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 March 31, 2020

OR

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

For the transition period from to

Commission File Number: 001-38052

TOCAGEN INC.

(Exact name of registrant as specified in its charter)

Delaware	**26 - 1243872**
(State or other jurisdiction of incorporation or organization)	**(I.R.S. Employer Identification Number)**
4445 Eastgate Mall, Suite 200, San Diego, CA	**92121**
(Address of principal executive offices)	**(Zip Code)**

Registrant's telephone number, including area code: (858) 412-8400

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, par value $0.001 per share	TOCA	The Nasdaq Global Select Market

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

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

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

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

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

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

As of April 17, 2020, the registrant had 23,914,723 shares of common stock, par value $0.001 per share, outstanding.

TOCAGEN INC.
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PART I - FINANCIAL INFORMATION

Item 1. Financial Statements.

TOCAGEN INC.
CONDENSED BALANCE SHEETS
(in thousands, except share and par value data)

	March 31, 2020 (unaudited)	December 31, 2019
ASSETS		
Current assets:		
Cash and cash equivalents	$ 14,232	$ 8,986
Marketable securities	—	12,835
Prepaid expenses and other current assets	277	1,135
Total current assets	14,509	22,956
Property and equipment, net	694	1,689
Operating lease right-of-use asset	3,429	3,515
Total assets	$ 18,632	$ 28,160
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	$ 1,627	$ 3,218
Accrued liabilities	6,030	5,242
Notes payable, current portion	4,981	4,744
Total current liabilities	12,638	13,204
Operating lease liability, net of current portion	3,912	4,027
Other long term liabilities	—	81
Total liabilities	16,550	17,312
Commitments and contingencies		
Stockholders' equity:		
Common stock, $0.001 par value; 200,000,000 shares authorized at March 31, 2020 and December 31, 2019; 23,914,723 and 23,899,261 shares issued and outstanding at March 31, 2020 and December 31, 2019, respectively	23	23
Additional paid-in capital	291,739	290,215
Accumulated deficit	(289,680)	(279,400)
Accumulated other comprehensive income	—	10
Total stockholders' equity	2,082	10,848
Total liabilities and stockholders' equity	$ 18,632	$ 28,160

See accompanying notes to these unaudited condensed financial statements.

TOCAGEN INC.
CONDENSED STATEMENTS OF OPERATIONS AND COMPREHENSIVE LOSS
(in thousands, except share and per share data)

	Three Months Ended March 31,	
	2020	2019
	(unaudited)	
License revenue	$ —	$ 9
Operating expenses:		
Research and development	3,141	12,434
General and administrative	5,556	4,446
Total operating expenses	8,697	16,880
Loss from operations	(8,697)	(16,871)
Other income (expense), net:		
Interest income	58	541
Interest expense	(756)	(754)
Loss on disposal of assets	(885)	—
Total other expense, net	(1,583)	(213)
Net loss	$ (10,280)	$ (17,084)
Other comprehensive income (loss):		
Net unrealized (loss) gain on investments	(10)	41
Comprehensive loss	$ (10,290)	$ (17,043)
Net loss per common share, basic and diluted	$ (0.43)	$ (0.74)
Weighted-average number of common shares outstanding, basic and diluted	23,902,889	23,040,951

See accompanying notes to these unaudited condensed financial statements.

TOCAGEN INC.
CONDENSED STATEMENTS OF CHANGES IN STOCKHOLDERS' EQUITY
(in thousands, except share data)
Unaudited

	Common Stock		Additional Paid-In Capital	Accumulated Deficit	Accumulated Other Comprehensive Income (Loss)	Total Stockholders' Equity
	Shares	Amount				
Balance at December 31, 2019	23,899,261	$ 23	$ 290,215	$ (279,400)	$ 10	$ 10,848
Exercise of stock options	15,462	—	10	—	—	10
Stock-based compensation	—	—	1,514	—	—	1,514
Other comprehensive loss	—	—	—	—	(10)	(10)
Net loss	—	—	—	(10,280)	—	(10,280)
Balance at March 31, 2020	23,914,723	$ 23	$ 291,739	$ (289,680)	$ —	$ 2,082
Balance at December 31, 2018	23,000,151	$ 23	$ 274,029	$ (215,884)	$ (23)	$ 58,145
Exercise of stock options	64,313	—	248	—	—	248
Issuance of common stock, net of offering costs	146,398	—	1,504	—	—	1,504
Stock-based compensation	—	—	2,000	—	—	2,000
Other comprehensive income	—	—	—	—	41	41
Net loss	—	—	—	(17,084)	—	(17,084)
Balance at March 31, 2019	23,210,862	$ 23	$ 277,781	$ (232,968)	$ 18	$ 44,854

See accompanying notes to these unaudited condensed financial statements.

TOCAGEN INC.
CONDENSED STATEMENTS OF CASH FLOWS
(in thousands)

	Three Months Ended March 31,	
	2020	2019
	(unaudited)	
OPERATING ACTIVITIES		
Net loss	$ (10,280)	$ (17,084)
Adjustments to reconcile net loss to net cash used in operating activities:		
Stock-based compensation	1,514	2,000
Depreciation	57	216
Loss on disposal of property and equipment	916	—
Noncash interest expense	654	142
Accretion of discount on investments, net	103	(41)
Changes in operating assets and liabilities:		
Prepaid expenses and other assets	877	110
Accounts payable	(1,591)	(490)
Accrued liabilities	353	(2,777)
Deferred license revenue	—	(9)
Other	328	251
Net cash used in operating activities	(7,069)	(17,682)
INVESTING ACTIVITIES		
Proceeds from the sale/maturity of marketable securities	12,722	27,836
Purchases of marketable securities	—	(21,606)
Purchases of property and equipment	—	(133)
Net cash provided by investing activities	12,722	6,097
FINANCING ACTIVITIES		
Principal payments on notes payable	(417)	—
Proceeds from issuance of common stock	10	248
Proceeds from issuance of common stock under the ATM facility, net of issuance cost	—	1,522
Net cash (used in) provided by financing activities	(407)	1,770
Net increase (decrease) in cash and cash equivalents	5,246	(9,815)
Cash and cash equivalents, beginning of period	8,986	40,813
Cash and cash equivalents, end of period	$ 14,232	$ 30,998
NONCASH INVESTING AND FINANCING ACTIVITIES		
Cash paid for interest	$ 101	$ 606
Property and equipment purchases included in accounts payable and accrued liabilities	$ —	$ 26

See accompanying notes to these unaudited condensed financial statements.

1. Organization and Basis of Presentation

Historically, Tocagen Inc. (Tocagen or the Company) was a clinical-stage, cancer-selective gene therapy company developing broadly-applicable product candidates designed to activate a patient's immune system against their own cancer. The Company's cancer-selective gene therapy platform is built on retroviral replicating vectors which are designed to selectively deliver therapeutic genes into the DNA of cancer cells. The Company's gene therapy approach is designed to fight cancer through immunotherapeutic mechanisms of action without the autoimmune toxicities commonly experienced with other immunotherapies. The Company views its operations and manages its business in one operating segment.

Since the Company's inception in August 2007, it has devoted substantially all of its efforts to developing its gene therapy platform and its lead product candidate, Toca 511 & Toca FC. The Company has never been profitable and has incurred significant operating losses in each year since its inception. The Company has not generated revenues from its principal operations.

The accompanying unaudited condensed financial statements have been prepared in accordance with U.S. generally accepted accounting principles (GAAP) for interim financial information and the instructions to Form 10-Q and Article 10 of Regulation S-X. Accordingly, these financial statements do not include all of the information and footnotes required by GAAP for complete financial statements. In management's opinion, the accompanying financial statements reflect all adjustments, consisting of normal recurring adjustments, considered necessary for a fair presentation of the results for the interim periods presented. Interim financial results are not necessarily indicative of results anticipated for the full year. These unaudited condensed financial statements should be read in conjunction with the audited financial statements and footnotes included in the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2019, from which the balance sheet information herein was derived.

Liquidity

On February 19, 2020, the Company, Telluride Merger Sub, Inc., a Delaware corporation and wholly owned subsidiary of the Company (Merger Sub), and Forte Biosciences, Inc. (Forte) entered into an Agreement and Plan of Merger and Reorganization (the Merger Agreement). Upon the terms and subject to the satisfaction of the conditions described in the Merger Agreement, including approval of the transaction by the Company's stockholders, Merger Sub will be merged with and into Forte, with Forte surviving as a wholly-owned subsidiary of the Company (the Merger).

The accompanying financial statements have been prepared on a basis which assumes the Company is a going concern, and do not include any adjustments to reflect the possible future effects on the recoverability and classification of assets or the amounts and classifications of liabilities that may result from any uncertainty related to the Company's ability to continue as a going concern. The Company has experienced net losses and negative cash flows from operating activities since its inception. As of March 31, 2020, the Company had cash and cash equivalents of $14.2 million and accumulated deficit of $289.7 million.

Based on the Company's operating plans, its cash and cash equivalents may not be sufficient to fund operations for the next 12 months. As a result, there is substantial doubt about the Company's ability to continue as a going concern.

To conserve our cash resources, the Company has substantially reduced its workforce and has wound down and suspended its research and development activities. The Company is continuing to provide study drug for patients who remain on therapy via investigator sponsored trials (principal investigator assumes responsibility) through single patient investigational new drug applications and is continuing its day-to-day business operations including the limited remaining activities required to wrap up the Toca 5 trial.

Use of Estimates

The Company's financial statements are prepared in accordance with GAAP, which requires management to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenue and expenses and the disclosure of contingent assets and liabilities in the financial statements and accompanying notes. Significant estimates in the Company's financial statements relate to clinical trial accruals and the valuation of equity awards. Estimates are periodically reviewed in light of changes in circumstances, facts and experience. Actual results may differ from these estimates under different assumptions or conditions.

2. Summary of Significant Accounting Policies

Clinical Trial Accruals

Expenses related to clinical studies are based on estimates of the services received and efforts expended pursuant to the Company's contract arrangements. The financial terms of these agreements are subject to negotiation, vary from contract to contract and may result in uneven payment flows. There may be instances in which payments made to the Company's service providers will temporarily exceed the level of services provided and result in a prepayment of the clinical expense. Payments under some of these contracts depend on factors such as the successful enrollment of patients, site initiation and the completion of clinical milestones. The Company makes estimates of its accrued expenses as of each balance sheet date in its financial statements based on facts and circumstances known at that time. In accruing service fees, the Company estimates the time period over which services will be performed and the level of effort to be expended in each period. If the actual timing of the performance of services or the level of effort varies from its estimate, the Company adjusts the accrual or prepaid expense balance accordingly. Historically, the Company's estimated accrued liabilities have materially approximated actual expense incurred.

Revenue Recognition

Revenue generally consists of license revenue with upfront payments and development milestones considered probable of achievement.

Revenue is recognized when control of the promised goods or services is transferred to the Company's customers in an amount that reflects the consideration the Company expects to receive from its customers in exchange for those goods and services. This process involves identifying the contract with a customer, determining the performance obligations in the contract, determining the transaction price, allocating the contract price to the distinct performance obligations in the contract, and recognizing revenue when or as the Company satisfies the performance obligation(s).

At contract inception, the Company assesses the goods and services promised within each contract and assesses whether each promised good or service is distinct and determines that those are performance obligations. A performance obligation is considered distinct from other obligations in a contract when it provides a benefit to the customer either on its own or together with other resources that are readily available to the customer and is separately identified in the contract. The Company considers factors such as the research, manufacturing and commercialization capabilities of the collaboration partner and the availability of the associated expertise in the general marketplace. The Company considers a performance obligation satisfied once the Company has transferred control of a good or service to the customer, meaning the customer has the ability to use and obtain the benefit of the good or service. The Company recognizes revenue for satisfied performance obligations only when the Company determines there are no uncertainties regarding payment terms or transfer of control.

Collaborative Arrangements

The Company enters into collaborative arrangements with partners that may include payment to the Company of one or more of the following: (i) license fees; (ii) payments related to the achievement of developmental, regulatory, or commercial milestones; and (iii) royalties on net sales of licensed products. Where a portion of non-refundable upfront fees or other payments received are allocated to continuing performance obligations under the terms of a collaborative arrangement, they are recorded as contract liabilities and recognized as revenue when (or as) the underlying performance obligation is satisfied.

As part of the accounting for these arrangements, the Company must develop estimates and assumptions that require judgment to determine the underlying stand-alone selling price for each performance obligation which determines how the transaction price is allocated among the performance obligation(s). The stand-alone selling price may include items such as forecasted revenues, development timelines, discount rates, and probabilities of technical and regulatory success. The Company evaluates each performance obligation to determine if it can be satisfied at a point in time or over time. In addition, variable consideration must be evaluated to determine if it is constrained and, therefore, excluded from the transaction price.

License Fees

If a license to the Company's intellectual property is determined to be distinct from the other performance obligations identified in the arrangement, the Company recognizes revenues from non-refundable, upfront fees allocated to the license when the license is transferred to the licensee and the licensee is able to use and benefit from the license. For licenses that are bundled with other promises, the Company utilizes judgment to assess the nature of the combined performance obligation to determine whether the combined performance obligation is satisfied over time or at a point in time and, if over time, the appropriate method of measuring progress for purposes of recognizing revenue. The Company evaluates the measure of progress each reporting period and, if necessary, adjusts the measure of performance and related revenue recognition. Any such adjustments are recorded on a cumulative catch-up basis, which would affect license, collaboration or other revenues and earnings in the period of adjustment.

Milestone Payments

At the inception of each arrangement that includes milestone payments (variable consideration), the Company evaluates whether the milestones are considered probable of being reached and estimates the amount to be included in the transaction price. If it is probable that a milestone event would occur at the inception of the arrangement, the associated milestone value is included in the transaction price. Milestone payments that are not within the Company's control, such as regulatory approvals, are generally not considered probable of being achieved until those approvals are received. The transaction price is then allocated to each performance obligation on a relative stand-alone selling price basis, for which the Company recognizes revenue as or when the performance obligations under the contract are satisfied. At the end of each reporting period, the Company evaluates the probability of achievement of such milestones and any related constraint(s), and if necessary, may adjust the Company's estimate of the overall transaction price. Any such adjustments are recorded on a cumulative catch-up basis, which would affect license, collaboration or other revenues and earnings in the period of adjustment.

Royalties

For arrangements that include sales-based royalties, including milestone payments based on the level of sales, and for which the license is deemed to be the predominant item to which the royalties 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 royalty has been allocated has been satisfied (or partially satisfied). To date, the Company has not recognized any royalty revenue resulting from its collaborative arrangements.

