

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

FORM 8-K

CURRENT REPORT  
Pursuant to Section 13 or 15(d)  
of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): September 15, 2023

BLACK DIAMOND THERAPEUTICS, INC.  
(Exact name of registrant as specified in its charter)

Delaware  
(State or other jurisdiction  
of incorporation)

001-39200  
(Commission  
File Number)

81-4254660  
(I.R.S. Employer  
Identification No.)

One Main Street, 14th Floor  
Cambridge, MA 02142  
(Address of principal executive offices, including zip code)

(617) 252-0848  
(Registrant's telephone number, including area code)

Not Applicable  
(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation to the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)  
 Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)  
 Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))  
 Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, \$0.0001 par value per share	BDTX	The Nasdaq Global Select Market

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

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.

**Item 5.02. Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.**

*Departure of Chief Executive Officer and Principal Executive Officer*

On September 18, 2023, Black Diamond Therapeutics, Inc. (the “Company”) announced that it separated with David M. Epstein, Ph.D. as President and Chief Executive Officer and principal executive officer of the Company, in each case, effective as of September 15, 2023 (the “Separation”). Following the effective date of the Separation, Dr. Epstein will continue to serve as a member of the Board of Directors of the Company (the “Board”) until the Company’s annual meeting of stockholders to be held in 2024. Dr. Epstein will not receive any compensation for serving on the Board, other than continued vesting of his existing equity awards.

In connection with the Separation, Dr. Epstein and the Company entered into a Separation Agreement (the “Separation Agreement”) pursuant to which, Dr. Epstein is entitled to receive severance benefits pursuant to the terms of his employment agreement with the Company, which was filed as Exhibit 10.7 to the Company’s Registration Statement on Form S-1 filed on January 3, 2020. The foregoing summary of the Separation Agreement does not purport to be complete and is qualified in its entirety by reference to the full text of the Separation Agreement, which is filed as an exhibit to this Form 8-K.

*Appointment of Chief Executive Officer and Principal Executive Officer; Appointment of Lead Independent Director*

Effective September 16, 2023, the Board appointed Mark A. Velleca, M.D., Ph.D. as President and Chief Executive Officer and principal executive officer of the Company (the “Appointment”). In connection with the Appointment, Dr. Velleca resigned from his positions as Chair of the Compensation Committee of the Board (the “Compensation Committee”) and as a member of the Compensation Committee. Dr. Velleca will continue to serve as Chair of the Board. The Board appointed Samarth Kulkarni, Ph.D. to serve as the Lead Independent Director of the Board. The composition of the Audit Committee and the Nominating and Corporate Governance Committee of the Board remain unchanged at this time.

Dr. Velleca has served as a member of the Board since August 2021 and as Chair of the Board since December 2022. Prior to joining the Board, from May 2014 to December 2020, Dr. Velleca served as President and Chief Executive Officer of G1 Therapeutics, Inc., or G1, a publicly-traded commercial stage oncology company. Earlier in his career, Dr. Velleca was a co-founder and served as Senior Vice President of CGI Pharmaceuticals, Inc., or GCI, a privately held biopharmaceutical company, from 1999 to 2010, where he managed the company from its inception through clinical trials of multiple drug candidates. After CGI was acquired by Gilead Sciences, Inc., or Gilead, a publicly-traded biotechnology company, in 2010, Dr. Velleca served as a Senior Advisor to Gilead in R&D Strategy from 2010 to April 2012, where he worked to help build its oncology pipeline. Between CGI and G1, Dr. Velleca served as Executive Vice President at The Leukemia & Lymphoma Society from April 2012 to April 2014. Dr. Velleca currently serves as a Senior Advisor to and a member of the board of directors of G1 and also serves as executive chair of the board of directors of Myeloid Therapeutics, Inc., a privately held clinical stage mRNA-immunotherapy company. Most recently, from February 2022 to February 2023, Dr. Velleca served as Chief Executive Officer of StrideBio, Inc., a privately held gene therapy company, and from April 2021 to February 2023, as a Venture Partner at Hatteras Venture Partners, a venture capital firm. Dr. Velleca began his career as an attending physician at Yale New Haven Hospital and was on the faculty of the Yale University School of Medicine. Dr. Velleca received his B.S. from Yale University, and his M.D. and Ph.D. from Washington University in St. Louis.

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On September 17, 2023, the Company entered into an employment agreement with Dr. Velleca (the “Employment Agreement”). Pursuant to the Employment Agreement, Dr. Velleca is paid an annual base salary of \$620,000 and is eligible for an annual performance-based incentive cash bonus in an amount up to 55% of Dr. Velleca’s then-current base salary. In connection with his appointment, Dr. Velleca was also granted stock options to purchase 1,000,000 shares of the Company’s common stock. In the event Dr. Velleca’s employment is terminated for any reason, the Company shall pay or provide to Dr. Velleca (i) any base salary earned through the date of termination, (ii) unpaid expense reimbursements and (iii) any vested benefits Dr. Velleca may have under any employee benefit plan of the Company through the date of termination (the “Accrued Obligations”). In the event Dr. Velleca’s employment is terminated by the Company without Cause or by Dr. Velleca for Good Reason outside of the Change in Control Period, in addition to the Accrued Obligations, subject to his signing and complying with a release agreement and the release agreement becoming irrevocable, Dr. Velleca will be entitled to (i) receive a lump sum cash payment equal to the sum of (A) twelve (12) months of his annual base salary then in effect plus (B) his target annual performance bonus for the then-current year; provided in the event he is entitled to any payments pursuant to the Restrictive Covenants Agreement, the severance amount received in any calendar year will be reduced by the amount he is paid in the same such calendar year pursuant to the Restrictive Covenants Agreement, (ii) partial accelerated vesting of his outstanding stock options with respect to the same number of shares that would have vested if he had continued in employment with the Company through the next anniversary of the grant date for such option, in accordance with the vesting schedule applicable to such option, provided that if the termination date falls on an anniversary of the grant date of any stock option, no accelerated vesting will be provided for such option, and (iii) receive a monthly payment equal to the monthly employer contribution the Company would have made to provide health insurance had he remained employed, paid to either the group health plan provider, the COBRA provider or directly to him for up to twelve (12) months. The terms “Cause,” “Good Reason,” “Change in Control Period” and “Restrictive Covenants Agreement” are each defined in the Employment Agreement.

The foregoing summary of the Employment Agreement does not purport to be complete and is qualified in its entirety by reference to the full text of the Employment Agreement, a copy of which is filed as an exhibit to this Form 8-K.

Dr. Velleca has also entered into the Company’s standard form of officer indemnification agreement, which was filed as [Exhibit 10.5 to the Company’s Registration Statement on Form S-1 filed on January 3, 2020](#).

No family relationships exist between Dr. Velleca and any of the Company’s directors or executive officers. There are no arrangements or understandings between Dr. Velleca and any other person pursuant to which Dr. Velleca was selected as the President and Chief Executive Officer, nor are there any transactions to which the Company is or was a participant in which Dr. Velleca has a material interest subject to disclosure pursuant to Item 404(a) of Regulation S-K.

#### **Item 7.01. Regulation FD Disclosure.**

On September 18, 2023, the Company issued a press release entitled “Black Diamond Therapeutics Announces CEO Transition.” A copy of the press release is furnished as Exhibit 99.1 to this Current Report on Form 8-K.

The information furnished under this Item 7.01, including Exhibit 99.1 hereto, shall not be deemed “filed” for purposes of Section 18 of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), or otherwise subject to the liabilities of that section, nor shall it be deemed incorporated by reference in any filing under the Securities Act of 1933, as amended, or the Exchange Act, except as expressly set forth by specific reference in such a filing.

#### **Item 9.01. Financial Statements and Exhibits.**

(d) Exhibits:

<b>Exhibit No.</b>	<b>Description</b>
<a href="#">10.1</a>	<a href="#">Separation Agreement between Black Diamond Therapeutics, Inc. and Dr. Epstein, dated as of September 17, 2023.</a>
<a href="#">10.2</a>	<a href="#">Employment Agreement between Black Diamond Therapeutics, Inc. and Dr. Velleca, dated as of September 17, 2023.</a>
<a href="#">99.1</a>	<a href="#">Press Release issued by Black Diamond Therapeutics, Inc., dated September 18, 2023, furnished herewith.</a>
104	Cover Page Interactive Data File (embedded within the Inline XBRL document).

**SIGNATURE**

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 hereunto duly authorized.

**BLACK DIAMOND THERAPEUTICS, INC.**

Date: September 18, 2023

By: /s/ Brent Hatzis-Schoch

Name: Brent Hatzis-Schoch

Title: Chief Operating Officer and General Counsel

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September 17, 2023

David M. Epstein, PhD

**Re: Notice of Termination and Separation Agreement**

Dear David:

Pursuant to Section 4 of the Employment Agreement (the "Employment Agreement") between you and Black Diamond Therapeutics, Inc., a Delaware corporation (the "Company"), this letter will serve as notice of termination of your employment, effective September 15, 2023 (the "Separation Date"). Your employment is being terminated pursuant to Section 3(d) of the Employment Agreement (termination by the Company without Cause).

This letter also sets forth the terms of a Separation Agreement and Release (the "Agreement"), as that term is defined in the Employment Agreement. In the interest of clarity, the following terms and conditions shall apply regardless of whether you elect to accept or reject the Agreement:

- the Company will, if it has not already done so, pay you any Accrued Obligations, as that term is defined in the Employment Agreement;
- the Company will provide you with the right to continue group health plan coverage after the termination of your employment under the law known as "COBRA," which will be described in a separate written notice;
- your eligibility to participate in any other employee benefit plans and programs of the Company will cease on or after the Separation Date in accordance with the applicable benefit plan or program terms and practices;
- the equity awards held by you shall be governed by the terms and conditions of the Company's applicable equity incentive plan(s) and the applicable award agreement(s) governing the terms of such equity awards (collectively, the "Equity Documents"); and
- your obligations under your Employee Confidentiality, Assignment, Nonsolicitation and Noncompetition Agreement with the Company, dated January 1, 2020 (the "Restrictive Covenants Agreement"), and any other confidentiality, assignment of inventions, and restrictive covenants agreement that you entered into with the Company or its affiliates or any other policies and agreements with continuing obligations (collectively, the "Continuing Obligations") will survive in accordance with their terms.

In addition to the above described non-contingent terms, if you enter into and comply with the below Agreement, you will be entitled to the severance pay and other benefits described in Section 2. The remainder of this letter sets forth the Agreement.

