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**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): January 4, 2019**

**Apricus Biosciences, Inc.**

(Exact name of registrant as specified in its charter)

|  |                          |                                      |
|--|--------------------------|--------------------------------------|
| Nevada   | 0-22245                  | 87-0449967                           |
| (State or other jurisdiction of incorporation) | (Commission File Number) | (I.R.S. Employer Identification No.) |
| 11975 El Camino Real, Suite 300, San Diego, CA |                          | 92130                                |
| (Address of principal executive offices)       |                          | (Zip Code)                           |

**Registrant's telephone number, including area code (858) 222-8041**

**(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 of 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 240.13a-4(c))

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. ☐

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## Item 1.01 Entry into a Material Definitive Agreement

### *Securities Purchase Agreement*

On January 4, 2019, Apricus Biosciences, Inc. (the “Company” or “Apricus”) and Seelos Therapeutics, Inc. (“Seelos”) entered into Amendment Agreements (collectively, the “Second Amendment”) with each Investor (as defined below) amending that certain Securities Purchase Agreement (the “Purchase Agreement” and the transactions contemplated thereby, the “Financing”), made and entered into as of October 16, 2018, by and among the Company, Seelos and the buyers listed on the signature pages attached thereto (the “Investors”), and amended by those certain Amendment Agreements, made and entered into as of November 16, 2018 (the “First Amendment”). The Second Amendment reduces the estimated pro forma warrant liability and increases the estimated stockholders’ equity of the combined organization, which is required in order to meet certain of the listing requirements of the Nasdaq Capital Market following the closing of the Merger (as defined below).

As previously disclosed in the Company’s current report on Form 8-K filed on July 30, 2018, the Company, Seelos and Arch Merger Sub, Inc., a wholly owned subsidiary of Apricus (“Merger Sub”), are party to that certain Agreement and Plan of Merger and Reorganization, as amended (the “Merger Agreement”), pursuant to which among other matters, and subject to the satisfaction or waiver of the conditions set forth in the Merger Agreement, Merger Sub will merge with and into Seelos, with Seelos continuing as a wholly owned subsidiary of Apricus and the surviving corporation of the merger (the “Merger”).

Additionally, as previously disclosed in the Company’s current reports on Form 8-K filed on October 17, 2018 and November 16, 2018, pursuant to the Purchase Agreement, (i) Seelos agreed to sell to the Investors an aggregate of 1,187,336 shares of Seelos’ common stock (the “Initial Shares” and, as converted into the right to receive a number of shares of Company common stock equal to the exchange ratio in the Merger, the “Converted Initial Shares”) and deposit an additional 1,187,336 shares of Seelos’ common stock into escrow for the benefit of the Investors if the volume-weighted average closing trading price of a share of the Company’s common stock as quoted on the Nasdaq Capital Market for the first three trading days immediately following the closing date of the Financing is lower than the price paid by the Investors for the Initial Shares (to the extent issued and as converted into the right to receive a number of shares of Company common stock equal to the exchange ratio in the Merger, the “Converted Additional Shares”), and (ii) the Company agreed to issue warrants representing the right to acquire an amount of Company common stock up to the amount issuable in exchange for 80% of the combined Converted Initial Shares and Converted Additional Shares, (the “Series A Warrants”), and additional warrants to purchase shares of Company common stock (the “Series B Warrants” together with the Series A Warrants, the “Investor Warrants”). The First Amendment provided that the Investor Warrants were revised to provide that the Company shall in no event issue shares of the Company’s common stock pursuant to the exercise of the Series A Warrants and the Series B Warrants, in the aggregate, in excess of the difference obtained by subtracting the number of Converted Initial Shares and the number of Converted Additional Shares from 533,773,068, prior to giving effect to the reverse split to be effected in connection with the Merger (the “Warrant Issuance Cap”). In the event that the Company is unable to issue shares of the Company’s common stock pursuant to an exercise of Series A Warrants or the Series B Warrants due to the application of the Warrant Issuance Cap, the Company will pay to the exercising holder an amount in cash equal to the difference between the last closing trade price of the Company’s common stock and the applicable exercise price, if any, to the extent not previously paid to the Company.