Stock-Based Compensation

Stock-based compensation expense represents the cost of the grant date fair value of stock awards, including stock options, and stock purchase rights granted to employees and members of the Company's board of directors. For awards with time-based vesting provisions, the Company estimates the fair value of stock options on the date of grant using the Black-Scholes option pricing model and recognizes the expense over the requisite service period of the awards, which is generally the vesting period, on a straight-line basis. For awards with performance-based vesting provisions, the Company estimates the fair value of stock option grants on the date of grant, or the date when all of the terms of the grant have been agreed to, if later, and recognizes the expense based on the probability of the occurrence of the individual milestones at each reporting period. The expense is recognized over the implicit service period that commences once management believes the performance criteria are probable of being met. For purchase rights, the Company estimates the fair value of the purchase as of the plan enrollment date and recognizes expense on a straight-line basis over the applicable offering period. The Company accounts for forfeitures when they occur and reverses any compensation cost previously recognized for awards for which the requisite service has not been completed, in the period that the award is forfeited.

Net Loss Per Share

Basic and diluted net loss per common share for the periods presented is computed by dividing net loss by the weighted-average number of common shares outstanding during the respective periods, without consideration of common stock equivalents as they are anti-dilutive. Common stock equivalents that could potentially dilute earnings in the future are comprised of options to purchase shares of common stock outstanding under the Company's equity incentive plan and warrants for the purchase of shares of common stock. For all periods presented, there is no difference in the number of shares used to calculate basic and diluted shares outstanding due to the Company's net loss position.

Common stock equivalents from potentially dilutive securities that are not included in the calculation of diluted net loss per share, because to do so would be anti-dilutive, are as follows:

	Three Months Ended March 31,	
	2020	2019
Common stock options and awards	4,798,269	4,262,170
Common stock warrants	66,514	67,238
Total	4,864,783	4,329,408

Recently Issued Accounting Pronouncements

The Company has evaluated all recent accounting pronouncements issued by the Financial Accounting Standards Board in the form of Accounting Standards Updates through the date these financial statements were available to be issued and found no recent accounting pronouncements issued, but not yet effective that when adopted, would have a material impact on the financial statements of the Company.

3. Fair Value of Financial Instruments

Fair Values of Assets Measured on a Recurring Basis

The Company did not have any fair value measurements on a recurring basis as of March 31, 2020. The following table summarizes the Company's assets that required fair value measurements on a recurring basis as of December 31, 2019 and their respective input levels based on the fair value hierarchy (in thousands):

		Fair Value Measurements at End of Period Using:		
	Total	Quoted Market Prices for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
December 31, 2019				
Marketable securities:				
Corporate debt securities	$ 3,700	$ —	$ 3,700	$ —
Commercial paper	5,485	—	5,485	—
Asset-backed securities	3,650	—	3,650	—
	$ 12,835	$ —	$ 12,835	$ —

Marketable Securities. When there are fair values determined by Level 1 inputs, which utilize quoted prices in active markets for identical assets, the level of judgment required to estimate fair value is relatively low.

Fair values determined by Level 2 inputs, which utilize data points that are observable such as quoted prices, interest rates and yield curves, require the exercise of judgment and use of estimates, that if changed, could significantly affect the Company's financial position and results of operations. Investments in corporate debt securities, commercial paper and asset-backed securities are valued using Level 2 inputs. Level 2 securities are initially valued at the transaction price and subsequently valued and reported utilizing inputs other than quoted prices that are observable either directly or indirectly, such as quotes from third-party pricing vendors.

There were no transfers in or out of Level 1 or Level 2 investments during the three months ended March 31, 2020 or 2019.

At March 31, 2020 and December 31, 2019, the Company had investments in money market funds of $4.2 million and $6.3 million, respectively, that were measured at fair value using the net asset value per share (or its equivalent) that have not been classified in the fair value hierarchy. The funds were invested primarily in U.S. government securities.

Fair Values of Other Financial Instruments

The carrying amounts of certain of the Company's financial instruments, including accounts payable, approximate fair value due to their short-term nature. The Company's notes payable recorded on the balance sheet as of March 31, 2020 of $5.0 million were recorded at fair value as the notes payable were paid off in full on April 10, 2020.

4. Certain Financial Statement Caption Information

Marketable Securities

The Company did not have marketable securities as of March 31, 2020. The following is a summary of the Company's marketable securities as of December 31, 2019 (in thousands):

	Maturity (in years)	Amortized Cost	Unrealized Gain	Unrealized Loss	Fair Value
December 31, 2019					
Corporate debt securities	1 or less	$ 2,699	$ 1	$ —	$ 2,700
Corporate debt securities	>1 and <5	999	1	—	1,000
Commercial paper	1 or less	5,481	4	—	5,485
Asset-backed securities	1 or less	3,646	4	—	3,650
		$ 12,825	$ 10	$ -	$ 12,835

The Company classified all of its available-for-sale investment securities at December 31, 2019, including those with maturity greater than one year, as current assets on the balance sheet based on the highly liquid nature of these investment securities and because these investment securities were considered available for use in current operations.

There were no impairments considered other-than-temporary during the periods presented, as it is management's intention and ability to hold the securities until a recovery of the cost basis or recovery of fair value. Gross realized gains and losses on sales of marketable securities were immaterial for all periods presented.

Accrued Liabilities

Accrued liabilities are comprised of (in thousands):

	March 31, 2020	December 31, 2019
Clinical trial expenses	$ 405	$ 2,404
Payroll and other employee-related expenses	4,106	1,116
Contract manufacturing services	329	387
Current lease liability	435	416
Professional fees	377	330
Interest payable	34	37
Other	344	552
Total accrued liabilities	$ 6,030	$ 5,242

The Company further reduced its workforce in the first quarter 2020 as a result of the proposed Merger and incurred personnel-related restructuring charges of approximately $3.5 million for employee severance and other related termination benefits. As of March 31, 2020, $3.3 million of severance and other related termination costs were included in accrued liabilities on the balance sheet.

5. Notes Payable

Loan Agreement

On October 30, 2015, the Company entered into a Loan and Security Agreement (2015 Loan Agreement) with two lenders whereby it borrowed $18.0 million (the Initial Loans). Balances under the 2015 Loan Agreement were due in monthly principal and interest payments, with final maturity of the Initial Loans in May 2019. Each Initial Loan included a final payment fee of 7.95% of the original principal amount due upon maturity.

On May 18, 2018, the Company entered into an Amended and Restated Loan and Security Agreement, which was further amended in August 2018 and October 2019 (2018 Loan Agreement), pursuant to which the lenders agreed to lend the Company $26.5 million as term loans (the Term Loans). Of the total proceeds, $8.6 million was applied to the repayment of outstanding principal, interest and final payment owed pursuant to the Initial Loans.

The Company evaluated the 2018 Loan Agreement in accordance with ASC Topic 470, which requires assessment of whether the modification is considered a substantial modification, in which case the modification would be accounted for as a debt extinguishment. Based on the Company's evaluation, the 2018 Loan Agreement was considered substantial and therefore the unamortized discount associated with the 2015 Loan Agreement was written off through interest expense and the principal balance of the 2015 Loan Agreement was written off.

The Term Loans would have matured on December 1, 2022 (the Maturity Date) and bore interest at a floating per annum rate equal to the greater of (i) 8.50% and (ii) the sum of (a) the prime rate reported in the Wall Street Journal on the last business day of the month that immediately proceeds the month in which the interest will accrue, plus (b) 3.75%. The interest rate as of March 31, 2020 was 8.50%. The Company was required to make a final payment of 7.95% of the principal amount of the Term Loans payable on the earlier of (i) the Maturity Date, (ii) the acceleration of any Term Loans, or (iii) the prepayment of the Term Loans. On October 31, 2019, the Company entered into a Consent and Second Amendment to the Amended and Restated Loan and Security Agreement (the Second Amendment) and made a prepayment of $23.3 million, which amount was used to prepay i) a portion equal to $21.5 million of the outstanding principal of the Term Loans plus all accrued and unpaid interest thereon through the prepayment date, ii) prorated portion of the final payment with respect to the portion of such Term Loans being prepaid, plus iii) all outstanding lenders' expenses as of the date of the Second Amendment.

In connection with the Second Amendment, the lenders (i) agreed to waive any prepayment fee otherwise applicable to a prepayment of the Term Loans on or after the date of the Second Amendment, (ii) consent to the sale of certain specified equipment, so long as the net cash proceeds from the sale of such assets are used to repay the Term Loans, and (iii) release their lien on the specified equipment upon the closing of any such sale. Under the Second Amendment, the Company also agreed to grant a security interest in the Company's intellectual property as additional collateral to secure the Term Loans for the ratable benefit of the lenders.

On April 10, 2020, the Company made a prepayment of $4.9 million under the 2018 Loan Agreement, which amount was used to prepay i) the remaining outstanding principal of the Term Loans of $4.4 million, plus all accrued and unpaid interest thereon, ii) the remaining final payment with respect to the Term Loans and iii) all outstanding lenders' expenses as of the date of the Second Amendment. In connection with the Company's payment, the 2018 Loan Agreement was terminated and the lenders consented to the release of all liens under the 2018 Loan Agreement on the Company's assets, including intellectual property. As a result of the prepayment, all amounts due under the Term Loans have been classified as a current liability on the balance sheet as of March 31, 2020.

The 2018 Loan Agreement contained customary conditions of borrowing, events of default and covenants, including covenants that restricted the Company's ability to dispose of assets, merge with or acquire other entities, incur indebtedness and make distributions to holders of the Company's capital stock. If an event of default would have occurred, including the occurrence of a material adverse change, the Company would have been liable for immediate repayment of all obligations under the 2018 Loan Agreement. As of March 31, 2020, the balance sheet was adjusted for the amount due under the Term Loans for the outstanding principal, plus all accrued and unpaid interest thereon, and the final payment. All unaccreted balances for the final payment and unamortized discounts were adjusted through interest expense.

In conjunction with the 2018 Loan Agreement, the Company issued the lenders warrants exercisable for 56,578 shares of common stock (the Warrants). The Warrants are exercisable in whole or in part, immediately, and have a per share exercise price of $9.35. The Warrants will terminate on the earlier of May 18, 2028 or the closing of a certain merger or consolidation transaction. The Company recorded the Warrants as a debt discount, which is a contra-liability against debt, and was amortizing the balance over the life of the underlying debt. The offset to the contra-liability is recorded as additional paid in capital in the Company's balance sheet as the Warrants were determined to be an equity instrument. The Company determined the fair value of the Warrants at the date of issuance was $0.5 million using the Black-Scholes option pricing model based on significant unobservable inputs (Level 3) with an expected term of 10 years, volatility of 85.6%, risk free rate of 3.1% and expected dividend of 0%.

The aggregate carrying amounts of the Term Loans are comprised of the following (in thousands):

	March 31, 2020	December 31, 2019
Principal	$ 4,583	$ 5,000
Add: accreted liability for final payment fee	398	138
Less: unamortized discount	—	(394)
	$ 4,981	$ 4,744

6. Stockholders' Equity

The Company did not sell any shares under its Equity Distribution Agreement with Citigroup Global Markets Inc. (the Sales Agreement) during the three months ended March 31, 2020. During the three months ended March 31, 2019, the Company sold 146,398 shares of its common stock under the Sales Agreement. The sales were made at a weighted average price of $10.69 per share resulting in net proceeds of $1.5 million. As of March 31, 2020, the Company has sold 760,089 shares of common stock and has received net proceeds of $7.7 million under the Sales Agreement.

Common Stock Reserved for Future Issuance

Common stock reserved for future issuance as of March 31, 2020 is as follows:

Issued and Outstanding:	
Stock options and awards	4,798,269
Warrants for common stock	66,514
Shares reserved for issuance under the 2017 Employee Stock Purchase Plan	725,847
Shares reserved for future award grants	1,020,458
Total	6,611,088

The following table summarizes the allocation of the Company's non-cash stock-based compensation expense for all stock awards during the three months ended March 31, 2020 and 2019 (in thousands):

	Three Months Ended March 31,	
	2020	2019
Research and development	$ 364	$ 746
General and administrative	1,150	1,254
Total	$ 1,514	$ 2,000

The Company has not recognized non-cash stock-based compensation expense for outstanding options to purchase 188,651 shares of common stock with performance-based vesting provisions after its evaluation that the occurrence of the individual milestones is not probable as of March 31, 2020.

7. Collaborative Arrangements

ApolloBio License

On April 18, 2018, the Company entered into a License Agreement (the License Agreement) with Beijing Apollo Venus Biomedical Technology Limited and ApolloBio Corp. (collectively, ApolloBio), which became effective in July 2018, pursuant to which the Company granted to ApolloBio an exclusive license to develop and commercialize Toca 511 & Toca FC within the greater China region, including mainland China, Hong Kong, Macao and Taiwan (the Licensed Territory).

The Company is eligible to receive up to an aggregate $111.0 million, less withholding and other taxes, upon the achievement of specified development and commercial milestones. The Company completed its planned enrollment of 380 patients in the Toca 5 clinical trial in 2018 and earned a $2.0 million development milestone payment. The Company is also eligible for low double-digit tiered royalty payments based on annual net sales of licensed products in the Licensed Territory, subject to reduction under specified circumstances. ApolloBio will be responsible for all development and commercialization costs in the Licensed Territory. Future payments by ApolloBio are subject to the People's Republic of China (PRC) currency exchange approval and may be subject to other approvals by PRC authorities.

Under the License Agreement, the Company has received net proceeds of $15.2 million which is comprised of a $16.0 million up-front payment and a $2.0 million development milestone payment less $1.7 million in foreign income taxes and $1.1 million in certain foreign non-income taxes.

Unless earlier terminated, the License Agreement will expire upon the expiration of the last-to-expire royalty term for any and all licensed products, which royalty term is, with respect to a licensed product in a particular region (*i.e.*, mainland China, Hong Kong, Macao and Taiwan) of the Licensed Territory (each, a Region), the latest of (i) 10 years after the first commercial sale of such licensed product in such Region, (ii) the expiration of all regulatory exclusivity as to such licensed product in such Region and (iii) the date of expiration of the last valid patent claim covering such licensed product in such Region. Either party may terminate the License Agreement upon a material breach by the other party that remains uncured following 60 days (or, with respect to any payment breach, 10 days) after the date of written notice of such breach. ApolloBio may terminate the License Agreement at any time by providing 90 days' prior written notice to the Company. In addition, the Company may terminate the License Agreement upon written notice to ApolloBio under specified circumstances if ApolloBio challenges the licensed patent rights.