With those understandings, you and the Company agree as follows:

**1. Separation Date; Continued Board Service.**

(a) Separation Date. Your employment with the Company will end on the Separation Date. Subject to Section 1(b), you will, automatically and without further action by any person, be deemed to have resigned from all officer positions that you hold with the Company or any of its respective subsidiaries and affiliates and from all director (or the equivalent) positions that you hold with the Company or any of its respective subsidiaries and affiliates, in each case, effective on the Separation Date. The respective subsidiaries and affiliates referred to above include, but are not limited to, Black Diamond Therapeutics (Canada) Inc. and Black Diamond Therapeutics Security Corporation. Pursuant to Section 1(b) of the Employment Agreement, you agree to execute any documents in reasonable form as may be requested to confirm or effectuate any such resignations. The Company represents and warrants that the termination of your employment effective as of the Separation Date shall not constitute a termination of your "Service Relationship" or a "termination of employment" as those terms are used in the Company's equity plans and grant documents, and therefore, so long as you continue to serve as a member of the Company's Board of Directors (the "Board"), you shall retain all rights associated with your Company stock options and restricted stock units and shall remain eligible to exercise your vested stock options, subject to Section 1(b) and 2(c) below.

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(b) Continued Board Service. You will continue to serve as a member of the Board until the occurrence of the Board's 2024 Shareholder Meeting or you earlier resign your membership from the Board (such continued Board membership, the "Continued Board Service"). As compensation for the Continued Board Service, you shall continue to vest in the equity awards held by you pursuant to the terms of the Equity Documents beginning on the first vesting date that follows the Accelerated Vesting Date (as defined below), in accordance with the vesting schedule applicable to such option after giving effect to the accelerated vesting set forth in Section 2(c) below, for so long as you continue to serve as a member of the Board. You acknowledge and agree that, aside from such continued vesting, you shall not be entitled to any other additional compensation with respect to the Continued Board Service. Upon the conclusion of the Company's 2024 Annual Shareholder Meeting, you will, automatically and without further action by any person, be deemed to have resigned from the Board. Pursuant to Section 1(b) of the Employment Agreement, you agree to execute any documents in reasonable form as may be requested to confirm or effectuate such resignation from the Board. For the avoidance of doubt, the Board may elect, in its discretion, to waive and/or amend this Section 1(b) prior to the Company's 2024 Annual Shareholder Meeting such that you do not automatically resign upon the conclusion of the Company's 2024 Annual Shareholder Meeting and continue to serve as a member of the Company's Board, subject to such amended terms and conditions. In the event that you continue to serve as a member of the Company's Board following the Company's 2024 Annual Shareholder Meeting, you shall continue to vest in the equity awards held by you for so long as you continue to serve as a member of the Board, pursuant to the terms set forth above in this Section 1(b).

## 2. Severance Pay and Benefits

If you enter into, do not revoke, and comply with this Agreement, then the Company will provide you with the below payments and benefits.

(a) the Company shall pay you an amount equal to the sum of (A) 12 months of your Base Salary, as that term is defined in the Employment Agreement, plus (B) your Target Bonus for the 2023 fiscal year (the "Severance Amount");

(b) subject to your copayment of premium amounts at the applicable active employees' rate and your proper election to receive benefits under the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended ("COBRA"), the Company shall pay to the group health plan provider, the COBRA provider or to you a monthly payment equal to the monthly employer contribution that the Company would have made to provide health insurance to you if you had remained employed by the Company until the earliest of (A) the 12 month anniversary of the Separation Date; (B) your eligibility for group medical plan benefits under any other employer's group medical plan; or (C) the cessation of your continuation rights under COBRA; provided, however, if the Company determines that it cannot pay such amounts to the group health plan provider or the COBRA provider (if applicable) without potentially violating applicable law (including, without limitation, Section 2716 of the Public Health Service Act), then the Company shall convert such payments to payroll payments directly to you for the time period specified above. Such payments shall be subject to tax-related deductions and withholdings and paid on the Company's regular payroll dates; and

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(c) accelerated vesting of each of your outstanding stock options shall occur such that, on the Effective Date of this Agreement, you shall receive immediate accelerated vesting of each option with respect to the same number of shares that would have vested if you had continued in employment with the Company through the next anniversary of the grant date for such option (the "Accelerated Vesting Date"), in accordance with the vesting schedule applicable to such option, provided, however, that if the Separation Date falls on an anniversary of the grant date of any stock option, no accelerated vesting will be provided for such stock option; provided further, that any termination or forfeiture of the unvested portion of such options that would otherwise occur on the Separation Date in the absence of this Agreement will be delayed until the Effective Date of this Agreement and will only occur if the vesting pursuant to this subsection does not occur due to the absence of the Agreement becoming fully effective within the time period set forth therein. For the avoidance of doubt, the portion of your stock options that are accelerated pursuant to this Section will remain exercisable for ninety (90) days following the end of your service on the Board pursuant to Section 1(b) above.

### **3. Return of Property**

On the Separation Date, you agree to return to the Company all Company property, including, without limitation, computer equipment, laptops, monitors, software, keys and access cards, credit cards, files and any documents (including, without limitation, computerized data and any copies made of any computerized data or software) containing information concerning the Company or any of its affiliates or its businesses or its business relationships. After you return all such property, you commit to deleting and finally purging any duplicates of files or documents that may contain Company information from any non-Company computer or other device that remains your property after the Separation Date. In the event that you discover that you continue to retain any such property, you shall return it to the Company immediately.

### **4. Continuing Obligations and Confidential Information**

You hereby acknowledge and reaffirm your Continuing Obligations to the Company and its affiliates; provided that the Company agrees to waive the post-employment noncompetition restriction contained in Section 8(c) of the Restrictive Covenants Agreement (the "Noncompete Waiver") such that, as a result, you will not be bound by that post-employment noncompetition restriction and will not be eligible for any compensation of any kind, whether "Garden Leave Pay" or otherwise, under Section 8(c) of the Restrictive Covenants Agreement or any other provision of the Restrictive Covenants Agreement; provided further that, for the avoidance of doubt, you acknowledge and agree that neither the Noncompete Waiver nor any other provision of this Agreement impacts or in any way alters any fiduciary duty you may owe to the Company as a member of the Board during the Continued Board Service. You acknowledge and agree that the Restrictive Covenants Agreement (as modified by the Noncompete Waiver), including, without limitation, your obligations to the Company with respect to Confidential Information and Intellectual Property Rights in Company-Related Developments (all as defined in the Restrictive Covenants Agreement) shall continue to apply to your service as a member of the Board during the Continued Board Service; provided that the one (1) year post-employment portion of the Restricted Period (as defined in the Restrictive Covenants Agreement) shall commence on the Separation Date. You further understand and agree that you have been employed in a position of confidence and trust and have had access to information concerning the Company and its affiliates that the Company treats as confidential and the disclosure of which could negatively affect the Company's interests ("Confidential Information"). Confidential Information includes, without limitation, confidential financial information; business forecasts; inventions; improvements and other intellectual property; trade secrets; know-how; designs, processes or formulae; confidential software; marketing or sales information or plans; customer lists; and business plans, prospects and opportunities. You agree that you shall not use or disclose any Confidential Information at any time without the written consent of the Company. This provision is meant to supplement your Continuing Obligations to the Company and in no way limits those obligations.

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## 5. Release of Claims

In consideration for, among other terms, the Severance Pay and other benefits, to which you acknowledge you would otherwise not be entitled, you voluntarily release and forever discharge the Company, its affiliated and related entities, their respective predecessors, successors and assigns, their respective employee benefit plans and fiduciaries of such plans, and the current and former officers, directors, equity holders, employees, attorneys, accountants, and agents of each of the foregoing in their official and personal capacities (collectively referred to as the “Releasees”) generally from all claims, demands, debts, damages and liabilities of every name and nature known and unknown (“Claims”) that, as of the date when you sign this Agreement, you have, ever had, now claim to have or ever claimed to have had against any or all of the Releasees. This release includes, without limitation, all Claims:

- relating to your employment by and termination of employment with the Company;
- of wrongful discharge or violation of public policy;
- of breach of contract;
- of defamation or other torts;
- of retaliation or discrimination under federal, state or local law (including, without limitation, Claims of discrimination or retaliation under the Americans with Disabilities Act, the Age Discrimination in Employment Act, Title VII of the Civil Rights Act of 1964, M.G.L. c. 151B, and The Massachusetts Civil Rights Act;
- under any other federal or state statute (including, without limitation, Claims under the Worker Adjustment and Retraining Notification Act or the Fair Labor Standards Act);
- for wages, bonuses, incentive compensation, stock, stock options, vacation pay or any other compensation or benefits, either under the Massachusetts Wage Act, M.G.L. c. 149, §§148-150C, or otherwise; and
- for damages or other remedies of any sort, including, without limitation, compensatory damages, punitive damages, injunctive relief and attorney’s fees;

provided, however, that this release shall not affect your rights under this Agreement.

You agree not to accept damages of any nature, other equitable or legal remedies for your own benefit or attorney’s fees or costs from any of the Releasees with respect to any Claim released by this Agreement. As a material inducement to the Company to enter into this Agreement, you represent that you have not assigned any Claim to any third party. You acknowledge that as of the Company’s most recent payroll payment of salary or wages to you, you were fully paid for all salary and wages then due to you, and that, except as set forth in this Agreement, you are not eligible for any further compensation from the Company.

This Agreement is intended to be effective as a general release of and bar to all Claims, including, without limitation, unknown Claims.

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Notwithstanding the foregoing, this release shall not include any rights to indemnification or coverage under directors and officers or similar liability insurance policies for claims made against you arising out of your employment with the Company.

## 6. Non-Disparagement

You agree not to make any disparaging, critical or detrimental statements (whether written, oral, through social or electronic media or otherwise) concerning the Company, the Releasees or any of its or their products or services provided or to be provided. The Company agrees to instruct its officers and directors not to make any disparaging, critical or detrimental statements (whether written, oral, through social or electronic media or otherwise) about you.

## 7. Protected Disclosures and Other Protected Actions

Nothing contained in this Agreement or any other agreement limits your ability to file a charge or complaint with any federal, state or local governmental agency or commission, including without limitation a state division of human rights or local commission on human rights, (a "Government Agency"). In addition, nothing contained in this Agreement limits your ability to communicate with any Government Agency or otherwise participate in any investigation or proceeding that may be conducted by any Government Agency or speak with an attorney retained by you, nor does anything contained in this Agreement apply to truthful testimony in litigation. If you file any charge or complaint with any Government Agency and if the Government Agency pursues any claim on your behalf, or if any other third party pursues any claim on your behalf, you waive any right to monetary or other individualized relief (either individually or as part of any collective or class action). In addition, for the avoidance of doubt, pursuant to the federal Defend Trade Secrets Act of 2016, you shall not be held criminally or civilly liable under any federal or state trade secret law or under this Agreement or any other agreement for the disclosure of a trade secret that (a) is made (i) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney; and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or (b) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal.

