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

Form 10-Q

(Mark One)

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

For the quarterly period ended June 30, 2021

or

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

For the transition period from to .

Commission file number: 001-34207

Dynavax Technologies Corporation

(Exact name of registrant as specified in its charter)

Delaware	**33-0728374**
(State or other jurisdiction of incorporation or organization)	**(IRS Employer Identification No.)**

2100 Powell Street, Suite 900
Emeryville, CA 94608
(510) 848-5100
(Address, including Zip Code, and telephone number, including area code, of the registrant's principal executive offices)

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

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

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

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

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

Large accelerated filer	☒	Accelerated filer	☐
Non-accelerated filer	☐	Smaller reporting company	☐
Emerging growth company	☐		

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

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

As of July 30, 2021, the registrant had outstanding 114,760,092 shares of common stock.

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DYNAVAX TECHNOLOGIES CORPORATION

FORWARD-LOOKING STATEMENTS

This Quarterly Report on Form 10-Q contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended, which are subject to a number of risks and uncertainties. All statements that are not historical facts are forward-looking statements, including statements about the direct and indirect impact of the ongoing COVID-19 global pandemic on our business and operations, including sales of HEPLISAV-B®, our ability to successfully commercialize HEPLISAV-B, our anticipated market opportunity and level of sales of HEPLISAV-B, our ability to manufacture sufficient supply of HEPLISAV-B to meet future demand, our business, collaboration and regulatory strategy, our ability to successfully support the development, manufacture and commercialization of other vaccines containing our CpG 1018™ adjuvant, including any potential vaccine for COVID-19 stemming from our multiple collaborations, our ability to manufacture sufficient supply of CpG 1018 to meet potential future demand in connection with new vaccines, and to meet regulatory requirements, uncertainty regarding our capital needs and future operating results and profitability, anticipated sources of funds, liquidity and cash needs, as well as our plans, objectives, strategies, expectations and intentions. These statements appear throughout this Quarterly Report on Form 10-Q and can be identified by the use of forward-looking language such as "may," "will," "should," "expect," "plan," "anticipate," "believe," "estimate," "predict," "future," or "intend," or the negative of these terms or other variations or comparable terminology.

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

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

RISK FACTOR SUMMARY

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

- HEPLISAV-B has been launched in the United States, and approved in the European Union, and there is significant competition in these marketplaces. Since this is our first marketed product, the timing of uptake and distribution efforts are unpredictable and there is a risk that we may not achieve and sustain commercial success for HEPLISAV-B.
- Our business and operations have been and may continue to be adversely affected by the evolving and ongoing COVID-19 global pandemic. While we have entered into collaborative relationships to develop vaccines utilizing CpG 1018, including collaborations to develop a vaccine for COVID-19, our collaborators generally have primary responsibility for the development, conduct of clinical trials, for seeking and obtaining regulatory approval, and for the manufacture and commercialization of any approved vaccine, and these collaborations may not be successful. If the combination of patents, trade secrets and other proprietary rights that we rely on to protect our intellectual property rights in CpG 1018 are inadequate; we may be unable to realize any commercial benefit from the development of a vaccine containing CpG 1018.
- Our financial results may vary significantly from quarter to quarter or may fall below the expectations of investors or securities analysts, each of which may adversely affect our stock price.
- We face uncertainty regarding coverage, pricing and reimbursement and the practices of third-party payors, which may make it difficult or impossible to sell our product or product candidates on commercially reasonable terms.
- We are subject to ongoing United States Food and Drug Administration (“FDA”) and European Medicines Agency (“EMA”) post-marketing obligations concerning HEPLISAV-B, which may result in significant additional expense, and we may be subject to penalties if we fail to comply with regulatory requirements or experience unanticipated regulatory issues with HEPLISAV-B.
- If HEPLISAV-B or any products we develop are not accepted by the market or if regulatory agencies limit our labeling indications, require labeling content that diminishes market uptake of HEPLISAV-B or any other products we develop, or limit our marketing claims, we may be unable to generate significant revenues, if any.
- Many of our competitors have greater financial resources and expertise than we do. If we are unable to successfully compete with existing or potential competitors as a result of these disadvantages, we may be unable to generate sufficient or any revenues and our business will be harmed.
- Servicing our debt requires a significant amount of cash, and we may not have sufficient cash flow from our business to pay our substantial debt. Conversion of the Convertible Notes (defined below) may dilute the ownership interest of our stockholders or may otherwise depress the price of our common stock.
- We have incurred net losses in each year since our inception and anticipate that we will continue to incur significant losses for the foreseeable future unless we can successfully commercialize HEPLISAV-B or continue to sell significant quantities of CpG 1018, and if we are unable to achieve and sustain profitability, the market value of our common stock will likely decline. Until we are able to generate significant revenues or achieve profitability through product sales, we will require substantial additional capital to finance our operations.
- We may develop, seek regulatory approval for and market HEPLISAV-B or any other product candidates we may develop outside the U.S., requiring a significant commitment of resources. Failure to successfully manage our international operations could result in significant unanticipated costs and delays in regulatory approval or commercialization of our product and product candidates.
- Clinical trials for our commercial product and product candidates are expensive and time consuming, may take longer than we expect or may not be completed at all, and their outcomes are uncertain.
- As a biopharmaceutical company, we engage clinical research organizations (“CROs”) to conduct clinical studies, and failure by us or our CROs to conduct a clinical study in accordance with good clinical practice standards and other applicable regulatory requirements could result in disqualification of the applicable clinical trial from consideration in support of approval of a potential product.
- Regulatory authorities may require more clinical trials for our product candidates than we currently expect or are conducting before granting regulatory approval, if regulatory approval is granted at all. Our clinical trials may be extended

which may lead to substantial delays in the regulatory approval process for our product candidates and may impair our ability to generate revenues.

- HEPLISAV-B and most of our earlier stage programs, including our CpG 1018 adjuvant rely on oligonucleotide toll-like receptor ("TLR") agonists. Serious adverse event data relating to TLR agonists may require us to reduce the scope of or discontinue our operations, or reevaluate the viability of strategic alternatives.
- As we plan for broader commercialization of HEPLISAV-B and for expanded capacity to manufacture CpG 1018, our financial commitments to increase supply capacity might outpace actual demand for our products. Also, if we are unable to maintain our production operations in Dusseldorf and our existing supplier for CpG 1018, we would have to establish alternate qualified manufacturing capabilities, which could result in significant additional operating costs and delays in developing and commercializing HEPLISAV-B and any approved or potential vaccine utilizing CpG 1018. There can be no assurance that we or other third parties will be able to produce CpG 1018 at a cost, quantity and quality sufficient to support our existing or any future collaborations.
- We rely on our facility in Düsseldorf, Germany and third parties to supply materials or perform processes necessary to manufacture HEPLISAV-B. We rely on a limited number of suppliers to produce the oligonucleotides we require for development and commercialization. Additionally, we and our collaborators have limited experience in manufacturing our product candidates in commercial quantities. With respect to HEPLISAV-B, we have switched to a pre-filled syringe presentation of the vaccine and our ability to meet future demand will depend on our ability to manufacture sufficient supply in this presentation.
- As we continue to grow as a commercial organization and enter into supply agreements with customers and collaborators, those supply agreements will have obligations to deliver product for which we are reliant upon third parties to manufacture on our behalf.
- HEPLISAV-B is subject to regulatory obligations and continued regulatory review, and if we receive regulatory approval for our other product candidates, we will be subject to ongoing FDA and foreign regulatory obligations and continued regulatory review for such products.
- A key part of our business strategy for products in development is to establish collaborative relationships to help fund or manage development and commercialization of our product candidates and research programs. We may not succeed in establishing and maintaining collaborative relationships, which may significantly limit our ability to continue to develop and commercialize those products and programs, if at all.
- We rely on CROs and clinical sites and investigators for our clinical trials. If these third parties do not fulfill their contractual obligations or meet expected deadlines, our planned clinical trials may be delayed and we may fail to obtain the regulatory approvals necessary to commercialize our product candidates.
- As we focus on commercialization of HEPLISAV-B, we may encounter difficulties in managing our commercial growth and expanding our operations successfully.
- If we fail to comply with the extensive requirements applicable to biopharmaceutical manufacturers and marketers under the healthcare fraud and abuse, anticorruption, privacy, transparency and other laws of the jurisdictions in which we conduct our business, we may be subject to significant liability.
- The loss of key personnel could delay or prevent achieving our objectives. In addition, our continued growth to support commercialization may result in difficulties in managing our growth and expanding our operations successfully.
- We face product liability exposure, which, if not covered by insurance, could result in significant financial liability. Our business operations are vulnerable to interruptions by natural disasters, health epidemics and other catastrophic events beyond our control, the occurrence of which could materially harm our manufacturing, distribution, sales, business operations and financial results. Significant disruptions of information technology systems or breaches of data security could also adversely affect our business.
- We rely on licenses to intellectual property from third parties. Impairment of these licenses or our inability to maintain them would severely harm our business.
- If third parties successfully assert that we have infringed their patents and proprietary rights or challenge our patents and proprietary rights, we may become involved in intellectual property disputes and litigation that would be costly, time consuming and delay or prevent development or commercialization of our product candidates.
- Future sales of our common stock or the perception that such sales may occur in the public market could cause our stock price to fall.

ITEM 1. FINANCIAL STATEMENTS

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

	June 30, 2021 (unaudited)	December 31, 2020 (Note 1)
Assets		
Current assets:		
Cash and cash equivalents	$ 129,608	$ 32,073
Marketable securities available-for-sale	216,196	132,963
Accounts and other receivables, net	105,900	22,661
Inventories, net	86,451	63,689
Prepaid manufacturing	36,298	29,423
Prepaid expenses and other current assets	9,453	9,206
Total current assets	583,906	290,015
Property and equipment, net	32,547	30,567
Operating lease right-of-use assets	25,164	26,583
Goodwill	2,225	2,297
Restricted cash	229	237
Other assets	3,838	3,573
Total assets	$ 647,909	$ 353,272
Liabilities and stockholders' equity		
Current liabilities:		
Accounts payable	$ 12,079	$ 3,312
Accrued research and development	4,167	2,805
Accrued liabilities	25,711	19,099
Warrant liability	29,639	10,736
Deferred revenue	129,557	38,212
Other current liabilities	3,489	3,247
Total current liabilities	204,642	77,411
Long-term debt, net of debt discount of $1,094 at December 31, 2020	-	179,811
Convertible Notes, net of debt discount of $5,541 at June 30, 2021 (see Note 7)	219,959	-
Long-term deferred revenue	106,950	-
Long-term portion of lease liabilities	32,897	34,789
Other long-term liabilities	81	2,568
Total liabilities	564,529	294,579
Commitments and contingencies (Note 5)		
Stockholders' equity:		
Preferred stock: $0.001 par value		
Authorized: 5,000 shares; Issued and outstanding:	-	-
Series B Convertible Preferred stock– 4 shares at June 30, 2021 and December 31, 2020	-	-
Common stock: $0.001 par value; 278,000 shares authorized at June 30, 2021 and December 31, 2020; 114,756 shares and 110,190 shares issued and outstanding at June 30, 2021 and December 31, 2020, respectively	114	110
Additional paid-in capital	1,372,679	1,352,374
Accumulated other comprehensive (loss) gain	(713)	273
Accumulated deficit	(1,288,700)	(1,294,064)
Total stockholders' equity	83,380	58,693
Total liabilities and stockholders' equity	$ 647,909	$ 353,272

See accompanying notes.

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

	Three Months Ended June 30,		Six Months Ended June 30,	
	2021	2020	2021	2020
Revenues:				
Product revenue, net	$ 52,677	$ 2,405	$ 135,562	$ 12,919
Other revenue	90	263	540	668
Total revenues	52,767	2,668	136,102	13,587
Operating expenses:				
Cost of sales - product	14,845	967	39,470	3,321
Cost of sales - amortization of intangible assets	-	202	-	2,500
Research and development	7,167	5,884	14,925	10,537
Selling, general and administrative	21,583	18,954	44,006	39,880
Total operating expenses	43,595	26,007	98,401	56,238
Income (loss) from operations	9,172	(23,339)	37,701	(42,651)
Other income (expense):				
Interest income	48	331	95	921
Interest expense	(3,109)	(4,732)	(7,821)	(9,463)
Sublease income	1,670	1,927	3,692	3,853
Loss on debt extinguishment (Note 8)	(5,232)	-	(5,232)	-
Change in fair value of warrant liability (Note 11)	2,097	(25,655)	(23,455)	(17,045)
Other	(173)	(111)	384	211
Net income (loss)	4,473	(51,579)	5,364	(64,174)
Net income (loss) per share attributable to common stockholders				
Basic	$ 0.04	$ (0.53)	$ 0.04	$ (0.70)
Diluted	$ 0.02	$ (0.53)	$ 0.04	$ (0.70)
Weighted-average shares used in computing net income (loss) per share attributable to common stockholders:				
Basic	114,629	97,339	113,339	91,408
Diluted	118,830	97,339	114,978	91,408

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

	Three Months Ended June 30,		Six Months Ended June 30,	
	2021	2020	2021	2020
Net income (loss)	$ 4,473	$ (51,579)	$ 5,364	$ (64,174)
Other comprehensive income (loss), net of tax:				
Change in unrealized gain (loss) on marketable securities available-for-sale	38	(99)	29	192
Foreign currency translation adjustments	375	579	(1,015)	100
Total other comprehensive income (loss)	413	480	(986)	292
Total comprehensive income (loss)	$ 4,886	$ (51,099)	$ 4,378	$ (63,882)

See accompanying notes.

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

	Common Stock		Preferred Stock		Additional Paid-In	Accumulated Other Comprehensive	Accumulated	Total Stockholders'
Three Months Ended June 30, 2021	**Shares**	**Par Amount**	**Shares**	**Par Amount**	**Capital**	**(Loss) Income**	**Deficit**	**Equity**
Balances at March 31, 2021	114,563	$ 114	4	$ -	$ 1,393,947	$ (1,126)	$ (1,293,173)	$ 99,762
Issuance of common stock upon exercise of stock options and restricted stock awards, net	193	-	-	-	948	-	-	948
Purchase of capped call options related to issuance of Convertible Notes (see Note 7)	-	-	-	-	(27,240)	-	-	(27,240)
Stock compensation expense	-	-	-	-	5,024	-	-	5,024
Total other comprehensive income	-	-	-	-	-	413	-	413
Net income	-	-	-	-	-	-	4,473	4,473
Balances at June 30, 2021	114,756	$ 114	4	$ -	$ 1,372,679	$ (713)	$ (1,288,700)	$ 83,380
Six Months Ended June 30, 2021								
Balances at December 31, 2020	110,190	$ 110	4	$ -	$ 1,352,374	$ 273	$ (1,294,064)	$ 58,693
Exercise of warrants	750	1	-	-	7,927	-	-	7,928
Issuance of common stock upon exercise of stock options and restricted stock awards, net	833	-	-	-	1,335	-	-	1,335
Issuance of common stock under Employee Stock Purchase Plan	104	-	-	-	383	-	-	383
Issuance of common stock, net of issuance costs, in conjunction with an At Market Sales Agreement (see Note 11)	2,879	3	-	-	28,153	-	-	28,156
Purchase of capped call options related to issuance of Convertible Notes (see Note 7)	-	-	-	-	(27,240)	-	-	(27,240)
Stock compensation expense	-	-	-	-	9,747	-	-	9,747
Total other comprehensive loss	-	-	-	-	-	(986)	-	(986)
Net income	-	-	-	-	-	-	5,364	5,364
Balances at June 30, 2021	114,756	$ 114	4	$ -	$ 1,372,679	$ (713)	$ (1,288,700)	$ 83,380

	Common Stock		Preferred Stock		Additional Paid-In	Accumulated Other Comprehensive	Accumulated	Total Stockholders'
Three Months June 30, 2020	**Shares**	**Par Amount**	**Shares**	**Par Amount**	**Capital**	**(Loss) Income**	**Deficit**	**Equity**
Balances at March 31, 2020	87,599	$ 88	5	$ -	$ 1,245,730	$ (2,575)	$ (1,231,419)	$ 11,824
Conversion of preferred stock	700	1	(1)	-	-	-	-	1
Issuance (withholding) of common stock upon exercise of stock options and restricted stock awards, net	7	-	-	-	14	-	-	14
Issuance of common stock, net of issuance costs, in conjunction with an underwritten public offering and an At Market Sales Agreement (see Note 11)	21,197	20	-	-	93,447	-	-	93,467
Stock compensation expense	-	-	-	-	4,088	-	-	4,088
Total other comprehensive income	-	-	-	-	-	480	-	480
Net loss	-	-	-	-	-	-	(51,579)	(51,579)
Balances at June 30, 2020	109,503	$ 109	4	$ -	$ 1,343,279	$ (2,095)	$ (1,282,998)	$ 58,295
Six Months Ended June 30, 2020								
Balances at December 31, 2019	83,871	$ 84	5	$ -	$ 1,229,417	$ (2,387)	$ (1,218,824)	$ 8,290
Conversion of preferred stock	700	1	(1)	-	-	-	-	1
Issuance (withholding) of common stock upon exercise of stock options and restricted stock awards, net	735	1	-	-	12	-	-	13
Issuance of common stock under Employee Stock Purchase Plan	91	-	-	-	311	-	-	311
Issuance of common stock, net of issuance costs, in conjunction with an underwritten public offering and an At Market Sales Agreement (see Note 11)	24,106	23	-	-	107,673	-	-	107,696
Stock compensation expense	-	-	-	-	5,866	-	-	5,866
Total other comprehensive income	-	-	-	-	-	292	-	292
Net loss	-	-	-	-	-	-	(64,174)	(64,174)
Balances at June 30, 2020	109,503	$ 109	4	$ -	$ 1,343,279	$ (2,095)	$ (1,282,998)	$ 58,295

See accompanying notes.

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

	Six Months Ended June 30,	
	2021	2020
Operating activities		
Net income (loss)	$ 5,364	$ (64,174)
Adjustments to reconcile net income (loss) to net cash provided by (used in) operating activities:		
Depreciation and amortization	2,202	2,063
Amortization of right-of-use assets	1,326	1,261
Gain on disposal of property and equipment and from lease termination	-	(76)
Amortization of premium (accretion of discounts) on marketable securities	369	(78)
Loss on debt extinguishment	5,232	-
Change in fair value of warrant liability	23,455	17,045
Stock compensation expense	9,747	5,866
Cost of sales - amortization of intangible assets	-	2,500
Interest expense	2,806	1,726
Tenant improvements provided by the landlord	-	908
Changes in operating assets and liabilities:		
Accounts and other receivables, net	(83,239)	7,983
Inventories, net	(22,762)	(13,060)
Prepaid manufacturing	(6,875)	-
Prepaid expenses and other current assets	(247)	(2,083)
Other assets	(265)	163
Accounts payable	7,209	(3,993)
Lease liabilities	(1,554)	(1,383)
Deferred revenue	91,345	-
Long-term deferred revenue	106,950	-
Accrued liabilities and other liabilities	7,757	(3,355)
Net cash provided by (used in) operating activities	148,820	(48,687)
Investing activities		
Acquisition of technology licenses	-	(7,000)
Purchases of marketable securities	(164,928)	(103,182)
Proceeds from maturities and redemptions of marketable securities	81,355	74,400
Purchases of property and equipment, net	(2,812)	(3,038)
Net cash used in investing activities	(86,385)	(38,820)
Financing activities		
Proceeds from issuance of common stock, net	28,156	107,697
Proceeds from issuance of Convertible Notes, net	219,822	-
Purchases of capped call options	(27,240)	-
Repayment of long-term debt	(190,194)	-
Proceeds from warrants exercises	3,376	-
Proceeds from exercise of stock options and restricted stock awards, net	1,335	13
Proceeds from Employee Stock Purchase Plan	383	311
Net cash provided by financing activities	35,638	108,021
Effect of exchange rate changes on cash, cash equivalents and restricted cash	(546)	88
Net increase in cash, cash equivalents and restricted cash	97,527	20,602
Cash, cash equivalents and restricted cash at beginning of period	32,310	40,100
Cash, cash equivalents and restricted cash at end of period	$ 129,837	$ 60,702
Supplemental disclosure of cash flow information		
Cash paid during the period for interest	$ 2,053	$ 7,757
Non-cash investing and financing activities:		
Purchases of property and equipment, not yet paid	$ 2,131	$ 124

See accompanying notes.

1. Organization and Summary of Significant Accounting Policies

Dynavax Technologies Corporation ("we," "our," "us," "Dynavax" or the "Company"), is a commercial stage biopharmaceutical company focused on developing and commercializing novel vaccines. Our first marketed product, HEPLISAV-B® (Hepatitis B Vaccine (Recombinant), Adjuvanted) is approved in the United States and European Union for prevention of infection caused by all known subtypes of hepatitis B virus in adults age 18 years and older. We also manufacture and sell CpG 1018™, the adjuvant used in HEPLISAV-B. We are working to develop CpG 1018 as a premier vaccine adjuvant through research collaborations and partnerships. Current collaborations are focused on adjuvanted vaccines for COVID-19, pertussis and universal influenza.

Basis of Presentation

Our accompanying unaudited condensed consolidated financial statements have been prepared in accordance with U.S. generally accepted accounting principles ("GAAP") for interim financial information and pursuant to the instructions to Form 10-Q and Article 10 of Regulation S-X. In our opinion, these unaudited condensed consolidated financial statements include all adjustments, consisting of normal recurring adjustments, which we consider necessary to present fairly our financial position and the results of our operations and cash flows. As permitted under those rules, certain footnotes or other financial information that are normally required by GAAP have been condensed or omitted. Interim-period results are not necessarily indicative of results of operations or cash flows to be expected for a full-year period or any other interim-period. The condensed consolidated balance sheet at December 31, 2020 has been derived from audited financial statements at that date, but excludes disclosures required by GAAP for complete financial statements.

The unaudited condensed consolidated financial statements and these notes should be read in conjunction with our Annual Report on Form 10-K for the year ended December 31, 2020, as filed with the Securities and Exchange Commission (the "SEC").

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

Liquidity and Financial Condition

As of June 30, 2021, we had cash, cash equivalents and marketable securities of $345.8 million. During the three months ended June 30, 2021, we issued $225.5 million in 2.50% convertible senior notes due 2026 ("Convertible Notes"). We used approximately $190.2 million of the net proceeds to retire our previous loan agreement with CRG Servicing LLC (see Note 8) and $27.2 million of the net proceeds to pay the costs of the capped call transactions (the "Capped Calls") (see Note 7). As of June 30, 2021, the aggregate principal amount of our Convertible Notes was $225.5 million, excluding debt discount of $5.5 million (see Note 7). The Convertible Notes mature on May 15, 2026, unless converted, redeemed or repurchased in accordance with their terms prior to such date.

Prior to January 1, 2021, we incurred net losses in each year since our inception. For the three and six months ended June 30, 2021, we recorded net income of $4.5 million and $5.4 million, respectively. We cannot be certain that sales of our products, and the revenue from our other activities are sustainable. Further, we expect to continue to incur substantial expenses as we continue to invest in commercialization of HEPLISAV-B, development of our CpG 1018 adjuvant and clinical trials and other development. If we cannot generate a sufficient amount of revenue from product sales, we will need to finance our operations through strategic alliance and licensing arrangements and/or future public or private debt and equity financings. Raising additional funds through the issuance of equity or debt securities could result in dilution to our existing stockholders, increased fixed payment obligations, or both. In addition, these securities may have rights senior to those of our common stock and could include covenants that would restrict our operations.

We currently anticipate that our cash, cash equivalents and short-term marketable securities as of June 30, 2021, and anticipated revenues from HEPLISAV-B and CpG 1018 will be sufficient to fund our operations for at least the next 12 months from the date of this filing.

Our ability to raise additional capital in the equity and debt markets, should we choose to do so, is dependent on a number of factors, including, but not limited to, the market demand for our common stock, which itself is subject to a number of development and business risks and uncertainties, our creditworthiness and the uncertainty that we would be able to raise such additional capital at a price or on terms that are favorable to us. In addition, global financial crises and economic downturns, including those cause by widespread public health crises such as the COVID-19 pandemic, may cause extreme volatility and disruptions in capital and credit markets, and may impact our ability to raise additional capital when needed on acceptable terms, if at all. Adequate financing may not be available to us on acceptable terms, or at all.

Use of Estimates

The preparation of condensed consolidated financial statements in conformity with GAAP requires management to make informed estimates and assumptions that may affect the amounts reported in the condensed consolidated financial statements and accompanying notes, including amounts of revenues and expenses during the reported periods. Management's estimates are based on historical information available as of the date of the condensed consolidated financial statements and various other assumptions we believe are reasonable under the circumstances. On an ongoing basis, we evaluate our estimates, judgments and methodologies. Significant estimates and assumptions in the condensed consolidated financial statements include those related to revenue recognition; accounts receivable; useful lives of long-lived assets, impairment of long-lived assets, including goodwill; valuation procedures for right-of-use assets and operating lease liabilities; valuation of inventory; balance sheet classification of convertible notes; fair value of warrants; balance sheet classification of Convertible Notes; income taxes, including the valuation allowance for deferred tax assets; research and development expenses; contingencies and share-based compensation. We base our estimates on historical experience and on various other assumptions that are believed to be reasonable, the results of which form the basis for making judgments about the carrying values of assets and liabilities. Actual results may differ materially from these estimates under different assumptions or conditions and could be further impacted by the COVID-19 pandemic. Changes in estimates are reflected in reported results in the period in which they become known.

Summary of Significant Accounting Policies

Revenue Recognition

We recognize revenue when the customer obtains control of promised goods or services, in an amount that reflects the consideration which we expect to receive in exchange for those goods or services. To determine revenue recognition for arrangements that we determine are within the scope of Accounting Standards Codification ("ASC") 606, we perform the following five steps: (i) identify the contract(s) with a customer; (ii) identify the performance obligations in the contract; (iii) determine the transaction price; (iv) allocate the transaction price to the performance obligations in the contract; and (v) recognize revenue when (or as) we satisfy a performance obligation. We only apply the five-step model to contracts when it is probable that we will collect the consideration we are entitled to in exchange for the goods or services we transfer to the customer. At contract inception, once the contract is determined to be within the scope of ASC 606, we assess the goods or services promised within each contract and determine those that are performance obligations, and assess whether each promised good or service is distinct. We then recognize as revenue the amount of the transaction price that is allocated to the respective performance obligation when (or as) the performance obligation is satisfied.

Product Revenue, Net – HEPLISAV-B

We sell HEPLISAV-B to a limited number of wholesalers and specialty distributors in the U.S. (collectively, our "Customers").

Revenues from product sales are recognized when we have satisfied our performance obligation, which is the transfer of control of our product upon delivery to the Customer. The timing between the recognition of revenue for product sales and the receipt of payment is not significant. Because our standard credit terms are short-term and we expect to receive payment in less than one year, there is no significant financing component on the related receivables. Taxes collected from Customers relating to product sales and remitted to governmental authorities are excluded from revenues. Since our performance obligation is part of a contract that has an original expected duration of one year or less, we elect not to disclose the information about our remaining performance obligations.

Overall, product revenue, net, reflects our best estimates of the amount of consideration to which we are entitled based on the terms of the contract. The amount of variable consideration is included in the net sales price only to the extent that it is probable that a significant reversal in the amount of the cumulative revenue recognized will not occur in a future period. If our estimates differ significantly from actuals, we will record adjustments that would affect product revenue, net in the period of adjustment.

Reserves for Variable Consideration

Revenues from product sales are recorded at the net sales price, which includes estimates of variable consideration such as product returns, chargebacks, discounts, rebates and other fees that are offered within contracts between us and our Customers, healthcare providers, pharmacies and others relating to our product sales. We estimate variable consideration using either the most likely amount method or the expected value method, depending on the type of variable consideration and what method better predicts the amount of consideration we expect to receive. We take into consideration relevant factors such as industry data, current contractual terms, available information about Customers' inventory, resale and chargeback data and forecasted customer buying and payment patterns, in estimating each variable consideration. The variable consideration is recorded at the time product sales is recognized, resulting in a reduction in product revenue and a reduction in accounts receivable (if the Customer offsets the amount against its accounts receivable) or as an accrued liability (if we pay the amount through our accounts payable process). Variable consideration requires significant estimates, judgment and information obtained from external sources. The amount of variable consideration is included in the net sales price only to the extent that it is probable that a significant reversal in the amount of the cumulative revenue recognized will not occur in a future period. If our estimates differ significantly from actuals, we will record adjustments that would

affect product revenue, net in the period of adjustment. If we were to change any of these judgments or estimates, it could cause a material increase or decrease in the amount of revenue that we report in a particular period. There have been no material adjustments to these estimates for the three and six months ended June 30, 2021 and 2020.

Product Returns: Consistent with industry practice, we offer our Customers a limited right of return based on the product's expiration date for product that has been purchased from us. We estimate the amount of our product sales that may be returned by our Customers and record this estimate as a reduction of revenue in the period the related product revenue is recognized. We consider several factors in the estimation of potential product returns including expiration dates of the product shipped, the limited product return rights, available information about Customers' inventory, shelf life of the product and other relevant factors.

Chargebacks: Our Customers subsequently resell our product to healthcare providers, pharmacies and others. In addition to distribution agreements with Customers, we enter into arrangements with qualified healthcare providers that provide for chargebacks and discounts with respect to the purchase of our product. Chargebacks represent the estimated obligations resulting from contractual commitments to sell product to qualified healthcare providers at prices lower than the list prices charged to Customers who directly purchase the product from us. Customers charge us for the difference between what they pay for the product and the ultimate selling price to the qualified healthcare providers. These reserves are established in the same period that the related revenue is recognized, resulting in a reduction of product revenue and accounts receivable. Chargeback amounts are determined at the time of resale to the qualified healthcare providers by Customers, and we issue credits for such amounts generally within a few weeks of the Customer's notification to us of the resale. Reserves for chargebacks consists of credits that we expect to issue for units that remain in the distribution channel inventories at each reporting period end that we expect will be sold to the qualified healthcare providers, and chargebacks for units that our Customers have sold to the qualified healthcare providers, but for which credits have not been issued.

Trade Discounts and Allowances: We provide our Customers with discounts which include early payment incentives that are explicitly stated in our contracts, and are recorded as a reduction of revenue in the period the related product revenue is recognized.

Distribution Fees: Distribution fees include fees paid to certain Customers for sales order management, data and distribution services. Distribution fees are recorded as a reduction of revenue in the period the related product revenue is recognized.

Rebates: Under certain contracts, customers may obtain rebates for purchasing minimum volumes of our product. We estimate these rebates based upon the expected purchases and the contractual rebate rate and record this estimate as a reduction in revenue in the period the related revenue is recognized.

Product Revenue, Net – CpG 1018

We also sell our CpG 1018 adjuvant to certain of our collaboration partners for use in their development and/or commercialization of their respective COVID-19 vaccine candidates. We have determined that our collaboration partners in these arrangements meet the definition of customers under ASC 606. Therefore, we account for product sales of CpG 1018 adjuvant under ASC 606. Revenues from product sales are recognized when we have satisfied our performance obligations which include the transfer of control of our product to the collaboration partner, generally upon shipment or delivery. The timing between the recognition of revenue and the receipt of payment is less than one year. As such, we do not adjust the amount of consideration for the effects of a significant financing component. Since our performance obligation is part of a contract that has an original expected duration of one year or less, we elect not to disclose the information about our remaining performance obligations.

Overall, product revenue, net, reflects our best estimates of the amount of consideration to which we are entitled based on the terms of the contracts with our customers. The amount of variable consideration is included in the net sales price only to the extent that it is probable that a significant reversal in the amount of the cumulative revenue recognized will not occur in a future period, in accordance with ASC 606. If our estimates differ significantly from actuals, we will record adjustments that would affect product revenue, net in the period of adjustment.

Other Revenue

Other revenue includes collaboration and manufacturing service revenue. We have entered into collaborative arrangements and arrangements to provide manufacturing services to other companies. Such arrangements may include promises to customers which, if capable of being distinct, are accounted for as separate performance obligations. For agreements with multiple performance obligations, we allocate estimated revenue to each performance obligation at contract inception based on the estimated transaction price of each performance obligation. Revenue allocated to each performance obligation is then recognized when we satisfy the performance obligation by transferring control of the promised good or service to the customer. Collaboration and manufacturing service revenue are recorded in other revenue in the condensed consolidated statements of operations.

Inventories, net

Inventory is stated at the lower of cost or estimated net realizable value, on a first-in, first-out, or FIFO, basis. We primarily use actual costs to determine our cost basis for inventories. Our assessment of market value requires the use of estimates regarding the net realizable value of our inventory balances, including an assessment of excess or obsolete inventory. We determine excess or obsolete inventory based on multiple factors, including an estimate of the future demand for our products, product expiration dates and current sales levels. Our assumptions of future demand for our products are inherently uncertain and if we were to change any of these judgments or estimates, it could cause a material increase or decrease in the amount of inventory reserves that we report in a particular period. For the three and six months ended June 30, 2021 and 2020, there were no inventory reserves recognized.

We consider regulatory approval of product candidates to be uncertain and product manufactured prior to the required regulatory approval may not be sold unless regulatory approval is obtained. As such, the manufacturing costs for product candidates incurred prior to regulatory approval are not capitalized as inventory but are expensed as research and development costs. We begin capitalization of these inventory related costs once regulatory approval is obtained.

HEPLISAV-B was approved by the United States Food and Drug Administration ("FDA") on November 9, 2017, at which time we began to capitalize inventory costs associated with the vial presentation of HEPLISAV-B. In March 2018, we received regulatory approval of the pre-filled syringe ("PFS") presentation of HEPLISAV-B. Prior to FDA approval of HEPLISAV-B, all costs related to the manufacturing of HEPLISAV-B that could potentially be available to support the commercial launch of our products, were charged to research and development expense in the period incurred as there was no alternative future use. Prior to regulatory approval of PFS, costs associated with resuming operating activities at the Düsseldorf manufacturing facility were also included in research and development expense. Subsequent to regulatory approval of PFS, costs associated with resuming manufacturing activities at the Düsseldorf facility were included in cost of sales – product, until commercial production resumed in mid-2018 at which time these costs were recorded as raw materials inventory.

Convertible Notes

We evaluate all conversion, repurchase and redemption features contained in a debt instrument to determine if there are any embedded features that require bifurcation as a derivative. We accounted for the Convertible Notes (see Note 7) as a long-term liability equal to the proceeds received from issuance, including the embedded conversion feature, net of the unamortized debt issuance and offering costs on the condensed consolidated balance sheets. The conversion feature is not required to be accounted for separately as an embedded derivative. We amortize debt issuance and offering costs over the contractual term of the Convertible Notes, using the effective interest method, as interest expense on the condensed consolidated statements of operations.

Capped Calls

We evaluate financial instruments under ASC 815. In May 2021, in connection with the issuance of the Convertible Notes, we entered into the Capped Calls (see Note 7). The Capped Calls cover the same number of shares of common stock that initially underlie the Convertible Notes (subject to anti-dilution and certain other adjustments). The Capped Calls meet the definition of derivative under ASC 815. In addition, the Capped Calls meet the conditions in ASC 815 to be classified in stockholders' equity and are not subsequently remeasured as long as the conditions for the equity classification continue to be met.

Recent Accounting Pronouncements

Accounting Standards Update 2019-12

In December 2019, the FASB issued Accounting Standards Update ("ASU") No. 2019-12, Simplifying the Accounting for Income Taxes (Topic 740). This ASU simplifies the accounting for income taxes by removing certain exceptions and improving consistent application in certain areas of Topic 740. The ASU is effective for annual periods beginning after December 15, 2020 with early adoption permitted. We adopted this ASU on January 1, 2021 and the adoption of this standard did not have a material impact on our consolidated financial statements.

Accounting Standards Update 2020-06

We adopted ASU No. 2020-06, Debt—Debt with Conversion and Other Options (Subtopic 470-20) and Derivatives and Hedging—Contracts in Entity's Own Equity (Subtopic 815-40): Accounting for Convertible Instruments and Contracts in an Entity's Own Equity on January 1, 2021 using the modified retrospective method. This ASU simplifies the accounting for convertible instruments and requires entities to use the if-converted method for all convertible instruments in calculating diluted earnings-per-share. Entities also need to recombine instruments that were previously separated into two units of account if separation is no longer required. The adoption of this ASU did not have a material impact on our condensed consolidated financial statements as there were no outstanding financial instruments that require recombination at January 1, 2021.

Accounting Standards Update 2016-13

In June 2016, the Financial Accounting Standards Board ("FASB") issued ASU No. 2016-13, Financial Instruments – Credit Losses (Topic 326): Measurement of Credit Losses of Financial Instruments. The standard changes the methodology for measuring credit losses on financial instruments and the timing of when such losses are recorded. For public business entities, excluding smaller reporting companies, this ASU is effective for fiscal years beginning after December 15, 2019. Furthermore, the one-time determination of whether an entity is eligible to be a smaller reporting company shall be based on an entity's most recent determination as of November 15, 2019, in accordance with SEC regulations. Because we were a smaller reporting company based on the most recent determination as of November 15, 2019, this ASU and its subsequent updates, will be effective for fiscal years beginning after December 15, 2022. We are currently evaluating the impact this standard will have on our consolidated financial statements.

2. Fair Value Measurements

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

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

Assets and liabilities are classified based on the lowest level of input that is significant to the fair value measurements. We review the fair value hierarchy classification on a quarterly basis. Changes in the ability to observe valuation inputs may result in a reclassification of levels for certain assets or liabilities within the fair value hierarchy. There were no transfers between Level 1, 2 and 3 during the three and six months ended June 30, 2021.

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

Recurring Fair Value Measurements

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

	Level 1	Level 2	Level 3	Total
June 30, 2021				
Assets				
Money market funds	$ 112,600	$ -	$ -	$ 112,600
U.S. treasuries	-	23,352	-	23,352
U.S. government agency securities	-	41,725	-	41,725
Corporate debt securities	-	151,119	-	151,119
Total assets	$ 112,600	$ 216,196	$ -	$ 328,796
Liabilities				
Warrant liability	$ -	$ -	$ 29,639	$ 29,639

	Level 1	Level 2	Level 3	Total
December 31, 2020				
Assets				
Money market funds	$ 23,128	$ -	$ -	$ 23,128
U.S. treasuries	-	32,579	-	32,579
U.S. government agency securities	-	40,321	-	40,321
Corporate debt securities	-	61,063	-	61,063
Total assets	$ 23,128	$ 133,963	$ -	$ 157,091
Liabilities				
Warrant liability	$ -	$ -	$ 10,736	$ 10,736

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

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

Warrants were issued in connection with the underwritten public offering in August 2019 and are accounted for as a derivative liability at fair value (see Note 11). The fair value of the warrant liability is estimated using the Black-Scholes model which requires assumptions such as expected term, expected volatility and risk-free interest rate. These assumptions are subjective and require judgement to develop. Expected term is estimated using the full remaining contractual term of the warrants. We determine expected volatility based on our historical common stock price volatility. The warrant liability is classified as a Level 3 instrument as its value is based on unobservable inputs that are supported by little or no market activity.

As of June 30, 2021, we used the following key assumptions to estimate the fair value of warrant liability:

Number of shares	5,090,937
Expected term	0.6 year
Expected volatility	1.0
Risk-free interest rate	0.1%
Dividend yield	0%

The following table provides a summary of changes in the fair value warrant liability for the six months ended June 30, 2021 (in thousands):

Balance at December 31, 2020	$ 10,736
Increase in fair value of warrants exercised	3,172
Warrants exercised	(4,552)
Increase in the estimated fair value of warrant liability upon revaluation	20,283
Balance at June 30, 2021	$ 29,639

Convertible Notes

As of June 30, 2021, the fair value of the Convertible Notes was $261.8 million. The fair value was determined on the basis of the market prices observable for similar instruments and is considered Level 2 in the fair value hierarchy (see Note 7).

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

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

	June 30, 2021	December 31, 2020	June 30, 2020	December 31, 2019
Cash and cash equivalents	$ 129,608	$ 32,073	$ 60,485	$ 39,884
Restricted cash	229	237	217	216
Total cash, cash equivalents and restricted cash shown in the condensed consolidated statements of cash flows	$ 129,837	$ 32,310	$ 60,702	$ 40,100

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

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

	Amortized Cost	Unrealized Gains	Unrealized Losses	Estimated Fair Value
June 30, 2021				
Cash and cash equivalents:				
Cash	$ 17,008	$ -	$ -	$ 17,008
Money market funds	112,600	-	-	112,600
Total cash and cash equivalents	129,608	-	-	129,608
Marketable securities available-for-sale:				
U.S. treasuries	23,347	5	-	23,352
U.S. government agency securities	41,715	10	-	41,725
Corporate debt securities	151,074	45	-	151,119
Total marketable securities available-for-sale	216,136	60	-	216,196
Total cash, cash equivalents and marketable securities	$ 345,744	$ 60	$ -	$ 345,804
December 31, 2020				
Cash and cash equivalents:				
Cash	$ 7,945	$ -	$ -	$ 7,945
Money market funds	23,128	-	-	23,128
Corporate debt securities	1,000	-	-	1,000
Total cash and cash equivalents	32,073	-	-	32,073
Marketable securities available-for-sale:				
U.S. treasuries	32,548	31	-	32,579
U.S. government agency securities	40,313	14	(6)	40,321
Corporate debt securities	60,071	3	(11)	60,063
Total marketable securities available-for-sale	132,932	48	(17)	132,963
Total cash, cash equivalents and marketable securities	$ 165,005	$ 48	$ (17)	$ 165,036

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

	June 30, 2021	
	Amortized Cost	Estimated Fair Value
Mature in one year or less	$ 214,386	$ 214,446
Mature after one year through two years	1,750	1,750
	$ 216,136	$ 216,196

We have classified our entire investment portfolio as available-for-sale and available for use in current operations and accordingly have classified all investments as short-term. Available-for-sale securities are carried at fair value based on inputs that are observable, either directly or indirectly, such as quoted market prices for similar securities; quoted prices in markets that are not active; or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the securities, with unrealized gains and losses included in accumulated other comprehensive loss in stockholders' equity. Realized gains and losses and declines in value, if any, judged to be other than temporary on available-for-sale securities are included in interest income or expense. The cost of securities sold is based on the specific identification method. Management assesses whether declines in the fair value of investment securities are other than temporary. In determining whether a decline is other than temporary, management considers the following factors:

- whether the investment has been in a continuous unrealized loss position for over 12 months;
- the duration to maturity of our investments;
- our intention and ability to hold the investment to maturity and if it is not more likely than not that we will be required to sell the investment before recovery of the amortized cost bases;
- the credit rating, financial condition and near-term prospects of the issuer; and
- the type of investments made.

There were no realized gains or losses from the sale of marketable securities during the three and six months ended June 30, 2021 and 2020. All investments with unrealized losses at June 30, 2021 have been in a loss position for less than twelve months. We do not intend to sell the investments that are in an unrealized loss position before recovery of their amortized cost basis. To date, there have been no declines in fair value that have been identified as other than temporary.

4. Inventories, net

The following table presents inventories, net (in thousands):

	June 30, 2021	December 31, 2020
Raw materials	$ 28,041	$ 25,121
Work-in-process	19,852	30,293
Finished goods	38,558	8,275
Total	$ 86,451	$ 63,689

As of June 30, 2021, we recorded $36.3 million of prepaid manufacturing costs related to prepayments made to third-party manufacturers to manufacture CpG 1018 adjuvant. We expect these costs to be converted into inventory within the next twelve months.

5. Commitments and Contingencies

Leases

We lease our facilities in Emeryville, California and Düsseldorf, Germany.

In July 2019, we entered into a sublease for office space located at 2100 Powell Street, Emeryville, California (the "Powell Street Sublease") for our corporate headquarters. Under the terms of the Powell Street Sublease, we are leasing 23,976 square feet at the rate of $3.90 per square foot, paid on a monthly basis. Rent is subject to scheduled annual increases and we are responsible for certain operating expenses and taxes throughout the life of the Powell Street Sublease. The Powell Street Sublease will continue until June 30, 2022. There is no option to extend the sublease term.

On September 17, 2018, we entered into a lease ("Horton Street Master Lease") for office and laboratory space located at 5959 Horton Street, Emeryville, California ("Horton Street Premises"). Under the terms of the Horton Street Master Lease, we are leasing 75,662 square feet at the rate of $4.75 per square foot, paid on a monthly basis, starting on April 1, 2019 ("Commencement Date"). Rent is subject to scheduled annual increases, and we are also responsible for certain operating expenses and taxes throughout the life of Horton Street Master Lease. In connection with the Horton Street Master Lease, we have received tenant improvement allowance totaling $8.1 million through June 30, 2021. The Horton Street Master Lease has an initial term of 12 years, following the Commencement Date with an option to extend the lease for two successive five-year terms. The optional periods were not included in the lease term used in determining the right-of-use asset or the lease liability as we did not consider it reasonably certain that we would exercise the options. The operating lease right-of-use assets and liabilities on our June 30, 2021 condensed consolidated balance sheets primarily relate to the Horton Street Master Lease. Lease expense related to the Horton Street Master Lease is included in operating expense in our condensed consolidated statements of operations.

In connection with the organizational restructuring in May 2019, we did not occupy the Horton Street Premises and in July 2019, we entered into an agreement to sublease the Horton Street Premises to a third party ("Horton Street Sublease"). Under the terms of the Horton Street Sublease, we are subleasing the entire 75,662 rentable square feet at the rate of $5.50 per square foot, paid on a monthly basis. Rent is subject to scheduled annual increases and the subtenant ("Subtenant") is responsible for certain operating expenses and taxes throughout the life of the Horton Street Sublease. The Horton Street Sublease term is until March 31, 2031, unless earlier terminated, concurrent with the term of our Horton Street Master Lease. The Subtenant has no option to extend the sublease term. For the three and six months ended June 30, 2021, we recognized sublease income of $1.7 million and $3.7 million, respectively. For the three and six months ended June 30, 2020, we recognized sublease income of $1.9 million and $3.9 million, respectively. Sublease income is included in other income (expense) in our condensed consolidated statements of operations.

Under the terms of the Horton Street Master Lease, rent received from the Subtenant in excess of rent paid to the landlord shall be shared by paying the landlord 50% of the excess rent. The excess rent is considered a variable lease payment and the total estimated payments are being recognized as additional rent expense on a straight-line basis.

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

	Three Months Ended June 30,		Six Months Ended June 30,	
	2021	2020	2021	2020
Operating lease expense	$ 1,570	$ 1,561	$ 3,130	$ 3,153

Cash paid for amounts included in the measurement of lease liabilities for each of the six months ended June 30, 2021 and 2020 was $3.4 million and was included in change in lease liabilities in our condensed consolidated statement of cash flows.