Under ASU 2014-09, *Revenue from Contracts with Customers (Topic 606)*, the Company evaluated the terms of the License Agreement and the transfer of intellectual property rights (the license) was identified as the only performance obligation as of the inception of the License Agreement. The Company determined that the transaction price under the License Agreement was comprised solely of the $16.0 million upfront payment. The future potential development and commercial milestone payments were not included in the transaction price as they were determined to be fully constrained. As part of the evaluation of the development and commercial milestone constraint, the Company determined that the achievement of such milestones is contingent upon success in future clinical trials and regulatory approvals, each of which was uncertain at the inception of the License Agreement. The Company will re-evaluate the transaction price each quarter or as uncertain events are resolved or other changes in circumstances occur. Future potential development and commercial milestone amounts would be recognized as revenue, if unconstrained. Any reimbursable program costs are recognized proportionately with the performance of the underlying services and are accounted for as a reduction to research and development expense and are excluded from the transaction price.

The entire $16.0 million transaction price was allocated to the license performance obligation. The license was delivered in connection with the execution of the License Agreement and the performance obligation was fully satisfied in 2018 (transfer of intellectual property). Additionally, the Company earned a $2.0 million development milestone payment in 2018 upon completion of the planned enrollment of 380 patients in the Toca 5 clinical trial.

8. Commitments

The Company leases its office and laboratory space located in San Diego, California, for its corporate headquarters and research facility under an operating lease agreement (the Lease). The Lease commenced in March 2018. The term of the Lease is eight years and the Company has one option to extend the Lease for a period of five additional years.

In connection with the inception of the Lease, the Company was provided and fully utilized a tenant improvement allowance of $1.2 million. The Lease provides for an abatement of a portion of the lease payments for the first nine months of the lease term and includes escalation clauses in the future.

On December 16, 2019, the Company entered into a First Amendment (the "Lease Amendment") to the Lease. Under the terms of the Lease Amendment, the termination date of a portion of the premises containing approximately 21,180 rentable square feet was accelerated from June 30, 2026 to December 31, 2019. The Lease Amendment eliminated further rents due for the terminated rentable square feet, including aggregate base rent over the remaining term of approximately $7.6 million.

9. Subsequent Events

On April 17, 2020, the Company entered into an Asset Purchase Agreement with Denovo BioPharma LLC (Denovo) pursuant to which, among other things, Denovo agreed to acquire from the Company certain intellectual property rights, materials, know-how, and data, including those related to the Company's retroviral replicating vector technologies, including Toca 511 & Toca FC for a purchase price of $1.1 million. Under the terms of the Asset Purchase Agreement, the transaction will close upon the earlier of (a) immediately after the closing of the Merger and (b) promptly after the termination of the Merger Agreement.

Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

The following discussion and analysis of our financial condition and results of operations should be read in conjunction with our unaudited condensed financial statements and related notes included in this Quarterly Report on Form 10-Q and the audited financial statements and notes thereto as of and for the year ended December 31, 2019 and the related Management's Discussion and Analysis of Financial Condition and Results of Operations contained in our Annual Report on Form 10-K filed with the Securities and Exchange Commission, or SEC, on February 27, 2020, or Annual Report on Form 10-K. Unless the context requires otherwise, references in this Quarterly Report on Form 10-Q to "we," "us," and "our" refer to Tocagen Inc.

Forward-Looking Statements

The information in this discussion contains forward-looking statements and information within the meaning of Section 27A of the Securities Act of 1933, as amended, or the Securities Act, and Section 21E of the Securities Exchange Act of 1934, as amended, or the Exchange Act, which are subject to the "safe harbor" created by those sections. These forward-looking statements include, but are not limited to, statements concerning our strategy, future operations, future financial position, future revenues, projected costs, prospects and plans and objectives of management. The words "anticipates," "believes," "could," "estimates," "expects," "intends," "may," "plans," "projects," "will," "would" and similar expressions are intended to identify forward-looking statements, although not all forward-looking statements contain these identifying words. We may not actually achieve the plans, intentions, or expectations disclosed in our forward-looking statements and you should not place undue reliance on our forward-looking statements. Actual results or events could differ materially from the plans, intentions and expectations disclosed in the forward-looking statements that we make. These forward-looking statements involve risks and uncertainties that could cause our actual results to differ materially from those in the forward-looking statements, including, without limitation, the risks set forth in Part II, Item 1A, "Risk Factors" in this Quarterly Report on Form 10-Q and in our other filings with the SEC. The forward-looking statements are applicable only as of the date on which they are made, and we do not assume any obligation to update any forward-looking statements.

Overview

Historically, we were a clinical-stage, cancer-selective gene therapy company focused on developing broadly-applicable product candidates designed to activate a patient's immune system against their own cancer. Our cancer-selective gene therapy platform is built on retroviral replicating vectors, or RRVs, which are designed to selectively deliver therapeutic genes into the DNA of cancer cells. Our gene therapy approach is designed to fight cancer through immunotherapeutic mechanisms of action without the autoimmune toxicities commonly experienced with other immunotherapies.

We had been developing Toca 511 (vocimagene amiretrorepvec) & Toca FC (extended-release flucytosine), initially for the treatment of recurrent high grade glioma, or HGG, a brain cancer with limited treatment options, low survival rates and, therefore, a significant unmet medical need. We conducted a randomized, controlled Phase 3 clinical trial (Toca 5) of Toca 511 & Toca FC in patients with recurrent HGG, which was designed to serve as a registrational trial. At the final analysis, the trial missed the primary endpoint of overall survival compared to the standard of care treatment (11.1 months median compared to 12.2 months, HR=1.06, p=0.6154). In addition, all secondary endpoints showed no meaningful difference between the arms of the trial.

We do not have any products approved for sale and have not generated any revenue from product sales. Since our inception in August 2007, we have devoted substantially all of our efforts to developing our gene therapy platform and Toca 511 & Toca FC. We have never been profitable and have incurred significant operating losses in each year since our inception. We had an accumulated deficit of $289.7 million as of March 31, 2020. Substantially all of our net losses resulted from costs incurred in connection with our research, preclinical, clinical, product, regulatory and business development activities, as well as raising capital and building our infrastructure. We do not have any commitments for future external funding.

Following the announcement of the Toca 5 trial results, our board of directors commenced a process of evaluating strategic alternatives to maximize stockholder value. To assist with this process, our board of directors engaged a financial advisory firm to help explore our available strategic alternatives, including possible mergers and business combinations, a sale of part or all of our assets, and collaboration and licensing arrangements. On February 19, 2020, we entered into an Agreement and Plan of Merger and Reorganization, or Merger Agreement, with Telluride Merger Sub, Inc., a Delaware corporation and our wholly owned subsidiary, or Merger Sub, and Forte Biosciences, Inc., or Forte. Upon the terms and subject to the satisfaction of the conditions described in the Merger Agreement, including approval of the transaction by our stockholders, Merger Sub will be merged with and into Forte, with Forte surviving as our wholly-owned subsidiary. This transaction is referred to as the "Merger."

Although we have entered into the Merger Agreement and intend to consummate the proposed Merger, there is no assurance that we will be able to successfully consummate the proposed Merger on a timely basis, or at all. If, for any reason, the proposed Merger is not completed, we will reconsider our strategic alternatives and could pursue one or more of the following courses of action:

- ***Pursue potential collaborative, partnering or other strategic arrangements for our assets, including a sale or other divestiture of our assets.*** We have discontinued further development of our programs, including Toca 511 & Toca FC, and do not currently have any plans to resume development of any of our development programs. We continue our efforts to seek potential collaborative, partnering or other strategic arrangements for our programs, including a sale or other divestiture of our assets.
- ***Pursue another strategic transaction like the proposed Merger.*** Our board of directors may elect to pursue an alternative strategy, one of which may be a strategic transaction similar to the proposed Merger.
- ***Dissolve and liquidate our assets.*** If, for any reason, the proposed Merger is not consummated and we are unable to identify and complete an alternative strategic transaction like the Merger or potential collaborative, partnering or other strategic arrangements for our assets, or to continue to operate our business due to our inability to raise additional funding, we may be required to dissolve and liquidate our assets. In such case, we would be required to pay all of our debts and contractual obligations, and to set aside certain reserves for potential future claims, and there can be no assurances as to the amount or timing of available cash left to distribute to our stockholders after paying our debts and other obligations and setting aside funds for reserves.

To conserve our cash resources, we have substantially reduced our workforce and have wound down and suspended our research and development activities. We are continuing to provide study drug for patients who remain on therapy via investigator sponsored trials (principal investigator assumes responsibility) through single patient INDs and are continuing our day-to-day business operations including the limited remaining activities required to wrap up the Toca 5 trial.

Financial Operations Overview

Revenue

We currently have no products approved for sale and have not generated any revenues from the sale of products. We have not submitted any product candidate for regulatory approval.

We expect that any future revenue we generate will fluctuate from quarter to quarter and year to year as a result of the timing and amount of license fees, milestone and other payments, and the amount and timing of payments that we receive upon the sale of our products, to the extent any are successfully commercialized. If we fail to complete the development of our product candidates in a timely manner or obtain regulatory approval of them, our ability to generate future revenue, and our results of operations and financial position, would be materially adversely affected.

Research and Development Expenses

Research and development expenses consist primarily of salaries and related expenses for personnel, including non-cash stock-based compensation costs, preclinical costs, clinical trial costs, costs related to acquiring and manufacturing clinical trial materials, contract services, facilities costs, overhead costs and depreciation. These activities also include research and development related to our gene therapy platform development. All research and development costs are expensed as incurred.

The following table sets forth our research and development expense by project for the three months ended March 31, 2020 and 2019 (in thousands):

	Three Months Ended March 31,	
	2020	2019
Toca 511 & Toca FC	$ 3,141	$ 11,950
Vector technology	—	484
Total	$ 3,141	$ 12,434

General and Administrative Expenses

General and administrative expenses consist primarily of salaries and related expenses for personnel, including non-cash stock-based compensation costs and travel expenses for our employees in executive, operational, finance and business development functions. Other general and administrative expenses include facility-related costs, consulting fees, information technology, insurance, professional fees for accounting and legal services, expenses associated with obtaining and maintaining patents, expenses related to commercial readiness activities and costs associated with being a public company.

We anticipate continued expenses related to audit, legal, regulatory and tax-related services associated with maintaining compliance with exchange listing and SEC requirements, director and officer insurance premiums and costs associated with being a public company.

Interest Income

Interest income consists primarily of interest income earned on cash, cash equivalents and marketable securities.

Interest Expense

Interest expense consists primarily of stated interest and the amortization of related debt issuance costs incurred on the outstanding principal amount of our borrowings under our notes payable.

Loss on Disposal of Assets

Loss on disposal of assets consists primarily of fixed assets which were either sold or disposed of as part of our reduction in lab and office space.

Critical Accounting Policies and Significant Judgments and Estimates

There have been no significant changes to our critical accounting policies since December 31, 2019. For a description of critical accounting policies that affect our significant judgments and estimates used in the preparation of our unaudited condensed financial statements, refer to Item 7 "Management's Discussion and Analysis of Financial Condition and Results of Operations" and Note 2 to our audited financial statements contained in our Annual Report on Form 10-K and Note 2 to our unaudited condensed financial statements contained in this Quarterly Report on Form 10-Q.

Recent Accounting Pronouncements

We have reviewed all recently issued standards and have determined that such standards will not have a material impact on our financial statements or do not otherwise apply to our operations.

Results of Operations

Comparison of the Three Months Ended March 31, 2020 and 2019

The following table summarizes our results of operations for the three months ended March 31, 2020 and 2019 (in thousands):

	Three Months Ended March 31,	
	2020	2019
License revenue	$ —	$ 9
Research and development expenses	3,141	12,434
General and administrative expenses	5,556	4,446
Interest income	58	541
Interest expense	(756)	(754)
Loss on disposal of assets	(885)	—

Research and development expenses Research and development expenses were $3.1 million for the three months ended March 31, 2020 compared to $12.4 million for the three months ended March 31, 2019. The decrease of $9.3 million was primarily due to decreases in clinical trial related costs due to wind down activities and a reduction in our workforce.

General and administrative expenses General and administrative expenses were $5.6 million for the three months ended March 31, 2020, compared to $4.4 million for the three months ended March 31, 2019. The increase of $1.1 million was primarily due to increased personnel costs, including non-cash stock-based compensation and severance costs in connection with wind down activities and a reduction in our workforce.

Interest income Interest income was $0.1 million for the three months ended March 31, 2020 compared to $0.5 million for the three months ended March 31, 2019. The decrease of $0.5 million was primarily due to liquidation of invested cash to fund operations.

Interest expense Interest expense was $0.8 million for the three months ended March 31, 2020 and for the three months ended March 31, 2019. Adjustments to notes payable as of March 31, 2020 related to the final principal and exit fee payoff in April 2020 were recorded through interest expense.

Loss on disposal of assets Loss on disposal of assets was $0.9 million for the three months ended March 31, 2020 compared to zero for the three months ended March 31, 2019. The 2020 activity was due to equipment sales and disposals in connection with the reduction in lab and office space in December 2019.

Liquidity and Capital Resources

We have incurred significant losses and cumulative negative cash flows from operations since our inception. As of March 31, 2020, we had an accumulated deficit of $289.7 million.

Based on our operating plans, our cash and cash equivalents may not be sufficient to fund operations for the next 12 months. As a result, there is substantial doubt about our ability to continue as a going concern.

If we are unable to maintain sufficient financial resources, our business, financial condition and results of operations will be materially and adversely affected.

Since inception through March 31, 2020, we have funded our operations primarily through the private placement of our convertible preferred stock, our public offerings of our common stock, term loans, the issuance of convertible promissory notes and upfront and milestone payments under our license and collaboration agreements. As of March 31, 2020, we had $14.2 million in cash, and cash equivalents.

Cash Flows

The following table sets forth the primary sources and uses of cash for the three months ended March 31, 2020 and 2019 (in thousands):

	Three Months Ended March 31,	
	2020	2019
Net cash (used in) provided by:		
Operating activities	$ (7,069)	$ (17,682)
Investing activities	12,722	6,097
Financing activities	(407)	1,770
Net decrease in cash and cash equivalents	$ 5,246	$ (9,815)

Operating Activities. Net cash used in operating activities was $7.1 million and $17.7 million for the three months ended March 31, 2020 and 2019, respectively. The decrease in net cash used in operating activities was primarily attributable to a decrease in net loss of $6.8 million and changes in working capital.

Investing Activities. Net cash provided by investing activities was $12.7 million for the three months ended March 31, 2020 compared to $6.1 million for the three months ended March 31, 2019. The increase in cash provided by investing activities is due to liquidation of all marketable securities as of March 31, 2020 to fund operations.