## 8. Other Provisions

(a) Termination of Payments. If you breach any of your obligations under this Agreement or any Continuing Obligations, in addition to any other legal or equitable remedies it may have for such breach, the Company shall have the right to terminate its payments to you or for your benefit under this Agreement. The termination of such payments in the event of your breach will not affect your continuing obligations under this Agreement.

(b) Absence of Reliance. In signing this Agreement, you are not relying upon any promises or representations made by anyone at or on behalf of the Company.

(c) Non-Admission. You understand that the Company is not admitting in any way that it violated any legal obligation that it owed to you. The payment of the Severance Pay and other benefits pursuant to this Agreement will not be deemed an admission of liability or wrongdoing by the Company.

(d) Enforceability. If any portion or provision of this Agreement (including, without limitation, any portion or provision of any section of this Agreement) shall to any extent be declared illegal or unenforceable by a court of competent jurisdiction, then the remainder of this Agreement, or the application of such portion or provision in circumstances other than those as to which it is so declared illegal or unenforceable, shall not be affected thereby, and each portion and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

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(e) Waiver. No waiver of any provision of this Agreement shall be effective unless made in writing and signed by the waiving party. The failure of a party to require the performance of any term or obligation of this Agreement, or the waiver by a party of any breach of this Agreement, shall not prevent any subsequent enforcement of such term or obligation or be deemed a waiver of any subsequent breach.

(f) Governing Law: Interpretation. This Agreement shall be interpreted and enforced under the laws of the Commonwealth of Massachusetts, without regard to conflict of law principles. You and the Company hereby agree that the Superior Court of the Commonwealth of Massachusetts and the United States District Court for the District of Massachusetts shall have the exclusive jurisdiction to consider any matters related to this Agreement, including, without limitation, any claim of a violation of this Agreement. In the event of any dispute, this Agreement is intended by the parties to be construed as a whole, to be interpreted in accordance with its fair meaning, and not to be construed strictly for or against either you or the Company or the “drafter” of all or any portion of this Agreement.

(g) Entire Agreement. This Agreement constitutes the entire agreement between you and the Company. This Agreement supersedes any previous agreements or understandings between you and the Company, except the Continuing Obligations (as modified by the Noncompete Waiver) and the Equity Documents, and any other obligations specifically preserved in this Agreement.

(h) Time for Consideration: Effective Date. You acknowledge that you have knowingly and voluntarily entered into this Agreement and that the Company advises you to consult with an attorney before signing this Agreement. You understand and acknowledge that you have been given the opportunity to consider this Agreement for twenty-one (21) days from your receipt of this Agreement before signing it (the “Consideration Period”). To accept this Agreement, you must return a signed original or a signed PDF copy of this Agreement so that it is received by the Company at or before the expiration of the Consideration Period. If you sign this Agreement before the end of the Consideration Period, you acknowledge that such decision was entirely voluntary and that you had the opportunity to consider this Agreement for the entire Consideration Period. For the period of seven (7) days from the date when you sign this Agreement, you have the right to revoke this Agreement by written notice to the Company, provided that such notice is delivered so that it is received at or before the expiration of the seven (7) day revocation period. This Agreement shall not become effective or enforceable during the revocation period. This Agreement shall become effective on the first business day following the expiration of the revocation period (the “Effective Date”).

(i) Counterparts. This Agreement may be executed and delivered in separate counterparts, including, without limitation, by facsimile or other electronic means. When both counterparts are signed, they shall each constitute an original and be treated together as one and the same document.

[Signature page follows]

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Please indicate your agreement to the terms of this Agreement by signing and returning to the undersigned the original or a PDF copy of this letter within the time period set forth above.

Sincerely,

Black Diamond Therapeutics, Inc

Its Authorized Representative:

By: /s/ Brent Hatzis-Schoch

Name: Brent Hatzis-Schoch

Date: September 17, 2023

Title: Chief Operating Officer and General Counsel

You are advised to consult with an attorney before signing this Agreement. This is a legal document. Your signature will commit you to its terms. By signing below, you acknowledge that you have carefully read and fully understand all of the provisions of this Agreement and that you are knowingly and voluntarily entering into this Agreement.

/s/ David Epstein

David Epstein

Date: September 17, 2023

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## EMPLOYMENT AGREEMENT

This Employment Agreement (“Agreement”) is made between Black Diamond Therapeutics, Inc., a Delaware corporation (the “Company”), and Mark Velleca (the “Executive”) and is effective as of Executive’s first date of employment with the Company (the “Effective Date”).

WHEREAS, the Company desires to employ the Executive and the Executive desires to be employed by the Company on the terms and conditions contained herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Employment.

(a) Term. The Company shall employ the Executive and the Executive shall be employed by the Company pursuant to this Agreement commencing as of the Effective Date and continuing until such employment is terminated in accordance with the provisions hereof (the “Term”). The Executive’s employment with the Company will be “at will,” meaning that the Executive’s employment may be terminated by the Company or the Executive at any time and for any reason subject to the terms of this Agreement.

(b) Position and Duties. The Executive shall serve as the President and Chief Executive Officer (the “CEO”) of the Company and shall have such powers and duties as may from time to time be prescribed by the Board of Directors of the Company (the “Board”). In addition, the Company shall cause the Executive to be nominated for election to the Board and to be recommended to the stockholders for election to the Board as long as the executive remains the CEO of the Company, provided the Executive shall resign from the Board and from any related positions upon ceasing to serve as CEO for any reason. The Executive shall devote the Executive’s full working time and efforts to the business and affairs of the Company. Notwithstanding the foregoing, the Executive may serve on other boards of directors or provide advisory services, with the approval of the Board, or engage in religious, charitable or other community activities as long as such services and activities are disclosed to the Board and do not interfere with the Executive’s performance of the Executive’s duties to the Company. To the extent applicable, the Executive shall be deemed to have resigned from all officer and board member positions that the Executive holds with the Company or any of its respective subsidiaries and affiliates upon the termination of the Executive’s employment for any reason. The Executive shall execute any documents in reasonable form as may be requested to confirm or effectuate any such resignations.

2. Compensation and Related Matters.

(a) Base Salary. The Executive’s initial base salary shall be paid at the rate of \$620,000 per year. The Executive’s base salary shall be subject to periodic review by the Board or the Compensation Committee of the Board (the “Compensation Committee”). The base salary in effect at any given time is referred to herein as “Base Salary.” The Base Salary shall be payable in a manner that is consistent with the Company’s usual payroll practices for executive officers.

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(b) Incentive Compensation. The Executive shall be eligible to receive cash incentive compensation as determined by the Board or the Compensation Committee from time to time. The Executive's initial target annual incentive compensation shall be 55 percent of the Executive's Base Salary. The target annual incentive compensation in effect at any given time is referred to herein as "Target Bonus." The actual amount of the Executive's annual incentive compensation, if any, shall be determined in the sole discretion of the Board or the Compensation Committee, subject to the terms of any applicable incentive compensation plan that may be in effect from time to time. Except as otherwise provided herein, to earn incentive compensation, the Executive must be employed by the Company on the day such incentive compensation is paid.

(c) Expenses. The Executive shall be entitled to receive prompt reimbursement for all reasonable expenses incurred by the Executive during the Term in performing services hereunder, in accordance with the policies and procedures then in effect and established by the Company for its executive officers.

(d) Other Benefits. The Executive shall be eligible to participate in or receive benefits under the Company's employee benefit plans in effect from time to time, subject to the terms of such plans.

(e) Paid Time Off. The Executive shall be entitled to take paid time off in accordance with the Company's applicable paid time off policy for executives, as may be in effect from time to time.

(f) Equity. Subject to approval by the Board, the Company will grant Executive an option to purchase 1,000,000 shares of the Company's common stock (the "Option"), with 25% of the shares subject to the Option vesting on the first anniversary of the Effective Date and the remaining 75% vesting in 36 equal monthly installments thereafter. The exercise price will be equal to the fair market value as determined by the Board as of the date of grant. The Option shall be governed by the terms and conditions of the Company's applicable equity incentive plan(s) and the applicable award agreement(s) governing the terms of such Option (collectively, the "Equity Documents"); provided, however, and notwithstanding anything to the contrary in the Equity Documents, (i) Section 5, 6(c), and 7(a)(ii) shall apply in the event of a termination of the Executive's employment covered by those provisions pursuant to the terms of this Agreement, and (ii) the portion of the Executive's Equity Awards (defined below) that is accelerated pursuant to Section 5, 6(c), and 7(a)(ii) will remain exercisable for twelve (12) months following the termination of Executive's service to the Company.

3. Termination. The Executive's employment hereunder may be terminated without any breach of this Agreement under the following circumstances:

(a) Death. The Executive's employment hereunder shall terminate upon death.

(b) Disability. The Company may terminate the Executive's employment if the Executive is disabled and unable to perform the essential functions of the Executive's then existing position or positions under this Agreement with or without reasonable accommodation for a period of 180 days (which need not be consecutive) in any 12-month period. If any question shall arise as to whether during any period the Executive is disabled so as to be unable to perform the essential functions of the Executive's then existing position or positions with or without reasonable accommodation, the Executive may, and at the request of the Company shall, submit to the Company a certification in reasonable detail by a physician selected by the Company to whom the Executive or the Executive's guardian has no reasonable objection as to whether the Executive is so disabled or how long such disability is expected to continue, and such certification shall for the purposes of this Agreement be conclusive of the issue. The Executive shall cooperate with any reasonable request of the physician in connection with such certification. If such question shall arise and the Executive shall fail to submit such certification, the Company's determination of such issue shall be binding on the Executive. Nothing in this Section 3(b) shall be construed to waive the Executive's rights, if any, under existing law including, without limitation, the Family and Medical Leave Act of 1993, 29 U.S.C. §2601 *et seq.* and the Americans with Disabilities Act, 42 U.S.C. §12101 *et seq.*

(c) Termination by Company for Cause. The Company may terminate the Executive's employment hereunder for Cause. For purposes of this Agreement, "Cause" shall mean any of the following:

(i) the willful failure, disregard or refusal by the Executive to perform the Executive's material duties or obligations under this Agreement which, to the extent it is curable by the Executive, is not cured within thirty (30) days after written notice thereof is given to the Executive by the Company;

(ii) any willful, intentional or grossly negligent act by the Executive having the effect of materially injuring (whether financially or otherwise) the business or reputation of the Company or any of its affiliates, including but not limited to, any senior officer, director or executive of the Company or any of its affiliates;

(iii) willful misconduct by the Executive with respect to any of the material duties or obligations of the Executive under this Agreement, including, without limitation, willful insubordination with respect to lawful directions received by the Executive from the Board which, to the extent it is curable by the Executive, is not cured within thirty (30) days after written notice thereof is given to the Executive by the Company;

(iv) the commission by the Executive of acts satisfying the elements of (A) any felony or (B) a misdemeanor involving moral turpitude, deceit, dishonesty or fraud;

(v) the determination, after a reasonable and good-faith investigation by the Company, that the Executive engaged in some form of harassment or discrimination prohibited by law (including, without limitation, age, sex or race harassment or discrimination);

(vi) the Executive's material misappropriation or embezzlement of the property of the Company or its Affiliates (whether or not a misdemeanor or felony);

(vii) material breach by the Executive of any of the provisions of this Agreement, of any Company policy, and/or of the Executive's Restrictive Covenants Agreement (as defined below); or

(viii) the Executive's failure to cooperate with a bona fide internal investigation or an investigation by regulatory or law enforcement authorities, after being instructed by the Company to cooperate, or the willful destruction or failure to preserve documents or other materials known to be relevant to such investigation or the inducement of others to fail to cooperate or to produce documents or other materials in connection with such investigation.

