MASSACHUSETTS
LIFE SCIENCES CENTER

Investing in the State of Innovation

To: Michael Heffernan, Secretary, Executive Office for Administration and Finance
Christopher C. Harding, Commissioner, Department of Revenue
William Welch, Clerk, Massachusetts Senate
Steven James, Clerk, Massachusetts House of Representatives

By forward: House and Senate Committee on Ways and Means, the Joint Committee on Revenue and the Joint Committee on Economic Development and Emerging Technologies

From: Travis McCready, President and Chief Executive Officer

Date: December 10, 2018

Re: Extension of Time to Determine Certification Status ("Extension Report")

The Center respectfully submits the following Extension Report detailing our decision to extend certified status to certain life sciences companies as permitted under our statutory authority. This report is submitted in fulfillment of the requirements mandated by the General Court pursuant to the Center's enabling statute at Mass. Gen. Laws ch. 23I, § 5(e)(2), as amended by Chapter 130 of the Acts of 2008.

As always, thank you for your ongoing interest and support.

Sincerely,

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The Life Sciences Center's Tax Incentive Program:

The Massachusetts Life Sciences Center is authorized by statute to provide up to $25 million in tax incentives annually to encourage companies to locate, invest and create jobs in Massachusetts. To be eligible, companies must have made a qualifying investment under one or more of the tax incentive provisions that are specified in the statute, which includes among others incentives for R&D, capital investment, FDA user fees and orphan drug development. Companies receiving incentives must commit to the creation of a specific number of jobs during the following calendar year. Companies receiving tax incentives from the Center also must commit to retaining these net new jobs, along with their base headcount, for a five-year period. Companies must create at least 70% of the net new jobs, and in the case of companies awarded the Life Sciences Job Incentive Refundable Credit, must create at last 50 net new jobs or 70% of the net new jobs, whoever is higher, to which they have committed by the end of the calendar year following the award of a tax incentive. More information about the Center's Tax Incentive Program is available at www.masslifesciences.com.

Transparency and Accountability:

The Life Sciences Center has designed its tax incentive program to be transparent and accountable. The program's design was authorized by the Center's Board of Directors at a public meeting. Applications are accepted annually based on an open and widely publicized solicitation. Tax incentive awards are voted on in a public meeting, and announced publicly via press release and the Center's web site. That announcement specifies the recipient companies, the amount of the incentive received by each company, and the number of net new jobs that each company has committed to create in a specific calendar year.

To ensure accountability, the MLSC Tax Incentive Program (and the statute authorizing it) has enforcement mechanisms, including strict monitoring and reporting requirements for recipient companies. Within 30 days of the end of each calendar year following the year of award, awardees are required to provide an annual report to the Center that permits the Center to determine whether their job targets have been met. The statute provides for "clawback" provisions for companies that are found not to be fulfilling their commitment to the state.

Companies that fail to achieve at least 70% of their job targets at the end of any annual reporting period are subject to an investigation to determine the cause of this "material variance" (term used in the Life Sciences Statute). The following outcomes are possible:

1. In the event that the Center determines that it is unlikely that the company will achieve its job target based on a review of the company's financials and other information provided, the Center will de-certify the company and notify the Department of Revenue (DOR), which could initiate "claw-back" procedures to recover the tax value of any award provided.

2. In the event that the Center determines that the company has the potential to achieve its job target by the end of the year following failure to achieve at least 70% of its job target, the Center may permit the company this second year to meet its job targets. In this case, the Center is required to provide its reasons, in writing, for allowing the company this second year to meet its job target to the Secretary of Administration and Finance, the Commissioner of DOR, the clerks of the House

and Senate, the Joint Committee on Revenue, the Joint Committee on Economic Development and Emerging Technologies, and to post these reasons on its website.

The Center is required by statute to de-certify any company that fails to achieve at least 70% of its job target for 2 consecutive years. In this case, the Center would notify DOR and DOR could initiate "claw-back" procedures to recover the tax value of any award. Companies may also voluntarily terminate their award at any time and return to the Commonwealth any incentives or refunds received.

Companies may apply annually to the Tax Incentive Program, unless a company has failed to achieve at least 90% of its job target, and in the case of companies awarded the Life Sciences Job Incentive Refundable Credit, failed to create at least 50 net new jobs or 90% of the net new jobs committed in any particular year, whichever is higher. In that case the company would not be eligible to receive an award until the company is in compliance with past tax incentive agreements. In the instance that an awardee has terminated its award with the Center, the awardee is unable to apply to the program for the following year.

Extensions Granted to Tax Incentive Awardees Based on the 2017 Annual Reporting Cycle:

The Center, after conducting investigations in keeping with the procedures described above. The investigation for each company included the following steps:

1. An in-person meeting with each company to review a standard checklist of questions based on the queries below. Center staff also discussed process and options with each company;
2. Center staff analyzed data and information provided by each company;
3. Center staff presented findings to the Investment Committee of the Center's Board of Directors. The Investment Committee makes determinations of extension or decertification;
4. The companies involved and the Center's Board of Directors are notified of the outcome;
5. For any extensions, the statute requires the Center to prepare and send a report to the parties mentioned in the section above, and to post that report on the Center's website.
6. Companies that are decertified after investigation are notified in writing, with notice to the Massachusetts Department of Revenue, after which clawback proceedings may be initiated.

Based on this review, the Center has granted an extension to one company that received a tax incentive award from the program:

Acorda Therapeutics:

At the close of 2017 Acorda Therapeutics Inc. was three jobs short of meeting their minimum threshold for job creation under their 2016 tax incentive agreement. At the conclusion of the Center's investigation the company exceeded the minimum threshold, and at that time the company had postings for job openings that would be sufficient to reach their target. Given the likelihood that Acorda Therapeutics will meet the minimum threshold by the end of calendar year 2018, and the company's stated commitment to doing so, the Center has extended the compliance period for Acorda Therapeutics to December 31, 2018.