Financing activities. Net cash used in financing activities was $0.4 million for the three months ended March 31, 2020 compared to net cash provided by financing activities of $1.8 million for the three months ended March 31, 2019. The change in net cash related to financing activities was primarily related to net proceeds from the sale of common stock under our Equity Distribution Agreement with Citigroup Global Markets Inc. of $1.5 million in 2019 compared to zero in 2020. Additionally, cash used in financing activities for the three months ended March 31, 2020 included $0.4 million of principal payments on notes payable.

Funding Requirements

Our primary uses of capital are compensation and related expenses for personnel, third-party clinical research and development services, and general and administrative expenses. Based on our operating plans, our cash and cash equivalents may not be sufficient to fund operations for the next 12 months. As a result, there is substantial doubt about our ability to continue as a going concern.

If, for any reason, the proposed Merger is not consummated and we are unable to identify and complete an alternative strategic transaction like the Merger or potential collaborative, partnering or other strategic arrangements for our assets, or to continue to operate our business due to our inability to raise additional funding, we may be required to dissolve and liquidate our assets. In such case, we would be required to pay all of our debts and contractual obligations, and to set aside certain reserves for potential future claims, and there can be no assurances as to the amount or timing of available cash left to distribute to our stockholders after paying our debts and other obligations and setting aside funds for reserves.

Off-Balance Sheet Arrangements

As of March 31, 2020, we did not have and we do not currently have, any off-balance sheet arrangements, as defined in the rules and regulations of the SEC.

Item 3. Quantitative and Qualitative Disclosures About Market Risk.

Not required for smaller reporting companies.

Item 4. Controls and Procedures.

Disclosure Controls and Procedures

In 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. Our management, with the participation of our Chief Executive Officer and our Chief Financial Officer, evaluated the effectiveness of our disclosure controls and procedures as of the end of the period covered by this Quarterly Report on Form 10-Q. Based on that evaluation, our Chief Executive Officer and our Chief Financial Officer concluded that our disclosure controls and procedures were effective, at the reasonable assurance level, as of the end of the period covered by this Quarterly Report on Form 10-Q to ensure that information we are required to disclose in reports that we file or submit under the Exchange Act (1) is recorded, processed, summarized and reported within the time periods specified in SEC rules and forms, and (2) is accumulated and communicated to management, including our Chief Executive Officer and our Chief Financial Officer, as appropriate to allow timely decisions regarding required disclosure.

Changes in Internal Control Over Financial Reporting

There have been no changes in our internal control over financial reporting during our most recent fiscal quarter ended March 31, 2020 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

None.

Item 1A. Risk Factors

You should carefully consider the following risk factors, as well as the other information in this report, before deciding whether to purchase, hold or sell shares of our common stock. The occurrence of any of the following risks could harm our business, financial condition, results of operations and/or growth prospects or cause our actual results to differ materially from those contained in forward-looking statements we have made in this report and those we may make from time to time. You should consider all of the factors described in this section as well as the other information in our Annual Report on Form 10-K including our audited financial statements and the related notes and "Management's Discussion and Analysis of Financial Condition and Results of Operations" when evaluating our business. The risk factors set forth below that are marked with an asterisk (*) contain changes to the similarly titled risk factors included in Item 1A of our Annual Report on Form 10-K. If any of the following risks actually occurs, our business, financial condition, results of operations and future growth prospects would likely be materially and adversely affected. In these circumstances, the market price of our common stock would likely decline and you may lose all or part of your investments. Additional risks and uncertainties not presently known to us or that we currently deem immaterial also may impair our business operations.

Risks Related to the Proposed Merger

The exchange ratio set forth in the Merger Agreement is not adjustable based on the market price of our common stock, so the merger consideration at the closing of the Merger may have a greater or lesser value than at the time the Merger Agreement was signed.*

The Merger Agreement has set the exchange ratio for the Forte capital stock, and the exchange ratio is based on the outstanding capital stock of Forte and the outstanding common stock of Tocagen, in each case immediately prior to the closing of the Merger. Applying the exchange ratio formula in the Merger Agreement, the former Forte equityholders immediately before the Merger are expected to own approximately 76.7% of the outstanding capital stock of Tocagen immediately following the Merger, and the equityholders of Tocagen immediately before the Merger are expected to own approximately 23.3% of the outstanding capital stock of Tocagen immediately following the Merger, on a fully diluted basis using the treasury stock method subject to certain assumptions. Under certain circumstances further described in the Merger Agreement, however, these ownership percentages may be adjusted upward or downward based on cash levels of the respective companies at the closing of the Merger, and as a result, either our stockholders or the Forte stockholders could own less of the combined company than expected.

Any changes in the market price of our common stock before the completion of the Merger will not affect the number of shares of our common stock issuable to Forte's stockholders pursuant to the Merger Agreement. Therefore, if before the completion of the Merger the market price of our common stock declines from the market price on the date of the Merger Agreement, then Forte's stockholders could receive merger consideration with substantially lower value than the value of such merger consideration on the date of the Merger Agreement. Similarly, if before the completion of the Merger the market price of our common stock increases from the market price of our common stock on the date of the Merger Agreement, then Forte's stockholders could receive merger consideration with substantially greater value than the value of such merger consideration on the date of the Merger Agreement. The Merger Agreement does not include a price-based termination right. Because the exchange ratio does not adjust as a result of changes in the market price of our common stock, for each one percentage point change in the market price of our common stock, there is a corresponding one percentage point rise or decline, respectively, in the value of the total merger consideration payable to Forte's stockholders pursuant to the Merger Agreement.

Failure to complete the proposed Merger may result in Tocagen and Forte paying a termination fee to the other party and could significantly harm the market price of our common stock and negatively affect the future business and operations of each company.

If the proposed Merger is not completed and the Merger Agreement is terminated under certain circumstances, we may be required to pay Forte a termination fee of up to $750,000. Even if a termination fee is not payable in connection with a termination of the Merger Agreement, each of Tocagen and Forte will have incurred significant fees and expenses, which must be paid whether or not the Merger is completed. Further, if the proposed Merger is not completed, it could significantly harm the market price of our common stock.

In addition, if the Merger Agreement is terminated and the board of directors of Tocagen or Forte determines to seek another business combination, there can be no assurance that either we or Forte will be able to find a partner and close an alternative transaction on terms that are as favorable or more favorable than the terms set forth in the Merger Agreement.

The proposed Merger is subject to approval of the Merger Agreement by our stockholders and the Forte stockholders. Failure to obtain these approvals would prevent the closing of the Merger.

Before the proposed Merger can be completed, the stockholders of each of Tocagen and Forte must approve the Merger Agreement. Failure to obtain the required stockholder approvals, may result in a material delay in, or the abandonment of, the Merger. Any delay in completing the proposed Merger may materially adversely affect the timing and benefits that are expected to be achieved from the proposed Merger.

The Merger may be completed even though certain events occur prior to the closing that materially and adversely affect Tocagen or Forte.

The Merger Agreement provides that either Tocagen or Forte can refuse to complete the proposed Merger if there is a material adverse change affecting the other party between February 19, 2020, the date of the Merger Agreement, and the closing of the Merger that is continuing. However, certain types of changes do not permit either party to refuse to complete the proposed Merger, even if such change could be said to have a material adverse effect on Tocagen or Forte, including:

- general business, economic or political conditions or conditions generally affecting the industries in which Forte or Tocagen, as applicable, operates;
- any natural disaster or any acts of war, armed hostilities or terrorism;
- any changes in financial, banking or securities markets;
- with respect to Tocagen, any change in the stock price or trading volume of Tocagen excluding any underlying effect that may have caused such change;
- with respect to Tocagen, failure to meet internal or analysts' expectations or projects or the results of operations;
- with respect to Forte, failure to meet internal projections or forecasts or third party revenue or earnings predictions;
- any change in accounting requirements or principles or any change in applicable laws, rules, or regulations or the compliance with or interpretation thereof;
- any effect resulting from the announcement or pendency of the proposed Merger or any related transactions; and
- the taking of any action, or the failure to take any action, by either Tocagen or Forte required to comply with the terms of the Merger Agreement.

If adverse changes occur and Tocagen and Forte still complete the Merger, the market price of the combined organization's common stock may suffer. This in turn may reduce the value of the Merger to the stockholders of Tocagen, Forte or both.

Some Tocagen and Forte officers and directors have interests in the proposed Merger that are different from the respective stockholders of Tocagen and Forte and that may influence them to support or approve the Merger without regard to the interests of the respective stockholders of Tocagen and Forte.

Certain officers and directors of Tocagen and Forte participate in arrangements that provide them with interests in the proposed Merger that are different from the interests of the respective stockholders of Tocagen and Forte, including, among others, the continued service as an officer or director of the combined organization, severance benefits, the acceleration of stock option vesting, continued indemnification and the potential ability to sell an increased number of shares of common stock of the combined organization in accordance with Rule 144 under the Securities Act of 1933, as amended.

For example, we have entered into certain employment and severance benefits agreements with certain of our executive officers that may result in the receipt by such executive officers of cash severance payments and other benefits in the event of a covered termination of employment of each executive officer's employment. The closing of the Merger will also result in the acceleration of vesting of options to purchase shares of our common stock held by our executive officers and directors, whether or not there is a covered termination of such officer's employment. In addition, and for example, certain of Forte's directors and executive officers have options, subject to vesting, to purchase shares of Forte's common stock which, at the closing of the Merger, shall be converted into and become options to purchase shares of our common stock, certain of Forte's directors and executive officers are expected to become directors and executive officers of Tocagen upon the closing of the Merger, and all of Forte's directors and executive officers are entitled to certain indemnification and liability insurance coverage pursuant to the terms of the Merger Agreement. These interests, among others, may influence the officers and directors of Tocagen and Forte to support or approve the proposed Merger.

The market price of our common stock following the Merger may decline as a result of the Merger.

The market price of our common stock may decline as a result of the Merger for a number of reasons including if:

- investors react negatively to the prospects of the combined organization's product candidates, business and financial condition following the Merger;
- the effect of the Merger on the combined organization's business and prospects is not consistent with the expectations of financial or industry analysts; or
- the combined organization does not achieve the perceived benefits of the Merger as rapidly or to the extent anticipated by financial or industry analysts.

Tocagen and Forte equityholders will have a reduced ownership and voting interest in, and will exercise less influence over the management of, the combined organization following the closing of the Merger as compared to their current ownership and voting interest in the respective companies.*

After the completion of the Merger, the current securityholders of Tocagen and Forte will own a smaller percentage of the combined organization than their ownership in their respective companies prior to the Merger. Immediately after the Merger, it is currently estimated that Forte equityholders will own approximately 76.7% of the common stock of the combined organization, and Tocagen equityholders, whose shares of Tocagen common stock will remain outstanding after the Merger, will own approximately 23.3% of the common stock of the combined organization, on a fully diluted basis using the treasury stock method subject to certain assumptions. These estimates are based on the anticipated exchange ratio and are subject to adjustment as provided in the Merger Agreement. See also the risk factor above titled, "*The exchange ratio is not adjustable based on the market price of Tocagen common stock, so the merger consideration at the closing may have a greater or lesser value than at the time the Merger Agreement was signed.*"

In addition, the 8 member board of directors of the combined company will initially include 6 individuals with prior affiliations with Forte and 2 individuals with prior affiliations with Tocagen. Consequently, securityholders of Tocagen and Forte will be able to exercise less influence over the management and policies of the combined organization following the closing of the Merger than they currently exercise over the management and policies of their respective companies.

Tocagen and Forte stockholders may not realize a benefit from the Merger commensurate with the ownership dilution they will experience in connection with the Merger.

If the combined organization is unable to realize the strategic and financial benefits currently anticipated from the proposed Merger, Tocagen's and Forte's stockholders will have experienced substantial dilution of their ownership interests in their respective companies without receiving the expected commensurate benefit, or only receiving part of the commensurate benefit to the extent the combined organization is able to realize only part of the expected strategic and financial benefits currently anticipated from the proposed Merger.

The combined company will need to raise additional capital by issuing securities or debt or through licensing or other strategic arrangements, which may cause dilution to the combined company's stockholders or restrict the combined company's operations or impact its proprietary rights.

The combined company may be required to raise additional funds sooner than currently planned. In this regard, the exchange ratio may be impacted by cash levels of the respective companies at the closing of the Merger. The Merger Agreement conditions the completion of the Merger upon Tocagen holding a minimum amount of cash greater than or equal to $3,000,000 at the effective time of the Merger. The Merger Agreement does not condition the completion of the Merger upon Forte holding a minimum amount of cash at the effective time of the Merger. If either or both of Tocagen or Forte hold less cash at the time of the closing Merger than the parties currently expect, the combined company will need to raise additional capital sooner than expected. Additional financing may not be available to the combined company when it needs it or may not be available on favorable terms. To the extent that the combined company raises additional capital by issuing equity securities, such an issuance may cause significant dilution to the combined company's stockholders' ownership and the terms of any new equity securities may have preferences over the combined company's common stock. Any debt financing the combined company enters into may involve covenants that restrict its operations. These restrictive covenants may include limitations on additional borrowing and specific restrictions on the use of the combined company's assets, as well as prohibitions on its ability to create liens, pay dividends, redeem its stock or make investments. In addition, if the combined company raises additional funds through licensing, partnering or other strategic arrangements, it may be necessary to relinquish rights to some of the combined company's technologies or product candidates and proprietary rights, or grant licenses on terms that are not favorable to the combined company.

During the pendency of the proposed Merger, Tocagen and Forte may not be able to enter into a business combination with another party at a favorable price because of restrictions in the Merger Agreement, which could adversely affect their respective businesses.

Covenants in the Merger Agreement impede the ability of Tocagen and Forte to make acquisitions, subject to certain exceptions relating to fiduciary duties, as set forth below, or to complete other transactions that are not in the ordinary course of business pending completion of the proposed Merger. As a result, if the Merger is not completed, the parties may be at a disadvantage to their competitors during such period. In addition, while the Merger Agreement is in effect, each party is generally prohibited from soliciting, initiating, encouraging or entering into certain extraordinary transactions, such as a merger, sale of assets, or other business combination outside the ordinary course of business with any third party, subject to certain exceptions relating to fiduciary duties. Any such transactions could be favorable to such party's stockholders.

Certain provisions of the Merger Agreement may discourage third parties from submitting alternative takeover proposals, including proposals that may be superior to the arrangements contemplated by the Merger Agreement.

The terms of the Merger Agreement prohibit each of Tocagen and Forte from soliciting alternative takeover proposals or cooperating with persons making unsolicited takeover proposals, except in limited circumstances when such party's board of directors determines in good faith that an unsolicited alternative takeover proposal is or is reasonably likely to lead to a superior takeover proposal and that failure to cooperate with the proponent of the proposal would be reasonably likely to be inconsistent with the applicable board's fiduciary duties.

