 2.5 % of fully diluted outstanding equity of the Company, payable in Checkpoint common shares ("Annual Equity Fee"). The Annual Equity Fee was part of the consideration payable for formation of the Company, identification of certain assets, including the license contributed to Checkpoint by Fortress (see Note 4).

The Company records the Annual Equity Fee in connection with the Founders Agreement with Fortress as contingent consideration. Contingent consideration is recorded when probable and reasonably estimable. Due to the nature of the Company's assets and stage of development, future share prices and shares outstanding cannot be estimated prior to the issuance of the Annual Equity Fee. Due to these

**CHECKPOINT THERAPEUTICS, INC.**  
**Notes to Financial Statements**

uncertainties, the Company has concluded that it is unable to reasonably estimate the contingent consideration until shares are actually issued on January 1 of each year.

Pursuant to the Founders Agreement, the Company issued 368,907 shares of common stock to Fortress for the Annual Equity Fee, representing 2.5 % of the fully diluted outstanding equity of Checkpoint on January 1, 2023. Because the number of outstanding shares issuable to Fortress was determinable on January 1, 2023 prior to the issuance of the December 31, 2022 financial statements, the Company recorded approximately \$ 1.9 million in research and development expense and a credit to Common shares issuable - Founders Agreement during the year ended December 31, 2022.

Pursuant to the Founders Agreement, the Company will issue 1,492,915 shares of common stock to Fortress for the Annual Equity Fee, representing 2.5 % of the fully diluted outstanding equity of Checkpoint on January 1, 2024. The Company did not have enough unreserved authorized shares under its certificate of incorporation on January 1, 2024 to issue the shares for the Annual Equity Fee. Therefore, in December 2023, Fortress and Checkpoint mutually agreed to defer the issuance until such time as certificate of incorporation has been amended in order to increase the number of authorized that may be issued thereunder. Because the number of outstanding shares issuable to Fortress was determinable on January 1, 2024 prior to the issuance of the December 31, 2023 financial statements, the Company recorded approximately \$ 3.4 million in research and development expense and a credit to Common shares issuable - Founders Agreement during the year ended December 31, 2023.

***Stock-Based Compensation Expenses***

The Company expenses stock-based compensation over the requisite service period based on the estimated grant-date fair value of the awards and forfeiture rates. The Company accounts for forfeitures as they occur.

The Company estimates the fair value of stock option grants using the Black-Scholes Model. The assumptions used in calculating the fair value of stock-based awards represent management's best estimates and involve inherent uncertainties and the application of management's judgment. All stock-based compensation costs are recorded in general and administrative or research and development costs in the Statements of Operations based upon the underlying individual's role at the Company.

In addition, because some of the restricted stock, restricted stock units and options issued to employees, directors and consultants vest upon achievement of certain milestones, the total expense is uncertain. Compensation expense for such awards that vest upon the achievement of milestones is recognized when the achievement of such milestones is probable.

***Common Stock Warrant Liability***

The Company has issued freestanding warrants to purchase shares of its common stock in connection with its financing activities and accounts for them in accordance with applicable accounting guidance as either liabilities or as equity instruments depending on the specific terms of the warrant agreements. Warrants classified as liabilities are remeasured each period they are outstanding. Any resulting gain or loss related to the change in the fair value of the warrant liability is recognized in gain (loss) on common stock warrant liabilities, a component of other income (loss), in the Statements of Operations.

The Company estimates the fair value of common stock warrant liabilities using the Black-Scholes Model. The assumptions used in calculating the fair value represent management's best estimates and involve inherent uncertainties and the application of management's judgment.

***Fair Value Measurement***

The Company follows the accounting guidance in ASC 820 for its fair value measurements of financial assets and liabilities measured at fair value on a recurring basis. Under this accounting guidance, fair value is defined as an exit price, representing the amount that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. As such, fair value is a market-based measurement that should be determined based on assumptions that market participants would use in pricing an asset or a liability.

**CHECKPOINT THERAPEUTICS, INC.**  
**Notes to Financial Statements**

The accounting guidance requires fair value measurements be classified and disclosed in one of the following three categories:

- Level 1: Quoted prices in active markets for identical assets or liabilities.
- Level 2: Observable inputs other than Level 1 prices, for similar assets or liabilities that are directly or indirectly observable in the marketplace.
- Level 3: Unobservable inputs which are supported by little or no market activity and that are financial instruments whose values are determined using pricing models, discounted cash flow methodologies, or similar techniques, as well as instruments for which the determination of fair value requires significant judgment or estimation.

The fair value hierarchy also requires an entity to maximize the use of observable inputs and minimize the use of unobservable inputs when measuring fair value. Assets and liabilities measured at fair value are classified in their entirety based on the lowest level of input that is significant to the fair value measurement.

Certain of the Company's financial instruments are not measured at fair value on a recurring basis but are recorded at amounts that approximate their fair value due to their liquid or short-term nature, such as accounts payable and accrued expenses.

***Revenue from Contracts with Customers***

The Company recognizes revenue under ASC 606, *Revenue from Contracts with Customers*. The core principle of ASC 606 is that a company should recognize revenue to depict the transfer of promised goods or services to customers in an amount that reflects the consideration to which the company expects to be entitled in exchange for those goods or services. The following five steps are applied to achieve that core principle:

- Step 1: Identify the contract with the customer
- Step 2: Identify the performance obligations in the contract
- Step 3: Determine the transaction price
- Step 4: Allocate the transaction price to the performance obligations in the contract
- Step 5: Recognize revenue when the company satisfies a performance obligation

In order to identify the performance obligations in a contract with a customer, a company must assess the promised goods or services in the contract and identify each promised good or service that is distinct. A performance obligation meets ASC 606's definition of a "distinct" good or service (or bundle of goods or services) if both of the following criteria are met:

- the customer can benefit from the good or service either on its own or together with other resources that are readily available to the customer (i.e., the good or service is capable of being distinct).
- the entity's promise to transfer the good or service to the customer is separately identifiable from other promises in the contract (i.e., the promise to transfer the good or service is distinct within the context of the contract).

If a good or service is not distinct, the good or service is combined with other promised goods or services until a bundle of goods or services is identified that is distinct.

The transaction price is the amount of consideration to which an entity expects to be entitled in exchange for transferring promised goods or services to a customer, excluding amounts collected on behalf of third parties (for example, some sales taxes). The consideration promised in a contract with a customer may include fixed amounts, variable amounts, or both. When determining the transaction price, an entity must consider the effects of all of the following:

- variable consideration;
- constraining estimates of variable consideration;
- the existence of a significant financing component in the contract;
- noncash consideration; and
- consideration payable to a customer

**CHECKPOINT THERAPEUTICS, INC.**  
**Notes to Financial Statements**

Variable consideration is included in the transaction price only to the extent that it is probable that a significant reversal in the amount of cumulative revenue recognized will not occur when the uncertainty associated with the variable consideration is subsequently resolved.

The transaction price is allocated to each performance obligation on a relative standalone selling price basis. The transaction price allocated to each performance obligation is recognized when that performance obligation is satisfied, at a point in time or over time as appropriate.

Revenue for a sales-based or usage-based royalty promised in exchange for a license of intellectual property is recognized only when (or as) the later of the following events occurs:

- a. the subsequent sale or usage occurs; and
- b. the performance obligation to which some or all of the sales-based or usage-based royalty has been allocated has been satisfied (or partially satisfied).

Incremental contract costs are expensed when incurred when the amortization period of the asset that would have been recognized is one year or less; otherwise, incremental contract costs are recognized as an asset and amortized over time as services are provided to a customer.

**Income Taxes**

The Company records income taxes using the asset and liability method. Deferred income tax assets and liabilities are recognized for the future tax effects attributable to temporary differences between the financial statement carrying amounts of existing assets and liabilities and their respective income tax bases, and operating loss and tax credit carryforwards. The Company establishes a valuation allowance if management believes it is more likely than not that the deferred tax assets will not be recovered based on an evaluation of objective verifiable evidence. For tax positions that are more likely than not to be sustained upon audit, the Company recognizes the largest amount with a greater than 50% likely of being realized. The Company does not recognize any portion of the benefit for tax positions that are not more likely than not to be sustained upon audit. As of December 31, 2023 and December 31, 2022, the Company determined, based upon available evidence, that it is more likely than not that the net deferred tax asset will not be realized and, accordingly, has provided a full valuation allowance against its net deferred tax asset.

**Net Loss per Share**

Net loss per share is computed by dividing net loss by the weighted average number of common shares outstanding during the period. Net loss attributable to common stockholders consisted of net loss, as adjusted for deemed dividends. The Company recorded a deemed dividend for the modification of certain of its existing warrants and issuance of the October 2023 Common Stock Warrants of \$ 7.5 million during the year ended December 31, 2023 (see Notes 1 and 6). Diluted net loss per share does not reflect the effect of shares of common stock to be issued upon the exercise of stock options and warrants, as their inclusion would be anti-dilutive. The following table summarizes potentially dilutive securities outstanding at December 31, 2023 and 2022 that were excluded from the computation of diluted net loss per share, as they would be anti-dilutive:

	December 31,	
	2023	2022
Warrants (Note 6)	30,097,671	3,573,492
Stock options (Note 6)	127,000	27,000
Unvested restricted stock awards (Note 6)	1,316,120	378,897
Unvested restricted stock units (Note 6)	615,884	85,000
Total	32,156,675	4,064,389

The unexercised pre-funded warrants from the December 2022 Registered Direct Offering were included in the December 31, 2022 computation of diluted net loss per share since the exercise price was \$ 0.0001. The 1,134,000 shares held in abeyance from the

**CHECKPOINT THERAPEUTICS, INC.**  
**Notes to Financial Statements**

October 2023 Inducement (see Note 6) as of December 31, 2023 were included in the December 31, 2023 computation of diluted net loss per share since no additional consideration is due upon issuance of the shares.

**Comprehensive Loss**

The Company has no components of comprehensive loss other than net loss. Thus, comprehensive loss is the same as net loss for the periods presented.

**Recent Accounting Standards**

In October 2023, the Financial Accounting Standards Board ("FASB") issued Accounting Standard Update ("ASU") No. 2023-06, *Disclosure Improvements: Codification Amendments in Response to the SEC's Disclosure Updated and Simplification Initiative*, which amends the disclosure or presentation requirements related to various subtopics in the FASB Accounting Standards Codification. ASU 2023-06 was issued in response to the SEC's August 2018 final rule that updated and simplified disclosure requirements and is intended to align U.S. GAAP requirements with those of the SEC and to facilitate the application of U.S. GAAP for all entities. For entities subject to the SEC's existing disclosure requirements and for entities required to file or furnish financial statements with or to the SEC in preparation for the sale of or for purposes of issuing securities that are not subject to contractual restrictions on transfer, the effective date for each amendment will be the date on which the SEC removes that related disclosure from its rules. However, if by June 30, 2027, the SEC has not removed the related disclosure from its regulations, the amendments will be removed from the Codification and not become effective for any entity. The Company is currently evaluating the impact of the new standard on its disclosures.