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

	June 30, 2021	December 31, 2020
Operating lease liabilities:		
Current portion of lease liabilities (included in other current liabilities)	$ 3,489	$ 3,247
Long-term portion of lease liabilities	32,897	34,789
Total operating lease liabilities	$ 36,386	$ 38,036

At June 30, 2021, the maturities of our sublease income and operating lease liabilities were as follows (in thousands):

Years ending December 31,	Sublease Income	Operating Lease Liabilities
2021 (remaining)	$ 2,630	$ 3,486
2022	5,357	6,248
2023	5,518	5,384
2024	5,684	5,528
2025	5,854	5,677
Thereafter	33,742	30,721
Total	$ 58,785	57,044
Less:		
Present value adjustment		(20,658)
Total		$ 36,386

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

	June 30, 2021	December 31, 2020
Weighted average remaining lease term	8.8 years	9.1 years
Weighted average discount rate	10.1%	10.1%

Commitments

As of June 30, 2021, our material non-cancelable purchase and other commitments, for the supply of HEPLISAV-B, CpG 1018 and for clinical research, totaled $106.8 million.

As of June 30, 2021, the aggregate principal amount of our Convertible Notes was $225.5 million, excluding debt discount of $5.5 million (see Note 7). The Convertible Notes mature on May 15, 2026, unless converted, redeemed or repurchased in accordance with their terms prior to such date.

During 2004, we established a letter of credit with Deutsche Bank as security for our Düsseldorf lease in the amount of €0.2 million (Euros). The letter of credit remained outstanding through June 30, 2021 and is collateralized by a certificate of deposit for €0.2 million, which has been included in restricted cash in the consolidated balance sheets as of June 30, 2021.

In conjunction with our agreement with Symphony Dynamo, Inc. and Symphony Dynamo Holdings LLC ("Holdings") in November 2009, we agreed to make contingent cash payments to Holdings equal to 50% of the first $50 million from any upfront, pre-commercialization milestone or similar payments received by us from any agreement with any third party with respect to the development and/or commercialization of cancer and hepatitis C therapies originally licensed to Symphony Dynamo, Inc., including SD-101. In July 2020, we sold assets related to our SD-101 compound to TriSalus. We paid $2.5 million to Holdings in August 2020. We are obligated to pay Holdings 50% of the contingent pre-commercialization milestone payments that we may receive under the Asset Purchase Agreement. No liability has been recorded under this agreement as of June 30, 2021.

Contingencies

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

6. Collaboration, Development and Supply Agreements

Coalition for Epidemic Preparedness Innovations

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

In exchange for reserving CpG 1018 Materials and agreeing to sell CpG 1018 Materials to CEPI partner(s) at pre-negotiated prices, CEPI has agreed to provide advance payments in the form of an interest-free, unsecured, forgivable loan (the "Advance Payments") of up to $99.0 million. We are obligated to repay the Advance Payments, in proportion to quantity sold, if and to the extent we receive payments from sales of CpG 1018 Materials reserved under the CEPI Agreement. If the vaccine programs pursued by CEPI partner(s) are unsuccessful and no alternative use is found for CpG 1018 Materials reserved under the CEPI Agreement, the applicable Advance Payments will be forgiven at the end of the two-year term.

In May 2021, we entered into the first Amendment to the CEPI Agreement. This Amendment provides for the manufacture and reservation of an additional specified quantity of CpG 1018 adjuvant. In exchange for reserving an additional specified quantity of CpG 1018 adjuvant, CEPI has agreed to provide additional Advance Payments of up to $77.4 million, together with the initial CEPI Agreement, for total Advance Payments of up to $176.4 million.

We have determined that the accounting of the Advance Payments is under the scope of ASC 606. The Advance Payments are to cover the costs of manufacture and to reserve CpG 1018 Materials, which is an output of our ordinary activities. As such, the Advance Payments are classified as long-term deferred revenue in our condensed consolidated balance sheets. We will recognize the

Advance Payments as revenue when the amount (or a portion thereof) is forgiven by CEPI when (i) the CpG 1018 Materials are not sold through to CEPI partner(s), (ii) there is no alternative use and (iii) the CpG 1018 Materials are destroyed. When CpG 1018 Materials are sold through to CEPI partner(s) we will be obligated to repay CEPI within a certain period upon receipt of payment from CEPI partner(s) at which time the Advance Payments will be reclassified as other liability. No revenue was recognized under this arrangement for the three and six months ended June 30, 2021.

Through June 30, 2021, we have received Advance Payments totaling approximately $109.5 million pursuant to the CEPI Agreement, which we recorded as long-term deferred revenue. As of June 30, 2021, long-term deferred revenue balance related to the Advance Payments was $107.0 million, net of the amount reimbursable to CEPI. No revenue was recognized for the three and six months ended June 30, 2021.

Zhejiang Clover Biopharmaceuticals, Inc. and Clover Hong Kong Inc.

In June 2021, we entered into an agreement with Zhejiang Clover Biopharmaceuticals, Inc. and Clover Hong Kong Inc. (collectively, "Clover"), for the commercial supply of CpG 1018 adjuvant, for use with Clover's COVID-19 vaccine candidate, SCB-2019 (the "Clover Supply Agreement"). Under the Clover Supply Agreement, Clover has committed to purchase specified quantities of CpG 1018 adjuvant, at pre-negotiated prices pursuant to the CEPI Agreement, for use in Clover's commercialization of vaccines containing SCB-2019 and CpG 1018 adjuvant ("Clover Product").

Pricing for CpG 1018 adjuvant is variable depending on the destination where Clover ultimately sells Clover Product to. Pursuant to the Clover Supply Agreement, our initial invoicing will be at the lowest price tier, with a true-up mechanism to issue additional invoice for the difference between the initial invoice price and the higher tiered price, if any. In addition, if the net selling price of such Clover Product exceeds a threshold specified in the Clover Supply Agreement, we are entitled to a royalty calculated as a percentage of the excess portion of such net selling price.

For CpG 1018 adjuvant reserved for Clover under the CEPI Agreement, Clover is obligated to pay the purchase price, as set forth in a purchase order submitted by Clover, upon the earliest of (i) the true-up exercise, (ii) within a specified period after Clover delivers Clover Product to a customer, or (iii) Clover's receipt of payment for Clover Product from a customer. For CpG 1018 adjuvant ordered by Clover outside the CEPI Agreement, Clover is obligated to pay a specified percentage of the purchase price, as set forth in a purchase order submitted by Clover, upon our acceptance of such purchase order, and the remainder of the purchase price upon the release of such CpG 1018 adjuvant.

We recognize revenue at the lowest price tier upon transfer of control of CpG 1018 adjuvant to Clover. The potential true-up amount and royalties are considered constrained as we do not currently have sufficient ability to estimate these amounts. There is no significant financing component as the timing between shipment and payment is expected to be within twelve months. There was no revenue recognized for the three and six months ended June 30, 2021 under the Clover Supply Agreement.

As of June 30, 2021, we recognized approximately $72.9 million in deferred revenue for a portion of Clover's binding commitment to purchase CpG 1018 adjuvant outside the CEPI Agreement. There was no deferred revenue recognized for a portion of Clover's binding commitment to purchase CpG 1018 adjuvant that was reserved for Clover under the CEPI Agreement.

Medigen Vaccine Biologics

In February 2021, we entered into a Supply Agreement with Medigen Vaccine Biologics ("Medigen") to manufacture and supply specified quantities of CpG 1018 adjuvant for use in the development and commercialization of Medigen's COVID-19 vaccine candidate. For the three and six months ended June 30, 2021, we recognized CpG 1018 product revenue, net of $10.6 million and $17.5 million, respectively.

Valneva SE

In April 2020, we entered into a Collaboration Agreement with Valneva Scotland Limited ("Valneva") to provide CpG 1018 adjuvant for use in the development of Valneva's COVID-19 vaccine candidate. The Collaboration Agreement was amended in July 2020, to provide additional quantities of CpG 1018 adjuvant. In September 2020, we entered into a Supply Agreement ("Supply Agreement") with Valneva to manufacture and supply specified quantities of CpG 1018 adjuvant for use in the commercialization of Valneva's COVID-19 vaccine candidate.

We concluded that the Collaboration Agreement and the Supply Agreement were entered into at or near the same time, with the same customer and were negotiated as a package with a single commercial objective, that is the provision of CpG 1018 adjuvant to Valneva. Therefore, the Collaboration Agreement and the Supply Agreement should be combined and accounted for as a single arrangement.

Pursuant to the Supply Agreement, we receive advanced payments to purchase specified quantities of CpG 1018 adjuvant which are recorded as deferred revenue until we deliver the product to Valneva. As of June 30, 2021, deferred revenue related to the Supply Agreement was $55.4 million. For the three and six months ended June 30, 2021, we recognized CpG 1018 product revenue, net of $24.5 million and $89.4 million, respectively.

7. Convertible Notes

In May 2021, we issued $200.0 million aggregate principal amount of 2.50% convertible senior notes due 2026 in a private placement. The purchasers partially exercised their option to purchase additional Convertible Notes in May 2021 and we issued an additional $25.5 million of the Convertible Notes. Total proceeds from the issuance of the Convertible Notes, net of debt issuance and offering costs of $5.7 million, were $219.8 million. We used $190.2 million of the net proceeds to repay, in full, our outstanding debt and other obligations under the Loan Agreement and $27.2 million of the net proceeds to pay the costs of the capped call transactions described below.

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

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

1. During any calendar quarter commencing after September 30, 2021 (and only during such calendar quarter), if the last reported sale price of our common stock for at least 20 trading days (whether or not consecutive) during a period of 30 consecutive trading days ending on, and including, the last trading day of the immediately preceding calendar quarter is greater than or equal to 130% of the conversion price on each applicable trading day;
2. During the five business day period after any ten consecutive trading day period (the “measurement period”), in which the “trading price” (as defined the indenture governing the Convertible Notes) per $1,000 principal amount of the Convertible Notes for each trading day of the measurement period was less than 98% of the product of the last reported sale price of our common stock and the conversion rate on each such trading day;
3. If we call such Convertible Notes for redemption, at any time prior to the close of business on the scheduled trading day immediately preceding the redemption date; or
4. Upon the occurrence of specified corporate events as set forth in the indenture governing the Convertible Notes.

On or after February 15, 2026 until the close of business on the second scheduled trading day immediately preceding the maturity date, holders of the Convertible Notes may convert all or any portion of their Convertible Notes regardless of the foregoing circumstances. During the three months ended June 30, 2021, the conditions allowing holders of the Convertible Notes to convert have not been met and there were no changes to the initial conversion price of the Convertible Notes.

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

If we undergo a fundamental change (as set forth in the indenture governing the Convertible Notes), noteholders may require us to repurchase for cash all or any portion of their Convertible Notes at a repurchase price equal to 100% of the principal amount of the notes to be repurchased, plus accrued and unpaid interest to the fundamental change repurchase date. In addition, following certain corporate events (as set forth in the indenture governing the Convertible Notes) or if we deliver a notice of redemption prior to the

maturity date, we will, in certain circumstances, adjust the conversion rate for a noteholder who elects to convert its notes in connection with such a corporate event or such notice of redemption.

As a result of adopting ASU 2020-06, we accounted for the Convertible Notes as a single liability. As of June 30, 2021, the Convertible Notes were recorded at the aggregate principal amount of $225.5 million less unamortized issuance costs of $5.5 million as a long-term liability on the condensed consolidated balance sheets. The debt issuance costs are amortized to interest expense over the contractual term of the Convertible Notes at an effective interest rate of 3.1%.

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

	Three Months Ended June 30,		Six Months Ended June 30,	
	2021	2020	2021	2020
Stated coupon interest	$ 736	$ -	$ 736	$ -
Amortization of debt issuance cost	137	-	137	-
Total interest expense	$ 873	$ -	$ 873	$ -

Capped Calls

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

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

8. Long-Term Debt

On February 20, 2018, we entered into a $175.0 million term loan agreement (“Loan Agreement”) with CRG Servicing LLC. We borrowed $100.0 million under the Loan Agreement at closing and the remaining $75.0 million in March 2019 (collectively, “Term Loans”). Net proceeds under the Loan Agreement were $173.3 million. The Term Loans under the Loan Agreement bore interest at a rate equal to 9.5% per annum. The Term Loans had a maturity date of December 31, 2023.

In May 2021, we repaid the Term Loans Principal, in full, using the net proceeds from the Convertible Notes issuance. In connection with the early repayment of the Term Loans Principal, during the three and six months ended June 30, 2021, we recorded $5.2 million loss on debt extinguishment related to the amount we paid to terminate the Term Loans Principal in excess of its carrying value at the time of the repayment. Our final payment of $190.2 million to CRG Servicing LLC satisfied all of our obligations under the Loan Agreement. With the full repayment of the Term Loans Principal, all security interests, covenants, liens and encumbrances under the Loan Agreement were permanently released.

We recorded $2.3 million and $4.7 million of interest expense related to the Term Loans during the three months ended June 30, 2021 and 2020, respectively. We recorded $7.0. million and $9.4 million of interest expense related to the Term Loans during the six months ended June 30, 2021 and 2020, respectively.

9. Revenue Recognition

Disaggregation of Revenues

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

	Three Months Ended June 30, 2021			Three Months Ended June 30, 2020		
	U.S.	Non U.S.	Total	U.S.	Non U.S.	Total
Product revenue, net						
HEPLISAV-B	$ 13,688	$ -	$ 13,688	$ 2,405	$ -	$ 2,405
CpG 1018	-	38,989	38,989	-	-	-
Total product revenue, net	$ 13,688	$ 38,989	$ 52,677	$ 2,405	$ -	$ 2,405
Other revenue	-	90	90	-	263	263
Total revenues	$ 13,688	$ 39,079	$ 52,767	$ 2,405	$ 263	$ 2,668

	Six Months Ended June 30, 2021			Six Months Ended June 30, 2020		
	U.S.	Non U.S.	Total	U.S.	Non U.S.	Total
Product revenue, net						
HEPLISAV-B	$ 21,991	$ -	$ 21,991	$ 12,919	$ -	$ 12,919
CpG 1018	-	113,571	113,571	-	-	-
Total product revenue, net	$ 21,991	$ 113,571	$ 135,562	$ 12,919	$ -	$ 12,919
Other revenue	260	280	540	-	668	668
Total revenues	$ 22,251	$ 113,851	$ 136,102	$ 12,919	$ 668	$ 13,587

Revenues from Major Customers

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

	Three Months Ended June 30,		Six Months Ended June 30,	
	2021	2020	2021	2020
Largest Customer	28%	40%	28%	25%
Second largest Customer	21%	26%	23%	24%
Third largest Customer	16%	17%	17%	17%

The following table summarizes CpG 1018 product revenue from each of our two largest collaboration partners (as a percentage of total CpG 1018 product revenue):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2021	2020	2021	2020
Largest collaboration partner	63%	0%	79%	0%
Second largest collaboration partner	27%	0%	15%	0%

Contract Balances

The following table summarizes balances and activities in HEPLISAV-B product revenue allowance and reserve categories for the six months ended June 30, 2021 (in thousands):

	Balance at Beginning of Period	Provisions related to current period sales	Credit or payments made during the period	Balance at End of Period
Six months ended June 30, 2021:				
Accounts receivable reserves(1)	$ 2,836	$ 7,345	$ (6,820)	$ 3,361
Revenue reserve accruals(2)	$ 6,040	$ 4,117	$ (3,104)	$ 7,053

(1) Reserves are for chargebacks, discounts and other fees.
(2) Accruals are for returns, rebates and other fees.

Payments received or invoices issued before we satisfy our performance obligations are recorded as deferred revenue until we satisfy such performance obligations. Our deferred revenue activities are related to CpG 1018 product sales. The following table summarizes balances and activities in our deferred revenue accounts for the six months ended June 30, 2021 (in thousands):

	Balance at Beginning of Period	Additions (1)	Subtractions (2)	Revenue recognized in the current period included in deferred revenue balance at the beginning of the period	Balance at End of Period
Six months ended June 30, 2021:					
Deferred revenue	$ 38,212	$ 140,596	$ (12,199)	$ (37,052)	$ 129,557
Long-term deferred revenue	-	109,532	(2,582)	-	106,950

(1) Additions are primarily payments received or invoices issued before we satisfy our performance obligations.
(2) Subtractions are primarily revenues recognized in the period included in deferred revenue during the period.

10. Net Income (Loss) Per Share

We compute net income (loss) per share of common stock using the two-class method required for participating securities. We consider Series B Preferred Stocks and warrants to be participating securities because holders of such shares have dividend rights in the event of our declaration of a dividend for common shares. Undistributed earnings allocated to participating securities are subtracted from net income (loss) in determining net income attributable to common stockholders.

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

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

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

	Three Months Ended June 30,		Six Months Ended June 30,	
	2021	2020	2021	2020
Numerator				
Net income (loss)	$ 4,473	$ (51,579)	$ 5,364	$ (64,174)
Less: undistributed earnings allocated to participating securities	(333)	-	(410)	-
Net income (loss) attributable to common stockholders, basic	$ 4,140	$ (51,579)	$ 4,954	$ (64,174)
Less: Removal of change in fair value of warrant liability	(2,097)	-	-	-
Net income (loss) attributable to common stockholders, diluted	$ 2,043	$ (51,579)	$ 4,954	$ (64,174)
Denominator				
Weighted average common stock outstanding, basic	114,629	97,339	113,339	91,408
Effect of dilutive shares:				
Stock-based compensation plans	1,630	-	1,639	-
Effect of dilutive warrants	2,571	-	-	-
Weighted average common stock outstanding, diluted	118,830	97,339	114,978	91,408

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

	Three months ended June 30,		Six months ended June 30,	
	2021	2020	2021	2020
Outstanding securities not included in diluted net income (loss) per share calculation (in thousands):				
Stock options and stock awards	6,991	11,276	8,476	11,276
Series B Convertible Preferred Stock (as converted to common stock)	4,140	4,140	4,140	4,140
Warrants (as exercisable into common stock)	-	5,841	2,474	5,841
Convertible Notes (as converted to common stock)	11,363	-	5,713	-
Total	22,494	21,257	20,803	21,257

11. Common Stock, Preferred Stock and Warrants

Common Stock

As of June 30, 2021, there were 114,756,092 shares of our common stock outstanding.

In August 2019, we sold (i) 18,525,000 shares of our common stock, par value $0.001 per share, (ii) 4,840 shares of our Series B Convertible Preferred Stock, par value $0.001 per share (“Series B Preferred Stock”) and (iii) warrants to purchase up to an aggregate of 5,841,250 shares of our common stock in an underwritten public offering (the “Offering”). Each share of common stock was sold together with a warrant to purchase 0.25 shares of common stock, at a combined price of $3.00 per share of common stock and the accompanying warrant. Each share of Series B Preferred Stock was sold together with a warrant to purchase 250 shares of common stock, at a combined price of $3,000 per share and the accompanying warrant. Proceeds from the Offering were approximately $65.6 million, net of issuance costs of $4.5 million.

Investment funds associated with Bain Capital Life Sciences Investors, LLC (“Bain Capital Life Sciences”) purchased approximately $35.0 million of common stock, Series B Preferred Stock and warrants in the Offering at the public offering price. Pursuant to the Offering, (i) Bain Capital Life Sciences Fund, L.P. purchased 6,826,266 shares of common stock, 3,756 shares of Series B Preferred Stock and warrants to purchase 2,645,566 shares of common stock for a total purchase price of approximately $31.7 million and (ii) BCIP Life Sciences Associates, LP purchased 698,734 shares of common stock, 384 shares of Series B Preferred Stock and warrants to purchase 270,684 shares of common stock for a total purchase price of approximately $3.2 million (together, “Bain Life Sciences Funds”). Bain Capital Life Sciences is the general partner of Bain Life Sciences Funds. The participation by these investors was on the same terms as the other investors in the Offering.

Following the Offering, Andrew A. F. Hack, M.D., Ph.D and Managing Director of Bain Capital Life Sciences (a related party), was appointed to our board of directors.

In June 2021, Bain Capital Life Sciences sold warrants to purchase an aggregate of 2,916,250 shares of our common stock for aggregate consideration of $11.8 million, representing all of the warrants held by Bain Capital Life Sciences. In the transaction, Bain Capital Life Sciences Fund, L.P. sold warrants to purchase 2,645,566 shares of Common Stock and BCIP Life Sciences Associates, LP sold warrants to purchase 270,684 shares of our common stock.

In May 2020, we completed an underwritten public offering of 16,100,000 shares of our common stock, par value $0.001 per share, including 2,100,000 shares sold pursuant to the full exercise of an overallotment option previously granted to the underwriters. All of the shares were offered at a price to the public of $5.00 per share. The net proceeds to us from this offering were approximately $75.4 million, after deducting the underwriting discount and other estimated offering expenses payable by us. Bain Life Sciences Funds purchased 1,000,000 shares of common stock in the underwritten public offering. Bain Capital Life Sciences is the general partner of Bain Life Sciences Funds. The participation by Bain Life Sciences Funds was on the same terms as the other investors in the offering.

On August 6, 2020, we entered into an at-the-market Sales Agreement (the "2020 ATM Agreement") with Cowen and Company, LLC ("Cowen"), under which we may offer and sell from time to time, at our sole discretion, shares of our common stock having an aggregate offering price of up to $150 million through Cowen as our sales agent. We agreed to pay Cowen a commission of up to 3% of the gross sales proceeds of any common stock sold through Cowen under the 2020 ATM Agreement. For the six months ended June 30, 2021, we received net cash proceeds of $28.2 million resulting from sales of 2,878,567 shares of our common stock pursuant to the 2020 ATM Agreement. All of these shares were sold during the three months ended March 31, 2021. As of June 30, 2021, we had $120.5 million remaining under the 2020 ATM Agreement.

Preferred Stock

As of June 30, 2021, there were 4,140 shares of Series B Preferred Stock outstanding.

Each share of Series B Preferred Stock is convertible into 1,000 shares of common stock at any time at the holder's option. However, the holder is prohibited from converting the Series B Preferred Stock into shares of common stock if, as a result of such conversion, the holder and its affiliates would own more than 4.99% of the total number of shares of common stock then issued and outstanding, which percentage may be changed at the holders' election to a higher or lower percentage (not to exceed 19.99%) upon 61 days' notice to the Company. In the event of liquidation, dissolution, or winding up, the holder of Series B Preferred Stock will receive payment on shares of Series B Preferred Stock (determined on an as-converted to common stock basis) equal to the amount that would be paid on our common stock. Shares of Series B Preferred Stock generally have no voting rights, except as required by law and except that the consent of holders of a majority of the outstanding Series B Preferred Stock is required to amend the terms of the Series B Preferred Stock. Holders of Series B Preferred Stock are not entitled to receive any dividends, unless and until specifically declared by our board of directors. The Series B Preferred Stock ranks on parity with our common stock as to distributions of assets upon liquidation, dissolution or winding up. The Series B Preferred Stock may rank senior to, on parity with or junior to any class or series of capital stock created in the future depending upon the specific terms of such future stock issuance.

The fair value of the common stock into which the Series B Preferred Stock is convertible exceeded the allocated purchase price of the Series B Preferred Stock by $3.3 million on the date of issuance, for which we recorded a deemed dividend. We recognized a deemed dividend equal to the number of shares of common stock into which the Series B Preferred Stock is convertible multiplied by the difference between the value of the common stock and the Series B Preferred Stock conversion price per share on the date of issuance, which is the date the stock first became convertible. The dividend was reflected as a one-time, non-cash, deemed dividend to the holders of Series B Preferred Stock on the date of issuance.

Warrants

During the six months ended June 30, 2021, 750,313 of our common stock warrants were exercised. As of June 30, 2021, the following common stock warrants were outstanding:

Warrants Issuance Date	Shares Issuable (in thousands)	Expiration Date	Exercise Price per Share	Outstanding as of June 30, 2021 (in thousands)
August 12, 2019	5,091	February 12, 2022	$ 4.50	5,091

Warrants were exercisable upon issuance. The holder is prohibited from exercising these warrants if, as a result of such exercise, the holder and its affiliates, would own more than 4.99% of the total number of shares of common stock then issued and outstanding, which percentage may be changed at the holders' election to a higher or lower percentage (not to exceed 19.99%) upon 61 days' notice to the Company.

The warrants contain provisions that may obligate us to repurchase them for an amount that does not represent fair value in the event of a change of control. Due to this provision, the warrants do not meet the criteria to be considered indexed to our own stock.

Accordingly, we recorded the warrants as a derivative liability at fair value of $7.4 million on the issuance date, which was estimated using the Black-Scholes model.

The warrants will be revalued at each reporting period using the Black-Scholes model and the change in the fair value of the warrants will be recognized as other income (expense) in the condensed consolidated statements of operations. At June 30, 2021, the estimated fair value of warrant liability was $29.6 million. For the three months ended June 30, 2021, we recognized the decrease in the estimated fair value of warrant liability of $2.1 million as income in other income (expense) in our condensed consolidated statements of operations. For the six months ended June 30, 2021, we recognized the increase in the estimated fair value of warrant liability of $23.5 million as expense in other income (expense) in our condensed consolidated statements of operations.

12. Equity Plans and Stock-Based Compensation

In January 2021, we adopted the Dynavax Technologies Corporation 2021 Inducement Award Plan ("2021 Inducement Plan"), pursuant to which we reserved 1,500,000 shares of common stock for issuance under the plan to be used exclusively for grants of awards to individuals who were not previously employees or directors of the Company. In June 2021, we amended the 2021 Inducement Plan ("Amended 2021 Inducement Plan") to increase the number of shares of common stock reserved under the 2021 Inducement Plan to 3,250,000.

In May 2021, the stockholders approved the amendment and restatement of our 2014 Employee Stock Purchase Plan (the "Amended and Restated 2014 Employee Stock Purchase Plan"). The maximum number of shares of common stock that may be issued under the Amended and Restated 2014 Employee Stock Purchase Plan is 1,850,000.

As of June 30, 2021, the 2018 Equity Incentive Plan, as amended, ("Amended 2018 EIP"), the Amended 2021 Inducement Plan and the Amended and Restated 2014 Employee Stock Purchase Plan are our active plans. Under the Amended 2018 EIP, the aggregate number of shares of our common stock that may be issued to employees and directors (subject to adjustment for certain changes in capitalization) is 22,517,869.

Under our stock-based compensation plans, option awards generally vest over a three or four-year period contingent upon continuous service, and expire seven to ten years from the date of grant (or earlier upon termination of continuous service). Option activity under our stock-based compensation plans during the six months ended June 30, 2021 was as follows (in thousands except per share amounts):

	Shares Underlying Outstanding Options	Weighted-Average Exercise Price Per Share	Weighted-Average Remaining Contractual Term (years)	Aggregate Intrinsic Value
Balance at December 31, 2020	8,505	$ 11.57		
Options granted	2,817	9.31		
Options exercised	(308)	4.69		
Options cancelled:				
Options forfeited (unvested)	(376)	7.74		
Options expired (vested)	(391)	18.63		
Balance at June 30, 2021	10,247	$ 11.03	4.36	$ 17,136
Vested and expected to vest at June 30, 2021	9,876	$ 11.12	4.29	$ 16,644
Exercisable at June 30, 2021	5,966	$ 13.04	3.03	$ 9,627

Restricted stock unit activity under our stock-based compensation plans during the six months ended June 30, 2021 was as follows (in thousands except per share amounts):

	Number of Shares (in thousands)	Weighted-Average Grant-Date Fair Value Per Share
Non-vested as of December 31, 2020	1,794	$ 7.23
Granted	1,797	9.43
Vested	(537)	8.85
Forfeited	(276)	8.24
Non-vested as of June 30, 2021	2,778	$ 8.24

We granted performance-based restricted stock unit ("PSU") to certain executives in February 2021. These PSUs vest upon a specified market condition. The summary of PSU activities for the six months ended June 30, 2021 is as follows:

	Number of Shares (in thousands)	Weighted-Average Grant-Date Fair Value Per Share
Non-vested as of December 31, 2020	-	$ -
Granted	297	8.40
Forfeited	(60)	8.40
Non-vested as of June 30, 2021	237	$ 8.40

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

	Stock Options		Stock Options		Market-Based Performance Stock Unit ("PSUs")
	Three Months Ended June 30,		Six Months Ended June 30,		Six Months Ended June 30, 2021
	2021	2020	2021	2020	
Weighted-average fair value per share	$ 6.20	$ 3.77	$ 6.57	$ 3.61	$ 8.40
Risk-free interest rate	0.9%	0.3%	0.6%	1.2%	From 0.03% to 1.92%
Expected life (in years)	4.5	4.5	4.5	4.5	2.9
Volatility	0.9	0.9	1.0	0.9	0.9

The components of stock-based compensation expense were as follows (in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2021	2020	2021	2020
Research and development	$ 937	$ 774	$ 1,809	$ (799)
Selling, general and administrative	3,445	2,491	6,589	4,933
Cost of sales - product	155	179	324	315
Inventory	487	644	1,025	1,417
Total	$ 5,024	$ 4,088	$ 9,747	$ 5,866

Compensation expense is based on awards ultimately expected to vest and reflects estimated forfeitures. Stock-based compensation for the six months ended June 30, 2020 included reversal of expenses related to cancellation of certain equity grants in the first quarter of 2020.

13. Subsequent Events

Biological E. Limited

In July 2021, we entered into an agreement (the "Bio E Supply Agreement") with Biological E. Limited ("Bio E"), for the commercial supply of CpG 1018, for use with Bio E's subunit COVID-19 vaccine candidate, CORBEVAX™. Under the Bio E Supply Agreement, Bio E has committed to purchase specified quantities of CpG 1018, at pre-negotiated prices pursuant to the CEPI Agreement, for use in Bio E's commercialization of its CORBEVAX vaccine ("Bio E Product") with specified delivery dates in 2021 and the first quarter of 2022.

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

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

The following discussion and analysis is intended to provide an investor with a narrative of our financial results and an evaluation of our financial condition and results of operations. This discussion should be read in conjunction with the unaudited Condensed Consolidated Financial Statements and related Notes included in Item 1 of this Quarterly Report on Form 10-Q and the Consolidated Financial Statements and the related Notes and Management's Discussion and Analysis of Financial Condition and Results of Operations contained in our Annual Report on Form 10-K for the year ended December 31, 2020.

Overview

We are a commercial stage biopharmaceutical company focused on developing and commercializing novel vaccines. Our first marketed product, HEPLISAV-B® (Hepatitis B Vaccine (Recombinant), Adjuvanted) is approved in the United States and European Union for prevention of infection caused by all known subtypes of hepatitis B virus in adults age 18 years and older. We also manufacture and sell CpG 1018, the adjuvant used in HEPLISAV-B. We are working to develop CpG 1018 as a premier vaccine adjuvant through research collaborations and partnerships. Current collaborations are focused on adjuvanted vaccines for COVID-19, pertussis and universal influenza.

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

We have worldwide commercial rights to HEPLISAV-B and we market it in the United States. There are three other vaccines approved for the prevention of hepatitis B in the U.S.: Engerix-B and Twinrix® from GlaxoSmithKline plc and Recombivax-HB® from Merck & Co. In addition, we received Marketing Authorization approval of HEPLISAV-B in February 2021 from the European Commission following a positive recommendation in December 2020 from the European Medicines Agency ("EMA") Committee for Medicinal Products ("CHMP") for Human Use for prevention of infection caused by all known subtypes of hepatitis B virus in adults age 18 years and older. In May 2021, we entered into a commercialization agreement with Bavarian Nordic for the marketing and distribution of HEPLISAV-B in Germany.

All of our HEPLISAV-B sales are to certain wholesalers and specialty distributors in the U.S. whose principal customers include independent hospitals and clinics, integrated delivery networks, public health clinics and prisons, the Departments of Defense and Veterans Affairs and retail pharmacies. For the three and six months ended June 30, 2021, HEPLISAV-B product revenue, net was $13.7 million and $22.0 million, respectively.

In the third quarter of 2020, we commenced selling our CpG 1018 adjuvant to certain of our collaboration partners for their use in development and/or commercialization of COVID-19 vaccines. For the three and six months ended June 30, 2021, CpG 1018 product revenue, net was $39.0 million and $113.6 million, respectively.

In May 2021, we entered into the first Amendment (the "Amendment") to the Agreement with Coalition for Epidemic Preparedness Innovations ("CEPI"). The Amendment provides for the manufacture and reservation of an additional specified quantity of CpG 1018. In exchange for reserving an additional specified quantity of CpG 1018, CEPI has agreed to provide additional advance payments of up to $77.4 million, for a total of CEPI's funding of up to $176.4 million.

In June 2021, we entered into an agreement with Zhejiang Clover Biopharmaceuticals, Inc. and Clover Hong Kong Inc. (collectively, "Clover"), for the commercial supply of CpG 1018 adjuvant, for use with Clover's COVID-19 vaccine candidate, SCB-2019 (the "Clover Supply Agreement"). Under the Clover Supply Agreement, Clover has committed to purchase specified quantities of CpG 1018 adjuvant, at pre-negotiated prices pursuant to the CEPI Agreement, for use in Clover's commercialization of vaccines containing SCB-2019 and CpG 1018 adjuvant ("Clover Product"). The Clover Supply Agreement also provides terms for Clover to order additional quantities of CpG 1018 adjuvant beyond the quantities reserved by CEPI.

In July 2021, we entered into an agreement (the "Bio E Supply Agreement") with Biological E. Limited ("Bio E"), for the commercial supply of CpG 1018, for use with Bio E's subunit COVID-19 vaccine candidate, CORBEVAX™. Under the Bio E Supply Agreement, Bio E has committed to purchase specified quantities of CpG 1018, at pre-negotiated prices pursuant to the CEPI Agreement, for use in Bio E's commercialization of its CORBEVAX vaccine ("Bio E Product") with specified delivery dates in 2021

and the first quarter of 2022. The Bio E Supply Agreement also provides terms for Bio E to order additional quantities of CpG 1018 adjuvant beyond the quantities reserved by CEPI.

In May 2021, we issued $200.0 million aggregate principal amount of 2.50% convertible senior notes due 2026 (the "Convertible Notes") in a private placement. The purchasers partially exercised their option to purchase additional Convertible Notes and we issued an additional $25.5 million of the Convertible Notes in May 2021. Total proceeds from the issuance of the Convertible Notes, net of debt issuance and offering costs of $5.7 million, were $219.8 million. We used $190.2 million of the net proceeds to repay, in full, our outstanding debt and other obligations under the Loan Agreement and $27.2 million of the net proceeds to pay the costs of the capped call transactions described below.

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

In May 2021, we repaid the term loans and paid-in-kind interest (collectively "Term Loans Principal") under the Loan Agreement with CRG Servicing LLC ("Loan Agreement"), in full, using the net proceeds from the Convertible Notes issuance described above. In connection with the early repayment of the Term Loans Principal, during the three months ended June 30, 2021, we recorded $5.2 million loss on debt extinguishment related to the amount we paid to terminate the Term Loans Principal in excess of its carrying value at the time of the repayment. Our final payment of $190.2 million to CRG Servicing LLC satisfied all of our obligations under the Loan Agreement. With the full repayment of the Term Loans Principal, all security interests, covenants, liens and encumbrances under the Loan Agreement were permanently released.

COVID-19 Update

The ongoing COVID-19 global pandemic has presented a substantial public health and economic challenge around the world and is affecting our employees, patients, communities and business operations, as well as the U.S. economy and financial markets. The full extent to which the COVID-19 pandemic will directly or indirectly impact our business, results of operations and financial condition will depend on future developments that are highly uncertain and cannot be accurately predicted, including new information that may emerge concerning COVID-19 virus or current or newly discovered variants, the actions taken to contain it or treat its impact and the economic impact on local, regional, national and international markets. We continue to assess the potential impact of the COVID-19 pandemic on our business and operations.

To date, we and our distribution partners have been able to continue to supply HEPLISAV-B throughout the United States, and currently do not anticipate any interruptions in supply. Due to the ongoing COVID-19 global pandemic, most medical centers began restricting access to their facilities and focused on providing care to only the most severely affected patients beginning in March 2020. As states began phasing out restrictions in the middle of 2020, medical centers have been operating under limited capacity or with strict social distancing rules. This has resulted in significantly reduced utilization of adult vaccines since the end of the first quarter of 2020, including HEPLISAV-B. This reduced utilization has significantly impacted sales of HEPLISAV-B and is likely to continue to impact us until restrictions affecting us are lifted and the U.S. returns to more normal conditions. While we have seen utilization rates for adult vaccines generally, and HEPLISAV-B in particular, begin to increase again, their utilization still remains well below pre-COVID rates.

We are continuing to closely monitor the impact of the COVID-19 pandemic on our business and are taking proactive efforts to help protect the health and safety of our workforce, patients and healthcare professionals, and to continue our business operations and advance our goal of bringing important new vaccines to patients as rapidly as possible. We have implemented measures to help protect the health and safety of our workforce, including a mandatory work-from-home policy for employees who can perform their jobs offsite and continue to actively evaluate a return to the office at an appropriate time. In the conduct of our business activities, we are also taking actions to help protect the safety of patients and healthcare professionals. Our field-based personnel have reduced in-person customer interactions in healthcare settings and are primarily using electronic communication, such as emails, phone calls and video conferences. Many health care and contracting professionals at hospitals and other medical institutions with whom our field-based personnel interact are conducting a greater proportion of their work from their homes and are facing additional demands on their time during the COVID-19 pandemic. We expect that the different quality of electronic interactions as compared with in-person interactions, as well as the reduced quantity of interactions during the COVID-19 pandemic, could reduce the effectiveness of our sales personnel, our customers' procurement activities and those of our collaborators, which could negatively affect our overall product sales.

Our HEPLISAV-B post-marketing follow-up has been completed. We conducted an observational comparative study of HEPLISAV-B to Engerix-B to assess occurrence of acute myocardial infarction, or AMI. This study was initiated in August 2018, concluded in November 2020 and final results were presented in April 2021. The results provided evidence that there is no increased risk of AMI associated with vaccination with HEPLISAV-B compared to Engerix-B. We expect data from the autoimmune portion of our observational study to be available in the first quarter of 2022. Our HEPLISAV-B dialysis study was also able to continue, because the dialysis treatment has been classified under "essential travel" exemptions. Final immunogenicity results of our dialysis study were presented in April 2021 and we expect the safety follow up to be completed during the fourth quarter of 2021. However, if the COVID-19 pandemic continues to persist for an extended period of time, we could experience significant disruptions to these or other studies, which could adversely affect our business and growth prospects.

The extent of the impact of the COVID-19 pandemic on our ability to generate sales and revenues, our regulatory efforts, our corporate development objectives and the value of and market for our common stock, will depend on future developments that are highly uncertain and cannot be predicted with confidence at this time. Because of the above and other factors, our results of operations may vary substantially from year to year and from quarter to quarter and, as a result, we believe that period-to-period comparisons of our operating results may not be meaningful and should not be relied upon as being indicative of our future performance. For additional information on the various current and future potential risks posed by the COVID-19 pandemic, please read Item 1A. Risk Factors, included herein.

We have been actively pursuing opportunities to collaborate with other organizations on the development of a COVID-19 vaccine, by leveraging our toll-like receptor 9 ("TLR9") agonist adjuvant, CpG 1018, which is the adjuvant used in our HEPLISAV-B product. Since the first half of 2021, we announced multiple collaborations focused on COVID-19 and we continue to work to identify other programs where CpG 1018 can be utilized to enhance the immune response to a coronavirus vaccine or other vaccines. We and our contract manufacturers are developing plans to help scale-up activities to support pandemic-level of production of our CpG 1018 adjuvant, as necessary to support these and any future collaborations. There can be no assurance we will be successful in our efforts to help develop or supply an adjuvanted COVID-19 vaccine or other vaccines.

Critical Accounting Policies and the Use of Estimates

The accompanying discussion and analysis of our financial condition and results of operations are based upon our condensed consolidated financial statements and the related disclosures, which have been prepared in accordance with U.S. generally accepted accounting principles. The preparation of these financial statements requires us to make estimates, assumptions and judgments that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the balance sheet dates and the reported amounts of revenues and expenses for the periods presented. On an ongoing basis, we evaluate our estimates, assumptions and judgments described below that have the greatest potential impact on our condensed consolidated financial statements, including those related to revenue recognition, research and development activities, stock-based compensation, inventories and leases. We base our estimates on historical experience and on various other assumptions that we believe 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. Accounting assumptions and estimates are inherently uncertain and actual results may differ materially from these estimates under different assumptions or conditions.

We believe that there have been no significant changes in our critical accounting policies during the six months ended June 30, 2021, as compared with those disclosed in our Annual Report on Form 10-K for the year ended December 31, 2020 other than those described below:

Convertible Notes

We evaluate all conversion, repurchase and redemption features contained in a debt instrument to determine if there are any embedded features that require bifurcation as a derivative. We accounted for the issuance of the Convertible Notes as a long-term liability equal to the proceeds received from issuance, including the embedded conversion feature, net of the unamortized debt issuance and offering costs on the condensed consolidated balance sheets. The conversion feature is not required to be accounted for separately as an embedded derivative. We amortize debt issuance and offering costs over the contractual term of the Convertible Notes, using the effective interest method, as interest expense on the condensed consolidated statements of operations.

Capped Calls

We evaluate financial instruments under ASC 815. In May 2021, in connection with the issuance of the Convertible Notes, we entered into the Capped Calls. The Capped Calls cover the same number of shares of common stock that initially underlie the Convertible Notes (subject to anti-dilution and certain other adjustments). The Capped Calls meet the definition of derivative under ASC 815. In addition, the Capped Calls meet the conditions in ASC 815 to be classified in stockholders' equity and are not subsequently remeasured as long as the conditions for the equity classification continue to be met.

Results of Operations

Revenues

Revenues consist of amounts earned from product sales and other revenues. Product revenue, net, includes sales of HEPLISAV-B and CpG 1018 adjuvant.

Revenue from HEPLISAV-B product sales is recorded at the net sales price, which includes estimates of product returns, chargebacks, discounts, rebates and other fees. We sell our CpG 1018 adjuvant to our collaboration partners for use in their development and/or potential commercialization of COVID-19 vaccines. Overall, product revenue, net, reflects our best estimates of the amount of consideration to which we are entitled based on the terms of the contract.

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

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

	Three Months Ended June 30,		Increase (Decrease) from 2020 to 2021		Six Months Ended June 30,		Increase (Decrease) from 2020 to 2021	
Revenues:	**2021**	**2020**	**$**	**%**	**2021**	**2020**	**$**	**%**
HEPLISAV-B	$ 13,688	$ 2,405	$ 11,283	469%	$ 21,991	$ 12,919	$ 9,072	70%
CpG 1018	38,989	-	38,989	-	113,571	-	113,571	-
Total product revenue, net	$ 52,677	$ 2,405	$ 50,272	2,090%	$ 135,562	$ 12,919	$ 122,643	949%
Other revenue	90	263	(173)	(66)%	540	668	(128)	(19)%
Total revenues	$ 52,767	$ 2,668	$ 50,099	1,878%	$ 136,102	$ 13,587	$ 122,515	902%

HEPLISAV-B revenue for the three and six months ended June 30, 2021 increased, compared to the same periods of 2020, due to higher sales volume. Adult vaccine utilization rates improved in the three months ended June 30, 2021 compared to the same period of last year during the early stages of the COVID-19 pandemic.

In September 2020, we began selling our CpG 1018 adjuvant to our collaboration partners for their use in development and/or potential commercialization of COVID-19 vaccines. In the three and six months ended June 30, 2021, we continued to manufacture and ship CpG 1018 adjuvant pursuant to our supply and collaboration agreements. We expect the increase in CpG 1018 product revenue to continue in the near term as we ramp up production and sell CpG 1018 adjuvant pursuant to our commercial/collaboration agreements.

Other revenue included grant revenue and collaboration revenue related to services performed under a collaboration agreement with Serum Institute of India Pvt. Ltd. Other revenue for the three and six months ended June 30, 2021 decreased, compared to the same periods of 2020 due to less services performed.

Cost of Sales – Product

Cost of sales - product consists primarily of raw materials, certain fill, finish and overhead costs and any inventory adjustment charges for pre-filled syringes (“PFS”) of HEPLISAV-B and inventory costs to produce CpG 1018 for our collaboration partners. Our HEPLISAV-B PFS finished goods inventory previously included components for which a portion of the manufacturing costs were expensed to research and development prior to the approval of the PFS presentation by the United States Food and Drug Administration (“FDA”) in March 2018. Substantially all the inventory that was previously expensed to research and development has been sold to customers.

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

	Three Months Ended June 30,		Increase (Decrease) from 2020 to 2021		Six Months Ended June 30,		Increase (Decrease) from 2020 to 2021	
Cost of Sales – Product	**2021**	**2020**	**$**	**%**	**2021**	**2020**	**$**	**%**
HEPLISAV-B	$ 4,624	$ 967	$ 3,657	378%	$ 7,369	$ 3,321	$ 4,048	122%
CpG 1018	$ 10,221	$ -	$ 10,221	-	$ 32,101	$ -	$ 32,101	-
Total cost of sales - product	$ 14,845	$ 967	$ 13,878	1,435%	$ 39,470	$ 3,321	$ 36,149	1,088%

For the three and six months ended June 30, 2021, HEPLISAV-B cost of sales-product increased, as compared to the same periods in 2020, primarily due to higher sales volume and higher unit costs as we produce and then sell inventory that reflects the full cost of manufacturing.

In September 2020, we began selling our CpG 1018 adjuvant to our collaboration partners for their use in development and/or commercialization of COVID-19 vaccines. In the three and six months ended June 30, 2021, we continued to manufacture and ship CpG 1018 adjuvant pursuant to our supply and collaboration agreements.

Research and Development Expense

Research and development expense consists, primarily, of compensation and related personnel costs (which include benefits, recruitment, travel and supply costs), outside services, allocated facility costs and non-cash stock-based compensation. Outside services consist of costs associated with clinical development, process development, preclinical discovery and development, regulatory filings and research, including fees and expenses incurred by contract research organizations, clinical study sites, and other service providers.

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

	Three Months Ended June 30,		Increase (Decrease) from 2020 to 2021		Six Months Ended June 30,		Increase (Decrease) from 2020 to 2021	
Research and Development:	**2021**	**2020**	**$**	**%**	**2021**	**2020**	**$**	**%**
Compensation and related personnel costs	$ 2,131	$ 2,026	$ 105	5%	$ 5,333	$ 4,223	$ 1,110	26%
Outside services	4,108	2,942	1,166	40%	7,530	6,877	653	9%
Facility costs	(9)	142	(151)	(106)%	253	236	17	7%
Non-cash stock-based compensation	937	774	163	21%	1,809	(799)	2,608	326%
Total research and development	$ 7,167	$ 5,884	$ 1,283	22%	$ 14,925	$ 10,537	$ 4,388	42%

For the three and six months ended June 30, 2021, compensation and related personnel costs and non-cash stock-based compensation increased, as compared to the same periods in 2020, primarily due to higher headcount to support vaccine clinical and development activities. In addition, non-cash stock-based compensation for the six months ended June 30, 2020 included reversal of expenses related to cancellation of certain equity grants.

For the three and six months ended June 30, 2021, the increase in outside services, as compared to the same periods in 2020, was due to an overall increase in our vaccine clinical and development activities.

Facility costs, which primarily comprise of allocated occupancy and related expenses, for the three months ended June 30, 2021 decreased due to a common area maintenance credit that can be applied to future rent.