Because the lack of a public market for Forte's capital stock makes it difficult to evaluate the value of Forte's capital stock, the stockholders of Forte may receive shares of our common stock in the Merger that have a value that is less than, or greater than, the fair market value of Forte's capital stock.

The outstanding capital stock of Forte is privately held and is not traded in any public market. The lack of a public market makes it extremely difficult to determine the fair market value of Forte. Because the percentage of our common stock to be issued to Forte's stockholders was determined based on negotiations between the parties, it is possible that the value of our common stock to be received by Forte's stockholders will be less than the fair market value of Forte, or Tocagen may pay more than the aggregate fair market value for Forte.

If the conditions to the Merger are not met, the Merger will not occur.

Even if the Merger is approved by the stockholders of Tocagen and Forte, specified conditions must be satisfied or waived to complete the Merger. We cannot assure you that all of the conditions will be satisfied or waived. If the conditions are not satisfied or waived, the Merger will not occur or will be delayed, and Tocagen and Forte each may lose some or all of the intended benefits of the proposed Merger.

Litigation relating to the proposed Merger could require Tocagen or Forte to incur significant costs and suffer management distraction, and could delay or enjoin the proposed Merger.

Tocagen and Forte could be subject to demands or litigation related to the proposed Merger, whether or not the Merger is consummated. Such actions may create uncertainty relating to the Merger, or delay or enjoin the Merger.

There is no assurance that the proposed Merger will be completed in a timely manner or at all. If the proposed Merger is not consummated, our business could suffer materially and our stock price could decline.

The closing of the proposed Merger is subject to the satisfaction or waiver of a number of closing conditions, as described above, including the required approvals by Tocagen and Forte stockholders and other customary closing conditions. See the risk factors above titled, "*The proposed Merger is subject to approval of the Merger Agreement by our stockholders and the Forte stockholders. Failure to obtain these approvals would prevent the closing of the Merger*" and "*If the conditions to the Merger are not met, the Merger will not occur.*" If the conditions are not satisfied or waived, the proposed Merger may be materially delayed or abandoned. If the proposed Merger is not consummated, our ongoing business may be adversely affected and, without realizing any of the benefits of having consummated the proposed Merger, we will be subject to a number of risks, including the following:

- we have incurred and expect to continue to incur significant expenses related to the proposed Merger even if the Merger is not consummated;
- we could be obligated to pay Forte a termination fee of up to $750,000 under certain circumstances set forth in the Merger Agreement;

- the market price of our common stock may decline to the extent that the current market price reflects a market assumption that the proposed Merger will be completed; and
- matters relating to the proposed Merger have required and will continue to require substantial commitments of time and resources by our remaining management and employees, which could otherwise have been devoted to other opportunities that may have been beneficial to us.

We also could be subject to litigation related to any failure to consummate the proposed Merger or to perform our obligations under the Merger Agreement. If the proposed Merger is not consummated, these risks may materialize and may adversely affect our business, financial condition and the market price of our common stock.

If the proposed Merger is not completed, we may be unsuccessful in completing an alternative transaction on terms that are as favorable as the terms of the proposed Merger with Forte, or at all, and we may otherwise be unable to continue to operate our business. Our board of directors may decide to pursue a dissolution and liquidation of Tocagen. In such an event, the amount of cash available for distribution to our stockholders will depend heavily on the timing of such liquidation as well as the amount of cash that will need to be reserved for commitments and contingent liabilities.*

Our assets currently consist primarily of cash and cash equivalents, our RRV platform assets, other preclinical program assets, the remaining value, if any, of our deferred tax assets, our listing on The Nasdaq Global Select Market and the Merger Agreement with Forte. While we have entered into the Merger Agreement with Forte, the closing of the proposed Merger may be delayed or may not occur at all and there can be no assurance that the proposed Merger will deliver the anticipated benefits we expect or enhance stockholder value. If we are unable to consummate the proposed Merger, our board of directors may elect to pursue an alternative strategy, one of which may be a strategic transaction similar to the proposed Merger. Attempting to complete an alternative transaction like the proposed Merger will be costly and time consuming, and we can make no assurances that such an alternative transaction would occur at all. Alternatively, our board of directors may elect to continue our operations to advance the preclinical and clinical development of our programs, which would require that we obtain additional funding, and to resume our efforts to seek potential collaborative, partnering or other strategic arrangements for our programs, including a sale or other divestiture of our program assets, or our board of directors could instead decide to pursue a dissolution and liquidation of our company. In such an event, the amount of cash available for distribution to our stockholders will depend heavily on the timing of such decision, and with the passage of time the amount of cash available for distribution will be reduced as we continue to fund our operations. In addition, if our board of directors were to approve and recommend, and our stockholders were to approve, a dissolution and liquidation of our company, we would be required under Delaware corporate law to pay our outstanding obligations, as well as to make reasonable provision for contingent and unknown obligations, prior to making any distributions in liquidation to our stockholders. Our commitments and contingent liabilities may include severance obligations, regulatory and preclinical obligations, and fees and expenses related to the proposed Merger. As a result of this requirement, a portion of our assets may need to be reserved pending the resolution of such obligations. In addition, we may be subject to litigation or other claims related to a dissolution and liquidation. If a dissolution and liquidation were pursued, our board of directors, in consultation with its advisors, would need to evaluate these matters and make a determination about a reasonable amount to reserve. Accordingly, holders of our common stock could lose all or a significant portion of their investment in the event of a liquidation, dissolution or winding up of the company.

The issuance of shares of our common stock to Forte stockholders in the proposed Merger will substantially dilute the voting power of our current stockholders.*

If the proposed Merger is completed, each outstanding share of Forte common stock (including the shares of common stock issuable upon conversion of all shares of preferred stock prior to the Merger) will be converted into the right to receive a number of shares of our common stock equal to the exchange ratio determined pursuant to the Merger Agreement. Immediately following the Merger, the former Forte equityholders immediately before the Merger are expected to own approximately 76.7% of our outstanding capital stock, and our equityholders immediately before the Merger are expected to own approximately 23.3% of our outstanding capital stock, on a fully diluted basis using the treasury stock method subject to certain assumptions. Accordingly, the issuance of shares of our common stock to Forte stockholders in the Merger will reduce significantly the relative voting power of each share of Tocagen common stock held by our current stockholders. Consequently, our stockholders as a group will have significantly less influence over the management and policies of the combined company after the Merger than prior to the Merger. These estimates are based on the anticipated exchange ratio and are subject to adjustment as provided in the Merger Agreement. See also the risk factor above titled, "*The exchange ratio is not adjustable based on the market price of Tocagen common stock, so the merger consideration at the closing may have a greater or lesser value than at the time the Merger Agreement was signed.*"

Risks related to our business and financial condition

We have incurred losses since inception, and anticipate that we will incur continued losses for the foreseeable future.*

We are not profitable and have incurred net losses in each year since our inception in 2007, including net losses of $63.5 million for the year ended December 31, 2019 and $10.3 million for the three months ended March 31, 2020. As of March 31, 2020 we had an accumulated deficit of $289.7 million.

These losses, among other things, have had and will continue to have an adverse effect on our stockholders' equity and working capital.

A substantial portion of our recent efforts and expenditures have been devoted to, and our prospects were substantially dependent upon, the development of Toca 511 & Toca FC for the treatment of recurrent high grade glioma. We conducted a randomized, controlled Phase 3 clinical trial (Toca 5) of Toca 511 & Toca FC in patients with recurrent HGG, which was designed to serve as a registrational trial. We received the data from this trial in September 2019. At the final analysis, the trial missed the primary endpoint of overall survival compared to the standard of care treatment (11.1 months median compared to 12.2 months, HR=1.06, p=0.6154). In addition, all secondary endpoints showed no meaningful difference between the arms of the trial. The failure of the Toca 5 trial to achieve its primary and secondary endpoints has significantly depressed our stock price and has severely harmed our ability to raise additional capital and to secure potential collaborative, partnering or other strategic arrangements for our programs, and consequently, our prospects to continue as a going concern have been severely diminished. Following our review of the full data sets from the Toca 5 trial, we determined to discontinue further development of Toca 511 & Toca FC. We continue our efforts to seek potential collaborative, partnering or other strategic arrangements for our programs, including a sale or other divestiture of our program assets. If we are unable to ultimately enter into any such arrangements, we will not receive any return on our investment in Toca 511 & Toca FC.

We are substantially dependent on our remaining employees to facilitate the consummation of the proposed Merger.*

We have substantially reduced our workforce since September 2019 and as of April 22, 2020, we had only nine full-time employees. Such employees' employment with us will terminate upon the closing of the proposed Merger. Our ability to successfully complete the proposed Merger depends in large part on our ability to retain certain of our remaining personnel. Despite our efforts to retain these employees, one or more may terminate their employment with us on short notice. The loss of the services of any of these employees could potentially harm our ability to consummate the proposed Merger, to run our day-to-day business operations, as well as to fulfill our reporting obligations as a public company.

Management transition creates uncertainties and could harm our business.

We have in the past, and may again in the future, experience significant changes in executive leadership. Changes to company strategy, which can often times occur with the appointment of new executives, can create uncertainty, may negatively impact our ability to execute quickly and effectively, and may ultimately be unsuccessful. In addition, executive leadership transition periods are often difficult as the new executives gain detailed knowledge of our operations, and friction can result from changes in strategy and management style. Management transition inherently causes some loss of institutional knowledge, which can negatively affect strategy and execution. Until we integrate new personnel, and unless they are able to succeed in their positions, we may be unable to successfully manage and grow our business, and our results of operations and financial condition could suffer as a result. In any event, changes in our organization as a result of executive management transition may have a disruptive impact on our ability to implement our strategy and could have a material adverse effect on our business, financial condition and results of operations.

The pendency of the proposed Merger could have an adverse effect on the trading price of our common stock and our business, financial condition and prospects.

While there have been no significant adverse effects to date, the pendency of the proposed Merger could disrupt our business in many ways, including:

- the attention of our remaining management and employees may be directed toward the completion of the proposed Merger and related matters and may be diverted from our day-to-day business operations; and
- third parties may seek to terminate or renegotiate their relationships with us as a result of the proposed Merger, whether pursuant to the terms of their existing agreements with us or otherwise.

Should they occur, any of these matters could adversely affect the trading price of our common stock or harm our business, financial condition and prospects.

We are dependent on ApolloBio to develop and commercialize Toca 511 & Toca FC within the greater China region, including mainland China, Hong Kong, Macao and Taiwan. Failure of ApolloBio or any other third parties to successfully develop and commercialize Toca 511 & Toca FC in the applicable jurisdictions could have a material adverse effect on our business.

We have granted ApolloBio an exclusive license to develop and commercialize Toca 511 & Toca FC within the greater China region, including mainland China, Hong Kong, Macao and Taiwan. We have limited contractual rights to force ApolloBio to invest significantly in the development and commercialization of Toca 511 & Toca FC.

In the event that ApolloBio or any other third party with any future development and commercialization rights to any of our product candidates fails to adequately develop and commercialize those product candidates because they lack adequate financial or other resources, decide to focus on other initiatives or otherwise, our ability to successfully develop and commercialize our product candidates in the applicable jurisdictions would be limited, which would adversely affect our business, financial condition, results of operations and prospects. In addition, our license agreement with ApolloBio may be terminated by either party upon a material breach by the other party that remains uncured following 60 days (or, with respect to any payment breach, 10 days) after the date of written notice of such breach, may be terminated by ApolloBio at any time by providing us 90 days' prior written notice and may be terminated by us upon written notice to ApolloBio under specified circumstances if ApolloBio challenges the licensed patent rights. If we or ApolloBio terminate our license agreement, our ability to develop and commercialize Toca 511 & Toca FC within the greater China region, including mainland China, Hong Kong, Macao and Taiwan, would be materially harmed.

If product liability lawsuits are brought against us, we may incur substantial liabilities and may be required to limit commercialization of our product candidates.

We face an inherent risk of product liability as a result of the clinical testing of our product candidates and will face an even greater risk if we commercialize any products. For example, we may be sued if our product candidates cause or are perceived to cause injury or are found to be otherwise unsuitable during clinical testing, manufacturing, marketing or sale. Any such product liability claims may include allegations of defects in manufacturing, defects in design, a failure to warn of dangers inherent in the product, negligence, strict liability or a breach of warranties. Claims could also be asserted under state consumer protection acts. If we cannot successfully defend ourselves against product liability claims, we may incur substantial liabilities or be required to limit commercialization of our product candidates. Even successful defense would require significant financial and management resources. Regardless of the merits or eventual outcome, liability claims may result in:

- decreased demand for our product candidates;
- injury to our reputation;
- withdrawal of clinical trial participants;
- initiation of investigations by regulators;
- costs to defend the related litigation;
- a diversion of management's time and our resources;
- substantial monetary awards to clinical trial participants or patients;
- product recalls, withdrawals or labeling, marketing or promotional restrictions;
- exhaustion of any available insurance and our capital resources;
- loss of revenue;
- the inability to commercialize any product candidate; and
- a decline in our share price.

Our inability to obtain sufficient product liability insurance at an acceptable cost to protect against potential product liability claims could prevent or inhibit the commercialization of any products we develop, alone or with corporate collaborators. We currently carry $5 million of product liability insurance covering our clinical trials. Although we maintain such insurance, our insurance policies may have various exclusions, and we may be subject to a product liability claim for which we have no coverage. We may have to pay any amounts awarded by a court or negotiated in a settlement that exceed our coverage limitations or that are not covered by our insurance, and we may not have, or be able to obtain, sufficient capital to pay such amounts. Even if our agreements with any future corporate collaborators entitle us to indemnification against losses, such indemnification may not be available or adequate should any claim arise.

Our internal computer systems, or those used by our contract research organizations, or CROs, SaaS providers, contractors or consultants, may fail or suffer security breaches.

Despite the implementation of security measures, our internal computer systems and those of our CROs, SaaS providers, contractors and consultants are vulnerable to damage from computer viruses and unauthorized access. While we have not experienced any such material system failure or security breach to date, if such an event were to occur and cause interruptions in our operations, it could result in a material disruption of our development programs and our business operations. For example, the loss of clinical trial data from completed or future clinical trials could result in delays in our regulatory approval efforts and significantly increase our costs to recover or reproduce the data. To the extent that any disruption or security breach 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, and the further development and commercialization of our product candidates could be delayed.

Our business could be negatively impacted by cyber security threats.

In the ordinary course of our business, we use our data centers and our networks to store and access our proprietary business information. We face various cyber security threats, including cyber security attacks to our information technology infrastructure and attempts by others to gain access to our proprietary or sensitive information. The procedures and controls we use to monitor these threats and mitigate our exposure may not be sufficient to prevent cyber security incidents. The result of these incidents could include disrupted operations, lost opportunities, misstated financial data, liability for stolen assets or information, increased costs arising from the implementation of additional security protective measures, litigation and reputational damage. Any remedial costs or other liabilities related to cyber security incidents may not be fully insured or indemnified by other means.