In November 2023, the FASB issued ASU No. 2023-07, *Segment Reporting (Topic 280): Improvements to Reportable Segment Disclosures*, which amends ASC 280, *Segment Reporting* to require public entities to disclose significant segment expenses and other segment items that are regularly provided to the chief operating decision maker ("CODM") and included in each reported measure of a reportable segment's profit or loss, on an annual and interim basis, and provide in interim periods all disclosures about a reportable segment's profit or loss and assets that are currently required annually. The ASU permits entities to report multiple measures of a reportable segment's profit or loss if the CODM uses those measures to allocate resources and assess performance. The guidance is required to be applied retrospectively to all periods presented in the financial statements, unless impracticable. The guidance is effective for fiscal years beginning after December 15, 2023, and interim periods within fiscal years beginning after December 15, 2024. Early adoption is also permitted. Although the guidance only requires additional disclosures, the Company is in the process of determining the impact of this guidance to its segment disclosures.

In December 2023, the FASB issued ASU 2023-09, *Income Taxes (Topic 740): Improvements to Income Tax Disclosures*, which will require public entities to disclose on an annual basis a tabular reconciliation using both percentages and amounts, broken out into specific categories with certain reconciling items at or above 5% of the statutory (i.e. expected) tax further broken out by nature and/or jurisdiction. The ASU requires all entities to disclose on an annual basis the amount of income taxes paid (net of refunds received), disaggregated between federal (national), state/local and foreign, and amounts paid to an individual jurisdiction when 5% or more of the total income taxes paid. The guidance is required to be applied on a prospective basis; retrospective application is permitted. The guidance is effective for annual periods beginning after December 15, 2024. Early adoption is permitted. Although the guidance only requires additional disclosures, the Company is in the process of determining the impact of this guidance to its income tax disclosures.

**Note 3 - License Agreements****Dana-Farber Cancer Institute**

In March 2015, the Company entered into an exclusive license agreement with Dana-Farber Cancer Institute ("Dana Farber") to develop a portfolio of fully human immuno-oncology targeted antibodies targeting PD-L1, Glucocorticoid-induced TNFR-related protein ("GITR") and Carbonic anhydrase IX ("CAIX"). Under the terms of the license agreement, the Company paid Dana-Farber an up-front licensing fee of \$ 1.0 million and, on May 11, 2015, granted Dana-Farber 50,000 shares, valued at \$ 32,500 or \$ 0.65 per share. The license agreement included an anti-dilution clause that maintained Dana-Farber's ownership at 5 % until such time that the Company raised \$ 10 million in cash in exchange for common shares. Pursuant to this provision, on September 30, 2015, the Company granted to Dana-Farber an additional 13,683 shares of common stock valued at approximately \$ 0.6 million and the anti-dilution clause thereafter



**CHECKPOINT THERAPEUTICS, INC.**  
**Notes to Financial Statements**

expired. Dana-Farber is eligible to receive payments of up to an aggregate of approximately \$ 21.5 million for each licensed product upon the Company's successful achievement of certain clinical development, regulatory and first commercial sale milestones. As of December 31, 2023, \$ 5.0 million of these milestones have been expensed for the antibody targeting PD-L1. In addition, Dana-Farber is eligible to receive up to an aggregate of \$ 60.0 million upon the Company's successful achievement of certain sales milestones based on aggregate net sales, in addition to royalty payments based on a tiered low to mid-single digit percentage of net sales. Dana-Farber also receives an annual license maintenance fee of \$ 50,000, which is creditable against future milestone payments or royalties.

In connection with the license agreement with Dana-Farber, in March 2015 the Company entered into a collaboration agreement with TGTX, which was amended and restated in June 2019, to develop and commercialize the anti-PD-L1 and anti-GITR antibody research programs in the field of hematological malignancies. The Company retained the right to develop and commercialize these antibodies in solid tumors. Michael Weiss, Chairman of the Board of Directors of Checkpoint and Fortress' Executive Vice Chairman, Strategic Development, is also the Executive Chairman, President and Chief Executive Officer and a stockholder of TGTX. Effective September 30, 2023, the Company and TGTX agreed to mutually terminate the collaboration agreement. For the years ended December 31, 2023 and 2022, the Company recognized approximately \$ 58,000 and \$ 121,000 respectively, in revenue from our collaboration agreement with TGTX in the Statements of Operations.

***Adimab, LLC***

In October 2015, Fortress entered into a collaboration agreement with Adimab, LLC ("Adimab") to discover and optimize antibodies using their proprietary core technology platform. Under this agreement, Adimab optimized cosibelimab, the Company's anti-PD-L1 antibody which it originally licensed from Dana-Farber. In January 2019, Fortress transferred the rights to the optimized antibody to the Company, and Checkpoint entered into a collaboration agreement directly with Adimab on the same day. Under the terms of the agreement, Adimab is eligible to receive additional payments from the Company up to an aggregate of approximately \$ 2.5 million upon various filings for regulatory approvals to commercialize the product. In addition, Adimab is eligible to receive royalty payments from the Company based on a tiered low single digit percentage of net sales.

In February 2023, the Company expensed a non-refundable milestone payment of \$ 2.2 million to research and development expenses upon the United States Food and Drug Administration's filing acceptance of the Company's Biologics License Application for cosibelimab.

***NeuPharma, Inc.***

In March 2015, Fortress entered into an exclusive license agreement with NeuPharma, Inc. ("NeuPharma") to develop and commercialize novel irreversible, 3rd generation EGFR inhibitors, including olafertinib, on a worldwide basis other than certain Asian countries. On the same date, Fortress assigned all of its right and interest in the EGFR inhibitors to the Company. Under the terms of the license agreement, the Company paid NeuPharma an up-front licensing fee of \$ 1.0 million, and NeuPharma is eligible to receive additional payments of up to an aggregate of approximately \$ 39.0 million upon the Company's successful achievement of certain clinical development and regulatory milestones covering up to three indications, of which \$ 22.5 million are due upon various regulatory approvals to commercialize the products. In addition, NeuPharma is eligible to receive payments of up to an aggregate of \$ 40.0 million upon the Company's successful achievement of certain sales milestones based on aggregate net sales across all indications, in addition to royalty payments based on a tiered mid to high-single digit percentage of net sales.

***Jubilant Biosys Limited***

In May 2016, the Company entered into a license agreement with Jubilant Biosys Limited ("Jubilant"), whereby the Company obtained an exclusive, worldwide license to Jubilant's family of patents covering compounds that inhibit BET proteins such as BRD4, including CK-103. Under the terms of the license agreement, the Company paid Jubilant an up-front licensing fee of \$ 2.0 million, and Jubilant is eligible to receive payments up to an aggregate of approximately \$ 88.4 million upon the Company's successful achievement of certain clinical development and regulatory milestones, of which \$ 59.5 million are due upon various regulatory approvals to commercialize the products. In addition, Jubilant is eligible to receive payments up to an aggregate of \$ 89.3 million upon the Company's successful achievement of certain sales milestones based on aggregate net sales, in addition to royalty payments based on a tiered low to mid-single digit percentage of net sales.

**CHECKPOINT THERAPEUTICS, INC.**  
**Notes to Financial Statements**

In connection with the license agreement with Jubilant, the Company entered into a sublicense agreement with TGTX, a related party, to develop and commercialize the compounds licensed in the field of hematological malignancies, while the Company retained the right to develop and commercialize these compounds in the field of solid tumors. Effective September 30, 2023, the Company and TGTX agreed to mutually terminate the sublicense agreement. For the years ended December 31, 2023 and 2022, the Company recognized approximately \$ 46,000 and \$ 70,000 , respectively, in revenue related to the sublicense agreement in the Statements of Operations.

The collaborations with TGTX each contained single material performance obligations under Topic 606, which was the granting of a license that is functional intellectual property. The Company's performance obligations were satisfied at the point in time when TGTX had the ability to use and benefit from the right to use the intellectual property. The performance obligations of the original agreements were satisfied prior to the adoption of Topic 606. The performance obligation of the amendment to the collaboration agreement was satisfied in June 2019.

**Note 4 - Related Party Agreements**

***Founders Agreement and Management Services Agreement with Fortress***

Effective March 17, 2015, the Company entered into a Founders Agreement with Fortress, which was amended in July 2016 and October 2017. The Founders Agreement provides, that in exchange for the time and capital expended in the formation of Checkpoint and the identification of specific assets the acquisition of which resulted in the formation of a viable emerging growth life science company, the Company shall: (i) issue annually to Fortress, on January 1 of each year, shares of common stock equal to two and one-half percent ( 2.5 )% of the fully diluted outstanding equity of Checkpoint at the time of issuance; (ii) pay an equity fee in shares of common stock, payable within five ( 5 ) business days of the closing of any equity or debt financing for Checkpoint or any of its respective subsidiaries that occurs after the effective date of the Founders Agreement and ending on the date when Fortress no longer has majority voting control in Checkpoint's voting equity, equal to two and one-half percent ( 2.5 )% of the gross amount of any such equity or debt financing; and (iii) pay a cash fee equal to four and one half percent ( 4.5 )% of Checkpoint's annual net sales, payable on an annual basis, within ninety ( 90 ) days of the end of each calendar year. In the event of a change in control (as it is defined in the Founders Agreement), Checkpoint will pay a one-time change in control fee equal to five times ( 5 x) the product of (i) monthly net sales for the twelve ( 12 ) months immediately preceding the change in control and (ii) four and one-half percent ( 4.5 )%. The Founders Agreement has a term of fifteen years , after which it automatically renews for one-year periods unless Fortress gives the Company notice of termination. The Founders Agreement will also automatically terminate upon a change of control.

Effective March 17, 2015, the Company entered into a Management Services Agreement (the "MSA") with Fortress. Pursuant to the terms of the MSA, for a period of five ( 5 ) years, Fortress will render advisory and consulting services to the Company. Services provided under the MSA may include, without limitation, (i) advice and assistance concerning any and all aspects of Checkpoint's operations, clinical trials, financial planning and strategic transactions and financings and (ii) conducting relations on behalf of the Company with accountants, attorneys, financial advisors and other professionals (collectively, the "Services"). The Company is obligated to utilize clinical research services, medical education, communication and marketing services and investor relations/public relation services of companies or individuals designated by Fortress, provided those services are offered at market prices. However, the Company is not obligated to take or act upon any advice rendered from Fortress and Fortress shall not be liable for any of the Company's actions or inactions based upon their advice. Fortress and its affiliates, including all members of its Board of Directors, have been contractually exempt from fiduciary duties to the Company relating to corporate opportunities. In consideration for the Services, the Company will pay Fortress an annual consulting fee of \$ 0.5 million (the "Annual Consulting Fee"), payable in advance in equal quarterly installments on the first business day of each calendar quarter in each year, provided, however, that such Annual Consulting Fee shall be increased to \$ 1.0 million for each calendar year in which the Company has net assets in excess of \$ 100 million at the beginning of the calendar year. The MSA shall be automatically extended for additional five-year periods unless Fortress or the Company provides notice to the other party of its desire not to automatically extend the term. For the years ended December 31, 2023 and 2022, the Company recognized \$ 0.5 million in expense in its Statements of Operations related to the MSA.

***Caribe BioAdvisors, LLC***

In December 2016, the Company entered into an advisory agreement effective January 1, 2017 with Caribe BioAdvisors, LLC ("Caribe"), owned by Michael Weiss, to provide the advisory services of Mr. Weiss as Chairman of the Board. Pursuant to the

**CHECKPOINT THERAPEUTICS, INC.**  
**Notes to Financial Statements**

agreement, Caribe will be paid an annual cash fee of \$ 60,000 , in addition to any and all annual equity incentive grants paid to members of the board. In June 2023, Mr. Weiss assigned the agreement to Hawkins BioVentures, LLC. For each of the years ended December 31, 2023 and 2022, the Company recognized approximately \$ 110,000 in expenses in its Statements of Operations related to the advisory agreement, including \$ 50,000 in expenses related to annual equity incentive grants.

