

**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 September 30, 2023

or

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

For the transition period from to  
Commission File Number: 000-21088

**FRESH TRACKS THERAPEUTICS, INC.**

(Exact name of registrant as specified in its charter)

**Delaware**

(State or other jurisdiction of incorporation or organization)

**93-0948554**

(I.R.S. Employer Identification No.)

**2000 Central Avenue, Suite 100, Boulder, CO**

(Address of principal executive offices)

**80301**

(Zip Code)

**(720) 505-4755**

(Registrant's telephone number, including area code)

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, \$0.01 par value per share	FRTX	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 registrant was required to submit such files). Yes  No

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

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

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

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

As of November 3, 2023, there were 5,973,306 shares of the registrant's common stock outstanding.

## FORWARD-LOOKING STATEMENTS

This Quarterly Report on Form 10-Q (“Quarterly Report”) contains forward-looking statements that involve substantial risks and uncertainties for purposes of the safe harbor provided by the Private Securities Litigation Reform Act of 1995. All statements contained in this Quarterly Report other than statements of historical fact, including statements relating to future financial, business, conditions, plans, prospects, impacts, shifts, trends, progress, or strategies and other such matters, including without limitation, our proposed liquidation and dissolution (the “Dissolution”) pursuant to our proposed plan of liquidation and dissolution (the “Plan of Dissolution”), the timing of filing of the Certificate of Dissolution, the timing and outcome of the special meeting of stockholders to approve the Dissolution and the Plan of Dissolution, the amount, number, and timing of liquidating distributions, if any, to our stockholders, the amount of reserves, and similar statements, are forward-looking statements. The words “may,” “could,” “should,” “might,” “delist,” “suspend,” “appeal,” “request,” “stay,” “notify,” “cancel,” “expeditiously,” “quickly,” “approve,” “show,” “maximize,” “advise,” “continue,” “additional,” “range,” “announce,” “anticipate,” “explore,” “reflect,” “believe,” “sufficient,” “transform,” “estimate,” “expect,” “intend,” “plan,” “file,” “make,” “timely,” “promptly,” “attempt,” “distribute,” “discontinue,” “dissolve,” “dissolution,” “wind down,” “best interests,” “predict,” “potential,” “will,” “evaluate,” “aim,” “help,” “progress,” “meet,” “support,” “look forward,” “develop,” “strengthen,” “promise,” “successful,” “positive,” “provide,” “commit,” “opportunity,” “disrupt,” “reduce,” “restore,” “demonstrate,” “suggest,” “target,” “shift,” “inhibit,” and similar expressions and their variants, are intended to identify forward-looking statements. Such statements are based on management’s current expectations and involve risks and uncertainties. Actual results and performance could differ materially from those projected in the forward-looking statements as a result of many factors. Unless otherwise mentioned or unless the context requires otherwise, all references in this Quarterly Report to “Fresh Tracks,” “Brickell Subsidiary,” “Company,” “we,” “us,” and “our,” or similar references, refer to Fresh Tracks Therapeutics, Inc. and its consolidated subsidiaries.

We based these forward-looking statements largely on our current expectations and projections about future events and trends that we believe may affect our proposed Dissolution and Plan of Dissolution, continued listing and delisting on Nasdaq, status and return of product licenses and management, wind-down of Company operations and assets, financial condition, results of operations, business operations and objectives, employees, and financial needs. These forward-looking statements are subject to a number of risks, uncertainties, and assumptions, including those described in Part I, Item 1A. “Risk Factors” in our Annual Report on Form 10-K for the year ended December 31, 2022, and in Part II, Item 1A, “Risk Factors” in this Quarterly Report, and under a similar heading in any other periodic or current report we may file with the U.S. Securities and Exchange Commission (the “SEC”) in the future. Moreover, we operate in a very competitive and rapidly changing environment. New risks emerge quickly and from time to time. It is not possible for our management to predict all risks, nor can we assess the impact of all factors on our business and operations or the extent to which any factor, or combination of factors, may cause actual results to differ materially from those contained in any forward-looking statements we may make. In light of these risks, uncertainties, and assumptions, the future events and trends discussed in this Quarterly Report may not occur and actual results could differ materially and adversely from those anticipated or implied in the forward-looking statements. We undertake no obligation to revise or publicly release the results of any revision to these forward-looking statements, except as required by law. Given these risks and uncertainties, readers are cautioned not to place undue reliance on such forward-looking statements. All forward-looking statements are qualified in their entirety by this cautionary statement.

You should read carefully the factors described in Part I, Item 1A. “Risk Factors” in our Annual Report on Form 10-K for the year ended December 31, 2022, in Part II, Item 1A, “Risk Factors” in this Quarterly Report, and under a similar heading in any other periodic or current report we may file with the SEC to better understand the risks and uncertainties inherent in our business and underlying any forward-looking statements. You are advised to consult any further disclosures we make on related subjects in our future public filings and on our website.

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**FRESH TRACKS THERAPEUTICS, INC.**  
**FORM 10-Q**  
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## PART I. FINANCIAL INFORMATION

## ITEM 1. FINANCIAL STATEMENTS

FRESH TRACKS THERAPEUTICS, INC.  
CONDENSED CONSOLIDATED BALANCE SHEETS  
(in thousands, except share and per share data)  
(unaudited)

	September 30, 2023	December 31, 2022
<b>Assets</b>		
Current assets:		
Cash and cash equivalents	\$ 12,020	\$ 8,680
Prepaid expenses and other current assets	993	1,403
Total current assets	13,013	10,083
Property and equipment, net	44	75
Contract asset, net of current portion	—	64
Operating lease right-of-use asset	—	49
Total assets	<u>\$ 13,057</u>	<u>\$ 10,271</u>
<b>Liabilities and stockholders' equity</b>		
Current liabilities:		
Accounts payable	\$ 609	\$ 571
Accrued liabilities	1,499	2,457
Lease liability	—	49
Total current liabilities	<u>2,108</u>	<u>3,077</u>
Commitments and contingencies (Note 5)		
Stockholders' equity:		
Common stock, \$0.01 par value, 300,000,000 shares authorized as of September 30, 2023 and December 31, 2022; 5,926,497 and 3,018,940 shares issued and outstanding as of September 30, 2023 and December 31, 2022, respectively	59	30
Additional paid-in capital	181,815	173,633
Accumulated deficit	(170,925)	(166,469)
Total stockholders' equity	<u>10,949</u>	<u>7,194</u>
Total liabilities and stockholders' equity	<u>\$ 13,057</u>	<u>\$ 10,271</u>

*See accompanying notes to these condensed consolidated financial statements.*

**FRESH TRACKS THERAPEUTICS, INC.**  
**CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS**  
(in thousands, except share and per share data)  
(unaudited)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
Revenue				
Contract revenue	\$ 7,944	\$ 486	\$ 8,006	\$ 4,801
Royalty revenue	—	—	—	92
Total revenue	7,944	486	8,006	4,893
Operating expenses:				
Research and development	627	3,560	3,172	11,438
General and administrative	5,320	3,002	9,542	10,396
Total operating expenses	5,947	6,562	12,714	21,834
Income (loss) from operations	1,997	(6,076)	(4,708)	(16,941)
Other income	107	58	257	372
Interest expense	—	—	(5)	(6)
Net income (loss)	2,104	(6,018)	(4,456)	(16,575)
Less: net income attributable to participating securities	(197)	—	—	—
Net income (loss) attributable to common stockholders	\$ 1,907	\$ (6,018)	\$ (4,456)	\$ (16,575)
Net income (loss) per common share attributable to common stockholders, basic and diluted	\$ 0.32	\$ (2.07)	\$ (0.86)	\$ (6.05)
Weighted-average shares used to compute net income (loss) per share attributable to common stockholders, basic and diluted	5,912,786	2,906,000	5,199,856	2,738,954

*See accompanying notes to these condensed consolidated financial statements.*

**FRESH TRACKS THERAPEUTICS, INC.**  
**CONDENSED CONSOLIDATED STATEMENTS OF REDEEMABLE PREFERRED STOCK AND STOCKHOLDERS' EQUITY**  
(in thousands, except share data)  
**(unaudited)**

	Series A Redeemable Preferred Stock		Common Stock		Additional Paid-In-Capital	Accumulated Deficit	Total Stockholders' Equity
	Shares	Par Value	Shares	Par Value			
Balance, December 31, 2021	—	\$ —	2,652,828	\$ 27	\$ 170,247	\$ (145,367)	\$ 24,907
Stock-based compensation	—	—	—	—	551	—	551
Net loss	—	—	—	—	—	(9,410)	(9,410)
Balance, March 31, 2022	—	—	2,652,828	27	170,798	(154,777)	16,048
Issuance of redeemable preferred stock	1	—	—	—	—	—	—
Common stock issued, net of issuance costs of \$46	—	—	31,557	—	131	—	131
Issuance of common stock for cash under employee stock purchase plan	—	—	5,975	—	29	—	29
Stock-based compensation	—	—	—	—	576	—	576
Net loss	—	—	—	—	—	(1,147)	(1,147)
Balance, June 30, 2022	1	—	2,690,360	27	171,534	(155,924)	15,637
Redemption of preferred stock	(1)	—	—	—	—	—	—
Common stock issued, net of issuance costs of \$71	—	—	322,824	3	1,062	—	1,065
Stock-based compensation	—	—	—	—	539	—	539
Net loss	—	—	—	—	—	(6,018)	(6,018)
Balance, September 30, 2022	—	\$ —	3,013,184	\$ 30	\$ 173,135	\$ (161,942)	\$ 11,223

*See accompanying notes to these condensed consolidated financial statements.*

**FRESH TRACKS THERAPEUTICS, INC.**  
**CONDENSED CONSOLIDATED STATEMENTS OF REDEEMABLE PREFERRED STOCK AND STOCKHOLDERS' EQUITY (CONTINUED)**  
(in thousands, except share data)  
(unaudited)

	Series A Redeemable Preferred Stock		Common Stock		Additional Paid-In-Capital	Accumulated Deficit	Total Stockholders' Equity
	Shares	Par Value	Shares	Par Value			
Balance, December 31, 2022	—	\$ —	3,018,940	\$ 30	\$ 173,633	\$ (166,469)	\$ 7,194
Common stock issued pursuant to ATM agreements, net of issuance costs of \$202	—	—	2,887,535	29	6,540	—	6,569
Stock-based compensation	—	—	—	—	379	—	379
Net loss	—	—	—	—	—	(4,276)	(4,276)
Balance, March 31, 2023	—	—	5,906,475	59	180,552	(170,745)	9,866
Stock-based compensation	—	—	—	—	410	—	410
Net loss	—	—	—	—	—	(2,284)	(2,284)
Balance, June 30, 2023	—	—	5,906,475	\$ 59	180,962	(173,029)	7,992
Issuance of common stock upon restricted stock unit settlement, net of shares withheld for taxes	—	—	20,022	—	(10)	—	(10)
Stock-based compensation	—	—	—	—	863	—	863
Net income	—	—	—	—	—	2,104	2,104
Balance, September 30, 2023	—	\$ —	5,926,497	\$ 59	\$ 181,815	\$ (170,925)	\$ 10,949

*See accompanying notes to these condensed consolidated financial statements.*

**FRESH TRACKS THERAPEUTICS, INC.**  
**CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS**  
(unaudited, in thousands)

	Nine Months Ended September 30,	
	2023	2022
<b>CASH FLOWS FROM OPERATING ACTIVITIES:</b>		
Net loss	\$ (4,456)	\$ (16,575)
Adjustments to reconcile net loss to net cash used in operating activities:		
Stock-based compensation	1,652	1,666
Non-cash operating lease expense	60	44
Depreciation	31	21
Changes in operating assets and liabilities:		
Prepaid expenses and other current assets, including noncurrent portion of contract asset	474	(382)
Accounts payable	38	(161)
Accrued liabilities	(958)	(1,319)
Operating lease liability	(60)	(51)
Net cash used in operating activities	<u>(3,219)</u>	<u>(16,757)</u>
<b>CASH FLOWS FROM INVESTING ACTIVITIES:</b>		
Capital expenditures	—	(47)
Net cash used in investing activities	<u>—</u>	<u>(47)</u>
<b>CASH FLOWS FROM FINANCING ACTIVITIES:</b>		
Proceeds from the issuance of common stock pursuant to ATM agreements, net of issuance costs	6,569	1,196
Payments of taxes related to net share settlement of equity awards	(10)	(55)
Proceeds from the issuance of common stock under employee stock purchase plan	—	29
Net cash provided by financing activities	<u>6,559</u>	<u>1,170</u>
<b>NET INCREASE (DECREASE) IN CASH AND CASH EQUIVALENTS</b>	<b>3,340</b>	<b>(15,634)</b>
<b>CASH AND CASH EQUIVALENTS—BEGINNING</b>	<b>8,680</b>	<b>26,884</b>
<b>CASH AND CASH EQUIVALENTS—ENDING</b>	<b>\$ <u>12,020</u></b>	<b>\$ <u>11,250</u></b>
<b>Supplemental Disclosure of Non-Cash Investing and Financing Activities:</b>		
Acquisition of right-of-use asset through lease liability	<u>\$ 11</u>	<u>\$ —</u>

*See accompanying notes to these condensed consolidated financial statements.*

**FRESH TRACKS THERAPEUTICS, INC.**  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS**  
**(unaudited)**

**NOTE 1. ORGANIZATION AND NATURE OF OPERATIONS**

On September 19, 2023, Fresh Tracks Therapeutics, Inc. (the “Company” or “Fresh Tracks”) announced a proposed plan of liquidation and dissolution (the “Plan of Dissolution”) and its intent to discontinue all clinical and preclinical development programs and reduce its workforce. Historically, the Company was a clinical-stage pharmaceutical company striving to transform patient lives through the development of innovative and differentiated prescription therapeutics. The Company’s pipeline aimed to disrupt existing treatment paradigms and featured several new chemical entities that inhibit novel targets with first-in-class potential for autoimmune, inflammatory, and other debilitating diseases. This includes FRTX-02, a DYRK1A inhibitor for the treatment of certain autoimmune and inflammatory diseases; FRTX-10, a preclinical-stage Stimulator of Interferon Genes (“STING”) inhibitor candidate for the potential treatment of autoimmune, inflammatory, and rare genetic diseases; and a platform of next-generation kinase inhibitors that could produce treatments for autoimmune, inflammatory, and other debilitating diseases. In connection with the Plan of Dissolution, effective October 2, 2023, the Company discontinued all clinical and preclinical development programs and terminated most of its employees, except for certain employees, consultants, and advisors who will supervise or facilitate the dissolution and wind down of the Company, if approved by the Company’s stockholders.

***Liquidity and Capital Resources***

The Company has incurred significant operating losses and has an accumulated deficit as a result of in-licensing and development of product candidates, including conducting preclinical and clinical trials and providing general and administrative support for these operations. For the nine months ended September 30, 2023, the Company had a net loss of \$4.5 million and net cash used in operating activities of \$3.2 million. As of September 30, 2023, the Company had cash and cash equivalents of \$12.0 million and an accumulated deficit of \$170.9 million. The Company expects to continue to incur additional losses for the foreseeable future as it implements the Plan of Dissolution.

The Company’s board of directors (“Board”) and executive management team conducted a comprehensive process to explore and evaluate strategic alternatives with the goal of maximizing stockholder value. Potential alternatives that were under evaluation included, but were not limited to, a financing, a merger or reverse merger, the sale of all or part of the Company, licensing of assets, a business combination, and/or other strategic transactions or series of related transactions involving the Company.

On September 18, 2023, the Board unanimously approved the liquidation and dissolution of the Company (the “Dissolution”) and the Plan of Dissolution, subject to the approval of the Company’s stockholders. The Company plans to hold a special meeting of stockholders on November 16, 2023 (the “Special Meeting”) to seek stockholder approval of the Dissolution and the Plan of Dissolution and has filed proxy materials relating to the Special Meeting with the Securities and Exchange Commission (the “SEC”).

As a result of the Plan of Dissolution, management has concluded that substantial doubt exists about the Company’s ability to continue as a going concern for a period of twelve months from the date of issuance of the condensed consolidated financial statements, which do not include any adjustments relating to the recoverability and classification of recorded asset amounts or the amounts and classification of liabilities that might result from the outcome of this uncertainty about the ability to continue as a going concern. Accordingly, the condensed consolidated financial statements have been prepared on a basis that assumes the Company will continue as a going concern and which contemplates the realization of assets and satisfaction of liabilities and commitments in the ordinary course of business. If the Company’s stockholders approve the Dissolution and the

Plan of Dissolution and the likelihood is remote that the Company would return from liquidation, the Company would consider liquidation to be imminent and apply liquidation basis of accounting.

## **NOTE 2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

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

The accompanying condensed consolidated financial statements include the accounts of the Company and its wholly-owned subsidiary, Brickell Subsidiary, Inc. (“Brickell Subsidiary”), and are presented in U.S. dollars and have been prepared in accordance with accounting principles generally accepted in the United States of America (“U.S. GAAP”) and applicable rules and regulations of the SEC for interim reporting. As permitted under those rules and regulations, certain footnotes or other financial information normally included in financial statements prepared in accordance with U.S. GAAP have been condensed or omitted. These condensed consolidated financial statements have been prepared on the same basis as the annual financial statements and, in the opinion of management, reflect all adjustments, consisting only of normal recurring adjustments, which are necessary for a fair presentation of the Company’s financial information. The results of operations for the three and nine months ended September 30, 2023 are not necessarily indicative of the results to be expected for the full year ending December 31, 2023, for any other interim period, or for any other future period. The condensed consolidated balance sheet as of December 31, 2022 has been derived from audited financial statements at that date but does not include all of the information required by U.S. GAAP for complete financial statements. All intercompany balances and transactions have been eliminated in consolidation. The Company operates in one operating segment and, accordingly, no segment disclosures have been presented herein.

### ***Significant Accounting Policies***

The Company’s significant accounting policies are described in Note 2. “*Summary of Significant Accounting Policies*” in the Company’s Annual Report on Form 10-K for the year ended December 31, 2022. During the nine months ended September 30, 2023, the Company did not adopt any additional significant accounting policies.

### ***Use of Estimates***

The Company’s condensed consolidated financial statements are prepared in accordance with U.S. GAAP, which requires it to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenue and expenses during the reporting period. Although these estimates are based on the Company’s knowledge of current events and actions it may take in the future, actual results may ultimately differ from these estimates and assumptions.

### ***Risks and Uncertainties***

The Company’s business is subject to significant risks, including, but not limited to, uncertainty of plans and expectations for the Dissolution and the Plan of Dissolution and the scope, timing, rate of progress, and expense of the Company’s ongoing and future activities; the Company’s ability to remain listed on Nasdaq given the Company’s noncompliance with Nasdaq listing requirements and efforts by Nasdaq staff to delist the Company; the ongoing liquidity of the Company’s outstanding common stock; uncertainties and cost associated with obtaining patents and other intellectual property rights; the Company’s ability, if there is interest from potential purchasers, to sell any of its assets as part of the Plan of Dissolution, including but not limited to independently developed data packages, technology, and other intellectual property; compliance with regulatory and other legal requirements; and ability to manage business partners and other alliances, including potential return of product licenses and termination of these and other existing contractual relationships with the Company.

### **Cash and Cash Equivalents**

The Company considers all highly liquid investments with an original maturity of three months or less from date of purchase to be cash equivalents. Cash equivalents consist primarily of amounts held in short-term money market accounts with highly rated financial institutions.

### **Concentrations of Credit Risk**

Financial instruments that potentially subject the Company to concentrations of credit risk consist principally of cash and cash equivalents, accounts receivable, and contract asset. The Company maintains cash and cash equivalents balances in several accounts with three financial institutions which, from time to time, are in excess of federally insured limits.

One third party individually accounted for all of the Company's revenue for the three and nine months ended September 30, 2023 and 2022, as well as associated accounts receivable and contract asset balances as of December 31, 2022. Refer to Note 3. "Strategic Agreements" for a detailed discussion of agreements with Botanix SB Inc. and Botanix Pharmaceuticals Limited ("Botanix") and the termination of the Company's future payment rights in exchange for a single up-front payment in the three months ended September 30, 2023.

### **Fair Value Measurements**

Fair value is the price that the Company would receive to sell an asset or pay to transfer a liability in a timely transaction with an independent counterparty in the principal market, or in the absence of a principal market, the most advantageous market for the asset or liability. A three-tier hierarchy distinguishes between (1) inputs that reflect the assumptions market participants would use in pricing an asset or liability developed based on market data obtained from sources independent of the reporting entity (observable inputs) and (2) inputs that reflect the reporting entity's own assumptions about the assumptions market participants would use in pricing an asset or liability developed based on the best information available in the circumstances (unobservable inputs). The hierarchy is summarized in the three broad levels listed below:

**Level 1**—quoted prices in active markets for identical assets and liabilities

**Level 2**—other significant observable inputs (including quoted prices for similar assets and liabilities, interest rates, credit risk, etc.)

**Level 3**—significant unobservable inputs (including the Company's own assumptions in determining the fair value of assets and liabilities)

The following table sets forth the fair value of the Company's financial assets measured at fair value on a recurring basis based on the three-tier fair value hierarchy (in thousands):

	Level 1	
	September 30, 2023	December 31, 2022
Assets:		
Money market funds	\$ 8,695	\$ 7,680

### ***Fair Value of Financial Instruments***

The following methods and assumptions were used by the Company in estimating the fair values of each class of financial instrument disclosed herein:

*Money Market Funds*—The carrying amounts reported as cash and cash equivalents in the condensed consolidated balance sheets approximate their fair values due to their short-term nature and market rates of interest.

The carrying values of cash equivalents, accounts receivable, accounts payable, and accrued liabilities approximate fair value due to the short-term maturity of those items.

### ***Revenue Recognition***

The Company has historically recognized revenue primarily from upfront fees, research and development milestones, research reimbursements, and consulting services fees related to the development of previously owned or sublicensed assets associated with the proprietary compound sofipironium bromide, as well as sublicense income and royalty fees on sales of sofipironium bromide gel, 5% (ECCLOCK<sup>®</sup>) in Japan.

The Company recognizes revenue upon the transfer of promised goods or services to customers in an amount that reflects the consideration to which the Company expects to be entitled in exchange for those goods or services. In determining the appropriate amount of revenue to be recognized, the Company performs 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, including the constraint on variable consideration; (iv) allocate the transaction price to the performance obligations in the contract; and (v) recognize revenue when (or as) the Company satisfies the performance obligations. At contract inception, the Company assesses the goods or services promised within each contract and assesses whether each promised good or service is distinct and determines those that are performance obligations. The Company then recognizes as revenue the amount of the transaction price that is allocated to the respective performance obligation when (or as) the performance obligation is satisfied.

The Company utilizes judgment to assess the nature of the performance obligation to determine whether the performance obligation is satisfied over time or at a point in time and, if over time, the appropriate method of measuring progress. The Company evaluates the measure of progress each reporting period and, if necessary, adjusts the measure of performance and related revenue recognition.

### ***Contract Revenue***

The Company evaluates its contracts, including asset sale arrangements that involve the Company's rights to intellectual property, to determine whether they are outputs of the Company's ordinary activities and whether the counterparty meets the definition of a customer. If the arrangement is determined to be a contract with a customer and the goods or services sold are determined to be distinct from other performance obligations identified in the arrangement, the Company recognizes revenue primarily from non-refundable upfront fees, milestone payments, sales-based payments, and fees for consulting services allocated to the goods or services when (or as) control is transferred to the customer, and the customer can use and benefit from the goods or services.

### ***Licenses of Intellectual Property***

If a license for the Company's intellectual property is determined to be distinct from the other performance obligations identified in the arrangement, the Company recognizes revenue when the functional license is transferred to the customer, and the customer can use and benefit from the license.

### *Milestones*

At the inception of each arrangement that includes milestone payments (variable consideration), excluding sales-based milestone payments discussed below, the Company evaluates whether the milestones are considered probable of being reached and estimates the amount to be included in the transaction price using the most likely amount method. The most likely amount method is generally utilized when there are only two possible outcomes and represents the Company's best estimate of the single most likely outcome to be achieved. If it is probable that a significant revenue reversal would not occur, the variable consideration for the associated milestone is included in the transaction price. Milestone payments contingent on regulatory approvals that are not within the Company or the Company's collaboration partner's control, as applicable, are generally not considered probable of being achieved until those approvals are received. At the end of each subsequent reporting period, the Company re-evaluates the probability of achievement of milestones and any related constraint, and if necessary, adjusts the Company's estimate of the variable consideration. Any such adjustments are recorded on a cumulative catch-up basis, which would affect revenue in the period of adjustment.

### *Sales-Based Payments*

For license arrangements that include sales-based payments such as royalties or milestone payments based on the level of sales, and for which the license is deemed to be the predominant item to which the sales-based payments relate, the Company recognizes revenue at the later of (i) when the related sales occur or (ii) when the performance obligation to which some or all of the sales-based payment has been allocated has been satisfied (or partially satisfied). Sales-based payments received under license arrangements are recorded as royalty revenue in the Company's condensed consolidated statements of operations.

For non-license arrangements that include sales-based payments, including earnout payments and milestone payments based on the level of sales, the Company estimates the sales-based payments (variable consideration) to be achieved and recognizes revenue to the extent it is probable that a significant reversal in the amount of cumulative revenue recognized will not occur. The Company may use either the most likely amount, as described above, or the expected value method, in making such estimates based on the nature of the payment to be received and whether there is a wide range of outcomes or only two possible outcomes. The expected value method represents the sum of probability-weighted amounts in a range of possible consideration amounts. The Company bases its estimates using the applicable method described above on factors such as, but not limited to, required regulatory approvals, historical sales levels, market events and projections, and other factors as appropriate. The Company updates its estimates at each reporting period based on actual results and future expectations as necessary.

### *Contract Asset*

For non-license arrangements involving the sale and transfer of the Company's intellectual property rights, the Company recognizes estimated variable consideration as revenue as discussed above before the customer pays consideration or before payment is due. The estimated revenue recognized is presented as a contract asset on the Company's condensed consolidated balance sheets. The current portion of the contract asset is presented in prepaid expenses and other current assets on the Company's condensed consolidated balance sheets. Actual amounts paid or due by the customer are recorded as a reduction to the contract asset. Any revisions to the Company's estimated revenue based on actual results and future expectations are recognized as an adjustment to the contract asset.

### *Research and Development*

Research and development costs are charged to expense when incurred and consist of costs incurred for independent and collaboration research and development activities. The major components of research and

development costs include formulation development, nonclinical studies, clinical studies, clinical manufacturing costs, in-licensing fees for development-stage assets, salaries and employee benefits, and allocations of various overhead and occupancy costs. Research costs typically consist of applied research, preclinical, and toxicology work. Pharmaceutical manufacturing development costs consist of product formulation, chemical analysis, and the transfer and scale-up of manufacturing at contract manufacturers. Assets acquired (or in-licensed) that are utilized in research and development that have no alternative future use are expensed as incurred. Milestone payments related to the Company's acquired (or in-licensed) assets are recorded as research and development expenses when probable and reasonably estimable.

Costs for certain research and development activities, such as clinical trial expenses, are recognized based on an evaluation of the progress to completion of specific tasks using data such as patient enrollment, clinical site activations, and information provided to the Company by its vendor on their actual costs incurred or level of effort expended. Payments for these activities are based on the terms of the individual arrangements, which may differ from the pattern of costs incurred, and are reflected on the condensed consolidated balance sheets as prepaid expenses and other current assets or accrued expenses.

When the Company enters into licensing or subscription arrangements to access and utilize certain technology, the Company evaluates if the license agreement results in the acquisition of an asset or a business. To date, none of the Company's license agreements have been considered an acquisition of a business. For asset acquisitions, the upfront payments to acquire such licenses, as well as any future milestone payments made before product approval that do not meet the definition of a derivative, are immediately recognized as research and development expenses when they are paid or become payable, provided there is no alternative future use of the rights in other research and development projects.

#### *Net Income (Loss) per Share*

Basic and diluted net income (loss) per common share is computed by dividing net income (loss) attributable to common stockholders by the weighted-average number of common shares outstanding. When the effects are not anti-dilutive, diluted earnings per share is computed by dividing the Company's net income (loss) attributable to common stockholders by the weighted-average number of common shares outstanding and the impact of all potentially dilutive common shares.

Net income attributable to common stockholders is determined using the two-class method whereby net income is allocated to common stock and participating securities to the extent that each security may share in earnings as if all the earnings for the period had been distributed. Earnings allocated to participating securities is based on the contractual participation rights of the security to share in those current earnings. Outstanding warrants of 609,935 were determined to be participating securities as the terms of the warrant agreements provide that in the event of a distribution of assets at any time after the issuance of the warrant and prior to exercise or settlement then the warrant holder shall be entitled to participate in such distribution to the same extent that the warrant holder would have participated if the warrant holder had held the number of shares of common stock acquirable upon complete exercise of the warrant.

Diluted earnings per share gives effect to all dilutive potential common shares outstanding during the period, including stock options, restricted stock units, and warrants, using the treasury stock method and the two-class method in periods of net income to the extent that participating securities are outstanding. Stock options, restricted stock units, and warrants will have a dilutive effect only when the average market price of the Company's common stock during the period exceeds their exercise price. In computing diluted earnings per share, the average stock price for the period is used in determining the number of shares assumed to be issued from the exercise of stock options, the vesting of restricted stock units, or the exercise of warrants. Potentially dilutive common share equivalents are excluded from the diluted earnings per share computation in net loss periods because their effect would be anti-dilutive.

The following table sets forth the potential common shares excluded from the calculation of diluted net income and loss per share because their inclusion would be anti-dilutive:

	Three and Nine Months Ended September 30,	
	2023	2022
Outstanding warrants	621,063	621,063
Outstanding options	188,991	222,919
Unvested restricted stock units	97,750	—
Total	907,804	843,982

### ***Leases***

The Company determines if an arrangement is a lease at inception. Operating leases with a term greater than one year are recognized on the condensed consolidated balance sheets as right-of-use assets and lease liabilities. The Company does not currently hold any operating or finance leases. The Company has elected the practical expedient not to recognize on the condensed consolidated balance sheets leases with terms of one year or less and not to separate lease components and non-lease components for real estate leases. Lease liabilities and their corresponding right-of-use assets are recorded based on the present value of lease payments over the expected lease term. The interest rate implicit in lease contracts is typically not readily determinable. As such, the Company estimates the incremental borrowing rate in determining the present value of lease payments. Lease expense is recognized on a straight-line basis over the lease term.

### ***New Accounting Pronouncements***

From time to time, new accounting pronouncements are issued by the Financial Accounting Standards Board or other standard setting bodies that the Company adopts as of the specified effective date. The Company does not believe that the adoption of recently issued standards has had or will have a material impact on the Company's condensed consolidated financial statements or disclosures.

### **NOTE 3. STRATEGIC AGREEMENTS**

#### ***License and Development Agreement with Voronoi***

On August 27, 2021, the Company entered into a License and Development Agreement (the "Voronoi License Agreement") with Voronoi Inc. ("Voronoi"), pursuant to which the Company acquired exclusive, worldwide rights to research, develop, and commercialize FRTX-02 and other next-generation kinase inhibitors.

With respect to FRTX-02, the Voronoi License Agreement provides that the Company will make payments to Voronoi of up to \$211.0 million in the aggregate contingent upon achievement of specified development, regulatory, and commercial milestones. With respect to the compounds arising from the next-generation kinase inhibitor platform, the Company will make payments to Voronoi of up to \$107.5 million in the aggregate contingent upon achievement of specified development, regulatory, and commercial milestones. Further, the Voronoi License Agreement provides that the Company will pay Voronoi tiered royalty payments ranging from low-single digits up to 10% of net sales of products arising from the DYRK1A inhibitor programs and next-generation kinase inhibitor platform. All of the contingent payments and royalties are payable in cash in U.S. Dollars, except for \$1.0 million of the development and regulatory milestone payments, which amount is payable in equivalent shares of the Company's common stock. Under the terms of the Voronoi License Agreement, the Company is responsible for, and bears the future costs of, all development and commercialization activities, including patenting, related to all the licensed compounds. As of September 30, 2023 and through the date of this Quarterly Report, the Company has not yet made any payments or recorded

any liabilities related to the specified development, regulatory, and commercial milestones or royalties on net sales pursuant to the Voronoi License Agreement.

The Voronoi License Agreement also provides that upon termination of the Voronoi License Agreement, Voronoi will be entitled to receive a non-exclusive license to any information and know-how independently developed by the Company for FRTX-02 and other licensed assets in consideration for payment(s) at an arms'-length royalty rate on net sales that must be negotiated between the parties.

#### ***Exclusive License and Development Agreement with Carna***

On February 2, 2022, the Company entered into an Exclusive License Agreement (the "Carna License Agreement") with Carna Biosciences, Inc. ("Carna"), pursuant to which the Company acquired exclusive, worldwide rights to research, develop, and commercialize Carna's portfolio of novel STING inhibitors. In accordance with the terms of the Carna License Agreement, in exchange for the licensed rights, the Company made a one-time cash payment of \$2.0 million, which was recorded as research and development expenses in the condensed consolidated statements of operations during the nine months ended September 30, 2022.

The Carna License Agreement provides that the Company will make success-based payments to Carna of up to \$258.0 million in the aggregate contingent upon achievement of specified development, regulatory, and commercial milestones. Further, the Carna License Agreement provides that the Company will pay Carna tiered royalty payments ranging from mid-single digits up to 10% of net sales. All of the contingent payments and royalties are payable in cash in U.S. Dollars. Under the terms of the Carna License Agreement, the Company is responsible for, and bears the future costs of, all development and commercialization activities, including patenting, related to all the licensed compounds. As of September 30, 2023 and through the date of this Quarterly Report, the Company has not yet made any payments or recorded any liabilities related to the specified development, regulatory, and commercial milestones or royalties on net sales pursuant to the Carna License Agreement.

#### ***Agreements with Botanix***

##### **Asset Purchase Agreement with Botanix**

On May 3, 2022 (the "Effective Date"), the Company and Brickell Subsidiary entered into an asset purchase agreement with Botanix (the "Asset Purchase Agreement"), pursuant to which Botanix acquired and assumed control of all rights, title, and interests to assets primarily related to the proprietary compound sofipironium bromide that were owned and/or licensed by the Company or Brickell Subsidiary (the "Assets"). Prior to the sale of the Assets, the Company had previously entered into a License Agreement with Bodor Laboratories, Inc. ("Bodor"), dated December 15, 2012 (last amended in February 2020) that provided the Company with a worldwide exclusive license to develop, manufacture, market, sell, and sublicense products containing sofipironium bromide through which the Assets were developed (the "Amended and Restated License Agreement"). As a result of the Asset Purchase Agreement, Botanix became responsible for all further research, development, and commercialization of sofipironium bromide globally and replaced the Company as the exclusive licensee under the Amended and Restated License Agreement.