Business disruptions could seriously harm our future revenue and financial condition and increase our costs and expenses.*

Our operations, and those of our CROs, contractors and consultants, could be subject to power shortages, telecommunications failures, wildfires, water shortages, floods, earthquakes, hurricanes, typhoons, fires, extreme weather conditions, medical epidemics, such as the COVID-19 pandemic, and other natural or man-made disasters or business interruptions for which we are predominantly self-insured. The occurrence of any of these business disruptions could seriously harm our operations and financial condition and increase our costs and expenses. Our ability to obtain clinical supplies of our product candidates could be disrupted if the operations of our contract manufacturers or cell line storage facilities are affected by a man-made or natural disaster or other business interruption.

A COVID-19 pandemic is ongoing in many parts of the world and may result in significant disruptions which could have an effect on our business.*

A COVID-19 pandemic exists as of the filing of this Quarterly Report on Form 10-Q. As the pandemic is still evolving as of this time, much of its impact remains unknown, and it is impossible to predict the impact it may have on our business.

The COVID-19 pandemic may result in significant delays or disruptions in our planned merger. Prolonged disruptions to businesses, manufacturing, and supply chain, including shelter-in-place or similar orders imposed by federal, state or local government authorities, and economic downturns can lead to materially adverse effects on our business operations, including layoffs and/or suspension of our business operations.

We may be subject, directly or indirectly, to federal, state, local and foreign healthcare fraud and abuse laws, false claims laws, privacy laws and other applicable healthcare laws, and the failure to comply with such laws could result in substantial penalties. Our employees, independent contractors, consultants, principal investigators, CROs, commercial partners and vendors may engage in misconduct or other improper activities, including noncompliance with regulatory standards and requirements.*

We are exposed to the risk of fraud, misconduct or other illegal activity by our employees, independent contractors, consultants, principal investigators, CROs, commercial partners and vendors. Misconduct by these parties could include intentional, reckless and/or negligent conduct that fails to: comply with the laws of the FDA and other similar foreign regulatory bodies; provide true, complete and accurate information to the FDA and other similar foreign regulatory bodies; comply with manufacturing standards we have established; comply with federal and state data privacy, security, fraud and abuse and other healthcare laws and regulations in the United States and similar foreign fraudulent misconduct laws; or report financial information or data accurately or to disclose unauthorized activities to us.

In addition, our current and future operations are subject to regulation under such laws, and if we obtain FDA approval for any of our product candidates and begin commercializing those products in the United States, our potential exposure under such laws would increase significantly, along with our costs associated with compliance with such laws. These laws may impact, among other things, our current activities with principal investigators and research patients, as well as proposed and future sales, marketing and education programs. In particular, the research promotion, sales and marketing of healthcare items and services, as well as certain business arrangements in the healthcare industry, are subject to extensive laws and regulations intended to prevent fraud, misconduct, kickbacks, self-dealing and other abusive practices. These laws and regulations may restrict or prohibit a wide range of activities, including pricing, discounting, marketing and promotion, including off-label promotion of our products, structuring of commission(s), certain customer incentive programs and other business arrangements generally. Activities subject to these laws also involve the improper use or misrepresentation of information obtained in the course of patient recruitment for clinical trials, creating fraudulent data in our preclinical studies or clinical trials or illegal misappropriation of drug product, which could result in regulatory sanctions and cause serious harm to our reputation. The laws that may affect our ability to operate include, but are not limited to:

- the federal Anti-Kickback Statute, which prohibits, among other things, individuals and entities from knowingly and willfully soliciting, receiving, offering or paying any remuneration (including any kickback, bribe, or rebate), directly or indirectly, overtly or covertly, in cash or in kind, to induce, or in return for, either the referral of an individual for, or the purchase, lease, order or recommendation of, any good, facility, item or service for which payment may be made, in whole or in part, under a federal healthcare program, such as the Medicare and Medicaid programs. A person or entity does not need to have actual knowledge of the statute or specific intent to violate it in order to have committed a violation;
- federal civil and criminal false claims laws, including the federal civil False Claims Act, which can be enforced by individuals on behalf of the government through civil whistleblower or *qui tam* actions, and civil monetary penalty laws, which impose criminal and civil penalties on individuals and entities for, among other things, knowingly presenting, or causing to be presented, claims for payment or approval from Medicare, Medicaid, or other federal healthcare programs that are false, fictitious or fraudulent, or knowingly making, using or causing to be made or used, a false statement to avoid, decrease or conceal an obligation to pay money to the federal government. In addition, the government may assert that a claim including items and services resulting from a violation of the federal Anti-Kickback Statute constitutes a false or fraudulent claim for purposes of the federal civil False Claims Act;
- the federal Health Insurance Portability and Accountability Act of 1996, or HIPAA, which imposes criminal and civil liability for, among other things, knowingly and willfully executing, or attempting to execute, a scheme to defraud any healthcare benefit program or obtain, by means of false or fraudulent pretenses, representations, or promises, any of the money or property owned by, or under the custody or control of, any healthcare benefit program, regardless of the payor (e.g., public or private), willfully obstructing a criminal investigation of a healthcare offense, and knowingly and willfully falsifying, concealing or covering up by any trick or device a material fact or making any materially false, fictitious or fraudulent statements in connection with the delivery of, or payment for, healthcare benefits, items or services relating to healthcare matters. Similar to the federal Anti-Kickback Statute, a person or entity does not need to have actual knowledge of the statute or specific intent to violate it in order to have committed a violation;
- HIPAA, as amended by the Health Information Technology for Economic and Clinical Health Act, or HITECH, and their respective implementing regulations, which impose requirements on certain covered healthcare providers, health plans, and healthcare clearinghouses, as well as their respective business associates that perform services for them that involve the creation, use, maintenance or disclosure of, individually identifiable health information, relating to the privacy, security and transmission of individually identifiable health information without appropriate authorization;
- the federal physician payment transparency requirements, sometimes referred to as the “Physician Payments Sunshine Act,” created under the Patient Protection and Affordable Care Act, as amended by the Health Care and Education Reconciliation Act, collectively the Healthcare Reform Act, and its implementing regulations, which require certain manufacturers of drugs, devices, biologics and medical supplies for which payment is available under Medicare, Medicaid or the Children’s Health Insurance Program (with certain exceptions) to report annually to the Centers for Medicare & Medicaid Services, or CMS, information related to payments or other transfers of value made to physicians (defined to include doctors, dentists, optometrists, podiatrists and chiropractors) and teaching hospitals, as well as ownership and investment interests held by physicians and their immediate family members. Beginning in 2022, applicable manufacturers also will be required to report such information regarding payments and transfers of value provided, as well as ownership and investment interests held, during the previous year to physician assistants, nurse practitioners, clinical nurse specialists, certified nurse anesthetists and certified nurse-midwives;
- the U.S. Federal Food, Drug and Cosmetic Act, or FD&C Act, which prohibits, among other things, the adulteration or misbranding of drugs and medical devices; and
- federal consumer protection and unfair competition laws, which broadly regulate marketplace activities and activities that potentially harm consumers.

Additionally, we are subject to state, local and foreign equivalents of each of the healthcare fraud and abuse laws described above, among others, some of which may be broader in scope and may apply regardless of the payor. We may also be subject to state, local and foreign laws that require pharmaceutical companies to comply with the pharmaceutical industry's voluntary compliance guidelines and the relevant compliance guidance promulgated by the federal government or otherwise restrict payments that may be made to healthcare providers; to report information related to payments and other transfers of value to healthcare providers or entities, or marketing expenditures; report certain information regarding drug pricing; and require registration of pharmaceutical sales representatives. We may also be subject to state and foreign laws governing the privacy and security of health information in certain circumstances, many of which differ from each other in significant ways and often are not preempted by HIPAA, thus complicating compliance efforts.

In the European Union, the General Data Protection Regulation (2016/679), or GDPR, applies to any organization established in the European Union, and in some cases to activities of organizations that are not established in the European Union. The GDPR, which is wide-ranging in scope, imposes several requirements relating to control over personal data by individuals to whom personal data relates, the information that an organization must provide to individuals, the documentation an organization must maintain, the security and confidentiality of personal data, data breach notification and the use of third party processors in connection with the processing of personal data. The GDPR also imposes strict rules on the transfer of personal data out of the European Union to the United States, provides an enforcement authority, and authorizes fines of up to 20 million Euros or up to 4% of an organization's annual global turnover, whichever is greater, for non-compliance. Additionally, the California Consumer Privacy Act, or CCPA, went into effect on January 1, 2020. The CCPA creates new individual privacy rights for consumers (as that word is broadly defined in the law) and places increased privacy and security obligations on many organizations that handle the personal data of consumers or households. The CCPA requires covered companies to provide new disclosures to California consumers, provides a new right for consumers to opt-out of certain sales of personal information, and provides a new cause of action for data breaches in some cases. The California Attorney General is expected to issue regulations regarding the CCPA later this year. The CCPA impacts our business activities and exemplifies the vulnerability of our business to not only cyber threats but also the evolving regulatory environment related to personal data and protected health information.

It is not always possible to identify and deter employee misconduct, and the precautions we take to detect and prevent inappropriate conduct may not be effective in controlling unknown or unmanaged risks or losses or in protecting us from governmental investigations or other actions or lawsuits stemming from a failure to be in compliance with such laws or regulations. We are also subject to the risk that a person or government could allege such fraud or other misconduct, even if none occurred. Efforts to ensure that our business arrangements will comply with applicable healthcare laws and regulations will involve substantial costs. It is possible that governmental and enforcement authorities will conclude that our business practices may not comply with current or future statutes, regulations or case law interpreting applicable fraud and abuse or other healthcare laws and regulations. If any such actions are instituted against us, and we are not successful in defending ourselves or asserting our rights, those actions could have a significant impact on our business, including the imposition of significant civil, criminal and administrative penalties, damages, disgorgement, monetary fines, possible exclusion from participation in Medicare, Medicaid and other federal healthcare programs, contractual damages, reputational harm, diminished profits and future earnings, imprisonment, additional reporting obligations and oversight if we become subject to a corporate integrity agreement or other agreement to resolve allegations of non-compliance with these laws, and curtailment or restructuring of our operations, any of which could adversely affect our ability to operate our business and our results of operations. In addition, the approval and commercialization of any of our product candidates outside the United States will also likely subject us to foreign equivalents of the healthcare laws mentioned above, among other foreign laws.

Additionally, in the United States and some foreign jurisdictions there have been, and continue to be, several legislative and regulatory changes and proposed reforms of the healthcare system in an effort to contain costs, improve quality, and expand access to care. These reform initiatives may, among other things, result in modifications to the aforementioned laws and/or the implementation of new laws affecting the healthcare industry. Similarly, a significant trend in the healthcare industry is cost containment. Third-party payors have attempted to control costs by limiting coverage and the amount of reimbursement for particular medications. Our ability to commercialize any of our products successfully will depend in part on the extent to which coverage and adequate reimbursement for these products and will be available from third-party payors.

If we fail to comply with environmental, health and safety laws and regulations, we could become subject to fines or penalties or incur costs that could have a material adverse effect on the success of our business.

Our research and development, manufacturing processes, clinical trials and products may involve the controlled use of hazardous materials, chemicals, viruses and various radioactive compounds. Specifically, if our products or product candidates spread from human or companion pet patients to other people or pets, these other individuals or pets (such as the immune suppressed or the very young), might be more sensitive to the product or product candidate than the patient and may experience an adverse reaction. We are subject to federal, state and local laws and regulations governing the use, manufacture, storage, handling and disposal of such materials and certain waste products, including numerous environmental, health and safety laws and regulations, such as those governing laboratory procedures and the handling, use, storage, treatment and disposal of hazardous materials and wastes. Our

operations involve the use of hazardous and flammable materials, including chemicals and biological materials. Our operations also produce hazardous waste products. We generally contract with third parties for the disposal of these materials and wastes. We cannot eliminate the risk of contamination or injury from these materials. In the event of contamination or injury resulting from our use of hazardous materials, we could be held liable for any resulting damages, and any liability could exceed our resources. We also could incur significant costs associated with civil or criminal fines and penalties.

Although we maintain workers' compensation insurance to cover us for costs and expenses we may incur due to injuries to our employees resulting from the use of hazardous materials or other work-related injuries, this insurance may not provide adequate coverage against potential liabilities. In addition, we may incur substantial costs in order to comply with current or future environmental, health and safety laws and regulations. These current or future laws and regulations may impair our research, development or production efforts. Failure to comply with these laws and regulations also may result in substantial fines, penalties or other sanctions.

Risks related to our intellectual property

If we fail to comply with our obligations in the agreement under which we license intellectual property rights from the University of Southern California, or USC, or otherwise experience disruptions to our business relationships with USC or other future licensors, we could lose license rights that are important to our business.

In October 2007, we entered into a license agreement with USC pursuant to which we received a worldwide, exclusive license to, among other things, manufacture and market products utilizing certain inventions that are critical to our business. We may enter into additional license agreements in the future. Our existing license agreement imposes, and future license agreements may impose, various diligence, milestone payment, royalty and other obligations on us. If we fail to comply with our obligations under these agreements, or we are subject to a bankruptcy, the licensor may have the right to terminate the license, in which event we would not be able to market products covered by the license.

We may need to obtain licenses from third parties to advance our research or allow commercialization of our product candidates, and we have done so from time to time. We may fail to obtain any of these licenses at a reasonable cost or on reasonable terms, if at all. In that event, we may be required to expend significant time and resources to develop or license replacement technology. If we are unable to do so, we may be unable to develop or commercialize the affected product candidates, which could harm our business significantly. We cannot provide any assurances that third-party patents do not exist which might be enforced against our current product candidates or future products, resulting in either an injunction prohibiting our sales, or, with respect to our sales, an obligation on our part to pay royalties and/or other forms of compensation to third parties.

In certain cases, patent prosecution of our licensed technology may be controlled solely by the licensor. If our licensors fail to obtain and maintain patent or other protection for the proprietary intellectual property we license from them, we could lose our rights to the intellectual property or our exclusivity with respect to those rights, and our competitors could market competing products using the intellectual property. In certain cases, we control the prosecution of patents resulting from licensed technology. In the event we breach any of our obligations related to such prosecution, we may incur significant liability to our licensing partners. Licensing of intellectual property is of critical importance to our business and involves complex legal, business and scientific issues and is complicated by the rapid pace of scientific discovery in our industry. Disputes may arise regarding intellectual property subject to a licensing agreement, including:

- the scope of rights granted under the license agreement and other interpretation-related issues;
- the extent to which our technology and processes infringe on intellectual property of the licensor that is not subject to the licensing agreement;
- the sublicensing of patent and other rights under our collaborative development relationships;
- our diligence obligations under the license agreement and what activities satisfy those diligence obligations;
- the ownership of inventions and know-how resulting from the joint creation or use of intellectual property by our licensors and us and our partners; and
- the priority of invention of patented technology.