**Note 5 - Commitments and Contingencies**

***Leases***

The Company is not a party to any leases for office space or equipment.

***License Agreements***

The Company has undertaken to make contingent milestone payments to the licensors of its portfolio of product candidates. In addition, the Company would pay royalties to such licensors based on a percentage of net sales of each product candidate following regulatory marketing approval (See Note 3).

***Litigation***

The Company recognizes a liability for a contingency when it is probable that liability has been incurred and when the amount of loss can be reasonably estimated. When a range of probable loss can be estimated, the Company accrues the most likely amount of such loss, and if such amount is not determinable, then the Company accrues the minimum of the range of probable loss. As of December 31, 2023 and 2022, there was no litigation against the Company.

**Note 6 - Stockholders' Equity**

***Common Stock***

At the Company's 2023 Annual Meeting of Stockholders held on June 12, 2023, its stockholders approved an amendment to its certificate of incorporation to increase the number of authorized shares of common stock available to issue by 30,000,000 to 80,000,000 with a par value of \$ 0.0001 per share, of which 700,000 shares are designated as "Class A common stock." The amendment was filed with the Secretary of State of the State of Delaware on June 14, 2023.

As of December 31, 2023 and 2022, there were 700,000 shares of Class A common stock issued and outstanding to Fortress. Dividends are to be distributed pro-rata to the Class A and common stockholders. The holders of common stock are entitled to one vote per share of common stock held. The Class A common stockholders are entitled to a number of votes per share equal to 1.1 times a fraction, the numerator of which is the sum of the shares of outstanding common stock and the denominator of which is the number of shares of Class A common stock. Accordingly, the holder of shares of Class A common stock will be able to control or significantly influence all matters requiring approval by our stockholders, including the election of directors and the approval of mergers or other business combination transactions. Each share of Class A common stock is convertible, at the option of the holder thereof, into one (1) fully paid and non-assessable share of common stock subject to adjustment for stock splits and combinations.

***At the Market Issuance Sales Agreement***

In November 2020, the Company filed a shelf registration statement on Form S-3 (the "November 2020 S-3"), which was declared effective in December 2020 (File No. 333-251005). Under the S-3, the Company may sell up to a total of \$ 100 million of its securities. In connection with the S-3, the Company entered into an At-the-Market Issuance Sales Agreement (the "ATM") with Cantor Fitzgerald & Co., Ladenburg Thalmann & Co. Inc. and H.C. Wainwright & Co., LLC (each an "Agent" and collectively, the "Agents") relating to the sale of shares of common stock. Under the ATM, the Company pays the Agents a commission rate of up to 3.0 % of the gross proceeds from the sale of any shares of common stock.

**CHECKPOINT THERAPEUTICS, INC.**  
**Notes to Financial Statements**

During the year ended December 31, 2022, the Company sold a total of 532,816 shares of common stock under the ATM for aggregate total gross proceeds of approximately \$ 10.1 million at an average selling price of \$ 18.99 per share, resulting in net proceeds of approximately \$ 9.9 million after deducting commissions and other transaction costs.

***Registered Direct Offerings***

In December 2022, the Company closed on the December 2022 Registered Direct Offering for the issuance and sale of an aggregate of 950,000 shares of its common stock at a purchase price of \$ 4.325 per share of common stock. In addition, the offering includes 784,105 shares of common stock in the form of pre-funded warrants at a price of \$ 4.33249 . The pre-funded warrants were funded in full at closing except for a nominal exercise price of \$ 0.0001 and are exercisable commencing on the closing date and will terminate when such pre-funded warrants are exercised in full. The common stock and the pre-funded warrants were sold together with Series A warrants to purchase up to 1,734,105 shares of common stock and Series B warrants to purchase up to 1,734,105 shares of common stock (collectively, the "December 2022 Common Stock Warrants"). The Series A and B warrants are exercisable immediately upon issuance with an exercise price of \$ 4.075 per share. The Series A warrants will expire five years following the issuance date and the Series B warrants will expire eighteen months following the issuance date. The Company also issued the placement agent warrants to purchase up to 104,046 shares of common stock with an exercise price of \$ 5.406 per share (the "December 2022 Placement Agent Warrants"). Total gross proceeds from the December 2022 Registered Direct Offering were \$ 7.5 million with net proceeds of approximately \$ 6.7 million after deducting approximately \$ 0.8 million in commissions and other transaction costs. The shares of common stock and the shares underlying the prefunded warrants, December 2022 Common Stock Warrants, and December 2022 Placement Agent Warrants were registered for sale under the November 2020 S-3. In January 2023, the pre-funded warrants from the December 2022 Registered Direct Offering were fully exercised. The December 2022 Common Stock Warrants and December 2022 Placement Agent Warrants met the criteria for liability classification (See Note 7).

In February 2023, the Company closed on the February 2023 Registered Direct Offering for the issuance and sale of an aggregate of 1,180,000 shares of its common stock at a purchase price of \$ 5.25 per share of common stock. In addition, the offering includes 248,572 shares of common stock in the form of pre-funded warrants at a price of \$ 5.2499 . The pre-funded warrants were funded in full at closing except for a nominal exercise price of \$ 0.0001 and are exercisable commencing on the closing date and will terminate when such pre-funded warrants are exercised in full. In a concurrent private placement, Checkpoint issued and sold Series A warrants to purchase up to 1,428,572 shares of common stock and Series B warrants to purchase up to 1,428,572 shares of common stock (collectively, the "February 2023 Common Stock Warrants"). The Series A and B warrants are exercisable immediately upon issuance with an exercise price of \$ 5.00 per share. The Series A warrants will expire five years following the issuance date and the Series B warrants will expire eighteen months following the issuance date. The Company also issued the placement agent warrants to purchase up to 85,714 shares of common stock with an exercise price of \$ 6.5625 per share. The total gross proceeds from the February 2023 Registered Direct Offering were approximately \$ 7.5 million with net proceeds of approximately \$ 6.7 million after deducting approximately \$ 0.8 million in commissions and other transaction costs. The shares of common stock and the shares underlying the prefunded warrants were registered for sale under the November 2020 S-3. In March 2023, the Company filed a registration statement on Form S-3 to register the February 2023 Common Stock Warrants and placement agent warrants, which was declared effective May 5, 2023 (File No. 333-270474). In February 2023, the pre-funded warrants from the February 2023 Registered Direct Offering were fully exercised. The February 2023 Common Stock Warrants and placement agent warrants met the criteria for equity classification.

In April 2023, the Company closed on the April 2023 Registered Direct Offering for the issuance and sale of an aggregate of 1,700,000 shares of its common stock at a purchase price of \$ 3.60 per share of common stock. In a concurrent private placement, Checkpoint issued and sold Series A warrants to purchase up to 1,700,000 shares of common stock and Series B warrants to purchase up to 1,700,000 shares of common stock (collectively, the "April 2023 Common Stock Warrants"). The Series A and B warrants are exercisable immediately upon issuance with an exercise price of \$ 3.35 per share. The Series A warrants will expire five years following the issuance date and the Series B warrants will expire eighteen months following the issuance date. The Company also issued the placement agent warrants to purchase up to 102,000 shares of common stock with an exercise price of \$ 4.50 per share. The total gross proceeds from the April 2023 Registered Direct Offering were approximately \$ 6.1 million with net proceeds of approximately \$ 5.5 million after deducting approximately \$ 0.6 million in commissions and other transaction costs. The shares of common stock were registered for sale under the November 2020 S-3. In April 2023, the Company filed a registration statement on Form S-3 to register the April 2023 Common Stock Warrants and placement agent warrants, which was declared effective May 5, 2023 (File No. 333-271171). The April 2023 Common Stock Warrants and placement agent warrants met the criteria for equity classification.

**CHECKPOINT THERAPEUTICS, INC.**  
**Notes to Financial Statements**

The November 2020 Form S-3 expired in December 2023.

In March 2023, the Company filed a shelf registration statement on Form S-3 (the "March 2023 S-3"), which was declared effective May 5, 2023 (File No. 333-270843). Under the March 2023 S-3, the Company may sell up to a total of \$ 150 million of its securities.

In May 2023, the Company closed on the May 2023 Registered Direct Offering for the issuance and sale of an aggregate of 1,650,000 shares of its common stock at a purchase price of \$ 3.071 per share of common stock. In addition, the offering includes 1,606,269 shares of common stock in the form of pre-funded warrants at a price of \$ 3.0709. The pre-funded warrants were funded in full at closing except for a nominal exercise price of \$ 0.0001 and are exercisable commencing on the closing date and will terminate when such pre-funded warrants are exercised in full. The common stock and the pre-funded warrants were sold together with Series A warrants to purchase up to 3,256,269 shares of common stock and Series B warrants to purchase up to 3,256,269 shares of common stock (collectively, the "May 2023 Common Stock Warrants"). The Series A and B warrants are exercisable immediately upon issuance with an exercise price of \$ 2.821 per share. The Series A warrants will expire five years following the issuance date and the Series B warrants will expire eighteen months following the issuance date. The Company also issued the placement agent warrants to purchase up to 195,376 shares of common stock with an exercise price of \$ 3.8388 per share. The total gross proceeds from the May 2023 Registered Direct Offering were approximately \$ 10.0 million with net proceeds of approximately \$ 9.1 million after deducting approximately \$ 0.9 million in commissions and other transaction costs. The shares of common stock and the shares underlying the prefunded warrants, May 2023 Common Stock Warrants, and placement agent warrants were registered for sale under the March 2023 S-3. In August 2023, the pre-funded warrants from the May 2023 Registered Direct Offering were fully exercised. The May 2023 Common Stock Warrants and placement agent warrants met the criteria for equity classification.

In July 2023, the Company closed on the July 2023 Registered Direct Offering for the issuance and sale of an aggregate of 2,427,186 shares of its common stock at a purchase price of \$ 3.09 per share of common stock in a registered direct offering. In addition, the offering includes 809,062 shares of common stock in the form of pre-funded warrants at a price of \$ 3.0899. The pre-funded warrants were funded in full at closing except for a nominal exercise price of \$ 0.0001 and are exercisable commencing on the closing date and will terminate when such pre-funded warrants are exercised in full. The common stock and the pre-funded warrants were sold together with Series A warrants to purchase up to 3,236,248 shares of common stock and Series B warrants to purchase up to 3,236,248 shares of common stock (collectively, the "July 2023 Common Stock Warrants"). The Series A and B warrants are exercisable immediately upon issuance with an exercise price of \$ 2.84 per share. The Series A warrants will expire five years following the issuance date and the Series B warrants will expire eighteen months following the issuance date. The Company also issued the placement agent warrants to purchase up to 194,175 shares of common stock with an exercise price of \$ 3.8625 per share. The total gross proceeds from the July 2023 Registered Direct Offering were approximately \$ 10.0 million with net proceeds of approximately \$ 9.1 million after deducting approximately \$ 0.9 million in commissions and other transaction costs. The shares of common stock and the shares underlying the prefunded warrants, July 2023 Common Stock Warrants, and placement agent warrants were registered for sale under the March 2023 S-3. In September 2023, the pre-funded warrants from the July 2023 Registered Direct Offering were fully exercised. The July 2023 Common Stock Warrants and placement agent warrants met the criteria for equity classification.

As of December 31, 2023, approximately \$ 91.7 million of securities remain available for sale under the March 2023 Form S-3.