In accordance with the sublicense rights provided to the Company under the Amended and Restated License Agreement, the Company also had previously entered into a License, Development, and Commercialization Agreement with Kaken Pharmaceutical Co., Ltd. ("Kaken"), dated as of March 31, 2015 (as amended in May 2018, the "Kaken Agreement"), under which the Company granted to Kaken an exclusive right to develop, manufacture, and commercialize the sofipironium bromide compound in Japan and certain other Asian countries (the "Territory"). In exchange for the sublicense, the Company was entitled to receive aggregate payments of up to \$10.0 million upon the achievement of specified development milestones, which were earned and received in 2017 and 2018, and up to \$19.0 million upon the achievement of sales-based milestones, as well as tiered

royalties based on a percentage of net sales of licensed products in the Territory. In September 2020, Kaken received regulatory approval in Japan to manufacture and market ECCLOCK for the treatment of primary axillary hyperhidrosis, and as a result, the Company began recognizing royalty revenue earned on a percentage of net sales of ECCLOCK in Japan. Pursuant to the Asset Purchase Agreement, the Kaken Agreement was assigned to Botanix, which replaced the Company as the exclusive sub-licensor to Kaken. During the three and nine months ended September 30, 2022, prior to entering into the Asset Purchase Agreement, the Company recognized royalty revenue under the Kaken Agreement of \$0 and \$0.1 million, respectively.

The Company determined that the development of and ultimate sale and assignment of rights to the Assets is an output of the Company's ordinary activities and Botanix is a customer as it relates to the sale of the Assets and related activities.

On July 21, 2023, the Company and Brickell Subsidiary entered into Amendment No. 1 to the Asset Purchase Agreement (the "Asset Purchase Agreement Amendment") with Botanix. The Asset Purchase Agreement Amendment provided that, in lieu of any remaining amounts potentially payable by Botanix to the Company pursuant to the Asset Purchase Agreement (collectively, the "Post-Closing Payment Obligations"), Botanix would pay \$6.6 million to the Company and \$1.7 million on behalf of the Company to Bodor. The payments from Botanix to the Company and Bodor were made on July 26, 2023. The Asset Purchase Agreement Amendment also provided that upon payment of the amounts by Botanix thereunder, all Post-Closing Payment Obligations under the Asset Purchase Agreement were terminated and of no further force or effect.

In accordance with the terms of the Asset Purchase Agreement, in exchange for the Assets, the Company (i) received an upfront payment at closing in the amount of \$3.0 million, (ii) was reimbursed for certain recent development expenditures in advancement of the Assets, (iii) received a milestone payment of \$2.0 million upon the acceptance by the U.S. Food and Drug Administration ("FDA") in December 2022 of the filing of a new drug application ("NDA") for sofpironium bromide gel, 15%, and (iv) would have been eligible to receive, prior to the Asset Purchase Agreement Amendment, a contingent milestone payment of \$4.0 million if marketing approval in the U.S. for sofpironium bromide gel, 15%, had been received on or before September 30, 2023, or \$2.5 million if such marketing approval had been received after September 30, 2023 but on or before February 17, 2024. Botanix submitted an NDA for sofpironium bromide gel, 15%, to the FDA in September 2022, which was accepted for filing by the FDA in December 2022. Under the Asset Purchase Agreement, the Company also would have been eligible to receive, prior to the Asset Purchase Agreement Amendment, additional success-based regulatory and sales milestone payments of up to \$168.0 million. Further, the Company would have been eligible to receive, prior to the Asset Purchase Agreement Amendment, tiered earnout payments ranging from high-single digits to mid-teen digits on net sales of sofpironium bromide gel (the "Earnout Payments").

The Asset Purchase Agreement also provided that Botanix would pay the Company a portion of the sales-based milestone payments and royalties that Botanix received from Kaken under the assigned Kaken Agreement (together, the "Sublicense Income"). Sublicense Income represented the Company's estimate of payments that would be earned by the Company in the applicable period from sales-based milestone payments and royalties Botanix would receive from Kaken to the extent it was probable that a significant reversal in the amount of cumulative revenue recognized would not occur. Royalties vary based on net sales that are impacted by a wide variety of market and other factors and, as such, the Company utilized the expected value approach, which the Company believed would best predict the amount of consideration to which it would be entitled. In relation to the sales-based milestone payments that Botanix could receive from Kaken in the future, the Company utilized the most likely amount method and determined it was not yet probable that the Company would receive any payments from Botanix in relation to such milestone payments. Therefore, the Company determined that such milestone payments were fully constrained up through the date of the Asset Purchase Agreement Amendment, and, as such, did not recognize such amounts as contract revenue. With respect to the recognition of contract revenue for the Sublicense Income based on future royalties that would be due to Botanix from Kaken, certain amounts were not yet due from Botanix. Therefore, the Company recorded a contract asset equal to the amount

of revenue recognized related to the Sublicense Income, less the amount of payments received from or due by Botanix in relation to the Sublicense Income. As a result of entering into the Asset Purchase Agreement Amendment the contract asset was fully settled.

All other consideration due under the Asset Purchase Agreement was contingent upon certain regulatory approvals and future sales subsequent to such regulatory approvals, or was based upon future sales that the Company determined were not yet probable due to such revenues being highly susceptible to factors outside of the Company's influence and uncertainty about the amount of such consideration that would not be resolved for an extended period of time. Therefore, the Company determined that such variable consideration amounts were fully constrained up through the date of the Asset Purchase Agreement Amendment, and as such, did not recognize such amounts as contract revenue.

**Transition Services Agreement with Botanix**

In connection with the sale of the Assets, on the Effective Date, the Company and Botanix entered into a transition services agreement (the "TSA") whereby the Company provides consulting services as an independent contractor to Botanix in support of and through filing and potential approval of the U.S. NDA for sofipirionium bromide gel, 15%. In accordance with the terms of the TSA, in exchange for providing these services (i) prior to the acceptance of the filing by the FDA of such NDA in December 2022, the Company received from Botanix a fixed monthly amount of \$71 thousand, and (ii) after the acceptance of the filing in December 2022, the Company receives from Botanix a variable amount based upon actual hours worked, in each case plus related fees and expenses of the Company's advisors (plus a 5% administrative fee) and the Company's out-of-pocket expenses.

**Contract Revenue and Asset under the Botanix Agreements**

The Company recognized the following as contract revenue (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
Buyout of Post-Closing Payment Obligations	\$ 7,944	\$ —	\$ 7,944	\$ —
Sublicense Income	—	114	53	447
Consulting services provided under the TSA	—	372	9	730
Upfront consideration	—	—	—	3,000
Reimbursed development expenditures under the Asset Purchase Agreement	—	—	—	624
Total contract revenue	<u>\$ 7,944</u>	<u>\$ 486</u>	<u>\$ 8,006</u>	<u>\$ 4,801</u>

The following table presents changes in the value of the Company's contract asset related to Sublicense Income for the following periods (in thousands):

Contract asset as of January 1, 2023	\$ 318
Amounts received	(318)
Contract asset as of September 30, 2023	<u>\$ —</u>

Contract asset as of January 1, 2022	\$	—
Sublicense Income recognized		447
Amounts received or receivable		(61)
Contract asset as of September 30, 2022	\$	386
Contract asset, included in prepaid expenses and other current assets	\$	309
Contract asset, net of current portion	\$	77

#### *Agreements with Bodor*

In connection with the sale of the Assets, on the Effective Date (May 3, 2022), the Company, Brickell Subsidiary, and Bodor entered into an agreement (the “Rights Agreement”) to clarify that the Company and Brickell Subsidiary have the power and authority under the Amended and Restated License Agreement to enter into the Asset Purchase Agreement and the TSA, and that Botanix would assume the Amended and Restated License Agreement pursuant to the Asset Purchase Agreement. The Rights Agreement included a general release of claims and no admission of liability between the parties. Pursuant to such Rights Agreement, as subsequently amended on November 10, 2022, the Company agreed to pay Bodor (i) 20% of the amount of each payment due to the Company from Botanix for upfront and milestone payments, subject to deductions, credits, or offsets applied under the Asset Purchase Agreement, as well as (ii) certain tiered payments, set as a percentage ranging from mid-single digits to mid-teen digits, of the amount of each of the applicable Earnout Payments due to the Company from Botanix after deductions, credits or offsets applied under the Asset Purchase Agreement.

Pursuant to the terms of the Asset Purchase Agreement, the Company retained its obligation under the Amended and Restated License Agreement to issue \$1.0 million in shares of its common stock to Bodor upon the FDA’s acceptance of an NDA filing for sofpironium bromide gel, 15%. On November 10, 2022, the Company entered into an Acknowledgment and Agreement Related to Asset Purchase Agreement and Amended and Restated License Agreement (the “Acknowledgment”) with Brickell Subsidiary, Botanix, and Bodor. Pursuant to the Acknowledgment, the Company paid \$1.0 million in cash to Bodor in full satisfaction of the Company’s obligation to issue shares upon the FDA’s acceptance of the NDA.

In connection with the Asset Purchase Agreement Amendment, on July 21, 2023, the Company, Brickell Subsidiary, and Bodor entered into a Second Amendment to Rights Agreement (the “RA Amendment”). The RA Amendment provides that in exchange for the one-time payment of \$1.7 million by Botanix on behalf of the Company to Bodor, the Company shall have no further payment obligations to Bodor under or in connection with the Rights Agreement or the Amended and Restated License Agreement.

During the three and nine months ended September 30, 2023, the Company incurred \$1.7 million of general and administrative expense associated with payments due to Bodor. During the three and nine months ended September 30, 2022, \$0 and \$0.5 million, respectively, of general and administrative expense was associated with achieved milestones or payments due to Bodor related to sofpironium bromide gel, 15%. Prior to the execution of the Rights Agreement, the Company paid Bodor immaterial amounts with respect to the royalties the Company received from Kaken for sales of ECCLOCK in Japan during those periods.

**NOTE 4. DETAILED ACCOUNT BALANCES**

Prepaid expenses and other current assets consisted of the following (in thousands):

	September 30, 2023	December 31, 2022
Prepaid insurance	\$ 688	\$ 521
Contract asset	—	254
Prepaid research and development expenses	—	254
Accounts receivable	—	250
Other	305	124
Total	<u>\$ 993</u>	<u>\$ 1,403</u>

Accrued liabilities consisted of the following (in thousands):

	September 30, 2023	December 31, 2022
Accrued severance	\$ 1,126	\$ —
Accrued compensation	373	1,320
Accrued professional fees	—	705
Accrued research and development expenses	—	432
Total	<u>\$ 1,499</u>	<u>\$ 2,457</u>

**NOTE 5. COMMITMENTS AND CONTINGENCIES*****Operating Lease***

In August 2016, the Company entered into a multi-year, noncancelable lease for its Colorado-based office space, which was amended on December 29, 2022 to, among other things, extend the lease term to December 31, 2025, eliminate options previously available to the Company to extend the lease, and provide that the Company may terminate the lease effective June 30, 2023 if notice is provided by April 30, 2023 (as amended, the “Boulder Lease”). Minimum base lease payments under the Boulder Lease were recognized on a straight-line basis over the term of the lease. In addition to base rental payments included in the contractual obligations table below, the Company was responsible for its pro rata share of the operating expenses for the building, which included common area maintenance, utilities, property taxes, and insurance.

Upon modification of the Boulder Lease in December 2022, the Company reassessed classification of the lease and determined that the lease still met the criteria to be classified as an operating lease. Furthermore, the Company remeasured the lease liability as of the effective date by calculating the present value of the new lease payments, discounted at the Company’s incremental borrowing rate, over the lease term of six months. The lease term included periods covered by an option to terminate the lease that the Company was reasonably certain to exercise. The operating expenses were variable and were not included in the present value determination of the lease liability.

On May 4, 2023, the Company entered into an amendment to the Boulder Lease, which terminated the Boulder Lease, effective August 31, 2023, and provided for the payment of a termination fee by the Company of approximately \$5 thousand in May 2023. Upon modification of the Boulder Lease, the Company reassessed classification of the lease and determined that the lease still met the criteria to be classified as an operating lease. Furthermore, the Company remeasured the lease liability as of the effective date by calculating the present value of the new lease payments, discounted at the Company’s incremental borrowing rate, over the

remaining lease term of four months. The operating expenses were variable and were not included in the present value determination of the lease liability.

As of September 30, 2023, the Company had no contractual obligations related to operating lease commitments.

***Licensing and Other Agreements***

Refer to Note 3. “*Strategic Agreements*” for more information about the Company’s obligations under its licensing and other agreements.

**NOTE 6. CAPITAL STOCK**

***Common Stock***

Under the Company’s Restated Certificate of Incorporation, the Company’s Board has the authority to issue up to 300,000,000 shares of common stock with a par value of \$0.01 per share. Each share of the Company’s common stock is entitled to one vote, and the holders of the Company’s common stock are entitled to receive dividends when and as declared or paid by its Board. The Company had reserved authorized shares of common stock for future issuance as of September 30, 2023 as follows:

	September 30, 2023
Common stock warrants	621,063
Common stock options outstanding	188,991
Unvested restricted stock units	97,750
Shares available for grant under the Employee Stock Purchase Plan	42,728
Shares available for grant under the 2020 Omnibus Long-Term Incentive Plan	35,418
Total	<u>985,950</u>

The Company may be limited in its ability to sell a certain number of shares of its common stock under the Purchase Agreement or ATM Agreements described below, depending on the availability at any given time of authorized and available shares of common stock.

***Public Offerings of Common Stock and Warrants***

In October 2020, the Company completed a sale of 422,300 shares of its common stock, and, to certain investors, pre-funded warrants to purchase 40,663 shares of its common stock and accompanying common stock warrants to purchase up to an aggregate of 462,979 shares of its common stock (the “October 2020 Offering”). Each share of common stock and pre-funded warrant to purchase one share of the Company’s common stock was sold together with a common warrant to purchase one share of the Company’s common stock. The shares of common stock and pre-funded warrants, and the accompanying common warrants, were issued separately and were immediately separable upon issuance. The common warrants are exercisable at a price of \$32.40 per share of the Company’s common stock and will expire five years from the date of issuance. The common warrants provide the warrant holder with the right to participate in distributions on a 1-for-1 basis with common shareholders. The pre-funded warrants were exercised in October 2020. No warrants associated with the October 2020 Offering were exercised during the three and nine months ended September 30, 2023 or 2022.

In June 2020, the Company completed a sale of 328,669 shares of its common stock, and, to certain investors, pre-funded warrants to purchase 60,220 shares of its common stock and accompanying common stock warrants to purchase up to an aggregate of 388,920 shares of its common stock (the “June 2020 Offering”). Each share of

common stock and pre-funded warrant to purchase one share of common stock was sold together with a common warrant to purchase one share of common stock. The shares of common stock and pre-funded warrants, and the accompanying common warrants, were issued separately and were immediately separable upon issuance. The pre-funded warrants were exercised in the third quarter of 2020. The common warrants were immediately exercisable at a price of \$56.25 per share of common stock and will expire five years from the date of issuance. The common warrants provide the warrant holder with the right to participate in distributions on a 1-for-1 basis with common shareholders. No warrants associated with the June 2020 Offering were exercised during the three and nine months ended September 30, 2023 or 2022.

#### ***At Market Issuance Sales Agreements***

In March 2021, the Company entered into an At Market Issuance Sales Agreement (the “2021 ATM Agreement”) with Oppenheimer & Co. Inc. (“Oppenheimer”) and William Blair & Company, L.L.C. as the Company’s sales agents (the “Agents”). Pursuant to the terms of the 2021 ATM Agreement, the Company may sell from time to time through the Agents shares of its common stock having an aggregate offering price of up to \$50.0 million. Such shares are issued pursuant to the Company’s shelf registration statement on Form S-3 (Registration No. 333-254037). Sales of the shares are made by means of ordinary brokers’ transactions on The Nasdaq Capital Market at market prices or as otherwise agreed by the Company and the Agents. Under the terms of the 2021 ATM Agreement, the Company may also sell the shares from time to time to an Agent as principal for its own account at a price to be agreed upon at the time of sale. Any sale of the shares to an Agent as principal would be pursuant to the terms of a separate placement notice between the Company and such Agent. During the nine months ended September 30, 2023, the Company sold 2,887,535 shares of common stock under the 2021 ATM Agreement at a weighted-average price of \$2.34 per share, for aggregate net proceeds of \$6.6 million, after giving effect to a 3% commission to the Agents. During the three months ended September 30, 2023, no sales of common stock under the 2021 ATM Agreement occurred. During the three and nine months ended September 30, 2022, the Company sold 322,824 and 354,381 shares of common stock under the 2021 ATM Agreement at a weighted-average price of \$3.52 and \$3.70 per share, for aggregate net proceeds of \$1.1 million and \$1.3 million, respectively, after giving effect to a 3% commission to the Agents. As of September 30, 2023, approximately \$38.0 million of shares of common stock were remaining, but had not yet been sold by the Company under the 2021 ATM Agreement.

In April 2020, the Company entered into an At Market Issuance Sales Agreement (the “2020 ATM Agreement” and, together with the 2021 ATM Agreement, the “ATM Agreements”) with Oppenheimer as the Company’s sales agent. Pursuant to the terms of the 2020 ATM Agreement, the Company may sell from time to time through Oppenheimer shares of its common stock having an aggregate offering price of up to \$8.0 million. As of September 30, 2023, approximately \$2.6 million of shares of common stock were remaining, but had not yet been sold by the Company under the 2020 ATM Agreement. However, the shares that may be sold pursuant to the 2020 ATM Agreement are not currently registered under the Securities Act of 1933, as amended. During the three and nine months ended September 30, 2023 and 2022, no sales of common stock under the 2020 ATM Agreement occurred.

The Company is subject to the SEC’s “baby shelf rules,” which prohibit companies with a public float of less than \$75 million from issuing securities under a shelf registration statement in excess of one-third of such company’s public float in a 12-month period. These rules currently limit future issuances of shares by the Company under the ATM Agreements or other common stock offerings.

#### ***Private Placement Offerings***

In February 2020, the Company and Lincoln Park Capital Fund, LLC (“Lincoln Park”) entered into (i) a securities purchase agreement (the “Securities Purchase Agreement”); (ii) a purchase agreement (the “Purchase Agreement”); and (iii) a registration rights agreement (the “Registration Rights Agreement”). Pursuant to the Securities Purchase Agreement, Lincoln Park purchased, and the Company sold, (i) an aggregate of 21,111

shares of common stock (the “Common Shares”); (ii) a warrant to initially purchase an aggregate of up to 13,476 shares of common stock at an exercise price of \$0.45 per share (the “Series A Warrant”); and (iii) a warrant to initially purchase an aggregate of up to 34,588 shares of common stock at an exercise price of \$52.20 per share (the “Series B Warrant” and, together with the Series A Warrant, the “Warrants”). The Warrants provide the warrant holder with the right to participate in distributions on a 1-for-1 basis with common shareholders. No Warrants associated with the Securities Purchase Agreement were exercised during the three and nine months ended September 30, 2023 or 2022.

Under the terms and subject to the conditions of the Purchase Agreement, the Company has the right, but not the obligation, to sell to Lincoln Park, and Lincoln Park is obligated to purchase, up to \$28.0 million in the aggregate of shares of common stock. In order to retain maximum flexibility to issue and sell up to the maximum of \$28.0 million of the Company’s common stock under the Purchase Agreement, the Company sought and, at its annual meeting on April 19, 2021, received, stockholder approval for the sale and issuance of common stock in connection with the Purchase Agreement under Nasdaq Listing Rule 5635(d). Sales of common stock by the Company will be subject to certain limitations, and may occur from time to time, at the Company’s sole discretion, over the 36-month period commencing on August 14, 2020 (the “Commencement Date”).

Following the Commencement Date, under the Purchase Agreement, on any business day selected by the Company, the Company may direct Lincoln Park to purchase up to 2,222 shares of common stock on such business day (each, a “Regular Purchase”), provided, however, that (i) the Regular Purchase may be increased to up to 2,777 shares, provided that the closing sale price of the common stock is not below \$3.00 on the purchase date; and (ii) the Regular Purchase may be increased to up to 3,333 shares, provided that the closing sale price of the common stock is not below \$5.00 on the purchase date. In each case, Lincoln Park’s maximum commitment in any single Regular Purchase may not exceed \$1,000,000. The purchase price per share for each such Regular Purchase will be based on prevailing market prices of common stock immediately preceding the time of sale. In addition to Regular Purchases, the Company may direct Lincoln Park to purchase other amounts as accelerated purchases or as additional accelerated purchases if the closing sale price of the common stock exceeds certain threshold prices as set forth in the Purchase Agreement. In all instances, the Company may not sell shares of its common stock to Lincoln Park under the Purchase Agreement if it would result in Lincoln Park beneficially owning more than 9.99% of the outstanding shares of common stock. During the three and nine months ended September 30, 2023 and 2022, no sales of common stock under the Purchase Agreement occurred. As of September 30, 2023, approximately \$26.9 million of shares of common stock were remaining, but had not yet been sold by the Company under the Purchase Agreement.

On September 9, 2022, a registration statement was declared effective covering the resale of up to 1,750,000 additional shares of the Company’s common stock that the Company has reserved for issuance and sale to Lincoln Park under the Purchase Agreement (Registration Statement No. 333-267254).

The Company has the right to terminate the Purchase Agreement at any time, at no cost or penalty.

The Securities Purchase Agreement, the Purchase Agreement, and the Registration Rights Agreement contain customary representations, warranties, agreements, and conditions to completing future sale transactions, indemnification rights, and obligations of the parties.

### ***Preferred Stock***

Under the Company’s Restated Certificate of Incorporation, the Company’s Board has the authority to issue up to 5,000,000 shares of preferred stock with a par value of \$0.01 per share, at its discretion, in one or more classes or series and to fix the powers, preferences and rights, and the qualifications, limitations, or restrictions thereof, including dividend rights, conversion rights, voting rights, terms of redemption, and liquidation preferences, without further vote or action by the Company’s stockholders.

On May 25, 2022, the Company issued and sold one share of the Company's preferred stock, which was designated as Series A Preferred Stock (the "Series A Preferred Stock"), for a nominal amount. During the time the Series A Preferred Stock was outstanding, it had 80,000,000 votes exclusively with respect to any proposal to amend the Company's Restated Certificate of Incorporation to effect a reverse stock split of the Company's common stock. The terms of the Series A Preferred Stock provided that it would be voted, without action by the holder, on any such proposal in the same proportion as shares of the Company's common stock were voted. The Series A Preferred Stock otherwise had no voting rights except as otherwise required by the General Corporation Law of the State of Delaware. The Series A Preferred Stock was not convertible into, or exchangeable for, shares of any other class or series of stock or other securities of the Company and had no rights with respect to any distribution of assets of the Company, including upon a liquidation, bankruptcy, reorganization, merger, acquisition, sale, dissolution or winding up of the Company, whether voluntarily or involuntarily. The holder of the Series A Preferred Stock was not entitled to receive dividends of any kind. The Series A Preferred Stock was redeemed in whole on July 5, 2022 upon the effectiveness of the amendment to the Restated Certificate of Incorporation implementing the reverse stock split. As of September 30, 2023, there were no shares of preferred stock outstanding.

#### **NOTE 7. STOCK-BASED COMPENSATION**

##### ***Equity Incentive Plans***

On April 20, 2020, the Company's stockholders approved the 2020 Omnibus Long-Term Incentive Plan (the "Omnibus Plan"), which replaced, with respect to new award grants, the Company's 2009 Equity Incentive Plan, as amended and restated (the "2009 Plan"), and the Vical Equity Incentive Plan (the "Vical Plan") (collectively, the "Prior Plans") that were previously in effect. Following the approval of the Omnibus Plan on April 20, 2020, no further awards were available to be issued under the Prior Plans but awards outstanding under those plans as of that date remain outstanding in accordance with their terms. As of September 30, 2023, 24,769 and 1,668 shares were subject to outstanding awards under the 2009 Plan and Vical Plan, respectively.

On May 17, 2022, the Company's stockholders approved an increase in the number of shares of common stock authorized for issuance under the Omnibus Plan by 119,377 shares. As of September 30, 2023, 323,364 shares were authorized, and 260,304 shares were subject to outstanding awards under the Omnibus Plan. As of September 30, 2023, 35,418 shares remained available for grant under the Omnibus Plan.

##### ***Employee Stock Purchase Plan***

On April 19, 2021, the Company's stockholders approved the Fresh Tracks Therapeutics, Inc. Employee Stock Purchase Plan (the "ESPP"), which had a first eligible purchase period commencing on July 1, 2021. The ESPP allows qualified employees to purchase shares of the Company's common stock at a price per share equal to 85% of the lower of: (i) the closing price of the Company's common stock on the first trading day of the applicable purchase period or (ii) the closing price of the Company's common stock on the last trading day of the applicable purchase period. New six-month purchase periods begin each January 1 and July 1. As of September 30, 2023, the Company had 42,728 shares available for issuance and 15,049 cumulative shares had been issued under the ESPP.

### *Stock-Based Compensation Expense*

Total stock-based compensation expense reported in the condensed consolidated statements of operations was allocated as follows (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
Research and development	\$ 273	\$ 104	\$ 468	\$ 320
General and administrative	590	435	1,184	1,346
Total stock-based compensation expense	<u>\$ 863</u>	<u>\$ 539</u>	<u>\$ 1,652</u>	<u>\$ 1,666</u>

Employment agreements for certain of the Company's former executives included a service condition such that upon termination without cause, all unvested equity awards would accelerate and become fully vested as of the termination date. During the three months ended September 30, 2023, the Company terminated or approved the termination of three executives, which resulted in the recognition of \$0.7 million of share-based compensation expense. Total remaining share-based compensation expense to be recognized associated with the three executives as of September 30, 2023 is immaterial.

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

### **Overview**

On September 19, 2023, we announced the Plan of Dissolution and our intent to discontinue all clinical and preclinical development programs and reduce our workforce. Historically, we were a clinical-stage pharmaceutical company striving to transform patient lives through the development of innovative and differentiated prescription therapeutics. Our pipeline aimed to disrupt existing treatment paradigms and featured several new chemical entities that inhibit novel targets with first-in-class potential for autoimmune, inflammatory, and other debilitating diseases.

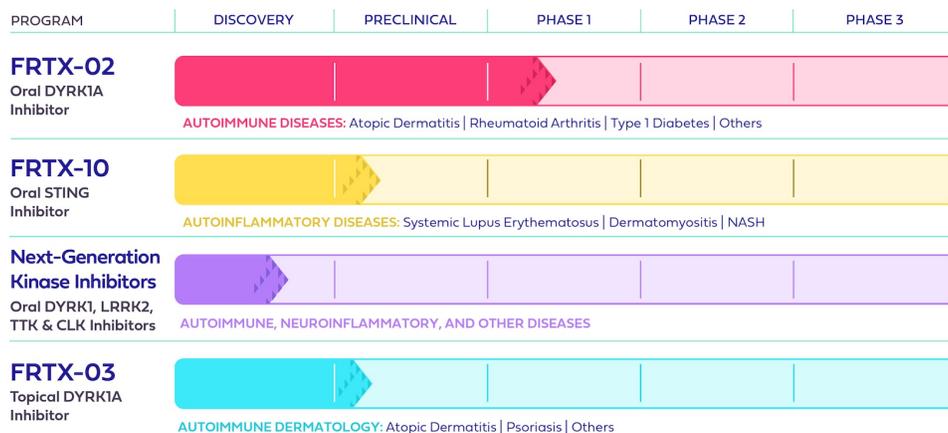
Our board of directors ("Board") and executive management team conducted a comprehensive process to explore and evaluate strategic alternatives with the goal of maximizing stockholder value. Potential alternatives that were under evaluation included, but were not limited to, a financing, a merger or reverse merger, the sale of all or part of the Company, licensing of assets, a business combination, and/or other strategic transactions or series of related transactions involving the Company.

On September 18, 2023, after conducting an extensive, months-long potential strategic alternatives process, including four unsuccessful attempts to find a merger or reverse merger partner due to the potential acquirer's inability to secure its own necessary financing and/or inability to offer adequate value to consummate the transaction, and combined with the unsuccessful outreach to approximately 125 other possible counterparties and investors who operate or invest in both life sciences and other industry sectors, our Board unanimously approved the Dissolution and the Plan of Dissolution, subject to the approval of our stockholders. In connection with the Plan of Dissolution, effective October 2, 2023, we discontinued all clinical and preclinical development programs and terminated most of our employees, except for certain employees, consultants, and advisors who will supervise or facilitate the dissolution and wind down of the Company, if approved by our stockholders.

We plan to hold a special meeting of stockholders on November 16, 2023 (the "Special Meeting") to seek stockholder approval of the Dissolution and the Plan of Dissolution and have filed proxy materials relating to the Special Meeting with the SEC. In connection with the Dissolution, subject to stockholder approval, we intend to distribute all remaining cash to stockholders over time.

## Research and Development Assets

The following image summarizes our current research and development assets, corresponding stage of development, and potential therapeutic areas for each program:



### ***FRTX-02: A Potential First-in-Class Oral DYRK1A Inhibitor for the Treatment of Autoimmune and Inflammatory Diseases***

FRTX-02 is a novel, potent, highly selective, and orally bioavailable potential first-in-class, small molecule DYRK1A inhibitor that aims to restore immune balance in patients whose immune systems have become dysregulated. FRTX-02 was our lead development-stage program and has demonstrated promising results in various preclinical and clinical models, including potentially for atopic dermatitis (“AD”) and rheumatoid arthritis.

FRTX-02 is covered by a composition of matter patent issued in the U.S., Japan, China, and other key countries through at least 2038, subject to patent term extensions and adjustments that may be available depending on how this early-stage asset is developed, as well as a pending Patent Cooperation Treaty (“PCT”) application, and other foreign and U.S. applications for FRTX-02, as of the date of this Quarterly Report.

### ***FRTX-10: A covalent Stimulator of Interferon Genes (STING) inhibitor for the Potential Treatment of Autoimmune, Inflammatory, and Rare Genetic Diseases***

FRTX-10, our early-stage Stimulator of Interferon Genes (“STING”) inhibitor candidate, is a novel, potent, and orally bioavailable covalent STING inhibitor that specifically targets the palmitoylation site of STING. STING is a well-known mediator of innate immune responses. Excessive signaling through STING is linked to numerous high unmet-need diseases, ranging from autoimmune disorders, such as systemic lupus erythematosus, to interferonopathies, which are a set of rare genetic conditions characterized by interferon overproduction and could have orphan drug potential.

For FRTX-10, as of the date of this Quarterly Report, we currently have two pending PCT applications and pending applications in the U.S., Japan, Europe, and other key countries. We possess an exclusive license directed to a library of compounds targeting/inhibiting STING, pharmaceutical compositions containing the same, and methods of their use, which are being evaluated.

***Next-Generation Kinase Inhibitors: A Cutting-Edge Platform with the Potential to Produce Treatments for Autoimmune, Inflammatory, and Other Debilitating Diseases***

We acquired exclusive global rights to a cutting-edge platform of next-generation kinase inhibitors. This library of new chemical entities includes next-generation DYRK1 inhibitors, as well as other molecules that specifically inhibit Leucine-Rich Repeat Kinase 2 (“LRRK2”), CDC2-like kinase (“CLK”), and TTK protein kinase (“TTK”), also known as Monopolar spindle 1 (Mps1) kinases. A number of these drug candidates have the potential to penetrate the blood-brain barrier, presenting an opportunity to address neuroinflammatory conditions of high unmet need, such as Down Syndrome, Alzheimer’s Disease, and Parkinson’s Disease, while other peripherally acting novel LRRK2, TTK, and CLK kinase inhibitors could be developed in additional therapeutic areas within autoimmunity, inflammation, and oncology.

Compounds from the next-generation kinase inhibitor platform are covered by U.S. and foreign composition of matter patent applications, as well as other applications, that are currently pending in global prosecution.

**Strategic, Licensing, and Other Arrangements**

***License and Development Agreement with Voronoi***

In August 2021, we entered into a License and Development Agreement (the “Voronoi License Agreement”) with Voronoi Inc. (“Voronoi”), pursuant to which we acquired exclusive, worldwide rights to research, develop, and commercialize FRTX-02 and other next-generation kinase inhibitors.

With respect to FRTX-02, the Voronoi License Agreement provides that we will make payments to Voronoi of up to \$211.0 million in the aggregate contingent upon achievement of specified development, regulatory, and commercial milestones. With respect to the compounds arising from the next-generation kinase inhibitor platform, we will make payments to Voronoi of up to \$107.5 million in the aggregate contingent upon achievement of specified development, regulatory, and commercial milestones. Further, the Voronoi License Agreement provides that we will pay Voronoi tiered royalty payments ranging from low-single digits up to 10% of net sales of products arising from the DYRK1A inhibitor programs and next-generation kinase inhibitor platform. All of the contingent payments and royalties are payable in cash in U.S. Dollars, except for \$1.0 million of the development and regulatory milestone payments, which amount is payable in equivalent shares of our common stock. Under the terms of the Voronoi License Agreement, we are responsible for, and bear the future costs of, all development and commercialization activities, including patenting, related to all the licensed compounds. As of September 30, 2023 and through the date of this Quarterly Report, we have not yet made any payments or recorded any liabilities related to the specified development, regulatory, and commercial milestones or royalties on net sales pursuant to the Voronoi License Agreement.

The Voronoi License Agreement also provides that upon termination of the Voronoi License Agreement, Voronoi will be entitled to receive a non-exclusive license to any information and know-how independently developed by the Company for FRTX-02 and other licensed assets in consideration for payment(s) at an arms’-length royalty rate on net sales that must be negotiated between the parties.

***Exclusive License and Development Agreement with Carna***

In February 2022, we entered into an Exclusive License Agreement (the “Carna License Agreement”) with Carna Biosciences, Inc. (“Carna”), pursuant to which we acquired exclusive, worldwide rights to research, develop, and commercialize Carna’s portfolio of novel STING inhibitors. In accordance with the terms of the Carna License Agreement, in exchange for the licensed rights, we made a one-time cash payment of \$2.0 million, which was recorded as research and development expenses in the condensed consolidated statements of operations during the nine months ended September 30, 2022.

The Carna License Agreement provides that we will make success-based payments to Carna of up to \$258.0 million in the aggregate contingent upon achievement of specified development, regulatory, and commercial milestones. Further, the Carna License Agreement provides that we will pay Carna tiered royalty payments ranging from mid-single digits up to 10% of net sales. All of the contingent payments and royalties are payable in cash in U.S. Dollars. Under the terms of the Carna License Agreement, we are responsible for, and bear the future costs of, all development and commercialization activities, including patenting, related to all the licensed compounds. As of September 30, 2023 and through the date of this Quarterly Report, we have not yet made any payments or recorded any liabilities related to the specified development, regulatory, and commercial milestones or royalties on net sales pursuant to the Carna License Agreement.

### ***Agreements with Botanix***

#### ***Asset Purchase Agreement with Botanix***

On May 3, 2022 (the “Effective Date”), we and Brickell Subsidiary entered into an asset purchase agreement with Botanix SB, Inc. and Botanix Pharmaceuticals Limited (“Botanix”) (the “Asset Purchase Agreement”), pursuant to which Botanix acquired and assumed control of all rights, title, and interests to assets primarily related to the proprietary compound sofipironium bromide that were owned and/or licensed by us or Brickell Subsidiary (the “Assets”). Prior to the sale of the Assets, we had previously entered into a License Agreement with Bodor Laboratories, Inc. (“Bodor”), dated December 15, 2012 (last amended in February 2020) that provided us with a worldwide exclusive license to develop, manufacture, market, sell, and sublicense products containing sofipironium bromide through which the Assets were developed (the “Amended and Restated License Agreement”). As a result of the Asset Purchase Agreement, Botanix became responsible for all further research, development, and commercialization of sofipironium bromide globally and replaced us as the exclusive licensee under the Amended and Restated License Agreement.