Selling, General and Administrative Expense

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

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

Selling, General and Administrative:	Three Months Ended June 30, 2021	Three Months Ended June 30, 2020	Increase (Decrease) from 2020 to 2021 $	Increase (Decrease) from 2020 to 2021 %	Six Months Ended June 30, 2021	Six Months Ended June 30, 2020	Increase (Decrease) from 2020 to 2021 $	Increase (Decrease) from 2020 to 2021 %
Compensation and related personnel costs	$ 9,172	$ 7,422	$ 1,750	24%	$ 18,376	$ 15,722	$ 2,654	17%
Outside services	5,699	5,584	115	2%	12,287	12,209	78	1%
Legal costs	508	582	(74)	(13)%	994	1,316	(322)	(24)%
Facility costs	2,759	2,875	(116)	(4)%	5,760	5,700	60	1%
Non-cash stock-based compensation	3,445	2,491	954	38%	6,589	4,933	1,656	34%
Total selling, general and administrative	$ 21,583	$ 18,954	$ 2,629	14%	$ 44,006	$ 39,880	$ 4,126	10%

For the three and six months ended June 30, 2021, compensation and related personnel costs increased, as compared to the same periods in 2020, primarily, due to higher headcount. In addition, compensation and related personnel costs for the six months ended June 30, 2021 included an accrual of benefits for a former executive in connection with their retirement.

For the three and six months ended June 30, 2021, non-cash stock-based compensation increased, as compared to the same periods in 2020, due to higher headcount. In addition, non-cash stock-based compensation included reversal of expenses related to cancellation of certain equity grants in the three months ended March 31, 2020.

Other Income (Expense)

Interest income is reported net of amortization of premiums and discounts on marketable securities and includes realized gains on investments. Interest expense includes the stated interest and accretion of discount and end of term fee related to our terminated long-term debt agreement and Convertible Notes. Sublease income is recognized in connection with our sublease of office and laboratory space. Loss on debt extinguishment reflects the amount we paid to terminate our long-term debt in excess of its carrying value at the time of the extinguishment. Change in fair value of warrant liability reflects the changes in fair value of warrants issued in connection with equity financing in August 2019. Other includes gains and losses on foreign currency transactions and disposal of property and equipment.

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

	Three Months Ended June 30, 2021	Three Months Ended June 30, 2020	Increase (Decrease) from 2020 to 2021 $	Increase (Decrease) from 2020 to 2021 %	Six Months Ended June 30, 2021	Six Months Ended June 30, 2020	Increase (Decrease) from 2020 to 2021 $	Increase (Decrease) from 2020 to 2021 %
Interest income	$ 48	$ 331	$ (283)	(85)%	$ 95	$ 921	$ (826)	(90)%
Interest expense	$ (3,109)	$ (4,732)	$ (1,623)	(34)%	$ (7,821)	$ (9,463)	$ (1,642)	(17)%
Sublease income	$ 1,670	$ 1,927	$ (257)	(13)%	$ 3,692	$ 3,853	$ (161)	(4)%
Loss on debt extinguishment	$ (5,232)	$ -	$ 5,232	-	$ (5,232)	$ -	$ 5,232	-
Change in fair value of warrant liability	$ 2,097	$ (25,655)	$ 27,752	(108)%	$ (23,455)	$ (17,045)	$ (6,410)	38%
Other	$ (173)	$ (111)	$ (62)	56%	$ 384	$ 211	$ 173	82%

Interest income for the three and six months ended June 30, 2021 decreased, as compared to the same periods in 2020, primarily due to lower yields on our marketable securities portfolio. Interest expense for the three and six months ended June 30, 2021 decreased, as compared to the same periods in 2020, due to the repayment of our long-term debt in May 2021, replaced by the issuance of Convertible Notes in May 2021. In connection with the repayment of our long-term debt, we recorded a one-time loss on debt extinguishment of $5.2 million during the three months ended June 30, 2021. The change in the fair value of warrant liability is primarily due to the decrease in our stock price during the three months ended June 30, 2021 and the increase in our stock price during the six months ended June 30, 2021. The change in other is primarily due to foreign currency transactions and related fluctuations in the value of the Euro compared to the U.S. dollar.

Liquidity and Capital Resources

As of June 30, 2021, we had $345.8 million in cash, cash equivalents and marketable securities. Since our inception, we have relied primarily on the proceeds from public and private sales of our equity securities, borrowings, government grants and revenues

from product sales and collaboration agreements to fund our operations. Our funds are currently invested in money market funds, U.S. treasuries, U.S. government agency securities and corporate debt securities. We currently anticipate that our cash, cash equivalents and short-term marketable securities as of June 30, 2021, and anticipated revenues from HEPLISAV-B and CpG 1018 will be sufficient to fund our operations for at least the next 12 months from the date of this filing.

Pursuant to the CEPI agreement, advanced payments received from CEPI to reserve a specified quantity of CpG 1018 totaling $107.0 million, net of the amount payable to CEPI of $2.6 million, were recorded as long-term deferred revenue in our condensed consolidated balance sheets.

Pursuant to the supply agreement with Clover, we recognized deferred revenue pursuant to an initial invoice for a portion of Clover's binding commitment to purchase CpG 1018 adjuvant, outside of the CEPI Agreement. As of June 30, 2021, deferred revenue related to Clover's supply agreement totaling $72.9 million was recorded in our condensed consolidated balance sheets.

Pursuant to the supply agreement with Valneva Scotland Limited ("Valneva"), we received advanced payments to purchase specified quantities of CpG 1018 adjuvant which were recorded as deferred revenue. As of June 30, 2021, deferred revenue related to the supply agreement totaling $55.4 million was recorded in our condensed consolidated balance sheets.

For the six months ended June 30, 2021, we received net cash proceeds of $28.2 million resulting from sales of 2,878,567 shares of our common stock pursuant to a 2020 At Market Sales Agreement with Cowen and Company, LLC ("2020 ATM Agreement"). All of these shares were sold during the three months ended March 31, 2021. As of June 30, 2021, we had $120.5 million remaining under the 2020 ATM Agreement.

During the six months ended June 30, 2021, we generated $148.8 million of cash from our operations primarily due to our net income of $5.4 million, of which $37.9 million consisted of non-cash items which included change in fair value of warrant liability, stock-based compensation, depreciation and amortization, amortization of right-of-use assets, non-cash interest expense and accretion and amortization on marketable securities. By comparison, during the six months ended June 30, 2020, we used $48.7 million of cash for our operations primarily due to our net loss of $64.2 million, of which $30.3 million consisted of non-cash items which included change in fair value of warrant liability, stock-based compensation, amortization of intangible assets, depreciation and amortization, non-cash interest expense, amortization of right-of-use assets and accretion and amortization on marketable securities. Cash provided by our operations during the first half of 2021 increased by $197.5 million. For the six months ended June 30, 2021, we received an advance payment from CEPI in the amount of $109.5 million which was recorded as long-term deferred revenue. Net cash provided by operating activities is also impacted by changes in our operating assets and liabilities due to timing of cash receipts and expenditures.

During the six months ended June 30, 2021 and 2020, net cash used in investing activities was $86.4 million and $38.8 million, respectively. Cash used in investing activities during the first six months of 2021 and 2020 included $83.6 million and $28.8 million of net purchases of marketable securities, respectively. During the first six months of 2020, we paid $7.0 million of sublicense payment to Merck.

During the six months ended June 30, 2021 and 2020, net cash provided by financing activities was $35.6 million and $108.0 million, respectively. Cash provided by financing activities for the first six months of 2021 included net proceeds of $219.8 million from the issuance of our Convertible Notes, $28.2 million from our 2020 ATM Agreement, $3.4 million from warrants exercised offset by $190.2 million repayment of our long-term debt and $27.2 million purchases of capped call options. Cash provided by financing activities for the first six months of 2020 included net proceeds of $75.4 million and $32.3 million from the issuance of common stock under our underwritten public offering in May 2020 and our, now terminated, 2017 ATM Agreement, respectively.

Prior to January 1, 2021, we incurred net losses in each year since our inception. For the three and six months ended June 30, 2021, we recorded net income of $4.5 million and $5.4 million, respectively. We cannot be certain that sales of our products, and the revenue from our other activities are sustainable. Further, we expect to continue to incur substantial expenses as we continue to invest in commercialization of HEPLISAV-B, development of our CpG 1018 adjuvant and clinical trials and other development. If we cannot generate a sufficient amount of revenue from product sales, we will need to finance our operations through strategic alliance and licensing arrangements and/or future public or private debt and equity financings. Raising additional funds through the issuance of equity or debt securities could result in dilution to our existing stockholders, increased fixed payment obligations, or both. In addition, these securities may have rights senior to those of our common stock and could include covenants that would restrict our operations.

Our ability to raise additional capital in the equity and debt markets, should we choose to do so, is dependent on a number of factors, including, but not limited to, the market demand for our common stock, which itself is subject to a number of development and business risks and uncertainties, our creditworthiness and the uncertainty that we would be able to raise such additional capital at a price or on terms that are favorable to us. In addition, our ability to raise additional funds may be adversely impacted by deteriorating global economic conditions and the recent disruptions to and volatility in the credit and financial markets in the United States and worldwide resulting from the ongoing COVID-19 pandemic. Adequate financing may not be available to us on acceptable terms, or at all. If adequate funds are not available when needed, we may need to significantly reduce our operations while we seek strategic alternatives, which could have an adverse impact on our ability to achieve our intended business objectives.

Contractual Obligations

As of June 30, 2021, our material non-cancelable purchase and other commitments, for the supply of HEPLISAV-B, CpG 1018 adjuvant and for clinical research, totaled $106.8 million.

As of June 30, 2021, the aggregate principal amount of our Convertible Notes was $225.5 million, excluding debt discount of $5.5 million. The Convertible Notes mature on May 15, 2026, unless converted, redeemed or repurchased in accordance with their terms prior to such date.

In May 2021, we repaid the Term Loans Principal under the Loan Agreement, in full. With the full repayment of the Term Loans Principal, all security interests, covenants, liens and encumbrances under the Loan Agreement were permanently released.

There were no other material changes to the contractual obligations previously disclosed in our Annual Report on Form 10-K for the year ended December 31, 2020.

Off-balance Sheet Arrangements

We do not have any off-balance sheet arrangements, as defined by rules enacted by the Securities and Exchange Commission, and accordingly, no such arrangements are likely to have a current or future effect on our financial position.

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

During the six months ended June 30, 2021, there were no material changes to our market risk disclosures as set forth in Part II, Item 7A, "Quantitative and Qualitative Disclosures About Market Risk" in our Annual Report on Form 10-K for the year ended December 31, 2020.

ITEM 4. CONTROLS AND PROCEDURES

(a) Evaluation of disclosure controls and procedures

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

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

(b) Changes in internal controls

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

PART II. OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS

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

ITEM 1A. RISK FACTORS

Various statements in this Quarterly Report on Form 10-Q are forward-looking statements, including, but not limited to, statements concerning the effect of the COVID-19 pandemic on our business, our future efforts to obtain regulatory approval, achieve restructuring goals, advance our collaborations, manufacture and commercialize approved products, or expectations about our anticipated expenses, revenues, liquidity and cash needs, as well as our plans and strategies. These forward-looking statements are based on current expectations and we assume no obligation to update this information. Numerous factors could cause our actual results to differ significantly from the results described in these forward-looking statements, including those in the risk factors that follow. We have marked with an asterisk (*) those risks described below that reflect material changes from, or additions to, the risks described under Part 1, Item 1A "Risk Factors" included in our Annual Report on Form 10-K for the year ended December 31, 2020 that was filed with the Securities and Exchange Commission on February 25, 2021.

Risks Related to our Business and Capital Requirements

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

We have established sales, marketing and distribution capabilities and commercialized HEPLISAV-B in the U.S. Successful commercialization of HEPLISAV-B will require significant resources and time and, while Dynavax personnel are experienced with respect to marketing of healthcare products, because HEPLISAV-B is the company's first marketed product, the potential uptake of the product in distribution and the timing for growth in sales, if any, is unpredictable and we may not be successful in commercializing HEPLISAV-B. We have never launched a product in the European Union before, and despite the recent European approval of HEPLISAV-B, there can be no certainty that we will succeed in our European launch efforts. In particular, successful commercialization of HEPLISAV-B will require that we continue to negotiate and enter into contracts with wholesalers, distributors, group purchasing organizations, and other parties, and that we maintain those contractual relationships. There is a risk that we may fail to complete or maintain some or all of these important contracts on favorable terms, or that in a potentially evolving reimbursement environment our efforts may fail to overcome established competition at favorable pricing or at all.

We converted our contracted U.S. field sales team into full-time Dynavax employees in the second quarter of 2019. Before then we had not previously employed an in-house field sales team, and thus have limited experience in overseeing and managing an employed salesforce. In addition, retention of capable sales personnel may be more difficult with focus on a single product offering and we must retain our salesforce in order for HEPLISAV-B to establish a commercial presence.

Moreover, we expect that significant resources will need to be invested in order to successfully market, sell and distribute HEPLISAV-B for use with diabetes patients, one of our targeted patient populations. Although the Centers for Disease Control and Prevention ("CDC") and the CDC's Advisory Committee on Immunization Practices ("ACIP") recommend that patients with diabetes receive hepatitis B vaccinations, we are unable to predict how many of those patients may receive HEPLISAV-B.

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

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

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

We are continuing to closely monitor the impact of the COVID-19 global pandemic on our business and are taking proactive efforts to protect the health and safety of our workforce, patients and healthcare professionals, and to continue our business operations and advance our goal of bringing important new vaccines to patients as rapidly as possible. We have implemented measures to protect the health and safety of our workforce, including a mandatory work-from-home policy for employees who can perform their jobs offsite. In the conduct of our business activities, we are also taking actions to protect the safety of patients and healthcare professionals. Our field-based personnel have mostly paused in-person customer interactions in healthcare settings and are generally using electronic communication, such as emails, phone calls and video conferences. Many healthcare and contracting professionals at hospitals and other medical institutions with whom our field-based personnel interact are working a greater proportion of their working schedule from home and are facing additional demands on their time during the COVID-19 pandemic. We expect that the different quality of electronic interactions as compared with in-person interactions, as well as the reduced quantity of interactions during the COVID-19 pandemic, may reduce the effectiveness of our sales personnel, our customers' procurement activities, as well as those of our collaborators, which could negatively affect our product sales.

In addition, due to the ongoing COVID-19 global pandemic, most medical centers restricted access to their facilities and focused on providing care to only the most severely affected patients beginning in mid-March 2020. As states began phasing out restrictions, medical centers began operating under limited capacity and strict social distancing rules. This has resulted in significantly reduced utilization of adult vaccines began in the first quarter of 2020, including utilization of HEPLISAV-B. This reduced utilization has significantly impacted sales and is likely to continue to impact us until restrictions affecting us are lifted and the U.S. returns to more normal conditions. While utilization rates have begun to improve more recently, there can be no assurance of the timing or likelihood for adult vaccine utilization rates to return to pre-COVID levels.

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

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

Our business and operations have been and may continue to be adversely affected by the evolving and ongoing COVID-19 global pandemic.

Our business has been and may continue to be adversely affected by the effects of the recent and evolving COVID-19 virus, which was declared by the World Health Organization ("WHO") as a global pandemic. The COVID-19 pandemic has resulted in travel and other restrictions in order to reduce the spread of the disease. In response to these public health directives and orders, we have implemented work-from-home policies for all employees, except those that need to be at work in order to perform critical responsibilities.

The COVID-19 pandemic, and government measures taken in response, have had a significant impact, both direct and indirect, on businesses and commerce, as significant reductions in business-related activities have occurred, supply chains have been disrupted, and manufacturing and clinical development activities have been curtailed or suspended. In accordance with guidance issued by the Centers for Disease Control and Prevention, WHO and local authorities, beginning in March 2020, most of our global workforce transitioned to working remotely. The principal purchasers of HEPLISAV-B, including independent hospitals and clinics, integrated delivery networks, public health clinics and prisons, the Departments of Defense and Veterans Affairs and retail pharmacies, have all

drastically curtailed their day-to-day activities and ceased allowing or significantly reduced access to their facilities for non-COVID-19 related business. Thus, our field sales and medical science employees increased their use of telephone and web-based means to seek to carry out their roles where necessary, which may not be as effective as being in-person.

The overall impact has generally resulted in significantly reduced utilization of all adult vaccines, (other than recently approved COVID-19 vaccines) since the end of the first quarter of 2020, including HEPLISAV-B. This shift has significantly and adversely impacted our sales of HEPLISAV-B and our business and operating results since March 2020 and continues to pose a headwind for our HEPLISAV-B business. This reduced HEPLISAV-B utilization is likely to continue to impact us until restrictions affecting us are lifted and the U.S. returns to more normal conditions.

We also cannot predict to what extent the COVID-19 pandemic may continue to disrupt demand for HEPLISAV-B, but the overall magnitude of the disruption to our business will depend, in part, on the length and ongoing severity of the restrictions, and other limitations on our ability to conduct our business in the ordinary course. Prolonged disruptions would likely materially and negatively impact our business, operating results and financial condition.

Current quarantines, shelter-in-place, executive and similar government orders related to COVID-19 have had no material impact on the supply of HEPLISAV-B and we have no current expectation that they will. However, if such restrictions are increased or continue for a substantial period of time, they could impact personnel at our manufacturing facility in Germany and third-party manufacturing facilities in the United States or abroad. This could adversely affect our ability to maintain and distribute a consistent supply of HEPLISAV-B or CpG 1018 adjuvant sufficient to meet demand.

The spread of COVID-19, which has caused a broad impact globally, may materially affect us economically. While the potential economic impact, and the duration of such impact, brought by COVID-19 may be difficult to assess or predict, a widespread pandemic could also potentially result in significant disruption of global financial markets, reducing our ability to access capital, which could in the future negatively affect our liquidity. In addition, a recession or market correction resulting from the spread of COVID-19 could materially affect our business and the value of our common stock.

The COVID-19 pandemic continues to rapidly evolve, and new variants of the virus continue to emerge. While some vaccines have been recently approved, it is not clear whether, which, or to what extent these vaccines will protect against current or future variants of the virus. The extent to which the COVID-19 pandemic impacts our business, our future sales of HEPLISAV-B, sales of CpG 1018 adjuvant and revenue will depend on future developments that are highly uncertain and cannot be predicted with confidence, such as the ultimate geographic spread of the disease, the duration of the outbreak, travel restrictions, quarantines, social distancing requirements and business closures in the United States and elsewhere, business disruptions and the effectiveness of actions taken in the United States and elsewhere to contain and treat the disease. Accordingly, we do not yet know the full extent of potential delays or impacts on our business, operations or the global economy as a whole. However, these impacts could continue to adversely impact our business, financial condition, results of operations and growth prospects.

In addition, to the extent the ongoing COVID-19 pandemic adversely affects our business and results of operations, it may also have the effect of heightening many of the other risks and uncertainties described elsewhere in this “Risk Factors” section.

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

As our commercial operations expand, we expect that we will also need to manage additional relationships with various third parties, including sole source suppliers, distributors, wholesalers and hospital customers. Future growth, including managing an in-house field sales team, will impose significant added responsibilities on our organization, in particular on management. Our future financial performance and our ability to successfully commercialize HEPLISAV-B and CpG 1018, and to compete effectively will depend, in part, on our ability to manage any future growth effectively. To that end, we may not be able to manage our growth efforts effectively, and hire, train and integrate additional management, administrative and sales and marketing personnel, or secure sufficient or timely supply from third party service and product providers, and our failure to accomplish any of these activities could prevent us from successfully growing our company.

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

As we plan to scale up production capabilities for HEPLISAV-B as well as production capabilities for our CpG 1018 advanced adjuvant, to support potential vaccine collaborations and response to COVID-19 and other initiatives, we have been, and in the future will be, required to make significant financial commitments to reserve manufacturing capacity at our contract manufacturing organizations (“CMOs”). Under ordinary circumstances we would make these commitments close in time and with some level of certainty that we have customers making similar commitments to us. Because of long lead times on manufacturing, uncertainty about who will ultimately buy adjuvant from us and in what quantities, if any, as well as the need to book manufacturing capacity in

advance, the financial commitments we make to our CMOs to support manufacturing may not be recovered in its entirety, or at all, if our collaborators do not ultimately purchase from us. Capacity reservation fees are generally not recoverable if we do not use the capacity we have reserved as a result of lower than expected demand, or otherwise. As a result, we could end up making financial commitments that we never recover if demand for the adjuvant does not materialize in the volumes we are expecting.

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

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

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

A substantial portion of our revenue for the foreseeable future may depend on sales of CpG 1018 adjuvant, which are difficult to predict. We expect that our visibility into future sales of CpG 1018 adjuvant, including volumes, prices and timing, will continue to be limited and could result in significant, unexpected fluctuations in our quarterly and annual operating results.

Numerous other factors, many of which are outside our control, may cause or contribute to significant fluctuations in our quarterly and annual operating results. For example, sales of CpG 1018 accounted for 83% of our overall revenue, and one CpG 1018 customer accounted for 66% of our revenue, during the six months ended June 30, 2021. If orders from our top customers or the number of CpG 1018 collaborations are reduced or discontinued, our revenue in future periods may materially decrease. Fluctuations in our operating results may make financial planning and forecasting difficult. In addition, these fluctuations may result in unanticipated decreases in our available cash, which could negatively affect our business and prospects. Similarly, our revenue or operating expenses in one period may be disproportionately higher or lower relative to the others. Accordingly, comparing our operating results on a period-to-period basis may not be meaningful, and investors should not rely on any particular past results as an indication of our future performance. If such fluctuations occur or if our operating results deviate from our expectations or the expectations of investors or securities analysts, our stock price may be adversely affected.

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

We rely on our facility in Düsseldorf and third parties to perform the multiple processes involved in manufacturing HEPLISAV-B surface antigens, the combination of the oligonucleotide and the antigens, and formulation, fill and finish. The FDA approved our pre-filled presentation of HEPLISAV-B in 2018 and we expect such presentation will be the sole presentation for HEPLISAV-B going forward. We have limited experience in manufacturing and supplying this presentation and rely on a contract manufacturer to do so. Our contract manufacturer is the only approved provider that we have, and there can be no assurance that we or they can successfully manufacture sufficient quantities of pre-filled syringes in compliance with GMP in order to meet market demand.

We have also relied on a limited number of suppliers to produce oligonucleotides for clinical trials and a single supplier to produce our CpG 1018 adjuvant for HEPLISAV-B and our pre-filled syringe presentation. To date, we have manufactured only small quantities of oligonucleotides ourselves for development purposes. If we were unable to maintain our existing supplier for CpG 1018 adjuvant, we would have to establish an alternate qualified manufacturing capability, which would result in significant additional operating costs and delays in manufacturing HEPLISAV-B and developing and commercializing our and our collaborators' product candidates. We or other third parties may not be able to produce product at a cost, quantity and quality that are available from our current third-party suppliers or at all.

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

We have entered into collaborative relationships to develop vaccines utilizing our CpG 1018 adjuvant, including collaborations to develop a vaccine for COVID-19. These collaborations may not be successful. If the combination of patents, trade secrets and other proprietary rights that we rely on to protect our intellectual property rights in CpG 1018 adjuvant or otherwise are inadequate, we may be unable to realize recurring commercial benefit from the development of a vaccine containing CpG 1018 adjuvant.

As part of our business, we are working to develop our CpG 1018 adjuvant as a premier vaccine adjuvant through research collaborations and partnerships. Current collaborations are focused on adjuvanted vaccines for COVID-19, pertussis and universal influenza. There are risks and uncertainties inherent in vaccine research and development, including the timing of completing vaccine development, the results of clinical trials, whether the vaccine will be approved for use, the extent of competition, government actions and whether a vaccine can be successfully manufactured and commercialized. As a result, these collaborative efforts may not be as successful as we expect, or at all.

In addition, our collaborators have primary responsibility for the development, conduct of clinical trials, and for seeking and obtaining regulatory approval of potential vaccines, including any potential vaccine for COVID-19 containing our adjuvant. We have limited or no control over our collaborators' decisions, including the amount and timing of resources that any of these collaborators will dedicate to such activities. If a collaborative partner fails to conduct collaborative activities successfully, the development and commercialization of a vaccine could be delayed, and may not occur at all. We also rely on a single supplier to produce our CpG 1018 adjuvant. If we were unable to maintain our existing supplier for the adjuvant, we would have to establish an alternate qualified manufacturing capability, which would result in significant additional operating costs and delays in developing and commercializing any potential adjuvanted vaccines by our third-party collaborators. We or other third parties may not be able to produce sufficient adjuvant at a cost, quantity and quality similar to that available from our current third-party supplier, or at all, and even if we add an additional supplier, there is no guarantee such supplier will be able to manufacture supplemental quantities sufficient to support commercial demand to the extent it materializes and in the timeframes required.

Our adjuvant has no composition of matter patent protection. We have filed patent applications claiming compositions and methods of use of CpG 1018 adjuvant for COVID-19 and other vaccines. In addition, we rely on trade secret protection and confidentiality and other agreements to protect our interests in proprietary know-how related to CpG 1018 adjuvant. If we are unable to adequately obtain or enforce our proprietary rights relating to CpG 1018 adjuvant, we may be unable to realize recurring commercial benefit from the development of a vaccine containing CpG 1018 adjuvant, and we may not have the ability to prevent others from developing or commercializing a vaccine containing the adjuvant. Disputes or litigation may also arise with our collaborators (with us and/or with one or more third parties), including those over ownership rights to intellectual property, know-how or technologies developed with our collaborators.

Furthermore, restrictive government actions related to potential waivers of intellectual property rights in the case of national emergencies or in other circumstances, such as imposition of compulsory licenses related to COVID-19 vaccines, as well as other regulatory initiatives, may result in a general weakening of our or our collaborators' intellectual property protection or otherwise diminish or eliminate our or our collaborators' ability to realize any commercial benefit from the development of a COVID-19 vaccine containing CpG 1018. This may, in turn, adversely impact the demand for CpG 1018, which would have a material adverse effect on our business, results of operations, and financial condition.

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

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

Third-party payors are increasingly challenging the price and cost-effectiveness of medical products and services, and pricing, as well as coverage and reimbursement decisions, may not allow our future products to compete effectively with existing competitive products. Because we intend to offer products, if approved, that involve new technologies and new approaches to treating disease, the willingness of third-party payors to reimburse for our products is uncertain. We will have to charge a price for our products that is sufficient to enable us to recover our considerable investment in product development and our operating costs. Adequate third-party

payor reimbursement may not be available to enable us to maintain price levels sufficient to achieve profitability, and such unavailability could harm our future prospects and reduce our stock price.

We have applied for, and in some cases have received, grants to help fund the scale-up of CpG 1018 production, and such grants, if and when received, may involve pricing or other restrictions.

In order to help fund potential scale-up of production of CpG 1018 that may be required in the event that CpG 1018 is included in any approved and commercially-available novel vaccine, whether a COVID-19 vaccine or otherwise, we have applied for, and in some cases have received grants from various charitable and philanthropic organizations. These grants and others, if and when received, may come with certain pricing requirements, global access requirements or reporting or other covenants to ensure that any funded product is made available by us worldwide and on a nondiscriminatory basis. Such covenants may limit the price we can charge for any funded product and may involve a license to use technology we own that is included in the funded products if we do not comply. Such price limitations or licenses, if invoked, could serve to limit the prices we charge, or in some cases, our control over the manufacturing and distribution of grant-funded products. Failure to agree with such requirements, may result in the Company not receiving some or all of the grant.

We implemented a strategic restructuring to prioritize our vaccine business and explore strategic alternatives for our immuno-oncology portfolio, and we cannot assure you that we will be able to successfully execute on a strategic alternative for our immuno-oncology portfolio.

In the second quarter of 2019, we implemented a strategic restructuring that would focus our efforts on HEPLISAV-B, which included a reduction in our workforce and operations to focus resources on HEPLISAV-B commercialization and sales execution as well as assess additional opportunities to leverage our CpG 1018 adjuvant. In 2020, we announced the sale of assets related to our SD-101 program. Additionally, we are seeking strategic alternatives for of the remaining assets in our immuno-oncology portfolio, including our development stage product DV281. In connection with the restructuring, we made the determination to wind down ongoing immuno-oncology trials. Our ability to successfully execute on a strategic alternative for the assets that remain in our immuno-oncology portfolio is dependent on a number of factors and we may not be able to execute upon a transaction or other strategic alternative for our immuno-oncology assets upon favorable terms within an advantageous timeframe and recognize significant value for these assets, if any at all. Additionally, the negotiation and consummation of a transaction or other strategic alternative involving our immuno-oncology assets may be costly and time-consuming. Our strategic restructuring may not result in anticipated savings or other economic benefits, could result in total costs and expenses that are greater than expected, could make it more difficult to attract and retain qualified personnel and may disrupt our operations, each of which could have a material adverse effect on our business.

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

Our HEPLISAV-B regulatory approval in the United States is subject to certain post-marketing obligations and commitments to the FDA. For example, we were required to conduct an observational comparative study of HEPLISAV-B to Engerix-B to assess occurrence of acute myocardial infarction, or AMI. This study was initiated in August 2018, concluded in November 2020 and final results were presented in April 2021, with the study report being prepared for submission to the FDA. We are also committed to conducting an observational surveillance study to evaluate the incidence of new onset immune-mediated diseases, herpes zoster and anaphylaxis; and we are required to establish a pregnancy registry to provide information on outcomes following pregnancy exposure to HEPLISAV-B. These studies will require significant effort and resources, and failure to timely conduct and/or complete these studies to the satisfaction of the FDA could result in withdrawal of our BLA approval, which would have a material adverse effect on our business, results of operations, financial condition and prospects. The results of post-marketing studies may also result in additional warnings or precautions for the HEPLISAV-B label or expose additional safety concerns that may result in product liability and withdrawal of the product from the market, any of which would have a material adverse effect on our business, results of operations, financial condition and prospects.

Similar post-marketing obligations and commitments exist in the European Union. For example, we are required to submit periodic safety update reports, or PSURs, to the EMA and to keep an up to date risk management plan that takes into account new information that may lead to a significant change in the risk/benefit profile of HEPISLAV-B. Non-compliance with European Union requirements regarding safety monitoring or pharmacovigilance can result in significant financial penalties.

In addition, the manufacturing processes, labelling, packaging, distribution, adverse event reporting, storage, advertising, promotion and recordkeeping for HEPLISAV-B are subject to extensive and ongoing regulatory requirements in the United States and the European Union. These requirements include submissions of safety and other post-marketing information and reports, registration, as well as continued compliance with current good manufacturing practices (“cGMP”), good clinical practices (“GCP”), ICH guidelines, and good laboratory practices (“GLP”). If we are not able to meet and maintain regulatory compliance, we may lose

marketing approval and be required to withdraw our product. Withdrawal of our product would have a material adverse effect on our business.

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

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

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

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

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

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

We compete with pharmaceutical companies, biotechnology companies, academic institutions and research organizations, in developing and marketing vaccines and adjuvants. For example, HEPLISAV-B competes in the U.S. with established hepatitis B vaccines marketed by Merck and GlaxoSmithKline plc (“GSK”) and if approved outside the U.S., with vaccines from those companies as well as several additional established pharmaceutical companies. There are also modified schedules of conventional hepatitis B vaccines for limited age ranges that are approved in the European Union and United States. In addition, HEPLISAV-B competes against Twinrix, a bivalent vaccine marketed by GSK for protection against hepatitis B and hepatitis A. A three-dose HBV vaccine manufactured by VBI Vaccines Inc. (“VBI”) is approved in Israel, and recently completed Phase 3 trials in the United States, Europe and Canada.

We are also in competition with companies developing vaccines and vaccine adjuvants, generally, including, among others, GSK, Pfizer, Inc., Sanofi S.A., Merck, Seqirus, Agenus, Inc., Emergent BioSolutions, Inc., Novavax, Inc., Medicago Inc., Valneva, AstraZeneca plc, Moderna, Inc., Johnson & Johnson and VBI.

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

We have incurred net losses in each year since our inception and anticipate that we will continue to incur significant losses for the foreseeable future unless we can successfully commercialize HEPLISAV-B and CpG 1018, and if we are unable to achieve and sustain profitability, the market value of our common stock will likely decline.

We have generated limited revenue from the sale of products and, prior to January 1, 2021, have incurred losses in each year since we commenced operations in 1996. Our net income for the six months ended June 30, 2021 was $5.4 million compared to net loss of $64.2 million for the six months ended June 30, 2020. As of June 30, 2021, we had an accumulated deficit of $1.3 billion.

With our investment in the launch and commercialization of HEPLISAV-B in the U.S., we expect to continue incurring operating losses for the foreseeable future. Our expenses have increased substantially as we established and maintain our HEPLISAV-B commercial infrastructure, including investments in internal infrastructure to support our field sales force and investments in manufacturing and supply chain commitments to maintain commercial supply of HEPLISAV-B. While new sales of CpG 1018 may generate revenue during the pandemic, there is no guarantee that such revenues will be sustainable in the long term. The timing for uptake of our products in the U.S. has further increased losses related to commercialization. Due to the numerous risks and uncertainties associated with developing and commercializing vaccine and pharmaceutical products, we are unable to predict the extent of any future losses or when, if ever, we will become profitable or that if we are able to reach profitability that it will be sustainable for any period of time.

Until we are able to generate significant revenues or achieve profitability through product sales, we will require substantial additional capital to finance our operations.

As of June 30, 2021, we had $345.8 million in cash, cash equivalents and marketable securities. Prior to January 1, 2021, we incurred net losses in each year since our inception. For the three and six months ended June 30, 2021, we recorded net income of $4.5 million and $5.4 million, respectively. As of June 30, 2021, we had an accumulated deficit of $1.3 billion. We cannot be certain that sales of our products, and the revenue from our other activities are sustainable and past results are not a reliable indicator of future performance. Further, we expect to continue to incur substantial expenses as we continue to invest in commercialization of HEPLISAV-B, development of our CpG 1018 adjuvant and clinical trials and other development. If we cannot generate a sufficient amount of revenue from product sales, we will need to finance our operations through strategic alliance and licensing arrangements and/or future public or private debt and equity financings. Raising additional funds through the issuance of equity or debt securities could result in dilution to our existing stockholders, increased fixed payment obligations, or both. In addition, these securities may have rights senior to those of our common stock and could include covenants that would restrict our operations.

Our ability to raise additional capital in the equity and debt markets, should we choose to do so, is dependent on a number of factors, including, but not limited to, the market demand for our common stock, which itself is subject to a number of development and business risks and uncertainties, our creditworthiness and the uncertainty that we would be able to raise such additional capital at a price or on terms that are favorable to us. In addition, our ability to raise additional funds may be adversely impacted by deteriorating global economic conditions and the recent disruptions to and volatility in the credit and financial markets in the United States and worldwide resulting from the ongoing COVID-19 pandemic. Adequate financing may not be available to us on acceptable terms, or at all. If adequate funds are not available when needed, we may need to significantly reduce our operations while we seek strategic alternatives, which could have an adverse impact on our ability to achieve our intended business objectives.

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

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

- adversely affect our ability to timely and successfully commercialize or market these product candidates;
- result in significant additional costs;
- potentially diminish any competitive advantages for those products;
- potentially limit the markets for those products;
- adversely affect our ability to enter into collaborations or receive milestone payments or royalties from potential collaborators;

- cause us to abandon the development of the affected product candidate; or
- limit our ability to obtain additional financing on acceptable terms, if at all.

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

We may seek to introduce HEPLISAV-B, or any other product candidates we may develop, to various additional markets outside the U.S. and Europe. Developing, seeking regulatory approval for and marketing our product candidates outside the U.S. could impose substantial costs as well as burdens on our personnel resources in addition to potential diversion of management's attention from domestic operations. International operations are subject to risk, including:

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

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

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

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

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

Each of our clinical trials requires the investment of substantial planning, expense and time and the timing of the commencement, continuation and completion of these clinical trials may be subject to significant delays relating to various causes, including scheduling conflicts with participating clinicians and clinical institutions, difficulties in identifying and enrolling participants who meet trial eligibility criteria, failure of participants to complete the clinical trial, delay or failure to obtain Institutional Review Board ("IRB") or regulatory approval to conduct a clinical trial at a prospective site, unexpected adverse events and shortages of available drug supply. Participant enrollment is a function of many factors, including the size of the relevant population, the

proximity of participants to clinical sites, the eligibility criteria for the trial, the existence of competing clinical trials and the availability of alternative or new treatments.

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

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

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

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

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

- deficiencies in the trial design;
- deficiencies in the conduct of the clinical trial including failure to conduct the clinical trial in accordance with regulatory requirements or clinical protocols;
- deficiencies in the clinical trial operations or trial sites resulting in the imposition of a clinical hold;
- a product candidate may have unforeseen adverse side effects, including fatalities, or a determination may be made that a clinical trial presents unacceptable health risks;
- the time required to determine whether a product candidate is effective may be longer than expected;
- fatalities or other adverse events arising during a clinical trial that may not be related to clinical trial treatments;
- a product candidate or combination study may appear to be no more effective than current therapies;
- the quality or stability of a product candidate may fail to conform to acceptable standards;
- the inability to produce or obtain sufficient quantities of a product candidate to complete the trials;
- our inability to reach agreement on acceptable terms with prospective CROs and trial sites, the terms of which can be subject to extensive negotiation and may vary significantly among different CROs and trial sites;
- our inability to obtain IRB approval to conduct a clinical trial at a prospective site;
- the inability to obtain regulatory approval to conduct a clinical trial;
- lack of adequate funding to continue a clinical trial, including the occurrence of unforeseen costs due to enrollment delays, requirements to conduct additional trials and studies and increased expenses associated with the services of our CROs and other third parties;

- the inability to recruit and enroll individuals to participate in clinical trials for reasons including competition from other clinical trial programs for the same or similar indications; or

- the inability to retain participants who have initiated a clinical trial but may withdraw due to side effects from the therapy, lack of efficacy or personal issues, or who are otherwise unavailable for further follow-up.

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

Third-party organizations such as patient advocacy groups and parents of trial participants may demand additional clinical trials or continued access to our drug even if our interpretation of clinical results received thus far leads us to determine that additional clinical trials or continued access are unwarranted. Any disagreement with patient advocacy groups or parents of trial participants may require management's time and attention and may result in legal proceedings being instituted against us, which could be expensive, time-consuming and distracting, and may result in delay of the program. Negative or inconclusive results or adverse medical events, including participant fatalities that may be attributable to our product candidates, during a clinical trial may necessitate that it be redesigned, repeated or terminated. Further, some of our clinical trials may be overseen by a Data Safety Monitoring Board ("DSMB"), and the DSMB may determine to delay or suspend one or more of these trials due to safety or futility findings based on events occurring during a clinical trial. Any such delay, suspension, termination or request to repeat or redesign a trial could increase our costs and prevent or significantly delay our ability to commercialize our product candidates.

HEPLISAV-B and most of our earlier stage programs rely on oligonucleotide TLR agonists. Serious adverse event data relating to TLR agonists may require us to reduce the scope of or discontinue our operations, or reevaluate the viability of strategic alternatives.

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

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

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

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

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

Any regulatory approvals that we receive for our product candidates are likely to contain requirements for post-marketing follow-up studies, which may be costly. Product approvals, once granted, may be modified based on data from subsequent studies or commercial use. As a result, limitations on labeling indications or marketing claims, or withdrawal from the market may be required if problems occur after approval and commercialization.

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

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

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

Supporting diligence activities conducted by potential collaborators and negotiating the financial and other terms of a collaboration agreement are long and complex processes with uncertain results. Even if we are successful in entering into one or more collaboration agreements, collaborations may involve greater uncertainty for us, as we may have less control over certain aspects of our collaborative programs than we do over our proprietary development and commercialization programs, and the financial terms upon which collaborators may be willing to enter into such an arrangement cannot be certain.

If any collaborator fails to fulfill its responsibilities in a timely manner, or at all, our research, clinical development, manufacturing or commercialization efforts pursuant to that collaboration could be delayed or terminated, or it may be necessary for us to assume responsibility for expenses or activities that would otherwise have been the responsibility of our collaborator. Despite our efforts, we may be unable to secure collaborative arrangements. If we are unable to establish and maintain collaborative relationships on acceptable terms or to successfully transition terminated collaborative agreements, we may have to delay or discontinue further development of one or more of our product candidates, undertake development and commercialization activities at our own expense or find alternative sources of capital.

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

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

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

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

- the federal Anti-Kickback Statute, which prohibits persons from, among other things, knowingly and willfully soliciting, receiving, offering or paying remuneration, directly or indirectly, in exchange for or to induce either the referral of an individual for, or the purchase, order or recommendation of, any good or service for which payment may be made under federal health care programs, such as the Medicare and Medicaid programs;

- federal false claims laws, including the False Claims Act, and Civil Monetary Penalties Law, which prohibit individuals or entities from, among other things, knowingly presenting, or causing to be presented, claims for payment to the government or its agents that are false or fraudulent;

- the Federal Food, Drug and Cosmetic Act and governing regulations which, among other things, prohibit off-label promotion of prescription drugs;

- the federal Physician Payments Sunshine Act created under the Patient Protection and Affordable Care Act of 2010, as amended by the Health Care and Education and Reconciliation Act of 2010 (collectively, “ACA”) which requires certain manufacturers of drugs, devices, biologics and medical supplies to report annually to the Centers for Medicare & Medicaid Services (“CMS”), information related to payments and other transfers of value to physicians (defined to include doctors, dentists, optometrists, podiatrists and chiropractors) and teaching hospitals, and ownership and investment interests held by such physicians and their immediate family members. Beginning in 2022, applicable manufacturers also will be required to report such information regarding its payments and other transfers of value to physician assistants, nurse practitioners, clinical nurse specialists, anesthesiologist assistants, certified registered nurse anesthetists and certified nurse midwives during the previous year;

- the federal Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), which created, among other things, new federal criminal statutes that prohibit executing a scheme to defraud any healthcare benefit program and making false statements relating to healthcare matters;

- HIPAA, as amended by the Health Information Technology for Economic and Clinical Health Act, and their implementing regulations, which imposes certain requirements on “covered entities,” including certain healthcare providers, health plans, and healthcare clearinghouses, and their respective “business associates” that create, receive,

maintain or transmit individually identifiable health information for or on behalf of a covered entity as well as their covered subcontractors relating to the privacy, security, and transmission of individually identifiable health information;

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

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

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

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

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

It remains unclear how various state, federal, and international privacy and cybersecurity law will affect our business. For example, we don't know how the CCPA will be interpreted, but as currently written, it will likely impact our business activities and exemplifies the vulnerability of our business to not only cyber threats but also the evolving regulatory environment related to personal data. As we expand our operations, the CCPA may increase our compliance costs and potential liability. Some observers have noted that the CCPA could mark the beginning of a trend toward more stringent privacy legislation in the United States. Other states are beginning to pass similar laws.

Internationally, the General Data Protection Regulation ("GDPR") requires us to make more detailed disclosures to data subjects, requires disclosure of the legal basis on which we can process personal data, makes it harder for us to obtain valid consent for processing, will require the appointment of data protection officers when sensitive personal data, such as health data, is processed on a large scale, provides more robust rights for data subjects, introduces mandatory data breach notification through the EU, imposes additional obligations on us when contracting with service providers and requires us to adopt appropriate privacy governance including policies, procedures, training and data audit. If we do not comply with our obligations under the GDPR, we could be exposed to fines of up to the greater of €20 million or up to 4% of our total global annual revenue in the event of a significant breach. In addition, we may be the subject of litigation and/or adverse publicity, which could adversely affect our business, results of operations and financial condition. Also, mechanisms for legally transferring information under the GDPR remain unclear. At present, there are few if any viable alternatives to the standard contractual clauses, or SCCs, so future developments may necessitate further expenditures on local infrastructure, changes to internal business processes, or may otherwise affect or restrict sales and operations.

In addition, our data security and information technology systems, as well as those of our partners and contractors, are potentially vulnerable to data security breaches, whether by employees or others, that may expose sensitive data or personal information to unauthorized persons.

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

We expect there will continue to be federal and state laws and/or regulations, proposed and implemented, that could impact our operations and business. For example, the ACA, among other things, imposes a significant annual fee on companies that manufacture or import branded prescription drug products. It also contains substantial provisions intended to broaden access to health insurance, reduce or constrain the growth of healthcare spending, and impose additional health policy reforms, any or all of which may affect our business. There have been executive, legal and political challenges to certain aspects of ACA. For example, President Trump signed several executive orders and other directives designed to delay, circumvent, or loosen certain requirements mandated by ACA. Concurrently, Congress considered legislation that would repeal or repeal and replace all or part of ACA. While Congress has not passed comprehensive repeal legislation, several bills affecting the implementation of certain taxes under the ACA have been signed into law. The Tax Cuts and Jobs Act of 2017 ("Tax Act") included a provision repealing, effective January 1, 2019, the tax-based shared responsibility payment imposed by ACA on certain individuals who fail to maintain qualifying health coverage for all or part of a year that is commonly referred to as the "individual mandate". In addition, the 2020 federal spending package permanently eliminated, effective January 1, 2020, the ACA-mandated "Cadillac" tax on high-cost employer-sponsored health coverage and medical device tax and, effective January l, 2021, also eliminated the health insurer tax. The Bipartisan Budget Act of 2018 ("BBA") among other things, amended the ACA, effective January 1, 2019, to increase from 50 percent to 70 percent the point-of-sale discount that is owed by pharmaceutical manufacturers who participate in Medicare Part D and close the coverage gap in most Medicare drug plans, commonly referred to as the "donut hole". On December 14, 2018, a Texas U.S. District Court Judge ruled that the ACA is unconstitutional in its entirety because the "individual mandate" was repealed by Congress as part of the Tax Act. Additionally, on June 17, 2021, the U.S. Supreme Court dismissed a challenge on procedural grounds that argued the ACA is unconstitutional in its entirety because the "individual mandate" was repealed by Congress. Thus, the ACA will remain in effect in its current form. Further, prior to the U.S. Supreme Court ruling, on January 28, 2021, President Biden issued an executive order that initiated a special enrollment period for purposes of obtaining health insurance coverage through the ACA marketplace, which began on February 15, 2021 and will remain open through August 15, 2021. The executive order also instructed certain governmental agencies to review and reconsider their existing policies and rules that limit access to healthcare, including among others, reexamining Medicaid demonstration projects and waiver programs that include work requirements, and policies that create unnecessary barriers to obtaining access to health insurance coverage through Medicaid or the ACA. It is possible that the ACA will be subject to judicial or Congressional challenges in the future. It is unclear how such challenges and healthcare reform measures will impact the ACA and our business.

Other legislative changes have also been proposed and adopted since the ACA was enacted. For example, the Budget Control Act of 2011 resulted in aggregate reductions in Medicare payments to providers of up to two percent per fiscal year, starting in 2013 and, due to subsequent legislative amendments to the statute, including the BBA, will remain in effect through 2030 unless additional Congressional action is taken. However, COVID-19 relief support legislation suspended the 2% Medicare sequester from May 1, 2020 through December 31, 2021. In addition, the American Taxpayer Relief Act of 2012, among other things, reduced Medicare payments to several types of providers and increased the statute of limitations period for the government to recover overpayments to providers from three to five years. Such laws, and others that may affect our business that have been recently enacted or may in the future be enacted, may result in additional reductions in Medicare and other healthcare funding.