***Warrant Inducement***

In October 2023, the Company entered into the October 2023 Inducement with a holder of certain of its existing warrants to exercise for cash an aggregate of 6,325,354 shares of the Company's common stock at a reduced exercise price of \$ 1.76 per share. The exercised warrants included the December 2022 Common Stock Warrants with an original exercise price of \$ 4.075 per share and the February Common Stock Warrants with an original exercise price of \$ 5.00 per share. These warrants were issued as part of the December 2022 Registered Direct Offering and February 2023 Registered Direct Offering. As part of the October 2023 Inducement, the Company agreed to issue new unregistered Series A Warrants to purchase up to 6,325,354 shares of Common Stock and new unregistered Series B Warrants to purchase up to 6,325,354 shares of Common Stock. The Series A and B warrants are exercisable immediately upon issuance with an exercise price of \$ 1.51 per share. The Series A warrants will expire five years following the issuance date and the Series B warrants will expire twenty-four months following the issuance date. The Company also issued the placement agent warrants to purchase up to 379,521 shares of common stock with an exercise price of \$ 2.20 per share. The total gross proceeds from the October 2023 Inducement were approximately \$ 11.1 million with net proceeds of approximately \$ 10.0 million after deducting approximately \$ 1.1

**CHECKPOINT THERAPEUTICS, INC.**  
**Notes to Financial Statements**

million in commissions and other transaction costs. In November 2023, the Company filed a registration statement on Form S-3 to register the October 2023 Common Stock Warrants and placement agent warrants, which was declared effective November 24, 2023 (File No. 333-275644). The October 2023 Common Stock Warrants and placement agent warrants met the criteria for equity classification.

The December 2022 Common Stock Warrants, which were liability classified, were revalued on October 4, 2023 using Black-Scholes Model to calculate the difference in fair value as a result of the change in exercise price. The difference in fair value of \$ 1.2 million was recorded as a loss on common stock warrant liabilities in the Statements of Operations. The issuance of the October 2023 Common Stock Warrants was also considered as part of the cost of the inducement and were valued using Black-Scholes Model and allocated between the December 2022 Common Stock Warrants and The February 2023 Common Stock Warrants on a weighted basis. The approximately \$ 7.7 million allocated to the December 2022 Common Stock Warrants was recorded as loss on common stock warrant liabilities in the Statements of Operations with a corresponding offset to additional paid-in-capital (see Note 7).

The February 2023 Common Stock Warrants, which were equity classified and treated under ASC 815-40, *Derivatives and Hedging - Contracts in Entity's Own Equity*, were revalued using Black-Scholes Model to calculate the difference in fair value as a result of the change in exercise price. The difference in fair value of \$ 1.1 million was deemed to be a dividend and recorded to additional paid-in-capital because the Company had an accumulated deficit on the exercise date. The approximately \$ 6.3 million allocated to the February 2023 Common Stock Warrants from the issuance of the October 2023 Common Stock Warrants was also deemed to be a dividend and recorded to additional paid-in-capital because the Company had an accumulated deficit on the exercise date. As a result, the Company presents a deemed dividend for the modification of the February 2023 Common Stock Warrants and issuance of the October 2023 Common Stock Warrants of \$ 7.5 and \$ 0 million for the years ended December 31, 2023 and 2022, respectively. The deemed dividend was included in net loss attributable to common stockholders in the calculation of net loss per share in the consolidated statements of operations (see Note 2).

Upon the close of the transaction, the Company issued the holder 110,000 of the 6,325,354 shares of common stock that were issuable upon exercise of the existing warrants. Due to the beneficial ownership limitation provisions in the inducement offer letter agreement, the remaining 6,215,354 shares were initially unissued, and held in abeyance for the benefit of the holder until notice from the holder that the shares may be issued in compliance with the agreement. As of December 31, 2023, 1,134,000 shares remained in abeyance. These shares were fully issued to the holder in January 2024.

***Shares Issued Under the Founders Agreement***

Pursuant to the Founders Agreement, the Company issued to Fortress 2.5 % of the aggregate number of shares of common stock issued in the offerings and warrant exercises noted above. Accordingly, the Company issued 398,660 shares and 56,671 shares to Fortress for the years ended December 31, 2023 and 2022, respectively, and recorded expenses of approximately \$ 1.0 million and \$ 0.4 million related to these stock grants, which is included in general and administrative expenses in the Company's Statements of Operations for the years ended December 31, 2023 and 2022, respectively.

Pursuant to the Founders Agreement, the Company issued 368,907 shares of common stock to Fortress for the Annual Equity Fee, representing 2.5 % of the fully diluted outstanding equity of the Company on January 1, 2023. Pursuant to the Founders Agreement, the Company will issue 1,492,915 shares of common stock to Fortress for the Annual Equity Fee, representing 2.5 % of the fully diluted outstanding equity of the Company on January 1, 2024. The Company did not have enough unreserved authorized shares under its certificate of incorporation on January 1, 2024 to issue the shares for the Annual Equity Fee. Therefore, in December 2023, Fortress and Checkpoint mutually agreed to defer the issuance until such time as the certificate of incorporation has been amended in order to increase the number of authorized shares that may be issued thereunder (see Notes 2 and 4).

The Company may offer the securities under the S-3 from time to time in response to market conditions or other circumstances if it believes such a plan of financing is in the best interests of its stockholders.



**CHECKPOINT THERAPEUTICS, INC.**  
**Notes to Financial Statements**

**Equity Incentive Plan**

The Company has in effect the Amended and Restated 2015 Incentive Plan ("2015 Incentive Plan"). The 2015 Incentive Plan was adopted in March 2015 by our stockholders. Under the 2015 Incentive Plan, the compensation committee of the Company's board of directors is authorized to grant stock-based awards to directors, officers, employees and consultants. An amendment to the 2015 Incentive Plan was approved by holders of a majority of the voting power of the common stock of the Company on November 17, 2023 to increase the shares available for issuance to 6,000,000 shares. The plan expires 10 years from the effective date of the amendment and limits the term of each option to no more than 10 years from the date of grant.

As of December 31, 2023, 3,510,830 shares are available for issuance under the 2015 Incentive Plan.

**Restricted Stock Awards**

Certain employees, directors and consultants have been awarded restricted stock. The restricted stock vesting consists of milestone and time-based vesting. The following table summarizes restricted stock award activity for the years ended December 31, 2023 and 2022:

	Number of Shares	Weighted Average Grant Date Fair Value
Nonvested at December 31, 2021	451,266	\$ 33.48
Granted	159,416	20.00
Forfeited	( 15,850 )	30.19
Vested	( 215,935 )	36.63
Nonvested at December 31, 2022	378,897	\$ 26.15
Granted	1,103,698	2.33
Forfeited	( 55,100 )	11.34
Vested	( 111,375 )	25.07
Non-vested at December 31, 2023	1,316,120	\$ 6.88

As of December 31, 2023, there was \$ 2.4 million of total unrecognized compensation cost related to non-vested restricted stock, which is expected to be recognized over a weighted-average period of 1.9 years. This amount does not include, as of December 31, 2023, 186,733 shares of restricted stock outstanding which are performance-based and vest upon achievement of certain corporate milestones. The expense is recognized over the vesting period of the award. Stock-based compensation for milestone awards will be measured and recorded if and when it is probable that the milestone will be achieved.

**Restricted Stock Units**

Certain employees have been awarded restricted stock units. The following table summarizes restricted stock units activity for the years ended December 31, 2023 and 2022:

	Number of Shares	Weighted Average Grant Date Fair Value
Non-vested at December 31, 2021	—	\$ —
Granted	85,000	10.50
Non-vested at December 31, 2022	85,000	10.50
Granted	577,384	2.25
Forfeited	( 4,000 )	10.50
Vested	( 42,500 )	10.50
Non-vested at December 31, 2023	615,884	\$ 2.77



**CHECKPOINT THERAPEUTICS, INC.**  
**Notes to Financial Statements**

As of December 31, 2023, all restricted stock units outstanding are performance-based and vest upon achievement of certain corporate milestones. The expense for milestone awards will be measured and recorded if and when it is probable that the milestone will be achieved.

*Stock Options*

The following table summarizes stock option award activity for the years ended December 31, 2023 and 2022:

	Stock Options	Weighted Average Exercise Price	Weighted Average Remaining Contractual Life (in years)
Outstanding as of December 31, 2021	27,000	\$ 31.35	7.44
Granted	4,000	14.20	
Forfeited	( 4,000 )	14.20	
Outstanding as of December 31, 2022	27,000	\$ 31.35	6.44
Granted	100,000	2.81	
Outstanding as of December 31, 2023	127,000	\$ 8.88	8.60
Vested and exercisable as of December 31, 2023	19,500	\$ 24.68	6.04

Upon the exercise of stock options, the Company will issue new shares of its common stock.

The Company used the Black-Scholes Model for determining the estimated fair value of stock-based compensation related to stock options. The table below summarizes the assumptions used:

	For the Years Ended December 31,	
	2023	2022
Risk-free interest rate	3.7 %	2.9 %
Expected dividend yield	—	—
Expected term in years	10.0	10.0
Expected volatility	83.5 %	73.1 %

**Warrants**

A summary of warrant activities for years ended December 31, 2023 and 2022 is presented below:

	Warrants	Weighted Average Exercise Price	Weighted Average Remaining Contractual Life (in years)
Outstanding as of December 31, 2021	1,249	\$ —	3.83
Granted	4,356,361	3.37	
Fractional share adjustment	( 13 )	—	
Outstanding as of December 31, 2022	4,357,597	\$ 3.37	3.26
Granted	35,513,575	2.30	
Exercised	( 9,773,501 )	1.76	
Outstanding as of December 31, 2023	30,097,671	\$ 2.36	3.00

Upon the exercise of warrants, the Company will issue new shares of its common stock.

**CHECKPOINT THERAPEUTICS, INC.**  
**Notes to Financial Statements**

**Stock-Based Compensation**

The following table summarizes stock-based compensation expense for the years ended December 31, 2023 and 2022 (in thousands).

	For the year ended December 31,	
	2023	2022
Research and development	\$ 1,169	\$ 888
General and administrative	1,728	2,036
Total stock-based compensation expense	<u>\$ 2,897</u>	<u>\$ 2,924</u>

**Note 7 – Common Stock Warrant Liabilities**

The Company accounts for warrants as either equity-classified or liability-classified instruments based on an assessment of the warrant's specific terms and applicable authoritative guidance in ASC 480, *Distinguishing Liabilities from Equity* and ASC 815-40, *Derivatives and Hedging – Contracts in Entity's Own Equity*. For warrants that meet all of the criteria for equity classification, the warrants are required to be recorded as a component of additional paid-in capital at the time of issuance. For warrants that do not meet all the criteria for equity classification, the warrants are required to be recorded at their initial fair value on the date of issuance, and each balance sheet date thereafter.

On December 16, 2022, the Company closed on an offering for the sale of shares of its common stock and pre-funded warrants as part of the December 2022 Registered Direct Offering. The common stock and the pre-funded warrants were sold together with December 2022 Common Stock Warrants. The Company also issued the placement agent warrants to purchase shares (See Note 6).

The Company deemed the December 2022 Common Stock Warrants and December 2022 Placement Agent Warrants to be classified as liabilities on the balance sheet as they contain terms for redemption of the underlying security that are outside its control. The December 2022 Common Warrants and December 2022 Placement Agent Warrants were recorded at the time of closing at a fair value, determined by using the Black-Scholes Model. As the total fair value of the common stock warrant liability exceeded the total proceeds, no proceeds were allocated to the common stock and pre-funded warrants issued as part of the transaction. The Company revalued the December 2022 Common Stock Warrants and December 2022 Placement Agent Warrants at December 31, 2022, resulting in a fair value of \$ 11.2 million. The Company also revalued the December 2022 Common Stock Warrants and December 2022 Placement Agent Warrants at each reporting period in 2023, resulting in gains throughout the year.