In accordance with the sublicense rights provided to us under the Amended and Restated License Agreement, we also had previously entered into a License, Development, and Commercialization Agreement with Kaken Pharmaceutical Co., Ltd. (“Kaken”), dated as of March 31, 2015 (as amended in May 2018, the “Kaken Agreement”), under which we granted to Kaken an exclusive right to develop, manufacture, and commercialize the sofipironium bromide compound in Japan and certain other Asian countries (the “Territory”). In exchange for the sublicense, we were entitled to receive aggregate payments of up to \$10.0 million upon the achievement of specified development milestones, which were earned and received in 2017 and 2018, and up to \$19.0 million upon the achievement of sales-based milestones, as well as tiered royalties based on a percentage of net sales of licensed products in the Territory. In September 2020, Kaken received regulatory approval in Japan to manufacture and market sofipironium bromide gel, 5% (“ECCLOCK<sup>®</sup>”) for the treatment of primary axillary hyperhidrosis, and as a result, we began recognizing royalty revenue earned on a percentage of net sales of ECCLOCK in Japan. Pursuant to the Asset Purchase Agreement, the Kaken Agreement was assigned to Botanix, which replaced us as the exclusive sub-licensor to Kaken. During the three and nine months ended September 30, 2022, prior to entering into the Asset Purchase Agreement, we recognized royalty revenue under the Kaken Agreement of \$0 and \$0.1 million, respectively.

We determined that the development of and ultimate sale and assignment of rights to the Assets is an output of our ordinary activities and Botanix is a customer as it relates to the sale of the Assets and related activities.

On July 21, 2023, we and Brickell Subsidiary entered into Amendment No. 1 to the Asset Purchase Agreement (the “Asset Purchase Agreement Amendment”) with Botanix. The Asset Purchase Agreement Amendment provided that, in lieu of any remaining amounts potentially payable by Botanix to us pursuant to the Asset Purchase Agreement (collectively, the “Post-Closing Payment Obligations”), Botanix would pay \$6.6 million to us and \$1.7 million on behalf of us to Bodor. The payments from Botanix to the Company and Bodor were made on July 26, 2023. The Asset Purchase Agreement Amendment also provided that upon payment of the

amounts by Botanix thereunder, all Post-Closing Payment Obligations under the Asset Purchase Agreement were terminated and of no further force or effect.

In accordance with the terms of the Asset Purchase Agreement, in exchange for the Assets, we (i) received an upfront payment at closing in the amount of \$3.0 million, (ii) were reimbursed for certain recent development expenditures in advancement of the Assets, (iii) received a milestone payment of \$2.0 million upon the acceptance by the U.S. Food and Drug Administration (“FDA”) in December 2022 of the filing of a new drug application (“NDA”) for sofipirionium bromide gel, 15%, and (iv) would have been eligible to receive, prior to the Asset Purchase Agreement Amendment, a contingent milestone payment of \$4.0 million if marketing approval in the U.S. for sofipirionium bromide gel, 15%, had been received on or before September 30, 2023, or \$2.5 million if such marketing approval had been received after September 30, 2023 but on or before February 17, 2024. Botanix submitted an NDA for sofipirionium bromide gel, 15%, to the FDA in September 2022, which was accepted for filing by the FDA in December 2022. Under the Asset Purchase Agreement, we also would have been eligible to receive, prior to the Asset Purchase Agreement Amendment, additional success-based regulatory and sales milestone payments of up to \$168.0 million. Further, we would have been eligible to receive, prior to the Asset Purchase Agreement Amendment, tiered earnout payments ranging from high-single digits to mid-teen digits on net sales of sofipirionium bromide gel (the “Earnout Payments”).

The Asset Purchase Agreement also provided that Botanix would pay us a portion of the sales-based milestone payments and royalties that Botanix received from Kaken under the assigned Kaken Agreement (together, the “Sublicense Income”). Sublicense Income represented our estimate of payments that would be earned by us in the applicable period from sales-based milestone payments and royalties Botanix would receive from Kaken to the extent it was probable that a significant reversal in the amount of cumulative revenue recognized would not occur. Royalties vary based on net sales that are impacted by a wide variety of market and other factors. We recorded a contract asset equal to the amount of revenue recognized related to the Sublicense Income, less the amount of payments received from or due by Botanix in relation to the Sublicense Income.

All other consideration due under the Asset Purchase Agreement was contingent upon certain regulatory approvals and future sales subsequent to such regulatory approvals, or was based upon future sales that we determined were not yet probable due to such revenues being highly susceptible to factors outside of our influence and uncertainty about the amount of such consideration that would not be resolved for an extended period of time. Therefore, we determined that such variable consideration amounts were fully constrained up through the date of the Asset Purchase Agreement Amendment, and, as such, did not recognize such amounts as contract revenue.

#### *Transition Services Agreement with Botanix*

In connection with the sale of the Assets, on the Effective Date, we and Botanix entered into a transition services agreement (the “TSA”) whereby we provide consulting services as an independent contractor to Botanix in support of and through filing and potential approval of the U.S. NDA for sofipirionium bromide gel, 15%. In accordance with the terms of the TSA, in exchange for providing these services (i) prior to the acceptance of the filing by the FDA of such NDA in December 2022, we are receiving from Botanix a fixed monthly amount of \$71 thousand, and (ii) after the acceptance of the filing in December 2022, we receive from Botanix a variable amount based upon actual hours worked, in each case plus related fees and expenses of our advisors (plus a 5% administrative fee) and our out-of-pocket expenses.

**Contract Revenue under the Botanix Agreements**

The Company recognized the following as contract revenue (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
Buyout of Post-Closing Payment Obligations	\$ 7,944	\$ —	\$ 7,944	\$ —
Sublicense Income	—	114	53	447
Consulting services provided under the TSA	—	372	9	730
Upfront consideration	—	—	—	3,000
Reimbursed development expenditures under the Asset Purchase Agreement	—	—	—	624
Total contract revenue	\$ 7,944	\$ 486	\$ 8,006	\$ 4,801

**Agreements with Bodor**

In connection with the sale of the Assets, on the Effective Date, we, Brickell Subsidiary, and Bodor entered into an agreement (the “Rights Agreement”) to clarify that we and Brickell Subsidiary have the power and authority under the Amended and Restated License Agreement to enter into the Asset Purchase Agreement and the TSA, and that Botanix would assume the Amended and Restated License Agreement pursuant to the Asset Purchase Agreement. The Rights Agreement included a general release of claims and no admission of liability between the parties. Pursuant to such Rights Agreement, as subsequently amended on November 10, 2022, we agreed to pay Bodor (i) 20% of the amount of each payment due to us from Botanix for upfront and milestone payments, subject to deductions, credits, or offsets applied under the Asset Purchase Agreement, as well as (ii) certain tiered payments, set as a percentage ranging from mid-single digits to mid-teen digits, of the amount of each of the applicable Earnout Payments due to us from Botanix after deductions, credits, or offsets applied under the Asset Purchase Agreement.

Pursuant to the terms of the Asset Purchase Agreement, we retained our obligation under the Amended and Restated License Agreement to issue \$1.0 million in shares of our common stock to Bodor upon the FDA’s acceptance of an NDA filing for sofpironium bromide gel, 15%. On November 10, 2022, we entered into an Acknowledgment and Agreement Related to Asset Purchase Agreement and Amended and Restated License Agreement (the “Acknowledgment”) with Brickell Subsidiary, Botanix, and Bodor. Pursuant to the Acknowledgment, we paid \$1.0 million in cash to Bodor in full satisfaction of our obligation to issue shares upon the FDA’s acceptance of the NDA. We determined to prepay this obligation in cash in order to avoid the substantial dilution to our stockholders that would have resulted if we had issued the shares of our common stock originally provided for in the Amended and Restated License Agreement.

In connection with the Asset Purchase Agreement Amendment, on July 21, 2023, we, Brickell Subsidiary, and Bodor entered into a Second Amendment to Rights Agreement (the “RA Amendment”). The RA Amendment provides that in exchange for the one-time payment of \$1.7 million by Botanix on behalf of us to Bodor, we shall have no further payment obligations to Bodor under or in connection with the Rights Agreement or the Amended and Restated License Agreement. Except as explicitly amended by the RA Amendment, the Rights Agreement remains in full force and effect.

During the three and nine months ended September 30, 2023, we incurred \$1.7 million of general and administrative expense associated with payments due to Bodor. During the three and nine months ended September 30, 2022, \$0 and \$0.5 million, respectively, of general and administrative expense was associated

with achieved milestones or payments due to Bodor related to sofpironium bromide gel, 15%. Prior to the execution of the Rights Agreement, we paid Bodor immaterial amounts with respect to the royalties we received from Kaken for sales of ECCLOCK in Japan during those periods.

#### **Nasdaq Delisting Matter**

On October 10, 2023, we received a notice (the “Delisting Notice”) from the Listing Qualifications Department (the “Staff”) of The Nasdaq Stock Market LLC (“Nasdaq”) informing the Company that the Staff, pursuant to Nasdaq Listing Rule Series 5100, had determined to apply more stringent criteria and delist our common stock. Accordingly, if we had not timely requested on or before October 17, 2023 an appeal through a hearing before a Nasdaq Hearings Panel (the “Panel”), our common stock would have been scheduled for delisting and suspended at the opening of business on October 19, 2023. The Company requested an appeal and our hearing before the Panel is scheduled for December 21, 2023. The suspension and delisting action is currently stayed by Nasdaq Staff pending the Panel’s decision.

The Delisting Notice stated in part as follows, “In a Form 8-K dated September 19, 2023, the Company announced that the board of directors approved a plan of liquidation and dissolution (the “Plan of Liquidation”), subject to the approval of stockholders. In connection with the Plan of Liquidation, effective October 2, 2023, the Company discontinued all clinical and preclinical development programs and terminated most of its employees, except for certain employees, consultants, and advisors who will supervise or facilitate the dissolution and wind down of the Company. In view of the foregoing, Staff believes that the Company no longer has an operating business, and as a result, has determined that the Company is a public shell.”

As previously disclosed in a Current Report on Form 8-K filed on April 27, 2023 with the SEC, we received a notice from Nasdaq on April 24, 2023, informing us that because the closing bid price for our common stock listed on Nasdaq was below \$1.00 per share for 30 consecutive business days, we did not comply with the minimum closing bid price requirement for continued listing on Nasdaq under Nasdaq Listing Rule 5550(a)(2) (the “Rule”). We initially had a period of 180 calendar days, or until October 23, 2023, to regain compliance with the Rule. However, because our common stock did not meet the minimum bid requirement for continued listing, and we did not inform Nasdaq of our intent to effect a reverse stock split in order to regain compliance with this minimum price requirement by Nasdaq to stay listed, Nasdaq determined as of the date of the Delisting Notice that we could not regain compliance with the Rule prior to October 23, 2023, and additionally determined to delist the Company pursuant to Nasdaq Listing Rules 5101 and 5110(b). Our hearing request also resulted in a stay of the suspension and delisting action relating to this determination.

In a Current Report on Form 8-K filed on September 19, 2023, we further disclosed that, in connection with the Plan of Dissolution, each of the then-current members of the Company’s Board, Reginald L. Hardy, Gary A. Lyons, and Vijay B. Samant, would resign from the Board, effective October 2, 2023, and Mr. Marchio, an officer of the Company, would be appointed as the sole director, and new Chief Executive Officer, of the Company on such date. As a result, the Staff determined that we no longer comply with Nasdaq’s majority independent board, independent audit committee and independent compensation committee requirements under Nasdaq Listing Rules 5605(b)(1), 5605(c)(2), and 5605(d)(2), respectively, and that these serve as separate and additional bases for delisting. Our hearing request also resulted in a stay of the suspension and delisting action relating to this determination.

#### **Significant Financing Arrangements**

This section sets forth our recent and ongoing financing arrangements, all of which involve our common stock.

### ***Public Offerings of Common Stock and Warrants***

In October 2020, we completed the sale of 422,300 shares of our common stock, and, to certain investors, pre-funded warrants to purchase 40,663 shares of our common stock and accompanying common stock warrants to purchase up to an aggregate of 462,979 shares of our common stock (the “October 2020 Offering”). The October 2020 Offering resulted in net proceeds of approximately \$13.7 million to us after deducting underwriting commissions and discounts and other offering expenses payable by us of \$1.3 million and excluding the proceeds from the exercise of the warrants. The common warrants provide the warrant holder with the right to participate in distributions on a 1-for-1 basis with common shareholders. No warrants associated with the October 2020 Offering were exercised during the three and nine months ended September 30, 2023 or 2022.

In June 2020, we completed the sale of 328,669 shares of our common stock, and, to certain investors, pre-funded warrants to purchase 60,220 shares of our common stock and accompanying common stock warrants to purchase up to an aggregate of 388,920 shares of our common stock (the “June 2020 Offering”). The June 2020 Offering resulted in approximately \$18.7 million of net proceeds after deducting underwriting commissions and discounts and other offering expenses payable by us of \$1.4 million and excluding the proceeds from the exercise of the warrants. The common warrants provide the warrant holder with the right to participate in distributions on a 1-for-1 basis with common shareholders. No warrants associated with the June 2020 Offering were exercised during the three and nine months ended September 30, 2023 or 2022.

For additional information regarding the offerings described above, see Note 6. “*Capital Stock*” of the notes to our condensed consolidated financial statements included in this Quarterly Report.

### ***At Market Issuance Sales Agreements***

In March 2021, we entered into an At Market Issuance Sales Agreement (the “2021 ATM Agreement”) with Oppenheimer & Co. Inc. (“Oppenheimer”) and William Blair & Company, L.L.C. as our sales agents (the “Agents”). Pursuant to the terms of the 2021 ATM Agreement, we may sell from time to time through the Agents shares of our common stock having an aggregate offering price of up to \$50.0 million. Such shares are issued pursuant to our shelf registration statement on Form S-3 (Registration No. 333-254037). Sales of shares are made by means of ordinary brokers’ transactions on The Nasdaq Capital Market at market prices or as otherwise agreed by us and the Agents. Under the terms of the 2021 ATM Agreement, we may also sell the shares from time to time to an Agent as principal for its own account at a price to be agreed upon at the time of sale. Any sale of the shares to an Agent as principal would be pursuant to the terms of a separate placement notice between us and such Agent. During the nine months ended September 30, 2023, we sold 2,887,535 shares of common stock under the 2021 ATM Agreement at a weighted-average price of \$2.34 per share, for aggregate net proceeds of \$6.6 million, after giving effect to a 3% commission to the Agents. During the three months ended September 30, 2023, no sales of common stock under the 2021 ATM Agreement occurred. During the three and nine months ended September 30, 2022, we sold 322,824 and 354,381 shares of common stock under the 2021 ATM Agreement at a weighted-average price of \$3.52 and \$3.70 per share, for aggregate net proceeds of \$1.1 million and \$1.3 million, respectively, after giving effect to a 3% commission to the Agents. As of September 30, 2023, approximately \$38.0 million of shares of common stock were remaining, but had not yet been sold under the 2021 ATM Agreement.

In April 2020, we entered into an At Market Issuance Sales Agreement (the “2020 ATM Agreement” and, together with the 2021 ATM Agreement, the “ATM Agreements”) with Oppenheimer as our sales agent. Pursuant to the terms of the 2020 ATM Agreement, we may sell from time to time through Oppenheimer shares of our common stock having an aggregate offering price of up to \$8.0 million. As of September 30, 2023, approximately \$2.6 million of shares of common stock were remaining, but had not yet been sold under the 2020 ATM Agreement, however, the shares that may be sold pursuant to the 2020 ATM Agreement are not

currently registered under the Securities Act of 1933, as amended. During the three and nine months ended September 30, 2023 and 2022, no sales of common stock under the 2020 ATM Agreement occurred.

We are subject to the SEC's "baby shelf rules," which prohibit companies with a public float of less than \$75 million from issuing securities under a shelf registration statement in excess of one-third of such company's public float in a 12-month period. These rules currently limit future issuances of shares by us under the ATM Agreements or other common stock offerings.

#### ***Private Placement Offerings***

In February 2020, we and Lincoln Park Capital Fund, LLC ("Lincoln Park") entered into (i) a securities purchase agreement (the "Securities Purchase Agreement"); (ii) a purchase agreement (the "Purchase Agreement"); and (iii) a registration rights agreement (the "Registration Rights Agreement"). Pursuant to the Securities Purchase Agreement, Lincoln Park purchased, and we sold, (i) an aggregate of 21,111 shares of common stock (the "Common Shares"); (ii) a warrant to initially purchase an aggregate of up to 13,476 shares of common stock at an exercise price of \$0.45 per share (the "Series A Warrant"); and (iii) a warrant to initially purchase an aggregate of up to 34,588 shares of common stock at an exercise price of \$52.20 per share (the "Series B Warrant" and, together with the Series A Warrant, the "Warrants"). The aggregate gross purchase price for the Common Shares and the Warrants was \$2.0 million. The Warrants provide the warrant holder with the right to participate in distributions on a 1-for-1 basis with common shareholders. No Warrants associated with the Securities Purchase Agreement were exercised during the three and nine months ended September 30, 2023 or 2022.

Under the terms and subject to the conditions of the Purchase Agreement, we have the right, but not the obligation, to sell to Lincoln Park, and Lincoln Park is obligated to purchase, up to \$28.0 million in the aggregate of shares of our common stock. In order to retain maximum flexibility to issue and sell up to the maximum of \$28.0 million of our common stock under the Purchase Agreement, we sought and, at our annual meeting on April 19, 2021, received, stockholder approval for the sale and issuance of common stock in connection with the Purchase Agreement under Nasdaq Listing Rule 5635(d). Sales of common stock by us will be subject to certain limitations, and may occur from time to time, at our sole discretion, over the 36-month period commencing on August 14, 2020 (the "Commencement Date").

Following the Commencement Date, under the Purchase Agreement, on any business day selected by us, we may direct Lincoln Park to purchase up to 2,222 shares of our common stock on such business day (each, a "Regular Purchase"), provided, however, that (i) the Regular Purchase may be increased to up to 2,777 shares, provided that the closing sale price of the common stock is not below \$3.00 on the purchase date; and (ii) the Regular Purchase may be increased to up to 3,333 shares, provided that the closing sale price of the common stock is not below \$5.00 on the purchase date. In each case, Lincoln Park's maximum commitment in any single Regular Purchase may not exceed \$1,000,000. The purchase price per share for each such Regular Purchase will be based on prevailing market prices of common stock immediately preceding the time of sale. In addition to Regular Purchases, we may direct Lincoln Park to purchase other amounts as accelerated purchases or as additional accelerated purchases if the closing sale price of the common stock exceeds certain threshold prices as set forth in the Purchase Agreement. In all instances, we may not sell shares of our common stock to Lincoln Park under the Purchase Agreement if it would result in Lincoln Park beneficially owning more than 9.99% of the outstanding shares of our common stock. During the three and nine months ended September 30, 2023 and 2022, no sales of common stock under the Purchase Agreement occurred. As of September 30, 2023, approximately \$26.9 million of shares of common stock were remaining, but had not yet been sold under the Purchase Agreement.

On September 9, 2022, a registration statement was declared effective covering the resale of up to 1,750,000 additional shares of our common stock that we have reserved for issuance and sale to Lincoln Park under the Purchase Agreement (Registration Statement No. 333-267254).

We have the right to terminate the Purchase Agreement at any time, at no cost or penalty.

### **Financial Overview**

Our operations to date have been limited to business planning, raising capital, developing and entering into strategic partnerships for our pipeline assets, identifying, in-licensing and out-licensing and/or selling product candidates, conducting clinical trials, and other research and development activities.

To date, we have financed operations primarily through funds received from the sale of common stock and warrants, convertible preferred stock, debt and convertible notes, and payments received under license, collaboration, and other agreements. Other than through arrangements as they relate to sales of ECCLOCK in Japan, none of our product candidates has been approved for sale and we have not generated any product sales. Since inception, we have incurred operating losses with the exception of the three months ended September 30, 2023. We recorded a net loss of \$4.5 million and \$16.6 million for the nine months ended September 30, 2023 and 2022, respectively. As of September 30, 2023, we had an accumulated deficit of \$170.9 million. We expect to continue to incur additional expenses and operating losses for the foreseeable future as we implement the Plan of Dissolution.

On September 18, 2023, after conducting an extensive, months-long potential strategic alternatives process, including four unsuccessful attempts to find a merger or reverse merger partner due to the potential acquirer's inability to secure its own necessary financing and/or inability to offer adequate value to consummate the transaction, and combined with the unsuccessful outreach to approximately 125 other possible counterparties and investors who operate or invest in both life sciences and other industry sectors, our Board unanimously approved the Dissolution and the Plan of Dissolution, subject to the approval of the Company's stockholders. We plan to hold the Special Meeting on November 16, 2023 to seek stockholder approval of the Dissolution and the Plan of Dissolution and have filed proxy materials relating to the Special Meeting with the SEC.

In connection with the Dissolution, subject to stockholder approval, we intend to distribute all remaining cash to shareholders over time. Additionally, in order to reduce costs, we have discontinued all clinical and preclinical development programs and reduced our workforce, except for certain employees, consultants, and advisors who will supervise or facilitate the dissolution and wind down of the Company, if approved by our stockholders.

### **Key Components of Operations**

#### ***Revenue***

Revenue generally consists of revenue recognized under our strategic agreements for the development and commercialization of our product candidates. Our strategic agreements generally outline overall development plans and include payments we receive at signing, payments for the achievement of certain milestones, sublicense income, earnout payments on net product sales, and royalties on net product sales. For these activities and payments, we utilize judgment to assess the nature of the performance obligations to determine whether the performance obligations are satisfied over time or at a point in time and, if over time, the appropriate method of measuring progress for purposes of recognizing revenue. Prior to entering into the Asset Purchase Agreement, we recognized royalty revenue earned on a percentage of net sales of ECCLOCK in Japan. Beginning in the second quarter of 2022, we began recognizing contract revenue pursuant to the terms of the Asset Purchase Agreement. After entering into the Asset Purchase Agreement Amendment in July 2023 and recognizing \$7.9 million in revenue from Botanix on July 27, 2023, we do not expect to generate any further significant revenue from any product candidates that we developed under the Asset Purchase Agreement or Asset Purchase Agreement Amendment.

### ***Research and Development Expenses***

Research and development expenses principally consist of payments to third parties known as clinical research organizations (“CROs”) and upfront in-licensing fees of development-stage assets. CROs help plan, organize, and conduct clinical and nonclinical studies under our direction. Personnel costs, including wages, benefits, and share-based compensation, related to our research and development staff in support of product development activities are also included, as well as costs incurred for supplies, clinical and nonclinical studies, consultants, and facility and related overhead costs.

### ***General and Administrative Expenses***

General and administrative expenses consist primarily of personnel costs, including wages, benefits, share-based compensation, and severance, related to our executive, sales, marketing, finance, and human resources personnel, as well as professional fees, including legal, accounting, and licensing fees.

### ***Total Other Income, Net***

Other income, net consists primarily of interest income, interest expense, and various income or expense items of a non-recurring nature. We have earned interest income from money market funds and interest-bearing accounts. Our interest income varies each reporting period depending on our average cash balances during the period and market interest rates. We expect interest income to fluctuate in the future with changes in average cash balances and market interest rates.

### **Critical Accounting Estimates**

We have prepared the condensed consolidated financial statements in accordance with accounting principles generally accepted in the United States of America (“U.S. GAAP”). The preparation of these condensed consolidated financial statements requires us to make estimates, assumptions, and judgments that affect the reported amounts of assets, liabilities, and related disclosures at the date of the condensed consolidated financial statements, and the reported amounts of revenue and expenses during the reporting period. On an ongoing basis, management evaluates its critical estimates, including those related to revenue recognition and accrued research and development expenses. We base our estimates on our historical experience and on assumptions that we believe are reasonable; however, actual results may differ materially from these estimates under different assumptions or conditions.

There were no changes during the nine months ended September 30, 2023 to our critical accounting estimates as disclosed in our Annual Report on Form 10-K for the year ended December 31, 2022. For information on our significant accounting policies, please refer to Note 2 of the notes to our condensed consolidated financial statements included elsewhere in this Quarterly Report.

### **Recent Accounting Pronouncements**

We believe that the impact of recently issued guidance, whether adopted or to be adopted in the future, is not expected to have a material impact on our condensed consolidated financial statements upon adoption.

### **Results of Operations**

As described above, in July 2023, we recognized \$7.9 million in revenue pursuant to the Asset Purchase Agreement Amendment with Botanix, and we incurred \$1.7 million of general and administrative expense associated with payments due to Bodor. Further, in connection with the Plan of Dissolution, effective October 2, 2023, we discontinued all clinical and preclinical development programs and terminated most of our employees, except for certain employees, consultants, and advisors who will supervise or facilitate the dissolution and wind

down of the Company, if approved by our stockholders. As a result, we do not expect the discussions of our historical results of operations below to be indicative of our results of operations in the current or future periods.

**Comparison of the Three Months Ended September 30, 2023 and 2022**

	Three Months Ended September 30,		Change
	2023	2022	
(in thousands)			
Revenue	\$ 7,944	\$ 486	\$ 7,458
Research and development expenses	(627)	(3,560)	2,933
General and administrative expenses	(5,320)	(3,002)	(2,318)
Total other income, net	107	58	49
Net income (loss)	\$ 2,104	\$ (6,018)	\$ 8,122

**Revenue**

Revenue increased by \$7.5 million for the three months ended September 30, 2023 compared to the three months ended September 30, 2022. Revenue for the three months ended September 30, 2023 primarily consisted of contract revenue of \$7.9 million pursuant to the Asset Purchase Agreement Amendment with Botanix, in which we agreed to terminate and relinquish any remaining amounts potentially payable by Botanix to us in the future. Revenue for the three months ended September 30, 2022 primarily consisted of contract revenue recognized under the Asset Purchase Agreement and TSA with Botanix.

**Research and Development**

Research and development expenses decreased by \$2.9 million for the three months ended September 30, 2023 compared to the three months ended September 30, 2022, driven primarily by decreased expenses of \$2.3 million related to our DYRK1A inhibitor program and \$0.6 million for personnel and other unallocated expenses. In May 2022, we initiated Part 1 of a two-part Phase 1 clinical trial in Canada for FRTX-02 that was completed in December 2022. Below is a summary of our research and development expenses by period by program:

	Three Months Ended September 30,		Change
	2023	2022	
(in thousands)			
Direct program expenses related to			
DYRK1A inhibitor program (FRTX-02)	\$ 168	\$ 2,470	\$ (2,302)
STING inhibitor program (FRTX-10)	2	76	(74)
Personnel and other unallocated expenses	457	1,014	(557)
Total research and development expenses	\$ 627	\$ 3,560	\$ (2,933)

**General and Administrative Expenses**

General and administrative expenses increased by \$2.3 million for the three months ended September 30, 2023 compared to the three months ended September 30, 2022, which was primarily the result of \$1.7 million for a licensing fee to Bodor in July 2023 under the Asset Purchase Agreement Amendment and \$1.1 million in higher compensation-related expenses, partially offset by \$0.5 million in lower legal and compliance fees.

Compensation-related expense was higher in 2023 primarily due to \$1.3 million of severance expense in 2023 due to the winding down of our operations, and partially offset by a reduction of compensation and bonuses of \$0.2 million.

**Comparison of the Nine Months Ended September 30, 2023 and 2022**

	Nine Months Ended September 30,		Change
	2023	2022	
	(in thousands)		
Revenue	\$ 8,006	\$ 4,893	\$ 3,113
Research and development expenses	(3,172)	(11,438)	8,266
General and administrative expenses	(9,542)	(10,396)	854
Other income, net	252	366	(114)
Net loss	\$ (4,456)	\$ (16,575)	\$ 12,119

**Revenue**

Revenue increased by approximately \$3.1 million for the nine months ended September 30, 2023 compared to the nine months ended September 30, 2022. Revenue for the nine months ended September 30, 2023 primarily consisted of contract revenue of \$7.9 million pursuant to the Asset Purchase Agreement Amendment with Botanix, in which we agreed to terminate and relinquish any remaining amounts potentially payable by Botanix to us in the future, and \$0.1 million pursuant to the Asset Purchase Agreement and TSA with Botanix. Revenue for the nine months ended September 30, 2022 primarily consisted of contract revenue recognized under the Asset Purchase Agreement and TSA with Botanix of \$4.8 million and royalty revenue of \$0.1 million. Contract revenue recorded during the nine months ended September 30, 2022 consisted of the following: an upfront payment from Botanix of \$3.0 million; fees for consulting services we provided under the TSA with Botanix of \$0.7 million; reimbursed development expenditures from Botanix under the Asset Purchase Agreement of \$0.6 million; and Sublicense Income under the Asset Purchase Agreement of \$0.4 million.

**Research and Development Expenses**

Research and development expenses decreased by \$8.3 million for the nine months ended September 30, 2023 compared to the nine months ended September 30, 2022, driven primarily by decreased costs of \$2.9 million related to the completion in December 2022 of our Phase 1 clinical trial of FRTX-02, \$2.1 million related to our Phase 3 pivotal clinical program of sofpiroonium bromide in 2022 that did not recur, \$2.0 million related to acquisition and license costs for our portfolio of STING inhibitor program in 2022 that did not recur, and

\$1.3 million in lower personnel and other unallocated expenses. Below is a summary of our research and development expenses by period by program:

	Nine Months Ended September 30,		Change
	2023	2022	
(in thousands)			
Direct program expenses related to			
Sofpironium bromide	\$ —	\$ 2,090	\$ (2,090)
DYRK1A inhibitor program (FRTX-02)	1,257	4,156	(2,899)
STING inhibitor program (FRTX-10)	109	2,114	(2,005)
Personnel and other unallocated expenses	1,806	3,078	(1,272)
Total research and development expenses	<u>\$ 3,172</u>	<u>\$ 11,438</u>	<u>\$ (8,266)</u>

**General and Administrative Expenses**

General and administrative expenses decreased by \$0.9 million for the nine months ended September 30, 2023 compared to the nine months ended September 30, 2022. The decrease of \$0.9 million was primarily related to \$2.1 million in lower legal and compliance fees and \$0.5 million in lower insurance and other fees, partially offset by an increase of \$1.1 million in licensing fees to Bodor and \$0.6 million in compensation-related expenses. Compensation-related expense was higher in 2023 primarily due to \$1.3 million of severance expense in 2023 due to the winding down of our operations, and partially offset by a reduction of compensation and bonuses of \$0.8 million.

**Total Other Income, Net**

Total other income, net decreased by \$0.1 million for the nine months ended September 30, 2023 compared to the nine months ended September 30, 2022. Total other income, net in the 2023 period primarily consisted of interest income on our investment balances and in the 2022 period primarily consisted of a gain from the extinguishment of liabilities assumed by Botanix related to development costs during the nine months ended September 30, 2022 prior to the Effective Date of the Asset Purchase Agreement.

**Liquidity and Capital Resources**

We have incurred significant operating losses and have an accumulated deficit as a result of in-licensing and development of our product candidates, including conducting preclinical and clinical trials and providing general and administrative support for these operations. For the nine months ended September 30, 2023 and 2022, we had a net loss of \$4.5 million and \$16.6 million, respectively. As of September 30, 2023, we had an accumulated deficit of \$170.9 million. As of September 30, 2023, we had cash and cash equivalents of \$12.0 million. Since inception, we have financed our operations primarily through funds received from the sale of common stock and warrants, convertible preferred stock, debt and convertible notes, and payments received under license and other strategic agreements. We expect to continue to incur additional losses for the foreseeable future as we implement the Plan of Dissolution.

Our Board and executive management team conducted a comprehensive process to explore and evaluate strategic alternatives with the goal of maximizing stockholder value. Potential alternatives that were under evaluation included, but were not limited to, a financing, a merger or reverse merger, the sale of all or part of the Company, licensing of assets, a business combination, and/or other strategic transactions or series of related transactions involving the Company.

On September 18, 2023, after conducting an extensive, months-long potential strategic alternatives process, including four unsuccessful attempts to find a merger or reverse merger partner due to the potential acquirer's inability to secure its own necessary financing and/or inability to offer adequate value to consummate the transaction, and combined with the unsuccessful outreach to approximately 125 other possible counterparties and investors who operate or invest in both life sciences and other industry sectors, our Board unanimously approved the Dissolution and the Plan of Dissolution, subject to the approval of the Company's stockholders. We plan to hold the Special Meeting on November 16, 2023 to seek stockholder approval of the Dissolution and the Plan of Dissolution and have filed proxy materials relating to the Special Meeting with the SEC. In connection with the Dissolution, subject to stockholder approval, we intend to distribute all remaining cash to stockholders over time. Additionally, in order to reduce costs, we have discontinued all clinical and preclinical development programs and reduced our workforce, except for certain employees, consultants, and advisors who will supervise or facilitate the dissolution and wind down of the Company, if approved by our stockholders.

As a result of the Plan of Dissolution, our management has concluded that substantial doubt exists about our ability to continue as a going concern for a period of twelve months from the date of issuance of our accompanying condensed consolidated financial statements, which do not include any adjustments relating to the recoverability and classification of recorded asset amounts or the amounts and classification of liabilities that might result from the outcome of this uncertainty. Accordingly, the condensed consolidated financial statements have been prepared on a basis that assumes that we will continue as a going concern and which contemplates the realization of assets and satisfaction of liabilities and commitments in the ordinary course of business. If our stockholders approve the Dissolution and the Plan of Dissolution and the likelihood is remote that we would return from liquidation, we would consider liquidation to be imminent and apply liquidation basis of accounting.

### Cash Flows

Since inception, we have primarily used our available cash to fund expenditures related to efforts to in-license and develop our product candidates, including conducting preclinical and clinical trials and providing general and administrative support for these operations. The following table sets forth a summary of cash flows for the periods presented:

	Nine Months Ended September 30,	
	2023	2022
	(in thousands)	
Net cash provided by (used in):		
Operating activities	\$ (3,219)	\$ (16,757)
Investing activities	—	(47)
Financing activities	6,559	1,170
Total	<u>\$ 3,340</u>	<u>\$ (15,634)</u>

### Operating Activities

Net cash used in operating activities of \$3.2 million during the nine months ended September 30, 2023 decreased compared to \$16.8 million during the nine months ended September 30, 2022, primarily as a result of a decrease in cash used to support our operating activities, including but not limited to our clinical trials, research and development activities, and general working capital requirements. The \$13.5 million decrease was impacted by the net effect of a decrease in net loss of \$12.1 million and the net effect of changes in working capital of \$1.4 million.

***Financing Activities***

Net cash provided by financing activities during the nine months ended September 30, 2023 increased by \$5.4 million compared to the nine months ended September 30, 2022, primarily resulting from increased net proceeds received during the nine months ended September 30, 2023 of \$5.4 million from sales of our common stock under the 2021 ATM Agreement.

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

We are a smaller reporting company as defined by Rule 12b-2 of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), and are not required to provide the information under this item.

**ITEM 4. CONTROLS AND PROCEDURES**

**Evaluation of Disclosure Controls and Procedures**

We maintain disclosure controls and procedures that are designed to ensure that information required to be disclosed in the reports that we file under the Exchange Act is recorded, processed, summarized, and reported within the time periods specified in the rules and forms of the SEC, and that such information is accumulated and communicated to our management, including our principal executive officer and principal financial officer, as appropriate, to allow timely decisions regarding required disclosures. In designing and evaluating the disclosure controls and procedures, management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives, and management is required to apply its judgment in evaluating the cost-benefit relationship of possible controls and procedures.