The Second Amendment provides that Series A Warrants shall be comprised of two series of Series A Warrants, a Series A-1 Warrant (“A-1 Warrant”), which shall constitute 70% of the Series A Warrants issuable to each Investor pursuant to the Purchase Agreement, and a Series A-2 Warrant (“A-2 Warrant”), which shall constitute 30% of the Series A Warrants issuable to each Investor pursuant to the Purchase Agreement. The form of the A-2 Warrants was not amended pursuant to the Second Amendment and shall be in the form attached as Exhibit A-1 attached to the First Amendment, and as filed as Exhibit 4.1 to the Company’s current report on Form 8-K filed November 16, 2018. The A-1 Warrants shall be in the form attached as Exhibit A-1 attached to the First Amendment, except as follows: (i) the provision that required a cash payment in the event that upon any exercise of the warrant, the Company did not have sufficient authorized shares to deliver to the Investor was deleted; (ii) the provisions on Fundamental Transactions (as defined therein) was revised to state that in the event a Fundamental Transaction was not within the Company’s control, a holder of the warrant will be entitled to the same type of consideration (and in the same proportion) offered and paid to the holders of common stock; and (iii) the definitions of “Black Scholes Consideration Value” and “Black Scholes Value” were amended to remove the minimum volatility factor and change references to the “highest Weighted Average Prices” during the calculation period to the “average of the Weighted Average Prices”. In addition, the provision of the Purchase Agreement pertaining to the date by which the closing of the Financing must occur before the Investors have the right to terminate the Purchase Agreement was extended from December 31, 2018 to January 18, 2019.

## ***Transaction Document***

The representations, warranties and covenants contained in the Second Amendment were made solely for the benefit of the parties to the Second Amendment and ROTH Capital Partners, LLC acting as exclusive placement agent. In addition, such representations, warranties and covenants (i) are intended as a way of allocating the risk between the parties to the Second Amendment and not as statements of fact, and (ii) may apply standards of materiality in a way that is different from what may be viewed as material by stockholders of, or other investors in, the Company. Accordingly, the Second Amendment is filed with this report only to provide investors with information regarding the terms of transaction, and not to provide investors with any other factual information regarding the Company. Stockholders should not rely on the representations, warranties and covenants or any descriptions thereof as characterizations of the actual state of facts or condition of the Company. Moreover, information concerning the subject matter of the representations and warranties may change after the date of the Second Amendment, which subsequent information may or may not be fully reflected in public disclosures.

The Second Amendment is filed as Exhibit 10.1 to this Current Report on Form 8-K. The foregoing summary of the terms of this document are subject to, and qualified in its entirety by, the copy of such document filed as Exhibit 10.1 to this Current Report on Form 8-K, which is incorporated herein by reference.

As a result of the Second Amendment, the A-1 Warrants will now be equity-classified and will no longer be accounted for as a liability on the Company's pro forma balance sheet, resulting in a higher stockholders' equity. Pro forma financial information with respect to the combined organization after the Merger and reflecting the effects of the Purchase Agreement, as amended by the First Amendment and Second Amendment, is provided in Item 9.01 of, and set forth in Exhibit 99.1 to, this Current Report on Form 8-K.

### **Item 5.07 Submission of Matters to a Vote of Security Holders.**

On January 4, 2019, the Company reconvened its Special Meeting of Stockholders (the "Special Meeting"), which was previously convened and adjourned on December 14, 2018. The following is a brief description of each matter submitted to a vote at the Special Meeting on January 4, 2019, as well as the number of votes cast for, withheld or against, the number of abstentions and the number of broker non-votes with respect to each matter, as applicable. For more information about these proposals, please refer to the proxy statement/prospectus/information statement contained in the registration statement on Form S-4 filed by the Company on November 20, 2018 and declared effective by the Securities and Exchange Commission (the "SEC") on November 20, 2018 (the "Proxy Statement").

The number of shares of the Company's common stock entitled to vote at the Special Meeting was 28,167,329. The number of shares of the Company's common stock present or represented by valid proxy at the Special Meeting was 21,865,784. All matters submitted to a binding vote of stockholders at the Special Meeting were approved as described below.

#### ***Proposal No. 1:***

Stockholders approved the Merger Agreement, a copy of which is attached as Annex A to the Proxy Statement, and the transactions contemplated thereby, including the Merger and the issuance of shares of Apricus common stock to Seelos' stockholders pursuant to the terms of the Merger Agreement. The results of the voting included 15,376,368 votes for, 535,796 votes against, 78,551 votes abstained and 5,875,069 broker non-votes.