In October 2023, the Company entered into the October 2023 Inducement with a holder of certain of its existing warrants to exercise for cash an aggregate of 6,325,354 shares of the Company's common stock at a reduced exercise price of \$ 1.76 per share (see Note 6). Included in the exercise were the entirety of the December 2022 Common Stock Warrants. The Company revalued the December 2022 Common Stock Warrants on October 4, 2023, resulting in a fair value of \$ 3.1 million. The decrease in the fair value of the common stock warrant liability throughout the year resulted in an offsetting gain on common stock warrant liabilities in the Statements of Operations. Since the December 2022 Placement Agent Warrants issued in the December 2022 Registered Direct Offering were not included in the October 2023 Inducement and have not been exercised, they were revalued at December 31, 2023.

	Warrant Liabilities
Common Stock Warrant liabilities at December 31, 2021	\$ —
Issuance of December 2022 Common Stock Warrants	7,640
Issuance of December 2022 Placement Agent Warrants	278
Change in fair value of Common Stock Warrant liabilities	3,252
Common Stock Warrant liabilities at December 31, 2022	\$ 11,170
Change in fair value of Common Stock Warrant liabilities	( 7,924 )
Exercise of December 2022 Common Stock Warrants	( 3,121 )
Common Stock Warrant liabilities at December 31, 2023	<u>\$ 125</u>

**CHECKPOINT THERAPEUTICS, INC.**  
**Notes to Financial Statements**

The Company used the Black-Scholes Model for determining the estimated fair value of the common stock warrant liabilities, including as part of the October 2023 Inducement. A summary of the weighted average (in aggregate) significant unobservable inputs used in measuring the warrant liability is determined using Level 3 inputs as follows:

	October 4, 2023	December 31, 2022
<b>Series A Warrants</b>		
Exercise price	\$ 1.76	\$ 4.08
Volatility	91.4 %	89.4 %
Expected life	4.2	5.0
Risk-free rate	4.7 %	4.0 %
Dividend yield	—	—

	October 4, 2023	December 31, 2022
<b>Series B Warrants</b>		
Exercise price	\$ 1.76	\$ 4.08
Volatility	99.6 %	82.4 %
Expected life	0.7	1.5
Risk-free rate	5.4 %	4.7 %
Dividend yield	—	—

	December 31, 2023	December 31, 2022
<b>Placement Agent Warrants</b>		
Exercise price	\$ 5.41	\$ 5.41
Volatility	96.4 %	89.4 %
Expected life	4.0	5.0
Risk-free rate	3.8 %	4.0 %
Dividend yield	—	—

**Note 8 - Income Taxes**

The Company has accumulated net losses since inception and has not recorded an income tax provision or benefit during the years ended December 31, 2023 and 2022.

A reconciliation of the statutory U.S. federal rate to the Company's effective tax rate is as follows:

	For the Year Ended December 31, 2023	2022
Percentage of pre-tax income:		
Statutory federal income tax rate	21 %	21 %
State taxes, net of federal tax benefit	11 %	4 %
Credits	2 %	3 %
Change in state tax rate	12 %	( 4 )%
Provision to return	— %	— %
Stock based compensation	( 1 )%	— %
Change in fair market value of warrant	— %	— %
Other	( 1 )%	( 3 )%
Change in valuation allowance	( 43 )%	( 21 )%
Income taxes provision (benefit)	— %	— %

**CHECKPOINT THERAPEUTICS, INC.**  
**Notes to Financial Statements**

The components of the net deferred tax asset as of December 31, 2023 and 2022 are the following (in thousands):

	As of December 31,	
	2023	2022
Deferred tax assets:		
Net operating loss carryovers	\$ 45,000	\$ 40,456
Stock compensation and other	1,384	1,066
Amortization of license	11,126	7,952
Accruals and reserves	825	463
Tax credits	5,105	4,112
Start Up Costs	24	21
Section 174 Capitalization	23,793	10,671
Total deferred tax assets	87,257	64,741
Less valuation allowance	( 87,257 )	( 64,741 )
Deferred tax asset, net of valuation allowance	\$ —	\$ —

The Company has determined, based upon available evidence, that it is more likely than not that the net deferred tax asset will not be realized and, accordingly, has provided a full valuation allowance against its net deferred tax asset. A valuation allowance of approximately \$ 87.3 million and \$ 64.7 million was recorded for the years ended December 31, 2023 and 2022, respectively. As of December 31, 2023, the Company had federal and state net operating loss carryforwards of approximately \$ 166.8 million and \$ 154.2 million, respectively. Approximately \$ 135.6 million of the federal net operating loss carryforwards and \$ 1.7 million of the state net operating loss carryforwards can be carried forward indefinitely. The remaining \$ 31.2 million of federal and \$ 152.5 million of state net operating loss carryforwards will begin to expire, if not utilized, by 2034 and 2034, respectively. The Company has \$ 3.7 million of research and development credit carryforwards and \$ 1.4 million of orphan drug credit carryforwards, which will begin to expire, if not utilized, by 2034. Utilization of the net operating loss and credit carryforwards may be subject to an annual limitation due to the ownership change limitations provided by Section 382 of the Internal Revenue Code of 1986, as amended and similar state provisions. The Company has not completed an analysis to determine whether any such limitations have been triggered as of December 31, 2023. The Company has no income tax affect due to the recognition of a full valuation allowance on the expected tax benefits of future loss carry forwards based on uncertainty surrounding realization of such assets.

There are no significant matters determined to be unrecognized tax benefits taken or expected to be taken in a tax return, in accordance with ASC 740, which clarifies the accounting for uncertainty in income taxes recognized in the financial statements, that have been recorded on the Company's financial statements for the years ended December 31, 2023 and 2022. The Company does not anticipate a material change to unrecognized tax benefits in the next twelve months.

Additionally, ASC 740 provides guidance on the recognition of interest and penalties related to income taxes. There were no interest or penalties related to income taxes that have been accrued or recognized as of and for the period ended December 31, 2023 and 2022. The Company would classify interest and penalties related to uncertain tax positions as income tax expense, if applicable.

The federal and state tax returns for the periods ended December 31, 2020, 2021 and 2022 are currently open for examination under the applicable federal and state income tax statutes of limitations.

Beginning with the 2022 tax year, the Company is required to capitalize research and development expenses for tax purposes as defined under Internal Revenue Code Section 174. For expenses that are incurred for research and development in the U.S., the amounts will be amortized over 5 years, and for expenses that are incurred for research and development outside the U.S., the amounts will be amortized over 15 years.

**CHECKPOINT THERAPEUTICS, INC.**  
**Notes to Financial Statements**

**Note 9 - Accounts Payable and Accrued Expenses**

At December 31, 2023 and 2022, accounts payable and accrued expenses consisted of the following (in thousands):

	December 31,	
	2023	2022
Accounts payable	\$ 6,570	\$ 11,535
Accrued compensation	1,206	1,195
Research and development	7,123	7,289
Other	586	278
Total accounts payable and accrued expenses	<u>\$ 15,485</u>	<u>\$ 20,297</u>

**Note 10 – Subsequent Events**

In January 2024, the Company closed on a registered direct offering (the “January 2024 Registered Direct Offering”) for the issuance and sale of an aggregate of 1,275,000 shares of its common stock at a purchase price of \$ 1.805 per share of common stock. In addition, the offering includes 6,481,233 shares of common stock in the form of pre-funded warrants at a price of \$ 1.8049 . The pre-funded warrants were funded in full at closing except for a nominal exercise price of \$ 0.0001 and are exercisable commencing on the closing date and will terminate when such pre-funded warrants are exercised in full. In a concurrent private placement, Checkpoint issued and sold common warrants (the “January 2024 Common Warrants”) to purchase up to 7,756,233 shares of common stock. The January 2024 Common Warrants are exercisable immediately upon issuance with an exercise price of \$ 1.68 per share and will expire five years following the issuance date. The Company also issued the placement agent warrants to purchase up to 465,374 shares of common stock with an exercise price of \$ 2.2563 per share. The total gross proceeds from the January 2024 Registered Direct Offering were approximately \$ 14.0 million with net proceeds of approximately \$ 12.8 million after deducting approximately \$ 1.2 million in commissions and other transaction costs. The shares of common stock and the shares underlying the pre-funded warrants were registered for sale under the March 2023 S-3. The Company will file a registration statement to register the January 2024 Common Stock Warrants and placement agent warrants.

As of March 19 2024, 2,661,233 pre-funded warrants from the January 2024 Registered Direct Offering were fully exercised.

## SIGNATURES

Pursuant to the requirements of Section 12 of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

### Checkpoint Therapeutics, Inc.

By: /s/ James F. Oliviero

Name: James F. Oliviero

Title: President, Chief Executive Officer and Director

March 22, 2024

## POWER OF ATTORNEY

We, the undersigned directors and/or executive officers of Checkpoint Therapeutics, Inc., hereby severally constitute and appoint James F. Oliviero, acting singly, his or her true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution, for him or her in any and all capacities, to sign this report and to file the same, with all exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorney-in-fact and agent full power and authority to do and perform each and every act and thing necessary or appropriate to be done in connection therewith, as fully for all intents and purposes as he or she might or could do in person, hereby approving, ratifying and confirming all that said attorney-in-fact and agent, or his substitute, may lawfully do or cause to be done by virtue hereof.

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

Signature	Title	Date
<u>/s/ James F. Oliviero</u> James F. Oliviero	President, Chief Executive Officer and Director (Principal Executive Officer)	March 22, 2024
<u>/s/ Garrett Gray</u> Garrett Gray	Chief Financial Officer (Principal Financial Officer)	March 22, 2024
<u>/s/ Michael S. Weiss</u> Michael S. Weiss	Chairman of the Board	March 22, 2024
<u>/s/ Lindsay A. Rosenwald</u> Lindsay A. Rosenwald, M.D.	Director	March 22, 2024
<u>/s/ Neil Herskowitz</u> Neil Herskowitz	Director	March 22, 2024
<u>/s/ Barry Salzman</u> Barry Salzman	Director	March 22, 2024
<u>/s/ Christian Béchon</u> Christian Béchon	Director	March 22, 2024
<u>/s/ Amit Sharma</u> Amit Sharma, MD	Director	March 22, 2024

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**DESCRIPTION OF SECURITIES**

*When used herein, the terms "we," "our," and "us" refer to Checkpoint Therapeutics, Inc.*

**DESCRIPTION OF CAPITAL STOCK**

The following description summarizes the material terms of Checkpoint capital stock. Because it is only a summary, it does not contain all the information that may be important to you. For a complete description of our capital stock, you should refer to our certificate of incorporation, our bylaws and to the provisions of applicable Delaware law.

**Common Stock**

Our common stock is traded on The Nasdaq Capital Market, or the Exchange, under the symbol "CKPT."