Also, there has been heightened governmental scrutiny recently in the U.S. over pharmaceutical pricing practices in light of the rising cost of prescription drugs and biologics. Such scrutiny has resulted in several recent Congressional inquiries and proposed and enacted federal and state legislation designed to, among other things, bring more transparency to product pricing, review the relationship between pricing and manufacturer patient programs, and reform government program reimbursement methodologies for products. At the federal level, the Trump administration used several means to propose or implement drug pricing reform, including through federal budget proposals, executive orders and policy initiatives. For example, on July 24, 2020 and September 13, 2020, the Trump administration announced several executive orders related to prescription drug pricing that attempt to implement several of the administration's proposals. The FDA also released a final rule, effective November 30, 2020, implementing a portion of the importation executive order providing guidance for states to build and submit importation plans for drugs from Canada. Further, on November 20, 2020, HHS finalized a regulation removing safe harbor protection for price reductions from pharmaceutical manufacturers to plan sponsors under Part D, either directly or through pharmacy benefit managers, unless the price reduction is required by law. The implementation of the rule has been delayed by the Biden administration from January 1, 2022 to January 1, 2023 in response to ongoing litigation. The rule also creates a new safe harbor for price reductions reflected at the point-of-sale, as well as a new safe harbor for certain fixed fee arrangements between pharmacy benefit managers and manufacturers, the implementation of which have also been delayed until January 1, 2023. On November 20, 2020, CMS issued an interim final rule implementing President Trump's Most Favored Nation executive order, which would tie Medicare Part B payments for certain physician-administered drugs to the lowest price paid in other economically advanced countries, effective January 1, 2021. On December 28, 2020, the United States District Court in Northern California issued a nationwide preliminary injunction against implementation of the interim final rule. On January 13, 2021, in a separate lawsuit brought by industry groups in the U.S. District of Maryland, the government defendants entered a joint motion to stay litigation on the condition that the government would not appeal the preliminary injunction granted in the U.S. District Court for the Northern District of California and that performance for any final

regulation stemming from the Most Favored Nation Model interim final rule shall not commence earlier than 60 days after publication of that regulation in the Federal Register. Additionally, based on a recent executive order, the Biden administration expressed its intent to pursue certain policy initiatives to reduce drug prices. At the state level, legislatures have increasingly passed legislation and implemented regulations designed to control pharmaceutical and biological product pricing, including price or patient reimbursement constraints, discounts, and restrictions on certain product access. In some cases, such legislation and regulations have been designed to encourage importation from other countries and bulk purchasing.

We cannot predict the initiatives that may be adopted in the future or the effect any such initiatives may have on our business. However, in the future, there will likely continue to be additional proposals relating to the reform of the U.S. healthcare system, some of which could further limit coverage and reimbursement of products, including our product candidates. Any reduction in reimbursement from Medicare or other government programs may result in a similar reduction in payments from private payors. The implementation of cost containment measures or other healthcare reforms may prevent us from being able to generate revenue, attain profitability or commercialize our products. Further, it is possible that additional governmental action is taken in response to the COVID-19 pandemic.

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

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

Risks Related to our Intellectual Property

We rely on licenses to intellectual property from third parties. Impairment of these licenses or our inability to maintain them would severely harm our business.

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

If third parties successfully assert that we have infringed their patents and proprietary rights or challenge our patents and proprietary rights, we may become involved in intellectual property disputes and litigation that would be costly, time consuming and delay or prevent development or commercialization of our product candidates.

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

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

If the combination of patents, trade secrets and contractual provisions that we rely on to protect our intellectual property is inadequate, the value of our products or product candidates will decrease, and we may be unable to realize any commercial benefit from the development of a vaccine containing our CpG 1018 adjuvant.

Our success depends on our ability to:

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

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

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

The biopharmaceutical patent environment outside the U.S. is also uncertain. We may be particularly affected by this uncertainty since several of our product candidates or our collaborators' vaccine candidates may initially address market opportunities outside the U.S., where we may only be able to obtain limited patent protection, if any. For example, while many countries such as the U.S. permit method of use patents relating to the use of drug products, in some countries the law relating to patentability of such use claims is evolving and may be unfavorably interpreted to prevent us from successfully prosecuting some or all of our pending patent applications relating to the use of CpG 1018. There are some countries that currently do not allow such method of use patents, or that significantly limit the types of uses that are patentable.

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

- we may not receive an issued patent for any of our patent applications or for any patent applications that we have exclusively licensed now or in the future;
- the pending patent applications we have filed or to which we have exclusive rights may take longer than we expect to result in issued patents;
- the claims of any patents that are issued may not provide meaningful protection or may not be valid or enforceable;
- we might not be able to develop additional proprietary technologies that are patentable;

- the patents licensed or issued to us or our collaborators may not provide a competitive advantage;
- patents issued to other parties may limit our intellectual property protection or harm our ability to do business;
- other parties may independently develop similar or alternative technologies or duplicate our technologies and commercialize discoveries that we attempt to patent;
- other parties may design around technologies we have licensed, patented or developed; and
- pending patent applications or issued patents may be challenged by third parties in proceedings, such as inter partes review ("IPR"), pre- and post-grant oppositions, and post grant review ("PGR").

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

Risks Related to our Common Stock

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

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

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

- the volume of trading in our common stock;
- investor perceptions or negative announcements by our customers, competitors or suppliers regarding their own performance; and
- industry conditions and general financial, economic and political instability, as well as developments with respect to the COVID-19 global pandemic, including but not limited to regulatory initiatives, such as the imposition of compulsory licenses related to COVID-19 vaccines, that may result in a general weakening of intellectual property protections.

The stock markets in general, and the markets for biotechnology and pharmaceutical stocks in particular, have historically experienced significant volatility that has often been unrelated or disproportionate to the operating performance of particular companies, including recently in connection with the ongoing COVID-19 pandemic, which has resulted in decreased market prices, notwithstanding the lack of a fundamental change in the underlying business models or prospects of those companies. These broad market fluctuations have adversely affected and may in the future adversely affect the market price of our common stock. In this regard, worsening economic conditions and other adverse effects or developments relating to the ongoing COVID-19 pandemic may negatively affect the market price of our common stock, regardless of our actual operating performance.

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

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

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

Under our universal shelf registration statement, we may sell any combination of common stock, preferred stock, debt securities and warrants in one or more offerings, including pursuant to our sales agreement with Cowen & Company, LLC, (the "Cowen Agreement") under which we can offer and sell our common stock from time to time up to aggregate sales proceeds of $150 million.

The sale or issuance of our securities, including those issuable upon exercise of the outstanding warrants or conversion of the preferred stock, as well as the existence of outstanding options and shares of common stock reserved for issuance under our option and equity incentive plans also may adversely affect the terms upon which we are able to obtain additional capital through the sale of equity securities.

Risks Related to the Convertible Notes

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

Our ability to make scheduled payments of the principal of, to pay interest on or to refinance our indebtedness, including the $225.5 million in 2.50% convertible senior notes due 2026 ("Convertible Notes"), depends on our future performance, which is subject to economic, financial, competitive and other factors beyond our control. Our business may not continue to generate cash flow from operations in the future sufficient to service our debt and make necessary capital expenditures. If we are unable to generate such cash flow, we may be required to adopt one or more alternatives, such as selling assets, restructuring debt or obtaining additional equity capital on terms that may be onerous or highly dilutive. Our ability to refinance our indebtedness will depend on the capital markets and our financial condition at such time. We may not be able to engage in any of these activities or engage in these activities on desirable terms, which could result in a default on our debt obligations.

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

Holders of the Convertible Notes will have the right, subject to certain conditions and limited exceptions, to require us to repurchase all or a portion of their Convertible Notes upon the occurrence of a fundamental change at a fundamental change repurchase price equal to 100% of the principal amount of the Convertible Notes to be repurchased, plus accrued and unpaid interest,

if any, to, but excluding, the fundamental change repurchase date. In addition, upon conversion of the Convertible Notes, unless we elect to deliver solely shares of our common stock to settle such conversion (other than paying cash in lieu of delivering any fractional share), we will be required to make cash payments in respect of the Convertible Notes being converted. Moreover, we will be required to repay the Convertible Notes in cash at their maturity unless earlier converted, redeemed or repurchased. However, we may not have enough available cash or be able to obtain financing at the time we are required to make repurchases of Convertible Notes surrendered therefor or pay cash with respect to Convertible Notes being converted. In addition, our ability to repurchase the Convertible Notes or to pay cash upon conversions of the Convertible Notes may be limited by law, by regulatory authority or by agreements governing our future indebtedness. Our failure to repurchase Convertible Notes at a time when the repurchase is required by the indenture governing the Convertible Notes or to pay any cash payable on future conversions of the Convertible Notes as required by the indenture governing the Convertible Notes would constitute a default under the indenture governing the Convertible Notes. A default under the indenture governing the Convertible Notes or the occurrence of a fundamental change itself could also lead to a default under agreements governing our future indebtedness. Moreover, the occurrence of a fundamental change under the indenture governing the Convertible Notes could constitute an event of default under any agreements governing our future indebtedness. If the repayment of the related indebtedness were to be accelerated after any applicable notice or grace periods, we may not have sufficient funds to repay the indebtedness and repurchase the Convertible Notes or make cash payments upon conversions thereof.

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

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

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

The conversion of some or all of the Convertible Notes may dilute the ownership interests of our stockholders. Upon conversion of the Convertible Notes, we have the option to pay or deliver, as the case may be, cash, shares of our common stock, or a combination of cash and shares of our common stock. If we elect to settle our conversion obligation in shares of our common stock or a combination of cash and shares of our common stock, any sales in the public market of our common stock issuable upon such conversion could adversely affect prevailing market prices of our common stock. In addition, the existence of the Convertible Notes may encourage short selling by market participants because the conversion of the Convertible Notes could be used to satisfy short positions, or anticipated conversion of the Convertible Notes into shares of our common stock could depress the price of our common stock.

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

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

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

In connection with the issuance of the Convertible Notes, we have entered into Capped Calls with the option counterparties. The Capped Calls cover, subject to customary adjustments, the number of shares of common stock that initially underlie the Capped Calls. The Capped Calls are expected to offset the potential dilution to our common stock as a result of any conversion of the Convertible Notes, subject to a cap based on the cap price.

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

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

General Risk Factors

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

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

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

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

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

Our business could be adversely affected by health epidemics in regions where we have manufacturing facilities, sales activities or other business operations. For example, outbreaks of epidemic or pandemic diseases, such as the ongoing COVID-19 pandemic, or the fear of such events, could cause restrictions on supply chains, access to workplaces and affect employee health and availability.

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

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

Significant disruptions of information technology systems or breaches of data security could adversely affect our business.

Our business is increasingly dependent on critical, complex and interdependent information technology systems, including internet-based systems, to support business processes as well as internal and external communications. In addition, the COVID-19 pandemic has intensified our dependence on information technology systems as many of our critical business activities are currently being conducted remotely. The size and complexity of our computer systems make them potentially vulnerable to breakdown, malicious intrusion and computer viruses that may result in the impairment of key business processes.

In addition, our systems are potentially vulnerable to data security breaches—whether by employees or others—that may expose sensitive data to unauthorized persons. Such data security breaches could lead to the loss of trade secrets or other intellectual property, or could lead to the public exposure of personally identifiable information (including sensitive personal information) of our employees, collaborators, clinical trial patients, and others. A data security breach or privacy violation that leads to disclosure or modification of or prevents access to patient information, including personally identifiable information or protected health information, could harm our reputation, compel us to comply with federal, state and/or international data breach notification laws, subject us to mandatory corrective action, require us to verify the correctness of database contents and otherwise subject us to liability under laws and regulations that protect personal data, including, but not limited to, HIPAA, similar state data protection regulations, and the GDPR, resulting in significant penalties; increased costs; loss of revenue; expenses of computer or forensic investigations; material fines and penalties; compensatory, special, punitive or statutory damages; litigation; consent orders regarding our privacy and security practices; requirements that we provide notices, credit monitoring services and/or credit restoration services or other relevant services to impacted individuals; adverse actions against our licenses to do business; or injunctive relief. News reports have also highlighted COVID research-specific hacking and phishing attempts. Because we and our collaborators are working on vaccines, including potential COVID vaccines, we may be at higher-than-average risk for such attempts.

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

U.S. and international authorities have been warning businesses of increased cybersecurity threats from actors seeking to exploit the COVID-19 pandemic. In 2020, we experienced a cybersecurity incident known as a phishing e-mail scam, and although we do not consider its impact on us to be material, if we are unable to prevent this or other such data security breaches or privacy violations or implement satisfactory remedial measures, our operations could be disrupted, and we may suffer loss of reputation, financial loss and other regulatory penalties because of lost or misappropriated information, including sensitive patient data. Moreover, failure to maintain effective internal accounting controls related to data security breaches and cybersecurity in general could impact our ability to produce timely and accurate financial statements and could subject us to regulatory scrutiny. In addition, these breaches and other inappropriate access can be difficult to detect, and any delay in identifying them may lead to increased harm of the type described above. Moreover, the prevalent use of mobile devices that access confidential information increases the risk of data security breaches, which could lead to the loss of confidential information, trade secrets or other intellectual property. While we have implemented security measures that are intended to protect our data security and information technology systems, such measures may not prevent such events.

Such disruptions and breaches of security could have a material adverse effect on our business, financial condition and results of operations.

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

None.

ITEM 5. OTHER INFORMATION

None.

ITEM 6. EXHIBITS

Exhibit Number	Document	Incorporated by Reference				Filed Herewith
		Exhibit Number	Filing	Filing Date	File No.	
3.1	Sixth Amended and Restated Certificate of Incorporation	3.1	S-1/A	February 5, 2004	333-109965	
3.2	Certificate of Amendment of Amended and Restated Certificate of Incorporation	3.1	8-K	January 4, 2010	001-34207	
3.3	Certificate of Amendment of Amended and Restated Certificate of Incorporation	3.1	8-K	January 5, 2011	001-34207	
3.4	Certificate of Amendment of Amended and Restated Certificate of Incorporation	3.6	8-K	May 30, 2013	001-34207	
3.5	Certificate of Amendment of the Sixth Amended and Restated Certificate of Incorporation	3.1	8-K	November 10, 2014	001-34207	
3.6	Certificate of Amendment of the Sixth Amended and Restated Certificate of Incorporation	3.1	8-K	June 2, 2017	001-34207	
3.7	Certificate of Amendment of the Sixth Amended and Restated Certificate of Incorporation	3.1	8-K	July 31, 2017	001-34207	
3.8	Certificate of Amendment of the Sixth Amended and Restated Certificate of Incorporation	3.1	8-K	May 29, 2020	001-34207	
3.9	Certificate of Designation of Preferences, Rights and Limitations of Series B Convertible Preferred Stock	3.1	8-K	August 8, 2019	001-34207	
3.10	Amended and Restated Bylaws	3.8	10-Q	November 6, 2018	001-34207	
4.1	Reference is made to Exhibits 3.1, 3.2, 3.3, 3.4, 3.5, 3.6, 3.7, 3.8, 3.9 and 3.10					
4.2	Form of Specimen Common Stock Certificate	4.2	S-1/A	January 16, 2004	333-109965	
4.3	Form of Series B Preferred Stock Certificate	4.3	10-Q	November 7, 2019	001-34207	
4.4	Form of Warrant to Purchase Common Stock	4.1	8-K	August 8, 2019	001-34207	
4.5	Indenture between Company and U.S. Bank National Association, as trustee, dated May 13, 2021	4.1	8-K	May 13, 2021	001-34207	
4.6	Form of Global Note, representing Dynavax Technologies Corporation's 2.5% Convertible Senior Notes due 2026 (included as Exhibit A to the Indenture filed as Exhibit 4.5)	4.2	8-K	May 13, 2021	001-34207	
10.1^	First Amendment to Agreement, dated May 3, 2021, between the Company and Coalition for Epidemic Preparedness Innovations					X
10.2	Amendment No. 5 to Term Loan Agreement and Fee Letter, dated May 3, 2021, by and among Company, CRG Partners III L.P., CRG Partners III-Parallel Fund "A" L.P. and CRG Servicing LLC					X
10.3+	Amended and Restated Dynavax Technologies Corporation 2021 Inducement Award Plan					X
10.4+	Dynavax Technologies Corporation Amended and Restated 2014 Employee Stock Purchase Plan	Appendix A	DEF 14A	April 16, 2021	001-34207	
10.5	Form of Confirmation for Capped Call Transactions	10.1	8-K	May 13, 2021	001-34207	
10.6^	Supply Agreement dated June 29, 2021 by and among Company, Zhejiang Clover Biopharmaceuticals, Inc., and Clover Biopharmaceuticals (Hong Kong) Co., Limited					X
10.7^	Supply Agreement dated July 1, 2021 by and between Company and Biological E. Limited					X
31.1	Certification of Principal Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002					X
31.2	Certification of Principal Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002					X

32.1*	Certification of Principal Executive Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002	X
32.2*	Certification of Principal Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002	X

+ Indicates management contract, compensatory plan or arrangement.

^ Pursuant to Item 601(b)(10) of Regulation S-K, certain portions of this exhibit have been omitted by means of marking such portions with asterisks because the Registrant has determined that the information is both not material and is the type that the Registrant treats as private or confidential.

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

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

SIGNATURES

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

DYNAVAX TECHNOLOGIES CORPORATION

Date: August 4, 2021

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

Date: August 4, 2021

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

Date: August 4, 2021

By: /s/ JUSTIN BURGESS
Justin Burgess
Controller
(Principal Accounting Officer)

Exhibit 10.1

CERTAIN CONFIDENTIAL INFORMATION CONTAINED IN THIS DOCUMENT, MARKED BY [***], HAS BEEN OMITTED BECAUSE IT IS NOT MATERIAL AND WOULD LIKELY CAUSE COMPETITIVE HARM TO THE COMPANY IF PUBLICLY DISCLOSED.

First Amendment to Agreement

This First Amendment to Agreement ("**First Amendment**") is entered into as of the date of last signature by and between **Coalition for Epidemic Preparedness Innovations**, having an address of PO Box 123, Torshov, N-0412 Oslo, Norway ("**CEPI**"), and **Dynavax Technologies Corporation**, having an address of 2100 Powell Street, Suite 900, Emeryville, CA 94608, USA ("**Dynavax**"). Each of CEPI and Dynavax is referred to herein individually as a "**Party**" and are collectively referred to herein as the "**Parties**."

Recitals

Whereas, CEPI and Dynavax are parties to that certain Agreement dated January 29, 2021 (the "**Agreement**"), pursuant to which, among other things, CEPI agreed to advance an interest-free, forgivable, unsecured loan to Dynavax to cover the costs of at risk manufacture of specified quantities of the CpG 1018 adjuvant and to reserve such quantities for purchase by CEPI Partners for use in development and manufacturing of vaccines against COVID-19;

Whereas, CEPI has exercised the Option and the First Right (as such terms are defined in the Agreement); and

Whereas, the Parties now wish to amend the Agreement to provide for an increase to the Loan Amount (as defined herein) and to reserve specified additional quantities of the CpG 1018 adjuvant for purchase by CEPI Partners; in each case, on the terms and subject to the conditions set forth in the Agreement, as amended by this First Amendment.

Agreement

Now, Therefore, in consideration of the foregoing premises and the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Defined Terms. Capitalized terms used but not otherwise defined in this First Amendment shall have the meanings set forth in the Agreement. As used in the Agreement and this First Amendment, the following terms shall have the meanings set forth below.

(a) "Amended Agreement" shall mean the Agreement, as amended by this First Amendment.

(b) "Dynavax CMO" shall mean (a) the third party contract manufacturer engaged by Dynavax to manufacture Dynavax Adjuvant as of the Effective Date ("**CMO 1**") or (b) the additional third party contract manufacturer engaged by Dynavax to manufacture Dynavax Adjuvant as of the First Amendment Date ("**CMO 2**").

(c) "Extra Loan Amount" shall have the meaning set forth in Section 3.1(b) of the Agreement, as such Section 3.1(b) has been amended by this First Amendment.

(d) **"Extra Manufacturing Cost"** shall mean the total manufacturing cost of the Extra Reserved Material, based on an Extra Manufacturing Cost per kilogram of US$[***].

(e) **"Extra Reserved Material"** shall have the meaning set forth in paragraph 3 of this First Amendment.

(f) **"First Amendment Date"** shall mean the date when this First Amendment has been signed by both Parties or, if both Parties signed this First Amendment on different dates, the date on which the last Party has signed this First Amendment.

(g) **"Loan Amount"** shall mean the sum of (i) the Initial Loan Amount, (ii) the Additional Loan Amount, and (iii) the Extra Loan Amount.

(h) **"Reserved Material"** shall mean the Initial Reserved Material, the Additional Reserved Material and the Extra Reserved Material.

2. **Exercise of Option.** The Parties acknowledge that CEPI exercised the Option in accordance with Section 2.1(b) of the Agreement. Subject to the terms and conditions of the Amended Agreement, and in consideration for CEPI advancing the Additional Loan Amount in accordance with Section 3.1(a) of the Agreement, Dynavax shall use commercially reasonable efforts to have manufactured the Additional Reserved Material for release during Q4 2021. CEPI's obligation to advance the Additional Loan Amount in accordance with Section 3.1(a) of the Agreement is firm as of the First Amendment Date and shall not be subject to termination or cancellation.

3. **Exercise of First Right.** The Parties acknowledge that CEPI has exercised the First Right in accordance with Section 2.1(c) of the Agreement. Subject to the terms and conditions of the Amended Agreement, and in consideration for CEPI advancing the Extra Loan Amount in accordance with Section 3.1(b) of the Agreement (as such Section 3.1(b) has been amended by this First Amendment), Dynavax shall use commercially reasonable efforts to have manufactured an extra [***] kg of Dynavax Material (the "**Extra Reserved Material**") for release in Q4 2021. CEPI's obligation to advance the Extra Loan Amount in accordance with Section 3.1(b) of the Agreement (as such Section 3.1(b) has been amended by this First Amendment) is firm as of the First Amendment Date and shall not be subject to termination or cancellation.

4. Extra Loan Amount. Section 3.1(b) of the Agreement is hereby amended and restated to read in its entirety as follows:

"**Extra Loan Amount.** Effective as of the First Amendment Date, CEPI shall make available to Dynavax an interest-free, forgivable, unsecured loan for a sum equivalent to the Extra Manufacturing Cost (the **"Extra Loan Amount"**), which shall be advanced by CEPI to Dynavax in two installments, upon receipt of a Loan Drawdown Notice for each such installment, as follows:

Quantity	Total Manufacturing Cost	First Installment	Due Date for First Installment	Second Installment	Due Date for Second Installment
Extra Reserved Material - CMO 1 ([***]kg)	[***]	[***]	First Amendment Date	[***]	Release Date*
Extra Reserved Material - CMO 2 ([***] kg)	[***]	[***]	First Amendment Date	[***]	Release Date*
Total – [***] kg	[***]	[***]		[***]	

* The second installment of the Manufacturing Cost shall be payable on a kilogram-by-kilogram basis upon the applicable Release Date for a particular quantity of Extra Reserved Material, written notice of which shall be provided by Dynavax to CEPI, and shall be based on (i) in the case of Extra Reserved Material manufactured by CMO 1, [***]% of the Manufacturing Cost per kilogram (*i.e.*, US$[***]per kilogram), and (ii) in the case of Extra Reserved Material manufactured by CMO 2, [***]% of the Manufacturing Cost per kilogram (*i.e.*, US$[***] per kilogram).

Loan Drawdown Notices pursuant to Section 3.1(a) and this Section 3.1(b) shall specifically refer to this Agreement and shall be delivered by Dynavax to CEPI via email to [***] with a copy to [***] fifteen (15) Business Days in advance of the due date except for: (i) the first advance which will be made as soon as reasonably practicable after the first Loan Drawdown Notice; and (ii) the first advance of the Extra Loan Amount (*i.e.*, US$[***]) which will be made as soon as reasonably practicable after the First Amendment Date, provided that the Loan Drawdown Notice for such amount is provided on or about the First Amendment Date."

5. Regulatory Information. Dynavax shall, promptly upon request by any CEPI Partner to which Dynavax supplies Reserved Material, file with applicable regulatory authorities such letters of cross-reference to such CMC data or other manufacturing information of Dynavax with respect

to the Dynavax Adjuvant on file with any regulatory authority (collectively, "**Dynavax Manufacturing Information**") as may be necessary for such CEPI Partner to apply for, obtain or maintain regulatory approval for such CEPI Partner's Product; *provided, however,* that:

(a) if a regulatory authority requires [***], then, to the maximum extent permissible by applicable laws, rules and regulations, [***]; and

(b) if a regulatory authority requires [***], then Dynavax will [***].

6. [***]. Dynavax shall, promptly upon request by [***] as may be necessary for [***].

7. Effectiveness of Agreement. Except as expressly amended by this First Amendment, the Agreement shall remain in full force and effect in accordance with its terms.

8. Counterparts. This First Amendment may be executed in counterparts, including electronic counterparts, but shall not be effective until each Party has executed at least one counterpart. Each counterpart shall constitute an original of this First Amendment, but all the counterparts shall together constitute one and the same instrument.

[*Signature page follows.*]

In Witness Whereof, the Parties hereto have caused this First Amendment to Agreement to be executed and entered into by their duly authorized representatives as of the date(s) specified below.

Signed for and on behalf of **COALITION FOR EPIDEMIC PREPAREDNESS INNOVATIONS** by:

Signature: /s/ Dr. Richard Hatchett

Name: Dr. Richard Hatchett

Title: Chief Executive Officer

Date: 2021-05-03

Signed for and on behalf of **DYNAVAX TECHNOLOGIES CORPORATION** by:

Signature: /s/ Ryan Spencer

Name: Ryan Spencer

Title: Chief Executive Officer

Date: 2021-05-03

Exhibit 10.2

AMENDMENT NO. 5 TO TERM LOAN AGREEMENT

THIS AMENDMENT NO. 5 TO TERM LOAN AGREEMENT, dated as of [May 1], 2021 (this "***Agreement***"), is made among Dynavax Technologies Corporation, a Delaware corporation (the "***Borrower***"), the Subsidiary Guarantors party hereto, the Lenders party hereto and CRG Servicing LLC, as administrative agent and collateral agent (in such capacities, "***Agent***"), with respect to the Loan Agreement referred to below.

RECITALS

WHEREAS, the Borrower, the Subsidiary Guarantors from time to time party thereto, the Lenders from time to time party thereto and the Agent are parties to that certain Term Loan Agreement, dated as of February 20, 2018, as amended by that certain Waiver and Amendment, dated as of November 20, 2018, that certain Amendment No. 2 to Term Loan Agreement and Fee Letter, dated as of August 7, 2019 and effective as of August 7, 2019, that certain Consent, dated as of April 21, 2020, that certain Consent, dated as of July 31, 2020, that certain Amendment No. 3 to Term Loan Agreement, dated as of November 2, 2020 and that certain Amendment No. 4 to Term Loan Agreement, dated as of January 29, 2021 (as further amended, amended and restated, modified or otherwise supplemented from time to time, the "***Loan Agreement***"); and

WHEREAS, the parties hereto desire to amend the Loan Agreement on the terms and subject to the conditions set forth herein;

NOW, THEREFORE, in consideration of the mutual agreements, provisions and covenants contained herein, the parties agree as follows:

SECTION 1. Definitions; Interpretation.

(a) **Terms Defined in Loan Agreement**. All capitalized terms used in this Agreement (including in the recitals hereof) and not otherwise defined herein shall have the meanings assigned to them in the Loan Agreement.

(b) **Interpretation**. The rules of interpretation set forth in Section 1.03 of the Loan Agreement shall be applicable to this Agreement and are incorporated herein by this reference.

SECTION 2. Amendments. Subject to **Section 3**, the Loan Agreement is hereby amended as follows:

(a) Section 1.01 of the Loan Agreement is hereby amended by inserting the following new definition in the appropriate alphabetical order:

"***Fifth Amendment Effective Date***" means [May 1], 2021.

(b) Section 1.01 of the Loan Agreement is hereby amended by amending and restating the definition of "CEPI Agreement" to read as follows:

"***CEPI Agreement***" means that certain Agreement dated as of January 29, 2021 between CEPI and the Borrower, as amended by that certain First Amendment to Agreement dated as of the Fifth Amendment Effective Date and as further amended, modified, extended, restated, replaced or supplemented from time to time in accordance with the terms and provisions of this Agreement.

(c) Section 9.01(w) of the Loan Agreement is hereby amended by replacing the text "the Fourth Amendment Effective Date" with the text "the Fifth Amendment Effective Date".

(d) Section 9.07(vi) of the Loan Agreement is hereby amended by replacing the text "the Fourth Amendment Effective Date" with the text "the Fifth Amendment Effective Date".

SECTION 3. Conditions to Effectiveness. The effectiveness of **Section 2** shall be subject to the satisfaction of each of the following conditions precedent:

(a) Agent shall have received, in form and substance reasonably satisfactory to it and Lenders, counterparts of this Agreement duly executed by Borrower, Agent and the Majority Lenders.

(b) The representations and warranties in **Section 5** shall be true in all material respects on the date hereof and on the date on which the foregoing condition is satisfied.

SECTION 4. Expenses. The Obligors agree to reimburse the Agent for all reasonable fees, charges and disbursements of the Agent in connection with the preparation, execution and delivery of this Agreement, including the reasonable fees, charges and disbursements of Moore & Van Allen PLLC.

SECTION 5. Representations and Warranties. Each Obligor hereby represents and warrants to Agent and each Lender as follows:

(a) Such Obligor has full power, authority and legal right to make and perform this Agreement and the Loan Agreement, as modified by this Agreement (the "***Amended Loan Agreement***"). Each of this Agreement and the Amended Loan Agreement is within such Obligor's corporate or equivalent powers and has been duly authorized by all necessary corporate or equivalent action and, if required, by all necessary shareholder action. This Agreement has been duly executed and delivered by such Obligor and each of this Agreement and the Amended Loan Agreement constitutes legal, valid and binding obligations of such Obligor, enforceable against such Obligor in accordance with its terms, except as such enforceability may be limited by (i) bankruptcy, insolvency, reorganization, moratorium or similar laws of general applicability affecting the enforcement of creditors' rights and (ii) the application of general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law). Each of this Agreement and the Amended Loan Agreement (x) does not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority or any third party, except for such as have been obtained or made and are in full force and effect, (y)

will not violate any applicable law or regulation or the charter, bylaws or other organizational documents of such Obligor and its Subsidiaries or any order of any Governmental Authority, other than any such violations that, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect, and (z) will not violate or result in an event of default under any material indenture, agreement or other instrument binding upon any Obligor or any of its Subsidiaries or assets, or give rise to a right thereunder to require any payment to be made by any such Person.

(b) No Default has occurred and is continuing or will result after giving effect to this Agreement.

(c) There has been no Material Adverse Effect since the date of the Loan Agreement.

(d) The representations and warranties made by or with respect to such Obligor in Section 7 of the Loan Agreement are true in all material respects (and, in all respects, for such representations and warranties that are by their terms already qualified as to materiality, material adverse effect or similar language), taking into account any changes made to schedules updated in accordance with Section 7.20 of the Loan Agreement, except that such representations and warranties that refer to a specific earlier date were true in all material respects on such earlier date (and, in all respects, for such representations and warranties that are by their terms already qualified as to materiality, material adverse effect or similar language).

SECTION 6. Reaffirmation. Each Obligor hereby ratifies, confirms, reaffirms, and acknowledges its obligations under the Loan Documents to which it is a party and agrees that the Loan Documents remain in full force and effect, undiminished by this Agreement, except as expressly provided herein. By executing this Agreement, each Obligor acknowledges that it has read, consulted with its attorneys regarding, and understands, this Agreement.

SECTION 7. Governing Law; Submission to Jurisdiction; Waiver of Jury Trial.

(a) **Governing Law**. This Agreement and the rights and obligations of the parties hereunder shall be governed by, and construed in accordance with, the law of the State of New York, without regard to principles of conflicts of laws that would result in the application of the laws of any other jurisdiction; *provided that* Section 5-1401 of the New York General Obligations Law shall apply.

(b) **Submission to Jurisdiction**. Each Obligor agrees that any suit, action or proceeding with respect to this Agreement or any other Loan Document to which it is a party or any judgment entered by any court in respect thereof may be brought initially in the federal or state courts in Houston, Texas or in the courts of its own corporate domicile and irrevocably submits to the nonexclusive jurisdiction of each such court for the purpose of any such suit, action, proceeding or judgment. This **Section 7** is for the benefit of Lenders and the Agent only and, as a result, neither the Agent nor any Lender shall be prevented from taking proceedings in any other courts with jurisdiction. To the extent

allowed by applicable Laws, Agent and Lenders may take concurrent proceedings in any number of jurisdictions.

(c) **Waiver of Jury Trial**. EACH OBLIGOR, THE AGENT AND EACH LENDER HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OTHER LOAN DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

SECTION 8. No Actions, Claims, Etc. Each Obligor acknowledges and confirms that it has no knowledge of any actions, causes of action, claims, demands, damages or liabilities of whatever kind or nature, in law or in equity, against any Secured Party, in any case, arising from any action or failure of any Secured Party to act under any Loan Document on or prior to the date hereof, or of any offset right, counterclaim or defense of any kind against any of its respective obligations, indebtedness or liabilities to Secured Party under any Loan Document. Each Obligor unconditionally releases, waives and forever discharges (a) any and all liabilities, obligations, duties, promises or indebtedness of any kind of Agent or any Lender to such Obligor, except the obligations required to be performed by Agent or any Lender under the Loan Documents on or after the date hereof, and (b) all claims, offsets, causes of action, suits or defenses of any kind whatsoever (if any), whether arising at law or in equity, whether known or unknown, which such Obligor might otherwise have against any Secured Party in connection with the Loan Documents or the transactions contemplated thereby, in the case of each of **clauses (a)** and **(b)**, on account of any past or presently existing condition, act, omission, event, contract, liability, obligation, indebtedness, claim, cause of action, defense, circumstance or matter of any kind. Each Obligor acknowledges that it may discover facts or law different from, or in addition to, the facts or law that it knows or believes to be true with respect to the claims released in this **Section 8** and agrees, nonetheless, that this release shall be and remain effective in all respects notwithstanding such different or additional facts or the discovery of them. Each Obligor expressly acknowledges and agrees that all rights under Section 1542 of the California Civil Code are expressly waived. That section provides:

> "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR."

SECTION 9. Miscellaneous.

(a) **No Waiver**. Nothing contained herein shall be deemed to constitute a waiver of compliance with any term or condition contained in the Loan Agreement or any of the other Loan Documents or constitute a course of conduct or dealing among the parties. Except as expressly stated herein, Agent and Lenders reserve all rights, privileges and remedies under the Loan Documents (including, without limitation, all such rights, privileges and remedies with respect to any Default, Event of Default or Material Adverse Effect, whether or not communicated to Lenders or Agent). Except as amended hereby, the

Loan Agreement and other Loan Documents remain unmodified and in full force and effect. All references in the Loan Documents to the Loan Agreement shall be deemed to be references to the Loan Agreement as modified hereby.

(b) **Severability**. In case any provision of or obligation under this Agreement shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

(c) **Headings**. Headings and captions used in this Agreement (including the Exhibits, Schedules and Annexes hereto, if any) are included for convenience of reference only and shall not be given any substantive effect.

(d) **Integration**. This Agreement constitutes a Loan Document and, together with the other Loan Documents, incorporates all negotiations of the parties hereto with respect to the subject matter hereof and is the final expression and agreement of the parties hereto with respect to the subject matter hereof.

(e) **Counterparts**. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument and any of the parties hereto may execute this Agreement by signing any such counterpart. Receipt by facsimile or other electronic transmission of any executed signature page to this Agreement shall constitute delivery of such signature page.

(f) **Controlling Provisions**. In the event of any inconsistencies between the provisions of this Agreement and the provisions of any other Loan Document, the provisions of this Agreement shall govern and prevail.

(g) **Loan Document**. This Agreement is a Loan Document.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered as of the day and year first above written.

BORROWER:

DYNAVAX TECHNOLOGIES CORPORATION

By: /s/ Ryan Spencer
Name: Ryan Spencer
Title: Chief Executive Officer

[Signature Page to Amendment No. 5]

AGENT:

CRG SERVICING LLC

By: /s/ Nathan Hukill
Name: Nathan Hukill
Title: Authorized Signatory

LENDERS:

CRG ISSUER 2017-1

By: CRG SERVICING LLC,
acting by power of attorney

By: /s/ Nathan Hukill
Name: Nathan Hukill
Title: Authorized Signatory

CRG PARTNERS III (CAYMAN) UNLEV AIV 1 L.P.

By: CRG PARTNERS III (CAYMAN) GP L.P.,
its General Partner

By: CRG PARTNERS III GP LLC,
its General Partner

By: /s/ Nathan Hukill
Name: Nathan Hukill
Title: Authorized Signatory

Witness: /s/ Nicole Nesson
Name: Nicole Nesson

CRG PARTNERS III-PARALLEL FUND "A" L.P.

By: CRG PARTNERS III-PARALLEL FUND "A" GP L.P.,
its General Partner

By: CRG PARTNERS III GP LLC,
its General Partner

By: /s/ Nathan Hukill
Name: Nathan Hukill
Title: Authorized Signatory

[Signature Page to Amendment No. 5]

DYNAVAX TECHNOLOGIES CORPORATION
2021 INDUCEMENT AWARD PLAN

ADOPTED BY THE COMPENSATION COMMITTEE: JANUARY 9, 2021
AMENDED AND RESTATED BY THE COMPENSATION COMMITTEE: JUNE 22, 2021

1 GENERAL.

(a) Eligible Award Recipients. Awards may only be granted to Employees who satisfy the standards for inducement grants under Rule 5635(c)(4) of the Nasdaq Listing Rules. A person who previously served as an Employee or Director will not be eligible to receive Awards, other than following a bona fide period of non-employment.

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

(c) Purpose. The Plan, through the granting of Awards, is intended to help the Company and any Affiliate secure and retain the services of eligible award recipients, provide an inducement material for such persons to enter into employment with the Company or an Affiliate within the meaning of Rule 5635(c)(4) of the Nasdaq Listing Rules, provide incentives for such persons to exert maximum efforts for the success of the Company and any Affiliate and provide a means by which such persons may benefit from increases in value of the Common Stock.

2. Administration.

(a) Administration by Board. The Board will administer the Plan. The Board may delegate administration of the Plan to a Committee or Committees, as provided in Section 2(c). However, notwithstanding the foregoing or anything in the Plan to the contrary, the grant of Awards will be approved by the Company's independent compensation committee or a majority of the Company's independent directors (as defined in Rule 5605(a)(2) of the Nasdaq Listing Rules) in order to comply with the exemption from the stockholder approval requirement for "inducement grants" provided under Rule 5635(c)(4) of the Nasdaq Listing Rules.

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

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

(ii) To construe and interpret the Plan and Awards granted under it, and to establish, amend and revoke rules and regulations for administration of the Plan and Awards. The

Board, in the exercise of these powers, may correct any defect, omission or inconsistency in the Plan or in any Award Agreement, in a manner and to the extent it will deem necessary or expedient to make the Plan or Award fully effective.

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

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

(v) To suspend or terminate the Plan at any time. Except as otherwise provided in the Plan (including Section 2(b)(viii)) or an Award Agreement, suspension or termination of the Plan will not materially impair a Participant's rights under an outstanding Award without his or her written consent.

(vi) To amend the Plan in any respect the Board deems necessary or advisable, including, without limitation, by adopting amendments relating to certain nonqualified deferred compensation under Section 409A of the Code and/or to make the Plan or Awards granted under the Plan exempt from or compliant with the requirements for nonqualified deferred compensation under Section 409A of the Code, subject to the limitations, if any, of applicable law. If required by applicable law or listing requirements, and except as provided in Section 9(a) relating to Capitalization Adjustments, the Company will seek stockholder approval of any amendment of the Plan. Except as otherwise provided in the Plan (including Section 2(b)(viii)) or an Award Agreement, no amendment of the Plan will materially impair a Participant's rights under an outstanding Award without his or her written consent.

(vii) To submit any amendment to the Plan for stockholder approval, including, but not limited to, amendments to the Plan intended to satisfy the requirements of Rule 16b-3.

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

Notwithstanding the foregoing or anything in the Plan to the contrary, unless prohibited by applicable law, the Board may amend the terms of any outstanding Award or the Plan, or may suspend or terminate the Plan, without the affected Participant's consent, (A) to clarify the manner of exemption from, or to bring the Award or the Plan into compliance with, Section 409A of the Code or (B) to comply with other applicable laws or listing requirements.

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

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

(c) Delegation to Committee.

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

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

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

(e) Cancellation and Re-Grant of Awards. Neither the Board nor any Committee will have the authority to (i) reduce the exercise or strike price of any outstanding Option or SAR or (ii) cancel any outstanding Option or SAR that has an exercise or strike price (per share) greater than the then-current Fair Market Value of the Common Stock in exchange for cash or other Awards under the Plan, unless the stockholders of the Company have approved such an action within 12 months prior to such an event.

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

3. Shares Subject to the Plan.

(a) Share Reserve.

(i) Subject to Section 9(a) relating to Capitalization Adjustments, the aggregate number of shares of Common Stock that may be issued pursuant to Awards from and after the Effective Date will not exceed 3,250,000 shares (the "***Share Reserve***").

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

(b) Reversion of Shares to the Share Reserve.

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

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

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

4. ELIGIBILITY.

(a) Eligibility for Awards. Awards may only be granted to persons who are Employees described in Section 1(a), where the Award is an inducement material to the individual's entering into employment with the Company or an Affiliate within the meaning of Rule 5635(c)(4) of the Nasdaq Listing Rules. For clarity, Awards may not be granted to (1)

Directors, for service in such capacity, or (2) any individual who was previously an Employee or Director, other than following a bona fide period of non-employment. Notwithstanding the foregoing, Awards may not be granted to Employees who are providing Continuous Service only to any "parent" of the Company, as such term is defined in Rule 405, unless (i) the stock underlying such Awards is treated as "service recipient stock" under Section 409A of the Code (for example, because the Awards are granted pursuant to a corporate transaction such as a spin off transaction) or (ii) the Company, in consultation with its legal counsel, has determined that such Awards are otherwise exempt from or alternatively comply with Section 409A of the Code.

(b) Approval Requirements. All Awards must be granted either by a majority of the Company's independent directors or by the Company's compensation committee comprised of independent directors within the meaning of Rule 5605(a)(2) of the Nasdaq Listing Rules.

5. Provisions Relating to Options and Stock Appreciation Rights.

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

(a) Term. No Option or SAR will be exercisable after the expiration of seven years from the date of its grant or such shorter period specified in the Award Agreement.

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

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

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

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

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

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

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

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

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

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

(ii) Domestic Relations Orders. Subject to the approval of the Board or a duly authorized Officer, an Option or SAR may be transferred pursuant to the terms of a domestic

relations order, official marital settlement agreement or other divorce or separation instrument as permitted by Treasury Regulations Section 1.421-1(b)(2).

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

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

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

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

Affiliate, if the sale of any Common Stock received upon exercise of an Option or SAR following the termination of a Participant's Continuous Service (other than for Cause) would violate the Company's insider trading policy, then the Option or SAR will terminate on the earlier of (i) the expiration of a total period of time (that need not be consecutive) equal to the applicable post-termination exercise period after the termination of the Participant's Continuous Service during which the sale of the Common Stock received upon exercise of the Option or SAR would not be in violation of the Company's insider trading policy or (ii) the expiration of the term of the Option or SAR as set forth in the applicable Award Agreement.

(i) Disability of Participant. Except as otherwise provided in the applicable Award Agreement or other written agreement between a Participant and the Company or an Affiliate, if a Participant's Continuous Service terminates as a result of the Participant's Disability, the Participant may exercise his or her Option or SAR (to the extent that the Participant was entitled to exercise such Option or SAR as of the date of termination of Continuous Service), but only within such period of time ending on the earlier of (i) the date that is 12 months following such termination of Continuous Service (or such longer or shorter period specified in the Award Agreement), and (ii) the expiration of the term of the Option or SAR as set forth in the Award Agreement. If, after such termination of Continuous Service, the Participant does not exercise his or her Option or SAR (as applicable) within the applicable time period, the Option or SAR (as applicable) will terminate.

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

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

(l) Non-Exempt Employees. If an Option or SAR is granted to an Employee who is a non-exempt employee for purposes of the Fair Labor Standards Act of 1938, as amended, the Option or SAR will not be first exercisable for any shares of Common Stock until at least six months following the date of grant of the Option or SAR (although the Award may vest prior to

such date). Consistent with the provisions of the Worker Economic Opportunity Act, (i) if such non-exempt employee dies or suffers a Disability, (ii) upon a Transaction in which such Option or SAR is not assumed, continued or substituted, (iii) upon a Change in Control, or (iv) upon the Participant's retirement (as such term may be defined in the Participant's Award Agreement, in another written agreement between the Participant and the Company or an Affiliate, or, if no such definition, in accordance with the Company's or Affiliate's then current employment policies and guidelines), the vested portion of any Options and SARs may be exercised earlier than six months following the date of grant. The foregoing provision is intended to operate so that any income derived by a non-exempt employee in connection with the exercise or vesting of an Option or SAR will be exempt from his or her regular rate of pay. To the extent permitted and/or required for compliance with the Worker Economic Opportunity Act to ensure that any income derived by a non-exempt employee in connection with the exercise, vesting or issuance of any shares under any other Award will be exempt from the employee's regular rate of pay, the provisions of this Section 5(l) will apply to all Awards and are hereby incorporated by reference into such Award Agreements.

6. PROVISIONS OF AWARDS OTHER THAN OPTIONS AND SARS.

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

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

(ii) Vesting. Shares of Common Stock awarded under a Restricted Stock Award Agreement may be subject to forfeiture to or repurchase by the Company in accordance with a vesting schedule to be determined by the Board.

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

(iv) Transferability. Rights to acquire shares of Common Stock under a Restricted Stock Award Agreement will be transferable by the Participant only upon such terms and conditions as are set forth in the Restricted Stock Award Agreement, as the Board will determine in its sole discretion, so long as Common Stock awarded under the Restricted Stock

Award Agreement remains subject to the terms of the Restricted Stock Award Agreement. Notwithstanding the foregoing or anything in the Plan or a Restricted Stock Award Agreement to the contrary, no Restricted Stock Award may be transferred to any financial institution without prior stockholder approval.

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

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

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

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

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

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

(c) Performance Stock Awards.

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

by applicable law and the applicable Award Agreement, the Board may determine that cash may be used in payment of Performance Stock Awards.