(d) Termination by the Company without Cause. The Company may terminate the Executive's employment hereunder at any time without Cause. Any termination by the Company of the Executive's employment under this Agreement which does not constitute a termination for Cause under Section 3(c) and does not result from the death or disability of the Executive under Section 3(a) or (b) shall be deemed a termination without Cause.

(e) Termination by the Executive. The Executive may terminate employment hereunder at any time for any reason, including but not limited to, Good Reason. For purposes of this Agreement, "Good Reason" shall mean that the Executive has completed all steps of the Good Reason Process (hereinafter defined) following the occurrence of any of the following events without the Executive's consent (each, a "Good Reason Condition"):

(i) a material adverse change in Executive's duties, authority, responsibilities or reporting chain relative to Executive's duties, authority, or responsibilities in effect immediately prior to such change;

(ii) a material diminution in the Executive's Base Salary except for across-the-board salary reductions based on the Company's financial performance similarly affecting all or substantially all senior management employees of the Company;

(iii) a material change in the geographic location at which the Executive provides services to the Company, such that there is an increase of at least thirty (30) miles of driving distance to such location from the Executive's principal residence as of such change; or

(iv) a material breach of this Agreement by the Company.

The “Good Reason Process” consists of the following steps:

- (i) the Executive reasonably determines in good faith that a Good Reason Condition has occurred;
- (ii) the Executive notifies the Company in writing of the first occurrence of the Good Reason Condition within 60 days of the first occurrence of such condition;
- (iii) the Executive cooperates in good faith with the Company’s efforts, for a period of not less than 30 days following such notice (the “Cure Period”), to remedy the Good Reason Condition;
- (iv) notwithstanding such efforts, the Good Reason Condition continues to exist; and
- (v) the Executive terminates employment within 60 days after the end of the Cure Period.

If the Company cures the Good Reason Condition during the Cure Period, Good Reason shall be deemed not to have occurred.

If the Executive’s employment with the Company is terminated for any reason, the Company shall pay or provide to the Executive (or to the Executive’s authorized representative or estate) (i) any Base Salary earned through the Date of Termination; (ii) unpaid expense reimbursements (subject to, and in accordance with, Section 2(c) of this Agreement); and (iii) any vested benefits the Executive may have under any employee benefit plan of the Company through the Date of Termination, which vested benefits shall be paid and/or provided in accordance with the terms of such employee benefit plans (collectively, the “Accrued Obligations”).

4. Notice and Date of Termination.

(a) Notice of Termination. Except for termination as specified in Section 3(a), any termination of the Executive’s employment by the Company or any such termination by the Executive shall be communicated by written Notice of Termination to the other party hereto. For purposes of this Agreement, a “Notice of Termination” shall mean a notice which shall indicate the specific termination provision in this Agreement relied upon.

(b) Date of Termination. “Date of Termination” shall mean: (i) if the Executive’s employment is terminated by death, the date of death; (ii) if the Executive’s employment is terminated on account of disability under Section 3(b) or by the Company for Cause under Section 3(c), the date on which Notice of Termination is given (which, in the event of a termination by the Company for Cause under Section 3(c), may occur after the conclusion of an applicable cure period); (iii) if the Executive’s employment is terminated by the Company without Cause under Section 3(d), the date on which a Notice of Termination is given or the date otherwise specified by the Company in the Notice of Termination; (iv) if the Executive’s employment is terminated by the Executive under Section 3(e) other than for Good Reason, 30 days after the date on which a Notice of Termination is given, and (v) if the Executive’s employment is terminated by the Executive under Section 3(e) for Good Reason, the date on which a Notice of Termination is given after the end of the Cure Period. Notwithstanding the foregoing, in the event that the Executive gives a Notice of Termination to the Company, the Company may unilaterally accelerate the Date of Termination and such acceleration shall not result in a termination by the Company for purposes of this Agreement.



5. Severance Pay and Benefits Upon Death or Disability. If the Executive's employment is terminated by death pursuant to Section 3(a) or disability pursuant to Section 3(b), then, subject to the Executive (or the Executive's estate or heirs, as applicable) signing the Separation Agreement and Release (as defined below) and the Separation Agreement and Release becoming fully effective, all within the time frame set forth in the Separation Agreement and Release but in no event more than 60 days after the Date of Termination, the Executive, the Executive's estate, or the Executive's heirs, as applicable, shall be entitled to: (1) continuation of the Executive's salary Base Salary for a period of 75 days following the Date of Termination; and (2) notwithstanding anything to the contrary in any applicable equity incentive plan(s) or award agreement(s), partial accelerated vesting of each of the Executive's outstanding stock options or other stock-based awards ("Equity Awards") such that, on the effective date of the Separation Agreement and Release, the Executive shall receive immediate accelerated vesting of all Equity Awards with respect to the same number of shares that would have vested if the Executive had continued in employment with the Company for one year following the Date of Termination, in accordance with the vesting schedule applicable to such Equity Awards; provided, that any termination or forfeiture of the unvested portion of such Equity Awards that would otherwise occur on the Date of Termination in the absence of this Agreement will be delayed until the effective date of the Separation Agreement and Release and will only occur if the vesting pursuant to this Section does not occur due to the absence of the Separation Agreement and Release becoming fully effective within the time period set forth therein. Notwithstanding the foregoing, no additional vesting of Equity Awards shall occur during the period between the Executive's Date of Termination and the effective date of the Separation Agreement and Release. The amounts payable under Section 5, to the extent taxable, shall be paid out in substantially equal installments in accordance with the Company's payroll practice over two-and-a-half months commencing within 60 days after the Date of Termination; provided, however, that if the 60-day period begins in one calendar year and ends in a second calendar year, the amount, to the extent it qualifies as "non-qualified deferred compensation" within the meaning of Section 409A of the Internal Revenue Code of 1986, as amended (the "Code"), shall begin to be paid in the second calendar year by the last day of such 60-day period; provided, further, that the initial payment shall include a catch-up payment to cover amounts retroactive to the day immediately following the Date of Termination. Each payment pursuant to this Agreement is intended to constitute a separate payment for purposes of Treasury Regulation Section 1.409A-2(b)(2).

6. Severance Pay and Benefits Upon Termination by the Company without Cause or by the Executive for Good Reason Outside the Change in Control Period. If the Executive's employment is terminated by the Company without Cause as provided in Section 3(d), or the Executive terminates employment for Good Reason as provided in Section 3(e), each outside of the Change in Control Period (as defined below), then, in addition to the Accrued Obligations, and subject to (i) the Executive signing a separation agreement and release in a form and manner satisfactory to the Company, which shall include, without limitation, a general release of claims against the Company and all related persons and entities, a reaffirmation of all of the Executive's Continuing Obligations (as defined below), and, in the Company's sole discretion, a one-year post-employment noncompetition agreement, and shall provide that if the Executive breaches any of the Continuing Obligations, all payments of the Severance Amount shall immediately cease (the "Separation Agreement and Release"), and (ii) the Separation Agreement and Release becoming irrevocable, all within 60 days after the Date of Termination (or such shorter period as set forth in the Separation Agreement and Release), which shall include a seven (7) business day revocation period:

(a) the Company shall pay the Executive an amount equal to the sum of (A) 12 months of the Executive's Base Salary plus (B) the Executive's Target Bonus for the then-current year (the "Severance Amount"); provided in the event the Executive is entitled to any payments pursuant to the Restrictive Covenants Agreement, the Severance Amount received in any calendar year will be reduced by the amount the Executive is paid in the same such calendar year pursuant to the Restrictive Covenants Agreement (the "Restrictive Covenants Agreement Setoff");

(b) subject to the Executive's copayment of premium amounts at the applicable active employees' rate and the Executive's proper election to receive benefits under the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended ("COBRA"), the Company shall pay to the group health plan provider, the COBRA provider or the Executive a monthly payment equal to the monthly employer contribution that the Company would have made to provide health insurance to the Executive if the Executive had remained employed by the Company until the earliest of (A) the 12 month anniversary of the Date of Termination; (B) the Executive's eligibility for group medical plan benefits under any other employer's group medical plan; or (C) the cessation of the Executive's continuation rights under COBRA; provided, however, if the Company determines that it cannot pay such amounts to the group health plan provider or the COBRA provider (if applicable) without potentially violating applicable law (including, without limitation, Section 2716 of the Public Health Service Act), then the Company shall convert such payments to payroll payments directly to the Executive for the time period specified above. Such payments shall be subject to tax-related deductions and withholdings and paid on the Company's regular payroll dates; and

(c) notwithstanding anything to the contrary in any applicable equity incentive plan(s) or award agreement(s), accelerated vesting of the Executive's Equity Awards shall occur such that, on the effective date of the Separation Agreement and Release, the Executive shall receive immediate accelerated vesting of Equity Awards with respect to the same number of shares that would have vested if the Executive had continued in employment with the Company for one year following the Date of Termination, in accordance with the vesting schedule applicable to such Equity Award; provided, that any termination or forfeiture of the unvested portion of such Equity Awards that would otherwise occur on the Date of Termination in the absence of this Agreement will be delayed until the effective date of the Separation Agreement and Release and will only occur if the vesting pursuant to this subsection does not occur due to the absence of the Separation Agreement and Release becoming fully effective within the time period set forth therein.

The amounts payable under Section 6, to the extent taxable, shall be paid out in substantially equal installments in accordance with the Company's payroll practice over 12 months commencing within 60 days after the Date of Termination; provided, however, that if the 60-day period begins in one calendar year and ends in a second calendar year, the Severance Amount, to the extent it qualifies as "non-qualified deferred compensation" within the meaning of Section 409A of the Code, shall begin to be paid in the second calendar year by the last day of such 60-day period; provided, further, that the initial payment shall include a catch-up payment to cover amounts retroactive to the day immediately following the Date of Termination. Each payment pursuant to this Agreement is intended to constitute a separate payment for purposes of Treasury Regulation Section 1.409A-2(b)(2).