**Conclusion Regarding the Effectiveness of Disclosure Controls and Procedures**

Under the supervision and with the participation of our management, including our principal executive officer and principal financial officer, we conducted an evaluation of the design and operation of our disclosure controls and procedures, as such term is defined in Rule 13a-15(e) and 15d-15(e) promulgated under the Exchange Act, as of the end of the period covered by this Quarterly Report. Based on this evaluation, our principal executive officer and principal financial officer concluded that our disclosure controls and procedures were effective and were operating at a reasonable assurance level as of September 30, 2023.

**Changes in Internal Control over Financial Reporting**

Management has determined that there were no changes in our internal control over financial reporting that occurred during the three months ended September 30, 2023 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

## PART II. OTHER INFORMATION

### ITEM 1. LEGAL PROCEEDINGS

From time to time, we may become involved in legal proceedings arising in the ordinary course of our business. We are not presently a party to any legal proceedings that, if determined adversely to us, would individually or taken together have a material adverse effect on our Company, nor is any such litigation threatened as of the date of this filing.

### ITEM 1A. RISK FACTORS

*Our business, financial condition, and operating results may be affected by a number of factors, whether currently known or unknown, including but not limited to those described below. Any one or more of such factors could directly or indirectly cause our actual results of operations and financial condition to vary materially from past or anticipated future results of operations and financial condition. Any of these factors, in whole or in part, alone or combined with any of the other factors, could materially and adversely affect our business, financial condition, results of operations, and stock price. The following information should be read in conjunction with Part I, Item 2, "Management's Discussion and Analysis of Financial Condition and Results of Operations" and the condensed consolidated financial statements and related notes in Part I, Item 1, "Financial Statements" of this Quarterly Report.*

#### Risks Related to the Dissolution

*We cannot predict the timing of the distributions, if any, to stockholders.*

Our current intention is that, if our stockholders approve the Dissolution and the Plan of Dissolution at our Special Meeting, the Certificate of Dissolution would be filed with the Delaware Secretary of State promptly after such approval; however, the Board would retain the discretion to determine not to proceed with the Dissolution in its sole discretion and, if it does proceed with the Dissolution, would have discretion as to the timing of the filing of the Certificate of Dissolution. No further stockholder approval would be required to effect the Dissolution. However, if the Board determines that the Dissolution is not in our best interest or in the best interest of our stockholders, the Board may, in its sole discretion, abandon the Dissolution or may amend or modify the Plan of Dissolution to the extent permitted by the Delaware General Corporation Law (the "DGCL") without the necessity of further stockholder approval. After the Certificate of Dissolution has been filed, revocation of the Dissolution would require further stockholder approval under the DGCL.

As part of the process of delisting from the Nasdaq exchange and dissolving the Company, the Company intends to terminate its relationship with its Transfer Agent while, in parallel, notifying the Nasdaq Hearing Panel of its intent to delist the Company from the Nasdaq exchange. This would have the impact of canceling the delisting hearing scheduled for December 21, 2023 and would likely result in Nasdaq staff delisting the Company shortly thereafter.

If the Company cannot obtain the necessary stockholder votes to proceed with the Plan of Dissolution at the Special Shareholder Meeting, or subsequently if such meeting is adjourned, then the Company plans to petition the Chancery Court of Delaware for a judicial dissolution order.

Under Delaware law, utilizing the procedures of Section 281(b) of the DGCL (which is contemplated by the Plan of Dissolution unless otherwise determined by the Board), before a dissolved corporation may make any distribution to its stockholders, it must: (i) pay or make reasonable provision to pay all of its claims and obligations, including all contingent, conditional or unmatured contractual claims known to the corporation, (ii) make such provision as will be reasonably likely to be sufficient to provide compensation for any claim against it which is the subject of a pending action, suit or proceeding to which it is a party, and (iii) make such

provision as will be reasonably likely to be sufficient to provide compensation for claims that have not been made known to the corporation or that have not arisen but that, based on facts known to the corporation, are likely to arise or to become known to the corporation within 10 years after the date it dissolves. Among other things, our potential liabilities that may require provision could include those relating to indemnification obligations, if any, to third parties or to our current and former officers and directors, and to resolve any stockholder or other litigation that may emerge, even though none exists now or is threatened. It might take significant time to resolve these matters, and as a result we are unable to predict the timing, amount, or number of distributions, if any are made, to our stockholders.

***We cannot assure you as to the timing, amount, or number of distributions, if any, to be made to our stockholders.***

We cannot predict with certainty the timing, amount, or number of distributions, if any, to our stockholders. Any such distributions will not occur until after the Certificate of Dissolution is filed, and we cannot predict the timing, amount, or number of any such distributions, or whether any such distributions will occur, as uncertainties as to the ultimate amount and scope of our liabilities, the operating costs and amounts to be set aside for claims, obligations and provisions during the liquidation and winding-up process, and the related timing to complete such transactions, make it impossible to predict with certainty the actual net cash amount, if any, that will ultimately be available for distribution to stockholders or the timing of any such distributions. Examples of uncertainties that could reduce the value of distributions to our stockholders include: the incurrence by the Company of expenses relating to the Dissolution being different than estimated; the receipt of no, or lower than expected, proceeds in the course of our efforts to monetize our remaining assets and intellectual property; unanticipated costs relating to the defense, satisfaction or settlement of lawsuits or other claims that may be threatened against us or our current or former directors or officers; amounts necessary to resolve claims of any creditors or other third parties; and delays in the Dissolution or other winding-up process.

In addition, as we wind down, we will continue to incur expenses from operations, including directors' and officers' insurance, severance payments, payments to service providers and any continuing employees or consultants, taxes, legal, accounting and consulting fees, costs associated with maintaining the listing of our common stock, and/or its delisting, and expenses related to our filing obligations with the SEC and/or others, which will reduce any amounts available for distribution to our stockholders. As a result, we cannot assure you as to any amounts, if any, to be distributed to our stockholders if the Board proceeds with the Dissolution. If our stockholders do not approve the Dissolution and the Plan of Dissolution, we will not be able to proceed with the Dissolution and no liquidating distributions will be made in connection therewith, until and unless the Company is able to get Chancery Court in Delaware to agree to judicially dissolve the Company.

It is the current intent of the Board, assuming approval of the Dissolution, that any cash will first be used to pay our outstanding current liabilities and obligations, and then will be retained to pay ongoing corporate and administrative costs and expenses associated with winding down the Company, liabilities and potential liabilities relating to or arising out of any litigation matters and potential liabilities relating to our indemnification obligations, if any, to our service providers, or to our current and former officers and directors, before such cash, if any remains, will be available for distribution to stockholders.

The Board will determine, in its sole discretion, the timing and number of the distributions of the remaining amounts, if any, to our stockholders in the Dissolution. We can provide no assurance as to if or when any such distributions will be made, and we cannot provide any assurance as to the amount to be paid to stockholders in any such distributions, if any are to be made. Stockholders may receive substantially less than the amount that we currently estimate that they may receive, or they may receive no distribution at all.

***If our stockholders do not approve the Dissolution Proposal, we would not be able to continue our business operations.***

We discontinued substantially all clinical and preclinical development programs, and reduced our workforce, which includes the termination of most employees, in the second half of 2023, except for certain employees, consultants, and advisors who are supervising or facilitating the dissolution and wind down of the Company, if approved by our stockholders. At our 2022 annual meeting of stockholders, we were unable to obtain stockholder approval for a reverse stock split to increase the trading price of our common stock to regain compliance with Nasdaq Marketplace Rule 5550(a)(2), and there can be no assurance that we will be able to obtain stockholder approval for the Dissolution and the Plan of Dissolution. If our stockholders do not approve the Dissolution and the Plan of Dissolution, the Board will continue to explore what, if any, alternatives are available for the future of the Company in light of its discontinued business activities; however, those alternatives are likely limited to seeking voluntary judicial dissolution at a later time with Delaware Chancery court or some other jurisdiction with potentially diminished assets or seeking bankruptcy protection or protection under other insolvency laws. It is unlikely that these alternatives would result in greater stockholder value than the proposed Plan of Dissolution and the Dissolution.

***The Board may determine not to proceed with the Dissolution.***

Even if the Dissolution and the Plan of Dissolution are approved by our stockholders, the Board may determine in its sole discretion not to proceed with the Dissolution, especially if some other alternative emerges, which we do not expect, that would provide greater value to the stockholders than Dissolution and the Plan of Dissolution. If our Board elects to pursue any alternative to the Plan of Dissolution, our stockholders may not receive any of the funds that might otherwise have been available now or in the future for distribution to our stockholders. After the Certificate of Dissolution has been filed, revocation of the Dissolution would require further stockholder approval under the DGCL.

***Our stockholders may be liable to third parties for part or all of the amount received from us in our liquidating distributions if cash reserves are inadequate.***

If the Dissolution becomes effective, we are required to establish a cash reserve designed to satisfy any additional claims and obligations that may arise. Any reserve may not be adequate to cover all of our claims and obligations. Under the DGCL, if we fail to create an adequate reserve for payment of our expenses, claims and obligations, each stockholder could be held liable for payment to our creditors for claims brought prior to or after the period ending three years after the effective time of the Certificate of Dissolution (the “Effective Time”) (or such longer period as the Delaware Court of Chancery may direct) (the “Survival Period”) (or, if we choose the Safe Harbor Procedures under DGCL Section 280 and 281(a), for claims brought prior to the expiration of the Survival Period), up to the lesser of (i) such stockholder’s pro rata share of amounts owed to creditors in excess of the reserve and (ii) the amounts previously received by such stockholder in the Dissolution from us and from any liquidating trust or trusts. Accordingly, in such event, a stockholder could be required to return part or all of the distributions previously made to such stockholder, and a stockholder could ultimately receive nothing from us under the Plan of Dissolution. Moreover, if a stockholder has paid taxes on amounts previously received, a repayment of all or a portion of such amount could result in a situation in which a stockholder may incur a net tax cost if the repayment of the amount previously distributed does not cause a commensurate reduction in taxes payable in an amount equal to the amount of the taxes paid on amounts previously distributed.

***Our stockholders of record will not be able to buy or sell shares of our common stock after we close our stock transfer books at the Effective Time of the Dissolution.***

If the Board determines to proceed with the Dissolution, we intend to close our stock transfer books and discontinue recording transfers of our common stock at the Effective Time of the Dissolution. After we close

our stock transfer books, we will not record any further transfers of our common stock on our books except at our sole discretion by will, intestate succession, or operation of law. Therefore, shares of our common stock will not be freely transferable after the Effective Time. As a result of the closing of the stock transfer books, all liquidating distributions in the Dissolution will likely be made to the same stockholders of record as the stockholders of record as of the Effective Time.

***We plan to initiate steps to exit from certain reporting requirements under the Exchange Act, which may substantially reduce publicly available information about us. If the exit process is protracted, we will continue to bear the expense of being a public reporting company despite having no source of revenue.***

Our common stock is currently registered under the Exchange Act, which requires that we, and our officers and director with respect to Section 16 of the Exchange Act, comply with certain public reporting and proxy statement requirements thereunder. Compliance with these requirements is costly and time-consuming. We plan to initiate steps to exit from such reporting requirements in order to curtail expenses; however, such process may be protracted and we expect to continue to be required to file Current Reports on Form 8-K to disclose material events, including those related to the Dissolution or to any potential Nasdaq delisting of our common stock, and other reports, including an Annual Report on Form 10-K for the year ending December 31, 2023. Accordingly, we will continue to incur expenses that will reduce any amount available for distribution, including expenses of complying with public company reporting requirements and paying our service providers, among others. If our reporting obligations cease, publicly available information about us will be substantially reduced.

***We may be delisted from Nasdaq prior to the Dissolution.***

On October 10, 2023, we received a notice (the “Delisting Notice”) from the Listing Qualifications Department (the “Staff”) of The Nasdaq Stock Market LLC (“Nasdaq”) informing the Company that the Staff, pursuant to Nasdaq Listing Rule Series 5100, had determined to apply more stringent criteria and delist our common stock. Accordingly, if we had not timely requested on or before October 17, 2023 an appeal through a hearing before a Nasdaq Hearings Panel (the “Panel”), our common stock would have been scheduled for delisting and suspended at the opening of business on October 19, 2023. Our hearing before the Panel is scheduled for December 21, 2023. The suspension and delisting action is currently stayed by Nasdaq Staff pending the Panel’s decision.

The Delisting Notice indicated that the Staff had determined to delist our common stock based on a number of factors, including its determination that the Company is a public shell, the noncompliance of our common stock with the minimum closing bid requirement, and our noncompliance with Nasdaq’s majority independent board, independent audit committee and independent compensation committee requirements, each of which serve as separate and additional bases for delisting. Our hearing request resulted in a stay of the suspension and delisting action relating to each of these determinations.

There can be no assurance, however, as to when our common stock will be delisted from Nasdaq. If our common stock is delisted from Nasdaq prior to the effective date of the Dissolution, we do not expect that it would be eligible for quotation or listing on another national securities exchange, and therefore trading of our common stock could be conducted only in the over-the-counter market or on an electronic bulletin board established for unlisted securities such as the OTC Pink, or there may be no opportunity for further trading as well. In such an event, it could become more difficult to dispose of, or obtain accurate price quotations for, our common stock, which could cause the price of our common stock to decline further or delays or inability by stockholders to transact their shares any more.

***We may not be able to find a purchaser for our remaining non-cash assets during the Dissolution.***

We own several non-cash assets, including but not limited to preclinical and clinical data packages that we generated in developing FRTX-02 and other product candidates. We may try to find a buyer for these assets but there may be no buyers forthcoming or the offers for the assets may not be adequate. As such there may be no opportunity for any additional distribution to stockholders for these retained assets including during the Survival Period or thereafter.

***The loss of key personnel could adversely affect our ability to efficiently dissolve, delist, liquidate, and wind down.***

We intend to rely on a few individuals in key management roles and as contractor support to dissolve, delist from Nasdaq, liquidate our remaining assets, and wind-down operations, which will continue for at least three years during the Survival Period. Loss of one or more of these key individuals, or inability to contract with essential personnel, could hamper the efficiency or effectiveness of these processes.

***Stockholders may not be able to recognize a loss for U.S. federal income tax purposes until they receive a final distribution from us.***

As a result of the Dissolution, for U.S. federal income tax purposes, a stockholder that is a U.S. person generally will recognize gain or loss on a share-by-share basis equal to the difference between (1) the sum of the amount of cash and the fair market value of property, if any, distributed to the stockholder with respect to each share, less any known liabilities assumed by the stockholder or to which the distributed property (if any) is subject, and (2) the stockholder's adjusted tax basis in each share of our common stock. A liquidating distribution pursuant to the Plan of Dissolution may occur at various times and in more than one tax year. Any loss generally will be recognized by a stockholder only in the tax year in which the stockholder receives our final liquidating distribution, and then only if the aggregate value of all liquidating distributions with respect to a share of our common stock is less than the stockholder's tax basis for that share. Stockholders are urged to consult with their own tax advisors as to the specific tax consequences to them of the Dissolution pursuant to the Plan of Dissolution.

**Risks Related to Our Liquidity, Financial Matters, and Our Common Stock**

***We are currently operating in a period of economic uncertainty and capital markets disruption, which has been significantly impacted by geopolitical conflict in and around Ukraine, Israel, the broader Middle East, and other areas of the world. Our business, financial condition, and results of operations may be materially adversely affected by the negative impact on the global economy and capital markets resulting from these geopolitical conflicts or other geopolitical tensions.***

U.S. and global markets are experiencing volatility and disruption following the escalation of geopolitical tensions and conflict in and around Ukraine, Israel, the broader Middle East, and other areas of the world. Although the length and impact of the ongoing military conflict is highly unpredictable, these conflicts have led to market disruptions, including significant volatility in commodity prices, credit and capital markets, as well as supply chain disruptions. Russian military actions and the resulting sanctions could further adversely affect the global economy and financial markets and lead to instability and lack of liquidity in capital markets, potentially making it more difficult for us to obtain additional funds.

The extent and duration of the military action, sanctions, and resulting market disruptions are impossible to predict, but could be substantial. Any such disruptions may also magnify the impact of other risks described in this Quarterly Report.

***Our operating results and liquidity needs could be affected negatively by global market fluctuations and economic downturns.***

Our operating results and liquidity could be affected negatively by global economic conditions generally, both in the U.S. and elsewhere around the world, including but not limited to that related to geopolitical conflict in and around Ukraine, Israel, the broader Middle East, and other areas of the world, global IT threats, and rising interest rates. Domestic and international equity and debt markets are experiencing and may in the future experience heightened volatility and turmoil based on domestic and international economic conditions and concerns. In the event these economic conditions and concerns continue or worsen and the markets remain volatile, or an economic recession, our operating results and liquidity could be affected adversely by those factors in many ways, making it more difficult for us to operate, and our stock price may decline.

***Adverse developments affecting the financial services industry, such as actual events or concerns involving liquidity, defaults, or non-performance by financial institutions or transactional counterparties, could adversely affect our current and projected business operations, financial condition, and results of operations.***

Actual events involving limited liquidity, defaults, non-performance and/or other adverse developments that affect financial institutions, transactional counterparties, or other companies in the financial services industry or the financial services industry generally, or concerns or rumors about any events of these kinds or other similar risks, have in the past and may in the future lead to market-wide liquidity problems. For example, on March 10, 2023, Silicon Valley Bank (“SVB”) was closed by the California Department of Financial Protection and Innovation, which appointed the Federal Deposit Insurance Corporation (“FDIC”) as receiver. Similarly, on March 12, 2023, Signature Bank and Silvergate Capital Corp. were each swept into receivership.

Inflation and rapid increases in interest rates have led to a decline in the trading value of previously issued government securities with interest rates below current market interest rates. Although the U.S. Department of Treasury, FDIC, and Federal Reserve Board have announced a program to provide up to \$25 billion of loans to financial institutions secured by certain of such government securities held by financial institutions to mitigate the risk of potential losses on the sale of such instruments, widespread demands for customer withdrawals or other liquidity needs of financial institutions for immediate liquidity may exceed the capacity of such program. Additionally, there is no guarantee that the U.S. Department of Treasury, FDIC, and Federal Reserve Board (“Government Insurers”) will provide access to uninsured funds in the future in the event of the closure of other banks or financial institutions, or that they would do so in a timely fashion.

Our access to funding sources in amounts adequate to finance or capitalize our current and projected future business operations, including but not limited to our employee payroll obligations, could be significantly impaired (and delayed) by factors that affect us, the financial institutions with which we have relationships, or the financial services industry or economy in general. These factors could include, among others, events such as liquidity constraints or failures, the ability to perform obligations under various types of financial, credit, or liquidity agreements or arrangements, the loss of uninsured deposits, disruptions or instability in the financial services industry or financial markets, inability or refusal by Government Insurers to provide additional protections, or concerns or negative expectations about the prospects for companies in the financial services industry.

In addition, any further deterioration in the macroeconomic economy or financial services industry could lead to losses or defaults by our contractual counterparties, which in turn, could have a material adverse effect on our current and/or projected business operations and results of operations and financial condition. For example, a contractual counterparty may fail to make payments when due, default under their agreements with us, become insolvent, or declare bankruptcy. In addition, a contractual counterparty could be adversely affected by any of the liquidity or other risks that are described above or by the loss of the ability to draw on existing credit facilities involving a troubled or failed financial institution. Any contractual counterparty bankruptcy or insolvency, or the failure of any contractual counterparty to make payments when due, or any breach or default

by a contractual counterparty, or the loss of any significant contractual counterparty relationship, could result in material losses to us and may have a material adverse impact on our business.

***Our stock price and volume of shares traded have been and may continue to be highly volatile, and our common stock may continue to be illiquid.***

The market price of our common stock has been subject to significant fluctuations. Market prices for securities of biotechnology and other life sciences companies historically have been particularly volatile and subject to large daily price swings. In addition, there has been limited liquidity in the trading market for our securities, which may adversely affect stockholders and we are facing a delisting by Nasdaq as previously disclosed. Some of the factors that may cause the market price of our common stock to continue to fluctuate include, but are not limited to:

- the outcome of a stockholder vote on our Dissolution and Plan of Dissolution;
- the payment of any distribution to stockholders as part of the Dissolution of our outstanding common stock continues to be listed on Nasdaq or any other exchange at the time or following the distribution;
- material developments in, or the conclusion of, any litigation to enforce or defend any intellectual property rights or defend against the intellectual property rights of others;
- our inability to satisfy the listing requirements of The Nasdaq Capital Market and the impact that may result from our failure to address current and avoid future deficiencies, and if we are delisted by Nasdaq as already initiated and stayed through the hearing scheduled for December 21, 2023; and
- the entry into, or termination of, or breach by us or our partners of material agreements, including key commercial partner or licensing agreements.

Moreover, the stock markets in general have experienced substantial volatility in our industry, especially for microcap biotechnology companies, and such volatility has often been unrelated to the operating performance of individual companies or a certain industry segment, such as the ongoing reaction of global markets to geopolitical conflicts and other economic disruptions or concerns, including inflation and interest rate increases. These broad market fluctuations may also adversely affect the trading price of our common stock.

In the past, following periods of volatility in the market price of a company's securities, stockholders have often instituted class action securities litigation against those companies. Such litigation, if instituted, could result in substantial costs and diversion of management attention and resources, which could significantly harm our reputation and could expose us to liability or negatively impact our business, financial condition, and operating results.

***We are a "smaller reporting company" and the reduced disclosure and governance requirements applicable to smaller reporting companies may make our common stock less attractive to some investors.***

We qualify as a "smaller reporting company" under Rule 12b-2 of the Exchange Act. As a smaller reporting company, we are entitled to rely on certain exemptions and reduced disclosure requirements, such as simplified executive compensation disclosures and reduced financial statement disclosure requirements, in our SEC filings. These exemptions and decreased disclosures in our SEC filings due to our status as a smaller reporting company may make it harder for investors to analyze our results of operations and financial prospects. We cannot predict if investors will find our common stock less attractive because we rely on these exemptions. If some investors find our common stock less attractive as a result, there may be a less active trading market for our common stock and our common stock price may be more volatile.

***We do not anticipate paying any dividends in the foreseeable future.***

Our current expectation is that we will retain any future earnings to maximize intended distributions of all remaining cash to stockholders, pending stockholder approval of the Dissolution and the Plan of Dissolution.

***Our ability to use our net operating loss carryforwards and other tax assets to offset future taxable income may be subject to certain limitations.***

As of December 31, 2022, we had approximately \$454.5 million of federal and \$444.4 million of state net operating loss (“NOL”) carryforwards available to offset any future taxable income, of which \$210.3 million will carryforward indefinitely and the remainder will expire in varying amounts beginning in 2023 for federal and state purposes if unused. Utilization of these NOLs depends on many factors, including our future income, which cannot be assured. Under the U.S. Tax Cuts and Jobs Acts, U.S. federal NOLs incurred in 2018 and later years may be carried forward indefinitely, but our ability to utilize such U.S. federal NOLs to offset taxable income is limited to 80% of the current-year taxable income. In addition, under Sections 382 and 383 of the Internal Revenue Code of 1986 and corresponding provisions of state law, if a corporation undergoes an “ownership change” (which is generally defined as a greater than 50 percentage points change (by value) in its equity ownership over a rolling three-year period), the corporation’s ability to use its pre-change NOL carryforwards and other pre-change tax attributes to offset its post-change income or taxes may be limited. We have not determined whether we have experienced Section 382 ownership changes in the past and if a portion of our NOLs is therefore subject to an annual limitation under Section 382. Therefore, we cannot provide any assurance that a change in ownership within the meaning of the Internal Revenue Code of 1986 and corresponding provisions of state law has not occurred in the past, and there is a risk that changes in ownership could have occurred. We may experience ownership changes as a result of subsequent changes in our stock ownership, which may be outside of our control. In that case, the ability to use NOL carryforwards to offset any future taxable income will be limited following any such ownership change and could be eliminated. If eliminated, the related asset would be removed from the deferred tax asset schedule with a corresponding reduction in the valuation allowance on our financial statements.

**Risks Related to Legal, Regulatory, and Compliance Matters**

***Our business and operations would suffer in the event of system failures, illegal stock trading or manipulation by external parties, cyber-attacks, or a deficiency in or exploitation of our cyber-security.***

We rely on cloud-based software to provide the functionality necessary to operate our company, utilizing what is known as “software as a service” (“SaaS”). SaaS allows users like us to connect to and use cloud-based applications over the Internet, such as email, calendaring, and office tools. SaaS provides us with a complete software solution that we purchase on a subscription basis from a cloud service provider. Despite our efforts to protect confidential and sensitive information from unauthorized disclosure across all our platforms, and similar efforts by our cloud service provider(s) and our other third-party contractors, consultants, and vendors, whether information technology (“IT”) providers or otherwise, including but not limited to law firms accountants, and government regulators, this information, and the systems used to store and transmit it, are vulnerable to damage from computer viruses, unauthorized access, computer hacking or breaches, natural disasters, epidemics and pandemics, terrorism, war, labor unrest, and telecommunication and electrical failures. The risk of a security breach or disruption, particularly through cyber-attacks or cyber-intrusion, or other illegal acts, including by computer hackers, foreign governments, and cyber-terrorists, has generally increased as the number, intensity, and sophistication of attempted attacks and intrusions from around the world have increased. Other emerging threats we face include: phishing, account takeover attacks, data breach or theft (no matter where the data are stored), loss of control, especially in SaaS applications, over which users have access to what data and level of access, new malware, zero-day threats, and threats within our own organization. In addition, malicious cyber actors may increase malware and ransom campaigns and phishing emails targeting teleworkers as well as company systems, global conflicts like with Ukraine, Israel, and the broader Middle East, or other world trends

and events, which exposes us to additional cybersecurity risks, or may try to illegally obtain material inside information to manipulate our stock price. If such an event were to occur and cause interruptions in our operations, or substantial manipulation of our stock price, it could result in a material disruption of our business operations. In addition, since we have sponsored clinical trials, any breach that compromises patient data and identities, thereby causing a breach of privacy, could generate significant reputational damage and legal liabilities and costs to recover and repair. For example, the loss or theft of clinical trial data from completed clinical trials could result in stock manipulation and significantly increase our costs to recover or reproduce the data. To the extent that any disruption or security breach were to result in a loss of, or damage to, our data or applications or inappropriate disclosure of confidential or proprietary information, we could incur liability or suffer from stock price volatility or decline.

***We may face product liability exposure, and if successful claims are brought against us, we may incur substantial liability if our insurance coverage for those claims is inadequate.***

We face an inherent risk of product liability or similar causes of action as a result of the clinical testing (and use) of our product candidates or product candidates we have previously sub-licensed, sold, and/or assigned. This risk exists even if a product is manufactured in facilities licensed and regulated by the FDA or an applicable foreign regulatory authority. Our products and product candidates, past and present, are designed to affect important bodily functions and processes. Any side effects, manufacturing defects, misuse, or abuse associated with our product candidates could result in actual or perceived injury to a patient that may or may not be reversible or potentially even cause death. We cannot offer any assurance that we will not face product liability or other similar suits in the future or that we will be successful in defending them, nor can we assure that our insurance coverage will be sufficient to cover our liability under any such cases.

In addition, a liability claim may be brought against us even if our product candidates merely appear to have caused an injury. If we cannot successfully defend against product liability or similar claims, we will incur substantial liabilities, reputational harm, and possibly injunctions and punitive actions. In addition, regardless of merit or eventual outcome, product liability claims may result in:

- impairment of our business reputation;
- substantial costs of any related litigation or similar disputes;
- distraction of management's attention and other resources; or
- substantial monetary awards to patients or other claimants against us that may not be covered by insurance.

Large judgments have been awarded in class action or individual lawsuits based on drugs that had unanticipated side effects. Our insurance coverage may not be sufficient to cover all of our product liability-related expenses or losses and may not cover us for any expenses or losses we may suffer. Moreover, insurance coverage is becoming increasingly expensive, restrictive, and narrow, and, in the future, we may not be able to maintain adequate insurance coverage at a reasonable cost, or through self-insurance, in sufficient amounts or upon adequate terms to protect us against losses due to product liability or other similar legal actions. A successful product liability claim or series of claims brought against us could, if judgments exceed our insurance coverage, decrease our cash, expose us to liability and harm our business, financial condition, and operating results and lessen the amount, timing and number of any distributions to stockholder pursuant to the Plan of Dissolution.

***We are and may be subject to strict healthcare laws, regulation, and enforcement, and our failure to comply with those laws could expose us to liability or adversely affect our business, financial condition, and operating results.***

Certain federal and state healthcare laws and regulations pertaining to patients' rights and privacy, as well as other rights and obligations, are and may be applicable to our business. We are subject to regulation by the federal government and the states where we or our partners conduct business. The healthcare laws and regulations that may affect our ability to operate include: the Federal Food, Drug and Cosmetic Act, as amended; Title 21 of the Code of Federal Regulations Part 202 (21 CFR Part 202); and civil monetary penalty laws; federal and state disclosure laws; the Foreign Corrupt Practices Act as it applies to activities both inside and outside of the U.S.; and state law equivalents of many of the above federal laws.

Because of the breadth of these laws and the narrowness of the statutory exceptions and safe harbors available, it is possible that some of our business activities could be subject to challenge under one or more of such laws. In addition, healthcare reform legislation has strengthened these laws.

Achieving and sustaining compliance with these laws may prove costly. In addition, any action against us for violation of these laws, even if we successfully defend against it, could cause us to incur significant legal expenses, fluctuation in our stock price, and divert our management's attention from the operation of our business and result in reputational damage. If our operations are found to be in violation of any of the laws described above or any other governmental laws or regulations that apply to us, we may be subject to penalties, including administrative, civil, and criminal penalties, damages, including punitive damages, fines, disgorgement, individual imprisonment or corporate criminal liability, and injunctions, any of which could expose us to liability and could adversely affect our business, financial condition, and operating results.

***Our employees, independent contractors, consultants, vendors, and any partners with which we may collaborate or have collaborated may engage or may have engaged in misconduct or other improper activities, including noncompliance with regulatory standards and requirements.***

We are exposed to the risk that our employees, officers, directors, independent contractors, consultants, advisors, vendors, and any partners with which we may collaborate or have collaborated may engage or may have engaged in fraudulent or other illegal or unethical activity. Misconduct by these persons could include intentional, reckless, gross, or negligent misconduct or unauthorized activity that violates: laws or regulations, including those laws requiring the reporting of true, complete, and accurate information to the FDA or foreign regulatory authorities; manufacturing standards; federal, state and foreign laws on data and patient privacy; anticorruption laws, securities laws, and/or laws that require the true, complete and accurate reporting of financial information or data, books, and records. If any such or similar actions are instituted against us and we are not successful in defending ourselves or asserting our rights, those actions could have a significant impact on our business, including the imposition of civil, criminal, and administrative and punitive penalties, damages, monetary fines, contractual damages, reputational harm, and injunctions, any of which could expose us to liability and adversely affect our business, financial condition, and operating results and implement the Dissolution and Plan of Dissolution.

***We incur costs and demands upon management because of complying with the laws and regulations affecting public companies.***

We incur significant legal, accounting, and other expenses and management demands to operate as a public company, including costs associated with public company reporting and other SEC requirements, and Nasdaq listing requirements and regarding defending the current efforts by Nasdaq staff to delist the Company. We also incur costs associated with corporate governance requirements, including requirements under the Sarbanes-Oxley Act, and rules implemented by the SEC and Nasdaq. These rules and regulations have, and are expected to continue to, increase our legal and financial compliance costs and make some activities more time-consuming and costly. These rules and regulations may also make it expensive for us to operate our business and implement the Dissolution and Plan of Dissolution.

## Risks Related to Our Intellectual Property

*We may not be able to obtain, afford, maintain, enforce, or protect our intellectual property rights covering our product candidates and related technologies that are of sufficient type, breadth, and term throughout the world.*

Our ability to prevent unauthorized or infringing use of our autoimmune and inflammatory portfolio and other product candidates by third parties depends in substantial part on our ability to leverage valid and enforceable patents and other intellectual property rights around the world.

The patent application process, also known as patent prosecution, is expensive and time-consuming, and we and our licensors and licensees may not be able to prepare, file, and prosecute all necessary or desirable patent applications at a reasonable cost or in a timely manner in all the countries that may be desirable. Therefore, any of our patents and applications may not be prosecuted and enforced in a manner consistent with the best interests of our business. Moreover, our competitors independently may develop equivalent knowledge, methods, and know-how or discover workarounds to our patents that would not constitute infringement. Our partners or licensees may inappropriately take or use our intellectual property and/or confidential information to infringe our patents or otherwise violate their contractual obligations to us related to the protection of our intellectual property. Any of these outcomes could impair our ability to enforce the exclusivity of our patents effectively, which may have an adverse impact on our business, financial condition, and operating results.

Due to constantly shifting global legal standards relating to patentability, validity, enforceability, and claim scope of patents covering pharmaceutical inventions, our ability to protect patents in any jurisdiction is uncertain and involves complex legal and factual questions, especially across countries. Accordingly, rights under any applicable patents that apply to us may not cover our product candidates or may not provide us with sufficient protection for our product candidates to afford a sustainable commercial advantage against competitive products or processes, including those from branded and generic pharmaceutical companies. In addition, we cannot guarantee that any patents or other intellectual property rights will be issued from any pending or future patent or other similar applications related to us. Even if patents or other intellectual property rights have issued or will issue, we cannot guarantee that the claims of these patents and other rights are or will be held valid or enforceable by the courts or other legal authorities, through injunction or otherwise, or will provide us with any significant protection against competitive products or otherwise be commercially valuable to us in every country of commercial significance that we may target, or that a legislative or executive branch of government will not alter the rights and enforceability thereof at any time.

Competitors in the therapeutic areas of our strategic focus have created a substantial amount of prior art, including scientific publications, abstracts, posters, presentations, patents and patent applications, and other public disclosures, including on the Internet and various social media. Our ability to protect valid and enforceable patents and other intellectual property rights depends on whether the differences between our proprietary technology and the prior art allow our technology to be patentable over the prior art. We do not have outstanding issued patents covering all the recent developments in our technology and are unsure of the patent protection that we will be successful in securing, if any. Even if the patents do issue successfully, third parties may design around or challenge the validity, enforceability, or scope of such issued patents or any other issued patents or intellectual property that apply to us, which may result in such patents and/or other intellectual property being narrowed, invalidated, or held unenforceable. If the breadth or strength of protection provided by the patents and other intellectual property we hold or pursue with respect to our product candidates is challenged, regardless of our future success, it could dissuade companies from collaborating with us to develop, or threaten our ability to commercialize or finance, our product candidates.

The laws of some foreign jurisdictions do not provide intellectual property rights to the same extent or duration as in the U.S., and many companies have encountered significant difficulties in acquiring, maintaining, protecting, defending, and especially enforcing such rights in foreign jurisdictions. If we encounter such

difficulties in protecting, or are otherwise precluded from effectively protecting, our intellectual property in foreign jurisdictions, our business could be substantially harmed, especially internationally.

Patents have a limited lifespan. In the U.S., the natural expiration of a patent is generally 20 years after it is filed, with patent term extensions granted in certain instances to compensate for part of the period in which the drug was under development and could not be commercialized while under the patent. Without patent protection for our product portfolio, our product candidates may be subject to competition from generic versions of these assets.