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

(d) Other Stock Awards. Other forms of Awards valued in whole or in part by reference to, or otherwise based on, Common Stock, including the appreciation in value thereof (*e.g.*, options or stock appreciation rights with an exercise or strike price (per share) less than 100% of the Fair Market Value of the Common Stock on the date of grant) may be granted either alone or in addition to Awards granted under Section 5 and this Section 6. Subject to the provisions of the Plan (including, but not limited to, Section 2(f)), the Board will have sole and complete authority to determine the persons to whom and the time or times at which such Other Stock Awards will be granted, the number of shares of Common Stock (or the cash equivalent thereof) to be granted pursuant to such Other Stock Awards and all other terms and conditions of such Other Stock Awards.

7. COVENANTS OF THE COMPANY.

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

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

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

8. MISCELLANEOUS.

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

(b) Corporate Action Constituting Grant of Awards. Corporate action constituting a grant by the Company of an Award to any Participant will be deemed completed as of the date of such corporate action, unless otherwise determined by the Board, regardless of when the instrument, certificate or letter evidencing the Award is communicated to, or actually received or accepted by, the Participant. In the event that the corporate records (*e.g.*, Board consents, resolutions or minutes) documenting the corporate action constituting the grant contain terms (*e.g.*, exercise price, vesting schedule or number of shares) that are inconsistent with those in the Award Agreement or related grant documents as a result of a clerical error in the papering of the Award Agreement or related grant documents, the corporate records will control and the Participant will have no legally binding right to the incorrect term in the Award Agreement or related grant documents.

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

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

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

(f) Investment Assurances. The Company may require a Participant, as a condition of exercising or acquiring Common Stock under any Award, (i) to give written assurances

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

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

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

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

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

that any Award granted hereunder is not exempt from and is therefore subject to Section 409A of the Code, the Award Agreement evidencing such Award will incorporate the terms and conditions necessary to avoid the consequences specified in Section 409A(a)(1) of the Code, and to the extent an Award Agreement is silent on terms necessary for compliance with Section 409A of the Code, such terms are hereby incorporated by reference into the Award Agreement. Notwithstanding anything to the contrary in this Plan (and unless the Award Agreement specifically provides otherwise), if the shares of Common Stock are publicly traded, and if a Participant holding an Award that constitutes "deferred compensation" under Section 409A of the Code is a "specified employee" for purposes of Section 409A of the Code, no distribution or payment of any amount under such Award that is due because of a "separation from service" (as defined in Section 409A of the Code without regard to alternative definitions thereunder) will be issued or paid before the date that is six months and one day following the date of such Participant's "separation from service" or, if earlier, the date of the Participant's death, unless such distribution or payment may be made in a manner that complies with Section 409A of the Code, and any amounts so deferred will be paid in a lump sum on the day after such six-month period elapses, with the balance paid thereafter on the original schedule.

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

9. Adjustments upon Changes in Common Stock; Other Corporate Events.

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

(b) Dissolution or Liquidation. Except as otherwise provided in the applicable Award Agreement or other written agreement between a Participant and the Company or an Affiliate, in the event of a dissolution or liquidation of the Company, all outstanding Awards (other than Awards consisting of vested and outstanding shares of Common Stock not subject to a forfeiture condition or the Company's right of repurchase) will terminate immediately prior to the completion of such dissolution or liquidation, and the shares of Common Stock subject to a forfeiture condition or the Company's right of repurchase may be reacquired or repurchased by the Company notwithstanding the fact that the holder of such Award is providing Continuous Service.

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

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

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

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

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

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

(e) Parachute Payments. Except as otherwise provided in the applicable Award Agreement or other written agreement between a Participant and the Company or an Affiliate, if any payment or benefit the Participant would receive pursuant to a Change in Control from the Company or otherwise ("***Payment***") would (i) constitute a "parachute payment" within the meaning of Section 280G of the Code, and (ii) but for this sentence, be subject to the excise tax imposed by Section 4999 of the Code (the "***Excise Tax***"), then such Payment will be equal to the Reduced Amount. The "***Reduced Amount***" will be either (x) the largest portion of the Payment that would result in no portion of the Payment being subject to the Excise Tax or (y) the largest portion, up to and including the total, of the Payment, whichever amount, after taking into account all applicable federal, state and local employment taxes, income taxes, and the Excise Tax (all computed at the highest applicable marginal rate), results in the Participant's receipt, on an after-tax basis, of the greater amount of the Payment notwithstanding that all or some portion of the Payment may be subject to the Excise Tax. If a reduction in payments or benefits constituting "parachute payments" is necessary so that the Payment equals the Reduced Amount, reduction will occur in the following order: (A) reduction of cash payments; (B) cancellation of accelerated vesting of equity awards other than stock options; (C) cancellation of accelerated vesting of stock options; and (D) reduction of other benefits paid to the Participant. Within any such category of payments and benefits (that is, (A), (B), (C) or (D)), a reduction will occur first with respect to amounts that are not "deferred compensation" within the meaning of Section 409A of the Code and then with respect to amounts that are. In the event that acceleration of compensation from a Participant's equity awards is to be reduced, such acceleration of vesting will be canceled, subject to the immediately preceding sentence, in the reverse order of the date of grant. The accounting firm engaged by the Company for general audit purposes as of the day prior to the effective date of the Change in Control will perform the foregoing calculations. If the accounting firm so engaged by the Company is serving as accountant or auditor for the individual, entity or group effecting the Change in Control, the Company will appoint a nationally recognized accounting firm to make the determinations required hereunder. The Company will bear all expenses with respect to the determinations by such accounting firm required to be made hereunder. The accounting firm engaged to make the determinations hereunder will provide its calculations, together with detailed supporting documentation, to the Participant and the Company within 15

calendar days after the date on which the Participant's right to a Payment is triggered (if requested at that time by the Participant or the Company) or such other time as reasonably requested by the Participant or the Company. Any good faith determinations of the accounting firm made hereunder will be final, binding and conclusive upon the Participant and the Company.

10. TERMINATION OR SUSPENSION OF THE PLAN.

(a) Termination or Suspension. The Board may suspend or terminate the Plan at any time. No Awards may be granted under the Plan while the Plan is suspended or after it is terminated.

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

11. EFFECTIVE DATE OF PLAN.

This Plan will become effective on the Effective Date.

12. CHOICE OF LAW.

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

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

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

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

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

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

(e) "***Capitalization Adjustment***" means any change that is made in, or other events that occur with respect to, the Common Stock subject to the Plan or subject to any Award after the Effective Date without the receipt of consideration by the Company through merger, consolidation, reorganization, recapitalization, reincorporation, stock dividend, dividend in property other than cash, large nonrecurring cash dividend, stock split, reverse stock split, liquidating dividend, combination of shares, exchange of shares, change in corporate structure or any similar equity

restructuring transaction, as that term is used in Statement of Financial Accounting Standards No. 123 (revised). Notwithstanding the foregoing, the conversion of any convertible securities of the Company will not be treated as a Capitalization Adjustment.

(f) "***Cause***" will have the meaning ascribed to such term in any written agreement between a Participant and the Company or an Affiliate defining such term and, in the absence of such agreement, such term means, with respect to a Participant, the occurrence of one or more of the following: (i) the Participant's theft, dishonesty, willful misconduct, breach of fiduciary duty for personal profit, or falsification of any Company or Affiliate documents or records; (ii) the Participant's material failure to abide by the code of conduct or other policies (including, without limitation, policies relating to confidentiality and reasonable workplace conduct) of the Company or an Affiliate; (iii) the Participant's unauthorized use, misappropriation, destruction or diversion of any tangible or intangible asset or corporate opportunity of the Company or an Affiliate (including, without limitation, the Participant's improper use or disclosure of confidential or proprietary information of the Company or an Affiliate); (iv) any intentional act by the Participant which has a material detrimental effect on the reputation or business of the Company or an Affiliate; (v) the Participant's repeated failure or inability to perform any reasonable assigned duties after written notice from the Company or an Affiliate, and a reasonable opportunity to cure, such failure or inability; (vi) any material breach by the Participant of any employment or service agreement between the Participant and the Company or an Affiliate, which breach is not cured pursuant to the terms of such agreement; or (vii) the Participant's conviction (including any plea of guilty or nolo contendere) of any criminal act involving fraud, dishonesty, misappropriation or moral turpitude, or which impairs the Participant's ability to perform his or her duties. The determination that a termination of a Participant's Continuous Service is either for Cause or without Cause will be made by the Company, in its sole discretion. Any determination by the Company that the Continuous Service of a Participant was terminated with or without Cause for the purposes of outstanding Awards held by the Participant will have no effect upon any determination of the rights or obligations of the Company or the Participant for any other purpose.

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

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

increases the percentage of the then outstanding voting securities Owned by the Subject Person over the designated percentage threshold, then a Change in Control will be deemed to occur;

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

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

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

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

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

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

(i) "***Committee***" means a committee of two or more Directors to whom authority has been delegated by the Board in accordance with Section 2(c).

(j) "***Common Stock***" means the common stock of the Company.

(k) "***Company***" means Dynavax Technologies Corporation, a Delaware corporation.

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

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

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

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

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

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

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

(n) "***Director***" means a member of the Board. Directors are not eligible to receive Awards with respect to their service in such capacity.

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

(p) "***Effective Date***" means the effective date of this Plan, which is the date the Plan was approved by the Compensation Committee of the Board.

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

(r) "***Entity***" means a corporation, partnership, limited liability company or other entity.

(s) "***Exchange Act***" means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

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

(u) "***Fair Market Value***" means, as of any date, the value of the Common Stock determined as follows:

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

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

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

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

(w) "***Nonstatutory Stock Option***" means an option granted pursuant to Section 5 that does not qualify as an "incentive stock option" within the meaning of Section 422 of the Code.

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

(y) "***Option***" means a Nonstatutory Stock Option to purchase shares of Common Stock granted pursuant to the Plan.

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

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

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

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

(dd) "***Participant***" means with respect to any Award, a person to whom such Award is granted pursuant to the Plan or, if applicable, such other person who holds an outstanding Award.

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

(ff) "***Performance Goals***" means, for a Performance Period, the one or more goals established by the Board for the Performance Period based upon the Performance Criteria. Performance Goals may be based on a Company-wide basis, with respect to one or more business units, divisions, Affiliates, or business segments, and in either absolute terms or relative to the performance of one or more comparable companies or the performance of one or more relevant indices. The Board is authorized to make appropriate adjustments in the method of calculating the attainment of Performance Goals for a Performance Period as follows: (i) to exclude restructuring and/or other nonrecurring charges; (ii) to exclude exchange rate effects, as applicable, for non-U.S. dollar denominated Performance Goals; (iii) to exclude the effects of changes to generally accepted accounting principles; (iv) to exclude the effects of any statutory adjustments to corporate tax rates; (v) to exclude the effects of items that are "unusual" in nature or occur "infrequently" as determined under generally accepted accounting principles; (vi) to exclude the dilutive effects of

acquisitions or joint ventures; (vii) to assume that any business divested by the Company achieved performance objectives at targeted levels during the balance of a Performance Period following such divestiture; (viii) to exclude the effect of any change in the outstanding shares of common stock of the Company by reason of any stock dividend or split, stock repurchase, reorganization, recapitalization, merger, consolidation, spin-off, combination or exchange of shares or other similar corporate change, or any distributions to common stockholders other than regular cash dividends; (ix) to exclude the effects of stock based compensation and/or the award of an annual cash incentive under the Company's Annual Incentive Program; (x) to exclude the effect of any other unusual, non-recurring gain or loss or other extraordinary item; and (xi) to make other appropriate adjustments selected by the Board.

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

(hh) "***Performance Stock Award***" means an Award granted under the terms and conditions of Section 6(c).

(ii) "***Plan***" means this Dynavax Technologies Corporation 2021 Inducement Award Plan.

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

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

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

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

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

(oo) "***Rule 405***" means Rule 405 promulgated under the Securities Act.

(pp) "***Securities Act***" means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

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

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

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

(tt) "***Transaction***" means a Corporate Transaction or a Change in Control.

Exhibit 10.6

CERTAIN CONFIDENTIAL INFORMATION CONTAINED IN THIS DOCUMENT, MARKED BY [***], HAS BEEN OMITTED BECAUSE IT IS NOT MATERIAL AND WOULD LIKELY CAUSE COMPETITIVE HARM TO THE COMPANY IF PUBLICLY DISCLOSED.

Supply Agreement

Supply Agreement Summary

CUSTOMER INFORMATION	
Name:	Zhejiang Clover Biopharmaceuticals, Inc., a company organized under the laws of P.R. China ("**Zhejiang Clover**"), and Clover Biopharmaceuticals (Hong Kong) Co., Limited, a company organized under the laws of Hong Kong ("**Clover HK**" and, collectively with Zhejiang Clover, "**Customer**")
Mailing Address for Zhejiang Clover:	Zhejiang Clover Biopharmaceuticals, Inc. 168 Chenwang Road Economic Development Zone Changxing County Huzhou City Zhejiang Province China
Mailing Address for Clover HK:	Clover Biopharmaceuticals (Hong Kong) Co., Limited Suite 603，6/F. Laws Commercial Plaza 788 Cheung Sha Wan Road Kowloon Hong Kong
Designated Contact:	Steven GONG steven.gong@cloverbiopharma.com +86-137-6156-6431

SUPPLIER INFORMATION	
Name:	Dynavax Technologies Corporation ("**Dynavax**")
Mailing Address:	2100 Powell Street, Suite 900, Emeryville, CA 94608, USA
Designated Contact:	David Novack dnovack@dynavax.com +1-617-640-7427

CUSTOMER VACCINE/CUSTOMER PRODUCT INFORMATION	
Customer Vaccine	SCB-2019
Customer Product	SCB-2019, adjuvanted with CpG 1018 and Aluminum Hydroxide
Form	Liquid in vial(s)

Presentation	(1) In two separate vials: (i) co-formulated SCB-2019 and Aluminum Hydroxide; and (ii) CpG 1018; in each case, multiple-dose per vial; and/or (2) Co-formulated in single vial, multiple-dose per vial

AGREEMENT INFORMATION	
Parties:	Customer and Dynavax (each a **"Party"** and collectively the **"Parties"**)
Effective Date:	Date on which this Supply Agreement Summary is signed by second Party.
Expiration Date:	31 December 2022, subject to extension by mutual written agreement of the Parties in accordance with Section 14.1 of Annex B hereto.
Currency for all prices, payments and charges:	USD (United States Dollars)
The Supply Agreement (the **"Supply Agreement"**) between Customer and Dynavax consists exclusively of and incorporates by reference:	-This Supply Agreement Summary -Annex A: Scope and Pricing Schedule -Annex B: General Terms and Conditions for the Supply of Goods -Annex C: "Order" or "Order Form" Template

CERTAIN CONFIDENTIAL INFORMATION CONTAINED IN THIS DOCUMENT, MARKED BY [***], HAS BEEN OMITTED BECAUSE IT IS NOT MATERIAL AND WOULD LIKELY CAUSE COMPETITIVE HARM TO THE COMPANY IF PUBLICLY DISCLOSED.

Signed for and on behalf of **Dynavax Technologies Corporation** by: Signature:…/s/ David Novack…… Name: David Novack Title: President and COO Date:…June 29, 2021……	Signed for and on behalf of **Zhejiang Clover Biopharmaceuticals, Inc.**: Signature:…/s/ Joshua Liang…… Name: Joshua LIANG Title: CEO, Board Director Date:…June 29, 2021…… Signed for and on behalf of **Clover Biopharmaceuticals (Hong Kong) Co., Limited**: Signature:…/s/ Joshua Liang…… Name: Joshua LIANG Title: CEO, Board Director Date:…June 29, 2021…… *Solely for purposes of Article 5 and Sections 3.3, 3.4 and 17.7 of Annex B*, signed for and on behalf of **Sichuan Clover Biopharmaceuticals, Inc.**: Signature:…/s/ Joshua Liang…… Name: Joshua LIANG Title: CEO, Board Director Date:…June 29, 2021……

Annex A: Scope and Pricing Schedule

Name:	Dynavax CpG 1018
Form of Supply:	Liquid bulk formulation of Dynavax CpG 1018 in [***], at a concentration of [***] mg/ml, provided that, for each full batch of Dynavax CpG 1018 manufactured, the [***]. Must be ordered in whole numbers of containers.
Dose:	Dose means [***], net of any overage
Price per Dose:	**LMIC Price.** For Dynavax CpG 1018 for use in Customer Product for sale or distribution in countries supported by the Advance Market Commitment of the COVAX Facility as listed at the following website: https://www.gavi.org/news/media-room/92-low-middle-income-economies-eligible-access-covid-19-vaccines-gavi-covax-amc ("**LMICs**"); but excluding Dynavax CpG 1018 in Customer Product sold in private markets within LMICs: For all Doses scheduled to be delivered on or before [***] (it being understood that if actual delivery of such Doses is delayed, the following price shall still apply): •USD [***] per Dose For Doses scheduled for delivery on or after [***]: •USD [***] per Dose for total combined calendar year orders between [***] and [***] Doses •USD [***] per Dose for total combined calendar year orders between [***] and [***] Doses •USD [***] per Dose if total combined calendar year orders exceed [***] Doses **UMIC Price.** For Dynavax CpG 1018 for use in Customer Product for sale or distribution in countries listed at the following website as "upper middle income" countries: https://data.worldbank.org/income-level/upper-middle-income ("**UMICs**") which includes China; but excluding Dynavax CpG 1018 in Customer Product sold in private markets within UMICs: •USD [***] per Dose for any amount of Doses (the "**UMIC Price**") **HIC Price.** For Dynavax CpG 1018 for use in Customer Product for sale or distribution in countries that are neither LMICs nor UMICs ("**HICs**") or for use in Customer Product sold in private markets within LMICs or UMICS: •USD [***] per Dose for any amount of Doses (the **"HIC Price"**) **Royalty.** As per Section 6.4 of Annex B of this Supply Agreement, a royalty of [***]% will be payable to Dynavax on any Net Sale under a Bilateral Agreement exceeding a Net Sale Per Unit of $[***]. For clarity, no royalty will be payable with respect to Customer Product sold under any COVAX Supply Agreement or GAVI Customer AP Agreement.

Order #	Quarter (manufacturing)	Order Quantity (million Doses [kg])	Order Due Date	Delivery Date
1	[***]	[***]	[***]	[***] 2021

2	[***]	[***]	[***]	[***]2021
3	[***]	[***]	[***]	[***] 2021
4	[***]	[***]	[***]	[***] 2022
5	[***]	[***]	[***]	[***] 2022
6	[***]	[***]	[***]	[***] 2022
7	[***]	[***]	[***]	[***] 2022

Notwithstanding the table above, the timing for ordering and manufacturing and the timing for delivery for Q1 through Q4 of 2021 may be delayed, and the quantities for Q1 through Q3 of 2021 may be modified, by CEPI in its sole discretion.

Rows 1 through 4 of the table above constitute a binding commitment on the part of Customer to order the applicable quantities set forth in the table above.

On or before the respective Order Due Dates specified in rows 5 through 7 of the table above, Customer may submit to Dynavax Orders for quantities of Dynavax CpG 1018 for manufacture and delivery during the respective periods set forth in such rows, and Dynavax may [***]. Customer acknowledges that [***], except to the extent [***].

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Annex B: General Terms and Conditions for the Supply of Goods

1. Interpretation

The following definitions and rules of interpretation apply in these Conditions.

1.1 **Definitions:**

"Adjusted Net Sales Per Unit" means, in any accounting period, the amount (if any) by which Net Sales Per Unit exceeds the Unit Threshold Price.

"Anti-Corruption Laws" means the U.S. Foreign Corrupt Practices Act (15 U.S.C. §§78dd-1, et. seq.), as amended, the Organization for Economic Co-operation and Development (OECD) Convention on combating bribery of foreign public officials in international business transactions, the UK Bribery Act 2010, as amended, and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the relevant government department concerning the legislation, and any other applicable laws of similar effect, and the related regulations and published interpretations thereunder.

"Applicable Laws" means all national and supranational laws and regulations and other mandatory professional regulations applicable to a Party or a Party's activities or obligations described under or pursuant to the Supply Agreement, including but not limited to, Anti-Corruption Laws, Data Protection Legislation and GMP.

"Biosimilar Version" means, with respect to a Customer Product that is being sold in a country or regulatory jurisdiction (the "**Reference Product**"), a biopharmaceutical product sold by a third party (other than a third party acting on behalf of or in concert with Customer or any affiliate or sublicensee or assignee of Customer) in such country or jurisdiction, that through reference to the Regulatory Approval of the Reference Product, is eligible for and has achieved regulatory approval in such country or jurisdiction pursuant to an abbreviated follow-on biological approval pathway established by the Regulatory Authority in such country or jurisdiction pursuant to the Applicable Laws, or otherwise is approved for marketing and sale in such country or jurisdiction by an abridged procedure in reliance, in whole or in part, on the prior Regulatory Approval of the Reference Product or on the safety and efficacy data included in the prior Regulatory Approval (in such country or jurisdiction) of the Reference Product, including any such biopharmaceutical product that (i) with respect to such biopharmaceutical product in the United States, has been approved as a biosimilar or interchangeable product by the FDA pursuant to 42 U.S.C. § 262 of the Public Health Service Act, or (ii) with respect to such biopharmaceutical product in any country or regulatory jurisdiction, has otherwise obtained Regulatory Approval from a Regulatory Authority pursuant to similar statutory or regulatory requirement as that described in the foregoing clause (i) in such other country or jurisdiction.

"Bilateral Agreement" means any agreement entered into between Customer and a third party, outside the COVAX Supply Agreement, for the supply of the Customer Product.

"Business Day" means a day other than a Saturday, Sunday or public holiday in the United States of America and/or People's Republic of China.

"CEPI" means the Coalition for Epidemic Preparedness and Innovations.

"COA" means the Certificate of Analysis issued by Dynavax for the Goods in each delivery for the Customer, summarizing the testing results on samples of the Goods in that delivery together with the evaluation of compliance to the Goods Specification.

"Collaboration Agreements" means (a) the Clinical Collaboration Agreement between Dynavax and Sichuan Clover dated May 16, 2020, as amended (the "**Clinical Collaboration Agreement**"),

and (b) the Collaboration Agreement between Dynavax and Sichuan Clover dated March 13, 2020, as amended (the "**Collaboration Agreement**").

"Conditions" means the terms and conditions of this Annex B, as amended from time to time in accordance with Section 17.9 hereof.

"Confidential Information" confidential and proprietary information disclosed by or on behalf of a Party (the "**Disclosing Party**") to the other Party (the "**Receiving Party**") or its affiliates or their directors, officers, employees, or agents under this Supply Agreement or the NDA, either directly or indirectly, in writing, orally, electronically or through other means, and whether or not designated as "confidential" at the time of disclosure, including without limitation, compounds, biological sequences, inventions (including patent applications covering such inventions), trade secrets, specifications, formulations, designs, data, know-how, results, regulatory affairs, clinical trials and protocols, customers, suppliers, collaborators, affairs, funders, employees, consultants, partners, clients or sales and marketing information, development work, project timetables, manufacturing processes, analytical processes, and other confidential and proprietary information, processes, services and business of the Disclosing Party including new know-how and information developed by the Disclosing Party under this Supply Agreement, data, information, and any improvements, modifications, derivations, or compilations thereto, provided however, that Confidential Information shall not include any information which:

(a) Was known by or disclosed to the Receiving Party or its affiliates prior to its date of disclosure to the Receiving Party, other than by previous disclosure by the Disclosing Party, as demonstrated by legally admissible evidence available to the Receiving Party or its affiliates;

(b) Either before or after the date of the disclosure to the Receiving Party is lawfully disclosed or otherwise provided to the Receiving Party or its affiliates by sources other than the Disclosing Party rightfully in possession of the Confidential Information;

(c) Either before or after the date of the disclosure to the Receiving Party becomes publicly known through no fault or omission on the part of the Receiving Party or its affiliates; or

(d) Is or was independently developed by or for the Receiving Party or its affiliates without use of the Confidential Information as shall be evidenced by the written records of the Receiving Party.

Without limiting the generality of the foregoing definition, Confidential Information of Dynavax includes Dynavax Manufacturing Information.

"COVAX" means the global organization COVAX, one of three pillars of the Access to COVID-19 Tools (ACT) Accelerator which is coordinated by GAVI, CEPI and the World Health Organization (WHO) to act as a platform to support the research, development and manufacturing of a wide range of COVID-19 vaccine candidates, and to negotiate their pricing.

"COVAX Supply Agreement" means an agreement entered into between Customer and COVAX for the supply of Customer Product.

"Customer Product" means a product containing or comprising a combination of Customer Vaccine and Goods (whether such Goods are formulated with the Customer Vaccine in the same vial or separately from the Customer Vaccine in an accompanying vial).

"Customer Vaccine" means the SCB-2019 S-Trimer being developed or commercialized by or on behalf of Customer as a COVID-19 vaccine (with respect to any variant of COVID-19), as identified on the Supply Agreement Summary page of this Supply Agreement. For clarity, Customer Vaccine does not include Dynavax Adjuvant or Goods.

"Data Protection Legislation" means all applicable data protection and privacy legislation in force from time to time, including Regulation (EU) 2016/679 (the General Data Protection Regulation) and any other applicable legislation relating to personal data and all other legislation and regulatory

requirements in force from time to time which apply to a Party relating to the use of personal data (including, without limitation, the privacy of electronic communications); and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a Party. In addition, for purposes of Customer's compliance obligations hereunder, "Data Protection Legislation" shall also include the Cybersecurity Law of the People's Republic of China, Personal Information Protection Law of People's Republic of China.

"Defect" or **"Defective Product"** means any failure of the Goods to conform to the Goods Specification, or to have been manufactured in accordance with GMP.

"Delivery Location" has the meaning given in Section 4.2.

"Dose" has the meaning described in Annex A of this Supply Agreement.

"Dynavax" means Dynavax Technologies Corporation.

"Dynavax Adjuvant" means Dynavax's proprietary CpG 1018 adjuvant.

"Dynavax CMO" means Nitto Denko Avecia, Inc. or any other third party contract manufacturer engaged by Dynavax to manufacture Goods on behalf of Dynavax.

"Dynavax Manufacturing Information" means information or documentation in the possession or under the control of Dynavax relating to manufacture of the Dynavax Adjuvant or supply of the Goods, that, in each case: (a) is contained in any Dynavax Regulatory Filing that Dynavax authorizes Customer or any Regulatory Authority to reference or use in connection with Customer or any of its affiliates applying for, obtaining or maintaining Regulatory Approval for Customer Product; or (b) is submitted by or on behalf of Dynavax to any Regulatory Authority for use or reference in connection with Customer or any of its affiliates applying for, obtaining or maintaining Regulatory Approval for Customer Product; or (c) is disclosed or provided by or on behalf of Dynavax to Customer or any of its affiliates for submission to any Regulatory Authority in connection with Customer or any of its affiliates applying for, obtaining or maintaining Regulatory Approval for Customer Product. Without limiting the generality of the foregoing, Dynavax Manufacturing Information includes the Goods Specifications.

"Dynavax Regulatory Filing" means any filing or submission of Dynavax or any of its affiliates with or to any Regulatory Authority regarding the Dynavax Adjuvant.

"Expiration Date" means the expiration date specified in the Supply Agreement Summary, subject to extension in accordance with Section 14.1 of these Conditions.

"Export Control Laws" shall mean: (a) all applicable U.S. laws and regulations relating to sanctions and embargoes imposed by U.S. Department of Treasury's Office of Foreign Assets Control (or its successor office or other body having substantially the same function); (b) all applicable U.S. export control laws, including the Arms Export Controls Act (22 U.S.C. Ch. 39), the International Emergency Economic Powers Act (50 U.S.C. §§ 1701 et seq.), the Trading With the Enemy Act (50 U.S.C. app. §§ 1 et seq.), the Export Administration Act of 1979 (50 U.S.C. app. §§ 2401 et seq.), International Boycott Provisions of Section 999 of the U.S. Internal Revenue Code of 1986, and all rules, regulations and executive orders relating to any of the foregoing, including but not limited to the International Traffic in Arms Regulations (22 C.F.R. §§ 120 et seq.), the Export Administration Regulations (15 C.F.R. §§ 730 et. seq.), and the regulations administered by the Office of Foreign Assets Controls of the United States Department of the Treasury; and (c) all export controls imposed on any Goods by any country or organization or nation within the jurisdiction of which either Party operates or does business.

[***] has the meaning given in Section 4.9.

[***] has the meaning given in Section 3.8.

"Force Majeure Event" means any circumstance not within a Party's reasonable control including, without limitation:

i. acts of God, flood, drought, earthquake or other natural disaster;

ii. epidemic or pandemic;

iii. terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;

iv. nuclear, chemical or biological contamination or sonic boom;

v. any law or action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition;

vi. collapse of buildings, fire, explosion or accident; and

vii. any labor or trade dispute, strikes, industrial action or lockouts (excluding any labor or trade dispute, strike, industrial action or lockout confined to Dynavax's workforce).

"GAVI" means the GAVI Alliance (formerly the Global Alliance for Vaccines and Immunisation), which is a global health partnership of public and private sector organizations dedicated to "immunisation for all" and is the COVAX facility secretariat which establishes advance purchase commitments with manufacturers.

"GAVI Customer AP Agreement" means the agreement to be entered into between GAVI and Customer for the advanced purchase of Customer Product.

"GAVI Purchase Orders" means the advanced purchase orders placed by GAVI with Customer for Customer Product.

"Good Manufacturing Practice" or **"GMP"** means the minimum standard that a medicines manufacturer must meet in their production processes in accordance with (i) 21 C.F.R. Parts 210 and 211, (ii) Directive 2003/94/EC laying down the principles and guidelines of good manufacturing practice in respect of medicinal products for human use and investigational medicinal products for human use, (iii) Volume 4 of the Rules Governing Medicinal Products in the European Union, EU Guidelines for Good Manufacturing Process for Medicinal Products for Human and Veterinary Use, Chapter 7 (Outsourced Activities) and (iv) all relevant regulations or guidance for WHO Prequalification.

"Goods" means specified quantities of Dynavax Adjuvant in liquid bulk formulation (or any part thereof) as set out in an Order Form or as supplied by Dynavax to Customer hereunder.

"Goods Specifications" means the specifications for the Goods as established by Dynavax and set forth in the Quality Agreement, as they may be amended from time to time in accordance with the Quality Agreement.

"HIC Price" has the meaning given in Annex A.

"HICs" has the meaning given in Annex A.

"Intellectual Property Rights" means patents, patent applications, rights to inventions, know-how, and other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

"Latent Defect" means a Defect in any Goods delivered hereunder that could not have been discovered by a reasonable visual inspection on delivery.

"LMIC Price" has the meaning given in Annex A.

"LMICs" has the meaning given in Annex A.

"NDA" means that certain Non-Disclosure Agreement between Dynavax and Sichuan Clover dated March 11, 2020.

"Net Sales" means, in any accounting period, the gross amounts invoiced by Customer, its affiliates and their respective licensees (each, a "**Selling Party**") for sales or other dispositions of Customer Product to third parties (other than Selling Parties), but excluding sales or other dispositions of Customer Product under any COVAX Supply Agreement or GAVI Customer AP Agreement, less the following, to the extent actually granted, allowed, incurred or paid by the Selling Party and specifically attributable to such sales or other dispositions of Customer Product:

(a) normal and customary trade discounts, including trade, cash and quantity discounts or trade rebates, credits or refunds;

(b) credits or allowances additionally granted upon returns, rejections or recalls, and allowances for uncollectible amounts or bad debts on previously sold Customer Products, provided that Customer shall use commercially reasonable efforts to collect such uncollectible amounts and any such amounts shall be included in Net Sales if and at such time as subsequently received;

(c) rebates, chargebacks, credits and discounts (or the equivalent thereof) accrued and actually paid, credited or granted to any governmental agency (or agent or branch thereof) or to any third party payor, administrator or contractee, including managed healthcare organizations, pharmacy benefit managers (or equivalent thereof) or their agencies, purchasers, reimbursers, or trade customers;

(d) charges for outbound freight, insurance, transportation, postage and handling; and

(e) tariffs, taxes, excises, customs duties and other governmental charges (including any tax such as a value added or similar tax or government charge, except to the extent reimbursed, but excluding what is commonly known as income tax) levied on or measured by the production, sale, transportation, delivery or use of Customer Products and actually paid, as adjusted for rebates and refunds.

All aforementioned deductions shall only be allowable to the extent they are (i) calculated in a manner consistent with the Selling Party's customary practice for pharmaceutical products and, in any event, in accordance with U.S. Generally Accepted Accounting Principles or International Financial Reporting Standards, consistently applied by such Selling Party, and (ii) reasonably allocable to Customer Product, or apportioned on a good faith, fair and equitable basis to Customer Product. No particular amount identified above shall be deducted more than once in calculating Net Sales (i.e., no "double counting" of deductions).

For clarification, sale or other disposition of Customer Product by a Selling Party to another Selling Party for resale by such other Selling Party to a third party (other than a Selling Party) shall not be deemed a sale for purposes of this definition of "Net Sales," *provided* that the subsequent resale is included in the computation of Net Sales. In the event of any sale or other disposition of Customer Product for any consideration other than exclusively monetary consideration on bona fide arm's-length terms (including any sale or other disposition of Customer Product by a Selling Party to another Selling Party for end use by such other Selling Party), then for purposes of calculating Net Sales under these Conditions, such Customer Product shall be deemed to have been sold exclusively for cash at the weighted (by sales volume) average sale price of such Customer Product in bona fide arm's-length transactions (when sold alone, and not with other products) in the applicable country in which such sale or other disposition occurred during the applicable accounting period. Customer Products provided to third parties without charge in connection with research and development, clinical trials, compassionate use, humanitarian and charitable donations, or indigent programs shall be excluded from the computation of Net Sales.

"Net Sales Per Unit" means, in any accounting period, the amount determined by dividing (x) total Net Sales of Customer Products in such period by (y) Units Sold in such period.

"Order" or **"Order Form"** has the meaning given in Section 2.2.

"Person" means an individual, sole proprietorship, partnership, limited partnership, limited liability partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, or other similar entity or organization, including a government or political subdivision, department, or agency of a government.

"Pharmacovigilance Agreement" means the agreement between Dynavax and Customer setting out the pharmacovigilance responsibilities of the Parties in relation to the Goods.

"Quality Agreement" means the quality agreement between Dynavax and the Dynavax CMO (the "**CMO Quality Agreement**") and/or the quality agreement between Customer and Dynavax, which shall be consistent in all respects with the CMO Quality Agreement, in each case setting out the responsibilities of the relevant parties in relation to quality as required for compliance with GMP.

"Quarter" means a period of three calendar months starting on 1st January, 1st April, 1st July and 1st October respectively in each calendar year. "**Q1**" shall refer to the first Quarter of the calendar year that it refers to, "**Q2**" shall refer to the second Quarter of the calendar year that it refers to, "**Q3**" shall refer to the third Quarter of the calendar year that it refers to, "**Q4**" shall refer to the fourth Quarter of the calendar year that it refers to. By way of illustration "Q4 2021" refers to the period starting 1st October 2021 and ending 31st December 2021. "**Quarterly**" shall be construed accordingly.

"Regulatory Approval" means in relation to a country and a Customer Product an approval (including emergency use approvals and conditional use approval) granted by the appropriate Regulatory Authority to develop, use and offer for sale and to sell the Customer Product in that country, whether filed or held in the name of Customer, an affiliate of Customer, or a third party on behalf or for the benefit of Customer or an affiliate of Customer as permitted by Sections 5.2 and 10.5.

"Regulatory Authority" means any competent government agency, regulatory authority or other administrative body, including WHO, responsible for regulating or otherwise exercising authority with respect to the development, manufacture, import, export, distribution, promotion, regulatory approval (including regulatory or marketing approval) or reimbursement of medicinal products.

"Remaining Stock" means (a) any Goods supplied by Dynavax to Customer or any of its affiliates pursuant to the Supply Agreement that remain in the possession or control of Customer or its affiliate as of the expiry or termination of the Supply Agreement and (b) any Goods that are delivered by Dynavax to Customer after the expiry or termination of this Agreement in accordance with Section 15.

"Selling Party" has the meaning provided in the definition of Net Sales.

"Sichuan Clover" means Sichuan Clover Biopharmaceuticals, Inc., an affiliate of Customer.

"Term" means the period beginning on the Effective Date and, subject to earlier termination of the Supply Agreement in accordance with Section 14 of these Conditions, expiring on the Expiration Date.

"UMIC Price" has the meaning given in Annex A.

"UMICs" has the meaning given in Annex A.

"Uncancellable" means with respect to orders for the manufacture of Dynavax Adjuvant placed with the Dynavax CMO in response to Orders from Customer, such orders that cannot be cancelled by Dynavax using commercially reasonable efforts, without incurring any cost to Dynavax in respect of such cancellation.

"Unit" of Customer Product means the amount of Customer Product required and sufficient for a single immunization of one (1) patient.

"Units Sold" means, for any accounting period, the number of Units of Customer Product sold or disposed of by the Selling Parties in such accounting period that are included in the computation of Net Sales. For clarity, "Units Sold" in an accounting period exclude Customer Products provided to third parties without charge in connection with research and development, clinical trials, compassionate use, humanitarian and charitable donations, or indigent programs in such accounting period.

"Unit Threshold Price" means [***] per Unit of Customer Product.

1.2 In the Supply Agreement:

(a) any headings in the Supply Agreement shall not affect the interpretation of the Supply Agreement;

(b) except where the Supply Agreement expressly specifies Business Days, all references to numbers of days in the Supply Agreement refer to calendar days;

(c) unless the context otherwise requires reference to the singular includes the plural and vice versa, any reference to a person includes a body corporate and words importing one gender include both genders;

(d) a reference to a statute or statutory provision is (unless otherwise stated) a reference to the applicable country's or regulatory jurisdiction's statute as it is then in effect, taking account of any amendment, extension, or re-enactment, and includes any subordinate legislation made under it that is then in effect;

(e) where the words "include(s)" or "including" are used in the Supply Agreement, they are deemed to have the words "without limitation" following them, and are illustrative and shall not limit the sense of the words preceding them;

(f) references to Annexes are references to Annexes of the Supply Agreement; and

(g) references to Sections are references to Sections of these Conditions (including all subsections thereof, if any).

2. Orders

2.1 As of the Effective Date, Customer is deemed to have ordered, and has committed to purchase, and Dynavax is deemed to have accepted such orders and committed to supply, the quantities of Dynavax Adjuvant specified in rows 1 through 4 of the table contained in Annex A of the Supply Agreement. On or within five (5) Business Days after the Effective Date, Customer shall submit Order Form(s) to Dynavax evidencing such commitment.

2.2 In addition to the Orders described in Section 2.1, Customer may issue to Dynavax from time to time during the Term one or more purchase orders (each an **"Order"** or **"Order Form"** in the form set out in Annex 3 of this Supply Agreement) for additional Goods during the Term, subject to Annex A, provided that an Order Form for such Goods shall be submitted to Dynavax in accordance with the timing given in Annex A, and Dynavax may, [***]. If and to the extent Dynavax believes it will be able to supply the quantity set forth in any such Order Form, Dynavax shall provide written confirmation of acceptance of such Order Form, including the quantity (if less than the full quantity) of Goods believes it will be able to supply, in writing within ten (10) Business Days after its receipt thereof. However, if Dynavax in good faith believes that it will not be able to supply the full quantity specified in an Order Form, Dynavax shall so notify Customer within such 10-Business Day period, indicating the quantity, if any, that Dynavax in good faith believes it will be able to supply by the specified delivery date.

2.3 For clarity, [***].

2.4 Any Orders for Goods submitted by Customer shall reference the Supply Agreement and shall be governed exclusively by the terms contained herein. Any term or condition in any Order Form, purchase order, confirmation, or other document furnished by Customer or Dynavax that is in any way inconsistent with, or in addition to, the terms and conditions set forth in the Supply Agreement is hereby expressly rejected.

3. Supply of Goods

3.1 Pursuant to the terms and conditions of the Supply Agreement, including Annex A, during the Term, (a) Dynavax (either itself or through the Dynavax CMO) shall manufacture or have manufactured, and supply or have supplied to Customer, the Dynavax Adjuvant in (i) the quantities specified in rows 1 through 4 of the table contained in Annex A of the Supply Agreement and (ii) the quantities (if any) set forth in any written confirmation of acceptance of Order delivered by Dynavax to Customer in response to an Order submitted by Customer pursuant to Section 2.2, and (b) Customer shall purchase from Dynavax all of such quantities of Dynavax Adjuvant.

3.2 Except to the extent otherwise expressly permitted by Section 4.9 in the event of [***] during the Term, and subject to [***], Customer (a) [***]b) [***], and (c) [***]. For clarity, [***].

3.3 In the event that, during or after the Term, Customer or any of its affiliates [***], including, but not limited to, [***], Dynavax shall have the right [***]: (a) [***]; (b) [***]; (c) [***]; (d) [***]; and (e) [***]; *provided, however,* that, notwithstanding any exercise by Dynavax of its rights set forth above in this Section 3.3, [***] subject to the terms and conditions of the Supply Agreement, and, [***], (i) [***] and (ii) [***]. For the avoidance of doubt, nothing in this Supply Agreement shall [***].

3.4 Dynavax and CEPI have entered into an agreement where CEPI has advanced a loan to Dynavax to cover the costs of at-risk manufacture of certain quantities of Dynavax Adjuvant in 2021 and Dynavax has agreed to reserve such quantities for purchase by CEPI partners. Upon written request by CEPI to Dynavax and Customer, CEPI may request amounts of Dynavax Adjuvant to be sent to destinations of its choice and Customer hereby consents to Dynavax providing such Dynavax Adjuvant. The quantities of Dynavax Adjuvant supplied to Customer in response to CEPI's request shall be considered supplied as part of an applicable Order placed by Customer.

3.5 Customer and Dynavax shall enter into a Quality Agreement and Pharmacovigilance Agreement, each in a form reasonable and typical for the industry, within thirty (30) days of the Effective Date. The Quality Agreement include provisions covering recalls of Customer Product, Goods and Customer Vaccine and the respective responsibilities of the parties.

3.6 Customer hereby covenants on behalf of itself and its affiliated entities not to, and not to permit or cause any of its affiliated entities, any of its permitted manufacturers or distributors, or any other third party to, directly or indirectly: (a) except as permitted by Section 3.7, modify or create derivatives from the Goods or attempt to reverse engineer, deconstruct or in any way determine the structure or composition of the Goods; (b) use the Goods with any product other than the Customer Product; (c) develop, use, or seek regulatory approval for, the Dynavax Adjuvant except for the Goods as incorporated in Customer Products; (d) sell, resell, transfer, convey, dispose of, or otherwise provide access to, the Goods except (i) for transfer of the Goods to Customer's contract manufacturer of Customer Products for the sole purpose of manufacturing Customer Products on behalf of Customer or (ii) as incorporated in Customer Products; or (e) use the Goods for any purpose other than the development, manufacture, use, sale, offer for sale and importation of Customer Products.

3.7 Customer may (i) perform an identity test and to test the concentration of Dynavax Adjuvant in the Goods, (ii) sell Customer Product including Goods (whether formulated with the Customer Vaccine

in the same vial or separately in an accompanying vial), and (iii) use Dynavax's test for concentration for the purpose set out in (i) above.

3.8 Dynavax shall [***] for Dynavax Adjuvant to Customer within ten (10) Business Days after this Supply Agreement became effective. In addition, within ten (10) Business Days after Customer's written request, Dynavax shall [***]. Customer shall be solely responsible, [***] for (a) as applicable, (i) [***], or (ii) [***], and (b) [***]. All [***] constitutes Confidential Information of Dynavax.

3.9 Dynavax represents and warrants to Customer that all Goods delivered by Dynavax hereunder will, as of the date of delivery: (a) conform to the applicable Goods Specifications then in effect; (b) have been manufactured, labelled, packaged, stored, handled and shipped in accordance with the Quality Agreement, GMP and other Applicable Laws; (c) not be adulterated or misbranded within the meaning of the United States Food, Drug and Cosmetic Act, as amended, and any regulations promulgated thereunder (the **"Act"**); (d) not be articles that, under the provisions of the Act, may not be introduced into interstate commerce; and (e) be free and clear of any lien or encumbrance.

3.10 Dynavax shall ensure that at all relevant and required times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Supply Agreement in respect of the Goods. Dynavax will provide to Customer such Dynavax Manufacturing Information as Customer may reasonably require for purposes of applying for, obtaining and maintaining clinical trial authorisations and Regulatory Approvals for Customer Products, provided that any such Dynavax Manufacturing Information provided by Dynavax to Customer shall not be used by Customer for any purpose other than as expressly permitted hereby or as otherwise required by Applicable Law, in each case, in relation to Customer Products. However, for the avoidance of doubt, Customer shall be solely responsible for obtaining and maintaining all licenses, permissions, authorisations, consents and permits necessary for the research, development, manufacture (excluding manufacture of the Goods), use, marketing, promotion, distribution, handling, storage, sale or other disposition of Customer Vaccine and Customer Products, including obtaining and maintaining Regulatory Approvals for Customer Products, and for complying with all Applicable Laws in connection with carrying out the foregoing activities.

3.11 EXCEPT AS EXPRESSLY SET FORTH IN THE SUPPLY AGREEMENT, NEITHER PARTY MAKES ANY REPRESENTATIONS OR EXTENDS ANY WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, AND EACH PARTY EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OF DESIGN, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THE INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES, OR ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICES.

4. Delivery of Goods

4.1 Dynavax shall ensure that:

(a) the Goods are properly packed and secured in a manner reasonably determined by Dynavax to be appropriate for shipping;

(b) each delivery of the Goods is accompanied by a COA as well as a delivery note which shows the date of the Order, the Order number (if any), the type and quantity of the Goods (including the code number of the Goods (where applicable)), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and

(c) it states clearly on the delivery note any requirement for the Customer to return any packaging material for the Goods to Dynavax. Any such packaging material shall only be returned to Dynavax at the cost of Dynavax.

4.2 Dynavax shall deliver the Goods within five (5) Business Days of the delivery date specified in the Order and to the location set out in the Order or as otherwise agreed by the Parties before delivery ("**Delivery Location**"). Dynavax shall not be responsible for any delay in delivery of Goods to the extent caused by a third party carrier.

4.3 Dynavax shall deliver all Goods [***], and title and risk of loss shall pass from Dynavax to Customer upon [***]. Customer shall be responsible for [***]. At Customer's request, Dynavax shall [***].

4.4 Dynavax shall not deliver the Goods in instalments without the Customer's prior written consent. Where it is agreed that the Goods are delivered by instalments, they may be invoiced and paid for separately.

4.5 Customer shall notify Dynavax in writing of any shortage in any shipment of Goods within thirty (30) days after receipt. In the event of an undisputed shortage, Dynavax shall make up the shortage at no cost to Customer, within thirty (30) Business Days if replacement Goods stock is available, or, if replacement stock is unavailable at such time, as soon as reasonably practicable after it becomes available.