If disputes over intellectual property that we have licensed prevent or impair our ability to maintain our current licensing arrangements on acceptable terms, we may be unable to successfully develop and commercialize the affected product candidates.

Our reliance on third parties may require us to share our trade secrets, which increases the possibility that a competitor will discover them or that our trade secrets will be misappropriated or disclosed.

We seek to protect our proprietary technology in part by entering into confidentiality agreements and, if applicable, material transfer agreements, collaborative research agreements, consulting agreements or other similar agreements with our manufacturers, collaborators, advisors, employees and consultants prior to beginning research or disclosing proprietary information. These agreements typically limit the rights of the third parties to use or disclose our confidential information, such as trade secrets. Despite the contractual provisions employed when working with third parties, the need to share trade secrets and other confidential information increases the risk that such trade secrets become known by our competitors, are inadvertently incorporated into the technology of others, are used inappropriately to create new inventions or are disclosed or used in violation of these agreements. Given that our proprietary position is based, in part, on our know-how and trade secrets, a competitor's discovery of our trade secrets or other unauthorized use or disclosure would impair our competitive position and may have a material adverse effect on our business.

In addition, these agreements typically restrict the ability of our collaborators, advisors, employees and consultants to publish data potentially relating to our trade secrets. Our academic collaborators typically have rights to publish data, provided that we are notified in advance and may delay publication for a specified time in order to secure our intellectual property rights arising from the collaboration. In other cases, publication rights are controlled exclusively by us, although in some cases we may share these rights with other parties. We also conduct joint research and development programs that may require us to share trade secrets under the terms of our research and development partnerships or similar agreements. Despite our efforts to protect our trade secrets, our competitors may discover our trade secrets through breach of these agreements, independent development or publication of information including our trade secrets in cases where we do not have proprietary or otherwise protected rights at the time of publication. A competitor's discovery of our trade secrets may impair our competitive position and have an adverse impact on our business.

We may be subject to claims that our employees, consultants or independent contractors have wrongfully used or disclosed confidential information of third parties or that our employees have wrongfully used or disclosed alleged trade secrets of their former employers.

We employ individuals who were previously employed at universities or other biotechnology or pharmaceutical companies, including our competitors or potential competitors. Although we try to ensure that our employees, consultants and independent contractors do not use the proprietary information or know-how of others in their work for us, we may be subject to claims that we or our employees, consultants or independent contractors have inadvertently or otherwise used or disclosed intellectual property, including trade secrets or other proprietary information, of any of our employee's former employer or other third parties. Litigation may be necessary to defend against these claims. If we fail in defending any such claims, in addition to paying monetary damages, we may lose valuable intellectual property rights or personnel, which could adversely impact our business. Even if we are successful in defending against such claims, litigation could result in substantial costs and be a distraction to management and other employees.

Risks related to ownership of our common stock

If we fail to satisfy applicable listing standards, our common stock may be delisted from the Nasdaq Global Select Market.*

On October 28, 2019, we received a letter from the Listing Qualifications Staff of the Nasdaq Stock Market LLC, or Nasdaq, notifying us that the closing bid price of our common stock had been below $1.00 per share for 30 consecutive business days and that we were therefore not in compliance with the minimum bid price requirement for continued listing on The Nasdaq Global Select Market, as required by Nasdaq Listing Rule 5550(a)(2). Nasdaq stated in its October 28, 2019 letter that, in accordance with Nasdaq Listing 5810(c)(3)(A), we had a grace period of 180 calendar days, or until April 27, 2020, to regain compliance with the minimum closing bid price requirement for continued listing. We were notified on March 10, 2020 that we regained compliance with Nasdaq Listing Rule 5450(a)(1).

There is no guarantee that we will be able to maintain compliance with the Nasdaq minimum bid price requirement, which could result in Nasdaq taking steps to delist our common stock. Delisting from The Nasdaq Global Select Market could adversely affect our ability to raise additional financing through the public or private sale of equity securities, would significantly affect the ability of investors to trade our securities and would negatively affect the value and liquidity of our common stock. Delisting could also have other negative results, including the potential loss of confidence by employees, the loss of institutional investor interest and fewer business development opportunities. If our common stock is delisted by The Nasdaq Global Select Market, the price of our common stock may decline, and although our common stock may be eligible to trade on the Nasdaq Capital Market, the OTC Bulletin Board, another over-the-counter quotation system, or on the pink sheets, an investor may find it more difficult to dispose of their common stock or obtain accurate quotations as to the market value of our common stock. Further, if we are delisted, we would incur additional costs under state blue sky laws in connection with any sales of our securities. These requirements could severely limit the market liquidity of our common stock and the ability of our stockholders to sell our common stock in the secondary market.

In addition, we are required pursuant to the terms of the Merger Agreement to submit to our stockholders a proposal to approve an amendment to our amended and restated certification of incorporate to authorize our board of directors to effect a reverse stock split of all outstanding shares of our common stock. The approval of the reverse stock split by the stockholders is a condition to closing pursuant to the Merger Agreement. If we do not maintain compliance with the Nasdaq minimum bid price prior to the Merger and this reverse stock split proposal is not approved by our stockholders and the parties waive this closing condition the combined company resulting from the proposed Merger will likely not be able to obtain compliance with the minimum bid price requirement for an initial listing on The Nasdaq Capital Market and, as a consequence, Nasdaq will immediately provide the combined company with written notification that our common stock will be delisted.

If our common stock is delisted, we would expect our common stock to be traded in the over-the-counter market, which could adversely affect the liquidity of our common stock. Additionally, we could face significant material adverse consequences, including:

- a limited availability of market quotations for our common stock;
- a reduced amount of news and analyst coverage for us;
- a decreased ability to issue additional securities and a concomitant substantial impairment in our ability to obtain sufficient additional capital to fund our operations and to continue as a going concern;
- reduced liquidity for our stockholders;
- potential loss of confidence by employees and potential future partners or collaborators; and
- loss of institutional investor interest and fewer business development opportunities.

The market price of our common stock has been volatile and may continue to be volatile in the future. This volatility may cause our stock price and the value of your investment to decline.*

The market prices for securities of biotechnology companies, including ours, have been highly volatile and may continue to be so in the future. The market price of our common stock is likely to continue to be volatile and subject to significant price and volume fluctuations. In addition, companies trading in the stock market in general, and the Nasdaq Global Select Market in particular, have experienced extreme price and volume fluctuations that have often been unrelated or disproportionate to the operating performance of these companies. Broad market and industry factors may negatively affect the market price of our common stock, regardless of our actual operating performance.

In the past, class action litigation has often been instituted against companies whose securities have experienced periods of volatility in market price. Any such litigation brought against us could result in substantial costs, which would hurt our financial condition and results of operations.

Unstable market and economic conditions may have serious adverse consequences on our business, financial condition and stock price.*

From time to time, including recently as a result of the COVID-19 pandemic, global credit and financial markets have experienced extreme volatility and disruptions, including severely diminished liquidity and credit availability, declines in consumer confidence, declines in economic growth, increases in unemployment rates and uncertainty about economic stability. Our general business strategy may be adversely affected by any such economic downturn, volatile business environment and continued unpredictable and unstable market conditions. If the equity and credit markets deteriorate it may make any necessary debt or equity financing more difficult to complete, more costly, and more dilutive. Failure to secure any necessary financing in a timely manner and on favorable terms could have a material adverse effect on our growth strategy, financial performance and stock price and could require us to delay or abandon clinical development plans. In addition, there is a risk that one or more of our current service providers, manufacturers and other partners may not survive an economic down-turn, which could directly affect our ability to attain our operating goals on schedule and on budget.

We do not intend to pay dividends on our common stock so any returns will be limited to the value of our stock.*

We have never declared or paid any cash dividends on our common stock. We currently anticipate that we will retain future earnings for the operation of our business and do not anticipate declaring or paying any cash dividends for the foreseeable future. Any return to stockholders will therefore be limited to the appreciation of their stock.

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

We are an emerging growth company, as defined in the Jumpstart Our Business Startups Act, or JOBS Act. For as long as we continue to be an emerging growth company, we may take advantage of exemptions from various reporting requirements that are applicable to other public companies that are not emerging growth companies, including not being required to comply with the auditor attestation requirements of Section 404 of the Sarbanes-Oxley Act of 2002, as amended, or the Sarbanes-Oxley Act, reduced disclosure obligations regarding executive compensation in our periodic reports and proxy statements and exemptions from the requirements of holding nonbinding advisory votes on executive compensation and stockholder approval of any golden parachute payments not previously approved. We could be an emerging growth company for up to five years following the year in which we completed our initial public offering, although circumstances could cause us to lose that status earlier. We will remain an emerging growth company until the earlier of (1) the last day of the fiscal year (a) following the fifth anniversary of the completion of our initial public offering (i.e. December 31, 2022), (b) in which we have total annual gross revenue of at least $1.07 billion or (c) in which we are deemed to be a large accelerated filer, which requires the market value of our common stock that is held by non-affiliates to exceed $700 million as of the prior June 30th, and (2) the date on which we have issued more than $1 billion in non-convertible debt during the prior three-year period.

Even after we no longer qualify as an emerging growth company, we may still qualify as a “smaller reporting company” which would allow us to take advantage of many of the same exemptions from disclosure requirements including not being required to comply with the auditor attestation requirements of Section 404 of the Sarbanes-Oxley Act and reduced disclosure obligations regarding executive compensation in our periodic reports and proxy statements. We cannot predict if investors will find our common stock less attractive because we may rely on these exemptions. If some investors find our common stock less attractive as a result, there may be a less active trading market for our common stock and our stock price may be more volatile.

Under the JOBS Act, emerging growth companies can also delay adopting new or revised accounting standards until such time as those standards apply to private companies. We have irrevocably elected not to avail ourselves of this exemption from new or revised accounting standards and, therefore, will be subject to the same new or revised accounting standards as other public companies that are not emerging growth companies. As a result, changes in rules of U.S. generally accepted accounting principles or their interpretation, the adoption of new guidance or the application of existing guidance to changes in our business could significantly affect our financial position and results of operations.

Sales of a substantial number of shares of our common stock in the public market could cause our stock price to fall.*

If our existing stockholders sell, or indicate an intention to sell, substantial amounts of our common stock in the public market, the market price of our common stock could decline. We had 23,918,889 shares of common stock outstanding as of April 17, 2020. We are unable to predict the effect that sales may have on the prevailing market price of our common stock.

Sales of our common stock by current stockholders may make it more difficult for us to sell equity or equity-related securities in the future at a time and price that we deem reasonable or appropriate, and make it more difficult for other stockholders to sell shares of our common stock. In addition, as of March 31, 2020, 5,881,075 shares of common stock that are either subject to outstanding options or awards, reserved for future issuance under our equity incentive plans or subject to outstanding warrants will become eligible for sale in the public market to the extent permitted by the provisions of various vesting schedules and Rule 144 and Rule 701 under the Securities Act. If these additional shares of common stock are sold, or if it is perceived that they will be sold, in the public market, the market price of our common stock could decline.

We have broad discretion in the use of working capital and may not use it effectively.

Our management will have broad discretion in the application of working capital, and stockholders do not have the opportunity to assess whether working capital is being used appropriately. Because of the number and variability of factors that will determine our use of our working capital, its ultimate use may vary substantially from its currently intended use. Management might not apply working capital in ways that ultimately increase stockholder value. Failure by us to apply working capital effectively could harm our business. Pending its use, we may invest our working capital in short-term, investment-grade, interest-bearing securities. These investments may not yield a favorable return to our stockholders. If we do not invest or apply our working capital in ways that enhance stockholder value, we may fail to achieve expected financial results, which could cause our stock price to decline.

Changes in tax laws or regulations that are applied adversely to us or our customers may have a material adverse effect on our business, cash flow, financial condition or results of operations.*

New income, sales, use or other tax laws, statutes, rules, regulations or ordinances could be enacted at any time, which could affect the tax treatment of our domestic and foreign earnings. Any new taxes could adversely affect our domestic and international business operations, and our business and financial performance. Further, existing tax laws, statutes, rules, regulations or ordinances could be interpreted, changed, modified or applied adversely to us. For example, legislation enacted in 2017, informally titled the Tax Cuts and Jobs Act, or Tax Act, made many significant changes to the tax laws, including the Internal Revenue Code of 1986, as amended, or IRC. Future guidance from the Internal Revenue Service and other tax authorities with respect to the Tax Act may affect

us, and certain aspects of the Tax Act could be repealed or modified in future legislation. For example, the Coronavirus Aid, Relief, and Economic Security Act, or the CARES Act, modified certain provisions of the Tax Act. In addition, it is uncertain if and to what extent various states will conform to the Tax Act or any newly enacted federal tax legislation. Changes in corporate tax rates, the realization of net deferred tax assets relating to our operations, the taxation of foreign earnings, and the deductibility of expenses under the Tax Act or future reform legislation could have a material impact on the value of our deferred tax assets, could result in significant one-time charges, and could increase our future U.S. tax expense.

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

As of December 31, 2019, we had federal net operating losses of $231.0 million, of which $136.6 million begin to expire in 2028 unless previously utilized and $94.4 million do not expire. As of December 31, 2019, we had California net operating loss carryforwards of $76.0 million that begin to expire in 2028 unless previously utilized. If these net operating loss carryforwards expire unused, they will be unavailable to offset future income and reduce future income tax liabilities. In addition, under the Tax Act, as modified by the CARES Act, federal net operating losses incurred in taxable years beginning after December 31, 2017 may be carried forward indefinitely, but the deductibility of such federal net operating losses in tax years beginning after December 31, 2020, is limited to 80% of taxable income. It is uncertain if and to what extent various states will conform to the Tax Act or the CARES Act. Under Sections 382 and 383 of the IRC, if a corporation undergoes an "ownership change," generally defined as a cumulative change in its equity ownership by "5-percent shareholders" of greater than 50 percentage points (by value) over a three-year period, the corporation's ability to use its pre-change net operating loss carryforwards, or NOLs, and certain other pre-change tax attributes (such as research tax credits) to offset its post-change taxable income and taxes, as applicable, may be limited. We have completed public offerings and multiple other rounds of financing since our inception which may have resulted in an ownership change or could result in one or more ownership changes in the future. As of December 31, 2019, we have not completed a Section 382 and 383 analysis regarding any limitations on our NOLs and research and development credit carryforwards and such limitations could be significant. We may also experience ownership changes in the future as a result of subsequent shifts in our stock ownership. As a result, our ability to use our NOLs and research and development credit carryforwards to offset our U.S. federal taxable income and taxes, as applicable, may be subject to limitations, which could potentially result in increased future tax liability to us. In addition, at the state level, similar rules may apply and there may be periods during which the use of NOLs is suspended or otherwise limited, which could accelerate or permanently increase state taxes owed.