7. Severance Pay and Benefits Upon Termination by the Company without Cause or by the Executive for Good Reason within the Change in Control Period. The provisions of this Section 7 shall apply in lieu of, and expressly supersede, the provisions of Section 6 if (i) the Executive's employment is terminated either (a) by the Company without Cause as provided in Section 3(d), or (b) by the Executive for Good Reason as provided in Section 3(e), and (ii) the Date of Termination is within three months prior or 12 months after the occurrence of the first event constituting a Change in Control (such period, the "Change in Control Period"). These provisions shall terminate and be of no further force or effect after a Change in Control Period.

(a) If the Executive's employment is terminated by the Company without Cause as provided in Section 3(d) or the Executive terminates employment for Good Reason as provided in Section 3(e) and in each case the Date of Termination occurs during the Change in Control Period, then, in addition to the Accrued Obligations, and subject to the signing of the Separation Agreement and Release by the Executive and the Separation Agreement and Release becoming fully effective, all within the time frame set forth in the Separation Agreement and Release but in no event more than 60 days after the Date of Termination:

(i) the Company shall pay the Executive a lump sum in cash in an amount equal to 1.5 times the sum of (A) the Executive's then current Base Salary (or the Executive's Base Salary in effect immediately prior to the Change in Control, if higher) plus (B) the Executive's Target Bonus for the then-current year (the "Change in Control Payment"); provided the Change in Control Payment shall be reduced by the amount of the Restrictive Covenants Agreement Setoff, if applicable, paid or to be paid in the same calendar year; and

(ii) notwithstanding anything to the contrary in any applicable equity incentive plan(s) or award agreement(s), all Equity Awards shall immediately accelerate and become fully exercisable or nonforfeitable as of the later of (i) the Date of Termination or (ii) the effective date of the Separation Agreement and Release (the "Accelerated Vesting Date"); *provided* that any termination or forfeiture of the unvested portion of such Equity Awards that would otherwise occur on the Date of Termination in the absence of this Agreement will be delayed until the effective date of the Separation Agreement and Release and will only occur if the vesting pursuant to this subsection does not occur due to the absence of the Separation Agreement and Release becoming fully effective within the time period set forth therein. Notwithstanding the foregoing, no additional vesting of the Equity Awards shall occur during the period between the Executive's Date of Termination and the Accelerated Vesting Date; and

(iii) subject to the Executive's copayment of premium amounts at the applicable active employees' rate and the Executive's proper election to receive benefits under COBRA, the Company shall pay to the group health plan provider, the COBRA provider or the Executive a monthly payment equal to the monthly employer contribution that the Company would have made to provide health insurance to the Executive if the Executive had remained employed by the Company until the earliest of (A) the 18 month anniversary of the Date of Termination; (B) the Executive's eligibility for group medical plan benefits under any other employer's group medical plan; or (C) the cessation of the Executive's continuation rights under COBRA; provided, however, if the Company determines that it cannot pay such amounts to the group health plan provider or the COBRA provider (if applicable) without potentially violating applicable law (including, without limitation, Section 2716 of the Public Health Service Act), then the Company shall convert such payments to payroll payments directly to the Executive for the time period specified above. Such payments shall be subject to tax-related deductions and withholdings and paid on the Company's regular payroll dates.

The amounts payable under this Section 7(a), to the extent taxable, shall be paid or commence to be paid within 60 days after the Date of Termination; provided, however, that if the 60-day period begins in one calendar year and ends in a second calendar year, such payments to the extent they qualify as "non-qualified deferred compensation" within the meaning of Section 409A of the Code, shall be paid or commence to be paid in the second calendar year by the last day of such 60-day period.

(b) Additional Limitation.

(i) Anything in this Agreement to the contrary notwithstanding, in the event that the amount of any compensation, payment or distribution by the Company to or for the benefit of the Executive, whether paid or payable or distributed or distributable pursuant to the terms of this Agreement or otherwise, calculated in a manner consistent with Section 280G of the Code, and the applicable regulations thereunder (the "Aggregate Payments"), would be subject to the excise tax imposed by Section 4999 of the Code, then the Aggregate Payments shall be reduced (but not below zero) so that the sum of all of the Aggregate Payments shall be \$1.00 less than the amount at which the Executive becomes subject to the excise tax imposed by Section 4999 of the Code; provided that such reduction shall only occur if it would result in the Executive receiving a higher After Tax Amount (as defined below) than the Executive would receive if the Aggregate Payments were not subject to such reduction. In such event, the Aggregate Payments shall be reduced in the following order, in each case, in reverse chronological order beginning with the Aggregate Payments that are to be paid the furthest in time from consummation of the transaction that is subject to Section 280G of the Code: (1) cash payments not subject to Section 409A of the Code; (2) cash payments subject to Section 409A of the Code; (3) equity-based payments and acceleration; and (4) non-cash forms of benefits; provided that in the case of all the foregoing Aggregate Payments all amounts or payments that are not subject to calculation under Treas. Reg. §1.280G-1, Q&A-24(b) or (c) shall be reduced before any amounts that are subject to calculation under Treas. Reg. §1.280G-1, Q&A-24(b) or (c).

(ii) For purposes of this Section 7(b), the “After Tax Amount” means the amount of the Aggregate Payments less all federal, state, and local income, excise and employment taxes imposed on the Executive as a result of the Executive’s receipt of the Aggregate Payments. For purposes of determining the After Tax Amount, the Executive shall be deemed to pay federal income taxes at the highest marginal rate of federal income taxation applicable to individuals for the calendar year in which the determination is to be made, and state and local income taxes at the highest marginal rates of individual taxation in each applicable state and locality, net of the maximum reduction in federal income taxes which could be obtained from deduction of such state and local taxes.

(iii) The determination as to whether a reduction in the Aggregate Payments shall be made pursuant to Section 7(b)(i) shall be made by a nationally recognized accounting firm selected by the Company (the “Accounting Firm”), which shall provide detailed supporting calculations both to the Company and the Executive within 15 business days of the Date of Termination, if applicable, or at such earlier time as is reasonably requested by the Company or the Executive. Any determination by the Accounting Firm shall be binding upon the Company and the Executive.

(c) Definitions. For purposes of this Section 7, a “Change in Control” shall mean a “Sale Event” as defined in the Black Diamond Therapeutics, Inc. 2020 Stock Option and Incentive Plan, as may be amended from time to time, but only to the extent such Sale Event is also a “change in control event” within the meaning of Section 409A of the Code and the regulations promulgated thereunder.

8. Section 409A.

(a) Anything in this Agreement to the contrary notwithstanding, if at the time of the Executive’s separation from service within the meaning of Section 409A of the Code, the Company determines that the Executive is a “specified employee” within the meaning of Section 409A(a)(2)(B)(i) of the Code, then to the extent any payment or benefit that the Executive becomes entitled to under this Agreement or otherwise on account of the Executive’s separation from service would be considered deferred compensation otherwise subject to the 20 percent additional tax imposed pursuant to Section 409A(a) of the Code as a result of the application of Section 409A(a)(2)(B)(i) of the Code, such payment shall not be payable and such benefit shall not be provided until the date that is the earlier of (A) six months and one day after the Executive’s separation from service, or (B) the Executive’s death. If any such delayed cash payment is otherwise payable on an installment basis, the first payment shall include a catch-up payment covering amounts that would otherwise have been paid during the six-month period but for the application of this provision, and the balance of the installments shall be payable in accordance with their original schedule.

(b) All in-kind benefits provided and expenses eligible for reimbursement under this Agreement shall be provided by the Company or incurred by the Executive during the time periods set forth in this Agreement. All reimbursements shall be paid as soon as administratively practicable, but in no event shall any reimbursement be paid after the last day of the taxable year following the taxable year in which the expense was incurred. The amount of in-kind benefits provided or reimbursable expenses incurred in one taxable year shall not affect the in-kind benefits to be provided or the expenses eligible for reimbursement in any other taxable year (except for any lifetime or other aggregate limitation applicable to medical expenses). Such right to reimbursement or in-kind benefits is not subject to liquidation or exchange for another benefit.

(c) To the extent that any payment or benefit described in this Agreement constitutes “non-qualified deferred compensation” under Section 409A of the Code, and to the extent that such payment or benefit is payable upon the Executive’s termination of employment, then such payments or benefits shall be payable only upon the Executive’s “separation from service.” The determination of whether and when a separation from service has occurred shall be made in accordance with the presumptions set forth in Treasury Regulation Section 1.409A-1(h).

(d) The parties intend that this Agreement will be administered in accordance with Section 409A of the Code. To the extent that any provision of this Agreement is ambiguous as to its compliance with Section 409A of the Code, the provision shall be read in such a manner so that all payments hereunder comply with Section 409A of the Code. Each payment pursuant to this Agreement or the Restrictive Covenants Agreement is intended to constitute a separate payment for purposes of Treasury Regulation Section 1.409A-2(b)(2). The parties agree that this Agreement may be amended, as reasonably requested by either party, and as may be necessary to fully comply with Section 409A of the Code and all related rules and regulations in order to preserve the payments and benefits provided hereunder without additional cost to either party.

(e) The Company makes no representation or warranty and shall have no liability to the Executive or any other person if any provisions of this Agreement are determined to constitute deferred compensation subject to Section 409A of the Code but do not satisfy an exemption from, or the conditions of, such Section.

9. Continuing Obligations.

(a) Restrictive Covenants Agreement. As a condition of employment, the Executive is required to enter into the Employee Confidentiality, Assignment, Nonsolicitation and Noncompetition Agreement, attached hereto as Exhibit A (the “Restrictive Covenants Agreement”). For purposes of this Agreement, the obligations in this Section 9 and those that arise in the Restrictive Covenants Agreement and any other agreement relating to confidentiality, assignment of inventions, or other restrictive covenants shall collectively be referred to as the “Continuing Obligations.”

(b) Third-Party Agreements and Rights. The Executive hereby confirms that the Executive is not bound by the terms of any agreement with any previous employer or other party which restricts in any way the Executive’s use or disclosure of information, other than confidentiality restrictions (if any), or the Executive’s engagement in any business. The Executive represents to the Company that the Executive’s execution of this Agreement, the Executive’s employment with the Company and the performance of the Executive’s proposed duties for the Company will not violate any obligations the Executive may have to any such previous employer or other party. In the Executive’s work for the Company, the Executive will not disclose or make use of any information in violation of any agreements with or rights of any such previous employer or other party, and the Executive will not bring to the premises of the Company any copies or other tangible embodiments of non-public information belonging to or obtained from any such previous employment or other party.