***Proposal No. 2:***

Stockholders approved a reverse stock split of Apricus common stock, at a ratio of one post-split share for every thirty shares outstanding immediately prior to the reverse stock split. The results of the voting included 14,292,620 votes for, 1,618,831 votes against, 79,264 votes abstained and 5,875,069 broker non-votes.

***Proposal No. 3:***

Stockholders approved an amendment to the amended and restated articles of incorporation of Apricus to change the corporate name of Apricus from “Apricus Biosciences, Inc.” to “Seelos Therapeutics, Inc.” in the form attached as Annex C to the Proxy Statement. The results of the voting included 15,326,307 votes for, 458,048 votes against, 206,360 votes abstained and 5,875,069 broker non-votes.

***Proposal No. 4:***

Stockholders approved an amendment to the amended and restated articles of incorporation of Apricus to increase the number of authorized shares of Apricus common stock to a total number of 120,000,000 shares, in the form attached as Annex D to the Proxy Statement. The results of the voting included 18,828,162 votes for, 2,848,769 votes against, 188,853 votes abstained and no broker non-votes.

***Proposal No. 5:***

Stockholders approved an amendment and restatement of the Apricus 2012 Stock Long Term Incentive Plan (the “2012 Plan”) to, among other things, increase the total number of shares of Apricus common stock currently available for issuance under the 2012 Plan by 9,200,000 shares, prior to giving effect to the reverse split to be effected in connection with the Merger, in the form attached as Annex E to the Proxy Statement. The results of the voting included 12,587,919 votes for, 2,471,570 votes against, 931,226 votes abstained and 5,875,069 broker non-votes.

***Proposal No. 6:***

Stockholders approved the issuance of: (a) shares of Apricus common stock upon the exercise of the Investor Warrants to be issued in the Financing, and (b) additional shares of Apricus common stock that may be issued following the closing of the Financing, in each case pursuant to the Purchase Agreement and as required by and in accordance with Nasdaq Listing Rule 5635. The results of the voting included 13,621,749 votes for, 1,351,793 votes against, 1,017,173 votes abstained and 5,875,069 broker non-votes.

***Proposal No. 7:***

Stockholders approved, on a non-binding, advisory basis, the compensation that will be paid or may become payable to Apricus’ named executive officers in connection with the Merger. The results of the voting included 12,985,316 votes for, 1,949,511 votes against, 1,055,888 votes abstained and 5,875,069 broker non-votes.

***Proposal No. 8:***

Stockholders approved an adjournment of the Special Meeting, if necessary, to solicit additional proxies if there are not sufficient votes in favor of Proposal Nos. 1 or 2. The results of the voting included 13,652,291 votes for, 2,083,559 votes against, 254,865 votes abstained and 5,875,069 broker non-votes.

**Item 8.01 Other Events**

The New York Stock Exchange (“NYSE”) has informed the Company that it deems Proposal No. 4 included in the Proxy Statement, to approve the Company’s amended and restated articles of incorporation to increase the number of authorized shares of its common stock to a total number of 120,000,000 shares (the “Share Increase”), to be a “routine matter,” pursuant to NYSE Rule 452. In accordance with NYSE Rule 452, banks, brokers and other nominees who held shares of common stock in “street name” for their customers had discretionary authority to vote such shares on “routine matters,” but did not have such discretionary authority to vote the shares on “non-routine matters.” Accordingly, the Company is disclosing that, if a stockholder’s shares were held by a bank, broker or other nominee on such stockholder’s behalf in “street name” and such stockholder did not instruct such stockholder’s bank, broker or other nominee how to vote on the proposal to approve the Share Increase, such stockholder’s bank, broker or other nominee could nonetheless vote on the proposal to approve the Share Increase if it chose to exercise such discretionary authority.

## Item 9.01 Financial Statements and Exhibits.

### (b) Pro Forma Financial Information

Unaudited pro forma condensed combined financial information of the Company for the nine months ended September 30, 2018 and for the year ended December 31, 2017 is set forth in Exhibit 99.1 to this Current Report on Form 8-K, which gives effect to the Merger, the Purchase Agreement, the First Amendment and the Second Amendment.