Provisions in our amended and restated certificate of incorporation and amended and restated bylaws, as well as provisions of Delaware law, could make it more difficult for a third party to acquire us or increase the cost of acquiring us, even if doing so would benefit our stockholders or remove our current management.

Our amended and restated certificate of incorporation, amended and restated bylaws and Delaware law contain provisions that may have the effect of delaying or preventing a change in control of us or changes in our management. Our amended and restated certificate of incorporation and amended and restated bylaws, include provisions that:

- permit our board of directors to issue up to 10,000,000 shares of preferred stock, with any rights, preferences and privileges as they may designate (including the right to approve an acquisition or other change in our control);
- provide that the authorized number of directors may be changed only by resolution of the board of directors;
- provide that the board of directors or any individual director may only be removed with cause and the affirmative vote of the holders of at least 66-2/3% of the voting power of all of our then outstanding common stock;
- provide that all vacancies, including newly created directorships, may, except as otherwise required by law, be filled by the affirmative vote of a majority of directors then in office, even if less than a quorum;
- divide our board of directors into three classes;
- require that any action to be taken by our stockholders must be effected at a duly called annual or special meeting of stockholders and not be taken by written consent;
- provide that stockholders seeking to present proposals before a meeting of stockholders or to nominate candidates for election as directors at a meeting of stockholders must provide notice in writing in a timely manner and also specify requirements as to the form and content of a stockholder's notice;
- do not provide for cumulative voting rights (therefore allowing the holders of a majority of the shares of common stock entitled to vote in any election of directors to elect all of the directors standing for election, if they should so choose);
- provide that special meetings of our stockholders may be called only by the chairman of the board, our Chief Executive Officer or by the board of directors pursuant to a resolution adopted by a majority of the total number of authorized directors; and

- provide that the Court of Chancery of the State of Delaware will be the sole and exclusive forum for (i) any derivative action or proceeding brought on our behalf, (ii) any action asserting a claim of breach of a fiduciary duty owed by any of our directors or officers to us or our stockholders, (iii) any action asserting a claim against us arising pursuant to any provision of the Delaware General Corporation Law or our certificate of incorporation or bylaws, or (iv) any action asserting a claim against us governed by the internal affairs doctrine (these choice of forum provisions do not apply to suits brought to enforce a duty or liability created by the Securities Act, the Exchange Act, or any other claim for which the federal courts have exclusive jurisdiction).

These provisions, alone or together, could delay or prevent hostile takeovers and changes in control or changes in our management.

In addition, because we are incorporated in Delaware, we are governed by the provisions of Section 203 of the Delaware General Corporation Law, which limits the ability of stockholders owning in excess of 15% of our outstanding voting stock to merge or combine with us.

Any provision of our amended and restated certificate of incorporation or amended and restated bylaws or Delaware law that has the effect of delaying or deterring a change in control could limit the opportunity for our stockholders to receive a premium for their shares of our common stock, and could also affect the price that some investors are willing to pay for our common stock.

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

Our amended and restated certificate of incorporation and amended and restated bylaws provide that the Court of Chancery of the State of Delaware is the sole and exclusive forum for (i) any derivative action or proceeding brought on our behalf; (ii) any action asserting a breach of fiduciary duty owed by any of our directors, officers or other employees to us or our stockholders; (iii) any action asserting a claim against us or any of our directors, officers or other employees arising pursuant to the Delaware General Corporation Law, our amended and restated certificate of incorporation or our amended and restated bylaws; or (iv) any action asserting a claim against us or any of our directors, officers or other employees that is governed by the internal affairs doctrine; *provided*, that these choice of forum provisions do not apply to suits brought to enforce a duty or liability created by the Securities Act, the Exchange Act, or any other claim for which the federal courts have exclusive jurisdiction. The choice of forum provision may limit a stockholder's ability to bring a claim in a judicial forum that it finds favorable for disputes with us or our directors, officers or other employees, which may discourage such lawsuits against us and our directors, officers and other employees. Alternatively, if a court were to find the choice of forum provision contained in our amended and restated certificate of incorporation and amended and restated bylaws to be inapplicable or unenforceable in an action, we may incur additional costs associated with resolving such action in other jurisdictions, which could adversely affect our business and financial condition.

Item 5. Other Information

On April 17, 2020, we entered into an Asset Purchase Agreement, or Purchase Agreement, with Denovo BioPharma LLC, or Denovo, pursuant to which, among other things, Denovo agreed to acquire from us certain intellectual property rights, materials, know-how, and data, including those related to our retroviral replicating vector technologies, including Toca 511 & Toca FC for a purchase price of $1.1 million, or the Denovo Transaction.

The Purchase Agreement includes representations and warranties, covenants and closing conditions customary for a transaction of this nature. The Purchase Agreement also includes customary termination provisions for both us and Denovo and provides that, in connection with the termination of the Purchase Agreement by us to accept and enter into a definitive agreement with respect to an unsolicited superior offer pursuant to the Merger Agreement, we will be required to pay a termination fee of an amount in cash equal to $200,000 and up to an additional $50,000 of Denovo's documented legal fees incurred in connection with the Denovo Transaction.

Under the terms of the Purchase Agreement, the Denovo Transaction will close upon the earlier of (a) immediately after the closing of the Merger and (b) promptly after the termination of the Merger Agreement. We expect the Merger and the Denovo Transaction to close in the second quarter of 2020.

The foregoing description of the Purchase Agreement is qualified in its entirety by reference to the Purchase Agreement, a copy of which will be filed as an exhibit to our Quarterly Report on Form 10-Q for the quarterly period ending June 30, 2020.

Cautionary Statement Regarding Forward-Looking Statements

This Item 5 contains "forward-looking" statements within the meaning of the Private Securities Litigation Reform Act of 1995, including, without limitation, statements related to the anticipated consummation of the proposed transactions, and other statements that are not historical facts. Any statements contained in this Item 5 that are not statements of historical fact may be deemed to be forward-looking statements. Forward-looking statements may be identified by the use of words referencing future events or circumstances such as "expect," "intend," "plan," "anticipate," "believe," "will," and similar expressions and their variants. These forward-looking statements are based upon our current expectations. Forward-looking statements involve risks and uncertainties. Our actual results and the timing of events could differ materially from those anticipated in such forward-looking statements as a result of these risks and uncertainties, which include, without limitation, risks relating to the completion of the Denovo Transaction, the completion of the Merger, including the need for stockholder approval and the satisfaction of closing conditions with respect to the Merger, which include the anticipated financing to be completed immediately prior the closing of the Merger, our cash balance prior to the Merger and our ability to remain listed on The Nasdaq Stock Market, LLC.

There can be no assurance that we will be able to complete the transactions on the anticipated terms, or at all. Additional risks and uncertainties relating to us and our business can be found under the caption "Risk Factors" in Part II, Item 1A of this Quarterly Report on Form 10-Q and elsewhere in our filings and reports with the SEC, including our Registration Statement on Form S-4, filed with the SEC on March 25, 2020. We expressly disclaim any obligation or undertaking to release publicly any updates or revisions to any forward-looking statements contained herein or therein to reflect any change in our expectations with regard hereto or thereto or any change in events, conditions or circumstances on which any such statements are based.

Item 6. Exhibits

The following exhibits are filed as part of this Quarterly Report on Form 10-Q.

Exhibit Number	Description of Exhibit
2.1#	Agreement and Plan of Merger and Reorganization, dated February 19, 2020, by and among the Registrant, Telluride Merger Sub, Inc. and Forte Biosciences, Inc., incorporated by reference to Exhibit 2.1 of the Registrant's Current Report on Form 8-K filed on February 20, 2020.
2.2	Form of Support Agreement, dated February 19, 2020, by and between the Registrant and each of the parties named in each agreement therein, incorporated by reference to Exhibit 10.2 of the Registrant's Current Report on Form 8-K filed on February 20, 2020.
3.1	Amended and Restated Certificate of Incorporation of the Registrant, incorporated by reference to Exhibit 3.1 of the Registrant's Current Report on Form 8-K filed on April 19, 2017.
3.2	Amended and Restated Bylaws of the Registrant, incorporated by reference to Exhibit 3.2 of the Registrant's Current Report on Form 8-K filed on April 19, 2017.
4.1	Form of Common Stock Certificate of the Registrant, incorporated by reference to Exhibit 4.1 of the Registrant's Registration Statement on Form S-1 (File No. 333-216574), as amended, originally filed with the Securities and Exchange Commission on March 9, 2017.
4.3†	Research and Development Grant Agreement, dated June 5, 2013, by and between the Registrant and Voices Against Brain Cancer, incorporated by reference to Exhibit 4.3 of the Registrant's Registration Statement on Form S-1 (File No. 333-216574), as amended, originally filed with the Securities and Exchange Commission on March 9, 2017.
4.4	Warrant to Purchase Stock, dated October 30, 2015, issued to Oxford Finance LLC, incorporated by reference to Exhibit 4.4 of the Registrant's Registration Statement on Form S-1 (File No. 333-216574), as amended, originally filed with the Securities and Exchange Commission on March 9, 2017.
4.5	Warrant to Purchase Stock, dated October 30, 2015, issued to Silicon Valley Bank, incorporated by reference to Exhibit 4.5 of the Registrant's Registration Statement on Form S-1 (File No. 333-216574), as amended, originally filed with the Securities and Exchange Commission on March 9, 2017.
4.6	Warrant to Purchase Common Stock, dated May 18, 2018, issued to Oxford Finance LLC, incorporated by reference to Exhibit 4.6 of the Registrant's Quarterly Report on Form 10-Q filed on August 9, 2018.
4.7	Warrant to Purchase Common Stock, dated May 18, 2018, issued to Oxford Finance LLC, incorporated by reference to Exhibit 4.7 of the Registrant's Quarterly Report on Form 10-Q filed on August 9, 2018.
4.8	Warrant to Purchase Common Stock, dated May 18, 2018, issued to Oxford Finance LLC, incorporated by reference to Exhibit 4.8 of the Registrant's Quarterly Report on Form 10-Q filed on August 9, 2018.
4.9	Warrant to Purchase Common Stock, dated May 18, 2018, issued to Silicon Valley Bank, incorporated by reference to Exhibit 4.9 of the Registrant's Quarterly Report on Form 10-Q filed on August 9, 2018.
10.1+	Amended and Restated Executive Employment Agreement, dated February 21, 2020, by and between the Registrant and Martin J. Duvall, incorporated by reference to Exhibit 10.10 of the Registrant's Annual Report on Form 10-K filed on February 27, 2020.
10.2+	Amended and Restated Executive Employment Agreement, dated February 21, 2020, by and between the Registrant and Mark Foletta, incorporated by reference to Exhibit 10.11 of the Registrant's Annual Report on Form 10-K filed on February 27, 2020.
10.3+	Amended and Restated Executive Employment Agreement, dated February 21, 2020, by and between the Registrant and Fairooz Kabbinavar, M.D., incorporated by reference to Exhibit 10.21 of the Registrant's Annual Report on Form 10-K filed on February 27, 2020.
10.4+	Form of Restricted Stock Unit Grant Notice and Agreement, incorporated by reference to Exhibit 10.18 of the Registrant's Annual Report on Form 10-K filed on February 27, 2020.
31.1*	Certification of Principal Executive Officer pursuant to Rule13a-14(a) and Rule 15d-14(a) of the Securities Exchange Act, as amended.
31.2*	Certification of Principal Financial Officer pursuant to Rule13a-14(a) and Rule 15d-14(a) of the Securities Exchange Act, as amended.
32.1*	Certification of Principal Executive Officer and Principal Financial Officer pursuant to Rule 13a-14(b) or 15d-14(b) of the Securities Exchange Act, as amended, and 18 U.S.C. Section 1350.
101.INS*	XBRL Instance Document.
101.SCH*	XBRL Taxonomy Extension Schema Document.
101.CAL*	XBRL Taxonomy Extension Calculation Linkbase Document.
101.DEF*	XBRL Taxonomy Extension Definition Linkbase Document.
101.LAB*	XBRL Taxonomy Extension Label Linkbase Document.
101.PRE*	XBRL Taxonomy Extension Presentation Linkbase Document.

* Filed herewith.

\+ Indicates management contract or compensatory plan.

† Confidential treatment has been granted with respect to certain portions of this exhibit. Omitted portions have been filed separately with the Securities and Exchange Commission.

Schedules and exhibits have been omitted pursuant to Item 601(b)(2) of Regulation S-K. A copy of any omitted schedule and/or exhibit will be furnished to the Securities and Exchange Commission upon request.

SIGNATURES

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

Date: April 23, 2020

TOCAGEN INC.

By: /s/ MARTIN J. DUVALL
Martin J. Duvall
Chief Executive Officer
(Principal Executive Officer)

By: /s/ MARK FOLETTA
Mark Foletta
Chief Financial Officer
(Principal Financial Officer)

Exhibit 31.1

CERTIFICATION

I, Martin J. Duvall, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Tocagen Inc., a Delaware corporation (the "registrant");

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

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

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

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

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

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

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

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

Date: April 23, 2020

/s/ Martin J. Duvall

Martin J. Duvall
Chief Executive Officer
(Principal Executive Officer)

Exhibit 31.2

CERTIFICATION

I, Mark Foletta, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Tocagen Inc., a Delaware corporation (the "registrant");

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

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

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

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

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

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

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

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

Date: April 23, 2020

/s/ Mark Foletta

Mark Foletta
Chief Financial Officer
(Principal Financial Officer)

Exhibit 32.1

SECTION 1350 CERTIFICATION

Each of the undersigned, Martin J. Duvall, Chief Executive Officer of Tocagen Inc., a Delaware corporation (the "Company"), and Mark Foletta, Chief Financial Officer of the Company, do 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 March 31, 2020, as filed with the Securities and Exchange Commission on the date hereof (the "Report") and to which this Certification is attached as Exhibit 32.1, 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/ Martin J. Duvall
Name: Martin J. Duvall
Title: Chief Executive Officer (Principal Executive Officer)
Dated: April 23, 2020

/s/ Mark Foletta
Name: Mark Foletta
Title: Chief Financial Officer (Principal Financial Officer)
Dated: April 23, 2020

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.