(c) Litigation and Regulatory Cooperation. During and after the Executive's employment, the Executive shall cooperate fully with the Company in (i) the defense or prosecution of any claims or actions now in existence or which may be brought in the future against or on behalf of the Company which relate to events or occurrences that transpired while the Executive was employed by the Company, and (ii) the investigation, whether internal or external, of any matters about which the Company believes the Executive may have knowledge or information. The Executive's full cooperation in connection with such claims, actions or investigations shall include, but not be limited to, being available to meet with counsel to answer questions or to prepare for discovery or trial and to act as a witness on behalf of the Company at mutually convenient times. During and after the Executive's employment, the Executive also shall cooperate fully with the Company in connection with any investigation or review of any federal, state or local regulatory authority as any such investigation or review relates to events or occurrences that transpired while the Executive was employed by the Company. The Company shall reimburse the Executive for any reasonable out-of-pocket expenses incurred in connection with the Executive's performance of obligations pursuant to this Section 9(c).

(d) Relief. The Executive agrees that it would be difficult to measure any damages caused to the Company which might result from any breach by the Executive of the Continuing Obligations, and that in any event money damages would be an inadequate remedy for any such breach. Accordingly, the Executive agrees that if the Executive breaches, or proposes to breach, any portion of the Continuing Obligations, the Company shall be entitled, in addition to all other remedies that it may have, to an injunction or other appropriate equitable relief to restrain any such breach without showing or proving any actual damage to the Company.

(e) Protected Disclosures and Other Protected Action. Nothing in this Agreement shall be interpreted or applied to prohibit the Executive from making any good faith report to any governmental agency or other governmental entity (a "Government Agency") concerning any act or omission that the Executive reasonably believes constitutes a possible violation of federal or state law or making other disclosures that are protected under the anti-retaliation or whistleblower provisions of applicable federal or state law or regulation. In addition, nothing contained in this Agreement limits the Executive's ability to communicate with any Government Agency or otherwise participate in any investigation or proceeding that may be conducted by any Government Agency, including the Executive's ability to provide documents or other information, without notice to the Company. In addition, for the avoidance of doubt, pursuant to the federal Defend Trade Secrets Act of 2016, the Executive shall not be held criminally or civilly liable under any federal or state trade secret law or under this Agreement or the Restrictive Covenants Agreement for the disclosure of a trade secret that (a) is made (i) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney; and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or (b) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal.

10. Consent to Jurisdiction. The parties hereby consent to the exclusive jurisdiction of the state and federal courts of the Commonwealth of Massachusetts. Accordingly, with respect to any such court action, the Executive (a) submits to the exclusive personal jurisdiction of such courts; (b) consents to service of process; and (c) waives any other requirement (whether imposed by statute, rule of court, or otherwise) with respect to personal jurisdiction or service of process.

11. Integration. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements between the parties concerning such subject matter.

12. Withholding; Tax Effect. All payments made by the Company to the Executive under this Agreement shall be net of any tax or other amounts required to be withheld by the Company under applicable law. Nothing in this Agreement shall be construed to require the Company to make any payments to compensate the Executive for any adverse tax effect associated with any payments or benefits or for any deduction or withholding from any payment or benefit.

13. Assignment. Neither the Executive nor the Company may make any assignment of this Agreement or any interest in it, by operation of law or otherwise, without the prior written consent of the other; provided, however, that the Company may assign its rights and obligations under this Agreement (including the Restrictive Covenants Agreement) without the Executive's consent to any affiliate or to any person or entity with whom the Company shall hereafter effect a reorganization, consolidate with, or merge into or to whom it transfers all or substantially all of its properties or assets; provided further that if the Executive remains employed or becomes employed by the Company, the purchaser or any of their affiliates in connection with any such transaction, then the Executive shall not be entitled to any payments, benefits or vesting pursuant to Section 6 or pursuant to Section 7 of this Agreement solely as a result of such transaction. This Agreement shall inure to the benefit of and be binding upon the Executive and the Company, and each of the Executive's and the Company's respective successors, executors, administrators, heirs and permitted assigns. The Company shall obtain an agreement from any successor to assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform if no succession had taken place, except where such assumption occurs by operation of law.

14. Enforceability. If any portion or provision of this Agreement (including, without limitation, any portion or provision of any section of this Agreement) shall to any extent be declared illegal or unenforceable by a court of competent jurisdiction, then the remainder of this Agreement, or the application of such portion or provision in circumstances other than those as to which it is so declared illegal or unenforceable, shall not be affected thereby, and each portion and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

15. Survival. The provisions of this Agreement shall survive the termination of this Agreement and/or the termination of the Executive's employment to the extent necessary to effectuate the terms contained herein.



16. Waiver. No waiver of any provision hereof shall be effective unless made in writing and signed by the waiving party. The failure of any party to require the performance of any term or obligation of this Agreement, or the waiver by any party of any breach of this Agreement, shall not prevent any subsequent enforcement of such term or obligation or be deemed a waiver of any subsequent breach.

17. Notices. Any notices, requests, demands and other communications provided for by this Agreement shall be sufficient if in writing and delivered in person or sent by a nationally recognized overnight courier service or by registered or certified mail, postage prepaid, return receipt requested, to the Executive at the last address the Executive has filed in writing with the Company or, in the case of the Company, at its main offices, attention of the Board.

18. Amendment. This Agreement may be amended or modified only by a written instrument signed by the Executive and by a duly authorized representative of the Company.

19. Effect on Other Plans and Agreements. An election by the Executive to resign for Good Reason under the provisions of this Agreement shall not be deemed a voluntary termination of employment by the Executive for the purpose of interpreting the provisions of any of the Company's benefit plans, programs or policies. Nothing in this Agreement shall be construed to limit the rights of the Executive under the Company's benefit plans, programs or policies except as otherwise provided in Section 9 hereof, and except that the Executive shall have no rights to any severance benefits under any Company severance pay plan, offer letter or otherwise. Except for the Restrictive Covenants Agreement, in the event that the Executive is party to an agreement with the Company providing for payments or benefits under such plan or agreement and under this Agreement, the terms of this Agreement shall govern and the Executive may receive payment under this Agreement only and not both. Further, Section 6 and Section 7 of this Agreement are mutually exclusive and in no event shall the Executive be entitled to payments or benefits pursuant to both Section 6 and Section 7 of this Agreement.

20. Governing Law. This is a Massachusetts contract and shall be construed under and be governed in all respects by the laws of the Commonwealth of Massachusetts, without giving effect to the conflict of laws principles thereof. With respect to any disputes concerning federal law, such disputes shall be determined in accordance with the law as it would be interpreted and applied by the United States Court of Appeals for the First Circuit.

21. Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be taken to be an original; but such counterparts shall together constitute one and the same document.

IN WITNESS WHEREOF, the parties have executed this Agreement effective on the Effective Date.

**BLACK DIAMOND THERAPEUTICS, INC.**

By: /s/ Brent Hatzis-Schoch

Its: Chief Operating Officer and General Counsel

**EXECUTIVE**

/s/ Mark Velleca

Mark Velleca

## **Exhibit A**

### **Restrictive Covenants Agreement**

#### **Employee Confidentiality, Assignment, Nonsolicitation and Noncompetition Agreement**

In consideration and as a condition of my employment by Black Diamond Therapeutics, Inc. (including its subsidiaries and other affiliates and its and their successors and assigns, the “Company”), and in exchange for, among other things, the benefits provided in the Employment Agreement to which this Agreement is appended, I enter into this Employee Confidentiality, Assignment, Nonsolicitation and Noncompetition Agreement (the “Agreement”) and agree as follows:

**1. Proprietary Information.** I agree that all information, whether or not in writing, concerning the Company’s business, technology, business relationships or financial affairs that the Company has not released to the general public (collectively, “Proprietary Information”) and all tangible embodiments thereof are and will be the exclusive property of the Company. By way of illustration, Proprietary Information may include information or material that has not been made generally available to the public, such as: (a) *corporate information*, including plans, strategies, methods, policies, resolutions, negotiations or litigation; (b) *marketing information*, including strategies, methods, customer or business partner identities or other information about customers, business partners, prospect identities or other information about prospects, or market analyses or projections; (c) *financial information*, including cost and performance data, debt arrangements, equity structure, investors and holdings, purchasing and sales data and price lists; (d) *operational, technological and scientific information*, including plans, specifications, manuals, forms, templates, software, pre-clinical and clinical testing data and strategies, research and development strategies, designs, methods, procedures, formulae, data, reports, discoveries, inventions, improvements, concepts, ideas, and other Developments (as defined below), know-how and trade secrets; and (e) *personnel information*, including personnel lists, reporting or organizational structure, resumes, personnel data, performance evaluations and termination arrangements or documents. Proprietary Information also includes information received in confidence by the Company from its customers, suppliers, business partners or other third parties.

**2. Recognition of Company’s Rights.** I will not, at any time, without the Company’s prior written permission, either during or after my employment, disclose any Proprietary Information to anyone outside of the Company, or use or permit to be used any Proprietary Information for any purpose other than the performance of my duties as an employee of the Company. I will cooperate with the Company and use my best efforts to prevent the unauthorized disclosure of all Proprietary Information. I will deliver to the Company all copies and other tangible embodiments of Proprietary Information in my possession or control upon the earlier of a request by the Company or termination of my employment.

**3. Rights of Others.** I understand that the Company is now and may hereafter be subject to nondisclosure or confidentiality agreements with third persons that require the Company to protect or refrain from use or disclosure of proprietary information. I agree to be bound by the terms of such agreements in the event I have access to such proprietary information. I understand that the Company strictly prohibits me from using or disclosing confidential or proprietary information belonging to any other person or entity (including any employer or former employer), in connection with my employment. In addition, I agree not to bring any confidential information belonging to any other person or entity onto Company premises or into Company workspaces.

**4. Commitment to Company; Avoidance of Conflict of Interest.** While an employee of the Company, I will devote my full-time efforts to the Company’s business and I will not, directly or indirectly, engage in any other business activity, except as expressly authorized in writing and in advance by a duly authorized representative of the Company. I will advise an authorized officer of the Company or his or her designee at such time as any activity of either the Company or another business presents me with a conflict of interest or the appearance of a conflict of interest as an employee of the Company. I will take whatever action is requested of me by the Company to resolve any conflict or appearance of conflict which it finds to exist.