The unaudited pro forma condensed combined financial statements should be read together with the Company's historical financial statements, which are included in the Company's latest Annual Report on Form 10-K filed with the SEC on March 1, 2018 and the September 30, 2018 results included in the Company's Quarterly Report on Form 10-Q filed with the SEC on October 31, 2018, and Seelos' historical information included in the registration statement on Form S-4 declared effective by the SEC on November 20, 2018.

### (d) Exhibits

| Exhibit No.          | Description  |
|----------------------|--|
| <a href="#">10.1</a> | Form of Second Amendment Agreement.  |
| <a href="#">99.1</a> | Unaudited Pro Forma Condensed Combined Financial Information of the Company for the nine months ended September 30, 2018 and for the year ended December 31, 2017, which gives effect to the Merger, the Purchase Agreement, the First Amendment and the Second Amendment. |

### Forward Looking Statements.

The Company cautions you that statements included in this Current Report on Form 8-K that are not a description of historical facts are forward-looking statements. In some cases, you can identify forward-looking statements by terms such as "may," "will," "should," or "expect," "plan," "anticipate," "could," "intend," "target," "project," "contemplates," "believes," "estimates," "predicts," "potential" or "continue" or the negatives of these terms or other similar expressions. These statements are based on the Company's current beliefs and expectations. These forward-looking statements include statements regarding the completion of the sale of the Company's securities and the amount and use of the expected net proceeds therefrom, and the potential completion of the Merger. The inclusion of forward-looking statements should not be regarded as a representation by the Company that any of its plans will be achieved. Actual results may differ from those set forth in this report due to the risk and uncertainties inherent in the Company's business, including, without limitation: the satisfaction of customary closing conditions related to the sale of the Company's securities, the risk that the conditions to the closing of the Merger are not satisfied, including the failure to timely or at all obtain stockholder approval for the transaction; uncertainties as to the timing of the consummation of the Merger and the ability of each of the Company and Seelos to consummate the Merger and other risks detailed in the periodic reports the Company files with the SEC. You are cautioned not to place undue reliance on these forward-looking statements, which speak only as of the date hereof, and the Company undertakes no obligation to revise or update this report to reflect events or circumstances after the date hereof. All forward-looking statements are qualified in their entirety by this cautionary statement. This caution is made under the safe harbor provisions of the Private Securities Litigation Reform Act of 1995.

## **Important Additional Information and Where to Find It**

This communication relates to a proposed business combination between Apricus and Seelos. In connection with this proposed business combination, on November 20, 2018, Apricus filed a registration statement on Form S-4 with the SEC that contains a joint proxy statement/prospectus and other relevant documents concerning the proposed business combination. The registration statement on Form S-4 was declared effective by the SEC on November 20, 2018. Apricus mailed the joint proxy statement/prospectus to its stockholders beginning on or around November 20, 2018. INVESTORS AND SECURITY HOLDERS OF APRICUS AND SEELOS ARE URGED TO READ THE JOINT PROXY STATEMENT/PROSPECTUS AND OTHER DOCUMENTS THAT MAY BE FILED WITH THE SEC CAREFULLY AND IN THEIR ENTIRETY BECAUSE THEY WILL CONTAIN IMPORTANT INFORMATION ABOUT THE PROPOSED TRANSACTION. Investors and security holders may obtain a free copy of the joint proxy statement/prospectus and other documents (when available) that Apricus files with the SEC at the SEC's website at [www.sec.gov](http://www.sec.gov). In addition, these documents may be obtained from Apricus free of charge by directing a request to [ir@apricusbio.com](mailto:ir@apricusbio.com). Before making any investment decision, investors and stockholders are urged to read the proxy statement/prospectus (including any amendments or supplements thereto) and any other relevant documents that the Company may file with the SEC when they become available because they will contain important information about the Merger.

## **Participants in the Solicitation**

The Company and Seelos, and each of their respective directors and executive officers and certain of their other members of management and employees, may be deemed to be participants in the solicitation of proxies in connection with the Merger. Information about the Company's directors and executive officers is included in the Company's Annual Report on Form 10-K for the year ended December 31, 2017, filed with the SEC on March 1, 2018, and the definitive proxy statement for the Company's 2018 annual meeting of stockholders, filed with the SEC on April 6, 2018. Additional information regarding these persons and their interests in the transaction are included in the proxy statement/prospectus relating to the Merger referred to above. These documents can be obtained free of charge from the sources indicated above.