4.6 Customer shall inspect all shipments of Goods promptly upon receipt, and shall notify Dynavax in writing in reasonable detail within thirty (30) days of receipt if Customer is rejecting any Goods for any Defect discovered in the course of such inspection. All Goods not rejected within such thirty (30)-day period will be deemed accepted. Customer acknowledges that [***] and hereby agrees that [***] Customer shall [***]. Dynavax shall [***]. Should Dynavax [***], Dynavax shall [***], and, [***], the Parties shall [***], *provided* that [***].

4.7 If Customer notifies Dynavax of any Defect in any Goods in accordance with Section 4.6, Dynavax shall have the right to inspect the Goods in question and Customer shall cooperate with Dynavax's inspection, including providing Dynavax with samples of the Goods in question for testing upon request. If Dynavax agrees with such notice of Defect and agrees that such Defect was caused by occurrences prior to the delivery of the Goods to Customer in accordance with Section 4.3, Dynavax shall, at its discretion and expense, either: (A) replace such Goods, at no additional expense to Customer, as soon as reasonably practicable and in any event within one hundred and eighty (180) days after receipt of notification of such Defect or (B) refund any portion of the applicable amount that has already been paid for such Goods. If necessary to produce replacement Goods for Goods properly and timely rejected in accordance with Section 4.6, Dynavax shall start another manufacturing run within three (3) months of notice of the Defect and shall deliver the new Goods to Customer within six (6) months of the notice of the Defect at no additional cost to the Customer.

4.8 In the event that Dynavax disagrees with Customer that the relevant Goods have a Defect, or believes in good faith that the Defect was caused by occurrences after the delivery of the Goods to Customer, it may require a sample of the allegedly nonconforming Goods to be delivered to a mutually acceptable independent testing laboratory for testing or, in the case of a dispute concerning compliance with GMP, an independent consultant for evaluation. Except in the case of manifest error, the determination of the laboratory or consultant, as applicable, will be final and binding on the Parties. The fees and expenses of such laboratory testing or consultant, as the case may be, shall be borne entirely by the Party against whom such laboratory's or consultant's determination is made. If such determination is against Customer, then such Goods shall be deemed accepted by Customer. If such determination is against Dynavax, then Dynavax shall

either refund the portion of the applicable amount that has already been paid by Customer for such Goods or replace such Goods, at no additional cost to Customer, as soon as reasonably practicable after replacement stock becomes available. If necessary to produce replacement Goods, Dynavax shall start another manufacturing run within three (3) months of such determination and shall deliver the new Goods to Customer within six (6) months of such determination at no additional cost to the Customer.

4.9 In the event that Dynavax has manufacturing and supply problems rendering it unable to supply during any Quarter the aggregate of the quantity of Goods ordered by Customer for delivery in such Quarter and the quantity of Dynavax Adjuvant ordered by Dynavax and third party purchasers for delivery in such Quarter, Dynavax shall allocate the available Dynavax Adjuvant among Customer, Dynavax and its affiliates, and third party purchasers *pro rata* on the basis of the volume of Goods ordered for delivery to Customer in that Quarter and the Dynavax Adjuvant volume requirements of Dynavax, its affiliates and third party purchasers for such Quarter. The allocation rules set forth in this Section 4.9 shall restart for each Quarter, with no carryover from any prior Quarter. In the event that Dynavax [***], then [***], in which event [***]. In the event of [***]:

(a) [***];

(b) [***]; and

(c) [***].

4.10 Notwithstanding anything to the contrary in the Supply Agreement, the remedies set forth in Sections 4.5, 4.6, 4.7, 4.8 and 4.9 will be Customer's sole and exclusive remedy and recourse with respect to shortages of and Defects in Goods delivered to Customer by Dynavax hereunder. Sections 4.5, 4.6, 4.7, 4.8 and 4.9 shall apply to any replacement Goods supplied by Dynavax.

4.11 Customer shall bear the risk of damage to the Goods after delivery to Customer pursuant to Section 4.3. If the Goods are damaged after delivery to Customer and Customer intends to order replacement Goods, Customer shall promptly notify Dynavax of the damage and any orders for replacement Goods, and Dynavax may, at its sole discretion but in good faith, accept or reject all or a portion of the order for the replacement Goods.

5. Intellectual Property

5.1 Customer acknowledges that the Dynavax Adjuvant is proprietary to Dynavax, that Dynavax shall at all times remain the sole and exclusive owner of all Intellectual Property Rights in and to the Dynavax Adjuvant, and that Customer shall not obtain any right, ownership interest, or, except as expressly set forth in Section 5.2, license, in or to the Dynavax Adjuvant as a result of its purchase, receipt or use of the Goods. Customer shall not file (or cause to be filed) any patent application claiming or disclosing the Dynavax Adjuvant, the composition or formulation thereof, or any method of use, manufacture or production of the Dynavax Adjuvant.

5.2 Subject to the terms and conditions of the Supply Agreement, Dynavax hereby grants to Customer during the Term, and, with respect to any Remaining Stock, for so long after expiry or termination of the Supply Agreement as such Remaining Stock remains in the possession or control of Customer or its affiliate, a limited non-exclusive, non-transferable (except in connection with a permitted assignment of the Supply Agreement), royalty-free (except to the extent expressly set forth in Section 6.4) license under Dynavax's Intellectual Property Rights in and to the Dynavax Adjuvant, solely to develop, make, have made, use, sell, have sold, offer for sale and import Customer Products; *provided, however,* that the license to make and have made Customer Products is limited to the right to make or have made Customer Products using the Goods supplied by Dynavax pursuant to the Supply Agreement, and [***]. The license granted to Customer hereunder excludes the right to sublicense, provided that (a) Customer may contract with third party

contract manufacturers for the manufacture on behalf of Customer of Customer Products using the Goods supplied hereunder, and (b) Customer may contract with a third party for that third party to be the Regulatory Approval applicant and Regulatory Approval holder for the Customer Product in accordance with Section 10.5, and such contracting in each case ((a) and (b)) shall not be considered a sublicense. The foregoing license shall not be construed to obligate Dynavax to disclose or transfer to Customer any such Intellectual Property Rights.

5.3 Dynavax acknowledges that the Customer Vaccine is proprietary to Customer, and that Customer shall at all times remain the sole and exclusive owner of all Intellectual Property Rights in and to the Customer Vaccine, and that Dynavax shall not obtain any right or ownership interest thereto.

5.4 The Parties hereby agree that all rights to any invention or discovery, whether or not patentable, that is made, discovered, conceived or reduced to practice by or on behalf of Customer in the course of using any of the Goods supplied hereunder or developing, using, manufacturing or having manufactured Customer Product, or in the course of activities conducted under either of the Collaboration Agreements, that, in each case, (i) [***] or (ii) [***], shall be [***], and [***].

5.5 Dynavax and Customer shall [***]. Customer hereby grants Dynavax (a) [***], and (b) [***]. For the avoidance of doubt, notwithstanding [***], Customer [***]. Dynavax hereby grants Customer (a) [***], and (b) [***]. For the avoidance of doubt, nothing in this Supply Agreement shall [***].

5.6 In the event a potential [***]Invention is created by a party, such party shall notify the other party without delay including provision of details of such [***]Invention. [***].

5.7 In the event a Party becomes aware of any suspected infringement of [***] by a third party it shall notify the other Party without delay. The Parties will discuss in good faith the best way forward.

5.8 No right or license under any Intellectual Property Rights of Dynavax or Customer is granted or shall be granted by implication, estoppel or otherwise. All such rights or licenses are or shall be granted only as expressly provided in the Supply Agreement.

5.9 This Article 5 supersedes the entirety of Article 6 of the Clinical Collaboration Agreement, which shall be of no further force or effect, and the entirety of Section 3 of the Collaboration Agreement, which shall be of no further force or effect.

6. Prices, Royalties and Payments

6.1 **Prices.** The prices for the Goods shall be as set forth in Annex A, subject to Section 6.3 and Section 14.1.

6.2 **Invoicing and Payment.**

a) In respect of the Goods requested in any Order, Dynavax shall invoice the Customer [***]% of the aggregate price of the Goods covered by an Order upon acceptance of such Order (which, except as otherwise provided in Annex A of the Agreement, shall be placed six (6) months in advance of delivery date in such Order) from Customer.

b) Upon release of the Goods by Dynavax, Dynavax shall issue an invoice to Customer for the remaining [***]% of the aggregate price of such Goods. In the case of Goods to be delivered in 2021, Dynavax will deliver such Goods to Customer in accordance with Section 4.3 [***]. In the case of Goods to be delivered in 2022, Dynavax will deliver such Goods to Customer in accordance with Section 4.3 [***]. The price of the Goods in each invoice delivered under paragraph (a) or this paragraph (b) of this Section 6.2 shall be based on the LMIC Price only.

Each invoice shall include such supporting information required by the Customer to verify the accuracy of the invoice, including but not limited to the relevant purchase order number.

c) In respect of Goods to be delivered in 2021, the Customer shall pay the amounts invoiced under paragraphs (a) and (b) of this Section 6.2 upon the earliest of (i) the first available trueing up exercise under Section 6.3, (ii) within ninety (90) days of Customer delivering the applicable Customer Product to a customer under the COVAX Supply Agreement or a Bilateral Agreement, or (iii) Customer's receipt of payment for the applicable Customer Product from a customer under the COVAX Supply Agreement or a Bilateral Agreement; *provided, however,* that [***].

d) In respect of Goods to be delivered in 2022, the Customer shall pay the amounts invoiced under paragraphs (a) and (b) of this Section 6.2 as soon as practicable after, and in any event within thirty (30) days of, the date of receipt of the invoice (regardless of whether or not Customer has received payment from any purchaser of Customer Product) to a bank account designated in writing by Dynavax. For the avoidance of doubt, Dynavax will not be obligated to submit to the Dynavax CMO an order for Goods ordered by Customer for delivery in 2022 prior to Dynavax's receipt from Customer of the initial [***]% of the aggregate price of such Goods (except [***]), and Dynavax will not be obligated to deliver such Goods to Customer until Customer pays the remaining [***] of the aggregate price of such Goods.

6.3 **Trueing up.** For purposes of this Section 6.3, a Unit of Customer Product will be deemed to have been "**Disposed**" of by or on behalf of Customer (including, for purposes of this Section 6.3, by Customer's affiliates and licensees) in a particular country (*i.e.*, an LMIC, UMIC or HIC, as applicable) if it is actually delivered or distributed by or on behalf of Customer in such country; *provided, however,* that a Unit of Customer Product will be deemed to have been "Disposed" of by or on behalf of Customer (including, for purposes of this Section 6.3, by Customer's affiliates and licensees) at the HIC Price if it is actually delivered or distributed by or on behalf of Customer for a private market in an LMIC or UMIC. Within twenty (20) Business Days of the end of each Quarter in which any Customer Product containing Dynavax Adjuvant supplied hereunder is delivered or distributed by or on behalf of Customer anywhere in the world, the Parties shall undertake a 'trueing up' exercise in order to establish whether the Customer has disposed of any Doses for which Customer paid the LMIC Price at prices that are deemed to exceed the LMIC Price.

For purposes of performing such trueing up exercise, within ten (10) Business Days after the end of each Quarter, the Customer shall report to Dynavax: (i) the total number of Doses of Dynavax Adjuvant contained in all Units of Customer Product Disposed of by or on behalf of Customer in LMICs (excluding private markets in LMICs) during such Quarter; (ii) the total number Doses of Dynavax Adjuvant contained in all Units of Customer Product Disposed of by or on behalf of Customer in UMICs (excluding private markets in UMICs) during such Quarter; and (iii) the total number Doses of Dynavax Adjuvant contained in all Units of Customer Product Disposed of by or on behalf of Customer (a) in HICs and (b) for private markets in LMICs or UMICs, in each case, during such Quarter.

With respect to Customer Product sold pursuant to the COVAX Supply Agreement the Parties agree that Clover shall use all reasonable efforts to obtain (including negotiating reasonable payment timelines and information rights from COVAX buyers to the extent possible) and provide the information required for the trueing up exercise as soon as possible. It is understood that it may be outside the timelines set out in this Section 6.3 and then such information will be taken into account in the next Quarter trueing up.

If the total number of Doses of Dynavax Adjuvant invoiced by Dynavax to Customer at the LMIC Price in such Quarter exceeds the total number of Doses of Dynavax Adjuvant contained in all Units of Customer Product Disposed of by or on behalf of Customer in LMICs (excluding private markets

in LMICs) during such Quarter, then Customer shall pay to Dynavax an additional amount (the "**Additional Amount**") calculated in USD (United States dollars) according to the following formula: **[(UMIC Price – LMIC Price) MULTIPLIED BY (W – X – Z))] PLUS [(HIC Price – LMIC Price) MULTIPLIED BY (W – X – Y)]**; where:

"W" equals the total number of Doses of Dynavax Adjuvant invoiced by Dynavax to Customer at the LMIC Price in such Quarter;

"X" equals the total number of Doses of Dynavax Adjuvant contained in all Units of Customer Product Disposed of by or on behalf of Customer in LMICs (excluding private markets in LMICs) in such Quarter;

"Y" equals the total number of Doses of Dynavax Adjuvant contained in all Units of Customer Product Disposed of by or on behalf of Customer in UMICs (excluding private markets in UMICs); and

"Z" equals the sum of (a) the total number of Doses of Dynavax Adjuvant contained in all Units of Customer Product Disposed of by or on behalf of Customer in HICs and (b) the total number of Doses of Dynavax Adjuvant contained in all Units of Customer Product Disposed of by or on behalf of Customer in private markets in any LMIC or UMIC.

The Customer shall provide to Dynavax promptly upon request all such additional information as Dynavax may request in order to determine the Additional Amount. The Additional Amount shall be due and payable within thirty (30) days of the date of receipt by Customer of an invoice from Dynavax for the Additional Amount.

6.4 **Royalties.** For any Quarter in which Net Sales Per Unit of Customer Product (other than Customer Product sold under any COVAX Supply Agreement or GAVI Customer AP Agreement) exceed the Unit Threshold Price, Customer shall pay to Dynavax a royalty equal to [***]% of the amount determined by multiplying (x) Adjusted Net Sales Per Unit in such Quarter, by (y) Units Sold in such Quarter. For clarity, no royalties shall be payable under this Section 6.4 (a) for any portion of Net Sales Per Unit of Customer Product that does not exceed the Unit Threshold Price or (b) on any sales of Customer Product under any COVAX Supply Agreement or GAVI Customer AP Agreement.

6.5 **Royalty Payments and Reports.** Royalties under Section 6.4 shall be calculated and reported for each Quarter and shall be paid within forty-five (45) days of the end of the Quarter. Within three (3) Business Days after the end of each Quarter, Customer shall deliver a written report to Dynavax with Customer's preliminary good faith estimate of Net Sales, Units Sold, Net Sales Per Unit and royalties for such Quarter. In addition, within ten (10) Business Days after the end of each Quarter, Customer shall deliver to Dynavax a report of Net Sales, Units Sold, and Net Sales Per Unit in the applicable Quarter in sufficient detail to permit confirmation of the accuracy of the payment due or made, including, on a Customer Product-by-Customer Product and country-by-country basis, the number of each type of Customer Product sold, gross sales, Net Sales and itemized deductions from gross sales (by major category as set forth in the definition of Net Sales), the royalties payable, and the exchange rates used.

6.6 **Late Payment.** If any payment due under the Supply Agreement is not paid when due in accordance with the applicable provisions of these Conditions, such payment shall accrue interest at a rate per annum that is [***] basis points (*i.e.*, [***] percentage points) above the then-current prime rate quoted by Citibank in New York City (or such other rate and source as the Parties mutually agree in writing) for the period from the due date for payment until the date of actual

payment; *provided, however,* that in no event shall such rate exceed the maximum legal annual interest rate. The payment of such interest shall not limit Dynavax from exercising any other rights it may have as a consequence of the lateness of any payment.

6.7 **VAT.** All amounts payable by the Customer under the Supply Agreement are exclusive of amounts in respect of valued added tax (or national equivalent) applicable to the Goods from time to time ("**VAT"**). Where any taxable supply for VAT purposes is made under the Supply Agreement by Dynavax to the Customer, the Customer shall, on receipt of a valid VAT invoice from Dynavax, pay to Dynavax such additional amounts in respect of VAT as are chargeable on the supply of the Goods at the same time as payment is due for the supply of the Goods.

6.8 **Other taxes or duties.** Notwithstanding the above, all amounts payable by the Customer under the Supply Agreement are exclusive of any applicable sales tax, or any other taxes (other than income taxes imposed on Dynavax).

6.9 **Audits**.

(a) Customer shall keep, and shall cause its affiliates and licensees to keep, complete and accurate records pertaining to the sale or other disposition of Customer Product in sufficient detail to permit Dynavax to confirm (i) the country in which each Unit of Customer Product is Disposed of; and (ii) the accuracy of all royalties due hereunder; in each case, for at least three (3) full calendar years following the end of the calendar year to which they pertain. Dynavax shall have the right, once annually, to cause an independent, certified public accountant of international standing and reasonably acceptable to Customer to audit such records to confirm Additional Amounts, Net Sales, Units Sold, Net Sales Per Unit, Adjusted Net Sales per Unit and royalties for a period covering not more than the preceding three (3) full calendar years. No calendar year shall be subject to audit under this section more than once. Such audits may be exercised during normal business hours upon reasonable prior written notice to Customer. The auditor will execute a reasonable written confidentiality agreement with Customer and will disclose to Dynavax only such information as is reasonably necessary to provide Dynavax with information regarding any discrepancies between amounts reported and actually paid and amounts payable under the Supply Agreement. The auditor will send a copy of the report to Customer at the same time it is sent to Dynavax. The report sent to both Parties will include the methodology and calculations used to determine the results. If such audit reveals that Customer has failed to accurately report information pursuant to Section 6.3 or Section 6.5 or to make any Additional Amount or royalty payment (or portion thereof) when due under the Supply Agreement, then Customer, within thirty (30) days after receipt of the final audit report, shall pay to Dynavax any underpaid amounts due under these the Supply Agreement, together with interest on such underpaid or late amounts calculated in accordance with Section 6.6. Dynavax shall bear the full cost of such audit unless such audit discloses an underpayment by Customer of more than 5% of the amount due for any calendar year under the Supply Agreement, in which case Customer shall bear the full cost of such audit. If such audit discloses an overpayment by Customer, then Customer will deduct the amount of such overpayment from amounts otherwise owed to Dynavax under the Supply Agreement.

(b) Dynavax shall keep appropriate and complete records relating to the manufacture of the Goods supplied under this Supply Agreement as required for compliance with GMP. Customer and/or its authorized representative, shall be entitled once a year, upon twenty (20) days' notice to Dynavax, during normal business hours to audit the applicable documentation to ensure compliance with GMP and other Applicable Laws. Dynavax shall provide all reasonable assistance to Customer and/or its authorized representative to have access to the applicable documentation. In the event that Customer has reasonable

cause to suspect a breach of this Supply Agreement by Dynavax, Customer shall only be required to give forty-eight (48) hours' notice to conduct such an audit and such audit may be in addition to the once a year audit limitation mentioned above.

(c) Dynavax shall, where permitted and possible, and as soon as reasonably practicable, notify the Customer if it receives notification from any Regulatory Authority or any other authority of an inspection which specifically relates to or impacts on the manufacturing or supply of the Goods under this Agreement and will promptly provide to the Customer extracts or copies of all correspondence, reports, notices, findings and other material pertinent to such inspections received or produced by Dynavax, but only if such inspection relates to or impacts the manufacturing and/or supply of the Goods under this Supply Agreement (and the scope of such disclosure does not include the aforementioned information to the extent it specifically relates to services provided to other Dynavax clients).

7. Covenants and Warranties

7.1 In addition to any covenants made by it elsewhere in the Supply Agreement, each Party hereby covenants to the other Party that:

(a) neither such Party nor any of its affiliates will, directly or indirectly through affiliates or third parties, pay, promise or offer to pay, or authorize the payment of, any money or give any promise or offer to give, or authorize the giving of anything of value to a public official or entity or other Person for purpose of obtaining or retaining business for or with, or directing business to, any Person, including such Party and its affiliates, nor will such Party or any of its affiliates directly or indirectly promise, offer or provide any corrupt payment, gratuity, emolument, bribe, kickback, illicit gift or hospitality or other illegal or unethical benefit to a public official or entity or any other Person;

(b) neither such Party nor any of its affiliates (or any of their respective employees and contractors), in connection with the exercise of such Party's rights or performance of such Party's obligations under the Supply Agreement, shall cause the other Party to be in violation of Anti-Corruption Laws or Export Control Laws;

(c) such Party shall immediately notify the other Party if such Party has any information that there is or is likely to be a violation of Anti-Corruption Laws or Export Control Laws in connection with the exercise of such Party's rights or performance of such Party's obligations under the Supply Agreement; and

(d) each Party shall undertake due diligence activities appropriate to its activities under the Supply Agreement in accordance with applicable Anti-Corruption Laws and related guidance, including guidance issued by the U.S. Department of Justice Criminal Division (entitled "Evaluation of Corporate Compliance Programs") as amended from time to time, concerning the Foreign Corrupt Practices Act (15 U.S.C. §§78dd-1, et. seq.), and issued by the U.K. Ministry of Justice concerning the UK Bribery Act 2010 as amended from time to time, such activities to include the conduct of appropriate due diligence in relation to third party contractors, and shall collaborate with the other Party to ensure such compliance.

Each Party has the right, upon reasonable notice and at its sole expense, to conduct, or have conducted by an independent third party reasonably acceptable to the other Party, no more than once every three years (except for cause), a reasonable and customary audit of the other Party for the purposes of monitoring compliance with this Section 7.1, and the other Party shall, subject to compliance with Applicable Laws, provide to such Party any relevant documents reasonably requested by such Party in relation thereto. Save in respect of such an audit for cause, the auditing Party shall reimburse the audited Party for reasonable and documented external costs and expenses incurred by the audited Party in complying with the foregoing requirements.

7.2 Dynavax warrants and represents to Customer that:

(a)it has the requisite power and authority to enter into this Supply Agreement and to perform its obligations hereunder;

(b)it holds all permits and licenses which are necessary to fulfil its obligations hereunder;

(c)there are no agreements between Dynavax and any third party that conflict with this Supply Agreement.

7.3 Customer warrants and represents to Dynavax that:

(a) it has the requisite power and authority to enter into this Supply Agreement and to perform its obligations hereunder; and

(b) there are no agreements between Customer and any third party that conflict with this Supply Agreement.

8. Indemnity, [***] and Insurance.

8.1 **Indemnity**.

(a) Dynavax shall indemnify and hold Customer harmless from all losses, liabilities, damages and expense, including reasonable attorneys' fees and costs (collectively, "**Losses**"), incurred as a result of any claim, demand, action or other proceeding by a third party (a "**Claim**") to the extent caused by (i) the negligence or wilful misconduct of Dynavax, (ii) any breach by Dynavax of its covenants, representations, warranties or other obligations hereunder, or (iii) the infringement of the Intellectual Property Rights of a third party arising from Dynavax's manufacture of Goods hereunder or the use, sale, offer for sale or import of the Goods by Customer or on its behalf as a component of the Customer Product; in each case (i), (ii) and (iii) above, other than to the extent Customer is obligated to indemnify Dynavax under Section 8.1(b) below.

(b) Customer shall indemnify and hold Dynavax harmless from all Losses incurred as a result of any Claim to the extent caused by (i) the negligence or wilful misconduct of Customer, (ii) any breach by Customer of its covenants, representations, warranties or other obligations hereunder, (iii) the infringement of the Intellectual Property Rights of a third party arising out of the manufacture (excluding manufacture of the Goods), use, sale, offer for sale or import of Customer Vaccine, including Customer Vaccine sold by Customer or on its behalf that is packaged with the Goods in the Customer Product (whether the Customer Vaccine is formulated with the Goods in the same vial or is in vials packaged with separate vials of the Goods), (iv) the research, development, manufacture (excluding manufacture of the Goods), use, marketing, promotion, distribution, handling, storage, sale or other disposition of Customer Vaccine by or on behalf of Customer, including Customer Vaccine sold by Customer or on its behalf that is packaged with the Goods in the Customer Product (whether the Customer Vaccine is formulated with the Goods in the same vial or is packaged in vials with separate vials of the Goods); or (v) [***]; in each case (clauses (i) through (v) above), other than to the extent such Losses are caused by (A) the negligence or wilful misconduct of Dynavax, (B) any breach by Dynavax of its covenants, representations, warranties or other obligations hereunder, or (C) the infringement of the Intellectual Property Rights of a third party arising from Dynavax's manufacture of Goods hereunder or the use, sale, offer for sale or import of the Goods by Customer or on its behalf as a component of the Customer Product.

(c) In the event a Party (the **"Indemnified Party"**) seeks indemnification under Section 8.1(a) or Section 8.1(b), the Indemnified Party shall: (i) inform the other Party (the **"Indemnifying Party"**) of a claim as soon as reasonably practicable after it receives

notice of the claim (it being understood and agreed, however, that the failure by an Indemnified Party to give notice of a claim as provided in this Section 8.1(c) shall not relieve the Indemnifying Party of its indemnification obligation under the Supply Agreement except and only to the extent that such Indemnifying Party is actually damaged as a result of such failure to give notice); (ii) permit the Indemnifying Party to assume direction and control of the defence of the claim (including the right to settle the claim solely for monetary consideration), using counsel reasonably satisfactory to the Indemnified Party, at the Indemnifying Party's sole cost and expense; and (iii) cooperate as requested (at the expense of the Indemnifying Party) in the defence of the claim. If the Indemnifying Party does not assume control of such defence within thirty (30) days after receiving notice of the claim from the Indemnified Party, the Indemnified Party shall control such defence and, without limiting the Indemnifying Party's indemnification obligations, the Indemnifying Party shall reimburse the Indemnified Party for all costs, including reasonable attorney fees, incurred by the Indemnified Party in defending itself within thirty (30) days after receipt of any invoice therefor from the Indemnified Party together with reasonable supporting documentation. The Party not controlling such defence may participate therein at its own expense. The Party controlling such defence shall keep the other Party advised of the status of such action, suit, proceeding or claim and the defence thereof and shall consider recommendations made by the other party with respect thereto. The Indemnified Party shall not agree to any settlement of such action, suit, proceeding or claim without the prior written consent of the Indemnifying Party, which shall not be unreasonably withheld, delayed or conditioned. The Indemnifying Party shall not agree to any settlement of such action, suit, proceeding or claim or consent to any judgment in respect thereof that (i) does not include a complete and unconditional release of the Indemnified Party from all liability with respect thereto, (ii) imposes any liability or obligation on the Indemnified Party, or (iii) acknowledges fault by the Indemnified Party without the prior written consent of the Indemnified Party.

8.2 [***].

8.3 **Exclusions.** Neither Party shall be liable to the other Party for any loss of an indirect or consequential nature, nor for any loss of turnover, profits, business or goodwill, whether in contract, warranty, negligence, tort, strict liability or otherwise, arising out of any breach of or failure to perform any of the provisions of the Supply Agreement.

8.4 **Exclusions from** [***]**.** Notwithstanding the foregoing, nothing in the Supply Agreement shall limit the liability of either Party in respect of:

(a) personal injury or death arising out of that Party's negligence or wilful misconduct; or

(b) that Party's fraud or fraudulent misrepresentation or wilful misconduct; or

(c) any other liability of such Party which cannot be limited or excluded as a matter of law; or

(d) any material breach by such Party of applicable Data Protection Legislation; or

(e) any material breach by such Party of applicable Anti-corruption Laws;

(f) any indemnities of such Party set out under Section 8.1; or

(g) any breach by such Party of confidentiality obligations set out under Section 10.

8.5 **Mitigating steps.** Each Party shall at all times take all reasonable steps to minimise and mitigate any loss or damage for which the relevant Party is entitled to bring a claim against the other Party pursuant to the indemnities in these Conditions.

8.6 This Section 8 shall survive termination or expiration of the Supply Agreement.

9. Insurance

[***]will, at its own expense through a third party insurer or through self-insurance, obtain and maintain [***], (a) product liability and general liability insurance providing protection in the amount of [***], and (b) workers' compensation insurance with not less than the minimum coverage limit as required by law. Upon written request [***], [***]will furnish [***], a certificate of insurance evidencing compliance with the provisions of this Section. The existence of such coverage will in no way limit [***]liability or obligations expressly set forth in the Supply Agreement.

10. Confidentiality

10.1 The Customer undertakes that it shall not at any time during the Term and for a period of seven (7) years after expiry or termination of the Supply Agreement, disclose to any person any Confidential Information (including for the avoidance of doubt any personal data) of Dynavax, except as permitted by Section 10.3 and 10.4; *provided, however,* that Customer's obligations of non-disclosure under the Supply Agreement, including this Section 10, with respect to any Dynavax Manufacturing Information, and Customer's obligations of non-use under the Supply Agreement, including Section 3.3 and Section 3.10, with respect to any Dynavax Manufacturing Information, shall continue beyond such seven- (7-) year period after expiry or termination of the Supply Agreement until such time as such Dynavax Manufacturing Information becomes publicly known through no fault or omission on the part of Customer or any of its affiliates.

10.2 Dynavax undertakes that it shall not at any time during the Term and for a period of seven (7) years after expiry or termination of the Supply Agreement, disclose to any person any Confidential Information (including for the avoidance of doubt any personal data) of the Customer except as permitted by Section 10.3.

10.3 The Receiving Party may disclose Confidential Information of the Disclosing Party:

(a) to the Receiving Party's employees, officers, representatives, professional advisers, or permitted subcontractors, who need to know such information for the purposes of exercising the Receiving Party's rights or carrying out its obligations under the Supply Agreement. The Receiving Party shall ensure that its employees, officers, representatives or advisers to whom it discloses the Disclosing Party's Confidential Information comply with this Section 10; and

(b) as may be required by Applicable Laws, a court of competent jurisdiction or any governmental authority or Regulatory Authority, or the rules of any securities exchange on which the Receiving Party's securities are listed; provided that the Receiving Party will, except where impermissible, give reasonable advance notice to the Disclosing Party of such required disclosure and comply with all reasonable requests of the Disclosing Party with respect to maintaining confidence of such Confidential Information and in any event shall use at least the same diligent efforts to secure confidential treatment of such Confidential Information as the Receiving Party would use to protect its own confidential information of a similar nature, but in no event less than reasonable efforts; and

(c) to actual and bona fide potential investors, acquirors, and other financial partners for the purpose of evaluating or carrying out an actual or potential investment or acquisition, in each case under reasonable written obligations of confidentiality and non-use; provided that the Receiving Party limits such disclosure to the maximum extent possible and redacts the financial terms and other provisions of the Supply Agreement that are not reasonably required to be disclosed in connection with such potential investment or acquisition.

10.4 Subject to Sections 3.3 and 3.10, Dynavax gives consent for Customer to disclose Dynavax Confidential Information to Regulatory Authorities solely to the extent necessary to apply for and obtain and maintain clinical trial authorisations and Regulatory Approvals for the Customer Product.

10.5 It is understood that in the event that Customer does not have an affiliate in a particular country, Customer may, where required by the Applicable Laws, contract with a third party for that third party to be the Regulatory Approval applicant and Regulatory Approval holder for the Customer Product in that country.

10.6 Dynavax shall keep Customer informed of all matters relating to the manufacturing and supply of the Dynavax Adjuvant by or on behalf of Dynavax that would reasonably be expected to require an amendment to, or have an adverse impact, on the regulatory submissions of the Customer for the Customer Product.

11. Publications and announcements

11.1 Except as required by law or any competent government authority or Regulatory Authority or in compliance with this Section 11, the Parties shall consult on and agree in writing upon the form of all abstracts, reports, presentations, press releases, publications and public announcements concerning the Supply Agreement or its subject matter (each a "**Publication**").

11.2 Neither Party shall use the names, logos or trademarks of the other in any Publication disclosure, advertising, promotion, commercially-related purposes or presentation without the named Party's prior express written consent, except as expressly provided for in this Section 11.

11.3 Notwithstanding the foregoing, the Customer may issue a Publication regarding Customer Vaccine at any time provided that such Publication does not include any Confidential Information of Dynavax.

12. Compliance with relevant laws and policies

12.1 In performing its obligations under the Supply Agreement, Dynavax and Customer shall comply with all Applicable Laws.

12.2 Dynavax shall manufacture, sample, test and store all Goods and provide a COA in accordance with the Quality Agreement.

12.3 On reasonable prior notice, Dynavax shall provide all reasonable co-operation to any inspection by any Regulatory Authority, and shall permit such Regulatory Authority access to the Dynavax CMO manufacturing site and all relevant records necessary or reasonably desirable, in each case, in support of the use of the Goods as expressly permitted by the Supply Agreement and shall share the results of such inspection promptly with Customer.

12.4 If any Regulatory Authority notifies Dynavax CMO or Dynavax of a violation or deficiency in compliance which would impact the use of the Goods as expressly permitted by the Supply Agreement, Dynavax shall share such notification with Customer within three (3) days of receipt of the same.

13. Data protection

13.1 Both Parties will comply with all applicable requirements of the Data Protection Legislation. Except as specifically agreed otherwise in writing between the Parties, it is hereby acknowledged and

agreed that (i) no personal data will be shared between the Parties under or in connection with the Supply Agreement; and (ii) if the sharing of personal data between the Parties is strictly needed in order to perform their obligations under the Supply Agreement, a specific additional written data sharing agreement (incorporating such terms as may be required by applicable Data Protection Legislation) shall be agreed and signed by the Parties before any such sharing of personal data.

14. Extension of Expiration Date; Termination

14.1 The Parties may extend the Expiration Date of the Supply Agreement by mutual written agreement on commercially reasonable terms to be negotiated in good faith, such agreement not to be unreasonably withheld by Dynavax.

14.2 Without affecting any other right or remedy available to it, either Party may terminate the Supply Agreement with immediate effect by giving written notice to the other Party if:

(a) the other Party commits a material breach of any term of the Supply Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of thirty (30) days after being notified to do so;

(b) the other Party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

(c) the other Party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business;

(d) the other Party or any of its directors, employees, or consultants have been found to have violated any applicable Anti-Corruption Laws.

14.3 Customer has the right to terminate this Supply Agreement upon thirty (30) days' written notice to Dynavax in the event:

(a) WHO formally denies Customer pre-qualification for the Customer Product;

(b) GAVI informs the Customer that GAVI will not enter into a GAVI Customer AP Agreement;

(c) there is a significant safety concern related to the Customer Product or the Goods or the Customer Vaccine that cannot be resolved to a Regulatory Authority's satisfaction; or

(d) a Regulatory Authority directs that the Customer Product is recalled or removed from the market.

15. Consequences of termination or expiration

15.1 Neither expiration nor termination of the Supply Agreement shall relieve either Party of any obligation or liability accruing under the Supply Agreement prior to such expiration or termination, nor shall expiration or termination of the Supply Agreement preclude either Party from pursuing all rights and remedies it may have under the Supply Agreement, at law or in equity, with respect to breach of the Supply Agreement.

15.2 Upon the earlier of expiration or termination of this Agreement for any reason, each party shall promptly return to the other party, or delete or destroy, in each such party's discretion, all records and materials in such party's possession or control containing Confidential Information of the other party; provided that each party shall be permitted to retain one (1) copy of such Confidential

Information for the sole purpose of performing, or monitoring compliance with, any continuing obligations under this Agreement, as required by Applicable Law, or for legal archival purposes, which copy shall remain subject to the non-use and non-disclosure provisions contained herein.

15.3 In the event that Customer terminates this Supply Agreement pursuant to Section 14.2, Customer shall only be obligated to pay Dynavax for quantities of Goods set forth in Orders accepted (or deemed accepted) by Dynavax and not yet delivered to Customer to the extent that such quantities are Uncancellable under Dynavax's agreement with Dynavax CMO for such Goods.

15.4 Upon termination of this Supply Agreement (a) for any reason, Customer shall pay all outstanding invoices; and (b) by Customer pursuant to Section 14.2(a), Customer shall have the right to request that Dynavax manufacture and deliver to Customer, in which case Dynavax shall manufacture and deliver to Customer, the Goods ordered under all outstanding accepted Orders on the relevant scheduled delivery dates, and Customer shall pay Dynavax the remaining [***] percent ([***]%) of the aggregate price of such Goods in accordance with Section 6.2, and any true-up amount due under Section 6.3.

15.5 Customer shall be entitled to sell any existing Customer Product in stock and also use any Goods in its stock to manufacture Customer Product for sale, subject in each case to Customer's payment and reporting obligations under Article 6 with respect to the sale of any such Customer Product.

15.6 The Parties' rights and obligations under Annex A (with regard to pricing of Doses of Dynavax Adjuvant and royalties on applicable Net Sales) and under Sections 1, 3.3, 3.6, 3.7, 3.10, 3.11, 4.6, 4.7, 4.8, 4.9 (solely in the event of [***]), 4.10, 4.11, 5, 6.2, 6.3, 6.4, 6.5, 6.6, 6.7, 6.8, 6.9, 7, 8, 9, 10, 11, 12.4, 13, 15 and 17 of these Conditions shall survive expiration or termination of the Supply Agreement.

16. Force Majeure

16.1 Provided it has complied with the remaining provisions of this Section 16, if a Party is prevented, hindered or delayed in or from performing any of its obligations under the Supply Agreement by a Force Majeure Event ("**Affected Party**"), the Affected Party shall not be in breach of the Supply Agreement or otherwise liable for any such failure or delay in the performance of such obligations.

16.2 The corresponding obligations of the other Party will be suspended to the same extent as those of the Affected Party.

16.3 The Affected Party shall:

(a) as soon as reasonably practicable after the start of the Force Majeure Event but not later than three (3) Business Days from its start, notify the other Party in writing of the Force Majeure Event, the date on which it started, its likely potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the Supply Agreement; and

(b) use all reasonable endeavours to mitigate the effect of the Force Majeure Event.

16.4 An Affected Party cannot claim relief if the Force Majeure Event is attributable to the Affected Party's wilful act.

16.5 The Affected Party shall notify the other Party in writing as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under the Supply Agreement. Following such notification, the Supply Agreement shall

continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the Parties.

16.6 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than three (3) months, the Party not affected by the Force Majeure Event may terminate the Supply Agreement by giving four (4) weeks' notice to the Affected Party.

17. General

17.1 **Assignment.** Neither the Supply Agreement nor any rights or obligations hereunder may be assigned by a Party without the prior written consent of the other Party, except that a Party may, without the other Party's consent, assign the Supply Agreement and all of its rights and obligations hereunder: (a) in connection with the transfer or sale of all or substantially all of the business or assets of such Party relating to the Supply Agreement to a third party, whether by merger, consolidation, divesture, restructure, sale of stock, sale of assets, or otherwise; or (b) to an affiliate of such Party, provided that no such assignment shall relieve the assigning Party of its obligations hereunder.

17.2 **Subcontracting.** The Parties agree that Dynavax may subcontract the manufacture of Goods under the Supply Agreement to the Dynavax CMO. If Dynavax proposes to subcontract any of its other material obligations under the Supply Agreement, Dynavax shall provide prior written notice to Customer of such subcontracting and identity of the subcontractor. Dynavax shall remain responsible for all the acts and omissions of the Dynavax CMO and any of its other subcontractors as if they were its own. Customer or its affiliates or subcontractors may market, sell and otherwise commercialise the Customer Product.

17.3 **Notices.**

(a) Any notice to be given pursuant to the Supply Agreement shall be in writing in the English language to the address of the recipient Party set out in the Order or as a Party may otherwise from time to time designate by written notice to the other Party and shall be delivered:

(i) personally, in which case the notice will be deemed to have been received at the time of delivery;

(ii) by pre-paid, first-class post if the notice is being sent to an address within the country of posting, in which case the notice will be deemed to have been received at 09:00 in the country of receipt on the second (2nd) Business Day in the country specified in the recipient's address for notices after the date of posting; or

(iii) by international standard post if being sent to an address outside the country of posting, in which case the notice will be deemed to have been received at 09:00 in the country of receipt on the seventh (7th) Business Day in the country specified in the recipient's address for notices after the date of posting.

(b) To prove service of notice, it is sufficient to prove that the envelope containing the notice was properly addressed and posted or handed to the courier.

(c) A notice given under the Supply Agreement is not valid if sent electronically or by fax.

17.4 **Severance.** If any provision or part-provision of the Supply Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Supply Agreement. If any provision of the Supply Agreement is deemed deleted under this Section 17.4 the Parties shall negotiate in good faith to agree a replacement provision

that, to the greatest extent possible, achieves the intended commercial result of the original provision.

17.5 **Waiver.** A waiver of any right or remedy under the Supply Agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a Party to exercise any right or remedy provided under the Supply Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Supply Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

17.6 **No partnership or agency.** Nothing in the Supply Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the Parties, constitute either Party the agent of the other, or authorise either Party to make or enter into any commitments for or on behalf of the other Party. Each Party confirms it is acting on its own behalf and not for the benefit of any other person.

17.7 **Entire agreement.** The Supply Agreement constitutes the entire agreement and understanding between the Parties with respect to the subject matter hereof, and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter, including the NDA, it being understood that information disclosed by a Party to the other Party pursuant to the NDA shall be subject to the non-disclosure and non-use obligations of the Parties under this Agreement; provided that, except as set forth in Section 5.9, the Collaboration Agreements shall continue in full force and effect in accordance with their respective terms.

17.8 **Rights of Third Parties.** This Agreement is neither expressly nor impliedly made for the benefit of any party other than those executing it.

17.9 **Variation.** No variation, amendment, modification or supplement to the Supply Agreement shall be valid unless and until it is made in writing and signed by a duly authorised representative of each Party.

17.10 **Further Assurances.** Each Party will execute, acknowledge and deliver such further instruments, and do all such other ministerial, administrative or similar acts, as may be reasonably necessary or appropriate in order to carry out the expressly stated purposes and the clear intent of this Supply Agreement.

17.11 **Successors.** This Supply Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

17.12 **Governing law.** The Supply Agreement, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales without giving effect to any choice of law or conflict of law provisions or rules that would cause the application of the laws of any other jurisdiction. The U.N. Convention on Contracts for the International Sale of Goods (1980) is excluded and will not apply to the Supply Agreement. Nothing in this Supply Agreement shall prevent either Party from applying to a court of law for injunctive relief.

17.13 **Dispute resolution procedure**

(a) **Escalation process**. In the event of any disputes, controversies or differences between the Parties, arising out of, in relation to, or in connection with this Agreement, including

any alleged failure to perform, or breach, of this Agreement, or any issue relating to the validity, construction, interpretation, enforceability, breach, performance, application, or termination of this Agreement a ("**Dispute**"), then upon the written request of either Party, the Parties agree to meet and discuss in good faith an amicable resolution thereof, which good faith efforts include at least one in-person or videoconference meeting between the Executive Officers of each Party. All Disputes not resolved within thirty (30) days following the written request for amicable resolution shall be submitted to the International Court of Arbitration of the International Chamber of Commerce ("**ICC**") and shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce (the "**Rules**") (which Rules are deemed to be incorporated by reference into this Agreement). The following provisions shall apply, unless the Parties agree otherwise:

(i) The arbitral tribunal shall be composed of one or more arbitrators appointed in accordance with the Rules;

(ii) The seat, or legal place, of arbitration shall be London, England;

(iii) The language of the arbitration shall be English;

(iv) The tribunal shall draw up and submit to the Parties for signature the Terms of Reference within sixty (60) days of receiving the file;

(v) The arbitration award shall be final and binding on the Parties, and judgment upon the award may be entered by any court having jurisdiction thereof; and

(vi) Except as may be required by Applicable Laws, neither a Party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both Parties. For clarity, no award or procedural order made in the arbitration shall be published.

CERTAIN CONFIDENTIAL INFORMATION CONTAINED IN THIS DOCUMENT, MARKED BY [***], HAS BEEN OMITTED BECAUSE IT IS NOT MATERIAL AND WOULD LIKELY CAUSE COMPETITIVE HARM TO THE COMPANY IF PUBLICLY DISCLOSED.

Annex C: Purchase Order Template

PURCHASE ORDER #XXXX
(Please add this number on all delivery documents and invoices)

For Dynavax Adjuvant ordered pursuant to the Supply Agreement, effective as of June 29, 2021, between: (1) Zhejiang Clover Biopharmaceuticals, Inc. and Clover Biopharmaceuticals (Hong Kong) Co., Limited; and (2) Dynavax Technologies Corporation.
[*Note: Information provided in table below must be consistent with terms of Supply Agreement.*]

Customer Name
Customer Address Date
Customer Phone
Customer Email

Order #	Quarter (manufacturing)	Order Quantity (million Doses [kg])	Order Due Date	Delivery Date	Price Per Dose (based on LMIC Price)	Amount
					Total	

Delivery Address:

Exhibit 10.7

CERTAIN CONFIDENTIAL INFORMATION CONTAINED IN THIS DOCUMENT, MARKED BY [***], HAS BEEN OMITTED BECAUSE IT IS NOT MATERIAL AND WOULD LIKELY CAUSE COMPETITIVE HARM TO THE COMPANY IF PUBLICLY DISCLOSED.

Supply Agreement

Supply Agreement Summary

CUSTOMER INFORMATION	
Name:	Biological E. Limited ("**Customer**")
Mailing Address:	18/1&3, Azamabad Hyderabad-500020, Telangana India
Designated Contact:	Raju PV Sr. Vice President, SCM Raju.PV@biologicale.com +91 7702591888

SUPPLIER INFORMATION	
Name:	Dynavax Technologies Corporation ("**Dynavax**")
Mailing Address:	2100 Powell Street, Suite 900, Emeryville, CA 94608, USA
Designated Contact:	David Novack dnovack@dynavax.com +1-617-640-7427

AGREEMENT INFORMATION	
Parties:	Customer and Dynavax (each a **"Party"** and collectively the **"Parties"**)
Effective Date:	Date on which the Supply Agreement is signed by second Party.
Expiration Date:	31 December 2022, subject to extension by mutual written agreement of the Parties in accordance with Section 14.1 of Annex B hereto.
Currency for all prices, payments and charges:	USD (United States Dollars)
The supply agreement (the **"Supply Agreement"**) between Customer and Dynavax consists exclusively of and incorporates by reference:	- This Supply Agreement Summary - Annex A: Scope and Pricing Schedule - Annex B: General Terms and Conditions for the Supply of Dynavax Adjuvant

Signed for and on behalf of **Dynavax Technologies Corporation** by:	Signed for and on behalf of **Biological E. Limited** by:
Signature: /s/ David Novack	Signature: /s/ Mahima Datla
Name: David Novack	Name: Mahima Datla
Title: President and COO	Title: Managing Director
Date: Jul-01-2021	Date: Jul-01-2021

Annex A: Scope and Pricing Schedule

Dynavax Adjuvant Name:	Dynavax CpG 1018
Form of Supply:	Liquid bulk formulation of Dynavax CpG 1018 in [***], at a concentration of [***] mg/ml, provided that, for each full batch of Dynavax CpG 1018 manufactured, the [***]. Must be ordered in whole numbers of containers.
Dose:	Dose means [***], including overage.
Adjuvant Price per Dose:	**LMIC Price.** For Dynavax Adjuvant in Customer Product(s) sold in countries supported by the Advance Market Commitment of the COVAX Facility as listed at the following website: https://www.gavi.org/news/media-room/92-low-middle-income-economies-eligible-access-covid-19-vaccines-gavi-covax-amc ("**LMICs**"); but excluding Dynavax Adjuvant in Customer Product(s) sold in private markets within LMICs: • USD [***] per Dose [***]; and • USD [***] per Dose [***]; in each case, the **"LMIC Price"** for the applicable Dose. **UMIC Price.** For Dynavax Adjuvant in Customer Product(s) sold in countries listed at the following website (and as updated from time to time)as "upper middle income" countries: https://data.worldbank.org/income-level/upper-middle-income ("**UMICs**") or in private markets within LMICs; but excluding Dynavax Adjuvant in Customer Product(s) sold in private markets within UMICs: • USD [***] per Dose [***]; and • USD [***] per Dose [***]; in each case, the **"UMIC Price"** for the applicable Dose. **HIC Price.** For Dynavax Adjuvant in Customer Product(s) sold in countries that are neither LMICs nor UMICs ("**HICs**") or in private markets within UMICs: • USD [***] per Dose [***]; and • USD [***] per Dose [***]; in each case, the **"HIC Price"** for the applicable Dose. Dynavax shall [***] quantity of Dynavax Adjuvant [***] in each of the categories listed above. In the event Dynavax [***] the Dynavax Adjuvant [***] quantity of Dynavax Adjuvant [***], then Dynavax shall [***]. For clarity, the foregoing [***] in case Dynavax [***], and shall [***] quantity of Dynavax Adjuvant [***]. For avoidance of doubt, if any country categorized as an LMIC also qualifies as a UMIC as defined above, then, the LMIC Price shall apply for the Price per Dose in such an event. **Royalty.** As per Section 6.4 of Annex B of the Supply Agreement, a royalty of [***]% will be payable to Dynavax on any Net Sale of Customer Product(s) under a Bilateral Agreement exceeding a Net Sale Per Unit of $[***]. For clarity, no royalty will be payable with respect to Customer Product(s) sold under any COVAX Supply Agreement or GAVI Customer Agreement.