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**5. Developments.** I have made and will make full and prompt disclosure to the Company of all inventions, discoveries, designs, developments, methods, modifications, improvements, processes, algorithms, data, databases, computer programs, research, formulae, techniques, trade secrets, graphics or images, and audio or visual works and other works of authorship, and other intellectual property, including works-in-process (collectively "Developments") whether or not patentable or copyrightable, that were or are created, made, conceived or reduced to practice by me (alone or jointly with others) or under my direction during the period of my employment. I acknowledge that all work performed by me is on a "work for hire" basis, and I hereby do assign and transfer and, to the extent any such assignment cannot be made at present, will assign and transfer, to the Company (which, for purposes of this sentence, shall be my employing entity unless otherwise specified by such entity) and its successors and assigns all my right, title and interest in and to all Developments that (a) relate to the business of the Company or its subsidiaries or other affiliates or any customer of, supplier to or business partner of the Company or its subsidiaries or other affiliates or any of the products or services that have been, are being or will be researched, developed, manufactured or sold by the Company or its subsidiaries or other affiliates or which may be used with such products or services; or (b) result from tasks assigned to me by the Company or its subsidiaries or other affiliates; or (c) result from the use of premises or personal property (whether tangible or intangible) owned, leased or contracted for by the Company or its subsidiaries or other affiliates ("Company-Related Developments"), and all related patents, patent applications, trademarks and trademark applications, copyrights and copyright applications, *sui generis* database rights and other intellectual property rights in all countries and territories worldwide and under any international conventions ("Intellectual Property Rights").

To preclude any possible uncertainty, if there are any Developments that I have, alone or jointly with others, conceived, developed or reduced to practice prior to the commencement of my employment with the Company that I consider to be my property or the property of third parties and that I wish to have excluded from the scope of this Agreement ("Prior Inventions"), I have set forth on Exhibit A attached hereto a complete list of those Prior Inventions. If disclosure of any such Prior Invention would cause me to violate any prior confidentiality agreement, I understand that I am not to list such Prior Inventions in Exhibit A but am only to disclose a cursory name for each such invention, a listing of the party(ies) to whom it belongs and the fact that full disclosure as to such inventions has not been made for that reason. If there are any patents or patent applications in which I am named as an inventor, other than those that have been assigned to the Company ("Other Patent Rights"), I have also listed those Other Patent Rights on Exhibit A. If no such disclosure is attached, I represent that there are no Prior Inventions or Other Patent Rights. If, in the course of my employment with the Company, I incorporate a Prior Invention into a Company product, process or machine, research or development program, or other work done for the Company, I hereby grant to the Company a nonexclusive, royalty-free, fully paid-up, irrevocable, worldwide license (with the full right to sublicense through multiple tiers) to make, have made, modify, use, sell, offer for sale and import such Prior Invention. Notwithstanding the foregoing, I will not incorporate, or permit to be incorporated, Prior Inventions in any Company-Related Development without the Company's prior written consent.

This Agreement does not obligate me to assign to the Company any Development that, in the sole judgment of the Company, reasonably exercised, is developed entirely on my own time and does not relate to the business efforts or research and development efforts in which, during the period of my employment, the Company actually is engaged or reasonably would be engaged, and does not result from the use of premises or equipment owned or leased by the Company. However, I will also promptly disclose to the Company any such Developments for the purpose of determining whether they qualify for such exclusion. I understand that to the extent this Agreement is required to be construed in accordance with the laws of any state which precludes a requirement in an employee agreement to assign certain classes of inventions made by an employee, this Section 5 will be interpreted not to apply to any invention that a court rules and/or the Company agrees falls within such classes. I also hereby waive all claims to any moral rights or other special rights that I may have or accrue in any Company-Related Developments.

**6. Documents and Other Materials.** I will keep and maintain adequate and current records of all Proprietary Information and Company-Related Developments developed by me during my employment, which records will be available to and remain the sole property of the Company at all times.

All files, letters, notes, memoranda, reports, records, data, sketches, drawings, notebooks, layouts, charts, quotations and proposals, specification sheets, blueprints, models, prototypes, or other written, photographic or other tangible material containing Proprietary Information, whether created by me or others, which come into my custody or possession, are the exclusive property of the Company to be used by me only in the performance of my duties for the Company. Any property situated on the Company's premises and owned by the Company, including without limitation computers, disks and other storage media, filing cabinets or other work areas, is subject to inspection by the Company at any time with or without notice. In the event of the termination of my employment for any reason, I will deliver to the Company all Company property and equipment in my possession, custody or control, including all files, letters, notes, memoranda, reports, records, data, sketches, drawings, notebooks, layouts, charts, quotations and proposals, specification sheets, blueprints, models, prototypes, or other written, photographic or other tangible material containing Proprietary Information, and other materials of any nature pertaining to the Proprietary Information of the Company and to my work, and will not take or keep in my possession any of the foregoing or any copies.

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**7. Enforcement of Intellectual Property Rights.** I will cooperate fully with the Company, both during and after my employment with the Company, with respect to the procurement, maintenance and enforcement of Intellectual Property Rights in Company-Related Developments. I will sign, both during and after my employment, all papers, including without limitation copyright applications, patent applications, declarations, oaths, assignments of priority rights, and powers of attorney, which the Company may deem necessary or desirable in order to protect its rights and interests in any Company-Related Development or Intellectual Property Rights therein. If the Company is unable, after reasonable effort, to secure my signature on any such papers, I hereby irrevocably designate and appoint each officer of the Company as my agent and attorney-in-fact to execute any such papers on my behalf, and to take any and all actions as the Company may deem necessary or desirable in order to protect its rights and interests in any Company-Related Development, including any Intellectual Property Rights therein.

**8. Nonsolicitation and Noncompetition.**

In order to protect the Company's Proprietary Information and goodwill, during my employment and for a period of (i) one (1) year following the date of the cessation of my employment with the Company (the "Last Date of Employment") or such shorter period as the Company designates in writing to me in connection with the ending of my employment relationship, or (ii) two (2) years following the Last Date of Employment if I breach my fiduciary duty to the Company or if I have unlawfully taken, physically or electronically, property belonging to the Company (in either case the "Restricted Period"):

(a) I shall not, directly or indirectly, in any manner, other than for the benefit of the Company, solicit or transact any business with any of the customers of the Company. For purposes of this Agreement, customers shall include then current customers to which the Company provided products or services during the twelve months prior to the Last Date of Employment (the "One Year Lookback"), and customer prospects that the Company solicited during the One Year Lookback and that I had significant contact with or learned confidential information about in the course of my employment.

(b) I shall not, directly or indirectly, in any manner, solicit, entice or attempt to persuade any employee or consultant of the Company to leave the Company for any reason or otherwise participate in or facilitate the hire, directly or through another entity, of any person who is then employed or engaged by the Company.

(c) Unless (i) the Company terminates my employment without Cause (as defined below) or I have been laid off; or (ii) the Company waives the restrictions upon post-employment activities set forth in this Section 8(c), then, the Company shall make garden leave payments to me for the post-employment portion of the Restricted Period at the rate of 50% of the highest annualized base salary paid to me by the Company within the two-year period preceding the last day of my employment ("Garden Leave Pay"), and in exchange, I shall not directly or indirectly, whether as owner, partner, shareholder, director, manager, consultant, agent, employee, co-venturer or otherwise, anywhere in the world, engage or otherwise participate in any business that is, in whole or in part, engaged, or preparing to engage, in the Business (as defined below). I acknowledge that this covenant is necessary because the Company's legitimate business interests cannot be adequately protected solely by the other covenants in this Agreement. I further acknowledge and agree that any payments I receive pursuant to this Section 8(c) shall reduce (and shall not be in addition to) any severance or separation pay that I am otherwise entitled to receive from the Company pursuant to an agreement, plan or otherwise.

For purposes of this Agreement, and notwithstanding anything to the contrary in any other agreement between the Company and me:

"Business" shall mean, as of the Last Date of Employment, the business of the Company as previously or currently conducted, or as planned to be conducted in the future, including, without limitation, the research, manufacturing, development or marketing of small molecule inhibitors targeting genetically defined allosteric mutant oncogenes and the performance of any services related to the foregoing.

"Cause" shall mean a reasonable and good faith basis for the Company to be dissatisfied with my job performance, my conduct or my behavior.

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**9. Government Contracts.** I acknowledge that the Company may have from time to time agreements with other persons or with the United States Government or its agencies that impose obligations or restrictions on the Company regarding inventions made during the course of work under such agreements or regarding the confidential nature of such work. I agree to comply with any such obligations or restrictions upon the direction of the Company. In addition to the rights assigned under Section 5, I also assign to the Company (or any of its nominees) all rights that I have or acquired in any Developments, full title to which is required to be in the United States under any contract between the Company and the United States or any of its agencies.

**10. Prior Agreements.** I hereby represent that, except as I have fully disclosed previously in writing to the Company, I am not bound by the terms of any agreement with any previous or current employer or other party to refrain from using or disclosing any trade secret or confidential or proprietary information in the course of my employment with the Company or to refrain from competing, directly or indirectly, with the business of such employer or any other party. I further represent that my performance of all the terms of this Agreement as an employee of the Company does not and will not breach any agreement to keep in confidence proprietary information, knowledge or data acquired by me in confidence or in trust prior to my employment with the Company. I will not disclose to the Company or induce the Company to use any confidential or proprietary information or material belonging to any previous employer or others.

**11. Remedies Upon Breach.** I understand that the restrictions contained in this Agreement are necessary for the protection of the business and goodwill of the Company and I consider them to be reasonable for such purpose. Any breach of this Agreement is likely to cause the Company substantial and irrevocable damage and therefore, in the event of such breach, the Company, in addition to such other remedies which may be available, will be entitled to specific performance and other injunctive relief, without the posting of a bond. I further acknowledge that a court may render an award extending the Restricted Period as one of the remedies in the event of my violation of this Agreement. If I violate this Agreement, in addition to all other remedies available to the Company at law (including, without limitation, the Company's right to discontinue any payments I may receive pursuant to Section 8(c)), in equity, and under contract, I agree that I am obligated to pay all the Company's costs of enforcement of this Agreement, including reasonable attorneys' fees and expenses.

**12. Use of Voice, Image and Likeness.** I give the Company permission to use any and all of my voice, image and likeness, with or without using my name, in connection with the products and/or services of the Company, for the purposes of advertising and promoting such products and/or services and/or the Company, and/or for other purposes deemed appropriate by the Company in its reasonable discretion, except to the extent prohibited by law.

**13. No Employment Obligation.** I understand that this Agreement does not create an obligation on the Company or any other person to continue my employment. I acknowledge that, unless otherwise agreed in a formal written employment agreement signed on behalf of the Company by an authorized officer, my employment with the Company is at will and therefore may be terminated by the Company or me at any time and for any reason, with or without cause.

**14. Survival and Assignment by the Company.** I understand that my obligations under this Agreement will continue in accordance with its express terms regardless of any changes in my title, position, duties, salary, compensation or benefits or other terms and conditions of employment. I further understand that my obligations under this Agreement will continue following the termination of my employment regardless of the manner of such termination and will be binding upon my heirs, executors and administrators. The Company will have the right to assign this Agreement to its affiliates, successors and assigns. I expressly consent to be bound by the provisions of this Agreement for the benefit of the Company or any parent, subsidiary or affiliate to whose employ I may be transferred without the necessity that this Agreement be resigned at the time of such transfer.