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## SIGNATURES

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

Apricus Biosciences, Inc.

Date: January 4, 2019

By: /s/ Richard W. Pascoe

Name: Richard W. Pascoe

Title: Chief Executive Officer and Secretary

**SECOND AMENDMENT AGREEMENT**

**SECOND AMENDMENT AGREEMENT**, dated as of January 4, 2019 (this "**Agreement**"), by and among Seelos Therapeutics, Inc., a Delaware corporation, ("**Seelos**"), Apricus Biosciences, Inc., a Nevada corporation ("**Apricus**"), and the investor listed on the signature pages attached hereto (the "**Investor**"). All terms used and not defined herein are used as defined in the Securities Purchase Agreement and the Warrants (each as defined below), as applicable.

**WHEREAS**, Apricus and Seelos entered into that certain Securities Purchase Agreement, dated as of October 16, 2018 (as amended pursuant to that certain Amendment Agreement, dated November 16, 2018, by and among the parties thereto (the "**First Amendment**"), the "**Securities Purchase Agreement**"), with the Investor, a Buyer, and the other Buyers listed on the signature pages attached thereto;

**WHEREAS**, pursuant to the Securities Purchase Agreement: (i) Seelos agreed to issue to the Investor (x) the number of Initial Common Shares set forth opposite the Investor's name in column (3) of the Schedule of Buyers attached to the Securities Purchase Agreement and (y) up to the number of Additional Common Shares set forth opposite the Investor's name in column (4) of the Schedule of Buyers attached to the Securities Purchase Agreement and (ii) Apricus agreed to issue to the Investor (x) Series A Warrants to acquire Apricus Common Stock in the form attached as Exhibit B-1 to the Securities Purchase Agreement (the "**Series A Warrants**") and (y) Series B Warrants to acquire Apricus Common Stock in the form attached as Exhibit B-2 to the Securities Purchase Agreement (the "**Series B Warrants**") and, together with the Series A Warrants, the "**Warrants**"), in each case, subject to the terms and conditions set forth in the Securities Purchase Agreement;

**WHEREAS**, Section 10(e) of the Securities Purchase Agreement provides that written consent of the Required Holders (as defined therein) shall be required for any change or amendment to the Securities Purchase Agreement, including, without limitation, any exhibit attached thereto; and

**WHEREAS**, in compliance with Section 10(e) of the Securities Purchase Agreement, this Agreement shall only be effective and binding on all Buyers upon the execution and delivery of this Agreement and agreements in form and substance identical to this Agreement (other than with respect to the identity of the Investor and proportional changes reflecting the different holdings of the Buyers) (the "**Other Agreements**" and together with this Agreement, the "**Agreements**") entered into by and among Seelos, Apricus and such other Buyers who, collectively with the Investor, represent the Required Holders (as defined in the Securities Purchase Agreement) (such time, the "**Effective Time**").

**NOW, THEREFORE**, in consideration of the premises and the mutual agreements, provisions and covenants contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:



1. Amendments. The Series A Warrants shall be comprised of two series of Series A Warrants, a Series A-1 Warrant (" **A-1 Warrant**"), which shall constitute 70% of the Series A Warrants issuable to each Investor pursuant to the Securities Purchase Agreement, and a Series A-2 Warrant ("**A-2 Warrant**"), which shall constitute 30% of the Series A Warrants issuable to each Investor pursuant to the Securities Purchase Agreement. The form of A-2 Warrants shall not be amended hereunder and shall be in the form of Exhibit B-1 attached to the Securities Purchase Agreement. The A-1 Warrants shall be in the form of Exhibit B-1 attached to the Securities Purchase Agreement, except as follows:

(A) Solely with respect to the A-1 Warrants, the Form of the Series A Warrant attached as Exhibit B-1 to the Securities Purchase Agreement is hereby amended by amending Section 1(g) thereof to delete the following language:

"In the event that upon any exercise of this Warrant, the Company does not have sufficient authorized shares to deliver in satisfaction of such exercise, then unless the Holder elects to void such attempted exercise, the Holder may require the Company to pay to the Holder within three (3) Trading Days of the applicable exercise, cash in an amount equal to the product of (i) the number of Warrant Shares that the Company is unable to deliver pursuant to this Section 1(g) and (ii) the highest Weighted Average Price during the period beginning on the date of such attempted exercise and the date that the Company makes the applicable cash payment."