The authorized capital stock of Checkpoint consists of 80,000,000 shares of common stock, of which 700,000 shares have been designated as Class A common stock. The description of our Class A Common Stock in this item is for information purposes only. All of the Class A common stock has been issued to Fortress. Class A common stock is identical to common stock other than as to voting rights, the election of directors for a definite period, and conversion rights. On any matter presented to our stockholders for their action or consideration at any meeting of our stockholders (or by written consent of stockholders in lieu of meeting), each holder of outstanding shares of Class A common stock will be entitled to cast for each share of Class A common stock held by such holder as of the record date for determining stockholders entitled to vote on such matter, the number of votes that is equal to one and one-tenth (1.1) times a fraction, the numerator of which is the sum of the shares of outstanding common stock and the denominator of which is the number of shares of outstanding Class A common stock. Thus, the Class A common stock will at all times constitute a voting majority. For a period of ten (10) years from the date of the first issuance of shares of Class A common stock expiring in 2025 (the "Class A Director Period"), the holders of record of the shares of Class A common stock (or other capital stock or securities issued upon conversion of or in exchange for the Class A common stock), exclusively and as a separate class, will be entitled to appoint or elect the majority of the directors of Checkpoint (the "Class A Directors"). Finally, each share of Class A common stock is convertible, at the option of the holder, into one fully paid and nonassessable share of common stock (the "Conversion Ratio"), subject to certain adjustments.

If Checkpoint at any time effects a subdivision of the outstanding common stock (or other capital stock or securities at the time issuable upon conversion of the Class A common stock) by any stock split, stock dividend, recapitalization or otherwise, the applicable Conversion Ratio in effect immediately before that subdivision will be proportionately decreased so that the number of shares of common stock (or other capital stock or securities at the time issuable upon conversion of the Class A common stock) issuable on conversion of each share of Class A common stock will be increased in proportion to such increase in the aggregate number of shares of common stock (or other capital stock or securities at the time issuable upon conversion of the Class A common stock) outstanding. If Checkpoint at any time combines the outstanding shares of common stock, the applicable Conversion Ratio in effect immediately before the combination will be proportionately increased so that the number of shares of common stock (or other capital stock or securities at the time issuable upon conversion of the Class A common stock) issuable on conversion of each share of Class A common stock will be decreased in proportion to such decrease in the aggregate number of shares of common stock (or other capital stock or securities at the time issuable upon conversion of the Class A common stock) outstanding. Additionally, if any reorganization, recapitalization, reclassification, consolidation or merger involving Checkpoint occurs in which the common stock (but not the Class A common stock) is converted into or exchanged for securities, cash or other property (other than a transaction involving the subdivision or combination of the common stock), then, following any such reorganization, recapitalization, reclassification, consolidation or merger, each share of Class A common stock becomes convertible into the kind and amount of securities, cash or other property which such Class A Stockholder would have been entitled to receive had he or she

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converted the Class A Shares immediately before said transaction. In such case, appropriate adjustment (as determined in good faith by the Board of Directors of Checkpoint) will be made in the application of the provisions of Checkpoint's Amended and Restated Certificate of Incorporation relating the subdivision or combination of the common stock with respect to the rights and interests thereafter of the holders of the Class A common stock, such that the provisions set forth in of Checkpoint's Amended and Restated Certificate of Incorporation relating to the subdivision or combination of the common stock (including the provisions with respect to changes in and other adjustments of the applicable Conversion Ratio) will thereafter be applicable, as nearly as reasonably may be, in relation to any securities or other property thereafter deliverable upon the conversion of the Class A common stock. Checkpoint is not authorized to issue preferred stock.

#### **Dividends**

The holders of outstanding shares of our common stock, including Class A common stock, are entitled to receive dividends out of funds legally available at the times and in the amounts that our board of directors may determine. All dividends are non-cumulative.

#### **Voting Rights**

The holders of our common stock are entitled to one vote for each share of common stock held on all matters submitted to a vote of the stockholders, including the election of directors, except as to the Class A Directors during the Class A Director Period. Our certificate of incorporation and bylaws do not provide for cumulative voting rights.

#### **Liquidation and Dissolution**

Upon our liquidation, dissolution, or winding-up, the assets legally available for distribution to our stockholders would be distributable ratably among the holders of our common stock, including Class A common stock, outstanding at that time after payment of other claims of creditors, if any.

#### **Other**

The holders of our common stock have no preemptive, conversion, or subscription rights, and there are no redemption or sinking fund provisions applicable to our common stock.

All of the outstanding shares of our common stock, including Class A common stock, are duly issued, fully paid and non-assessable.

#### **DESCRIPTION OF WARRANTS**

We may issue warrants to purchase shares of our common stock in one or more series together with other securities or separately, as described in each applicable prospectus supplement.

The prospectus supplement relating to any warrants we offer will include specific terms relating to the offering. These terms will include some or all of the following:

- the title of the warrants;
  - the aggregate number of warrants offered;
  - the designation, number and terms of the shares of common stock purchasable upon exercise of the warrants and procedures by which those numbers may be adjusted;
  - the exercise price of the warrants;
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- the dates or periods during which the warrants are exercisable;
- the designation and terms of any securities with which the warrants are issued;
- if the warrants are issued as a unit with another security, the date on and after which the warrants and the other security will be separately transferable;
- if the exercise price is not payable in U.S. dollars, the foreign currency, currency unit or composite currency in which the exercise price is denominated;
- any minimum or maximum amount of warrants that may be exercised at any one time;
- any terms relating to the modification of the warrants;
- any terms, procedures and limitations relating to the transferability, exchange or exercise of the warrants; and
- any other specific terms of the warrants.

## **DESCRIPTION OF DEBT SECURITIES**

We may offer debt securities which may be senior, subordinated or junior subordinated and may be convertible. Unless otherwise specified in the applicable prospectus supplement, our debt securities will be issued in one or more series under an indenture to be entered into between us and a trustee. We will issue the debt securities offered by any applicable prospectus supplement under an indenture to be entered into between us and the trustee identified in the applicable prospectus supplement. The terms of the debt securities will include those stated in the indenture and those made part of the indenture by reference to the Trust Indenture Act of 1939, as in effect on the date of the indenture. The indenture will be subject to and governed by the terms of the Trust Indenture Act of 1939.

The following description briefly sets forth certain general terms and provisions of the debt securities that we may offer. The particular terms of the debt securities offered by any prospectus supplement and the extent, if any, to which these general provisions may apply to the debt securities, will be described in the related prospectus supplement. Accordingly, for a description of the terms of a particular issue of debt securities, reference must be made to both the related prospectus supplement and to the following description.

The aggregate principal amount of debt securities that may be issued under the indenture is unlimited. The debt securities may be issued in one or more series as may be authorized from time to time pursuant to a supplemental indenture entered into between us and the trustee or an order delivered by us to the trustee. For each series of debt securities we offer, a prospectus supplement will describe the following terms and conditions of the series of debt securities that we are offering, to the extent applicable:

- title and aggregate principal amount;
  - whether the debt securities will be senior, subordinated or junior subordinated;
  - applicable subordination provisions, if any;
  - provisions regarding whether the debt securities will be convertible or exchangeable into other securities or property of the Company or any other person;
  - percentage or percentages of principal amount at which the debt securities will be issued;
  - maturity date(s);
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- interest rate(s) or the method for determining the interest rate(s);
  - whether interest on the debt securities will be payable in cash or additional debt securities of the same series;
  - dates on which interest will accrue or the method for determining dates on which interest will accrue and dates on which interest will be payable;
  - whether the amount of payment of principal of, premium, if any, or interest on the debt securities may be determined with reference to an index, formula or other method;
  - redemption, repurchase or early repayment provisions, including our obligation or right to redeem, purchase or repay debt securities under a sinking fund, amortization or analogous provision;
  - if other than the debt securities' principal amount, the portion of the principal amount of the debt securities that will be payable upon declaration of acceleration of the maturity;
  - authorized denominations;
  - form;
  - amount of discount or premium, if any, with which the debt securities will be issued, including whether the debt securities will be issued as "original issue discount" securities;
  - the place or places where the principal of, premium, if any, and interest on the debt securities will be payable;
  - where the debt securities may be presented for registration of transfer, exchange or conversion;
  - the place or places where notices and demands to or upon the Company in respect of the debt securities may be made;
  - whether the debt securities will be issued in whole or in part in the form of one or more global securities;
  - if the debt securities will be issued in whole or in part in the form of a book-entry security, the depository or its nominee with respect to the debt securities and the circumstances under which the book-entry security may be registered for transfer or exchange or authenticated and delivered in the name of a person other than the depository or its nominee;
  - whether a temporary security is to be issued with respect to such series and whether any interest payable prior to the issuance of definitive securities of the series will be credited to the account of the persons entitled thereto;
  - the terms upon which beneficial interests in a temporary global security may be exchanged in whole or in part for beneficial interests in a definitive global security or for individual definitive securities;
  - the guarantors, if any, of the debt securities, and the extent of the guarantees and any additions or changes to permit or facilitate guarantees of such debt securities;
  - any covenants applicable to the particular debt securities being issued;
  - any defaults and events of default applicable to the debt securities, including the remedies available in connection therewith;
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- currency, currencies or currency units in which the purchase price for, the principal of and any premium and any interest on, such debt securities will be payable;
- time period within which, the manner in which and the terms and conditions upon which the Company or the purchaser of the debt securities can select the payment currency;
- securities exchange(s) on which the debt securities will be listed, if any;
- whether any underwriter(s) will act as market maker(s) for the debt securities;
- extent to which a secondary market for the debt securities is expected to develop;
- provisions relating to defeasance;
- provisions relating to satisfaction and discharge of the indenture;
- any restrictions or conditions on the transferability of the debt securities;
- provisions relating to the modification of the indenture both with and without the consent of holders of debt securities issued under the indenture;
- any addition or change in the provisions related to compensation and reimbursement of the trustee;
- provisions, if any, granting special rights to holders upon the occurrence of specified events;
- whether the debt securities will be secured or unsecured, and, if secured, the terms upon which the debt securities will be secured and any other additions or changes relating to such security; and
- any other terms of the debt securities that are not inconsistent with the provisions of the Trust Indenture Act (but may modify, amend, supplement or delete any of the terms of the indenture with respect to such series of debt securities).

#### **General**

One or more series of debt securities may be sold as “original issue discount” securities. These debt securities would be sold at a substantial discount below their stated principal amount, bearing no interest or interest at a rate which at the time of issuance is below market rates. One or more series of debt securities may be variable rate debt securities that may be exchanged for fixed rate debt securities.

United States federal income tax consequences and special considerations, if any, applicable to any such series will be described in the applicable prospectus supplement.

Debt securities may be issued where the amount of principal and/or interest payable is determined by reference to one or more currency exchange rates, commodity prices, equity indices or other factors. Holders of such debt securities may receive a principal amount or a payment of interest that is greater than or less than the amount of principal or interest otherwise payable on such dates, depending upon the value of the applicable currencies, commodities, equity indices or other factors. Information as to the methods for determining the amount of principal or interest, if any, payable on any date, the currencies, commodities, equity indices or other factors to which the amount payable on such date is linked and certain additional United States federal income tax considerations will be set forth in the applicable prospectus supplement.

The term “debt securities” includes debt securities denominated in U.S. dollars or, if specified in the applicable prospectus supplement, in any other freely transferable currency or units based on or relating to foreign currencies.

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We expect most debt securities to be issued in fully registered form without coupons and in denominations of \$2,000 and any integral multiples thereof. Subject to the limitations provided in the indenture and in the prospectus supplement, debt securities that are issued in registered form may be transferred or exchanged at the principal corporate trust office of the trustee, without the payment of any service charge, other than any tax or other governmental charge payable in connection therewith.