**15. Notice of Resignation.** If I elect to resign from my employment with the Company, I agree to provide the Company with written notification of my resignation at least 30 days prior to my intended resignation date. Such notice shall include information in reasonable detail about my post-employment job duties and other business activities, including the name and address of any subsequent employer and/or person or entity with whom or which I intend to engage in business activities during the Restricted Period and the nature of my job duties and other business activities. The Company may elect to waive all or part of the 30-day notice period in its sole discretion, and such waiver shall not result in a termination by the Company for purposes of this Agreement.

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**16. Post-Employment Notifications.** During the Restricted Period, I will notify the Company of any change in my address and of each subsequent employment or business activity, including the name and address of my employer or other post-Company employment plans and the nature of my activities.

**17. Disclosures During Restricted Period.** I will provide a copy of this Agreement to any person or entity with whom I may enter into a business relationship, whether as an employee, consultant, partner, coventurer or otherwise, prior to entering into such business relationship during the Restricted Period.

**18. Waiver; Reduction of Restricted Period by Company.** The Company and I acknowledge and agree that the Company's election not to provide me with Garden Leave Pay as set forth in Section 8(c) shall be deemed a waiver of my noncompetition obligations under Section 8(c). Otherwise, no waiver of any of my obligations under this Agreement shall be effective unless made in writing by the Company. The failure of the Company to require my performance of any term or obligation of this Agreement, or the waiver of any breach of this Agreement, shall not prevent the Company's subsequent enforcement of such term or obligation or be deemed a waiver of any subsequent breach. Notwithstanding anything to the contrary in Section 8, the Company may reduce the length of the Restricted Period by providing written notice to me of such reduction in connection with the ending of my employment relationship.

**19. Severability.** In case any provisions (or portions thereof) contained in this Agreement shall, for any reason, be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect the other provisions of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein. If, moreover, any one or more of the provisions contained in this Agreement shall for any reason be held to be excessively broad as to duration, geographical scope, activity or subject, it shall be construed by limiting and reducing it, so as to be enforceable to the extent compatible with the applicable law as it shall then appear.

**20. Choice of Law and Jurisdiction.** This Agreement will be deemed to be made and entered into in the Commonwealth of Massachusetts, and will in all respects be interpreted, enforced and governed under the laws of the Commonwealth of Massachusetts. I hereby consent to the exclusive jurisdiction of the state and federal courts situated within Massachusetts for purposes of enforcing this Agreement or for any other lawsuit relating to or arising under this Agreement, and I hereby waive any objection that I might have to personal jurisdiction or venue in those courts, provided, however, the Company and I agree that all civil actions relating to Section 8(c) of this Agreement shall be brought in the county of Suffolk and that the superior court or the business litigation session of the superior court shall have exclusive jurisdiction.

**21. Independence of Obligations.** My obligations under this Agreement are independent of any obligation, contractual or otherwise, the Company has to me. The Company's breach of any such obligation shall not be a defense against the enforcement of this Agreement or otherwise limit my obligations under this Agreement.

**22. Protected Disclosures.** I understand that nothing contained in this Agreement limits my ability to communicate with any federal, state or local governmental agency or commission, including to provide documents or other information, without notice to the Company. I also understand that nothing in this Agreement limits my ability to share compensation information concerning myself or others, except that this does not permit me to disclose compensation information concerning others that I obtain because my job responsibilities require or allow access to such information.

**23. Defend Trade Secrets Act of 2016.** I understand that pursuant to the federal Defend Trade Secrets Act of 2016, I shall not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that (a) is made (i) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney; and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or (b) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal.

**24. Entire Agreement; Amendment.** This Agreement constitutes the entire agreement between the Company and me with respect to the subject matter hereof, and supersedes all prior agreements or understandings, both written and oral, between the Company and me with respect to the subject matter hereof, but does not in any way merge with or supersede any other confidentiality, assignment of inventions or other restrictive covenant agreement or obligation entered into by the Company and me, which agreements and obligations shall supplement, and shall not limit or be limited by, this Agreement. This Agreement may be amended only in a written agreement executed by a duly authorized officer of the Company and me.

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I UNDERSTAND THAT THIS AGREEMENT AFFECTS IMPORTANT RIGHTS. BY SIGNING BELOW, I CERTIFY THAT (I) I WAS PROVIDED WITH THIS AGREEMENT BY THE EARLIER OF A FORMAL OFFER OF EMPLOYMENT OR TEN (10) BUSINESS DAYS BEFORE THE COMMENCEMENT OF MY EMPLOYMENT AND (II) I HAVE BEEN ADVISED BY THE COMPANY THAT I HAVE THE RIGHT TO CONSULT WITH COUNSEL PRIOR TO SIGNING THIS AGREEMENT.

IN WITNESS WHEREOF, the undersigned has executed this agreement as a sealed instrument and it shall become effective upon the later of the (i) full execution by both parties; or (ii) ten (10) business days after the Company provided me with notice of this Agreement.

EMPLOYEE

Signed: /s/ Mark A. Velleca

Type or print name: Mark A. Velleca

Date: September 17, 2023

BLACK DIAMOND THERAPEUTICS, INC.

Signed: /s/ Brent Hatzis-Schoch

Type or print name and job title: Brent Hatzis-Schoch, Chief Operating Officer and General Counsel

Date: September 17, 2023

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**EXHIBIT A**

To: BLACK DIAMOND THERAPEUTICS, INC.

From: \_\_\_\_\_

Date: \_\_\_\_\_

**SUBJECT: Prior Inventions**

The following is a complete list of all inventions or improvements relevant to the subject matter of my employment by the Company that have been made or conceived or first reduced to practice by me alone or jointly with others prior to my engagement by the Company:

No inventions or improvements

See below:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Additional sheets attached

The following is a list of all patents and patent applications in which I have been named as an inventor:

None

See below:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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### **Black Diamond Therapeutics Announces CEO Transition**

*Current Chairman of the Board and industry veteran Mark Velleca appointed CEO*

CAMBRIDGE, Mass. and NEW YORK, Sept. 18, 2023 (GLOBE NEWSWIRE) -- Black Diamond Therapeutics, Inc. (Nasdaq: BDTX), a clinical-stage precision oncology company developing therapies that target families of oncogenic mutations in patients with genetically defined cancers, announced that current Chairman of the Board, Mark Velleca, M.D., Ph.D., has been appointed as Chief Executive Officer (CEO) effective immediately. Dr. Velleca succeeds Company CEO and co-founder, David M. Epstein, Ph.D., who has stepped down and will continue to serve on the Board of Directors of the Company.

“Since co-founding Black Diamond in 2016, I have had the privilege of leading the Company from scientific inception through clinical proof of concept, while building a talented drug discovery and development team focused on providing cancer patients with better treatment options,” said Dr. Epstein. “I am incredibly proud of this team’s accomplishments and am pleased to pass the baton to our Board Chair, Mark Velleca, as we transition to later stage clinical development.”

“I am thrilled to join the Black Diamond team to build on its solid foundation and advance the Company’s clinical stage programs, BDTX-1535 and BDTX-4933. I look forward to leading the Company through its next phase of growth, advancing our pipeline on a clear commercial pathway, and creating value for our stakeholders,” said Dr. Velleca. “On behalf of the entire Board of Directors, I would like to sincerely thank David for his many contributions to Black Diamond, and his commitment to exceptional science and to patients in need.”

Dr. Velleca joined the Board of Directors of Black Diamond in 2021 and became Chairman of the Board in 2022. Prior to joining the Black Diamond Board, Dr. Velleca served as CEO of G1 Therapeutics, Inc. (Nasdaq: GTHX). At G1, he successfully led the company through its initial public offering and the development of its first therapy (COSELA®) from investigational new drug (IND) filing to U.S. Food and Drug Administration (FDA) approval. Dr. Velleca continues to serve as a Senior Advisor to and Board member of G1; he is also the Executive Chair of Myeloid Therapeutics, Inc.

Earlier in his career, Dr. Velleca was a co-founder and Senior Vice President of CGI Pharmaceuticals, Inc., where he managed the company from its inception through clinical trials of multiple drug candidates. After Gilead Sciences acquired CGI, he served as a Senior Advisor to Gilead in R&D Strategy and Corporate Development. Between CGI and G1, Dr. Velleca was Executive Vice President and Chief Policy & Advocacy Officer of the Leukemia and Lymphoma Society. Most recently, Dr. Velleca was CEO of StrideBio, a gene therapy company, and a Venture Partner at Hatteras Venture Partners.

Dr. Velleca began his career as an attending physician at Yale New Haven Hospital and was on the faculty of the Yale University School of Medicine. Dr. Velleca earned an M.D. and Ph.D. from Washington University in St. Louis, and a B.S. from Yale University.

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## **About Black Diamond Therapeutics**

Black Diamond Therapeutics is a clinical-stage precision oncology medicine company focused on the development of therapies that target families of oncogenic mutations in clinically validated targets. Black Diamond leverages a deep understanding of cancer genetics and onco-protein structure and function, to discover and develop innovative therapies. The Company's MasterKey therapies are designed to overcome resistance, minimize on-target, wild-type mediated toxicities, and be brain-penetrant to address significant unmet medical needs of patients with genetically defined cancers. The Company is advancing a robust pipeline with lead clinical-stage program BDTX-1535, targeting MasterKey mutations in both EGFR mutant-positive NSCLC and in GBM, and BDTX-4933, a program targeting RAF MasterKey mutations in solid tumors. For more information, please visit [www.blackdiamondtherapeutics.com](http://www.blackdiamondtherapeutics.com).

## **Forward-Looking Statements**

Statements contained in this press release regarding matters that are not historical facts are "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995. Because such statements are subject to risks and uncertainties, actual results may differ materially from those expressed or implied by such forward-looking statements. Such statements include, but are not limited to, statements regarding: the anticipated success of the management transition and the Company's continued ability to progress its pipeline. Any forward-looking statements in this statement are based on management's current expectations of future events and are subject to a number of risks and uncertainties that could cause actual results to differ materially and adversely from those set forth in or implied by such forward-looking statements. Risks that contribute to the uncertain nature of the forward-looking statements include those risks and uncertainties set forth in its Annual Report on Form 10-K for the year ended December 31, 2022, filed with the United States Securities and Exchange Commission and in its subsequent filings filed with the United States Securities and Exchange Commission. All forward-looking statements contained in this press release speak only as of the date on which they were made. The Company undertakes no obligation to update such statements to reflect events that occur or circumstances that exist after the date on which they were made.

## **Contacts**

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For Media:

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