(B) Solely with respect to the A-1 Warrants, the Form of the Series A Warrant attached as Exhibit B-1 to the Securities Purchase Agreement is hereby amended by amending Section 4(c) thereof to add the language in *italics*, as follows:

"Notwithstanding the foregoing, in the event of a Fundamental Transaction, at the request of the Holder delivered before the ninetieth (90<sup>th</sup>) day after the occurrence or consummation of such Fundamental Transaction, the Company (or the Successor Entity) shall purchase this Warrant from the Holder by paying to the Holder, within five (5) Business Days after such request (or, if later, on the effective date of the Fundamental Transaction), cash in an amount equal to the Black Scholes Value of the remaining unexercised portion of this Warrant on the date of such Fundamental Transaction; *provided, however, if the Fundamental Transaction is not within the Company's control, including not approved by the Company's Board of Directors, the Holder shall only be entitled to receive from the Company or any Successor Entity, as of the date of consummation of such Fundamental Transaction, the same type or form of consideration (and in the same proportion), at the Black Scholes Value of the unexercised portion of this Warrant, that is being offered and paid to the holders of Common Stock in connection with such Fundamental Transaction, whether that consideration be in the form of cash, stock or any combination thereof, or whether the holders of Common Stock are given the choice to receive from among alternative forms of consideration in connection with such Fundamental Transaction.*"

(C) Solely with respect to the A-1 Warrants, the definition of "Black Scholes Consideration Value" set forth in Section 17(g) of the Form of the Series A Warrant attached as Exhibit B-1 to the Securities Purchase Agreement is hereby amended and restated as follows (changes shown):

***[INSERT IN SERIES A WARRANT:*** "Black Scholes Consideration Value" means the value of the applicable Option, Convertible Security or Adjustment Right (as the case may be) calculated using the Black Scholes Option Pricing Model obtained from the "OV" function on Bloomberg determined as of the date of issuance thereof and reflecting (i) a risk-free interest rate corresponding to the U.S. Treasury rate for a period equal to the remaining term of such Option, Convertible Security or Adjustment Right (as the case may be) as of the date of issuance of such Option, Convertible Security or Adjustment Right (as the case may be), (ii) an expected volatility equal to ~~the greater of 100% and~~ the 100 day volatility obtained from the HVT function on Bloomberg as of the Trading Day immediately following the public announcement of the issuance of such Option, Convertible Security or Adjustment Right (as the case may be), or, if the issuance of such Option, Convertible Security or Adjustment Right (as the case may be) is not publicly announced, the date of issuance of such Option, Convertible Security or Adjustment Right (as the case may be), (iii) the underlying price per share used in such calculation shall be the average of the Weighted Average Prices highest Weighted Average Price of the Common Stock during the period beginning on the Trading Day prior to the execution of definitive documentation relating to the issuance of such Option or Convertible Security (as the case may be) and ending on (A) the Trading Day immediately following the public announcement of the execution of definitive documents with respect to the issuance of such Option or Convertible Security (as the case may be), or, (B) if the execution of definitive documents with respect to the issuance of such Option or Convertible Security (as the case may be) is not publicly announced, the date of such issuance, (iv) a zero cost of borrow and (v) a 365 day annualization factor.] ***[INSERT IN SERIES B WARRANT: Intentionally omitted.]***"

(D) Solely with respect to the A-1 Warrants, the definition of "Black Scholes Value" set forth in Section 17(h) of the Form of the Series A Warrant attached as Exhibit B-1 to the Securities Purchase Agreement is hereby amended and restated as follows (changes shown):