### **Global Securities**

The debt securities of a series may be issued in whole or in part in the form of one or more global securities that will be deposited with, or on behalf of, a depositary identified in the prospectus supplement. Global securities will be issued in registered form and in either temporary or definitive form. Unless and until it is exchanged in whole or in part for the individual debt securities, a global security may not be transferred except as a whole by the depositary for such global security to a nominee of such depositary or by a nominee of such depositary to such depositary or another nominee of such depositary or by such depositary or any such nominee to a successor of such depositary or a nominee of such successor. The specific terms of the depositary arrangement with respect to any debt securities of a series and the rights of and limitations upon owners of beneficial interests in a global security will be described in the applicable prospectus supplement.

### **Governing Law**

The indenture and the debt securities shall be construed in accordance with and governed by the laws of the State of New York.

### **DESCRIPTION OF UNITS**

We may issue, in one more series, units comprised of shares of our common stock, warrants to purchase common stock, debt securities or any combination of those securities. Each unit will be issued so that the holder of the unit is also the holder of each security included in the unit. Thus, the holder of a unit will have the rights and obligations of a holder of each included security. The unit agreement under which a unit is issued may provide that the securities included in the unit may not be held or transferred separately, at any time or at any time before a specified date.

We may evidence units by unit certificates that we issue under a separate agreement. We may issue the units under a unit agreement between us and one or more unit agents. If we elect to enter into a unit agreement with a unit agent, the unit agent will act solely as our agent in connection with the units and will not assume any obligation or relationship of agency or trust for or with any registered holders of units or beneficial owners of units. We will indicate the name and address and other information regarding the unit agent in the applicable prospectus supplement relating to a particular series of units if we elect to use a unit agent.

We will describe in the applicable prospectus supplement the terms of the series of units being offered, including:

- the designation and terms of the units and of the securities comprising the units, including whether and under what circumstances those securities may be held or transferred separately;
- any provisions of the governing unit agreement that differ from those described herein; and
- any provisions for the issuance, payment, settlement, transfer or exchange of the units or of the securities comprising the units.

The other provisions regarding our common stock, warrants and debt securities as described in this section will apply to each unit to the extent such unit consists of shares of our common stock, warrants and/or debt securities.

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MUTUAL TERMINATION AGREEMENT

This Mutual Termination Agreement (this "Agreement") is effective as of September 30, 2023 (the "Effective Date") by and between Checkpoint Therapeutics, Inc., a Delaware corporation with its place of business at 95 Sawyer Road, Suite 110, Waltham, MA 02453 ("Checkpoint") and TG Therapeutics, Inc., a Delaware corporation with its place of business at 2 Gansevoort Street, 9<sup>th</sup> Floor, New York, New York 10014 ("TGTX"). Checkpoint and TGTX may each individually be referred to as a "Party" herein and collectively as the "Parties".

WHEREAS, Checkpoint and TGTX entered into a Sublicense Agreement dated May 26, 2016 (as amended or supplemented, the "Sublicense Agreement");

WHEREAS, Checkpoint and TGTX have mutually agreed to terminate the Sublicense Agreement.

NOW, THEREFORE, Checkpoint and TGTX, for good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, do hereby agree as follows:

1. Capital terms used herein that are not otherwise defined shall have the meanings as given to them in the Sublicense Agreement.

2. The Sublicense Agreement is hereby terminated as of the Effective Date.

3. TGTX shall pay to Checkpoint any expenses which remain, as of the Effective Date, owing pursuant to Section 6.1(a) of the Sublicense Agreement. Except as expressly provided in this Agreement, the Parties acknowledge and agree that no further compensation, consideration or obligation will be due, payable or owing with respect to the Sublicense Agreement.

4. Checkpoint hereby releases TGTX, its officers, employees, directors, agents, successor entities, assigns, and representatives from and against any and all claims, losses, damages, liabilities, demands, costs and expenses attributable to, or arising out of, in any way the Sublicense Agreement.

5. TGTX hereby releases Checkpoint, its officers, employees, directors, agents, successor entities, assigns, and representatives from and against any and all claims, losses, damages, liabilities, demands, costs and expenses attributable to, or arising out of, in any way the Sublicense Agreement.

6. This Agreement shall be governed and interpreted, and all rights and obligations of the parties shall be determined, in accordance with the laws of the State of New York, without regard to its conflict of laws rules. All disputes with respect to this Agreement, which cannot be resolved by good faith negotiation among the parties, shall be brought and heard in the United States District Court for the Southern District of New York or any State courts sitting in New York, New York. The parties to this Agreement each consent to the in personam jurisdiction and agree that service of process upon them in any such action may be made if delivered in person, by courier service, by facsimile or by certified mail, postage prepaid, return receipt requested, and shall be deemed effectively given upon confirmed receipt thereof.

7. This Agreement may be executed in two counterparts and either party hereto may execute any such counterpart, both of which when executed and delivered shall be deemed to be an original and to which both counterparts, when fully executed by all of the parties, taken together shall constitute but one and the same instrument.

8. The Agreement states the entire agreement among the parties hereto concerning the termination of the Sublicense Agreement, and supersedes any and all prior agreements, commitments, communications, negotiations, offers (whether in writing or oral), representations, statements, understandings and writings pertaining thereto, and may not be amended or modified except by written instrument duly executed and delivered by each of the parties hereto.

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IN WITNESS WHEREOF, this Mutual Termination Agreement has been duly executed and delivered by their duly authorized representatives to be effective as of the Effective Date.

**Checkpoint Therapeutics, Inc.**

By: /s/ James F. Oliviero  
Name: James F. Oliviero  
Title: President & CEO

**TG Therapeutics, Inc.**

By: /s/ Michael Weiss  
Name: Michael Weiss  
Title: CEO & President

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MUTUAL TERMINATION AGREEMENT

This Mutual Termination Agreement (this "Agreement") is effective as of September 30, 2023 (the "Effective Date") by and between Checkpoint Therapeutics, Inc., a Delaware corporation with its place of business at 95 Sawyer Road, Suite 110, Waltham, MA 02453 ("CTI") and TG Therapeutics, Inc., a Delaware corporation with its place of business at 2 Gansevoort Street, 9th Floor, New York, New York 10014 ("TGTX"). CTI and TGTX may each individually be referred to as a "Party" herein and collectively as the "Parties."

WHEREAS, CTI and TGTX entered into an Amended and Restated Collaboration Agreement dated June 19, 2019 (as amended or supplemented, the "Collaboration Agreement");

WHEREAS, CTI and TGTX have mutually agreed to terminate the Collaboration Agreement.

NOW, THEREFORE, CTI and TGTX, for good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, do hereby agree as follows:

1. Capital terms used herein that are not otherwise defined shall have the meanings as given to them in the Collaboration Agreement.
  2. The Collaboration Agreement is hereby terminated as of the Effective Date.
  3. TGTX shall pay to CTI any expenses which remain, as of the Effective Date, owing pursuant to Section 6.1(a) of the Collaboration Agreement. Except as expressly provided in this Agreement, the Parties acknowledge and agree that no further compensation, consideration or obligation will be due, payable or owing with respect to the Collaboration Agreement.
  4. CTI hereby releases TGTX, its officers, employees, directors, agents, successor entities, assigns, and representatives from and against any and all claims, losses, damages, liabilities, demands, costs and expenses attributable to, or arising out of, in any way the Collaboration Agreement.
  5. TGTX hereby releases CTI, its officers, employees, directors, agents, successor entities, assigns, and representatives from and against any and all claims, losses, damages, liabilities, demands, costs and expenses attributable to, or arising out of, in any way the Collaboration Agreement.
  6. This Agreement shall be governed and interpreted, and all rights and obligations of the parties shall be determined, in accordance with the laws of the State of New York, without regard to its conflict of laws rules. All disputes with respect to this Agreement, which cannot be resolved by good faith negotiation among the parties, shall be brought and heard in the United States District Court for the Southern District of New York or any State courts sitting in New York, New York. The parties to this Agreement each consent to the in personam jurisdiction and agree that service of process upon them in any such action may be made if delivered in person, by courier service, by facsimile or by certified mail, postage prepaid, return receipt requested, and shall be deemed effectively given upon confirmed receipt thereof.
  7. This Agreement may be executed in two counterparts and either party hereto may execute any such counterpart, both of which when executed and delivered shall be deemed to be an original and to which both counterparts, when fully executed by all of the parties, taken together shall constitute but one and the same instrument.
  8. The Agreement states the entire agreement among the parties hereto concerning the termination of the Collaboration Agreement, and supersedes any and all prior agreements, commitments, communications, negotiations, offers (whether in writing or oral), representations, statements, understandings and writings pertaining thereto, and may not be amended or modified except by written instrument duly executed and delivered by each of the parties hereto.
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IN WITNESS WHEREOF, this Mutual Termination Agreement has been duly executed and delivered by their duly authorized representatives to be effective as of the Effective Date.

**Checkpoint Therapeutics, Inc.**

By: /s/ James F. Oliviero  
Name: James F. Oliviero  
Title: President & CEO

**TG Therapeutics, Inc.**

By: /s/ Michael Weiss  
Name: Michael Weiss  
Title: CEO & President

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KPMG LLP  
Two Financial Center  
60 South Street  
Boston, MA 02111

**Consent of Independent Registered Public Accounting Firm**

We consent to the incorporation by reference in the registration statements (Nos. 333-270474, 333-270474, 333-270843, 333-271171, 333-275644) on Form S-3 and (Nos. 333-216856, 333-221488, 333-251000, 333-268740, 333-275643) on Form S-8 of our report dated March 22, 2024, with respect to the financial statements of Checkpoint Therapeutics, Inc.

/s/ KPMG LLP

Boston, Massachusetts  
March 22, 2024

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**CERTIFICATION PURSUANT TO  
SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, James F. Oliviero certify that:

(1) I have reviewed this Annual Report on Form 10-K for the year ended December 31, 2023 of Checkpoint Therapeutics, Inc. (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(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

(a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) disclosed in the report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

(5) The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of 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.

Dated: March 22, 2024

By: /s/ James F. Oliviero

James F. Oliviero

President, Chief Executive Officer and Director

Principal Executive Officer

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**CERTIFICATION PURSUANT TO  
SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Garrett Gray, certify that:

(1) I have reviewed this Annual Report on Form 10-K for the year ended December 31, 2023 of Checkpoint Therapeutics, Inc. (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(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

(a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) disclosed in the report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

(5) The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

(a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

(b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Dated: March 22, 2024

By: /s/ Garrett Gray  
Garrett Gray  
Chief Financial Officer  
Principal Financial Officer

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**CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350 AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Annual Report on Form 10-K of Checkpoint Therapeutics, Inc. (the "Company") for the period ended December 31, 2023, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, James F. Oliviero, President and Chief Executive Officer of the Company, hereby certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to my knowledge:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company as of, and for, the periods presented in the Report.

Dated: March 22, 2024

By: /s/ James F. Oliviero

James F. Oliviero

President, Chief Executive Officer and Director

Principal Executive Officer

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**CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350 AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Annual Report on Form 10-K of Checkpoint Therapeutics, Inc. (the "Company") for the period ended December 31, 2023, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Garrett Gray, Principal Financial Officer of the Company, hereby certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to my knowledge:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company, as of, and for, the periods presented in the Report.