Order #	Quarter (manufacturing)	Order Quantity Doses (kg)	Order Due Date	Delivery Date
1	[***]	[***]	[***]	[***] 2021 [***]
2	[***]	[***]	[***]	[***] 2022
3	[***]	[***]	[***]	[***] 2022
4	[***]	[***]	[***]	[***] 2022
5	[***]	[***]	[***]	[***] 2022

* The Parties acknowledge that [***]. Should any additional quantity of Dynavax Adjuvant become available for delivery in Q1 2022, Dynavax shall offer such additional Dynavax Adjuvant, up to a maximum of an additional [***] Doses [***] of Dynavax Adjuvant (the "**Additional Q1 2022 Dynavax Adjuvant**"), to Customer by written notice, stating the available quantity of Additional Q1 2022 Dynavax Adjuvant, and Customer shall have [***] Business Days from delivery of such notice (the "**First Offer Period**") in which to submit an Order for such Additional Q1 2022 Dynavax Adjuvant (or a portion thereof) as described in Section 2.1 of Annex B of the Supply Agreement.

Notwithstanding the table above, the timing for ordering and manufacturing and the timing for delivery for Q3 and Q4 of 2021 may be delayed, and the quantities for Q3 and Q4 of 2021 may be modified, by CEPI in its sole discretion.

Rows 1 and 2 of the table above constitute a binding commitment on the part of Customer to order the applicable quantities set forth in the table above, except to the extent that any such quantities are modified by CEPI.

Annex B: General Terms and Conditions for the Supply of Dynavax Adjuvant

1. Interpretation

The following definitions and rules of interpretation apply in these Conditions.

1.1 **Definitions.**

"Additional Q1 2022 Dynavax Adjuvant" has the meaning given in Annex A of the Supply Agreement.

"Adjusted Net Sales Per Unit" means, in any accounting period, the amount (if any) by which Net Sales Per Unit exceeds the Unit Threshold Price.

"Anti-Corruption Laws" means the U.S. Foreign Corrupt Practices Act (15 U.S.C. §§78dd-1, et. seq.), as amended, the Organization for Economic Co-operation and Development (OECD) Convention on combating bribery of foreign public officials in international business transactions, the UK Bribery Act 2010, as amended, and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the relevant government department concerning the legislation, and any other applicable laws of similar effect, and the related regulations and published interpretations thereunder.

"Applicable Laws" means all national and supranational laws and regulations and other mandatory professional regulations applicable to a Party or a Party's activities or obligations described under or pursuant to the Supply Agreement, including but not limited to, Anti-Corruption Laws, Data Protection Legislation and cGMP.

"Authorized Third Party" has the meaning given in Section 10.5.

"Bilateral Agreement" means any agreement entered into between Customer and a third party, outside any COVAX Supply Agreement or GAVI Customer Agreement, for the supply of the Customer Product(s).

"Binding Quantities" has the meaning given in Section 3.1.

"Bioequivalent Adjuvant" means a CpG oligodeoxynucleotide with the same sequence as Dynavax Adjuvant that is not manufactured by or on behalf of Dynavax.

"Biosimilar Version" means, with respect to any Customer Product that is being sold in a country or regulatory jurisdiction (the "Reference Product"), any biopharmaceutical product sold by a third party (other than a third party acting on behalf of or in concert with Customer, any of its affiliates, any Licensee, or any sublicensee or assignee of any of the foregoing) in such country or jurisdiction, that through reference to the Regulatory Approval of the Reference Product, is eligible for and has achieved regulatory approval in such country or jurisdiction pursuant to an abbreviated follow-on biological approval pathway established by the Regulatory Authority in such country or jurisdiction pursuant to the Applicable Laws, or otherwise is approved for marketing and sale in such country or jurisdiction by an abridged procedure in reliance, in whole or in part, on the prior Regulatory Approval of the Reference Product or on the safety and efficacy data included in the prior Regulatory Approval (in such country or jurisdiction) of the Reference Product, including any such biopharmaceutical product that (i) with respect to such biopharmaceutical product in the United States, has been approved as a biosimilar or interchangeable product by the FDA pursuant to 42 U.S.C. § 262 of the Public Health Service Act, or (ii) with respect to such biopharmaceutical product in any country or regulatory jurisdiction, has otherwise obtained Regulatory Approval from a Regulatory Authority pursuant to similar statutory or regulatory requirement as that described in the foregoing clause (i) in such other country or jurisdiction.

“Business Day” means a day other than a Saturday, Sunday or public holiday in the United States of America and/or India.

“**CMO Quality Agreement**” means the quality agreement between Dynavax and the Dynavax CMO setting out the responsibilities of Dynavax and the Dynavax CMO in relation to quality of the Dynavax Adjuvant supplied under this Supply Agreement.

“CEPI” means the Coalition for Epidemic Preparedness and Innovations.

“CEPI Agreement” has the meaning given in Section 3.4.

“CEPI Reserved Material” has the meaning given in Section 3.4.

“COA” means the Certificate of Analysis issued by Dynavax for the Dynavax Adjuvant in each delivery for the Customer, summarizing the batch number, manufacturing date, expiry date or retest date, analytical parameters & testing results on samples of the Dynavax Adjuvant in that delivery together with the evaluation of compliance to the Specifications.

“COC” means the certificate of compliance issued by Dynavax to Recipient with each shipment of Dynavax Adjuvant that states (i) the batch number, manufacturing date, and (ii) that the Dynavax Adjuvant supplied to Customer thereunder were manufactured in accordance with all Applicable Laws.

“Collaboration Agreements” means (a) the Clinical Collaboration Agreement between Dynavax and Customer dated October 16, 2020, as amended (the “**Clinical Collaboration Agreement**”), and (b) the Collaboration Agreement between Dynavax and Customer dated June 29, 2020, as amended (the “**Collaboration Agreement**”).

“Conditions” means the terms and conditions of this Annex B, as amended from time to time in accordance with Section 17.9 hereof.

“Confidential Information” confidential or proprietary information disclosed by or on behalf of a Party or any of its affiliates (the “**Disclosing Party**”) to the other Party or any of its affiliates (the “**Receiving Party**”) under the Supply Agreement or the NDA (including under any Collaboration Agreement), either directly or indirectly, in writing, orally, electronically or through other means, and whether or not designated as “confidential” at the time of disclosure, including without limitation, information relating to compounds, biological sequences, inventions (including patent applications covering such inventions), trade secrets, specifications, formulations, designs, data, know-how, results, regulatory affairs, clinical trials and protocols, customers, suppliers, collaborators, funders, employees, consultants, partners, clients or sales and marketing information, development work, project timetables, manufacturing processes, analytical processes, and other confidential or proprietary information, processes, services and business of the Disclosing Party including new know-how and information developed by the Disclosing Party under the Supply Agreement, data, information, and any improvements, modifications, derivations, or compilations thereto, provided however, that Confidential Information shall not include any information which:

(a) Was known by or in the possession of the Receiving Party prior to its date of disclosure to the Receiving Party by or on behalf of the Disclosing Party, as demonstrated by the written records of the Receiving Party;

(b) Either before or after the date of the disclosure to the Receiving Party by or on behalf of the Disclosing Party, is lawfully disclosed to the Receiving Party by sources other than the Disclosing Party;

(c) Either before or after the date of the disclosure to the Receiving Party by or on behalf of the Disclosing Party, was or becomes publicly known through no fault or omission on the part of the Receiving Party; or

(d) Is or was independently developed by or for the Receiving Party without use of the Confidential Information as evidenced by the written records of the Receiving Party.

Without limiting the generality of the foregoing definition, Confidential Information of Dynavax includes Dynavax Manufacturing Information.

"COVAX" means the global organization COVAX, one of three pillars of the Access to COVID-19 Tools (ACT) Accelerator which is coordinated by GAVI, CEPI and the World Health Organization (WHO) to act as a platform to support the research, development and manufacturing of a wide range of COVID-19 vaccine candidates, and to negotiate their pricing.

"COVAX Supply Agreement" means any agreement entered into between Customer and COVAX for the supply of Customer Product(s).

"Current Good Manufacturing Practice" or **"cGMP"** means the minimum standard that a medicines manufacturer must meet in their production processes in accordance with (i) 21 C.F.R. Parts 210 and 211, (ii) Directive 2003/94/EC laying down the principles and guidelines of good manufacturing practice in respect of medicinal products for human use and investigational medicinal products for human use, (iii) Volume 4 of the Rules Governing Medicinal Products in the European Union, EU Guidelines for Good Manufacturing Process for Medicinal Products for Human and Veterinary Use, Chapter 7 (Outsourced Activities) and (iv) all relevant regulations or guidance for WHO Prequalification, in each case (i) – (iv) above as amended, supplemented or superseded from time to time.

"Customer" has the meaning set forth in the Supply Agreement Summary.

"Customer Product" means a product containing or comprising a combination of Customer Vaccine and Dynavax Adjuvant supplied by Dynavax hereunder (whether such Dynavax Adjuvant is formulated with the Customer Vaccine in the same vial or separately from the Customer Vaccine in an accompanying vial).

"Customer Vaccine" means: (a) the antigen(s) comprising of a protein sub-unit derived from SARS-CoV-2 virus spike protein (wild-type and variants), adjuvanted with alum, that is being developed, manufactured or commercialized by or on behalf of Customer or its affiliates or their Licensees as a COVID-19 vaccine as of the Effective Date; or (b) any other antigen (with respect to the wild type or any variant of SARS-COV-2) that is developed, manufactured or commercialized by or on behalf of Customer or its affiliates or their Licensees as a COVID-19 vaccine, with or without alum, that is identified by Customer to Dynavax in writing pursuant to Section 3.2. For clarity, Customer Vaccine does not include Dynavax Adjuvant.

"Data Protection Legislation" means all applicable data protection and privacy legislation in force from time to time, including Regulation (EU) 2016/679 (the General Data Protection Regulation) and any other applicable legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a Party relating to the use of personal data (including, without limitation, the privacy of electronic communications) pursuant to the Supply Agreement; and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to such Party.

"Defect" or **"Defective Product"** means any failure of the Dynavax Adjuvant supplied hereunder (i) to conform to the Specifications, or (ii) to have been manufactured in accordance with cGMP.

"Delivery Location" has the meaning given in Section 4.2.

"Dose" has the meaning described in Annex A of the Supply Agreement.

"Dynavax" means Dynavax Technologies Corporation.

"Dynavax Adjuvant" means Dynavax's proprietary CpG 1018 adjuvant (as further described in Annex A), manufactured by or on behalf of Dynavax.

"Dynavax CMO" means Nitto Denko Avecia, Inc. and/or any other third party contract manufacturer engaged by Dynavax to manufacture Dynavax Adjuvant on behalf of Dynavax.

"Dynavax Manufacturing Information" means information or documentation in the possession or under the control of Dynavax relating to the development or manufacture of the Dynavax Adjuvant, that, in each case: (a) is contained in any Dynavax Regulatory Filing that Dynavax authorizes Customer or any Regulatory Authority to reference or use in connection with Customer or any of its affiliates, Licensees or Authorized Third Party, applying for, obtaining or maintaining Regulatory Approval for any Customer Product; or (b) is submitted by or on behalf of Dynavax to any Regulatory Authority for use or reference in connection with Customer or any of its affiliates, their Licensees or any Authorized Third Party, applying for, obtaining or maintaining Regulatory Approval for any Customer Product; or (c) is disclosed or provided by or on behalf of Dynavax to Customer or any of its affiliates for submission to any Regulatory Authority in connection with Customer or any of its affiliates, or their Licensees or any Authorized Third Party, applying for, obtaining or maintaining Regulatory Approval for any Customer Product. Without limiting the generality of the foregoing, Dynavax Manufacturing Information includes the Specifications. In addition, the identity and concentration tests for Dynavax Adjuvant to transferred to Customer pursuant to Section 3.8 shall constitute Dynavax Manufacturing Information.

"Dynavax Regulatory Filing" means any filing or submission by or on behalf of Dynavax or any of its affiliates with or to any Regulatory Authority regarding the Dynavax Adjuvant.

"Effective Date" means the effective date specified in the Supply Agreement Summary.

"Expiration Date" means the expiration date specified in the Supply Agreement Summary.

"Export Control Laws" shall mean: (a) all applicable U.S. laws and regulations relating to sanctions and embargoes imposed by U.S. Department of Treasury's Office of Foreign Assets Control (or its successor office or other body having substantially the same function); (b) all applicable U.S. export control laws, including the Arms Export Controls Act (22 U.S.C. Ch. 39), the International Emergency Economic Powers Act (50 U.S.C. §§ 1701 et seq.), the Trading With the Enemy Act (50 U.S.C. app. §§ 1 et seq.), the Export Administration Act of 1979 (50 U.S.C. app. §§ 2401 et seq.), International Boycott Provisions of Section 999 of the U.S. Internal Revenue Code of 1986, and all rules, regulations and executive orders relating to any of the foregoing, including but not limited to the International Traffic in Arms Regulations (22 C.F.R. §§ 120 et seq.), the Export Administration Regulations (15 C.F.R. §§ 730 et. seq.), and the regulations administered by the Office of Foreign Assets Controls of the United States Department of the Treasury; and (c) all export controls imposed on any Dynavax Adjuvant by any country or organization or nation within the jurisdiction of which either Party operates or does business.

[***] has the meaning given in Section 4.9.

[***] has the meaning given in Section 3.8.

"First Offer Period" has the meaning given in Annex A of the Supply Agreement.

“Force Majeure Event” means any circumstance not within a Party’s reasonable control including, without limitation:

(e) acts of God, flood, drought, earthquake or other natural disaster;

(f) epidemic or pandemic;

(g) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;

(h) nuclear, chemical or biological contamination or sonic boom;

(i) any law or action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition;

(j) collapse of buildings, fire, explosion or accident; and

(k) any labor or trade dispute, strikes, industrial action or lockouts (excluding any labor or trade dispute, strike, industrial action or lockout confined to Dynavax’s workforce).

“GAVI” means the GAVI Alliance (formerly the Global Alliance for Vaccines and Immunisation), which is a global health partnership of public and private sector organizations dedicated to “immunisation for all.”

“GAVI Customer Agreement” means any agreement entered into between GAVI and Customer for the purchase of Customer Product(s).

“HIC Price” has the meaning given in Annex A.

“HICs” has the meaning given in Annex A.

“Intellectual Property Rights” means patents, patent applications, rights to inventions, know-how, and other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

“Latent Defect” means a Defect in any Dynavax Adjuvant delivered hereunder that could not be discovered by (a) (i) the testing / certification procedures by Dynavax / Dynavax CMO prior to the issuance of the COA and COC, and (ii) testing by Customer pursuant to Section 3.7; and (b) a reasonable visual inspection (i) prior to delivery by Dynavax / Dynavax CMO, and (ii) following receipt by Customer within the timeframe specified under Section 4.6.

“Licensee” means any third party to which Customer or its affiliate has granted a license to develop, manufacture or commercialize Customer Product(s).

“LMIC Price” has the meaning given in Annex A.

“LMICs” has the meaning given in Annex A.

“NDA” means that certain Mutual Non-Disclosure Agreement between Dynavax and Customer dated May 26, 2020.

“Net Sales” means, in any accounting period, the gross amounts invoiced by Customer, its affiliates and their respective Licensees (each, a “**Selling Party**”) for sales of Customer Product(s)

to third parties (other than Selling Parties), but excluding sales of Customer Product(s) under any COVAX Supply Agreement or GAVI Customer Agreement, less the following, to the extent actually granted, allowed, incurred or paid by the Selling Party and specifically attributable to such sales of Customer Product(s):

(l) normal and customary trade discounts, including trade, cash and quantity discounts or trade rebates, credits or refunds, or retroactive price reductions;

(m) credits or allowances additionally granted upon returns, rejections or recalls, allowances for uncollectible amounts or bad debts on previously sold Customer Product(s), provided that Customer shall use commercially reasonable efforts to collect such uncollectible amounts and any such amounts shall be included in Net Sales if and at such time as subsequently received;

(n) rebates, chargebacks, credits and discounts (or the equivalent thereof) accrued and actually paid, credited or granted to any third party including governmental agency (or agent or branch thereof) or to any third party payor, administrator or contractee, including managed healthcare organizations, pharmacy benefit managers (or equivalent thereof) or their agencies, purchasers, reimbursers, or trade customers;

(o) charges for tertiary packaging, outbound freight, insurance, transportation, postage and handling; and

(p) tariffs, taxes, excises, customs duties and other governmental charges (including any tax such as a value added or similar tax, GST or government charge, except to the extent reimbursed, but excluding income tax) levied on or measured by the production, sale, transportation, delivery or use of Customer Product(s) and actually paid, as adjusted for rebates and refunds.

All aforementioned deductions shall only be allowable to the extent they are (i) calculated in a manner consistent with the Selling Party's customary practice for pharmaceutical products and, in any event, in accordance with U.S. Generally Accepted Accounting Principles or International Financial Reporting Standards, consistently applied by such Selling Party, and (ii) reasonably allocable to Customer Product, or apportioned on a good faith, fair and equitable basis to Customer Product. No particular amount identified above shall be deducted more than once in calculating Net Sales (i.e., no "double counting" of deductions).

For clarification, sale of Customer Product by a Selling Party to another Selling Party for resale by such other Selling Party to a third party (other than a Selling Party) shall not be deemed a sale for purposes of this definition of "Net Sales," provided that the subsequent resale to such third party is included in the computation of Net Sales. In the event of any sale of Customer Product for any consideration other than exclusively monetary consideration on bona fide arm's-length terms (including any sale of Customer Product by a Selling Party to another Selling Party for end use by such other Selling Party), then for purposes of calculating Net Sales under these Conditions, such Customer Product shall be deemed to have been sold exclusively for cash at the weighted (by sales volume) average sale price of such Customer Product in bona fide arm's-length transactions (when sold alone, and not with other products) in the applicable country in which such sale occurred during the applicable accounting period. Customer Product(s) provided to third parties without charge in connection with research and development, clinical trials, compassionate use, humanitarian and charitable donations, or indigent programs shall be excluded from the computation of Net Sales.

"Net Sales Per Unit" means, in any accounting period, the amount determined by dividing (x) total Net Sales of Customer Product(s) in such period by (y) Units Sold in such period.

“Order” or **“Order Form”** has the meaning given in Section 2.2.

“Party” or **“Parties”** has the meaning set forth in the Supply Agreement Summary.

“Person” means an individual, sole proprietorship, partnership, limited partnership, limited liability partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, or other similar entity or organization, including a government or political subdivision, department, or agency of a government.

“Pharmacovigilance Agreement” means the agreement between Dynavax and Customer setting out the pharmacovigilance responsibilities of the Parties in relation to the Dynavax Adjuvant.

“Quality Agreement” means the quality agreement between Customer and Dynavax setting out the responsibilities of the Parties in relation to quality of the Dynavax Adjuvant supplied hereunder as required for compliance with cGMP of the applicable country or jurisdictions.

“Quarter” means a period of three calendar months starting on 1st January, 1st April, 1st July and 1st October respectively in each calendar year. **“Q1”** shall refer to the first Quarter of the calendar year that it refers to, **“Q2”** shall refer to the second Quarter of the calendar year that it refers to, **“Q3”** shall refer to the third Quarter of the calendar year that it refers to, **“Q4”** shall refer to the fourth Quarter of the calendar year that it refers to. By way of illustration, **“Q4 2021”** refers to the period starting 1st October 2021 and ending 31st December 2021. **“Quarterly”** shall be construed accordingly.

“Regulatory Approval” means in relation to any country and any Customer Product, any approval (including emergency use approvals and conditional use approval) granted by the appropriate Regulatory Authority to research, develop, manufacture, use, offer for sale, import, export, distribute, promote, price, market or sell the Customer Product in that country, whether filed or held in the name of Customer, any affiliate of Customer, any Licensee or any Authorized Third Party.

“Regulatory Authority” means any competent government agency, regulatory authority or other administrative body, including WHO, responsible for regulating or otherwise exercising authority with respect to the research, development, manufacture, sale, import, export, distribution, promotion, regulatory approval (including regulatory or marketing approval), pricing or reimbursement of medicinal products.

“Remaining Stock” means any Dynavax Adjuvant supplied by Dynavax to Customer or any of its affiliates pursuant to the Supply Agreement that (a) remain in the possession or control of Customer or any of its affiliates or their Licensees (including any such Dynavax Adjuvant in the physical possession of a third party contractor that is being held on behalf of Customer, its affiliate or a Licensee) as of the expiry or termination of the Supply Agreement or (b) are delivered by Dynavax to Customer or any of its affiliates after the expiry or termination of this Agreement in accordance with Section 15.

“Selling Party” has the meaning provided in the definition of Net Sales.

“Specifications” means the specifications for the Dynavax Adjuvant as set forth in the Quality Agreement, as they may be amended from time to time in accordance with the Quality Agreement. As of the Effective Date, the Specifications are the same as or tighter than those of the Product (as defined in the Clinical Collaboration Agreement) that was supplied under the Clinical Collaboration Agreement.

“Supply Agreement” has the meaning provided in the Supply Agreement Summary.

"Term" means the period beginning on the Effective Date and, subject to earlier termination of the Supply Agreement in accordance with Section 14 of these Conditions, expiring on the Expiration Date.

"UMIC Price" has the meaning given in Annex A.

"UMICs" has the meaning given in Annex A.

"Uncancellable" means with respect to orders for the manufacture of Dynavax Adjuvant placed with the Dynavax CMO in response to Orders from Customer, such orders that cannot be cancelled by Dynavax using commercially reasonable efforts, without Dynavax incurring any out-of-pocket cost as a result of such cancellation.

"Unit" of Customer Product means the amount of Customer Product required and sufficient for a single immunization of one (1) patient.

"Units Sold" means, for any accounting period, the number of Units of Customer Product sold by the Selling Parties in such accounting period that are included in the computation of Net Sales. For clarity, "Units Sold" in an accounting period exclude Customer Product(s) provided to third parties without charge in connection with research and development, clinical trials, compassionate use, humanitarian and charitable donations, or indigent programs in such accounting period.

"Unit Threshold Price" means [***] per Unit of Customer Product.

1.2 In the Supply Agreement:

(a) any headings in the Supply Agreement shall not affect the scope/interpretation of the Supply Agreement;

(b) except where the Supply Agreement expressly specifies Business Days, all references to numbers of days in the Supply Agreement refer to calendar days;

(c) unless the context otherwise requires reference to the singular includes the plural and vice versa, any reference to a person includes a body corporate and words importing one gender include both genders;

(d) a reference to a statute or statutory provision is (unless otherwise stated) a reference to the applicable country's or regulatory jurisdiction's statute as it is then in effect, taking account of any amendment, extension, or re-enactment, and includes any subordinate legislation made under it that is then in effect;

(e) where the words "include(s)" or "including" are used in the Supply Agreement, they are deemed to have the words "without limitation" following them, and are illustrative and shall not limit the sense of the words preceding them;

(f) references to Annexes are references to Annexes of the Supply Agreement; and

(g) references to Sections are references to Sections of these Conditions (including all subsections thereof, if any) unless otherwise specified.

1.3 In the event of any conflict/inconsistency between the terms of this Supply Agreement and:

(a) the terms of the Quality Agreement, the Quality Agreement shall govern for all quality-related matters and the Supply Agreement shall govern for all other matters;

(b) the terms of the Pharmacovigilance Agreement, the Pharmacovigilance Agreement shall govern for all pharmacovigilance-related matters and the Supply Agreement shall govern for all other matters;

2. Orders

2.1 As of the Effective Date, Customer is deemed to have ordered, and has committed to purchase, and Dynavax is deemed to have accepted such orders and committed to supply, the quantities of Dynavax Adjuvant specified in rows 1 and 2 of the table contained in Annex A of the Supply Agreement. On or within five (5) Business Days after the Effective Date, Customer shall submit Order Form(s) to Dynavax evidencing such commitment by Customer, which, upon submission, shall be binding on both Parties. In addition, if Customer submits to Dynavax an Order for any Additional Q1 2022 Dynavax Adjuvant offered by Dynavax as described in Annex A of the Supply Agreement prior to expiration of the First Offer Period, such Order, upon submission, will be binding on both Parties.

2.2 In addition to the Orders described in Section 2.1, Customer may issue to Dynavax from time to time during the Term one or more purchase orders (each an "**Order**" or "**Order Form**") for additional Dynavax Adjuvant during the Term, subject to Annex A, provided that an Order Form for Dynavax Adjuvant shall be submitted to Dynavax in accordance with the timing given in Annex A, and, except to the extent set forth in Section 2.3 below, Dynavax may, [***]. If and to the extent Dynavax believes it will be able to supply the quantity set forth in any such Order Form, Dynavax shall provide written confirmation of acceptance of such Order Form, including the quantity (if less than the full quantity) of Dynavax Adjuvant believes it will be able to supply, within five (5) Business Days after its receipt thereof. However, if Dynavax in good faith believes that it will not be able to supply the full quantity of Dynavax Adjuvant specified in an Order Form, then Dynavax shall so notify Customer within such five-Business Day period, indicating the quantity of such Dynavax Adjuvant, if any, that Dynavax in good faith believes it will be able to supply by the specified delivery date.

2.3 For clarity, [***]. However, in the event that [***], Dynavax [***], Dynavax shall [***].

2.4 Any Orders for Dynavax Adjuvant submitted by Customer shall reference the Supply Agreement and shall be governed exclusively by the terms contained herein. Unless mutually agreed to by the Parties in writing, any term or condition in any Order Form, purchase order, confirmation, or other document furnished by Customer or Dynavax that is in any way inconsistent with, or in addition to, the terms and conditions set forth in the Supply Agreement is hereby expressly rejected.

3. Supply of Dynavax Adjuvant

3.1 Pursuant to the terms and conditions of the Supply Agreement, during the Term (except as provided in Section 15.3), (a) Dynavax (either itself or through the Dynavax CMO) shall manufacture or have manufactured, and supply or have supplied to Customer, the Dynavax Adjuvant in (i) the quantities specified in rows 1 and 2 of the table contained in Annex A of the Supply Agreement, (ii) the quantity (if any) of Additional Q1 2022 Dynavax Adjuvant offered by Dynavax as described in Annex A of the Supply Agreement with respect to which Customer submits an Order prior to expiration of the First Offer Period, (iii) the quantities (if any) set forth in any written confirmation of Order delivered by Dynavax to Customer in response to an Order submitted by Customer pursuant to Section 2.2, and (iv) the quantities (if any) set forth in any Order submitted by Customer in accordance with Section 2.3 (clauses (i) through (iv), collectively, "**Binding Quantities**"), and (b) Customer shall purchase from Dynavax all of such quantities of Dynavax Adjuvant. Customer shall inform Dynavax in writing, the identity of the antigen contained in each Customer Vaccine that Customer uses in combination with Dynavax Adjuvant for the development, manufacturing or commercialization of any Customer Product.

3.2 Except to the extent otherwise expressly permitted by Section 4.9 in the event of [***], during the Term and subject to [***], Customer (a) [***], (b) [***], and (c) [***]. For clarity, [***].

3.3 In the event that, during or after the Term, Customer or any of its affiliates [***], including, but not limited to, [***], Dynavax shall have the right [***]: (a) [***]; (b) [***]; (c) [***]; (d) [***]; and (e) [***]; *provided, however,* that, notwithstanding any exercise by Dynavax of its rights set forth above in this Section 3.3, [***] subject to the terms and conditions of the Supply Agreement, and, [***], (i) [***], and (ii) [***]. For the avoidance of doubt, nothing in this Supply Agreement shall [***].

3.4 Dynavax and CEPI have entered into an agreement (the "**CEPI Agreement**") whereby CEPI has advanced loans to Dynavax to cover the costs of at-risk manufacture of certain quantities of Dynavax Adjuvant in 2021 ("**CEPI Reserved Material**"), and Dynavax has agreed to reserve the CEPI Reserved Material for purchase by CEPI partners in such proportions as CEPI may direct. By written notice to Dynavax, CEPI may direct that specified quantities of CEPI Reserved Material be sent to destinations of CEPI's choice, and Customer hereby consents to Dynavax providing such to Customer such quantities of CEPI Reserved Material as CEPI may direct. The quantities of CEPI Reserved Material supplied to Customer in response to any such direction by CEPI shall be considered as Dynavax Adjuvant supplied as part of an applicable Order placed by Customer.

3.5 Customer and Dynavax shall enter into a Quality Agreement and Pharmacovigilance Agreement, each in a form reasonable and typical for the industry, within thirty (30) days of the Effective Date. The Quality Agreement shall include provisions covering *inter alia* recalls of Customer Product(s), and Dynavax Adjuvant and the respective responsibilities of the Parties.

3.6 Customer hereby covenants on behalf of itself and its affiliated entities not to, and not to permit or cause any of its affiliated entities, any of its permitted manufacturers or distributors, or any other third party to, directly or indirectly: (a) except as permitted by Section 3.7, modify or create derivatives from the Dynavax Adjuvant or attempt to reverse engineer, deconstruct or in any way determine the structure or composition of the Dynavax Adjuvant; (b) use the Dynavax Adjuvant for any product other than the Customer Product(s); (c) use the Dynavax Adjuvant to develop, use or seek regulatory approval for the Dynavax Adjuvant except for the Dynavax Adjuvant as incorporated in Customer Product(s); (d) sell, resell, transfer, convey, dispose of, or otherwise provide access to the Dynavax Adjuvant except (i) for transfer of the Dynavax Adjuvant to Licensees and Customer's or its affiliate's or their Licensees' contract research organization / contract manufacturer of Customer Product(s) for the sole purpose of developing / manufacturing Customer Product(s) on behalf of Customer or any of its affiliates or their Licensees, or (ii) as incorporated in Customer Product(s); or (e) use the Dynavax Adjuvant for any purpose other than the research, development, manufacture, use, sale, offer for sale, importation, export or other commercialization of Customer Vaccine or Customer Product(s).

3.7 Customer, its affiliates or their Licensees, or third party contractors acting on behalf of any of them, may (i) perform identity test(s) and to test the concentration of Dynavax Adjuvant in the Dynavax Adjuvant supplied hereunder, and (ii) use Dynavax's tests for identity and concentration for the purpose set out in (i) above, and Customer, its affiliates and their Licensees may develop/have developed, manufacture/have manufactured, sell, and have sold on their behalf, Customer Product(s) including Dynavax Adjuvant (whether formulated with the Customer Vaccine in the same vial or separately in an accompanying vial).

3.8 Dynavax shall [***] for Dynavax Adjuvant to Customer within ten (10) Business Days after the Effective Date. [***] constitutes Confidential Information of Dynavax. Customer shall be solely responsible, [***] for (a) as applicable, (i) [***], or (ii) [***], and (b) [***].

3.9 Dynavax represents and warrants to Customer that all Dynavax Adjuvant delivered by Dynavax hereunder (whether directly or upon CEPI's direction as set forth in Section 3.4) will, as of the date of delivery: (a) conform to the applicable Specifications then in effect and Applicable Laws; (b) have been manufactured, labelled, packaged, stored, handled and shipped in accordance with the Quality Agreement, cGMP and other Applicable Laws; (c) not be adulterated or misbranded within the meaning of the United States Food, Drug and Cosmetic Act, as amended, and any regulations

promulgated thereunder (the "**Act**"); (d) not be articles that, under the provisions of the Act, may not be introduced into interstate commerce; and (e) be free and clear of any lien or encumbrance.

3.10 Dynavax shall ensure that at all relevant and required times it has and maintains (and Dynavax CMO has and maintains) all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Supply Agreement in respect of the Dynavax Adjuvant. Dynavax will provide (or have provided) to Customer, Dynavax Manufacturing Information and any other information relating to the Dynavax Adjuvant that Customer, any of its affiliates, their Licensees, third party contract manufacturers of Customer Product(s) acting on their behalf, or any Authorized Third Party may reasonably require for purposes of (i) applying for, obtaining and maintaining clinical trial authorisations and Regulatory Approvals for Customer Product(s), or (ii) exercising their rights under the Supply Agreement provided that any such information provided by Dynavax shall not be used by or on behalf of Customer, any of its affiliates or their Licensees or any Authorized Third Party for any purpose, other than as expressly permitted hereby or as otherwise required by Applicable Law, in each case, in relation to Customer Product(s). However, for the avoidance of doubt, Customer, its affiliates or their Licensees or Authorized Third Parties, as applicable, shall own and be solely responsible for obtaining and maintaining all licenses, permissions, authorisations, consents, permits and Regulatory Approvals necessary for the research, development, manufacture (excluding manufacture of the Dynavax Adjuvant), use, marketing, promotion, distribution, handling, storage, sale, import, export or other disposition of Customer Vaccine and Customer Product(s), and for complying with all Applicable Laws in connection with carrying out the foregoing activities.

3.11 EXCEPT AS EXPRESSLY SET FORTH IN THE SUPPLY AGREEMENT, NEITHER PARTY MAKES ANY REPRESENTATIONS OR EXTENDS ANY WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, AND EACH PARTY EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OF DESIGN, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THE INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES, OR ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICES.

3.12 Notwithstanding anything to the contrary in the Supply Agreement including this Section 3, Customer [***].

4. Delivery of Dynavax Adjuvant

4.1 Dynavax shall ensure that:

(a) the Dynavax Adjuvant is properly packed and secured in a manner reasonably determined by Dynavax to be appropriate for shipping;

(b) each delivery of the Dynavax Adjuvant is accompanied by a COA, COC as well as a delivery note which shows the date of the Order, the Order number (if any), the type and quantity of the Dynavax Adjuvant (including the code number of the Dynavax Adjuvant (where applicable)), manufacturing date, special storage instructions (if any) and, if the Dynavax Adjuvant are being delivered by instalments, the outstanding balance of Dynavax Adjuvant remaining to be delivered; and

(c) it states clearly on the delivery note any requirement for the Customer to return any packaging material for the Dynavax Adjuvant to Dynavax. Any such packaging material shall only be returned to Dynavax at the cost of Dynavax.

4.2 Dynavax shall deliver the Dynavax Adjuvant within five (5) Business Days of the delivery date specified in the Order and to the location set out in the Order or as otherwise agreed by the Parties

before delivery ("**Delivery Location**"). Dynavax shall not be responsible for any delay in delivery of Dynavax Adjuvant to the extent caused by a third party carrier.

4.3 Dynavax shall deliver all Dynavax Adjuvant [***], and title and risk of loss shall pass from Dynavax to Customer upon [***]. Customer shall be responsible for [***]. Dynavax shall be responsible for [***]. At Customer's request, Dynavax shall [***].

4.4 Dynavax shall not deliver the Dynavax Adjuvant in instalments without the Customer's prior written consent. Where it is agreed that the Dynavax Adjuvant can be delivered in instalments, they may be invoiced and paid for separately.

4.5 Customer shall notify Dynavax in writing of any shortage in any shipment of Dynavax Adjuvant within thirty (30) days after receipt. [***]. In the event of an undisputed shortage claim, Dynavax shall make up the shortage of Dynavax Adjuvant at no cost to Customer, and deliver the same within thirty (30) Business Days of receiving such written notification from Customer if replacement Dynavax Adjuvant stock is available, or if replacement stock is unavailable at such time, as soon as reasonably practicable after it becomes available [***].

4.6 Customer shall inspect all shipments of Dynavax Adjuvant promptly upon receipt, and shall notify Dynavax in writing in reasonable detail within thirty (30) days of receipt if Customer is rejecting any Dynavax Adjuvant for any Defect discovered in the course of such inspection. All Dynavax Adjuvant not rejected within such thirty (30)-day period will be deemed accepted. Customer acknowledges that [***] and hereby agrees that [***] Customer shall [***]. Dynavax shall [***]. [***]. Should Dynavax [***], Dynavax shall [***], the Parties shall [***], provided that [***].

4.7 If Customer notifies Dynavax of any Defect in any Dynavax Adjuvant in accordance with Section 4.6, Dynavax shall have the right to inspect the Dynavax Adjuvant in question and Customer shall cooperate with Dynavax's inspection, including providing Dynavax with samples of the Dynavax Adjuvant in question for testing upon request. If Dynavax agrees with such notice of Defect and agrees that such Defect was caused by occurrences prior to the delivery of the Dynavax Adjuvant to Customer in accordance with Section 4.3, Dynavax shall, at [***] option, either: (A) replace (at no additional expense to Customer) such Dynavax Adjuvant as soon as reasonably practicable and in any event within one hundred and eighty (180) days after receipt of notification of such Defect or (B) refund any portion of the applicable amount that has already been paid for such Dynavax Adjuvant. If necessary to produce replacement Dynavax Adjuvant for Dynavax Adjuvant properly and timely rejected in accordance with Section 4.6, Dynavax shall start another manufacturing run within three (3) months of notice of the Defect and shall deliver the new Dynavax Adjuvant to Customer within six (6) months of the notice of the Defect at no additional cost to the Customer.

4.8 In the event that Dynavax disagrees with Customer that the relevant Dynavax Adjuvant have a Defect, or believes in good faith that the Defect was caused by occurrences after the delivery of the Dynavax Adjuvant to Customer, it may require a sample of the allegedly nonconforming Dynavax Adjuvant to be delivered to a mutually acceptable independent testing laboratory for testing or, in the case of a dispute concerning compliance with cGMP, an independent consultant for evaluation. Except in the case of manifest error, the determination of the laboratory or consultant, as applicable, will be final and binding on the Parties. The fees and expenses of such laboratory testing or consultant, as the case may be, shall be borne entirely by the Party against whom such laboratory's or consultant's determination is made. If such determination is against Customer, then such Dynavax Adjuvant shall be deemed accepted by Customer. If such determination is against Dynavax, then Dynavax shall, at [***] option, either: (A) replace (at no additional expense to Customer) such Dynavax Adjuvant as soon as reasonably practicable [***] or (B) refund any portion of the applicable amount that has already been paid for such Dynavax Adjuvant. If necessary to produce replacement Dynavax Adjuvant, Dynavax shall start another manufacturing run within three (3) months of such determination and shall deliver the new Dynavax

Adjuvant to Customer within six (6) months of such determination at no additional cost to the Customer.

4.9 In the event that Dynavax has manufacturing and supply problems rendering it unable to supply during any Quarter the aggregate of the quantity of Dynavax Adjuvant ordered by Customer for delivery in such Quarter and the quantity of Dynavax Adjuvant ordered by Dynavax and third party purchasers for delivery in such Quarter, Dynavax shall promptly notify Customer in writing and allocate the available Dynavax Adjuvant among Customer, Dynavax and its affiliates, and third party purchasers pro rata on the basis of the volume of Dynavax Adjuvant ordered for delivery to Customer in that Quarter and the Dynavax Adjuvant volume requirements of Dynavax, its affiliates and third party purchasers for such Quarter. The allocation rules set forth in this Section 4.9 shall restart for each Quarter, with no carryover from any prior Quarter. In the event that Dynavax [***], then [***], in which event [***]. For clarity, [***].

In the event of [***]:

(a) [***];

(b) [***]; and

(c) [***].

4.10 Notwithstanding anything to the contrary in the Supply Agreement, the remedies set forth in Sections 4.5, 4.6, 4.7, 4.8 and 4.9 will be Customer's sole and exclusive remedy and recourse with respect to shortages of and defects in Dynavax Adjuvant delivered to Customer by Dynavax hereunder. Sections 4.5, 4.6, 4.7, 4.8 and 4.9 shall apply to any replacement Dynavax Adjuvant supplied by Dynavax.

4.11 Customer shall bear the risk of damage to the Dynavax Adjuvant after delivery to Customer pursuant to Section 4.3. If the Dynavax Adjuvant are damaged after delivery to Customer and Customer intends to order replacement Dynavax Adjuvant, Customer shall promptly notify Dynavax of the damage and any orders for replacement Dynavax Adjuvant, and Dynavax may, at its sole discretion but in good faith, accept or reject all or a portion of the order for the replacement Dynavax Adjuvant.

5. Intellectual Property

5.1 Customer acknowledges that the Dynavax Adjuvant is proprietary to Dynavax, that Dynavax shall at all times remain the sole and exclusive owner of all Intellectual Property Rights in and to the Dynavax Adjuvant, and that Customer shall not obtain any right, ownership interest, or, except as expressly set forth in the Supply Agreement, license, in or to such Intellectual Property Rights in the Dynavax Adjuvant as a result of its purchase, receipt or use of the Dynavax Adjuvant. Customer shall not file (or cause to be filed) any patent application claiming or disclosing any Dynavax Manufacturing Information disclosed or made available to Customer hereunder.

5.2 Subject to the terms and conditions of the Supply Agreement, Dynavax hereby grants to Customer during the Term, and, with respect to any Remaining Stock, for so long after expiry or termination of the Supply Agreement as such Remaining Stock remains in the possession or control of Customer or its affiliate or their Licensees (including any such Remaining Stock in the physical possession of a third party contractor that is being held on behalf of Customer, its affiliate or a Licensee), a limited non-exclusive, non-transferable (except as otherwise expressly set forth in the Supply Agreement), royalty-free (except to the extent expressly set forth in Section 6.4) license, which Customer, in its sole discretion, may extend to its affiliates, under Dynavax's Intellectual Property Rights in and to the Dynavax Adjuvant, solely to develop, have developed, make, have made, use, have used, sell, have sold, offer for sale, import, export or otherwise commercialize

Customer Product(s); *provided, however,* that the license to make and have made Customer Product(s) is limited to the right to make or have made Customer Product(s) using the Dynavax Adjuvant supplied by Dynavax pursuant to the Supply Agreement, and [***]. The license granted to Customer under this Section 5.2, including as extended by Customer to its affiliates, includes the right to sublicense solely to: (i) Customer's or any of its affiliates' Licensees *provided that* any such Licensee that will develop and/or make Customer Product(s) shall first have entered into a written sublicense agreement with Customer or its affiliate obligating such Licensee to be bound by all applicable provisions of this Agreement. However, (a) Customer or its affiliate(s) or their Licensees may contract with third party contract manufacturers for the manufacture on behalf of Customer or its affiliate(s) or their Licensees, as applicable, of Customer Product(s) using the Dynavax Adjuvant supplied hereunder, (b) Customer or its affiliate(s) or their Licensees may contract with third party contract research organizations for the development on behalf of Customer or its affiliate(s) or their Licensees, as applicable, of Customer Product(s) using the Dynavax Adjuvant supplied hereunder, (c) Customer or its affiliate(s) or their Licensees may contract with third parties including distributors, wholesalers, retailers, GPOs, and purchasing organizations (such as COVAX, GAVI) for warehousing, distribution and/or sale whether independently or on behalf of Customer or its affiliate(s) or their Licensees, as applicable, of Customer Product(s), and (d) Customer or its affiliate(s) may contract with any third party for that third party to apply for, obtain, update and maintain Regulatory Approval(s) for the Customer Product(s) on behalf of Customer and/or its affiliate, or on such third party's own behalf if it is also a Licensee, in each case, in accordance with Section 10.5, and such contracting in each case (clauses (a), (b), (c) and (d)) shall not be considered a sublicense. The foregoing license shall not be construed to obligate Dynavax to disclose or transfer to Customer any such Intellectual Property Rights [***]. Customer shall be responsible and liable for the compliance of its affiliates, their Licensees, and third party contractors with the terms and conditions of this Agreement.

5.3 Dynavax acknowledges that (a) the Customer Vaccine and Customer Product(s) (excluding the Dynavax Adjuvant incorporated or included in or with Customer Product(s), which is proprietary to Dynavax) are proprietary to Customer, and that Customer shall at all times remain the sole and exclusive owner of all Intellectual Property Rights in and to the Customer Vaccine and Customer Product(s) (excluding the Dynavax Adjuvant incorporated or included in or with Customer Product(s), which is proprietary to Dynavax), and (b) any other rights including Intellectual Property Rights in and to the Customer Vaccine and Customer Product(s) (excluding the Dynavax Adjuvant incorporated or included in or with Customer Product(s), which is proprietary to Dynavax) (i) owned or controlled by Customer, its affiliates and their licensor(s) and Licensee(s) as of the Effective Date, or (ii) created, licensed or otherwise acquired independently of this Supply Agreement by Customer, its affiliates and their licensor(s) and Licensee(s) shall remain their respective, sole and absolute property, and that Dynavax shall not obtain any right or ownership interest thereto. For clarity, nothing in the Supply Agreement, including this Section 5.3 is intended to or will be construed to imply that Dynavax Adjuvant is proprietary to Customer.

5.4 The Parties hereby agree that all rights to any invention, whether or not patentable, that is generated by or on behalf of Customer in the course of using any of the Dynavax Adjuvant supplied hereunder or developing, using, manufacturing or having manufactured Customer Product(s), that, in each case, [***] shall be [***] and [***].

The Parties hereby agree that [***]. The Parties agree that [***].

5.5 Dynavax and Customer shall [***]. The Parties agree that [***]. Customer hereby grants Dynavax (a) [***], and (b) [***]. Dynavax hereby grants Customer (a) [***]; and (b) [***]. .

5.6 In the event a [***]Invention is created by a Party, such Party shall notify the other Party without delay including provision of details of such [***]Invention. [***].