Proprietary trade secrets, unpatented know-how, and confidential information are also important to our business. Although we have taken steps to protect our trade secrets, unpatented know-how, and confidential information by entering into confidentiality and nondisclosure agreements with third parties and intellectual property protection agreements with officers, directors, employees, and certain consultants and advisors, there can be no assurance that binding agreements will not be breached or enforced by courts or other legal authorities, that we would have adequate remedies for any breach, including injunctive and other equitable relief, or that our trade secrets, unpatented know-how, and confidential information will not otherwise become known, be inadvertently disclosed by us or our agents and representatives, or be independently discovered by our competitors. If trade secrets are independently discovered, we would not be able to prevent their use, and if we and our agents or representatives inadvertently disclose trade secrets, unpatented know-how, and/or confidential information, we may not be allowed to retrieve the inadvertently disclosed trade secret, unpatented know-how, and/or confidential information and maintain the exclusivity we previously enjoyed.

***Obtaining and maintaining our protection for our intellectual property rights, including but not limited to patents, trademarks, and copyrights, depends on compliance with various procedural, document submission, fee payment, and other requirements imposed by governmental patent and similar agencies, and our protection could be reduced or eliminated for noncompliance with these requirements.***

Periodic maintenance, validation, and annuity fees on any issued intellectual property rights are due to be paid to the U.S. Patent and Trademark Office (“USPTO”) and equivalent foreign agencies in several stages over the lifetime of the intellectual property right, such as but not limited to a patent or trademark. The USPTO and various equivalent foreign governmental agencies require compliance with a number of procedural, documentary, fee payment, and other similar provisions during the application process to protect and register the intellectual property right. While an inadvertent lapse can, in many cases, be cured by payment of a late fee or by other means in accordance with the applicable rules, there are situations in which noncompliance can result in abandonment or lapse of the right or application to obtain the right, resulting in partial or complete loss of rights in the relevant jurisdiction just for failure to know about and/or timely pay such fee(s). Noncompliance events that could result in abandonment or lapse of an intellectual property right or application for such a right include failure to respond to official actions within prescribed time limits, non-payment of fees in prescribed time periods, and failure to properly legalize and submit formal documents in the format and style the country requires. If we or our licensors fail to maintain the intellectual property rights that have been granted for or are pending as to our product candidates for any reason, our competitors or others might be able to enter the market, which could have an adverse effect on our business, financial condition, and operating results.

In addition, countries continue to increase the fees that are charged to acquire, maintain, and enforce intellectual property rights, which may become prohibitive to initiate or continue paying in certain circumstances.

***If we fail to comply with our obligations under our intellectual property and related license agreements, we could lose license rights that are important to our business. Additionally, these agreements may be subject to disagreement over contract interpretation, which could narrow the scope of our rights to the relevant intellectual property or technology, or increase our financial or other obligations to our licensors.***

We have entered into in-license and in some cases, out-license or assignment arrangements with respect to all of our product candidates. These agreements impose various diligence, milestone, royalty, insurance, reporting, and other rights and obligations for and on us. If we fail to comply with certain of these obligations, the respective licensors may have the right to terminate or modify the license or trigger other more disadvantageous contract clauses, including but not limited to our inability to further develop any of our licensed product candidates. The loss of such rights could expose us to liability and potentially even litigation and could materially adversely affect our business, financial condition, and operating results.

Numerous U.S. and foreign-issued patents and pending patent applications owned by third parties exist in the fields relating to our product candidates. As the biotechnology and pharmaceutical industries expand and more patents and other intellectual property rights are issued, the risk increases that others may assert that our product candidates, technologies, or methods of delivery or use(s) infringe their patent or other intellectual property rights. Moreover, it is not always clear to industry participants, including us, which patents and other intellectual property rights cover various drugs, biologics, drug delivery systems and formulations, manufacturing processes, or their methods of use, and which of these patents or other rights may be valid and enforceable. Thus, because of the large number of patents issued and patent applications filed in our fields across many countries, there may be a risk that third parties may allege they have patent or other rights encompassing our product candidates, technologies, or methods.

In addition, there may be issued patents of third parties that are infringed or are alleged to be infringed by our product candidates or proprietary technologies notwithstanding the patents we may possess. Because some patent applications in the U.S. and other countries may be maintained in confidence until the patents are issued, because patent applications in the U.S. and many foreign jurisdictions are typically not published until eighteen (18) months or some other time after filing, and because publications in the scientific literature or other public disclosures often lag behind actual discoveries, we cannot be certain that others have not filed patent applications for technology covered by our patents or our pending applications. Our competitors may have filed, and may in the future file, patent applications covering our product candidates or technology similar to our technology. Any such patent application may have priority over our patent applications or patents, which could further require us to obtain rights to issued patents covering such technologies, which may mean paying significant licensing fees or royalties, or the like. If another party has filed a U.S. patent application on inventions similar to ours, we or the licensor may have to participate in the U.S. in an interference proceeding to determine priority of invention.

We may be exposed to, or threatened with, future litigation by third parties having patent or other intellectual property rights alleging that our product candidates or proprietary technologies infringe such third parties' intellectual property rights, including litigation resulting from filing in the U.S. under Paragraph IV of the Hatch-Waxman Act or other countries' laws similar to the Hatch-Waxman Act. These lawsuits could claim that there are existing patent or other intellectual property rights for such drug, and this type of litigation can be costly and could adversely affect our operating results and divert the attention of managerial and technical personnel, even if we do not infringe such patents or the patents asserted against us, or any other intellectual property rights of a third party, are ultimately established as invalid. There is a risk that a court or other legal authority would decide that we are infringing the third party's patents or other intellectual property and would order us to stop the activities covered by the patents or these other rights. In addition, there is a risk that a court or other legal authority will order us to pay the other party significant damages for having violated the other party's patents or intellectual property rights.

Because we rely on certain third-party licensors, licensees, assignees, and partners around the world, if one of our licensors, licensees, assignees, or partners is sued for infringing a third party's intellectual property rights, this could expose us to liability, and our business, financial condition, and operating results could suffer in the same manner as if we were sued directly. In addition to facing litigation risks, we have agreed to indemnify certain third-party licensors, licensees, assignees, and partners against claims of infringement caused by our proprietary technologies, and we have entered into cost-sharing agreements with some of our licensors,

licensees, assignees, and partners that could require us to pay some of the costs of patent or other intellectual property rights litigation brought against those third parties whether or not the alleged infringement is caused by our proprietary technologies or in-licensed technologies. In certain instances, these cost-sharing agreements could also require us to assume greater responsibility for infringement damages than would be assumed just on the basis of our technology.

The occurrence of any of the foregoing could expose us to liability or adversely affect our business, financial condition, and operating results at any time.

#### **General Risk Factors**

*Provisions of Delaware law and our restated certificate of incorporation and amended and restated bylaws may discourage another company from acquiring us or some or all of our assets and may prevent attempts by our stockholders to replace or remove our current management.*

Provisions of Delaware law and our restated certificate of incorporation and amended and restated bylaws may discourage, delay, or prevent a merger, reverse merger, licensing, acquisition, or other strategic transaction that our stockholders may consider favorable, including transactions in which you might otherwise receive a premium for your shares. In addition, these provisions may frustrate or prevent any attempts by our stockholders to replace or remove our current management by making it more difficult for stockholders to replace or remove the sole member of our Board. These provisions include, but are not limited to:

- authorizing the issuance of “blank check” preferred stock without any need for action by stockholders;
- requiring supermajority stockholder voting to effect certain amendments to our current certificate of incorporation and bylaws;
- eliminating the ability of stockholders to call special meetings of stockholders; and
- establishing advance notice requirements for nominations for election to our Board or for proposing matters that can be acted on by stockholders at stockholder meetings.

Although we believe these provisions collectively provide for an opportunity to receive higher bids by requiring potential acquirers to negotiate with our Board, they would apply even if an offer may be considered beneficial by some stockholders. In addition, these provisions may frustrate or prevent any attempts by our stockholders to replace or remove our current management by making it difficult for stockholders to replace the sole member of our Board, which is responsible for appointing the members of our management.

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

None.

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

Not applicable.

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

Not applicable.

## ITEM 5. OTHER INFORMATION

During the three months ended September 30, 2023, none of our directors or officers (as defined in Rule 16a-1(f) of the Exchange Act) adopted or terminated any contract, instruction, or written plan for the purchase or sale of our securities that was intended to satisfy the affirmative defense conditions of Rule 10b5-1(c) of the Exchange Act or any non-Rule 10b5-1 trading arrangement (as defined in the SEC's rules).

## ITEM 6. EXHIBITS

Exhibit Number	Description of Exhibit	Form	Date of Filing	Exhibit Number	Filed Herewith
2.1	Plan of Dissolution of Fresh Tracks Therapeutics, Inc.	8-K	9/19/2023	2.1	
3.1	Amended and Restated Certificate of Incorporation, as amended through September 6, 2022	8-K	9/8/2022	3.2	
3.2	Amended and Restated Bylaws, effective as of September 18, 2023				×
10.1	Amendment No. 1 to Asset Purchase Agreement, dated as of July 21, 2023, by and among Fresh Tracks Therapeutics, Inc., Brickell Subsidiary, Inc., Botanix SB Inc., and Botanix Pharmaceuticals Limited	8-K	7/21/2023	10.1	
10.2	Second Amendment to Rights Agreement, dated as of July 21, 2023, by and among Fresh Tracks Therapeutics, Inc., Brickell Subsidiary, Inc., and Bodor Laboratories, Inc.	8-K	7/21/2023	10.2	
10.3	Separation and Release Agreement, dated as of October 3, 2023, by and between Fresh Tracks Therapeutics, Inc. and Andrew D. Sklawer	8-K	10/10/2023	10.1	
10.4	Consulting Agreement, dated as of October 3, 2023, by and between Fresh Tracks Therapeutics, Inc. and Yonder Partners, LLC	8-K	10/10/2023	10.2	
10.5	Separation and Release Agreement, dated as of October 3, 2023, by and between Fresh Tracks Therapeutics, Inc. and David R. McAvoy				×
10.6	Consulting Agreement, dated as of October 3, 2023, by and between Fresh Tracks Therapeutics, Inc. and McAvoy Law LLC				×
10.7	Separation and Release Agreement, dated as of September 1, 2023, by and between Fresh Tracks Therapeutics, Inc. and Deepak Chadha				×
31.1	Certification of Principal Executive Officer and Principal Financial Officer pursuant to Rule 13a-14(a) and Rule 15d-14(a) of the Securities Exchange Act of 1934, as amended				×
32.1*	Certification of Principal Executive Officer and Principal Financial Officer pursuant to 18 U.S.C. 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002				×
101.INS	Inline XBRL Instance Document				×
101.SCH	Inline XBRL Taxonomy Extension Schema Document				×
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document				×
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document				×

101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document	×
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document	×
104	Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101)	×

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\* This certification is being furnished pursuant to 18 U.S.C. Section 1350 and is not being filed for purposes of Section 18 of the Exchange Act and is not to be incorporated by reference into any filing of the Registrant, whether made before or after the date hereof.

**SIGNATURES**

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

Fresh Tracks Therapeutics, Inc.

Date: November 13, 2023

By: /s/ Albert N. Marchio, II  
Albert N. Marchio, II  
Chief Executive Officer and Chief Financial Officer  
(Principal Executive Officer and Principal Financial Officer)

**AMENDED AND RESTATED  
BYLAWS  
OF  
FRESH TRACKS THERAPEUTICS, INC.**

**ARTICLE I**

**MEETINGS OF STOCKHOLDERS**

**Section 1. Place of Meetings.** All meetings of the stockholders shall be held at such place within or outside the State of Delaware as may be fixed from time to time by the Board of Directors or the chief executive officer, or if not so designated, at the registered office of the corporation.

**Section 2. Annual Meeting.** An annual meeting of stockholders shall be held at such date, time and place as designated by the Board of Directors or the chief executive officer and stated in the notice of meeting. At the annual meeting the stockholders shall elect by a plurality vote those directors to hold office based on the number of directors in the class whose terms are expiring and do so for a term of three (3) years until the annual meeting of stockholders coinciding with the end of such term.

At an annual meeting of the stockholders, only such business shall be conducted as shall have been properly brought before the meeting. To be properly brought before an annual meeting, business either (i) must be specified in a written notice of meeting (or any supplement thereto) given by or at the direction of the Board of Directors or the chief executive officer or secretary of the corporation, (ii) otherwise properly brought before the meeting by or at the direction of the Board of Directors, or (iii) otherwise properly brought before the meeting by a stockholder. In addition to any other applicable requirements, for business to be properly brought before an annual meeting by a stockholder, the stockholder must have given timely notice thereof in writing to the secretary of the corporation. To be timely, a stockholder's notice must be delivered to or mailed and received at one of the principal executive office(s) of the corporation, not less than ninety (90) calendar days nor more than one-hundred and twenty (120) calendar days prior to the annual meeting; provided, however, that in the event that less than forty-five (45) calendar days' notice or prior public disclosure of the date of the annual meeting is given or made to stockholders, notice by the stockholder to be timely must be so received not later than the close of business on the tenth (10<sup>th</sup>) business day following the day on which such notice of the date of the annual meeting was mailed or such public disclosure was made. A stockholder's notice to the secretary of the corporation shall set forth as to each matter the stockholder proposes to bring before the annual meeting (i) a brief description of the business desired to be brought before the annual meeting and the reasons for conducting such business at the annual

meeting, (ii) the name and record address of the stockholder proposing such business, (iii) the class and number of shares of the corporation which are beneficially owned by the stockholder and (iv) any material interest of the stockholder in such business. In no event shall the adjournment or postponement of an annual meeting commence a new notice time period (or extend any notice time period).

Notwithstanding anything in these bylaws to the contrary, no business shall be conducted at the annual meeting except in accordance with the procedures set forth in this Section 2 by any stockholder of any business properly brought before the annual meeting in accordance with said procedure.

The chairperson of an annual meeting shall, if the facts warrant, determine and declare to the meeting that business was not properly brought before the meeting in accordance with the provisions of this Section 2, or is otherwise not compliant with these bylaws, and if the chairperson should so determine, the chairperson shall so declare to the meeting and any such business not properly brought before the meeting shall not be transacted.

**Section 3. Special Meetings.** Special meetings of the stockholders, for any purpose or purposes, unless otherwise prescribed by statute or by the corporation's certificate of incorporation, may be called but only by the chief executive officer at his or her discretion, or by a resolution adopted by the affirmative vote of a majority of the Board of Directors. Business transacted at any special meeting shall be limited to matters relating to the purpose or purposes stated in the notice of meeting.

**Section 4. Notice of Meetings.** Except as otherwise provided by law, written notice of each meeting of stockholders, annual or special, stating the place, date and hour of the meeting and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be given not less than ten (10) nor more than sixty (60) calendar days before the date of the meeting, to each stockholder entitled to vote at such meeting. Without limiting the manner by which notices of meetings otherwise may be given to stockholders, any such notice may be given by electronic transmission in the manner provided in the Delaware General Corporation Law. Notice of any meeting need not be given to any stockholder who, either before or after the meeting, shall submit a waiver of notice or who shall attend such meeting, except when the stockholder attends for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Any stockholder so waiving notice of the meeting shall be bound by the proceedings of the meeting in all respects as if due notice thereof had been given.

**Section 5. Voting List.** The officer responsible for the stock ledger of the corporation shall prepare and make, at least ten (10) calendar days before every meeting of stockholders, a

complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder limited to any purpose germane to the meeting for a period of at least ten (10) calendar days before the meeting: (a) on a reasonably accessible electronic network, provided that the information required to gain access to such list was provided with the notice of the meeting; (b) during ordinary business hours, at the principal place of business of the corporation; or (c) either at a place within the city or town where the meeting is to be held, which place shall be specified in the notice of the meeting, or, if not so specified, at the place where the meeting is to be held. The list also shall be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present. Except as provided by applicable law, the stock ledger of the corporation shall be the only evidence as to who are the stockholders entitled to examine the stock ledger and the list of stockholders or to vote in person or by proxy at any meeting of stockholders.

**Section 6. Quorum.** The holders of one-third (1/3) of the stock issued and outstanding and entitled to vote thereat, present in person or represented by proxy, shall constitute a quorum at all meetings of stockholders for transaction of business, except as otherwise provided by statute, the certificate of incorporation or these bylaws. A quorum, once established, shall not be broken by subsequent withdrawal of enough votes to leave less than a quorum.

**Section 7. Adjournments.** Any meeting of stockholders may be adjourned from time to time, whether or not there is a quorum, to any other time and/or any other place at which a meeting of stockholders may be held under these bylaws, which time and place shall be announced at the meeting, by the chair of such meeting or by any officer entitled to act as corporate secretary of such meeting, without notice other than announcement at the meeting. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the original meeting. If the adjournment is for more than thirty (30) calendar days or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

**Section 8. Action at Meetings.** When a quorum is present at any meeting, the vote of the holders of a majority of the stock present in person or represented by proxy and entitled to vote on the question shall decide any question brought before such meeting, unless the question is one upon which by express provision of law, the corporation's certificate of incorporation or these bylaws, a different vote is required, in which case such express provision shall govern and control the decision of such question.

**Section 9. Voting and Proxies.** Unless otherwise provided in the corporation's certificate of incorporation, each stockholder shall at every meeting of the stockholders be entitled to one vote, in person or by proxy, for each share of capital stock having voting power held of record by such stockholder. Each stockholder entitled to vote at a meeting of stockholders, or to express consent or dissent to corporate action in writing without a meeting, may authorize another person or persons to act for such stockholder by proxy; provided that the instrument authorizing such proxy to act shall have been executed in writing (which shall include telegraphing, cabling or other means of electronically transmitted written copy) and signed and dated by the stockholder personally or by the stockholder's duly authorized attorney in fact. No such proxy shall be voted or acted upon after three (3) years from its effective date, unless the proxy expressly provides for a longer period.

**Section 10. Action by Consent.** Unless otherwise restricted by the corporation's certificate of incorporation or these bylaws, any action required or permitted to be taken at any annual or special meeting of the stockholders of the corporation may be taken without a meeting, if a majority of the stockholders of the corporation consent thereto in writing or by electronic transmission.

## **ARTICLE II DIRECTORS**

**Section 1. Number, Election, Tenure and Qualification.** The number of directors which shall constitute the whole board shall not be less than one (1) nor more than nine (9). Within and according to such limit, the actual number of directors shall be determined by resolution of the Board of Directors, or by the stockholders at the annual, or at any special meeting of stockholders. The directors shall be elected at the annual meeting or at any special meeting of the stockholders, except as provided in Section 3 of this Article, and each director elected shall hold office until such director's successor is elected and qualified or until the director's earlier death, resignation, disqualification, or removal. Directors need not be stockholders. The directors shall be divided into three (3) classes as nearly equal in size as is practicable, designated Class I, Class II and Class III. If the number of directors is changed, any newly created directorships or decrease in directorships shall be so apportioned among the classes as to make all classes as nearly equal in number as is practicable.

**Section 2. Enlargement.** The number of the Board of Directors may be increased at any time by vote of a majority of the directors then in office.

**Section 3. Nominations.** Subject to the rights of holders of any class or series of stock having a preference over the common stock as to dividends or upon liquidation,

nominations for election to the Board of Directors of the corporation at a meeting of stockholders may be made on behalf of the board by the nominating committee appointed by the board, or by any stockholder of the corporation entitled to vote for the election of directors at such meeting. Such nominations, other than those made by the nominating committee on behalf of the board, shall be made by notice in writing delivered or mailed by first class United States mail or a nationally recognized courier service, postage prepaid, to the secretary or assistant secretary of the corporation, and received by such officer not less than one hundred-twenty (120) calendar days prior to any meeting of stockholders called for the election of directors; provided, however, that if less than ninety (90) calendar days' notice of the meeting is given to stockholders, such nomination shall have been mailed or delivered to the secretary or the assistant secretary of the corporation not later than the close of business on the seventh (7<sup>th</sup>) calendar day following the day on which the notice of meeting was mailed. Such notice shall set forth as to each proposed nominee who is not an incumbent director (i) the name, age, business address and, if known, residence address of each nominee proposed in such notice, (ii) the principal occupation or employment of each such nominee, (iii) the number of shares of stock of the corporation which are owned beneficially by each such nominee and by the nominating stockholder, (iv) any other information concerning the nominee that must be disclosed of nominees in proxy solicitations regulated by Regulation 14A of the Securities Exchange Act of 1934, as amended, and (v) a written questionnaire with respect to the background and qualification of such nominee (which questionnaire shall be provided by the corporate secretary upon written request) and a written statement and agreement executed by each such nominee acknowledging that such person consents to being named in the corporation's proxy statement as a nominee and to serving as a director if elected.

The chairperson of the meeting, if the facts warrant, may determine and declare to the meeting that a nomination was not made in accordance with the foregoing procedure, and if the chairperson should so determine, the chairperson shall so declare the meeting and the defective nomination shall be disregarded.

**Section 4. Vacancies.** Vacancies and newly created directorships resulting from any increase in the authorized number of directors may be filled by a majority of the directors then in office, though less than a quorum, or by a sole remaining director, and the directors so chosen shall hold office until the next annual election at which the term of the class to which they have been elected expires and until their successors are duly elected and shall qualify or until the director's earlier death, resignation, disqualification, or removal. If there are no directors in office, then an election of directors may be held in the manner provided by statute. In the event of a vacancy in the Board of Directors, the remaining directors, except as otherwise provided by law or these bylaws, may exercise the powers of the full board until the vacancy is filled.

**Section 5. Resignation and Removal.** Any director may resign at any time for any reason upon giving written or electronic notice to the corporation at its principal place of business or to the chief executive officer or the secretary of the corporation. Such resignation shall be effective upon receipt of such notice by any of the foregoing unless the notice specifies such resignation to be effective at some other time or upon the happening of some other event. Any director or the entire Board of Directors may be removed, but only for cause, by the holders of a majority of the shares then entitled to vote at an election of directors, unless otherwise specified by law or the certificate of incorporation of the corporation.

**Section 6. General Powers.** The business and affairs of the corporation shall be managed by its Board of Directors, which may exercise all powers of the corporation and do all such lawful acts and things as are not by statute or by the certificate of incorporation or by these bylaws directed or required to be exercised or done solely by the stockholders.

**Section 7. Chairperson of the Board.** If the Board of Directors appoints a chairperson of the board, such chairperson, when present, shall preside at all meetings of the stockholders and the Board of Directors. The chairperson shall perform such duties and possess such powers as are customarily vested in the office of the chairperson of a board or as may be vested in the chairperson by the Board of Directors.

**Section 8. Place of Meetings.** The Board of Directors may hold meetings, both regular and special, either within or outside the State of Delaware to the extent held in the United States of America.

**Section 9. Regular Meetings.** Regular meetings of the Board of Directors may be held without notice at such time and at such place as shall from time to time be determined by the board; provided that any director who is absent when such a determination is made shall be given prompt written notice of such determination. A regular meeting of the Board of Directors may be held without notice immediately after and at the same place as the annual meeting of stockholders. Notwithstanding the foregoing, the board shall meet at a minimum frequency of quarterly.

**Section 10. Special Meetings.** Special meetings of the board may be called by the chief executive officer, secretary of the corporation, or on the written request of three (3) or more directors, or by one (1) director in the event that there is only one (1) director in office. Four (4) hours' notice to each director, either personally or by e-mail or other electronic transmission, commercial delivery service or similar means sent to such director's business or home address, or three (3) calendar days' notice by written notice deposited in the mail or delivered by a nationally recognized courier service, shall be given to each director by the secretary of the

corporation or by the officer or one of the directors calling the meeting. A notice or waiver of notice of a meeting of the Board of Directors need not specify the purposes of the meeting.

**Section 11. Quorum, Action at Meeting, Adjournments.** At all meetings of the board, a majority of directors then in office, but in no event less than one third (1/3) of the entire board, shall constitute a quorum for the transaction of business and the act of a majority of the directors present at any meeting at which there is a quorum shall be the act of the Board of Directors, except as may be provided otherwise specifically by law or by the corporation's certificate of incorporation. For purposes of this Section 11, the term "entire board" shall mean the number of directors last fixed by the stockholders or directors, as the case may be, in accordance with law and these bylaws; provided, however, that if less than all the number so fixed of directors were elected, the "entire board" shall mean the greatest number of directors so elected to hold office at any one time pursuant to such authorization. If a quorum shall not be present at any meeting of the Board of Directors, a majority of the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present.

**Section 12. Action by Consent.** Unless otherwise restricted by the certificate of incorporation or these bylaws, or applicable law, any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting, if all members of the board or committee, as the case may be, consent thereto in writing or by electronic transmission, and the writing or writings or transmission or transmissions are filed with the minutes of proceedings of the board or committee.

**Section 13. Telephonic Meetings.** Unless otherwise restricted by the certificate of incorporation or these bylaws, or applicable law, members of the Board of Directors or of any committee thereof may participate in a meeting of the Board of Directors or of any committee, as the case may be, by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person at the meeting.

**Section 14. Committees.** The Board of Directors, by resolution passed by a majority of the whole board, may designate one or more committees of the board, each committee to consist of one or more of the directors of the corporation. The board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. Any such committee, to the extent provided in the resolution of the Board of Directors, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the corporation, and may authorize the seal of the corporation to be affixed to all papers which may require it; but no such committee shall have the power or authority in reference to amending the certificate of

incorporation of the corporation or these bylaws, adopting an agreement of merger, acquisition or consolidation of the corporation in its entirety, recommending to the stockholders the sale, lease or exchange of all or substantially all of the corporation's property and assets, recommending to the stockholders a dissolution of the corporation or a revocation of a dissolution; and, unless the resolution designating such committee or the corporation's certificate of incorporation expressly so provide, no such committee shall have the power or authority to declare a dividend or to authorize the issuance of stock or stock options or warrants. Such committee or committees shall have such name or names as may be determined from time to time by resolution adopted by the Board of Directors. Each committee shall keep regular minutes of its meetings and make such reports to the Board of Directors as the Board of Directors may request. Except as the Board of Directors may otherwise determine, any committee may make rules for the conduct of its business in compliance with applicable laws and these bylaws and the corporation's certificate of incorporation, but unless otherwise provided by the directors or in such rules, its business shall be conducted as nearly as possible in the same manner as is provided in these bylaws for the conduct of its business by the Board of Directors.

**Section 15. Compensation.** Unless otherwise restricted by the certificate of incorporation of this corporation or these bylaws, or applicable law, the Board of Directors shall have the authority to fix from time to time the compensation of directors. The directors may be paid their expenses, if any, of attendance at each meeting of the Board of Directors and the performance of their responsibilities as directors and may be paid a fixed sum for attendance at each meeting of the Board of Directors and/or a stated salary as director. Payment may be by cash or by stock or stock option or warrant, as determined by the Board of Directors otherwise in accordance with these bylaws. No such payment shall preclude any director from serving the corporation or its parent or affiliate or subsidiary corporations thereof in any other capacity and receiving compensation therefor. The Board of Directors may also allow compensation for members of special or standing committees for service on such committees.

### ARTICLE III

#### OFFICERS

**Section 1. Enumeration.** The officers of the corporation shall be chosen by the Board of Directors and shall be a president, a secretary and a treasurer and such other officers with such titles, terms of office and duties as the Board of Directors may from time to time determine, including, if desired, one or more vice-presidents, and one or more assistant secretaries and assistant treasurers. The chief executive officer is empowered to appoint in writing from time to time assistant secretaries and assistant treasurers. Any number of offices may be held by the same person, unless the certificate of incorporation or these bylaws or applicable laws otherwise provide.

**Section 2. Election.** The Board of Directors at its first meeting after each annual meeting of stockholders shall choose or re-affirm a president, a secretary and a treasurer. Other officers may be appointed by the Board of Directors at such meeting, at any other meeting, or by written consent.

**Section 3. Tenure.** The officers of the corporation shall hold office until their successors are chosen and qualify, unless a different term is specified in the vote choosing or appointing such officer, or until such officer's earlier death, resignation or removal. Any officer may be removed at any time by the affirmative vote of a majority of the Board of Directors or a committee of the board duly authorized to do so, except that any officer appointed by the chief executive officer also may be removed at any time by the chief executive officer. Any vacancy occurring in any office of the corporation may be filled by the Board of Directors, at its discretion. Any officer may resign by delivering such officer's written or electronic resignation to the corporation at its principal place of business or to the chief executive officer or the secretary. Such resignation shall be effective upon receipt unless it is specified to be effective at some other time or upon the happening of some other event.

**Section 4. President.** The president shall be the chief executive officer unless the Board of Directors otherwise provides. The president, unless the Board of Directors provides otherwise in a specific instance or generally, shall (i) conduct general and active management of the business of the corporation and (ii) be responsible that all orders and resolutions of the Board of Directors are implemented. The president further shall execute bonds, mortgages, and other contracts requiring a seal, under the seal of the corporation, except where required or permitted by law to be otherwise signed and executed and except where the signing and execution thereof shall be expressly delegated by the Board of Directors to some other officer or agent of the corporation.

**Section 5. Vice-Presidents.** In the absence of the president or in the event of the president's inability or refusal to act, the vice-president, or if there be more than one vice-president, the vice-presidents in the order designated by the Board of Directors or the chief executive officer (or in the absence of any designation, then in the order determined by their tenure in office) shall perform the duties of the president, and when so acting, shall have all the powers of and be subject to all the restrictions upon the president. The vice-presidents shall perform such other duties and have such other powers as the Board of Directors or the chief executive officer may from time to time prescribe.

**Section 6. Secretary.** The secretary shall have such powers and perform such duties as are incident to the office of secretary. The secretary or such other officer the secretary or chief executive officer may designate shall maintain a stock ledger and prepare lists of stockholders and their addresses as required and shall be the custodian of corporate records. The secretary

shall attend all meetings of the Board of Directors and all meetings of the stockholders and record all the proceedings of the meetings of the corporation and of the Board of Directors in a book to be kept for that purpose and shall perform like duties for the standing committees when required. The secretary shall give, or cause to be given, notice of all meetings of the stockholders and special meetings of the Board of Directors, and shall perform such other duties as may be from time to time prescribed by the Board of Directors or chief executive officer, under whose supervision the secretary shall be. The secretary shall have custody of the corporate seal of the corporation and the secretary, or an assistant secretary, shall have authority to affix the same to any instrument requiring it and when so affixed, it may be attested by the secretary's signature or by the signature of such assistant secretary. The Board of Directors may give general authority to any other officer to affix the seal of the corporation and to attest the affixing by such officer's signature.

**Section 7. Chief Financial Officer.** The chief financial officer shall be the principal financial officer of the corporation and shall have such powers and perform such duties as may be assigned by the Board of Directors or the chief executive officer and as are customary for a principal financial officer.

**Section 8. Other Officers.** Such other officers as the Board of Directors may choose shall perform such duties and have such powers as from time to time may be assigned to them by the Board of Directors or the chief executive officer.

**Section 9. Delegation of Authority.** The Board of Directors or the chief executive officer may from time to time delegate the powers or duties of any officer to any other officers or agents, notwithstanding any provision hereof.

## ARTICLE IV

### NOTICES

**Section 1. Delivery.** Whenever, under the provisions of law, or of the certificate of incorporation or these bylaws, written notice is required to be given by the corporation to any director, officer, stockholder or other person, such notice may be given by mail, addressed to such director, officer, stockholder or other person, at such person's address as it appears on the records of the corporation or as otherwise requested in writing to the corporation, with postage thereon prepaid, and such notice shall be deemed to be given at the time when the same shall be deposited by the corporation in the United States mail or delivered to a nationally recognized courier service. Unless written notice by mail is required by law, written notice may also be given by e-mail or electronic transmission, commercial delivery services or similar means, addressed to such director, officer, stockholder or other person at such person's e-mail or address

as it appears on the records of the corporation or as otherwise requested in writing to the corporation, in which case such notice shall be deemed to be given when delivered by the corporation into the control of the persons charged with effecting such transmission, the transmission charge to be paid by the corporation or the person sending such notice and not by the addressee. Oral notice or other in-hand delivery, in person or by telephone, shall be deemed given at the time it actually is given.

**Section 2. Waiver of Notice.** Whenever any notice is required to be given by the corporation under the provisions of law or of the certificate of incorporation or of these bylaws, a waiver thereof in writing, signed and dated by the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent thereto.

## ARTICLE V

### INDEMNIFICATION

**Section 1. Actions Other than by or in the Right of the Corporation.** The corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, investigative or otherwise (other than an action by or in the right of the corporation) by reason of the fact that such person is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, penalties, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceedings, had no reasonable cause to believe such person's conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which such person reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that such person's conduct was unlawful.

**Section 2. Actions by or in the Right of the Corporation.** The corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, investigative or otherwise, by or in the right of the corporation to procure a judgment or legally binding decision in its favor by reason of the fact that such person is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a

director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection with the defense or settlement of such action, suit or proceeding if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the corporation and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable for negligence, fraud or misconduct in the performance of such person's duty or obligations to the corporation unless and only to the extent that the Court of Chancery of the State of Delaware or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery of the State of Delaware or such other court shall deem proper.

**Section 3. Success on the Merits.** To the extent that any person described in Section 1 or 2 of this Article V has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in said Sections, or in defense of any claim, issue or matter therein, such person shall be indemnified by the corporation against their expenses (including attorneys' fees) actually and reasonably incurred by such person in connection therewith.

**Section 4. Specific Authorization.** Any indemnification under Section 1 or 2 of this Article V (unless ordered by a court) shall be made by the corporation only as authorized in the specific case upon a determination that indemnification of any person described in said Sections is proper in the circumstances because such person has met the applicable standards of conduct set forth in said Sections. Such determination shall be made (1) by the Board of Directors by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding, or (2) if such a quorum is not obtainable, or even if obtainable a quorum of disinterested directors so directs, by independent legal counsel in a written opinion, or (3) by a majority vote of a quorum of the stockholders of the corporation.

**Section 5. Advance Payment.** Expenses incurred in defending a civil, criminal, administrative, investigative or other action, suit or proceeding for which indemnification is appropriate under these bylaws may be paid by the corporation in advance of the final disposition of such action, suit or proceeding as authorized by the Board of Directors in the manner provided for in Section 4 of this Article V upon receipt of an undertaking by or on behalf of any person described in said Section to repay such amount unless it ultimately is determined that such person is entitled to indemnification by the corporation as authorized in this Article V.

**Section 6. Non-Exclusivity.** The indemnification provided by this Article V shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any bylaw, agreement, vote of stockholders or disinterested directors, or otherwise, both as to action

in such person's official capacity and as to action in any other capacity while holding such office, and shall continue as to a person who has ceased to be director, officer, employee or agent of the corporation and shall inure to the benefit of the heirs, executors and administrators of such a person.

**Section 7. Insurance.** The Board of Directors may authorize, by a vote of the majority of the full board, the corporation to purchase and maintain insurance of any type and amount on behalf of any person who is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the corporation would have the power to indemnify such person against such liability under the provisions of this Article V or applicable law.

**Section 8. Severability.** If any word, clause or provision of this Article V or any award made hereunder shall for any reason be determined to be invalid, the provisions hereof shall not be affected otherwise thereby but shall remain in full force and effect.

**Section 9. Intent of Article.** The intent of this Article V is to provide for indemnification to the fullest extent permitted by section 145 of the General Corporation Law of Delaware or any other applicable law. To the extent that such Section or any successor section, or other applicable law, may be amended or supplemented from time to time, this Article V shall be amended automatically and construed so as to permit indemnification to the fullest extent from time to time permitted by the law.