Dated: March 22, 2024

By: /s/ Garrett Gray  
Garrett Gray  
Chief Financial Officer  
Principal Financial Officer

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**CHECKPOINT THERAPEUTICS, INC.**  
**INCENTIVE COMPENSATION RECOVERY POLICY**

**1.0 General.**

- 1.1 Checkpoint Therapeutics, Inc. (the “Company”) has adopted this Policy in accordance with the applicable listing standards of Nasdaq and Rule 10D-1 under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), which require listed companies to adopt and comply with a compensation recovery policy.
- 1.2 The effective date of this Policy is September 18, 2023 (the “Effective Date”).

**2.0 Definitions.** The following words and phrases shall have the following meanings for purposes of this Policy:

- 2.1 Accounting Restatement. An “Accounting Restatement” means an accounting restatement due to the material noncompliance of the Company with any financial reporting requirement under the securities laws, including any required accounting restatement to correct an error in previously issued financial statements that is material to the previously issued financial statements, or that would result in a material misstatement if the error were corrected in the current period or left uncorrected in the current period.
- 2.2 Board. The “Board” means the Board of Directors of the Company.
- 2.3 Compensation Committee. The “Compensation Committee” means the Compensation and Governance Committee of the Board.
- 2.4 Erroneously Awarded Compensation. “Erroneously Awarded Compensation” is the amount of Incentive-Based Compensation Received that exceeds the amount of Incentive-Based Compensation that otherwise would have been Received had it been determined based on the restated amounts, computed without regard to any taxes paid. For Incentive-Based Compensation based on stock price or TSR, where the amount of Erroneously Awarded Compensation is not subject to mathematical recalculation directly from the information in an Accounting Restatement: (i) the amount shall be based on a reasonable estimate of the effect of the Accounting Restatement on the stock price or TSR upon which the Incentive-Based Compensation was Received, and (ii) the Company shall maintain documentation of the determination of that reasonable estimate and provide such documentation to Nasdaq.
- 2.5 Executive Officer. The term “Executive Officer” means the Company’s principal executive officer, president, principal financial officer, principal accounting officer (or if there is no such accounting officer, the controller), any vice president of the Company in charge of a principal business unit, division, or function (such as sales, administration, or finance), any other officer who performs a policy-making function, or any other person who performs similar policy-making functions for the Company. Executive officers of any parent or subsidiary of the Company are deemed “Executive Officers” if they perform such policy-making functions for the Company. Executive Officers include, but are not limited to, the officers identified as executive officers by the Company in the Company’s filings with the SEC pursuant to Item 401(b) of Regulation S-K and the officers required to file reports under Section 16 of the Exchange Act.

- 2.6 Financial Reporting Measure. A “Financial Reporting Measure” is any measure that is determined and presented in accordance with the accounting principles used in preparing the Company’s financial statements, and any measure that is derived wholly or in part from such measure. Stock price and TSR are also Financial Reporting Measures. A Financial Reporting Measure need not be presented within the Company’s financial statements or included in a filing with the SEC.
- 2.7 Incentive-Based Compensation. The term “Incentive-Based Compensation” means any compensation that is granted, earned, or vested based wholly or in part upon the attainment of a Financial Reporting Measure. Please refer to Appendix A to this Policy for a list of examples of Incentive-Based Compensation.
- 2.8 Nasdaq. “Nasdaq” means the Nasdaq Capital Market. In the event the Company’s securities become listed on a different national securities exchange or national securities association in the future, then following such new listing, references to Nasdaq shall be deemed to refer to such other national securities exchange or national securities association.
- 2.9 Policy. “Policy” means this Incentive Compensation Recovery Policy.
- 2.10 Received. Incentive-Based Compensation is deemed “Received” in the Company’s fiscal period during which the Financial Reporting Measure specified in the Incentive-Based Compensation award is attained, even if the payment or grant of the Incentive-Based Compensation occurs after the end of that period.
- 2.11 SEC. “SEC” means the United States Securities and Exchange Commission.
- 2.12 TSR. “TSR” means total stockholder return.

### **3.0 Statement of Policy.**

- 3.1 In the event that the Company is required to prepare an Accounting Restatement, the Company will recover reasonably promptly the amount of all Erroneously Awarded Compensation Received by a person:
- i. After beginning service as an Executive Officer;
  - ii. Who served as an Executive Officer at any time during the performance period for that Incentive-Based Compensation;
  - iii. While the Company has a class of securities listed on Nasdaq;  
and
  - iv. During the three completed fiscal years immediately preceding the date that the Company is required to prepare the Accounting Restatement and any transition period (that results from a change in the Company’s fiscal year) within or immediately following those three completed fiscal years. For purposes of this Policy, a transition period between the last day of the Company’s previous fiscal year and the first day of its new fiscal year that comprises a period of nine to twelve months would be deemed a completed fiscal year.

Notwithstanding the foregoing, this Policy shall only apply to Incentive-Based Compensation Received on or after the Effective Date.



- 3.2 The Company's obligation to recover Erroneously Awarded Compensation pursuant to this Policy is not dependent on when the restated financial statements are filed.
- 3.3 For purposes of determining the relevant recovery period under this Policy, the date that the Company is required to prepare an Accounting Restatement is the earliest to occur of: (i) the date the Board, a committee of the Board, or the officer or officers of the Company authorized to take such action if Board action is not required, concludes, or reasonably should have concluded, that the Company is required to prepare an Accounting Restatement; or (ii) the date a court, regulator, or other legally authorized body directs the Company to prepare an Accounting Restatement.
- 3.4 The Company must recover Erroneously Awarded Compensation in compliance with this Policy except to the extent that the conditions of paragraphs (i), (ii) or (iii) in this Section 3.4 are met, and the Compensation Committee, or in the absence of such a committee, a majority of the independent directors serving on the Board, has determined that recovery would be impracticable.
- i. The direct expense paid to a third party to assist in enforcing this Policy would exceed the amount to be recovered. Before concluding that it would be impracticable to recover any amount of Erroneously Awarded Compensation based on expense of enforcement, the Company shall make a reasonable attempt to recover such Erroneously Awarded Compensation, document such reasonable attempt(s) to recover, and provide that documentation to Nasdaq.
  - ii. Recovery would violate home country law where that law was adopted prior to November 28, 2022. Before concluding that it would be impractical to recover any amount of Erroneously Awarded Compensation based on violation of home country law, the Company shall obtain an opinion of home country counsel, acceptable to Nasdaq, that recovery would result in such a violation, and provide such opinion to Nasdaq.
  - iii. Recovery would likely cause an otherwise tax-qualified retirement plan, under which benefits are broadly available to employees of the Company, to fail to meet the requirements of 26 U.S.C. 401(a)(13) or 26 U.S.C. 411(a) and regulations thereunder.
- 3.5 The Company shall not indemnify any Executive Officer or former Executive Officer against the loss of Erroneously Awarded Compensation pursuant to this Policy.
- 3.6 The Compensation Committee shall determine, in its sole discretion, the appropriate means to seek recovery of any Erroneously Awarded Compensation.
- 3.7 To the extent an Executive Officer, former Executive Officer or Other Covered Person refuses to pay to the Company any Erroneously Awarded Compensation, the Company shall have the right to sue for repayment or, to the extent legally permitted, to enforce such person's obligation to make payment by withholding unpaid or future compensation.
- 3.8 The Company shall file all disclosures with respect to this Policy in accordance with the requirements of the U.S. Federal securities laws, including the disclosure required by the applicable SEC filings.

#### **4.0 Application to Additional Persons.**

- 4.1 In addition to the Executive Officers and former Executive Officers, this Policy shall apply to any other employee of the Company or its parent or subsidiaries designated by the Compensation Committee or the Board as a person covered by this Policy (each, an "Other Covered Person").
- 4.2 Unless otherwise determined by the Compensation Committee or the Board, this Policy shall apply to an Other Covered Person as if such individual was an Executive Officer during the relevant periods described in Section 3.0.
- 4.3 The Compensation Committee or the Board may, in its discretion, limit recovery of Erroneously Awarded Compensation from an Other Covered Person to situations in which an Accounting Restatement was caused or contributed to by the Other Covered Person's fraud, willful misconduct or gross negligence.
- 4.4 In addition, the Compensation Committee or the Board shall have discretion as to (i) whether to seek to recover Erroneously Awarded Compensation from an Other Covered Person, (ii) the amount of the Erroneously Awarded Compensation to be recovered from an Other Covered Person, and (iii) the method of recovering any such Erroneously Awarded Compensation from an Other Covered Person. In exercising such discretion, the Compensation Committee or the Board may take into account such considerations as it deems appropriate, including whether the assertion of a claim may violate applicable law or prejudice the interests of the Company in any related proceeding or investigation.

#### **5.0 Interpretation; Enforcement.**

- 5.1 The Compensation Committee shall have full authority to interpret and enforce this Policy to the fullest extent permitted by law.
- 5.2 Any determination by the Compensation Committee or the Board with respect to this Policy shall be final, conclusive, and binding on all interested parties.

#### **6.0 Non-Exclusivity.**

- 6.1 Nothing in this Policy shall be viewed as limiting the right of the Company or the Compensation Committee to pursue recoupment under or as provided by the Company's plans, awards, policies or agreements or the applicable provisions of any law, rule or regulation (including, without limitation, Section 304 of the Sarbanes-Oxley Act of 2002).
- 6.2 If the requirement to recover Erroneously Awarded Compensation is triggered under this Policy, then, in the event of any actual or alleged conflict between the provisions of this Policy and a similar clause or provision in any of the Company's plans, awards, policies or agreements, this Policy shall be controlling and determinative; provided that, if such other plan, award, policy or agreement provides that a greater amount of compensation shall be subject to clawback, the provisions of such other plan, award, policy or agreement shall apply to the amount in excess of the amount subject to clawback under this Policy.

**7.0 Amendment.**

- 7.1 The Compensation Committee may amend this Policy, provided that any such amendment does not cause this Policy to violate applicable listing standards of Nasdaq or Rule 10D-1 under the Exchange Act.

## APPENDIX A

### Examples of Incentive-Based Compensation

Examples of compensation that constitutes Incentive-Based Compensation for purposes of this Policy include, but are not limited to, the following:

- Non-equity incentive plan awards earned based wholly or in part on satisfying a Financial Reporting Measure performance goal;
- Bonuses paid from a “bonus pool,” the size of which is determined based wholly or in part on satisfying a Financial Reporting Measure performance goal;
- Other cash awards based wholly or in part on satisfying a Financial Reporting Measure performance goal;
- Restricted stock, restricted stock units, performance share units, stock options, and stock appreciation rights that are granted or become vested based wholly or in part on satisfying a Financial Reporting Measure performance goal; and
- Proceeds received upon the sale of shares acquired through an incentive plan that were granted or vested based wholly or in part on satisfying a Financial Reporting Measure performance goal.

Examples of compensation that does not constitute Incentive-Based Compensation for purposes of this Policy include the following:

- Salaries (other than salary increases earned wholly or in part based on the attainment of a Financial Reporting Measure performance goal);
- Bonuses paid solely at the discretion of the Compensation Committee or Board that are not paid from a bonus pool, the size of which is determined based wholly or in part on satisfying a Financial Reporting Measure performance goal;
- Bonuses paid solely upon satisfying one or more subjective standards (e.g., demonstrated leadership) and/or completion of a specified employment period;
- Non-equity incentive plan awards earned solely upon satisfying one or more strategic measures (e.g., consummating a merger or divestiture) or operational measures (e.g., opening a specified number of business locations, completion of a project, or increase in market share); and
- Equity awards for which the grant is not contingent upon achieving any Financial Reporting Measure performance goal and vesting is contingent solely upon completion of a specified employment period and/or attaining one or more non-Financial Reporting Measures.