5.7 In the event a Party becomes aware of any suspected infringement of [***] by a third party, it shall notify the other Party without delay. The Parties will discuss in good faith the best way forward.

5.8 No right or license under any Intellectual Property Rights of a Party is granted or shall be granted to the other Party by implication, estoppel or otherwise. Any such rights or licenses are or shall be granted only as expressly provided in the Supply Agreement.

5.9 The Parties acknowledge and agree that the Supply Agreement is not a "joint research agreement" as defined in 35 U.S.C. § 100(h), and neither Party shall invoke the America Invents Act Joint Research Agreement exception codified at 35 U.S.C. § 102(c) (or any equivalent law outside the United States) in exercising any of its rights under the Supply Agreement without the prior written consent of the other Party.

5.10 This Section 5 supersedes the entirety of (i) Section 6 of the Clinical Collaboration Agreement, which shall be of no further force or effect, and (ii) the entirety of Section 3 and the last sentence of Section 5 of the Collaboration Agreement, which shall be of no further force or effect.

5.11 Notwithstanding anything to the contrary in the Supply Agreement including this Section 5, nothing in the Supply Agreement is intended to or shall be construed to [***].

6. Prices, Royalties and Payments

6.1 **Prices.** The prices for the Dynavax Adjuvant shall be as set forth in Annex A, subject to Section 6.3.

6.2 **Invoicing and Payment.**

(a) In respect of the Dynavax Adjuvant requested and supplied in the Order(s) for the [***] of the Dynavax Adjuvant referred to in row 1 of the table set forth in Annex A of the Supply Agreement as "CEPI allocation," Dynavax shall invoice the Customer one hundred percent (100%) of the aggregate price of the Dynavax Adjuvant covered by such Order(s) upon delivery of the Dynavax Adjuvant to Customer. Customer shall pay the amounts in such invoice(s) to Dynavax within fifteen (15) days of receiving the corresponding invoice(s) from Dynavax.

(b) In respect of the Dynavax Adjuvant requested in any Order(s) hereunder beyond the [***] of the Dynavax Adjuvant referred to in Section 6.2(a), Dynavax shall invoice the Customer [***] percent ([***]%) of the aggregate price of the Dynavax Adjuvant covered by an Order upon acceptance of such Order (which, except as otherwise provided in Annex A of the Supply Agreement or agreed to by the Parties in writing, shall be placed six (6) months in advance of delivery date in such Order) from Customer. Customer shall pay the amounts in such invoice(s) to Dynavax within fifteen (15) days of receiving the corresponding invoice(s) from Dynavax. For the avoidance of doubt, Dynavax will not be obligated to submit to the Dynavax CMO an order for Dynavax Adjuvant ordered by Customer for delivery in 2022 prior to Dynavax's receipt from Customer of payment of the initial [***] percent ([***]%) of the aggregate price of such Dynavax Adjuvant invoiced under this Section 6.2(b).

(c) In respect of the Dynavax Adjuvant requested in any Order(s) hereunder referred to in the preceding paragraph of this Section 6.2(b), upon Customer's receipt of the Dynavax Adjuvant covered by an Order, Dynavax shall issue an invoice to Customer for the remaining [***] percent ([***]%) of the aggregate price of such Dynavax Adjuvant which shall be payable by Customer within fifteen (15) days of receipt of the invoice by Customer.

(d) The price of the Dynavax Adjuvant in each invoice delivered under Section 6.2(a) or Section 6.2(b) shall be based on the LMIC Price only. Each invoice shall include such supporting information required by the Customer to verify the accuracy of the invoice, including but not limited to the relevant purchase order number. The Customer shall pay

the amounts invoiced under Sections 6.2(a) and 6.2(b) as soon as practicable after, and in any event within fifteen (15) days of, the date of receipt of the invoice to a bank account designated in writing by Dynavax.

6.3 **Trueing up.** For purposes of this Section 6.3, a Unit of Customer Product will be deemed to have been "**Disposed**" of by or on behalf of Customer (including, for purposes of this Section 6.3, by Customer, Customer's affiliates and their Licensees) in a particular country (i.e., an LMIC, UMIC or HIC, as applicable) if it is actually sold by or on behalf of Customer for delivery or distribution in such country; *provided, however,* that a Unit of Customer Product will be deemed to have been "Disposed" of by or on behalf of Customer (including, for purposes of this Section 6.3, by Customer, Customer's affiliates and their Licensees) (i) at the [***] UMIC Price [***] if it is actually sold by or on behalf of Customer for a private market in an LMIC or (ii) at the [***] HIC Price [***] if it is actually sold by or on behalf of Customer for a private market in a UMIC. Within twenty (20) Business Days of the end of each Quarter in which any Customer Product containing Dynavax Adjuvant supplied hereunder is Disposed of by or on behalf of Customer anywhere in the world, the Parties shall undertake a 'trueing up' exercise in order to establish whether the Customer has Disposed of any Doses for which Customer paid the [***]LMIC Price [***] at prices that are deemed to exceed the [***] LMIC Price [***]. For clarity, this Section 6.3 assumes that [***]. In the event that [***].

For purposes of performing such trueing up exercise, within ten (10) Business Days after the end of each Quarter, the Customer shall report to Dynavax: (i) the total number of Doses of Dynavax Adjuvant contained in all Units of Customer Product(s) Disposed of by or on behalf of Customer in LMICs (excluding private markets in LMICs) during such Quarter; (ii) the total number of Doses of Dynavax Adjuvant contained in all Units of Customer Product(s) Disposed of by or on behalf of Customer (a) in UMICs (excluding private markets in UMICs) and (b) for private markets in LMICs during such Quarter; and (iii) the total number of Doses of Dynavax Adjuvant contained in all Units of Customer Product(s) Disposed of by or on behalf of Customer (a) in HICs and (b) for private markets in UMICs, in each case, during such Quarter.

If the total number of Doses of Dynavax Adjuvant invoiced by Dynavax to Customer at the LMIC Price in such Quarter exceeds the total number of Doses of Dynavax Adjuvant contained in all Units of Customer Product(s) Disposed of by or on behalf of Customer in LMICs (excluding private markets in LMICs) during such Quarter, then Customer shall pay to Dynavax an additional amount (the "**Additional Amount**") calculated in USD (United States dollars) according to the following formula: **[(UMIC Price – LMIC Price) MULTIPLIED BY (W – X – Z))] PLUS [(HIC Price – LMIC Price) MULTIPLIED BY (W – X – Y)]**; where:

"W" equals the total number of Doses of Dynavax Adjuvant invoiced by Dynavax to Customer at the LMIC Price in such Quarter;

"X" equals the total number of Doses of Dynavax Adjuvant contained in all Units of Customer Product(s) Disposed of by or on behalf of Customer in LMICs (excluding private markets in LMICs) in such Quarter;

"Y" equals the sum of (a) the total number of Doses of Dynavax Adjuvant contained in all Units of Customer Product(s) Disposed of by or on behalf of Customer in UMICs (excluding private markets in UMICs), and (b) the total number of Doses of Dynavax Adjuvant contained in all Units of Customer Product(s) Disposed of by or on behalf of Customer in private markets in LMICs; and

"Z" equals the sum of (a) the total number of Doses of Dynavax Adjuvant contained in all Units of Customer Product(s) Disposed of by or on behalf of Customer in HICs, and (b) the total number of Doses of Dynavax Adjuvant contained in all Units of Customer Product(s) Disposed of by or on behalf of Customer in private markets in UMICs.

The Customer shall provide to Dynavax promptly upon request all such additional information as Dynavax may reasonably request in order to determine the Additional Amount. The Additional Amount shall be due and payable within thirty (30) days of the date of receipt by Customer of an invoice from Dynavax for the Additional Amount.

6.4 **Royalties.** For any Quarter in which Net Sales Per Unit of Customer Product(s) (other than Customer Product(s) sold under any COVAX Supply Agreement or GAVI Customer Agreement) exceed the Unit Threshold Price, Customer shall pay to Dynavax a royalty equal to [***]% of the amount determined by multiplying (x) Adjusted Net Sales Per Unit in such Quarter, by (y) Units Sold in such Quarter. For clarity, no royalties shall be payable under this Section 6.4 (a) for any portion of Net Sales Per Unit of Customer Product(s) that does not exceed the Unit Threshold Price, or (b) on any sales of Customer Product(s) under any COVAX Supply Agreement or GAVI Customer Agreement.

6.5 **Royalty Payments and Reports.** Royalties under Section 6.4 shall be calculated and reported for each Quarter and shall be paid within forty-five (45) days of the end of the Quarter. Within five (5) Business Days after the end of each Quarter, Customer shall deliver a written report to Dynavax with Customer's preliminary good faith estimate of Net Sales, Units Sold, Net Sales Per Unit and royalties for such Quarter. In addition, within ten (10) Business Days after the end of each Quarter, Customer shall deliver to Dynavax a report of Net Sales, Units Sold, and Net Sales Per Unit in the applicable Quarter in sufficient detail to permit confirmation of the accuracy of the payment due or made, including, on a Customer Product-by-Customer Product and country-by-country basis (for sales of Customer Product(s) that are made to specific country(ies)), the number of each type of Customer Product(s) sold, gross sales, Net Sales and itemized deductions from gross sales (by major category as set forth in the definition of Net Sales), the royalties payable, and the exchange rates used.

6.6 **Late Payment.** If any payment (other than any invoiced amount, or portion thereof, that is subject to good faith dispute) due under the Supply Agreement is not paid when due in accordance with the applicable provisions of these Conditions, such payment shall accrue interest at a rate per annum that is [***] basis points (i.e., [***] percentage points) above the then-current prime rate quoted by Citibank in New York City (or such other rate and source as the Parties mutually agree in writing) for the period from the due date for payment until the date of actual payment; provided, however, that in no event shall such rate exceed the maximum legal annual interest rate. If Customer in good faith disputes any invoiced amount or portion thereof, Customer shall timely pay the undisputed portion (if any) of such invoiced amount, and notify Dynavax in writing of the disputed amount and its basis for such dispute, in each case, no later than the due date for payment of such invoiced amount as set forth above in this Section 6. Promptly following Customer's delivery of any such notice of dispute, the Parties shall attempt in good faith to resolve such dispute. The payment of such interest shall not limit Dynavax from exercising any other rights it may have as a consequence of the lateness of any payment.

6.7 **VAT.** All amounts payable by the Customer under the Supply Agreement are exclusive of amounts in respect of valued added tax (or national equivalent) applicable to the Dynavax Adjuvant from time to time ("**VAT**"). Where any taxable supply for VAT purposes is made under the Supply Agreement by Dynavax to the Customer, the Customer shall, on receipt of a valid VAT invoice from Dynavax, pay to Dynavax such additional amounts in respect of VAT as are chargeable on the supply of the Dynavax Adjuvant at the same time as payment is due for the supply of the Dynavax Adjuvant.

6.8 **Other Taxes or Duties.** Notwithstanding the above, all amounts payable by the Customer under the Supply Agreement are exclusive of any applicable sales tax, or any other taxes (other than income taxes imposed on Dynavax).

6.9 **Audits.**

(a) Customer shall keep, and shall cause its affiliates and Licensees to keep, complete and accurate records pertaining to the sale of Customer Product(s) in sufficient detail to permit Dynavax to confirm (i) the country in which each Unit of Customer Product(s) is Disposed of (if sales are made to a specific country); and (ii) the accuracy of all royalties paid hereunder; in each case, for at least three (3) full calendar years following the end of the calendar year to which they pertain. Dynavax shall have the right, once annually, to cause an independent, certified public accountant of international standing and reasonably acceptable to Customer to audit such records to confirm Additional Amounts, Net Sales, Units Sold, Net Sales Per Unit, Adjusted Net Sales per Unit and royalties for a period covering not more than the preceding three (3) full calendar years. No calendar year shall be subject to audit under this section more than once. Such audits may be exercised during normal business hours upon ten (10) days prior written notice to Customer. The auditor will execute a reasonable written confidentiality agreement with Customer and will disclose to Dynavax only such information as is reasonably necessary to provide Dynavax with information regarding any discrepancies between (i) amounts reported and actually paid, and (ii) amounts payable under the Supply Agreement. The auditor will send a copy of the report to Customer at the same time it is sent to Dynavax. The report sent to both Parties will include the methodology and calculations used to determine the results. If such audit reveals that Customer has failed to accurately report information pursuant to Section 6.3 or Section 6.5 or to make any Additional Amount or royalty payment (or portion thereof) when due under the Supply Agreement, then Customer, within thirty (30) days after receipt of the final audit report, shall pay to Dynavax any underpaid amounts due under the Supply Agreement, together with interest on such underpaid or late amounts calculated in accordance with Section 6.6. Dynavax shall bear the full cost of such audit unless such audit discloses an underpayment by Customer of more than 5% of the amount due for any calendar year under the Supply Agreement, in which case Customer shall bear the full cost of such audit. If such audit discloses an overpayment by Customer, then Dynavax, within thirty (30) days after receipt of the final audit report, shall pay to Customer any overpaid amounts under the Supply Agreement.

(b) Dynavax shall keep (or shall cause to be kept, as applicable) appropriate and complete records relating to the manufacture of the Dynavax Adjuvant supplied under the Supply Agreement as required for compliance with Applicable Laws. Customer and/or its authorized representative, shall be entitled once a year, upon twenty (20) days' notice to Dynavax, during normal business hours to audit the applicable documentation, to ensure compliance with Applicable Laws. Dynavax shall provide all reasonable assistance to Customer and/or its authorized representative to have access to the applicable documentation. In the event that Customer has reasonable cause to suspect a breach of the Supply Agreement by Dynavax, Customer shall only be required to give forty-eight (48) hours' notice to conduct such an audit and such audit may be in addition to the once a year audit limitation mentioned above.

(c) Dynavax shall, where permitted and as soon as reasonably practicable, notify the Customer if it (or the Dynavax CMO) receives notification from any Regulatory Authority or any other authority of an inspection which specifically relates to or impacts on the manufacturing or supply of the Dynavax Adjuvant under the Supply Agreement and will promptly provide to the Customer extracts or copies of all correspondence, reports, notices, findings and other material pertinent to such inspections received or produced by Dynavax, but only if such inspection relates to or impacts the manufacturing and/or supply of the Dynavax Adjuvant under the Supply Agreement (and the scope of such disclosure does not include the aforementioned information to the extent it specifically relates to services provided to other Dynavax clients). Furthermore, Dynavax shall keep Customer reasonably informed of any follow-on actions / remedial measures that may be required to be undertaken by Dynavax/Dynavax CMO to address any issues identified on account of the

foregoing. Dynavax shall (and shall cause Dynavax CMO to) diligently attend to any such follow-on actions / remedial measures to ensure that the supply of the Dynavax Adjuvant under the Supply Agreement and the manufacturing and sale of the Customer Product(s) remain unaffected or minimally affected.

7. Covenants and Warranties

7.1 In addition to any covenants made by it elsewhere in the Supply Agreement, each Party hereby covenants to the other Party that in connection with the exercise of such Party's rights or performance of such Party's obligations under the Supply Agreement:

(a) neither such Party nor any of its affiliates will, directly or indirectly through affiliates or third parties, pay, promise or offer to pay, or authorize the payment of, any money or give any promise or offer to give, or authorize the giving of anything of value to a public official or entity or other Person for purpose of obtaining or retaining business for or with, or directing business to, any Person, including such Party and its affiliates, nor will such Party or any of its affiliates directly or indirectly promise, offer or provide any corrupt payment, gratuity, emolument, bribe, kickback, illicit gift or hospitality or other illegal or unethical benefit to a public official or entity or any other Person;

(b) neither such Party nor any of its affiliates (or any of their respective employees and contractors), in connection with the exercise of such Party's rights or performance of such Party's obligations under the Supply Agreement, shall cause the other Party to be in violation of Anti-Corruption Laws or Export Control Laws;

(c) such Party shall immediately notify the other Party if such Party has any information that there is or is likely to be a violation of Anti-Corruption Laws or Export Control Laws in connection with the exercise of such Party's rights or performance of such Party's obligations under the Supply Agreement; and

(d) each Party shall undertake due diligence activities appropriate to its activities under the Supply Agreement in accordance with applicable Anti-Corruption Laws and related guidance, including guidance issued by the U.S. Department of Justice Criminal Division (entitled "Evaluation of Corporate Compliance Programs") as amended from time to time, concerning the Foreign Corrupt Practices Act (15 U.S.C. §§78dd-1, et. seq.), and issued by the U.K. Ministry of Justice concerning the UK Bribery Act 2010 as amended from time to time, such activities to include the conduct of appropriate due diligence in relation to third party contractors, and shall collaborate with the other Party to ensure such compliance.

Each Party has the right, upon reasonable notice and at its sole expense, to conduct, or have conducted by an independent third party reasonably acceptable to the other Party, no more than once every three years (except for cause), a reasonable and customary audit of the other Party for the purposes of monitoring compliance with this Section 7.1, and the other Party shall, subject to compliance with Applicable Laws, provide to such Party any relevant documents reasonably requested by such Party in relation thereto. Save in respect of such an audit for cause, the auditing Party shall reimburse the audited Party for reasonable and documented out-of-pocket costs and expenses incurred by the audited Party in complying with the foregoing audit requirements.

7.2 Dynavax warrants and represents to Customer that:

(a) it has the requisite power and authority to enter into the Supply Agreement and to perform its obligations hereunder;

(b) as of the Effective Date neither Dynavax nor any of its officers or employees has been debarred under the U.S. Food, Drug and Cosmetic Act or any equivalent foreign law, and

Dynavax is not involved, nor to its knowledge are any of its officers or employees involved, in any such debarment proceeding. Dynavax agrees that it will (i) not use, and (ii) require that any third-party from whom it obtains services in connection with this Supply Agreement not use, the services of any person debarred under the U.S. Food, Drug and Cosmetic Act or any equivalent foreign law;

(c) as of the Effective Date, there (i) have not been any lawsuit(s) or dispute(s) and (ii) are no pending lawsuit(s) / dispute(s) (or any notice of any imminent lawsuit / dispute), in each case, against Dynavax or its affiliates, or, to Dynavax's knowledge, Dynavax CMO, relating to the Dynavax Adjuvant;

(d) to the best of Dynavax's knowledge, the manufacturing, offering for sale, selling, exporting, importing and using of the Dynavax Adjuvant shall not infringe the intellectual property rights of any third party;

(e) it and Dynavax CMO hold all authorizations, permits and licenses which are necessary to fulfil Dynavax's obligations hereunder;

(f) there are no agreements between Dynavax and any third party that conflict with the Supply Agreement.

7.3 Customer warrants and represents to Dynavax that:

(a) it has the requisite power and authority to enter into the Supply Agreement and to perform its obligations hereunder; and

(b) there are no agreements between Customer and any third party that conflict with the Supply Agreement.

8. Indemnity, [***] **and Insurance.**

8.1 **Indemnity.**

(a) Dynavax shall indemnify, defend and hold Customer, its affiliate(s), and their respective officers, directors, employees, and agents (each a "**Customer Indemnitee**") harmless from all losses, liabilities, damages and expense (including reasonable attorneys' fees and costs) incurred by a Customer Indemnitee that arise as a result of any claim, demand, action or other proceeding by a third party to the extent caused by (i) the negligence or wilful misconduct of any Dynavax Indemnitee (as defined below) and Dynavax CMO, (ii) any breach by Dynavax of its covenants, representations, warranties or other obligations hereunder, (iii) the manufacturing, storage and/or supply of the Dynavax Adjuvant by Dynavax, its affiliates or Dynavax CMO; and/or (iv) the infringement of the Intellectual Property Rights of a third party arising from: (1) Dynavax's, its affiliate(s)' or Dynavax CMO's manufacture and supply of Dynavax Adjuvant hereunder; or (2) the use, sale, offer for sale, import or commercialization by or on behalf of Customer, its affiliates, or their Licensees of the Dynavax Adjuvant as a component of Customer Product(s) for the purposes set forth in the Supply Agreement; in each case (i), (ii), (iii) and (iv) above, other than to the extent caused by (A) the negligence or wilful misconduct of any Customer Indemnitee, (B) any breach by Customer of its covenants, representations, warranties or other obligations hereunder, (C) the infringement of third party Intellectual Property Rights arising out of the manufacture, use, sale, offer for sale or import of Customer Vaccine as a component of Customer Product(s), (D) the research, development, manufacture (excluding manufacture of the Dynavax Adjuvant), use, marketing, promotion, distribution, handling, storage, sale or other disposition by or on behalf of Customer, its affiliates, or their Licensees of Customer Vaccine as a component of the Customer Product; or (E) [***].

(b) Customer shall indemnify, defend and hold Dynavax, its affiliates and their respective officers, directors, employees, and agents (each a "**Dynavax Indemnitee**") harmless from all losses, liabilities, damages and expense (including reasonable attorneys' fees and costs) incurred by a Dynavax Indemnitee that arise as a result of any claim, demand, action or other proceeding by a third party to the extent caused by (i) the negligence or wilful misconduct of any Customer Indemnitee, (ii) any breach by Customer of its covenants, representations, warranties or other obligations hereunder, (iii) the infringement of the Intellectual Property Rights of a third party arising out of the manufacture, use, sale, offer for sale or import by or on behalf of Customer, its affiliates, or their Licensees of Customer Vaccine as a component of Customer Product(s), (iv) the research, development, manufacture, use, marketing, promotion, distribution, handling, storage, or sale by or on behalf of Customer, its affiliates, or their Licensees of Customer Vaccine as a component of Customer Product(s); or (v) [***]; in each case (clauses (i) through (v) above), other than to the extent caused by (A) the negligence or wilful misconduct of any Dynavax Indemnitee, (B) any breach by Dynavax of its covenants, representations, warranties or other obligations hereunder, (C) the manufacturing, storage and/or supply of the Dynavax Adjuvant by Dynavax, its affiliates or Dynavax CMO; and/or (D) the infringement of the Intellectual Property Rights of a third party arising from: (1) Dynavax's, its affiliate(s)' or Dynavax CMO's manufacture and supply of Dynavax Adjuvant hereunder; or (2) the use, sale, offer for sale, import or commercialization by or on behalf of Customer, its affiliates, or their Licensees of the Dynavax Adjuvant as a component of Customer Product(s).

(c) In the event a Party (the "Indemnified Party") seeks indemnification under Section 8.1(a) or Section 8.1(b), the Indemnified Party shall: (i) inform the other Party (the "Indemnifying Party") of a claim as soon as reasonably practicable after it receives notice of the claim (it being understood and agreed, however, that the failure by an Indemnified Party to give notice of a claim as provided in this Section 8.1(c) shall not relieve the Indemnifying Party of its indemnification obligation under the Supply Agreement except and only to the extent that such Indemnifying Party's ability to defend against such claim is prejudiced as a result of such failure to give notice); (ii) permit the Indemnifying Party to assume direction and control of the defence of the claim (including the right to settle the claim solely for monetary consideration), using counsel reasonably satisfactory to the Indemnified Party, at the Indemnifying Party's sole cost and expense; and (iii) cooperate as reasonably requested (at the expense of the Indemnifying Party) in the defence of the claim. If the Indemnifying Party does not assume control of such defence within thirty (30) days after receiving notice of the claim from the Indemnified Party, the Indemnified Party shall control such defence but without limiting the Indemnifying Party's indemnification obligations under this Section 8. The Party not controlling the defence of any claim pursuant to this Section 8.1(c) may participate in the legal proceedings with a counsel of its choosing at its own expense. The Party controlling the defence of any claim pursuant to this Section 8.1(c) shall keep the other Party advised of the status of such action, suit, proceeding or claim and the defence thereof and shall consider recommendations made by the other Party with respect thereto. The Indemnified Party shall not agree to any settlement of such action, suit, proceeding or claim without the prior written consent of the Indemnifying Party, which shall not be unreasonably withheld, delayed or conditioned. The Indemnifying Party shall not agree to any settlement of such action, suit, proceeding or claim or consent to any judgment in respect thereof that (i) does not include a complete and unconditional release of the Indemnified Party from all liability with respect thereto, (ii) imposes any liability or obligation on the Indemnified Party, or (iii) acknowledges fault by the Indemnified Party without the prior written consent of the Indemnified Party.

8.2 [***].

8.3 **Exclusions.** Neither Party shall be liable to the other Party for any loss of an indirect or consequential nature including any loss of turnover, profits, business or goodwill, whether in

contract, warranty, negligence, tort, strict liability or otherwise, arising out of any breach of or failure to perform any of the provisions of the Supply Agreement.

8.4 **Exclusions** [***]**.** Notwithstanding the foregoing, nothing in the Supply Agreement shall limit the liability of either Party in respect of:

(a) personal injury or death arising out of that Party's negligence or wilful misconduct; or

(b) that Party's fraud or fraudulent misrepresentation or wilful misconduct; or

(c) any other liability of such Party which cannot be limited or excluded as a matter of law; or

(d) any material breach by such Party of applicable Data Protection Legislation; or

(e) any material breach by such Party of applicable Anti-corruption Laws;

(f) any indemnities of such Party set out under Section 8.1; or

(g) any breach by such Party of confidentiality obligations set out under Section 10.

8.5 **Mitigating Steps.** Each Indemnified Party shall take reasonable steps to minimise and mitigate any loss or damage for which such Indemnified Party is entitled to seek indemnification from the Indemnifying Party pursuant to the indemnities set forth in Section 8.1.

8.6 This Section 8 shall survive termination or expiration of the Supply Agreement.

9. Insurance

[***] will, at its own expense, obtain and maintain [***], (a) product liability and general liability insurance providing protection in the amount of [***] and (b) workers' compensation insurance with not less than the minimum coverage limit as required by law. Upon written request [***], [***] will furnish to [***], a copy of the certificate of insurance evidencing compliance with the provisions of this Section. The existence of such coverage will in no way limit [***] liability or obligations expressly set forth in the Supply Agreement.

10. Confidentiality

10.1 The Customer undertakes that it shall not at any time during the Term and for a period of seven (7) years after expiry or termination of the Supply Agreement, disclose to any person any Confidential Information (including for the avoidance of doubt any personal data) of Dynavax, except as permitted by Section 10.3 and 10.4; *provided, however,* that Customer's obligations of non-disclosure under the Supply Agreement, including this Section 10, with respect to any Dynavax Manufacturing Information, and Customer's obligations of non-use under the Supply Agreement, including Section 3.3 and Section 3.10, with respect to any Dynavax Manufacturing Information, shall continue beyond such seven- (7) year period after expiry or termination of the Supply Agreement until such time as such Dynavax Manufacturing Information becomes publicly known through no fault or omission on the part of Customer or any of its affiliates or their Licensees.

10.2 Dynavax undertakes that it shall not at any time during the Term and for a period of seven (7) years after expiry or termination of the Supply Agreement, disclose to any person any Confidential Information (including for the avoidance of doubt any personal data) disclosed by or on behalf of the Customer and its affiliates (including any confidential information of their Licensees or any Authorized Third Party) except as permitted by Section 10.3 [***].

10.3 The Receiving Party may disclose Confidential Information of the Disclosing Party:

(a) to the Receiving Party's or its affiliates' directors, employees, officers, representatives, professional advisers, or permitted subcontractors, and additionally in the case of Customer or its affiliates being the Receiving Party, Licensees and Authorized Third Parties; in each case, who need to know such information for the purposes of exercising the Receiving Party's rights or carrying out its obligations under the Supply Agreement. The Receiving Party shall ensure that its and its affiliates' directors, employees, officers, representatives, professional advisers, and permitted subcontractors, and, in the case of Customer or its affiliates being the Receiving Party, Licensees and Authorized Third Parties, to whom it discloses the Disclosing Party's Confidential Information comply with this Section 10, and the Receiving Party shall be responsible and liable for any non-compliance by any of the foregoing with this Section 10; and

(b) as may be required by Applicable Laws, a court of competent jurisdiction or any governmental authority or Regulatory Authority, or the rules of any securities exchange on which the Receiving Party's or its affiliate's, and additionally in the case of Customer or its affiliates being the Receiving Party, Licensees' and Authorized Third Parties'; in each case, securities are listed; provided that the Receiving Party will, except where impermissible, give reasonable advance notice to the Disclosing Party of such required disclosure and comply with all reasonable requests of the Disclosing Party with respect to maintaining confidence of such Confidential Information and in any event shall use at least the same diligent efforts to secure confidential treatment of such Confidential Information as the Receiving Party would use to protect its own confidential information of a similar nature, but in no event less than reasonable efforts; and

(c) to actual and bona fide potential investors, acquirors, and other financial partners of the Receiving Party or its affiliates, and additionally in the case of Customer or its affiliates being the Receiving Party, Licensees and Authorized Third Parties; in each case, for the purpose of evaluating or carrying out an actual or potential investment or acquisition, in each case under reasonable written obligations of confidentiality and non-use; provided that the Receiving Party or its affiliate limits such disclosure to the maximum extent possible and redacts the financial terms and other provisions of the Supply Agreement that are not reasonably required to be disclosed to existing or potential investors, acquirors and other financial partners in connection with such potential investment or acquisition.

10.4 Specifically and without limiting the foregoing, but subject to Sections 3.3 and 3.10, Dynavax hereby gives consent for Customer, its affiliates, their Licensees, and Authorized Third Party(ies), to disclose Dynavax Confidential Information to Regulatory Authorities solely to the extent necessary to apply for, obtain, update and maintain Regulatory Approval(s) for Customer Product(s).

10.5 It is understood that in the event that Customer does not have an affiliate in a particular country (or countries), Customer or its affiliate in another country may contract with a third party for that third party to apply for, obtain, update and maintain Regulatory Approval(s) for Customer Product(s) in that country (or countries) on behalf of Customer and/or its affiliate or on such third party's own behalf if such third party is also a Licensee (any such third party, an "**Authorized Third Party**").

10.6 Dynavax shall keep Customer informed of all matters relating to the manufacturing and supply of the Dynavax Adjuvant by or on behalf of Dynavax that would reasonably be expected to require an amendment to, or have an adverse impact, on the Regulatory Approval(s) / regulatory submissions for the Customer Product(s) [***].

11. Publications and Announcements

11.1 Except as required by law, regulation, or any competent government authority or Regulatory Authority or in compliance with this Section 11, the Parties shall consult on and agree in writing

upon the form of all press releases, publications, public announcements and public disclosures concerning the Supply Agreement or its subject matter (each a "**Publication**").

11.2 Neither Party shall use the names, logos or trademarks of the other in any Publication, advertising, promotion, or commercially-related publicity without the named Party's prior express written consent, except as expressly provided for in this Section 11.

11.3 Notwithstanding the foregoing, the Customer may issue a Publication regarding Customer Vaccine / Customer Product at any time provided that such Publication does not include any Confidential Information of Dynavax.

12. Compliance with Applicable Laws

12.1 In performing its obligations under the Supply Agreement, Dynavax and Customer shall comply, and shall ensure that their respective affiliates comply, and Dynavax shall ensure that the Dynavax CMO complies, with all Applicable Laws.

12.2 Dynavax or Dynavax CMO, as applicable, shall manufacture, sample, test and store all Dynavax Adjuvant and provide a COA and COC in accordance with the Quality Agreement.

12.3 On reasonable prior notice, Dynavax shall provide all reasonable co-operation to any inspection by any Regulatory Authority, and shall permit such Regulatory Authority access to the Dynavax or Dynavax CMO manufacturing site, as applicable, and all relevant records necessary or reasonably desirable, in each case, in support of the use of the Dynavax Adjuvant as expressly permitted by the Supply Agreement and shall share the results of such inspection promptly with Customer, in writing.

12.4 If any Regulatory Authority notifies Dynavax CMO or Dynavax of a violation or deficiency in compliance which would impact the use of the Dynavax Adjuvant as expressly permitted by the Supply Agreement, Dynavax shall share such notification with Customer within three (3) days of receipt of the same. [***].

13. Data Protection

Both Parties will comply with all applicable requirements of the Data Protection Legislation. Except as specifically agreed otherwise in writing between the Parties, it is hereby acknowledged and agreed that (i) no personal data will be shared between the Parties under or in connection with the Supply Agreement; and (ii) if the sharing of personal data between the Parties is strictly needed in order to perform their obligations under the Supply Agreement, a specific additional written data sharing agreement (incorporating such terms as may be required by applicable Data Protection Legislation) shall be agreed and signed by the Parties before any such sharing of personal data.

14. Extension of Expiration Date; Termination

14.1 The Parties may extend the Expiration Date of the Supply Agreement by mutual written agreement on commercially reasonable terms to be negotiated in good faith, such agreement not to be unreasonably delayed, withheld or conditioned by Dynavax.

14.2 Without affecting any other right or remedy available to it, either Party may terminate the Supply Agreement with immediate effect by giving written notice to the other Party if:

(a) the other Party commits a material breach of any term of the Supply Agreement which breach is irremediable or if such breach is remediable fails to remedy that breach within a period of thirty (30) days after being notified to do so;

(b) the other Party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

(c) the other Party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business;

(d) the other Party or any of its directors, employees, or consultants have been found to have violated any applicable Anti-Corruption Laws.

14.3 Customer has the right to terminate the Supply Agreement upon thirty (30) days' written notice to Dynavax in the event:

(a) there is a significant efficacy or safety concern related to the Customer Product(s) or the Dynavax Adjuvant or the Customer Vaccine that cannot be resolved to a Regulatory Authority's satisfaction; or

(b) a Regulatory Authority directs that the Customer Product(s) / Customer Vaccine / Dynavax Adjuvant be recalled or removed from the market;

(c) Customer Product(s) / Customer Vaccine do not receive the necessary Regulatory Approval(s) for the development, manufacturing or commercialization; or

(d) for any other reason including for convenience;

in each case, subject to the provisions of Section 15.

15. Consequences of Termination or Expiration

15.1 Neither expiration nor termination of the Supply Agreement shall relieve either Party of any obligation or liability accruing under the Supply Agreement prior to such expiration or termination, nor shall expiration or termination of the Supply Agreement preclude either Party from pursuing all rights and remedies it may have under the Supply Agreement, at law or in equity, with respect to any material breach of the Supply Agreement.

15.2 Upon the earlier of expiration or termination of the Supply Agreement for any reason, following a written request by the Disclosing Party, the Receiving Party shall promptly return to the Disclosing Party, or delete or destroy (in the Receiving Party's discretion), all records and materials in the possession or control of (a) the Receiving Party and (b) (i) in the case of Dynavax or its affiliates as the Receiving Party, its and its affiliate's sub-contractors and Dynavax CMO, or (ii) in the case of Customer or its affiliates as the Receiving Party, Licensees and Authorized Third Party(ies), that, in each case, (a) and (b) above contain Confidential Information of the Disclosing Party; provided that the Receiving Party shall be permitted to retain one (1) copy of such Confidential Information for the sole purpose of performing, or monitoring compliance with, any continuing obligations under the Supply Agreement, as required by Applicable Law, or for legal archival purposes, which copy shall remain subject to the non-use and non-disclosure provisions contained herein. Notwithstanding the foregoing, the Receiving Party shall not be required to return or destroy any electronic copy of files containing the Disclosing Party's Confidential Information that are created automatically in the ordinary course of business pursuant to the Receiving Party's electronic back-up procedures that apply to its own general electronic files (a) so long as such electronic copies of files are (i) maintained only on centralized storage servers (and not on personal computers or devices), and (ii) not readily accessible by the Receiving Party's representatives (other than its

information technology specialists), and (b) all of the Disclosing Party's Confidential Information contained in such electronic copies of files shall remain subject to the non-use and non-disclosure provisions contained herein.

15.3 Upon expiration or termination of the Supply Agreement for any reason: Customer shall pay all outstanding invoices for: (a) Dynavax Adjuvant delivered by Dynavax; and (b) Orders for Binding Quantities not yet delivered that are Uncancellable [***].

Upon expiration or termination of the Supply Agreement for any reason: Dynavax shall, subject to prior payment by Customer of (i) all outstanding invoices for (A) Dynavax Adjuvant delivered by Dynavax; and (B) Orders for Binding Quantities not yet delivered that are Uncancellable; and (ii) in the case of Orders for Binding Quantities scheduled for delivery in 2021 and not yet delivered (and therefore not yet invoiced by Dynavax under Section 6.2(a)), an invoice issued by Dynavax for [***] percent ([***]%) of the LMIC Price of such Binding Quantities; manufacture/deliver Orders for Binding Quantities (or any portion thereof) not yet delivered.

15.4 Upon expiration or termination of the Supply Agreement for any reason, Customer and its affiliates and their Licensees shall be entitled to sell any existing Customer Product(s) in stock and also use any Remaining Stock to manufacture Customer Product(s) for sale, subject in each case to Customer's payment and reporting obligations under Section 6 with respect to the sale of any such Customer Product(s).

15.5 The Parties' rights and obligations under Annex A (with regard to pricing of Doses of Dynavax Adjuvant and royalties on applicable Net Sales) and under Sections 1, 3.3, 3.6 (only so long as the Remaining Stock is available with Customer, its affiliates, their Licensees or their respective sub-contractors), 3.7, 3.9, 3.10, 3.11, 3.12, 4.1-4.5 (solely with respect to deliveries of Dynavax Adjuvant made after expiration or termination of the Supply Agreement), 4.6, 4.7, 4.8, 4.9 (solely in the event of [***]), 4.10, 4.11, 5, 6.2, 6.3, 6.4, 6.5, 6.6, 6.7, 6.8, 6.9, 7, 8, 9, 10, 11, 12.3, 12.4, 13, 15 and 17 of these Conditions shall survive expiration or termination of the Supply Agreement.

16. Force Majeure

16.1 Provided it has complied with the remaining provisions of this Section 16, if a Party is prevented, hindered or delayed in or from performing any of its obligations under the Supply Agreement by a Force Majeure Event ("**Affected Party**"), the Affected Party shall not be in breach of the Supply Agreement or otherwise liable for any such failure or delay in the performance of such obligations.

16.2 The corresponding obligations of the other Party will be suspended to the same extent as those of the Affected Party.

16.3 The Affected Party shall:

(a) as soon as reasonably practicable after the start of the Force Majeure Event but not later than three (3) Business Days from its start, notify the other Party in writing of the Force Majeure Event, the date on which it started, its likely potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the Supply Agreement; and

(b) use all reasonable endeavours to mitigate the effect of the Force Majeure Event.

16.4 An Affected Party cannot claim relief if the Force Majeure Event is attributable to the Affected Party's wilful act or negligence.

16.5 The Affected Party shall notify the other Party in writing as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its

obligations under the Supply Agreement. Following such notification, the Supply Agreement shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless mutually agreed otherwise in writing by the Parties.

16.6 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than three (3) months, the Party not affected by the Force Majeure Event may terminate the Supply Agreement by giving four (4) weeks' prior written notice to the Affected Party.

17. General

17.1 **Assignment.** Neither the Supply Agreement nor any rights or obligations hereunder may be assigned by a Party without the prior written consent of the other Party, except that a Party may, without the other Party's consent, assign the Supply Agreement and all of its rights and obligations hereunder: (a) in connection with the transfer or sale of all or substantially all of the business or assets of such Party relating to the Supply Agreement to a third party, whether by merger, consolidation, divesture, restructure, sale of stock, sale of assets, or otherwise; or (b) to an affiliate of such Party.

17.2 **Subcontracting.** The Parties agree that Dynavax may subcontract the manufacture of Dynavax Adjuvant to be supplied under the Supply Agreement to the Dynavax CMO. If Dynavax changes the approved Dynavax CMO that necessitates the vendor / product qualification for the use of Dynavax Adjuvant hereunder, Dynavax shall provide samples of Dynavax Adjuvant in quantities reasonably required for such purpose to Customer at no additional cost to Customer. If Dynavax proposes to subcontract any of its material obligations under the Supply Agreement, other than subcontracting of the manufacture of Dynavax Adjuvant to be supplied under the Supply Agreement to the Dynavax CMO, Dynavax shall (i) provide prior written notice to Customer of such subcontracting and identity of the subcontractor; and (ii) ensure that any such subcontract is consistent with the terms and conditions of the Supply Agreement. Dynavax shall remain responsible for all the acts and omissions of the Dynavax CMO and any of its other subcontractors as if they were its own.

17.3 **Notices.**

(a) Any notice to be given pursuant to the Supply Agreement (other than routine communications incident to the performance or administration of this Agreement) shall be in writing in the English language to the address of the recipient Party set out in this Section or as a Party may otherwise from time to time designate by written notice to the other Party and shall be delivered:

(i) personally, in which case the notice will be deemed to have been received at the time of delivery;

(ii) by pre-paid, first-class post if the notice is being sent to an address within the country of posting, in which case the notice will be deemed to have been received at 09:00 in the country of receipt on the fifth (5th) Business Day in the country specified in the receiving Party's address for notices after the date of posting; or

(iii) by international courier service if being sent to an address outside the country of posting, in which case the notice will be deemed to have been received upon receipt by the receiving Party as documented by such international courier service.

(b) A notice given under the Supply Agreement is valid if sent electronically or by fax if the paper version of notice is promptly dispatched to the receiving Party in any of the foregoing manners.

Customer address for notice:

Biological E. Limited

Plot No 623-H, Road No 35

Jubilee Hills, Hyderabad 500 033

Telangana State, India

Attn: N. Eswara Reddy

Sr. Vice President - Legal

Fax: +91- 040 -7121 6332
Tel: +91 7121 6000

With a copy to Mahima Datla at the address above.

Dynavax address for notice:

Dynavax Technologies Corporation
2100 Powell Street, Suite 900
Emeryville, CA 94608
USA
Attn: President and Chief Operating Officer
Email: dnovack@dynavax.com

With a copy to:

Dynavax Technologies Corporation
2100 Powell Street, Suite 900
Emeryville, CA 94608
USA
Attn: General Counsel
Email: legal@dynavax.com

17.4 **Severability.** If any provision or part-provision of the Supply Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Supply Agreement. If any provision of the Supply Agreement is deemed deleted under this Section 17.4 the Parties shall negotiate in good faith to agree to a legally valid replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

17.5 **Waiver.** A waiver of any right or remedy under the Supply Agreement is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a Party to exercise any right or remedy provided under the Supply Agreement or under applicable law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Supply Agreement or under applicable law shall prevent or restrict the further exercise of that or any other right or remedy.

17.6 **No Partnership or Agency.** Nothing in the Supply Agreement is intended to, or shall be deemed to, establish any employee/employer relationship, partnership or joint venture between the Parties, or constitute either Party the agent of the other, or authorise either Party to make or enter into any commitments for or on behalf of the other Party. Each Party confirms it is acting on its own behalf as an independent contractor and not on behalf of any third party.

17.7 **Entire Agreement.** The Supply Agreement constitutes the entire agreement and understanding between the Parties with respect to the subject matter hereof, and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings

between them, whether written or oral, relating to such subject matter, including the NDA, it being understood that information disclosed by a Party to the other Party pursuant to the NDA shall be subject to the non-disclosure and non-use obligations of the Parties under the Supply Agreement; provided that, except as set forth in Section 5.10 of the Supply Agreement, the Collaboration Agreements shall continue in full force and effect in accordance with their respective terms.

17.8 **Rights of Third Parties.** This Supply Agreement is neither expressly nor impliedly made for the benefit of any party other than those executing it.

17.9 **Variation.** No variation, amendment, modification or supplement to the Supply Agreement shall be valid unless and until it is made in writing and signed by a duly authorised representative of each Party.

17.10 **Further Assurances.** Each Party will execute, acknowledge and deliver such further instruments, and do all such other acts, as may be reasonably necessary or appropriate in order to carry out the expressly stated purposes and the clear intent of the Supply Agreement.

17.11 **Successors.** This Supply Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns.

17.12 **Governing Law.** The Supply Agreement, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales without giving effect to any choice of law or conflict of law provisions or rules that would cause the application of the laws of any other jurisdiction. The U.N. Convention on Contracts for the International Sale of Goods (1980) is excluded and will not apply to the Supply Agreement. Nothing in the Supply Agreement shall prevent either Party from applying to a court of law for injunctive relief.

17.13 **Dispute Resolution Procedure.**

(a) **Escalation Process.** In the event of any disputes, controversies or differences between the Parties, arising out of, in relation to, or in connection with the Supply Agreement, including any alleged failure to perform, or breach, of the Supply Agreement, or any issue relating to the validity, construction, interpretation, enforceability, breach, performance, application, or termination of the Supply Agreement (each a "**Dispute**"), then upon the written request of either Party, the Parties agree to meet and discuss in good faith an amicable resolution thereof, which good faith efforts include at least one in-person or videoconference meeting between the Executive Officers of each Party.

(b) Arbitration. All Disputes not resolved within thirty (30) days following the written request for amicable resolution shall be submitted to the International Court of Arbitration of the International Chamber of Commerce ("ICC") and shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce (the "Rules") (which Rules are deemed to be incorporated by reference into the Supply Agreement). The following provisions shall apply, unless the Parties agree otherwise:

(i) The arbitral tribunal shall be composed of one or more arbitrators appointed in accordance with the Rules;

(ii) The seat, or legal place, of arbitration shall be London, England;

(iii) The language of the arbitration shall be English;

(iv) The tribunal shall draw up and submit to the Parties for signature the Terms of Reference within sixty (60) days of receiving the file;

(v) The arbitration award shall be final and binding on the Parties, and judgment upon the award may be entered by any court having jurisdiction thereof; and

(vi) Except as may be required by Applicable Laws, neither a Party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both Parties. For clarity, no award or procedural order made in the arbitration shall be published, except as may be required by Applicable Laws.

17.14 **Counterparts**

The Supply Agreement may be executed in one (1) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Exhibit 31.1

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

CERTIFICATIONS

I, Ryan Spencer, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Dynavax Technologies Corporation (the "registrant");

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

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

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

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

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

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

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

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

By: /s/ RYAN SPENCER

Ryan Spencer
Chief Executive Officer
(Principal Executive Officer)

Date: August 4, 2021

Exhibit 31.2

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

CERTIFICATIONS

I, Kelly MacDonald, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Dynavax Technologies Corporation (the "registrant");

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

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

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

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

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

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

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

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

By: /s/ KELLY MACDONALD

Kelly MacDonald
Chief Financial Officer
(Principal Financial Officer)

Date: August 4, 2021

Exhibit 32.1

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

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

(i) The Company's Quarterly Report on Form 10-Q for the period ended June 30, 2021 (the "Periodic Report"), to which this Certificate is attached as Exhibit 32.1, fully complies with the requirements of Section 13(a) or Section 15(d) of the Exchange Act; and

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

In Witness Whereof, the undersigned has set his hand hereto as of the 4th day of August, 2021.

By: /s/ RYAN SPENCER

Ryan Spencer
Chief Executive Officer
(Principal Executive Officer)

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

Exhibit 32.2

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

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

(i) The Company's Quarterly Report on Form 10-Q for the period ended June 30, 2021 (the "Periodic Report"), to which this Certificate is attached as Exhibit 32.2, fully complies with the requirements of Section 13(a) or Section 15(d) of the Exchange Act; and

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

In Witness Whereof, the undersigned has set his hand hereto as of the 4th day of August, 2021.

By: /s/ KELLY MACDONALD

Kelly MacDonald
Chief Financial Officer
(Principal Financial Officer)

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