## ARTICLE VI

### CAPITAL STOCK

**Section 1. Certificates of Stock.** Every holder of stock in the corporation shall be entitled to have a certificate, signed by, or in the name of the corporation by, the chairperson or vice-chairperson of the Board of Directors, or the president or a vice-president and the treasurer or an assistant treasurer, or the secretary or an assistant secretary of the corporation, certifying the number of shares owned by such stockholder in the corporation. Any or all of the signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the corporation with the same effect as if such person were such officer, transfer agent or registrar at the date of issue. Certificates may be issued for partly paid shares and in such case upon the face

or back of the certificates issued to represent any such partly paid shares, the total amount of the consideration to be paid therefor, and the amount paid thereon shall be specified.

**Section 2. Lost Certificates.** The Board of Directors may direct a new stock certificate or certificates to be issued in place of any certificate or certificates theretofore issued by the corporation alleged to have been lost, stolen or destroyed. When authorizing such issue of a new certificate or certificates, the Board of Directors may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen or destroyed stock certificate or certificates, or such owner's legal representative, (i) to give reasonable evidence of such loss, theft or destruction, (ii) to advertise the same in such manner as it shall require, and/or (iii) to give the corporation a bond in such sum as it may direct as indemnity against any claim that may be made against the corporation with respect to the certificate alleged to have been lost, stolen or destroyed or the issuance of such new certificate.

**Section 3. Transfer of Stock.** Upon surrender to the corporation or the transfer agent of the corporation of a certificate for shares, duly endorsed or accompanied by proper evidence of succession, assignment or authority to transfer, and proper evidence of compliance with other conditions to rightful transfer, it shall be the duty of the corporation to issue a new certificate to the person entitled thereto, cancel the old certificate, and record the transaction upon its books.

**Section 4. Record Date for Action at a Meeting or for Other Purposes.** In order that the corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion, stock split, or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may fix, in advance, a record date, which shall not be more than sixty (60) calendar days nor less than ten (10) calendar days before the date of such meeting, nor more than sixty (60) calendar days prior to any other action to which such record date relates. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting. If no record date is fixed, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day before the day on which notice is given, or, if notice is waived, at the close of business on the day before the day on which the meeting is held. The record date for determining stockholders for any other purpose within this Section 4 of Article VI shall be at the close of business on the day on which the Board of Directors adopts the resolution relating to such purpose.

**Section 5. Registered Stockholders.** The corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends

and any other rights related to ownership of these shares, and to vote as such owner, and to hold liable for calls and assessments a person registered on its books as the owner of shares, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of Delaware or ordered by a court of competent jurisdiction.

## ARTICLE VII

### CERTAIN TRANSACTIONS

**Section 1. Transactions with Interested Parties.** No contract or transaction between the corporation and one or more of its directors or officers, or between the corporation and any other corporation, partnership, association or other organization in which one or more of the corporation's directors or officers also are directors or have a financial interest, shall be void or voidable solely for these reasons, or solely because the director or officer is present at or participates in the meeting of the board or committee thereof which authorizes the contract or transaction, or solely because the vote or votes of such director or officer are counted for such purpose, if:

(a) the material facts as to such person's relationship or interest and as to the contract or transaction are disclosed or are known to the Board of Directors or the committee of the board, and the board or committee in good faith authorizes the contract or transaction by unanimous written consent or the affirmative votes of a majority of the disinterested directors, even though the disinterested directors be less than a quorum; or

(b) the material facts as to such person's relationship or interest and as to the contract or transaction are disclosed or are known to the stockholders entitled to vote thereon, and the contract or transaction specifically is approved in good faith by written consent or a majority vote of a quorum of the stockholders; or

(c) the contract or transaction is fair and reasonable as to the corporation as of the time it is authorized, approved or ratified, by the Board of Directors, a committee thereof, or the stockholders.

**Section 2. Quorum.** Common or interested directors may be counted in determining the presence of a quorum at a meeting of the Board of Directors or of a committee which authorizes the contract or transaction with interested parties covered by this Article VII.

## ARTICLE VIII

### GENERAL PROVISIONS

**Section 1. Dividends.** Dividends upon the capital stock of the corporation, if any, may be declared by the Board of Directors at any regular or special meeting of the board or stockholders, or by unanimous written consent of the board, pursuant to applicable law. Dividends may be paid in cash, in property or in shares of the capital stock of the corporation, subject to the provisions of the certificate of incorporation thereof.

**Section 2. Reserves.** The directors may set apart out of any funds of the corporation available for dividends a reserve or reserves for any proper purpose and, separately, may abolish any such reserve.

**Section 3. Checks.** All checks or demands for money and notes of the corporation shall be signed either by the corporation's chief financial officer, chief accounting officer, controller, or such officer or officers, or such other person or persons, as the Board of Directors may from time to time designate in writing.

**Section 4. Fiscal Year.** The fiscal year of the corporation shall be fixed by resolution of the Board of Directors and may change at the discretion of the board.

**Section 5. Seal.** The Board of Directors, by resolution, may adopt a corporate seal but is not required to do so. The corporate seal shall have inscribed thereon the name of the corporation, the year of its organization, and the word "Delaware". The seal may be used by causing it or a facsimile thereof to be impressed or affixed or otherwise reproduced. The seal may be altered from time to time by the Board of Directors.

## ARTICLE IX

### AMENDMENTS

The Board of Directors is expressly empowered to adopt, amend or repeal these bylaws; provided, however, that any adoption, amendment or repeal of these bylaws by the Board of Directors shall require the approval of at least sixty-six and two-thirds percent (66  $\frac{2}{3}$ %) of the total number of authorized directors (whether or not there exist any vacancies in previously authorized directorships at the time any resolution providing for adoption, amendment or repeal is presented to the board). The stockholders also shall have power to adopt, amend or repeal these bylaws; provided, however, that in addition to any vote of the holders of any class or series of stock of this corporation required by law or by the certificate of incorporation of this corporation, the affirmative vote of the holders of at least sixty-six and two-thirds percent (66  $\frac{2}{3}$ %) of the voting power of all of the then outstanding shares of the stock of the corporation entitled to vote generally in the election of directors, voting together as a single class, shall be required for such adoption, amendment or repeal by the stockholders of any provisions of these bylaws.

David R. McAvoy  
[\*\*\*]  
[\*\*\*]

September 18, 2023

**Re: Separation and Release Agreement**

Dear Mr. McAvoy:

This letter sets forth the substance of the Separation and Release Agreement (the "**Agreement**") that Fresh Tracks Therapeutics, Inc., f/k/a Brickell Biotech, Inc., the parent of Brickell Sub ("**Brickell Parent**") and Brickell Subsidiary, Inc., d/b/a Brickell Biotech, Inc. ("**Brickell Sub**"), both being Delaware companies with a principal business address located at Founder Central, 2000 Central Avenue, 100, Boulder, Colorado 80301 (Brickell Sub and, together with Brickell Parent and any predecessors of Brickell Sub or Brickell Parent, collectively referred to herein as the "**Company**") is offering to aid you in your employment transition as a result of the Company's decision to downsize and dissolve its business operations. Except as expressly referenced herein, this Agreement supersedes and replaces all prior understandings and agreements, whether oral or written, regarding the terms and conditions of your employment with the Company, including but not limited to that certain Employment Agreement between you and the Company dated February 21, 2023 and attached hereto as Exhibit A ("**Employment Agreement**") and the Retention Bonus Agreement referenced in Section 3 below. Together, you and the Company may be referred to collectively as the "**Parties**" and the term "**Party**" may refer either to you or Company individually as the circumstances dictate.

Now therefore, for good and valuable consideration, receipt of which is hereby agreed and acknowledged, and fully intending to be legally bound hereby, the Parties to this Agreement agree as follows:

1. **Separation Date.** Your last day of Company employment will be October 2, 2023 (the "**Separation Date**"). You are being terminated by the Company without Cause as defined by, and incorporated by reference herein, Sec. 5.4 of your Employment Agreement. No Change of Control event is involved with this termination, as defined in the foregoing.

Company Initials /s/ AM

Your Initials /s/ DRM

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2. **Accrued Salary and PTO.** On the Separation Date, the Company will pay to you as a lump sum all accrued but unpaid base salary earned through the Separation Date, subject to standard payroll deductions and withholdings.

Further, on January 2, 2024, as authorized, the Company will pay you for your unpaid time-off vacation days that have accrued from the start of your employment through the date the Company adopted its current "Flexible Time-Off" policy (your "PTO Balance") as set forth in the PTO Balance Acknowledgement Form attached and fully incorporated by reference for the purposes hereto as Exhibit E, and as further required by Section 4.3(b) in the Employment Agreement, and do so as a lump-sum payment, subject to standard payroll deductions and withholdings, unless requested by you in writing to the Company be paid earlier, in which the Company shall make the payment of the PTO Balance on the Company's next regularly scheduled payroll date following such request. You understand and agree that other than this PTO Balance the Company owes you no other compensation for vacation or other paid time off during your employment period.

You are entitled to the payments covered by this Section 2 regardless of whether or not you sign this Agreement.

3. **Retention Bonus.** Pursuant to that certain agreement between you and the Company dated February 21, 2023, and as amended, to provide conditional retention bonuses (the "Retention Bonus Agreement"), you are eligible for payment of Fifty Percent (50%) of the Retention Bonus as defined in the Retention Bonus Agreement, or Thirty-Five Thousand (\$35,000) U.S. Dollars, if you timely sign, date, return, and do not revoke this Agreement. Conditional to the foregoing, the Company will pay to you this Retention Bonus amount, subject to standard payroll deductions and withholdings, on January 2, 2024, unless requested by you in writing to the Company be paid earlier, in which the Company shall make the Retention Bonus payment on the Company's next regularly scheduled payroll date following such request.

4. **Severance Benefits.** Pursuant to the terms of your Employment Agreement, including but not limited to Section 5.4 Termination Without Cause of your Employment Agreement, if you timely sign, date, return, and do not revoke this Agreement, the Company will pay you, as severance, an amount equal to nine (9) months of your base salary in effect as of the Separation Date, equal to Two Hundred Sixty-Two Thousand and Five Hundred (\$262,500) U.S. Dollars, subject to standard payroll deductions and withholdings ("Severance Payment"). The Severance Payment will be paid out in substantially equal installments in accordance with the Company's regular payroll schedule commencing on the Company's first regularly scheduled payroll date following

the Effective Date, and as further provided by Section 5.4 of the Employment Agreement, unless requested by you in writing to the Company be paid earlier, by lump sum or otherwise, in which the Company shall make the Severance Payment(s) on the Company's next regularly scheduled payroll date(s) following such request.

Section 19 of the Employment Agreement on Section 409A-Nonqualified Deferred Compensation shall apply to the Severance Payment and other benefits provided for in this Agreement.

5. **Health Insurance.** If you have health coverage through the Company, your group health insurance will cease on the last day of the month in which your employment ends. At that time, you will be eligible to continue your group health insurance benefits at your own expense, subject to the terms and conditions of the Company's benefit plan, pursuant to the Colorado group health insurance continuation law. You will receive additional information regarding your right to elect continued coverage under the Colorado group health insurance continuation law in a separate written communication from the Company's Human Resources department. If you timely execute, return, and do not revoke this Agreement, and timely elect health insurance continuation coverage, the Company will pay for nine (9) months of health care premiums equal to your current coverage for (a) medical, (b) dental, and (c) vision benefits by the Company for you and your eligible family and make such payments directly on your behalf to the Company's providers then in effect. In the event that the Company can no longer provide group health insurance for any applicable provider for the full nine (9) months described above, the Company will make a lump-sum payment to you for the total amount of the remaining third-party health care premiums that would have been owed by it pursuant to this Section 5, grossed up by a Thirty-Five Percent (35%) factor to help you minimize the impact of any applicable taxes that would apply to this as income to you, payable on the Company's first regularly scheduled payroll date following the date the Company is no longer able to pay the applicable provider on your behalf.

6. **Company Equity.** Pursuant to Section 3.2(b) of the Employment Agreement, there shall be a full acceleration of vesting on any unvested Equity Awards as defined therein as of the Separation Date and an exercise period of three (3) years from that accelerated vesting date will apply, notwithstanding anything else to the contrary. In all other respects, the rights and obligations to your Equity Awards will be as set forth in your applicable grant notice(s), the applicable stock option and/or other equity agreement, and the Company plan(s) governing these grants. The Company offers no advice on the tax treatment of your vested equity interests in the Company.

7. **Indemnification.** You and the Company acknowledge and agree that both of you will remain subject to the Indemnification Agreement executed by yourselves dated May 25, 2020 (attached and fully incorporated by reference for the purposes hereto as Exhibit D), and as further provided in Section 18 of the Employment Agreement.

8. **Corporate Lease.** You are responsible for terminating the corporate lease agreement that is signed in your name for Griffis Residential apartment D-220 within the applicable 60-calendar day early termination deadline and paying any associated fees, penalties, and other costs related to that termination; provided, however, the Company will give you two (2) months of your monthly rent and related utilities and living expenses grossed up by a Thirty-Five Percent Factor (35%) for a total of Eight Thousand One Hundred Dollars (\$8,100) to help you mitigate the associated fees, penalties, and other costs related to that termination and to minimize the impact of any applicable taxes that would apply to this payment as income to you from the Company. You agree that after the Separation Date the Company will have no further obligation or liability related to this corporate lease other than to make the foregoing remittance. The Company will pay this amount to you as a lump sum on your Separation Date.

9. **Other Compensation or Benefits.** You acknowledge that, except as expressly provided in this Agreement, the Employment Agreement, and the Retention Bonus Agreement, you have not earned, and will not receive, any additional pay or salary, incentive, or other compensation, severance, equity interests, or restricted stock, restricted stock units, or options or equity interests of any kind, or other property, insurance, or any other benefits, after the Separation Date, with the exception of any vested right(s) you may have under the express terms of a written ERISA-qualified benefit plan (e.g., 401(k) account) with the Company. You are entitled to payment for any such vested right(s) regardless of whether or not you sign this Agreement.

In particular, but without limitation, and qualified by all of the foregoing, you agree that based on your employment by the Company you are not owed any bonus for 2023 and beyond, incentive, or other compensation or benefits, or property, of any kind, or commissions, other than the Severance Payment, Retention Bonus, Retained Property, and payments related to your Griffis Residential Apartment D-220 corporate lease pursuant to Sec. 8, as provided herein and applicable to the Employment Agreement and the Retention Bonus Agreement. You understand, and agree, that you are solely and fully responsible for any and all tax liabilities or related obligations

involving any payment amounts or property transfers you receive from the Company pursuant to this Agreement, except as may otherwise be provided expressly herein.

10. **Reference Requests.** All inquiries regarding your employment with the Company from any third party, including but not limited to recruitment by any prospective employer or board of directors, non-profit organization, or relevant other recruitment initiative you may be involved in now or in the future, shall be directed to our Finance or Human Resources Department(s) in general, who will provide the actual dates of your complete employment and your title(s) with the Company.

The Company will respond timely, fully, and truthfully to any requests for information from state unemployment compensation authorities relating to any claim for unemployment compensation benefits that you may file by stating that you were terminated as a result of lack of available work due to a Company downsizing and dissolution, and not for cause, including scope of Cause as defined in your underlying Employment Agreement. Otherwise, the Company will not contest any finding made by state unemployment compensation authorities with respect to your eligibility for unemployment compensation benefits that may be applicable to your Company separation. The Company will not appeal any corresponding decision by the state unemployment compensation authorities finding you eligible for unemployment compensation benefits. You acknowledge that the consideration provided herein may affect the amount of unemployment compensation that you may receive and that the Company may confirm or report the payments made to you pursuant to this Agreement and your Employment Agreement, and any other information required by applicable law, to the state unemployment compensation system.

11. **Expense Reimbursements.** You agree that by the Effective Date, you will have submitted your final documented expense reimbursement statement reflecting all Company business expenses you incurred as an employee through the Separation Date, if any, for which you seek reimbursement. The Company will reimburse you for such authorized business expenses pursuant to its regular business policy and practice as provided in the Company's Travel, Meals, and Entertainment Policy (eff. 03.30.21). You are entitled to be reimbursed for all qualifying expenses regardless of whether or not you sign this Agreement.

12. **Return of Company Property.** Except for the Retained Property described below in this Section, and other than as required to allow you to perform any consulting agreement you may sign with the Company following your Separation Date, you agree to return to the Company all Company documents (and all copies thereof, in whole or in part) and other Company property which you have in your possession

or control, including but not limited to Company files, slide decks and presentations, memoranda, drafts, notes, drawings, records, plans, forecasts, reports, studies, data, samples, clinical trials and protocols, analyses, proposals, agreements, research and development information, sales and marketing information, personnel information, budget and financial information, legal, medical, and compliance information, audits, investigations, contracts (other than ones applicable to you), computer-recorded information, information related to intellectual property, trade secrets and know-how, tangible property, and equipment (including but not limited to computers, copiers, printers, facsimile machines, cell telephones, servers), Company-authorized credit cards, identification badges and keys, and any materials of any kind which contain, reference, or embody any proprietary or confidential information of the Company (and all reproductions thereof in whole or in part), and to do so within ten (10) business days of the Effective Date of this Agreement. You agree that you will make a diligent search to locate any such documents, property, and information covered by this Section 12 within the timeframe referenced above. If you have used any personally owned computer, server, or e-mail system to receive, store, review, author, prepare, edit, generate, and/or transmit any Company confidential or proprietary data, materials, or information, you agree to permanently delete and expunge such Company confidential or proprietary information from those systems promptly after the Separation Date.

If compliant with this Section, you will be entitled to keep at no cost to you your Company-issued laptop, known by Dell Latitude Model 7420, Serial 4F727G3, and all associated computer equipment and computer screens of the Company you use to support your use of the laptop as well as all the used IKEA-branded furniture in your Griffis Residential corporate apartment D-220, including but not limited to the couch, bed, bar stools, credenza, lighting, mirror, tables and chairs, and clothing storage, transferred by the Company "as is" with no representations or warranties of any kind whatsoever, (the "Retained Property"). As part of an additional severance hereunder, the Company hereby transfers and assigns to you all of the Company's rights, title, and interest in this Retained Property to be applicable as of the Effective Date of this Agreement. The Company agrees to promptly provide you with any additional proof of transfer of ownership rights in and to the Retained Property that may be reasonably requested. However, you are not entitled to the transfer of Retained Property hereunder unless you timely sign, date, and return and do not revoke this Agreement.

13. **Confidential Information And Other Obligations.** You acknowledge and reaffirm your continuing obligations under your Employee Confidentiality and Inventions Assignment Agreement, a copy of which is attached and fully incorporated

by reference for the purposes hereto as Exhibit B (“**Confidentiality Agreement**”). In addition, you understand and agree that Section 6 of the Employment Agreement providing for restrictive covenants, including specifically but not limited to Section 6.1 (Non-Competition), Section 6.2 (Nondisclosure), and Section 6.3 (Non-solicitation of Executives and Clients/Customers), of the Employment Agreement survives the termination of your employment and remains in full force and effect, as does the separately executed Non-Competition Agreement signed between you and the Company, attached and fully incorporated by reference as Exhibit C.

14. **Mutual Nondisclosure.** Except as may be otherwise expressly provided herein, the provisions of this Agreement will be held in strictest confidence by both you and the Company and will not be publicized or disclosed in any manner whatsoever; provided, however, that: (a) you may disclose this Agreement to your immediate family or any medical or mental health provider, or mental or behavioral health therapeutic support group; (b) you and the Company may disclose this Agreement in confidence to their attorneys, accountants, auditors, tax preparers, financial advisors; (c) you and the Company may disclose this Agreement to the extent such disclosure may be required by law; (d) you and the Company may disclose this Agreement to any local, state, or federal agency for any reason; and (e) you and the Company may disclose the general existence and purpose of this Agreement without any of its specific terms as that fact will be publicly disclosed by the Company in its SEC filings as well as disclose any other terms that are part of these filings or otherwise put in the public domain without breach by you of the nondisclosure obligations of this Section 14. In particular, and to the extent allowed by law, you agree not to disclose the terms of this Agreement to, or with, any current or former Company or Company-related employee, director, consultant or independent contractor, or Company advisors or representatives, except as required for Company business, or as already publicly disclosed through no fault by you, or as otherwise authorized by the Company. This Agreement does not limit your right to discuss your employment or any unlawful acts that may be alleged to have been committed by the Company or any of its affiliates (defined as entities under common ownership or control with Company) and subsidiaries, or any of their respective officers, directors, employees, shareholders, contractors, clients, customers, business partners, or agents and representatives in the Company’s workplace, including but not limited to sexual harassment, or to report possible violations of law or regulation by the Company or its affiliates and subsidiaries, or any of their respective officers, directors, employees, shareholders, contractors, clients, customers, business partners, or agents and representatives with any Government Agency (as defined in Section 21 below), or to discuss the terms and conditions of your employment with others, but only to the extent expressly permitted

or protected by (a) Section 7 of the federal National Labor Relations Act of 1935, as amended (the “**NLRA**”), or under (b) applicable provisions of law or regulation, including but not limited to “whistleblower” statutes or other similar provisions that protect such disclosure, and, further, to the extent any such rights are not permitted by applicable law to be the subject of nondisclosure or confidentiality obligations.

15. **Mutual Non-Disparagement.** You will not make, sponsor, assist, promote, solicit, or participate in the making of, or encourage any other person or entity to make, any public statements, written or oral, in whatever format, including but not limited to electronic or other communications such as Internet message boards or social media or the like, which are intended to criticize, disparage, libel, slander, or defame the goodwill or reputation of, or which are intended to embarrass, the Company, or any of its affiliates and subsidiaries, or any of their respective officers, directors, employees, shareholders, contractors, clients, customers, business partners, or agents and representatives. Notwithstanding the foregoing, you will not be prohibited from accurately and fully responding to any question, inquiry, order, subpoena, or request for information when required by legal process or applicable law, or which is requested by the Company. Further, it shall not be considered disparagement and nothing in this Agreement prevents you from discussing or disclosing information about discriminatory or unfair employment practices that may be alleged to occur in the Company workplace, such as harassment or discrimination or any other conduct that you have reason to believe is unlawful. The Company agrees, and shall direct its respective executive officers and directors, to refrain from making or publishing any statement that is malicious, critical, disparaging, defamatory, libelous, and/or slanderous about any aspect of your employment with the Company or would reasonably be expected to damage your business or reputation. In addition, in the event that the Company disparages you to a third party, the Company may not seek to enforce these Section 15 non-disparagement provisions, or the nondisclosure provisions of Section 14 of the Agreement, against you for violating either of these provisions but all other remaining terms of the Agreement shall remain enforceable.

16. **No Admissions.** You understand and agree that the promises and payments in consideration of this Agreement shall not be construed to be an admission of any liability or obligation by the Company or its officers, directors, employees, shareholders, contractors, clients, customers, business partners, or agents and representatives to you or to any other person or entity, and that the Company makes no such admission.

17. **Release of Claims.**

(a) In exchange for the payments and other consideration under this Agreement to which you would not otherwise be entitled, you hereby unconditionally, fully, irrevocably, and absolutely release, waive, acquit, and forever discharge the Company and its affiliates, subsidiaries, and its and their respective present and former owners, agents, representatives, employees, officers, directors, shareholders, partners, accountants, and attorneys, and, for each of the foregoing, their respective heirs, predecessors, successors, and assigns (collectively, the “**Releasees**” or “**Released Parties**”), from and of any and all claims (including attorneys’ fees and costs), liabilities, demands, causes of action, promises, judgments, liens, indebtedness, losses, costs, expenses, damages, indemnities, and obligations of every kind and nature, and similar rights of any type of whatsoever kind and character in law, equity, or otherwise, known and unknown, suspected and unsuspected, disclosed and undisclosed, arising out of or in any way related to agreements, events, your employment by, or service for, the Company, acts, omissions, incidents, or conduct at any time prior to, through, and including the date you sign this Agreement. This general release includes, but is not limited to: (i) all claims arising out of or in any way related to your employment with, or service for, the Company or the termination and separation of that employment and/or service; (ii) all claims related to your compensation or benefits, or conveyances of property of any type, from the Company, including but not limited to salary, bonuses, commissions, vacation pay, sick pay, expense reimbursements, severance pay, lost wages, fringe benefits, stock, stock options, restricted stock or units, equity awards and interests of any type, Retained Property and any other property transfers, the Employment Agreement, the Retention Bonus Agreement, or any other ownership interests in, or obligations by, the Company; (iii) all claims for breach of contract, wrongful termination, and breach of the implied covenant of good faith and fair dealing; (iv) all tort claims, including but not limited to claims for fraud, libel, slander, defamation, emotional distress, and discharge in violation of public policy; (v) all federal, state, and local statutory claims, including but not limited to claims for discrimination, harassment, retaliation, attorneys’ fees, and/or other claims arising under the federal Civil Rights Act of 1964, as amended (the “**CRA**”), the federal Civil

Rights Act of 1866, as amended (the “**CRA 1866**”), the federal Americans with Disabilities Act of 1990, as amended (the “**ADA**”), the federal Age Discrimination in Employment Act of 1967, as amended (the “**ADEA**”), the federal Equal Pay Act of 1963, as amended (the “**EPA**”), the federal Lilly Ledbetter Fair Pay Act of 2009, as amended (the “**LLFPA**”), the federal Worker Adjustment and Retraining Notification Act of 1988, as amended (the “**WARN**”), the federal Older Workers Benefit Protection Act of 1990, as amended (the “**OWBPA**”), the federal Employee Retirement Income Security Act of 1974, as amended (the “**ERISA**”), the federal Securities Exchange Act of 1934, as amended (the “**Exchange Act**”), the federal Fair Labor Standards Act of 1938, as amended (the “**FLSA**”), the NLRA, the federal Emergency Paid Sick Leave Act of 2020, as amended (the “**EPSLA**”), the federal Inspector General Act of 1978, as amended (the “**IG Act**”), the federal Occupational Safety and Health Act of 1970, as amended (the “**OSH ACT**”), the federal Sarbanes-Oxley Act of 2002, as amended (the “**SOX**”), including as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, the federal Genetic Information Nondiscrimination Act of 2008, as amended (the “**GINA**”), the Colorado Anti-Discrimination Act, as amended (Colo. Rev. Stat §24-34-301 et seq.) (the “**CADA**”), the Colorado Whistleblower Law, as amended (Colo. Rev. Stat §24-114-101 et seq.), the Colorado Healthy Families and Workplaces Act, as amended (Colo. Rev. Stat §8-13.3-401 et seq.) (the “**HFWA**”), the Colorado Equal Pay for Equal Work Act of 2019, as amended (Colo. Rev. Stat §8-5-101 et seq.) (the “**CEPEWA**”), the Indiana Civil Rights Law of 1971, as amended (IC §22-9-1-1 et seq.), the Indiana Law on Wages, Hours, and Benefits, as amended (IC §22-2 et seq.), the Indiana Occupational Health and Safety Act of 1974, as amended (IC §22-8-1.1 et seq.) (“**IOSHA**”), the Indiana False Claims and Whistleblower Protection Act, as amended (IC §5-11-5.5 et seq.), the Indiana Medicaid False Claims and Whistleblower Protection Act, as amended (IC §5-11-5.7-4 et seq.); (vi) all claims under any other federal, state, or local statute or common law; and (vii) any claim which was or could have been raised by you.

(b) Where allowed by law, and subject to Section 21 exceptions below, you agree to waive and release your right to monetary or other

recovery or award should any claim be pursued by you or on your behalf with any Government Agency arising out of or related in any way to your employment with and/or separation and transition from the Company.

- (c) You acknowledge that you may discover facts and/or law different from, or in addition to, the facts or law you know or believe to exist with respect to a released claim or a Released Party. You agree, nonetheless, that this Agreement and the releases contained in the Agreement shall be and remain effective in all respects notwithstanding such different or additional facts and/or law.

18. **For Employees Aged 40 and Over: ADEA Waiver and Release.** You acknowledge that you knowingly and voluntarily are waiving and releasing any rights you may have under the ADEA. You further acknowledge and agree that you have been advised by this writing, as required by the ADEA, that: (a) your waiver and release do not apply to any rights or claims that may arise after the Effective Date of this Agreement; (b) you have been advised hereby that you have the right to consult with an attorney that represents you (at your cost) prior to executing this Agreement; (c) you have twenty-one (21) calendar days to consider this Agreement (although you may choose to voluntarily sign and execute the Agreement earlier); (d) you have seven (7) calendar days following the execution of this Agreement by the Parties to revoke the Agreement; and (e) this Agreement will not be effective until the date upon which the revocation period has expired, which will be the eighth (8<sup>th</sup>) calendar day after this Agreement is executed by you, provided that the Company has also executed this Agreement by that date. If you choose to timely revoke this Agreement, the Agreement will be null and void, rescinded, and the Agreement shall not be valid or enforceable. To revoke this Agreement, you must timely deliver a signed writing stating your intention to revoke sent via email to Sue Fattor, Head of Human Resources of the Company at [Sfattor@frtx.com](mailto:Sfattor@frtx.com), by 11:59 p.m. MT the seventh (7<sup>th</sup>) calendar day after you sign this Agreement, with a copy in parallel to Amy Hartman, Company counsel, of Hartman Employment Law Practice LLC, at [amy@hartmanhrlaw.com](mailto:amy@hartmanhrlaw.com). This Agreement will not be effective until the eighth (8<sup>th</sup>) calendar day after this Agreement is executed by you, provided that the Company has also executed this Agreement by that date and you have not timely revoked the Agreement as provided above (the “**Effective Date**”).

19. **No Claims Pending.** You warrant and represent that you have no lawsuits, claims, or actions pending in your name or on behalf of any other person or entity

against the Company, Released Parties, or any other person or entity subject to the released claims granted by you in this Agreement. You further agree that in the event you bring a claim or charge covered by your released claims made under this Agreement, or do not dismiss and withdraw promptly any claim or charge covered by these released claims, and are seeking damages against the Company, this Agreement shall serve as a complete defense to such claims or charges, including but not limited to the obligations set forth under Sections 4, 5, and 9 herein.

20. **Further Acknowledgments, Warranties, and Representations.** You acknowledge, warrant, and represent that:

- (i) the consideration given by the Company to you for your waiver and release of rights as provided herein is in addition to anything of value to which you were already entitled;
- (ii) you have not suffered any discrimination or harassment by the Company and/or any of the Released Parties on account of your race, gender, national origin, religion, marital or registered domestic partner status, sexual orientation, age, disability, medical condition, or any other characteristic protected by law;
- (iii) you have not been denied by the Company and/or Released Parties any leave, wages, bonuses, benefits, property, compensation, or any other rights to which you may have been entitled under any applicable law, and that you have not suffered any job-related wrongs or injuries for which you might still be entitled to compensation or relief;
- (iv) you have not suffered any on-the-job injury for which you have not already filed a claim as of the Effective Date; and
- (v) except as expressly provided in this Agreement, you have been paid or given all leave and leave protections, wages, bonuses, benefits, property, compensation, and other amounts that the Company and/or any of the Released Parties have ever owed to you, or for which you were eligible to receive from the Company, and that you understand you will not receive any additional compensation, severance, property, or benefits, or the like, after the Separation Date, with the exception of any vested right(s) you may have with the Company, including but not limited to under the terms of a written ERISA-qualified benefit plan and your vested -- or will vest -- surviving equity interests from the Company.

21. **Exceptions and No Interference with Rights.** Nothing contained in this Agreement is intended to waive or release claims (a) for unemployment or workers' compensation benefits; (b) for vested rights under any ERISA-qualified benefit plans as applicable on the date you sign this Agreement, or other vested -- or will vest -- Company equity interests allowed hereunder and by the Company; (c) any rights or claims related to the enforcement of this Agreement; or (d) which cannot be released under applicable law by private agreement between an employer and employee. Further, nothing contained in this Agreement, the Confidentiality Agreement, or the surviving sections of the Employment Agreement shall prohibit either Party to this Agreement (or either Party's attorney(s)) from (a) filing a charge with, reporting possible violations of applicable law or regulation to, participating in any investigation by, or cooperating with the U.S. Equal Employment Opportunity Commission ("**EEOC**"), the National Labor Relations Board ("**NLRB**"), the Occupational Safety and Health Administration ("**OSHA**"), the U.S. Commodity Futures Trading Commission ("**CFTC**"), the U.S. Food and Drug Administration ("**FDA**"), Health Canada, the U.S. Department of Justice ("**DOJ**"), the U.S. Securities and Exchange Commission ("**SEC**"), the Financial Industry Regulatory Authority ("**FINRA**"), or any other securities regulatory agency, self-regulatory authority, or federal, state, local, or international regulatory authority (individually, "**Government Agency**" and collectively, "**Government Agencies**"), or making other disclosures that are protected under the whistleblower provisions of applicable law or regulations; (b) communicating directly with, cooperating with, or providing information in confidence to any Government Agency for the purpose of reporting or investigating a suspected violation of law, or from providing such information to attorney(s) for such Government Agencies, or in a sealed complaint, or other document filed in a lawsuit or other governmental proceeding; and/or (c) receiving a recovery or an award of any type for information provided to (i) the SEC under Section 17 of the Exchange Act and Exchange Act Rule 21F-17, as may be amended, (ii) OSHA pursuant to its Memorandum for Regional Administrators and Whistleblower Program Managers Regarding New Policy Guidelines for Approving Settlement Agreements in Whistleblower Cases (dated August 23, 2016, released September 15, 2016) and as it may be amended, or (iii) any other Government Agency that prohibits waivers or release by an employee of his/her right to a whistleblower or similar kind of reward. Pursuant to the employee immunity provision of the Defend Trade Secrets Act of 2016, and as that may be amended (18 USC §1833(b)), you will not be held criminally or civilly liable under any federal or state trade secret law for your disclosure of a Company trade secret that is made (a) in confidence to a federal, state, local, or international government official, either directly or indirectly, or to an attorney, and solely for the purpose of reporting or investigating a suspected violation of law; or (b) in a complaint or other document filed

in a lawsuit or other proceeding, if such filing is made under seal, and/or if you file a lawsuit for retaliation by the Company or its affiliates or subsidiaries based on you reporting a suspected Company violation of law, you may disclose the trade secret to your attorney and use the trade secret information in the court proceeding, if that trade secret is germane to the allegations, and you file any document containing the trade secret under seal with the court, and do not disclose the trade secret beyond this, except pursuant to court order. Nothing contained in this Agreement is intended to or shall preclude either Party from providing truthful testimony in response to a valid subpoena, court order, regulatory request, or other judicial, administrative, or legal process, or otherwise as required by law.

22. **Further Assurances.** In consideration of payment of the amounts specified herein, you agree to execute any documents (including but not limited to letters of resignation) and take any other actions reasonably necessary to terminate any directorships, officerships, committees, or other relationships with or for the Company or any of its affiliates or subsidiaries that exist as of your Separation Date. You also agree to reasonably cooperate after your Separation Date with any Company investigation or litigation, or required submission to any Government Agency, on any subject matter related to the time you were an employee and/or consultant of the Company, and with any request by the Company for assistance in responding to requests for information or documents by any Governmental Agencies, in making a required disclosure, or in connection with any pending or threatened administrative or judicial proceeding(s), and further agree, to the extent permitted by law, promptly to provide the Company with the same information or documents (or copies thereof) that you may provide to any Governmental Agency or disclose in any pending or threatened administrative or judicial proceeding. The Company agrees to reimburse you for any out-of-pocket expenses that you actually, reasonably, and directly incur in connection with compliance with any requests by the Company pursuant to this Section.

23. **Remedy.** You agree that if you bring any kind of legal, equitable, or other claim, complaint, or charge against the Company and/or the Released Parties that you have released by signing this Agreement, then you will be violating this Agreement, and you must pay all legal fees, other costs, and expenses, incurred by the Company and/or Released Parties in defending against and resolving your claim, complaint, or charge, in addition to any other relief you may owe the Company due to your breach of the Agreement.

24. **Conflicts.** To the extent that any provision of this Agreement may conflict with any surviving provision of the Employment Agreement, Retention Bonus Agreement, Confidentiality Agreement, Non-Competition Agreement, Equity Awards, and/or the Indemnification Agreement, then as to the Employment Agreement, Indemnification Agreement, or the Non-Competition Agreement these other agreements will control; and as to the Equity Awards, Retention Bonus Agreement, or the Confidentiality Agreement, this Agreement will control.

25. **Miscellaneous.** This Agreement, including Exhibits A-E, and the Equity Awards defined in your Employment Agreement and described in Exhibit A to the Employment Agreement, and the Retention Bonus Agreement constitute the complete, final, and exclusive embodiment of the entire agreement between you and the Company with regard to its particular subject matter, and these other agreements still in effect, including those contained in Exhibits A-E, incorporated fully herein by reference unless specifically stated otherwise, shall each remain in effect in accordance with their terms. This Agreement is entered into without reliance on any promise or representation, written or oral, other than those expressly contained herein, and it supersedes any other such promises, warranties, or representations. The Agreement may not be modified or amended except in a writing signed by you and a duly authorized officer or representative of the Company. The Agreement will bind the heirs, personal representatives, successors, and assigns of both you and the Company, and inure to the benefit of you and the Company, and corresponding heirs, successors, and assigns. The rights and obligations under this Agreement may be assigned by either Party hereto without the prior written consent of the other Party; provided that should an assignment be made the assigning Party will provide prompt written notice of the details of such to the other Party. If any provision of this Agreement is determined to be invalid or unenforceable, in whole or in part, this determination will not affect any other provision of this Agreement and the provision in question shall be modified to the limited extent necessary so as to be rendered enforceable. This Agreement will be deemed to have been entered into and will be construed and enforced in accordance with the laws of the State of Colorado, without regard to conflict of laws principles thereof, and as applied to contracts made and to be performed entirely within Colorado. Any dispute or controversy arising under or in connection with this Agreement, or any of the agreements contained in the Exhibits to this Agreement, shall be settled according to the Section 7 Arbitration provisions of your Employment Agreement. Any ambiguity in this Agreement shall not be construed against either Party as the drafter. Any waiver of a right or benefit under, or breach of, this Agreement shall be in a writing signed by the Party granting the waiver and, in case of a breach, shall not be deemed to be a waiver of any successive breach. The

Company shall make any payments required by this Agreement to a bank account or accounts as designated by you in writing to it. The section headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.

26. **Counterparts.** This Agreement may be executed in counterparts and by facsimile or electronic signatures, each of which shall be an original and all of which shall constitute but one and the same instrument. The Parties agree that execution of this Agreement by industry standard electronic signature software and/or by exchanging .PDF signatures shall have the same legal force and effect as the exchange of original signatures, and that in any proceeding arising under or relating to this Agreement, each Party hereby waives any right to raise any defense or waiver based upon execution of this Agreement by means of such electronic signatures or maintenance of the executed Agreement electronically.

27. **Expiration.** If you wish to accept the offer set forth in this Agreement you must sign and return this Agreement to the Company on or before 11:59 pm EST on October 9, 2023.

If this Agreement is acceptable to you, please electronically sign below and return to Michael Fridman, Associate Director of Human Resources, at mfridman@frtx.com.

Sincerely,

**FRESH TRACKS THERAPEUTICS, INC. AND  
BRICKELL SUBSIDIARY, INC.**

By: /s/ Albert N. Marchio II  
Albert N. Marchio II  
CEO

**AGREED TO AND ACCEPTED BY:**

By: /s/ David R. McAvoy  
David R. McAvoy  
Individually

**EXHIBIT A**

**EMPLOYMENT AGREEMENT  
BETWEEN FRESH TRACKS THERAPEUTICS, INC. AND DAVID MCAVOY**

Company Initials /s/ AM

Your Initials /s/ DRM

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**EXHIBIT B**

**CONFIDENTIALITY AND INVENTIONS ASSIGNMENT AGREEMENT  
BETWEEN FRESH TRACKS THERAPEUTICS, INC. AND DAVID MCAVOY**

Company Initials /s/ AM

Your Initials /s/ DRM

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**EXHIBIT C**

**NON-COMPETITION AGREEMENT  
BETWEEN FRESH TRACKS THERAPEUTICS, INC. AND DAVID MCAVOY**

Company Initials /s/ AM

Your Initials /s/ DRM

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**EXHIBIT D**

**INDEMNIFICATION AGREEMENT  
BETWEEN FRESH TRACKS THERAPEUTICS, INC. AND DAVID MCAVOY**

Company Initials /s/ AM

Your Initials /s/ DRM

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**EXHIBIT E**

**PTO BALANCE ACKNOWLEDGMENT FORM**

Company Initials /s/ AM

Your Initials /s/ DRM

**CONSULTING AGREEMENT**

**THIS CONSULTING AGREEMENT** (the “Agreement”) is made October 3, 2023 (the “Effective Date”), by and between **FRESH TRACKS THERAPEUTICS, INC.**, a Delaware corporation, with its principal place of business at Founder Central, 2000 Central Avenue, 100, Boulder, CO 80301 (hereafter “Corporation”) and **MCAVOY LAW LLC**, an Indiana domestic Limited Liability Company, with a principal place of business at [\*\*\*] (hereafter “Consultant”). Corporation and Consultant are sometimes referred to herein individually as a “party” and collectively as the “parties”.

**WHEREAS**, Corporation may have requirements for expert consulting (“Advisory”) services related to the Corporation’s business, legal, regulatory, personnel, compliance, operations, clinical trials, strategies, finances, business development, contracts management, capital requirements and raises, and evaluation, research, development, and testing, and eventual commercialization, of its pipeline product portfolio and other assets, including without limit, potential and ongoing earnout payments and any contingent value rights, prosecution, maintenance, and enforcement of intellectual property rights including patents and trademarks, support for the Corporation’s Transition Services Agreement between itself and Botanix SB, Inc., possible transition or delisting from Nasdaq to an OTC exchange, and reverse merger, merger, or other deal support as well as any other lawful business purpose (“Purpose”); and

**WHEREAS**, Consultant is uniquely skilled in the provision of Advisory services that may be required and is agreeable to providing such services to Corporation as requested by Corporation from time to time and provided for in this Agreement;

**NOW, THEREFORE**, in consideration of the mutual promises herein contained, the parties do hereby agree as follows:

1. Services.

(a) Scope. Consultant shall provide its expert services, skills, experience, network, and knowledge to the tasks assigned to it by Corporation in the delivery of Advisory services for the Purpose (“Services”). Consultant will perform all Services in accordance with all applicable laws, rules, and regulations, and Corporation policies and guidelines as communicated by Corporation to Consultant.

(b) Performance. Consultant understands and agrees that Consultant is responsible solely for the control and supervision of the means by which the Services are provided consistent with the goal of successfully completing the Services on Corporation’s schedule. During the Term (defined *infra* Section 4) of this Agreement, Consultant shall devote its reasonable best efforts, including time and attention, to providing Services and shall at all times promote the interests and welfare of Corporation without any actual or potential conflicts of interest. To the extent Consultant identifies an actual or potential conflict with its Services for the Corporation, Consultant shall promptly inform Corporation of the conflict in writing for instructions on how to proceed. Notwithstanding the foregoing, and except as otherwise set forth herein, Corporation acknowledges and agrees that Corporation’s retention of Consultant’s Services hereunder shall be non-exclusive for both parties. Consultant agrees to participate actively in such meetings designated by Corporation and that Corporation may request travel and in-person participation in Corporation’s various meetings at Corporation’s principal place of business or elsewhere, or at greater frequency, as required by Corporation.

## 2. Consideration.

(a) Hourly Rate. Consultant shall be entitled to compensation in an amount of Four Hundred Twenty-Five Dollars per hour (\$425.00/hr) (“Consulting Fee”) for completion of Services satisfactory to Corporation during the Term of the Agreement. Consulting Fees due hereunder shall commence upon the execution of this Agreement and continue during the Term of the Agreement. For avoidance of doubt, Corporation shall have no obligation under this Agreement to make any tax gross-up payments in respect of any tax imposed on, or that may be owed by, Consultant pursuant to applicable laws.

(b) Business Expenses. Corporation shall reimburse Consultant for all reasonable, actual, and necessary expenses incurred in providing Services hereunder (including but not limited to coach (not business) airfare, rental car or Uber/Lyft, taxi or the like, lodging, meals, tolls, fuel costs, parking) according to the Travel, Meals and Entertainment Policy attached hereto, the legitimacy of which shall be substantiated by Consultant through proper documentation including the requirement that Consultant attach receipts to each of his invoice(s). The Corporation may request that Consultant visit the Corporation’s Boulder, Colorado facilities for meetings approximately once per month. In such case the Corporation will need to pre-approve the trip purpose and the airfare and any lodging expenses in advance; other associated trip costs do not need prior consent by Corporation. All other expenses not covered by this subsection (b) shall be borne solely by Consultant. For avoidance of doubt, professional license fees and continuing education credit costs to maintain such license are not reimbursable expenses.

(c) Invoicing. Consultant shall submit invoices to Corporation by the fifth (5<sup>th</sup>) business day of the following month for Services performed and reimbursable expenses incurred by Consultant in the previous month. Invoices shall contain an adequate description of the specific completed Services and include any receipts for reimbursable business expenses as outlined by Section 2(b) above. All such invoices shall be submitted to the Corporation through Aaron Fox-Collis at: [invoices@frtx.com](mailto:invoices@frtx.com).

(d) ACH Payments. Corporation will pay Consultant by the end of the month in which it receives a timely invoice that complies with the requirements of Section 2 and for which Corporation reasonably does not dispute any payment obligation. To the extent Corporation does have such a dispute, Corporation shall pay the amounts in the invoice that are not in dispute and promptly seek to resolve said dispute with Consultant. If Consultant submits an invoice late, Corporation will pay an amount as required hereunder in the month following receipt of that invoice. The parties agree that all payments due and owed under this Agreement shall be made through transfers utilizing the Automated Clearing House network (“ACH”) by Corporation to Consultant’s designated bank account for direct deposit and Consultant will execute such documents as necessary to effectuate the same.

(e) Taxes. Consultant shall be solely responsible for all taxes, tax returns, and payments required to be filed with or made to any federal, state, or local tax authorities with respect to Consultant’s performance of Services and receipt of fees under this Agreement. Corporation may regularly report amounts paid by it to Consultant with tax authorities as required by law. Because Consultant is an independent contractor Corporation shall not withhold or make payments for social security, make unemployment insurance or disability insurance contributions, or obtain worker’s compensation insurance on Consultant’s (or Consultant’s employees’ or agents’) behalf. Consultant shall comply with, and agrees to accept, exclusive liability for non-compliance with all applicable laws related to Consultant’s performance under this Agreement including without limitation obligations such as payment of all taxes, social security, disability, and other contributions

based on fees paid by Corporation to Consultant, Consultant's employees and/or agents under this Agreement. Consultant hereby agrees to indemnify, hold harmless, and defend Corporation from and against any and all such liabilities, taxes, or contributions, including without limitation penalties and interest.

3. Independent Contractor and Means of Service. This Agreement does not create a fiduciary relationship between the parties. Consultant shall be an independent contractor at all times with respect to Corporation. Nothing in this Agreement constitutes or appoints Consultant as an agent, legal representative, partner, employee, or servant of Corporation for any purpose whatsoever. Consultant covenants and agrees that Corporation shall not in any event assume liability for or be deemed liable hereunder as a result of any contract, agreement, understanding, debt, or obligation entered into by Consultant on behalf of Corporation without Corporation's prior written consent. As an independent contractor, Consultant shall have no right or authority, either expressed or implied, to assume, bind, or create in any respect on behalf of Corporation any obligation, contract, commitment, representations, or responsibility, except to extent Consultant is acting as an authorized agent as designated in writing by the Corporation. The authority of Consultant hereunder is strictly limited to the performance of the Services as described herein. Further, it is not the intention of this Agreement or of the parties to confer a third-party beneficiary right of action upon any third party or entity. Nothing in this Agreement shall be construed to confer upon any third party other than the parties hereto a right of action under this Agreement or in any manner whatsoever. By virtue of this Agreement, Consultant and Consultant's employees and agents shall not be entitled to any of the benefits that Corporation may make available to its employees, such as but not limited to group health insurance, profit-sharing, or retirement benefits. Consultant will have exclusive control over the manner and means of performing the Services, including the choice of place and time, and will use Consultant's unique expertise and talents in performing the Services. Consultant shall provide, at Consultant's own expense, a place of work and all equipment, tools, and other materials necessary to complete the Services; however, to the extent necessary to facilitate performance of the Services and for no other purpose, Corporation shall make its equipment and facilities available to Consultant at Consultant's reasonable request, and shall provide at cost to the Corporation any licenses necessary for Consultant to conduct necessary video meeting(s) and other business communications or to prepare, send, read, and review essential documents, such as but not limited to Microsoft Teams, Adobe Acrobat, and the Microsoft 365 productivity suite.

4. Term and Termination. The term of this Agreement will commence on the Effective Date and will continue until such time as either party gives notice of termination pursuant to this Section 4 (the "Term"). The Agreement may be terminated by either party hereto: (a) with Cause (as defined below), upon thirty (30) calendar days' prior written notice to the other party; or (b) without cause upon forty-five (45) calendar days' prior written notice to the other party. For purposes of Section 4, "Cause" shall include: (i) a material breach of the terms of this Agreement which is not cured by the defaulting party within thirty (30) calendar days of written notice by the other party of such default, (ii) the commission of any illegal act, including but not limited to fraud and/or embezzlement, or (iii) deliberate disregard of a written rule or policy of the Corporation previously provided by Corporation to Consultant. All non-surviving duties and obligations of the parties under this Agreement will cease as of the date the Agreement terminates; provided, however, all accrued obligations to and through the termination date shall be fulfilled and the obligations set forth in Sections 2(e), 3, 4, 6-14, 16-27 shall survive this termination date.

5. Key Personnel. Consultant will perform all Services only through its member, David R. McAvoy ("Dave McAvoy"), and agrees not to staff or use any other personnel or contracted agents to undertake the same without first obtaining written approval from

Corporation. Dave McAvoy is essential to the work performed hereunder and forms the essence of this Agreement. In the event Dave McAvoy is unable physically or legally in the reasonable opinion of Corporation to perform hereunder, this Agreement may be terminated immediately by Corporation by serving written notice of termination to Consultant. Such termination shall become effective immediately upon the furnishing of the written notice. Consultant further may not assign, delegate, or subcontract any part of the Services without Corporation's prior written consent. Consultant shall remain liable for the acts of any such approved staff, subcontractor, assignee, or delegate as if performed by Consultant directly for Corporation hereunder.

6. Nondisclosure. At no time, unless required or protected by law, or authorized by Corporation to Consultant in writing, will Consultant divulge or cause to be divulged to any third party other than an employee of Consultant, or, separately, an agent, subcontractor, assignee, or delegate of Consultant approved by the Corporation, if any, the nature, Purpose, or results of the Consultant's work for Corporation pursuant to this Agreement, including without limit disclosure to Corporation's customers, suppliers, business partners, or competitors. If Consultant shall be placed under a legal obligation to disclose any Confidential Information, Consultant shall, if allowed by law, give the Corporation prompt written notice thereof and permit the Corporation to seek a protective order and/or waive the duty of confidentiality, at the Corporation's sole expense.

7. Intellectual Property.

(a) Ownership. Consultant hereby covenants and agrees that all work product arising from or directly related to the performance of Services under this Agreement, including but not limited to improvements, inventions, modifications, ideas, discoveries, developments, processes, procedures, designs, trade secrets, know-how, technical and engineering reports and designs, business and strategic plans, pictorial works, graphical works, graphical designs, drawings, hardware designs, specifications, draft and final work products, proposed designs and study protocols, flowcharts, test and research data, and/or computer programs and algorithms, and the like (hereafter the "Works"), whether patentable, copyrightable, capable of trademark, or not, that Consultant shall conceive or first actually reduce to practice, alone or in conjunction with others, pursuant to the performance of Services hereunder OR from the use of Corporation materials or facilities shall be the sole and exclusive property of the Corporation. Corporation shall own all right, title, and interest in the Works, including but not limited to all proprietary, patent, copyright, trademark, know-how, and trade secret rights therein.

(b) Registration and Payments. Furthermore, at the request of Corporation at any time, Consultant, at Corporation's sole expense, shall execute and deliver applications for patents, trademarks, and registrations for copyright, and any other intellectual property rights, for the Works in the United States and any foreign country, together with assignments by Consultant to Corporation of Consultant's entire interest therein.

(c) Assistance. Consultant shall also provide Corporation such reasonable assistance as requested by Corporation at Corporation's sole expense in securing, enforcing, maintaining, and protecting said applications, registrations, and copyrights, trademarks, patents, know-how, trade secrets, and other intellectual property rights. When such Services are requested and rendered during the Term of this Agreement, they shall be covered and compensated by Corporation as part of the Consulting Fees. Should such Services be required after termination of the Agreement, Consultant shall be paid by Corporation at a reasonable hourly rate agreed to between the parties for the assistance needed, but at an amount no lower than the Consulting Fee provided herein.

(d) No Conflicts. Consultant hereby represents, warrants, and covenants that Consultant has the full right, title, and authority to assign and or otherwise transfer any and all intellectual property rights in the Works to Corporation and that such assignment is not subject to the rights of any third party.

8. Confidentiality.

(a) Defined. During the course of this Agreement on and following the Effective Date, Consultant will acquire and/or develop confidential and proprietary information of or about the Corporation, including but not limited to improvements, inventions, data, modifications, ideas, discoveries, developments, processes, procedures, designs, trade secrets, know-how, technical and engineering reports and information, and designs, scientific, medical, marketing, IT, manufacturing and other CMC, commercial, business development, financial, accounting, tax, budget, capital requirements and expenses, vendor lists, legal, compliance, human resource-related, clinical and pre-clinical, business, and strategic information and plans, pictorial works, graphical works and designs, drawings, specifications, draft and final work products, proposed strategies, plans, and designs, flowcharts, organization charts, and/or computer programs and algorithms, test, research and other data, regarding the operation, products, technologies, business and employees and partners, agents and representatives of the Corporation and the like, as well as information a reasonable person would consider to be proprietary and confidential (hereafter the "Confidential Information"). Consultant shall treat and hold in trust and confidence all such Confidential Information during and after Consultant's acquisition and retention of such Confidential Information. At no time will Consultant divulge Confidential Information to a third party for any purpose other than for the benefit of the Corporation and with the Corporation's prior written consent. Consultant will protect the confidentiality of Confidential Information using at least the same level of effort as Consultant uses to protect his own confidential or proprietary information, but in no event may Consultant use less than commercially reasonable efforts. Further, Consultant shall not authorize or encourage persons who are under Consultant's direction or supervision to divulge such Confidential Information and shall be responsible for any breach of confidentiality hereunder by Consultant's employees, agents, and subcontractors.

(b) Exclusions. The restrictions on the use and disclosure of Confidential Information shall not apply to the specific portion of Confidential Information that Consultant can demonstrate: (i) is or becomes generally known or publicly available through no fault of Consultant; (ii) is already known by Consultant at the time of receiving such information, other than under an obligation of non-use or nondisclosure by Consultant to Corporation or any third party; (iii) is furnished to Consultant, without restriction on disclosure, by a third party who has a lawful right to disclose such information; or (iv) is independently developed by Consultant without reference to, or use of, any of Corporation's Confidential Information.

(c) Other than as may be previously authorized in writing to Consultant by Corporation, Consultant may disclose specific Confidential Information solely to the extent that such disclosure is required by court order or valid legal process; provided, however, that Consultant: (i) gives prompt written notice to Corporation of the disclosure requirement in order to allow Corporation to obtain any available limitation on or exemption from such disclosure requirement, and (ii) reasonably assist in such efforts by Corporation at Corporation's sole cost.

(d) Consultant will not disclose any confidential or proprietary information of third parties to Corporation or to Corporation's employees, agents and/or representatives

unless Consultant has the valid, binding legal right to disclose such information to Corporation or Corporation's employees, agents and/or representatives.

(e) This Section 8 shall survive termination of this Agreement for any reason for a period of fifteen (15) years thereafter.

9. Title To Work Product. Corporation shall retain sole and exclusive right, title, and interest in and to all written and verbal work product, including the Works, created by or for Consultant for Corporation hereunder. Consultant may not otherwise use or disclose same to third parties without Corporation's prior written approval.

10. Return of Materials. Upon termination of Consultant's engagement with Corporation under this Agreement, Consultant promptly will return all Confidential Information or, at the Corporation's sole discretion, destroy all information, records, and materials developed by or for Consultant in the performance of this Agreement; provided, however, Consultant shall have the right to retain one (1) record copy of such tangible information in its legal files, for use only in complying with Consultant's continuing obligations to the Corporation hereunder, and that any such Confidential Information shall remain subject to the terms of this Agreement. It is anticipated that Consultant, during the normal course of providing Services to Corporation, will produce and receive electronic files, e-mails, data, and other types of information, including but not limited to Confidential Information, normally stored in computer memory whether the memory is static, dynamic, in fixed or removable storage media, on-line, off-line, remote, or local. Consultant agrees that within ten (10) business days following the effective date of termination of this Agreement, Consultant will completely erase, destroy, and remove all electronic files, data, e-mails, e-mail records, voice mail, voice mail records, and any other information stored in computer memory if that information is directly related to Services performed for Corporation on and after the Effective Date pursuant to this Agreement, or would be Confidential Information of the Corporation subject to obligations under the Agreement, and further provided that no court order prohibiting destruction, erasure, or removal of same has been served upon Consultant, unless otherwise stipulated between the parties. If requested in writing by Corporation, and provided said request occurs within one (1) year of the effective date of termination of Services by Consultant, Consultant agrees to execute an affidavit to Corporation affirming Consultant's compliance with the obligations required by this Section 10.

11. Maintenance Of Records. Consultant agrees to keep and maintain adequate and current written records of all inventions and other Works made by Consultant related to the Services provided hereunder which records shall be available to and remain the sole and exclusive property of Corporation.

12. Prior Inventions. It is understood that all inventions, if any, patented or unpatented, that Consultant made prior to engagement by Corporation hereunder are excluded from the scope of this Agreement. Consultant represents and warrants that it has no such prior inventions, unless attached and listed as an Appendix to this Agreement. Consultant agrees to notify Corporation in writing before making any disclosure or performing any Services on behalf of Corporation that appears to threaten or conflict with proprietary rights Consultant claims in any invention or idea covered by this Section 12. In the event Consultant fails to give such notice, Consultant agrees to make no claim against Corporation with respect to any such inventions or ideas.

13. Representations and Warranties. Consultant hereby represents, warrants, and covenants that: (a) Consultant will perform, and is responsible for conducting, the Services in compliance with all applicable laws, rules, and regulations, and Corporation policies

and guidelines provided in advance by Corporation to Consultant; (b) all Works will be an original work of Consultant and any third parties that may have any rights to such Works will have executed assignment of those rights to Corporation that are reasonably acceptable to Corporation; (c) the performance of the Services by Consultant will not infringe the intellectual property rights of any third party to Consultant's knowledge; (d) Consultant has full right and power to enter into and perform this Agreement without the consent, registration, approval, or granting of a license or permit by or of any third party; (e) each manager, owner, employee, agent, representative, and subcontractor of Consultant, if any, who will receive or have proper access to Confidential Information and/or perform Services hereunder will agree in writing to assign any and all rights, title, and interest in and to all Works to Consultant so that Consultant may assign the same to Corporation and to protect the Confidential Information in accordance with this Agreement, and (f) Consultant has obtained, and will maintain, during the Term of the Agreement all permits, licenses, approvals, and registrations necessary for it or its authorized employees, agents and/or subcontractors to perform the Services.

14. Trade Secrets of Others/Other Obligations. Consultant represents, warrants, and covenants that its performance of Services under this Agreement does not and will not breach any agreement to protect the confidentiality of proprietary information acquired by Consultant in confidence prior to Consultant's engagement with Corporation. Consultant will not disclose to Corporation or induce Corporation to use any such proprietary information or material belonging to any previous employer or others. Consultant agrees not to enter into any oral or written agreement in conflict with this Agreement. Consultant acknowledges that Corporation from time to time may have agreements with other persons or with the United States government or agencies thereof that impose obligations or restrictions on Corporation regarding inventions made during the course of Services or regarding the confidential nature of such Services. Consultant agrees to be bound by all such obligations and restrictions and to take all action necessary to discharge the obligations of Corporation, at Corporation's sole expense.

15. Conflicts. This Agreement is non-exclusive in nature and during the Term of this Agreement, and to the extent not limited by any other agreement existing between Consultant, or Dave McAvoy, and the Corporation, including but not limited to that certain Non-Competition Agreement dated February 21, 2023 between Dave McAvoy and Corporation, Consultant may engage in consulting and other activities for any third party; provided, however, that unless Corporation consents in writing thereto, no works performed by Consultant for any third party shall conflict with Consultant's obligations as set forth in this Agreement, specifically including but not limited to provisions of performance or confidentiality. Section 15 as well as the underlying Agreement is not intended in any way to modify, cancel, or supersede any non-competition agreement or obligations that Consultant, or Dave McAvoy, may have with Corporation pursuant to any other agreement in existence and applicable to them.

16. Work Made for Hire.

(a) Proprietary Right. Consultant acknowledges that the "Works" specified or created hereunder have been specifically ordered and commissioned by and are being created under the direction and control of Corporation. Consultant hereby acknowledges and agrees that the Works shall be works made for hire by an independent contractor as defined in the United States Copyright Laws (17 U.S.C. Sections 101 et seq.). Pursuant to this Agreement, the Works are the sole and exclusive property of Corporation free and clear from all claims and rights, or encumbrances, of any nature relating to the Consultant's contributions and efforts, including but not limited to the right to copyright

the Works in the name of Consultant as author and proprietor thereof and any termination rights applicable thereto.

(b) Publishing. Consultant shall not be permitted to publish articles or otherwise disseminate information that utilizes knowledge obtained directly from or is otherwise directly related to Services performed under this Agreement without prior written consent from the Corporation.

(c) Assignment. Consultant agrees that, in the event these Works are determined by a Court of competent jurisdiction not to be works made for hire under the Federal Copyright Laws, this Agreement shall operate as an irrevocable assignment by Consultant to Corporation of the copyrights in the Works, including all rights in perpetuity, and including the right to display the Works and prepare derivative works. Under this irrevocable assignment, Consultant hereby assigns to Corporation the sole and exclusive rights, title, and interest in and to the Works without consideration beyond payment by Corporation for the Services rendered by Consultant hereunder.

17. Indemnification and Insurance. Consultant shall defend, indemnify, and hold harmless Corporation and Corporation's respective employees, officers, directors, agents, and representatives, for any and all loss or damage and from or against any third-party claims for injury, death, loss, or damage of any kind or character, directly resulting from Consultant's gross negligence or Consultant's material breach of this Agreement, by whomsoever asserted; provided, however, Consultant will not be liable for any loss or damage or against and from any claim arising out of Corporation's material breach of this Agreement or the grossly negligent acts of Corporation or Corporation's respective employees, officers, directors, agents, representatives, contractors, or subcontractors, if any.

Corporation shall defend, indemnify, and hold harmless Consultant for any and all loss or damage and from or against and from any third-party claims for injury, death, loss, or damage of any kind or character, directly resulting from Corporation's gross negligence or the Corporation's material breach of this Agreement, by whomever asserted; provided, however, Corporation will not be liable for any loss or damage or against and from any claim arising out of Consultant's material breach of this Agreement or the grossly negligent acts of Consultant or Consultant's respective employees, officers, directors, agents, representatives, contractors, or subcontractors, if any.

The indemnified party shall (i) give the indemnifying party prompt written notice of any claim, suit, or action brought against the indemnified party, (ii) allow the indemnifying party to defend the same (without prejudice to the right of the indemnified party to participate at its expense through counsel of its own choosing), (iii) render the indemnifying party all assistance reasonably necessary in defending against such claim, suit, or action at the indemnifying party's expense, and (iv) refrain from compromising or settling such claim or action without the indemnifying party's prior written consent, where such consent shall not be unreasonably withheld or delayed.

Each party shall procure and maintain insurance (or other means) adequate to cover its indemnity obligations hereunder.

18. Notices. Any notice, instruction, or communication required or permitted to be given under this Agreement to any party shall be in writing and given by personal delivery or sent by certified mail, return receipt requested, or internationally recognized air courier,

postage or fees paid, or documented email. Any such notice, instruction, or communication shall be deemed given when actually received by the other party.

If Notices given to Corporation:

Name: Albert N. Marchio  
Title: CEO  
Address: Fresh Tracks Therapeutics, Inc., c/o Founder Central, 2000 Central Ave., 100, Boulder, CO 80301  
E-mail: [amarchio@ftrx.com](mailto:amarchio@ftrx.com)

With copy to:

Name: Aaron Fox-Collis  
Title: VP Finance and Chief Accounting Officer  
Address: Fresh Tracks Therapeutics, Inc., c/o Founder Central, 2000 Central Ave., 100, Boulder, CO 80301  
E-mail: [afoxcollis@ftrx.com](mailto:afoxcollis@ftrx.com)

If Notices given to Consultant:

Name: McAvoy Law LLC  
Title: Consultant  
Address: [\*\*\*]  
E-mail: [\*\*\*]

Should an address need to be modified by a party, that party will notify the other party promptly in writing and until such adequate notice is made under Section 18 the currently effective address will control.

19. Governing Law. This Agreement shall be governed by the laws of the State of Delaware, without regard to conflicts of law provisions.

20. Prior Employment/Entire Agreement. Dave McAvoy was an employee of Corporation and was a party to a certain Employment Agreement dated February 21, 2023 (the "Employment Agreement"), and is a party to the Separation and Release Agreement with the Corporation dated October 18, 2023 (the "Separation and Release Agreement"), the Non-Competition Agreement, a certain Employee Confidentiality and Inventions Assignment Agreement dated July 7, 2021 (the "CIAA"), and a certain Indemnification Agreement dated May 25, 2020 (the "Indemnification Agreement"). This Agreement does not supersede, cancel, replace, modify, or otherwise amend the Separation and Release Agreement, the CIAA (including, without limit, Sections 1, 2, 4 or 7 thereof), the Non-Competition Agreement, and/or the Indemnification Agreement. Furthermore, the Employment Agreement has been terminated (except for provisions that survive) and such termination is made and documented in the Separation and Release Agreement. This Agreement states the entire agreement between the parties with respect to the subject matter hereof and all prior and contemporaneous understandings, representations, and agreements are merged herein and superseded hereby. No alteration, modification, release, or waiver of this Agreement or any of its provisions shall be effective unless agreed to in writing and executed by both parties. Neither party has relied upon any oral representation of the other party in entering into this Agreement. Neither this Agreement nor prior dealings between the parties represent a commitment by Corporation to engage Consultant for a certain number of hours or for a specific number of tasks, except as expressly otherwise provided herein.

21. Dispute Resolution. Except for actions involving injunctive relief, if a dispute arises out of or relates to this Agreement, or the breach thereof, the parties agree to submit the dispute to arbitration under the rules of the American Arbitration Association. Venue for any dispute resolution proceeding shall be in the State of Delaware, City of Wilmington. The decision by the arbitrators shall be final, binding, and conclusive on the parties, except that either party may petition for equitable or other relief to enforce any arbitral award. The party prevailing in arbitration shall be awarded its reasonable attorney fees and costs of arbitration from the losing party.

22. Equitable Relief. Consultant agrees that it would be difficult to measure the damage to Corporation from any breach by Consultant of any of the provisions of Sections 6-16 of the Agreement, that injury to Corporation from such breach by Consultant would be impossible to calculate, and that money damages may therefore be an inadequate remedy for such breach. Accordingly, Consultant agrees that if Consultant breaches any of Sections 6-16, Corporation may be entitled, in addition to all other remedies it may have, to injunctions or other appropriate orders to restrain any such breach without showing or proving any actual damage by Corporation. With regard to claims involving injunctive relief by either party, and notwithstanding Section 21 above, any action to interpret or enforce this Agreement shall occur in a court of competent jurisdiction in Wilmington, Delaware.

23. Force Majeure. Neither party will be held liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for failure or delay in fulfilling or performing any term of this Agreement when such failure or delay is caused by or results from causes beyond the reasonable control of the affected party, including but not limited to fire, floods, wind, earthquakes, severe weather, natural disasters, explosion, embargoes or blockades, war or invasion, acts of war or invasion (whether war be declared or not), insurrections, riots, terrorism, civil commotions, strikes or slowdowns (other than on the part of employees of the affected party), lockouts (other than on the part of the affected party), or other labor or industrial disturbances (other than involving the

employees of the affected party), acts of God, or acts or omissions, orders, or laws, or delays in acting, by any governmental authority, unlawful acts not caused by the affected party, telecommunication breakdowns, power outages or shortages, lack of warehouse or storage space, inadequate transportation services, inability or delay in obtaining supplies of adequate or suitable materials, national, regional, or local emergencies, or epidemic or pandemic. Excluded, however, from the scope of force majeure under this Section 23 are: a party's change in economic circumstances (including but not limited to performance becomes more expensive than anticipated), contractor and/or subcontractor defaults, and/or banking system failure. A party claiming relief under this Section shall give the other party written notice claiming relief by this Section within five (5) business days of the occurrence of the event giving rise to the force majeure and the relief under this Section shall continue only during the pendency of the force majeure event.

24. Severability. If any provision of this Agreement is held to be invalid, unenforceable, or illegal by a court of competent jurisdiction, or an arbitrator, such ruling will not affect or impair the validity, enforceability, or legality of any remaining portions of this Agreement, and, in such event, such provision will be changed and interpreted so as to best accomplish the objectives of such unenforceable or invalid provision within the limits of applicable law. All remaining portions of the Agreement will remain in full force and effect as if the original Agreement had been executed without the invalidated, unenforceable, or illegal part.

25. Waiver, Amendments. No waiver by the parties of any breach of this Agreement shall be a waiver of any preceding or succeeding breach. No waiver by the parties of any right under this Agreement shall be construed as a waiver of any other right. A party shall not be required to give notice to the other party to enforce strict adherence to all terms of this Agreement. The parties may only amend or modify this Agreement by a separate document duly signed by each party and no provision may be waived by a party unless such waiver is in a separate signed writing.

26. No Assignment. This Agreement may not be assigned by Consultant without Corporation's prior written consent. This Agreement may not be assigned by Corporation without Consultant's prior consent, except that no such consent shall be required for Corporation to assign its rights or transfer its obligations to its Affiliates or subsidiaries, or in connection with the sale, transfer, or assignment of the majority of its stock, or all or substantially all of its assets to which this Agreement relates, whether as part of a merger, reverse merger, acquisition, business combination, joint venture, or asset sale. Any assignment in violation of this Agreement will be null and void. This Agreement benefits and binds the parties and their respective successors and permitted assigns. For purposes of this Agreement, an entity shall be deemed to be an "Affiliate" of a party if it is a company, corporation, or other business entity, that is controlling, controlled by, or under common control with such party. For the purposes of such definition, "control" shall mean the direct or indirect ownership of more than fifty percent (50%) of the equity interest or voting securities in such corporation or business entity, or the ability in fact to control the management decisions of such corporation or business entity.

27. Counterparts. This Agreement may be executed in any number of counterparts, including by .pdf signatures, which shall be deemed as original signatures. All executed counterparts shall constitute one Agreement, notwithstanding that all signatories are not signatories to the original or the same counterpart.



**APPENDIX A**

**TRAVEL, MEALS, AND ENTERTAINMENT POLICY OF CORPORATION**

Deepak Chadha

[\*\*\*]  
[\*\*\*]

August 16, 2023

**Re: Separation and Release Agreement**

Dear Deepak:

This letter sets forth the substance of the Separation and Release Agreement (the “**Agreement**”) that Fresh Tracks Therapeutics, Inc., f/k/a Brickell Biotech, Inc., the parent of Brickell Sub (“**Brickell Parent**”) and Brickell Subsidiary, Inc., d/b/a Brickell Biotech, Inc. (“**Brickell Sub**”), both being Delaware companies with a principal business address located at 2000 Central Avenue, Suite 100, Boulder, Colorado 80301 (Brickell Sub and, together with Brickell Parent and any predecessors of Brickell Sub or Brickell Parent, collectively referred to herein as the “**Company**”) is offering to aid you in your employment transition as a result of the Company’s decision to downsize its business operations. Except as expressly referenced herein, this Agreement supersedes and replaces all prior understandings and agreements, whether oral or written, regarding the terms and conditions of your employment with the Company, including but not limited to that certain Employment Agreement between you and the Company dated February 21, 2023 and attached hereto as Exhibit A “**Employment Agreement**” and the Retention Bonus Agreement referenced in Section 3 below. Together, you and the Company may be referred to collectively as the “**Parties**” and the term “**Party**” may refer either to you or Company individually as the circumstances dictate.

Now therefore, for good and valuable consideration, receipt of which is hereby agreed and acknowledged, and fully intending to be legally bound hereby, the Parties to this Agreement agree as follows:

1. **Separation Date.** Your last day of Company employment will be September 1, 2023 (the “**Separation Date**”). You are being terminated by the Company without Cause as defined by, and incorporated by reference herein, Sec. 5.4 of your Employment Agreement. No Change of Control event is involved with this termination, as defined in the foregoing.

Company Initials /s/ DRM

Your Initials /s/ DC

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2. **Accrued Salary and PTO.** On the Separation Date, the Company will pay to you as a lump sum all accrued but unpaid base salary earned through the Separation Date, subject to standard payroll deductions and withholdings.

Further, on the Separation Date, the Company will pay you for your unpaid time-off vacation days that have accrued from the start of your employment through the date the Company adopted its current "Flexible Time-Off" policy (your "PTO Balance") as set forth in the PTO Balance Acknowledgement Form attached and fully incorporated by reference for the purposes hereto as Exhibit E, and as further required by Section 4.3(b) in the Employment Agreement, also as a lump sum payment, and subject to standard payroll deductions and withholdings. You understand and agree that other than this PTO Balance the Company owes you no other compensation for vacation or other paid time off during your employment period.

You are entitled to the payments covered by this Section 2 regardless of whether or not you sign this Agreement.

3. **Retention Bonus.** Pursuant to that certain agreement between you and the Company dated February 22, 2023 to provide conditional retention bonuses (the "Retention Bonus Agreement"), you are eligible for payment of Fifty Percent (50%) of the Retention Bonus as defined in the Retention Bonus Agreement, or \$41,500.00, if you timely sign, date, return, and do not revoke this Agreement. On the next regularly scheduled Company payroll date following the Effective Date of this Agreement, the Company will pay to you this Retention Bonus amount, subject to standard payroll deductions and withholdings.

4. **Severance Benefits.** Pursuant to the terms of your Employment Agreement including but not limited to Section 5.4 Termination Without Cause of your Employment Agreement, if you timely sign, date, return, and do not revoke this Agreement, the Company will pay you, as severance, an amount equal to twelve (12) months of your base salary in effect as of the Separation Date, equal to \$414,996.00 U.S. Dollars, subject to standard payroll deductions and withholdings ("**Severance Payment**"). An amount equal to four (4) months of your aforereferenced base salary will be paid in a lump sum to you on the Company's first regularly scheduled payroll date following the Effective Date of this Agreement. The remainder of the Severance Payment (i.e., eight (8) months of said base salary) will be paid out to you as a lump sum on the Company's first regularly scheduled payroll date of January 2024.

Company Initials /s/ DRM

Your Initials /s/ DC

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Section 19 of the Employment Agreement on Section 409A-Nonqualified Deferred Compensation shall apply to the Severance Payment and other benefits provided for in this Agreement.

5. **Health Insurance.** If you have health coverage through the Company, your group health insurance will cease on the last day of the month in which your employment ends. At that time, you will be eligible to continue your group health insurance benefits at your own expense, subject to the terms and conditions of the Company's benefit plan, pursuant to the Colorado group health insurance continuation law. You will receive additional information regarding your right to elect continued coverage under the Colorado group health insurance continuation law in a separate communication from the Company's Human Resources department. If you timely execute, return, and do not revoke this Agreement, and timely elect health insurance continuation coverage, the Company will pay for twelve (12) months of health care premiums equal to your current coverage for (a) medical, (b) dental, and (c) vision benefits by the Company for you and your eligible family and make such payments directly on your behalf to the Company's providers then in effect. In the event that the Company can no longer provide group health insurance for any applicable provider for the full twelve (12) months described above, the Company will make a lump sum payment to you for the total amount of the remaining third-party health care premiums that would have been owed by it pursuant to this Section 5, grossed up by a Thirty-Five Percent (35%) factor to help you minimize the impact of any applicable taxes that would apply to this as income to you, payable on the Company's first regularly scheduled payroll date following the date the Company is no longer able to pay the applicable provider on your behalf.

6. **Company Equity.** Pursuant to Section 3.2(b) of the Employment Agreement, there shall be a full acceleration of vesting on any unvested Equity Awards as defined therein as of the Separation Date and an exercise period of three (3) years from that accelerated vesting date will apply, notwithstanding anything else to the contrary. In all other respects, the rights and obligations to your Equity Awards will be as set forth in your applicable grant notice(s), the applicable stock option and/or other equity agreement, and the Company plan(s) governing these grants. The Company offers no advice on the tax treatment of your vested equity interests in the Company.

7. **Indemnification.** You and the Company acknowledge and agree that both of you will remain subject to the Indemnification Agreement executed by yourselves dated May 24, 2020 (attached and fully incorporated by reference for

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the purposes hereto as Exhibit D), and as further provided in Section 18 of the Employment Agreement.

8. **Other Compensation or Benefits.** You acknowledge that, except as expressly provided in this Agreement, the Employment Agreement, and the Retention Bonus Agreement, you have not earned, and will not receive, any additional pay or salary, incentive, or other compensation, severance, equity interests, or restricted stock, restricted stock units, or options or equity interests of any kind, or other property, insurance, or any other benefits, after the Separation Date, with the exception of any vested right(s) you may have under the express terms of a written ERISA-qualified benefit plan (e.g., 401(k) account) with the Company. You are entitled to payment for any such vested right(s) regardless of whether or not you sign this Agreement.

In particular, but without limitation, and qualified by all of the foregoing, you agree that based on your employment by the Company you are not owed any bonus for 2023 and beyond, incentive, or other compensation or benefits, or property, of any kind, or commissions, other than the Severance Payment, Retention Bonus, and Company-issued laptop, as provided herein and applicable to the Employment Agreement and the Retention Bonus Agreement. You understand, and agree, that you are solely and fully responsible for any and all tax liabilities or related obligations involving any payment amounts or property transfers you receive from the Company pursuant to this Agreement, except as may otherwise be provided expressly herein.

9. **Reference Requests.**

All inquiries regarding your employment with the Company from any third party, including but not limited to recruitment by any prospective employer or board of directors, non-profit organization, or relevant other recruitment initiative you may be involved in now or in the future, shall be directed to our Finance Department in general, who will provide the actual dates of your complete employment and your title(s) with the Company.

The Company will respond timely, fully, and truthfully to any requests for information from state unemployment compensation authorities relating to any claim for unemployment compensation benefits that you may file by stating that you were terminated as a result of lack of available work due to a Company downsizing, and not for cause, including scope of Cause as defined in your

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underlying Employment Agreement. Otherwise, the Company will not contest any finding made by state unemployment compensation authorities with respect to your eligibility for unemployment compensation benefits that may be applicable to your Company separation. The Company will not appeal any corresponding decision by the state unemployment compensation authorities finding you eligible for unemployment compensation benefits. You acknowledge that the consideration provided herein may affect the amount of unemployment compensation that you may receive and that the Company may confirm or report the payments made to you pursuant to this Agreement and your Employment Agreement, and any other information required by applicable law, to the state unemployment compensation system.

10. **Expense Reimbursements.** You agree that by the Separation Date, you will have submitted your final documented expense reimbursement statement reflecting all Company business expenses you incurred as an employee through the Separation Date, if any, for which you seek reimbursement. The Company will reimburse you for such authorized business expenses pursuant to its regular business policy and practice as provided in the Company's Travel, Meals, and Entertainment Policy (eff. 03.30.21). You are entitled to be reimbursed for all qualifying expenses regardless of whether or not you sign this Agreement.

11. **Return of Company Property.** Except for the Company-issued laptop described below in this Section, within ten (10) business days of the Separation Date, you agree to return to the Company all Company documents (and all copies thereof, in whole or in part) and other Company property which you have in your possession or control, including but not limited to Company files, slide decks and presentations, memoranda, drafts, notes, drawings, records, plans, forecasts, reports, studies, data, samples, clinical trials and protocols, analyses, proposals, agreements, research and development information, sales and marketing information, personnel information, budget and financial information, legal, medical, and compliance information, audits, investigations, contracts (other than ones applicable to you), computer-recorded information, information related to intellectual property, trade secrets and know-how, tangible property, and equipment (including but not limited to computers, copiers, printers, facsimile machines, cell telephones, servers), Company-authorized credit cards, identification badges and keys, and any materials of any kind which contain, reference, or embody any proprietary or confidential information of the Company (and all reproductions thereof in whole or in part). You agree that you will make a

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diligent search to locate any such documents, property, and information covered by this Section 11 within the timeframe referenced above. If you have used any personally owned computer, server, or e-mail system to receive, store, review, author, prepare, edit, generate, and/or transmit any Company confidential or proprietary data, materials, or information, you agree to permanently delete and expunge such Company confidential or proprietary information from those systems promptly after the Separation Date.

If compliant with this Section, you will be entitled to keep at no cost to you your Company-issued laptop, known by MacBook Pro model, Serial # FVFG73VE0KPF, and all associated related computer equipment of the Company you use to support your use of the laptop, transferred by the Company "as is" with no representations or warranties of any kind whatsoever. As part of an additional severance hereunder, the Company hereby transfers and assigns to you all of the Company's rights, title, and interest in your Company-issued laptop to be applicable as of the Effective Date of this Agreement. However, you are not entitled to the transfer of the Company-issued laptop hereunder unless you timely sign, date, and return and do not revoke this Agreement.

12. **Confidential Information And Other Obligations.** You acknowledge and reaffirm your continuing obligations under your Employee Confidentiality and Inventions Assignment Agreement, a copy of which is attached and fully incorporated by reference for the purposes hereto as Exhibit B ("**Confidentiality Agreement**"). In addition, you understand and agree that Section 6 of the Employment Agreement providing for restrictive covenants, including specifically but not limited to Section 6.1 (Non-Competition), Section 6.2 (Nondisclosure and Confidentiality Protections), and Section 6.3 (Non-solicitation of Executives and Clients/Customers), of the Employment Agreement survives the termination of your employment and remains in full force and effect, as does the separately executed Non-Competition Agreement signed between you and the Company, attached and fully incorporated by reference as Exhibit C. The Parties further understand and agree that the Confidentiality Agreement superseded and replaced in its entirety the Company Protection Agreement that was attached to and part of your Employment Agreement as Exhibit A to that Employment Agreement.

13. **Mutual Nondisclosure.** Except as may be otherwise expressly provided herein, the provisions of this Agreement will be held in strictest confidence by both you and the Company and will not be publicized or disclosed in any manner

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whatsoever; provided, however, that: (a) you may disclose this Agreement to your immediate family or any medical or mental health provider, or mental or behavioral health therapeutic support group; (b) you and the Company may disclose this Agreement in confidence to their attorneys, accountants, auditors, tax preparers, financial advisors; (c) you and the Company may disclose this Agreement to the extent such disclosure may be required by law; (d) you and the Company may disclose this Agreement to any local, state, or federal agency for any reason; and (e) you and the Company may disclose the general existence and purpose of this Agreement without any of its specific terms as that fact will be publicly disclosed by the Company in its SEC filings as well as disclose any other terms that are part of these filings or otherwise put in the public domain without breach by you of the nondisclosure obligations of this Section 13. In particular, and to the extent allowed by law, you agree not to disclose the terms of this Agreement to, or with, any current or former Company or Company-related employee, director, consultant or independent contractor, or Company advisors or representatives, except as required for Company business, or as already publicly disclosed through no fault by you, or as otherwise authorized by the Company. This Agreement does not limit your right to discuss your employment or any unlawful acts that may be alleged to have been committed by the Company or any of its affiliates (defined as entities under common ownership or control with Company) and subsidiaries, or any of their respective officers, directors, employees, shareholders, contractors, clients, customers, business partners, or agents and representatives in the Company's workplace, including but not limited to sexual harassment, or to report possible violations of law or regulation by the Company or its affiliates and subsidiaries, or any of their respective officers, directors, employees, shareholders, contractors, clients, customers, business partners, or agents and representatives with any Government Agency (as defined in Section 20 below), or to discuss the terms and conditions of your employment with others, but only to the extent expressly permitted or protected by (a) Section 7 of the federal National Labor Relations Act of 1935, as amended (the "**NLRA**"), or under (b) applicable provisions of law or regulation, including but not limited to "whistleblower" statutes or other similar provisions that protect such disclosure, and, further, to the extent any such rights are not permitted by applicable law to be the subject of nondisclosure or confidentiality obligations.

14. **Mutual Non-Disparagement.** You will not make, sponsor, assist, promote, solicit, or participate in the making of, or encourage any other person or entity to make, any public statements, written or oral, in whatever format,

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including but not limited to electronic or other communications such as Internet message boards or social media or the like, which are intended to criticize, disparage, libel, slander, or defame the goodwill or reputation of, or which are intended to embarrass, the Company, or any of its affiliates and subsidiaries, or any of their respective officers, directors, employees, shareholders, contractors, clients, customers, business partners, or agents and representatives. Notwithstanding the foregoing, you will not be prohibited from accurately and fully responding to any question, inquiry, order, subpoena, or request for information when required by legal process or applicable law, or which is requested by the Company. Further, it shall not be considered disparagement and nothing in this Agreement prevents you from discussing or disclosing information about discriminatory or unfair employment practices that may be alleged to occur in the Company workplace, such as harassment or discrimination or any other conduct that you have reason to believe is unlawful. The Company agrees, and shall direct its respective executive officers and directors, to refrain from making or publishing any statement that is malicious, critical, disparaging, defamatory, libelous, and/or slanderous about any aspect of your employment with the Company or would reasonably be expected to damage your business or reputation. In addition, in the event that the Company disparages you to a third party, the Company may not seek to enforce these Section 14 non-disparagement provisions, or the nondisclosure provisions of Section 13 of the Agreement, against you for violating either of these provisions but all other remaining terms of the Agreement shall remain enforceable.

15. **No Admissions.** You understand and agree that the promises and payments in consideration of this Agreement shall not be construed to be an admission of any liability or obligation by the Company or its officers, directors, employees, shareholders, contractors, clients, customers, business partners, or agents and representatives to you or to any other person or entity, and that the Company makes no such admission.

16. **Release of Claims.**

(a) In exchange for the payments and other consideration under this Agreement to which you would not otherwise be entitled, you hereby unconditionally, fully, irrevocably, and absolutely release, waive, acquit, and forever discharge the Company and its affiliates, subsidiaries, and its and their respective present and former

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owners, agents, representatives, employees, officers, directors, shareholders, partners, accountants, and attorneys, and, for each of the foregoing, their respective heirs, predecessors, successors, and assigns (collectively, the “**Releasees**” or “**Released Parties**”), from and of any and all claims (including attorneys’ fees and costs), liabilities, demands, causes of action, promises, judgments, liens, indebtedness, losses, costs, expenses, damages, indemnities, and obligations of every kind and nature, and similar rights of any type of whatsoever kind and character in law, equity, or otherwise, known and unknown, suspected and unsuspected, disclosed and undisclosed, arising out of or in any way related to agreements, events, your employment by, or service for, the Company, acts, omissions, incidents, or conduct at any time prior to, through, and including the date you sign this Agreement. This general release includes, but is not limited to: (i) all claims arising out of or in any way related to your employment with, or service for, the Company or the termination and separation of that employment and/or service; (ii) all claims related to your compensation or benefits, or conveyances of property of any type, from the Company, including but not limited to salary, bonuses, commissions, vacation pay, sick pay, expense reimbursements, severance pay, lost wages, fringe benefits, stock, stock options, restricted stock or units, equity awards and interests of any type, your Company-issued laptop and any other property transfers, the Employment Agreement, the Retention Bonus Agreement, or any other ownership interests in, or obligations by, the Company; (iii) all claims for breach of contract, wrongful termination, and breach of the implied covenant of good faith and fair dealing; (iv) all tort claims, including but not limited to claims for fraud, libel, slander, defamation, emotional distress, and discharge in violation of public policy; (v) all federal, state, and local statutory claims, including but not limited to claims for discrimination, harassment, retaliation, attorneys’ fees, and/or other claims arising under the federal Civil Rights Act of 1964, as amended (the “**CRA**”), the federal Civil Rights Act of 1866, as amended (the “**CRA 1866**”), the federal Americans with Disabilities Act of 1990, as amended (the “**ADA**”), the federal Age Discrimination in Employment Act of

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1967, as amended (the “**ADEA**”), the federal Equal Pay Act of 1963, as amended (the “**EPA**”), the federal Lilly Ledbetter Fair Pay Act of 2009, as amended (the “**LLFPA**”), the federal Worker Adjustment and Retraining Notification Act of 1988, as amended (the “**WARN**”), the federal Older Workers Benefit Protection Act of 1990, as amended (the “**OWBPA**”), the federal Employee Retirement Income Security Act of 1974, as amended (the “**ERISA**”), the federal Securities Exchange Act of 1934, as amended (the “**Exchange Act**”), the federal Fair Labor Standards Act of 1938, as amended (the “**FLSA**”), the NLRA, the federal Emergency Paid Sick Leave Act of 2020, as amended (the “**EPSLA**”), the federal Inspector General Act of 1978, as amended (the “**IG Act**”), the federal Occupational Safety and Health Act of 1970, as amended (the “**OSH ACT**”), the federal Sarbanes-Oxley Act of 2002, as amended (the “**SOX**”), including as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, the federal Genetic Information Nondiscrimination Act of 2008, as amended (the “**GINA**”), the Colorado Anti-Discrimination Act, as amended (Colo. Rev. Stat §24-34-301 et seq.) (the “**CADA**”), the Colorado Whistleblower Law, as amended (Colo. Rev. Stat §24- 114-101 et seq.), the Colorado Healthy Families and Workplaces Act, as amended (Colo. Rev. Stat §8-13.3-401 et seq.) (the “**HFWA**”), the Colorado Equal Pay for Equal Work Act of 2019, as amended (Colo. Rev. Stat §8-5-101 et seq.) (the “**CEPEWA**”), the Massachusetts Fair Employment Practices Act, as amended (Mass. Gen. Laws ch. 151B, §1 et seq.), the Massachusetts Freedom From Sexual Harassment Act, as amended (Mass. Gen. Laws ch. 214, §1C), the Massachusetts Equal Pay Act, as amended (Mass. Gen. Laws ch. 149, §§105A–C) (the “**MEPA**”), the Massachusetts Age Discrimination Law, as amended (Mass. Gen. Laws ch. 149, §24A et seq.), the Massachusetts Paid Family and Medical Leave Law, as amended (Mass. Gen. Laws ch. 175M, §1 et seq.) (the “**PFML Law**”), the Massachusetts Parental Leave Act, as amended (Mass. Gen. Laws ch. 149, §105D), the Massachusetts Equal Rights Act, as amended (Mass. Gen. Laws ch. 93, §§102-103), the Massachusetts Privacy Act, as amended (Mass. Gen. Laws ch. 214, §1B), the Massachusetts Minimum Wage/Overtime Act, as amended (Mass.

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Gen. Laws ch 151, §1 et seq.), the Massachusetts Payment of Wages Statute, as amended (Mass. Gen. Laws ch 149, §§148-150);

(vi) all claims under any other federal, state, or local statute or common law; and (vii) any claim which was or could have been raised by you.

(b) Where allowed by law, and subject to Section 20 exceptions below, you agree to waive and release your right to monetary or other recovery or award should any claim be pursued by you or on your behalf with any Government Agency arising out of or related in any way to your employment with and/or separation and transition from the Company.

(c) You acknowledge that you may discover facts and/or law different from, or in addition to, the facts or law you know or believe to exist with respect to a released claim or a Released Party. You agree, nonetheless, that this Agreement and the releases contained in the Agreement shall be and remain effective in all respects notwithstanding such different or additional facts and/or law.

**17. For Employees Aged 40 and Over: ADEA Waiver and Release.** You

acknowledge that you knowingly and voluntarily are waiving and releasing any rights you may have under the ADEA. You further acknowledge and agree that you have been advised by this writing, as required by the ADEA, that: (a) your waiver and release do not apply to any rights or claims that may arise after the Effective Date of this Agreement; (b) you have been advised hereby that you have the right to consult with an attorney that represents you (at your cost) prior to executing this Agreement; (c) you have twenty-one (21) calendar days to consider this Agreement (although you may choose to voluntarily sign and execute the Agreement earlier); (d) you have seven (7) calendar days following the execution of this Agreement by the Parties to revoke the Agreement; and (e) this Agreement will not be effective until the date upon which the revocation period has expired, which will be the eighth (8<sup>th</sup>) calendar day after this Agreement is executed by you, provided that the Company has also executed this Agreement by that date. If you choose to timely revoke this Agreement, the Agreement will be null and void, rescinded, and the Agreement shall not be valid or enforceable. To revoke this Agreement, you must timely deliver a signed writing stating your intention to revoke sent via email to Sue Fattor, Head of Human Resources of the Company at

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Sfattor@frtx.com, by 11:59 p.m. MT the seventh (7th) calendar day after you sign this Agreement, with a copy in parallel to Amy Hartman, Company counsel, of Hartman Employment Law Practice LLC, at [amy@hartmanhrlaw.com](mailto:amy@hartmanhrlaw.com). This Agreement will not be effective until the eighth (8<sup>th</sup>) calendar day after this Agreement is executed by you, provided that the Company has also executed this Agreement by that date and you have not timely revoked the Agreement as provided above (the “**Effective Date**”).

18. **No Claims Pending.** You warrant and represent that you have no lawsuits, claims, or actions pending in your name or on behalf of any other person or entity against the Company, Released Parties, or any other person or entity subject to the released claims granted by you in this Agreement. You further agree that in the event you bring a claim or charge covered by your released claims made under this Agreement, or do not dismiss and withdraw promptly any claim or charge covered by these released claims, and are seeking damages against the Company, this Agreement shall serve as a complete defense to such claims or charges, including but not limited to the obligations set forth under Sections 4, 5, and 8 herein.

19. **Further Acknowledgments, Warranties, and Representations.** You acknowledge, warrant, and represent that:

- (i) the consideration given by the Company to you for your waiver and release of rights as provided herein is in addition to anything of value to which you were already entitled;
- (ii) you have not suffered any discrimination or harassment by the Company and/or any of the Released Parties on account of your race, gender, national origin, religion, marital or registered domestic partner status, sexual orientation, age, disability, medical condition, or any other characteristic protected by law;
- (iii) you have not been denied by the Company and/or Released Parties any leave, wages, bonuses, benefits, property, compensation, or any other rights to which you may have been entitled under any applicable law, and that you have not suffered any job-related wrongs or injuries for which you might still be entitled to compensation or relief;

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- (iv) you have not suffered any on-the-job injury for which you have not already filed a claim as of the Effective Date; and
- (v) except as expressly provided in this Agreement, you have been paid or given all leave and leave protections, wages, bonuses, benefits, property, compensation, and other amounts that the Company and/or any of the Released Parties have ever owed to you, or for which you were eligible to receive from the Company, and that you understand you will not receive any additional compensation, severance, property, or benefits, or the like, after the Separation Date, with the exception of any vested right(s) you may have with the Company, including but not limited to under the terms of a written ERISA-qualified benefit plan and your vested -- or will vest -- surviving equity interests from the Company.

20. **Exceptions and No Interference with Rights.** Nothing contained in this Agreement is intended to waive or release claims (a) for unemployment or workers' compensation benefits; (b) for vested rights under any ERISA-qualified benefit plans as applicable on the date you sign this Agreement, or other vested -- or will vest -- Company equity interests allowed hereunder and by the Company; (c) any rights or claims related to the enforcement of this Agreement; or (d) which cannot be released under applicable law by private agreement between an employer and employee. Further, nothing contained in this Agreement, the Confidentiality Agreement, or the surviving sections of the Employment Agreement shall prohibit either Party to this Agreement (or either Party's attorney(s)) from (a) filing a charge with, reporting possible violations of applicable law or regulation to, participating in any investigation by, or cooperating with the U.S. Equal Employment Opportunity Commission ("**EEOC**"), the National Labor Relations Board ("**NLRB**"), the Occupational Safety and Health Administration ("**OSHA**"), the U.S. Commodity Futures Trading Commission ("**CFTC**"), the U.S. Food and Drug Administration ("**FDA**"), Health Canada, the U.S. Department of Justice ("**DOJ**"), the U.S. Securities and Exchange Commission ("**SEC**"), the Financial Industry Regulatory Authority ("**FINRA**"), or any other securities regulatory agency, self-regulatory authority, or federal, state, local, or international regulatory authority (individually, "**Government Agency**" and collectively, "**Government Agencies**"), or making other disclosures that are protected under the whistleblower provisions of applicable law or regulations; (b) communicating directly with, cooperating with, or providing information in confidence to any Government Agency for the purpose of reporting

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or investigating a suspected violation of law, or from providing such information to attorney(s) for such Government Agencies, or in a sealed complaint, or other document filed in a lawsuit or other governmental proceeding; and/or (c) receiving a recovery or an award of any type for information provided to (i) the SEC under Section 17 of the Exchange Act and Exchange Act Rule 21F-17, as may be amended,

(ii) OSHA pursuant to its Memorandum for Regional Administrators and Whistleblower Program Managers Regarding New Policy Guidelines for Approving Settlement Agreements in Whistleblower Cases (dated August 23, 2016, released September 15, 2016) and as it may be amended, or (iii) any other Government Agency that prohibits waivers or release by an employee of his/her right to a whistleblower or similar kind of reward. Pursuant to the employee immunity provision of the Defend Trade Secrets Act of 2016, and as that may be amended (18 USC §1833(b)), you will not be held criminally or civilly liable under any federal or state trade secret law for your disclosure of a Company trade secret that is made (a) in confidence to a federal, state, local, or international government official, either directly or indirectly, or to an attorney, and solely for the purpose of reporting or investigating a suspected violation of law; or (b) in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal, and/or if you file a lawsuit for retaliation by the Company or its affiliates or subsidiaries based on you reporting a suspected Company violation of law, you may disclose the trade secret to your attorney and use the trade secret information in the court proceeding, if that trade secret is germane to the allegations, and you file any document containing the trade secret under seal with the court, and do not disclose the trade secret beyond this, except pursuant to court order. Nothing contained in this Agreement is intended to or shall preclude either Party from providing truthful testimony in response to a valid subpoena, court order, regulatory request, or other judicial, administrative, or legal process, or otherwise as required by law.

21. **Further Assurances.** In consideration of payment of the amounts specified herein, you agree to execute any documents (including but not limited to letters of resignation) and take any other actions reasonably necessary to terminate any directorships, officerships, committees, or other relationships with or for the Company or any of its affiliates or subsidiaries that exist as of your Separation Date. You also agree to reasonably cooperate after your Separation Date with any Company investigation or litigation, or required submission to any Government Agency, on any subject matter related to the time you were an employee and/or consultant of the Company, and with any request by the

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Company for assistance in responding to requests for information or documents by any Governmental Agencies, in making a required disclosure, or in connection with any pending or threatened administrative or judicial proceeding(s), and further agree, to the extent permitted by law, promptly to provide the Company with the same information or documents (or copies thereof) that you may provide to any Governmental Agency or disclose in any pending or threatened administrative or judicial proceeding. The Company agrees to reimburse you for any out-of-pocket expenses that you actually, reasonably, and directly incur in connection with compliance with any requests by the Company pursuant to this Section.

22. **Remedy.** You agree that if you bring any kind of legal, equitable, or other claim, complaint, or charge against the Company and/or the Released Parties that you have released by signing this Agreement, then you will be violating this Agreement, and you must pay all legal fees, other costs, and expenses, incurred by the Company and/or Released Parties in defending against and resolving your claim, complaint, or charge, in addition to any other relief you may owe the Company due to your breach of the Agreement.

23. **Conflicts.** To the extent that any provision of this Agreement may conflict with any surviving provision of the Employment Agreement, Confidentiality Agreement, Non-Competition Agreement, Equity Awards, and/or the Indemnification Agreement, then as to the Employment Agreement, Indemnification Agreement, or the Non-Competition Agreement these other agreements will control; and as to the Equity Awards or the Confidentiality Agreement, this Agreement will control.

24. **Miscellaneous.** This Agreement, including Exhibits A-E, and the Equity Awards as defined in Section 3.2(b) of your Employment Agreement, and described in Exhibit A to the Employment Agreement, constitute the complete, final, and exclusive embodiment of the entire agreement between you and the Company with regard to its particular subject matter, and the other agreements still in effect and contained in Exhibits A-E, incorporated fully herein by reference unless specifically stated otherwise, shall each remain in effect in accordance with their terms. It is entered into without reliance on any promise or representation, written or oral, other than those expressly contained herein, and it supersedes any other such promises, warranties, or representations. This Agreement may not be modified or amended except in a writing signed by you and a duly authorized officer or representative of the Company. This Agreement will bind the heirs, personal

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representatives, successors, and assigns of both you and the Company, and inure to the benefit of you and the Company, and corresponding heirs, successors, and assigns. The rights and obligations under this Agreement may be assigned by either Party hereto without the prior written consent of the other Party; provided that should an assignment be made the assigning Party will provide prompt written notice of the details of such to the other Party. If any provision of this Agreement is determined to be invalid or unenforceable, in whole or in part, this determination will not affect any other provision of this Agreement and the provision in question shall be modified to the limited extent necessary so as to be rendered enforceable. This Agreement will be deemed to have been entered into and will be construed and enforced in accordance with the laws of the State of Colorado, without regard to conflict of laws principles thereof, and as applied to contracts made and to be performed entirely within Colorado. Any dispute or controversy arising under or in connection with this Agreement, or any of the agreements contained in the Exhibits to this Agreement, shall be settled according to the Section 7 Arbitration and Section 9 Governing Law provisions of your Employment Agreement. Any ambiguity in this Agreement shall not be construed against either Party as the drafter. Any waiver of a right or benefit under, or breach of, this Agreement shall be in a writing signed by the Party granting the waiver and, in case of a breach, shall not be deemed to be a waiver of any successive breach. The section headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.

25. **Counterparts.** This Agreement may be executed in counterparts and by facsimile or electronic signatures, each of which shall be an original and all of which shall constitute but one and the same instrument. The Parties agree that execution of this Agreement by industry standard electronic signature software and/or by exchanging .PDF signatures shall have the same legal force and effect as the exchange of original signatures, and that in any proceeding arising under or relating to this Agreement, each Party hereby waives any right to raise any defense or waiver based upon execution of this Agreement by means of such electronic signatures or maintenance of the executed Agreement electronically.

26. **Expiration.** If you wish to accept the offer set forth in this Agreement you must sign and return this Agreement to the Company on or before 11:59 pm EST on September 6, 2023.

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If this Agreement is acceptable to you, please electronically sign below and return to Michael Fridman, Associate Director of Human Resources, at mfridman@frtx.com.

Sincerely,

**FRESH TRACKS THERAPEUTICS, INC. AND  
BRICKELL SUBSIDIARY, INC.**

By: /s/ David R. McAvoy  
David R. McAvoy  
General Counsel and Chief Compliance Officer

**AGREED TO AND ACCEPTED BY:**

By: /s/ Deepak Chadha  
Deepak Chadha  
Individually

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**EXHIBIT A**

**EMPLOYMENT AGREEMENT  
BETWEEN FRESH TRACKS THERAPEUTICS, INC. AND DEEPAK CHADHA**

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**EXHIBIT B**

**CONFIDENTIALITY AND INVENTIONS ASSIGNMENT AGREEMENT BETWEEN FRESH TRACKS THERAPEUTICS,  
INC. AND DEEPAK CHADHA**

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**EXHIBIT C**

**NON-COMPETITION AGREEMENT  
BETWEEN FRESH TRACKS THERAPEUTICS, INC. AND DEEPAK CHADHA**

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**EXHIBIT D**

**INDEMNIFICATION AGREEMENT  
BETWEEN FRESH TRACKS THERAPEUTICS, INC. AND DEEPAK CHADHA**

Company Initials /s/ DRM

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Your Initials /s/ DC

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**EXHIBIT E**

**PTO BALANCE ACKNOWLEDGMENT FORM**

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Company Initials /s/ DRM

Your Initials /s/ DC

**CERTIFICATION PURSUANT TO RULE 13a-14(a) OR RULE 15d-14(a)  
OF THE SECURITIES EXCHANGE ACT OF 1934**

I, Albert N. Marchio, II certify that:

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

Date: November 13, 2023

By: /s/ Albert N. Marchio, II  
Albert N. Marchio, II  
Chief Executive Officer and Chief Financial Officer  
(Principal Executive Officer and Principal Financial Officer)

## SECTION 1350 CERTIFICATION

Albert N. Marchio, II, Chief Executive Officer and Chief Financial Officer of Fresh Tracks Therapeutics, Inc., a Delaware corporation (the "Company"), does hereby certify, pursuant to 18 U.S.C. Section 1350 as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to the best of his knowledge (1) the Quarterly Report on Form 10-Q of the Company for the quarterly period ended September 30, 2023, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended, and (2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ Albert N. Marchio, II

Albert N. Marchio, II

Chief Executive Officer and Chief Financial Officer

(Principal Executive Officer and Principal Financial Officer)

Date: November 13, 2023

*This certification accompanies and is being "furnished" with this Report, shall not be deemed "filed" by the Company for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, or otherwise subject to liability under that Section and shall not be deemed 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 Report, irrespective of any general incorporation language contained in such filing. A signed original of this written statement required by Section 906, or other document authenticating, acknowledging, or otherwise adopting the signature that appears in typed form within the electronic version of this written statement required by Section 906, has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.*