"[INSERT IN SERIES A WARRANT: "Black Scholes Value" means the value of this Warrant calculated using the Black-Scholes Option Pricing Model obtained from the "OV" function on Bloomberg determined as of the day immediately following the public announcement of the applicable Fundamental Transaction, or, if the Fundamental Transaction is not publicly announced, the date the Fundamental Transaction is consummated, for pricing purposes and reflecting (i) a risk-free interest rate corresponding to the U.S. Treasury rate for a period equal to the remaining term of this Warrant as of such date of request, (ii) an expected volatility equal to ~~the greater of 100% and~~ the 100 day volatility obtained from the HVT function on Bloomberg as of the Trading Day immediately following the public announcement of the applicable Fundamental Transaction, or, if the Fundamental Transaction is not publicly announced, the date the Fundamental Transaction is consummated, (iii) the underlying price per share used in such calculation shall be the greater of (x) the average of the Weighted Average Prices ~~highest Weighted Average Price~~ of the Common Stock during the period beginning on the Trading Day prior to the execution of definitive documentation relating to the applicable Fundamental Transaction and ending on (A) the Trading Day immediately following the public announcement of such Fundamental Transaction, if the applicable Fundamental Transaction is publicly announced or (B) the Trading Day immediately following the consummation of the applicable Fundamental Transaction if the applicable Fundamental Transaction is not publicly announced and (y) the sum of the price per share being offered in cash, if any, plus the value of any non-cash consideration, if any, being offered in the Fundamental Transaction, (iv) a zero cost of borrow and (v) a 365 day annualization factor.] [INSERT IN SERIES B WARRANT: Intentionally omitted."

(E) Section 9 of the Securities Purchase Agreement is hereby amended by deleting the reference to "*December 31, 2018*" and replacing it with "*January 18, 2019*".

2. Effectiveness. This Agreement shall become effective as of the Effective Time.

3. Ratifications. Except as otherwise expressly provided herein, each Transaction Document, is, and shall continue to be, in full force and effect and is hereby ratified and confirmed in all respects, except that (i) all references in the Securities Purchase Agreement to "this Agreement", "hereto", "hereof", "hereunder" or words of like import referring to the Securities Purchase agreement shall mean the Securities Purchase Agreement as amended by the First Amendment and this Agreement and (ii) on and after the Closing Date all references in the Warrants to "this Warrant", "hereto", "hereof", "hereunder" or words of like import referring to the Warrants shall mean the Warrants as amended by the First Amendment and this Agreement.

4. Representations and Warranties. The Investor represents and warrants to each of Apricus and Seelos, and each of Apricus and Seelos, severally and not jointly, represents and warrants to the Investor as of the date hereof and as of the Effective Time that: Such Person is an entity duly organized and validly existing under the laws of the jurisdiction of its formation, has the requisite power and authority to execute and deliver this Agreement and to carry out and perform all of its obligations under the terms of this Agreement; this Agreement has been duly executed and delivered on behalf of such Person, and this Agreement constitutes the valid and legally binding obligation of such Person enforceable against such Person in accordance with its terms, except as such enforceability may be limited by general principles of equity or to applicable bankruptcy, insolvency, reorganization, moratorium, liquidation and other similar laws relating to, or affecting generally, the enforcement of applicable creditors' rights and remedies; the execution, delivery and performance by such Person of this Agreement and the consummation by such Person of the transactions contemplated hereby will not (i) result in a violation of the organizational documents of such Person, (ii) conflict with, or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, any agreement, indenture or instrument to which such Person is a party, or (iii) result in a violation of any law, rule, regulation, order, judgment or decree (including federal and state securities laws) applicable to such Person, except in the case of clause (ii) and (iii) above, for such conflicts, defaults, rights or violations which would not, individually or in the aggregate, reasonably be expected to have a material adverse effect on the ability of such Person to perform its obligations hereunder.

5. Disclosure. On or before 8:30 a.m., New York City time, on January 7, 2019, Apricus shall file a Current Report on Form 8-K describing the terms of the transactions contemplated hereby in the form required by the 1934 Act and attaching the form of this Agreement as an exhibit to such filing (the "**8-K Filing**"). From and after the filing of the 8-K Filing with the SEC, each of Apricus and Seelos hereby acknowledges and agrees that the Investor shall not be in possession of any material, nonpublic information received from Apricus or Seelos, any of their respective Subsidiaries or any of their respective officers, directors, affiliates, employees or agents, that is not disclosed in the 8-K Filing. Each of Apricus and Seelos understands and confirms that the Investor will rely on the foregoing in effecting transactions in securities of Apricus and Seelos.

6. Governing Law; Jurisdiction; Jury Trial. All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by the internal laws of the State of New York, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New York or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of New York. Each party hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in The City of New York, Borough of Manhattan, for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof to such party at the address for such notices to it under the Securities Purchase Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof to the fullest extent enforceable under applicable law. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. **EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT OR ANY TRANSACTION CONTEMPLATED HEREBY.**

7. Counterparts; Headings. This Agreement may be executed in two or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument. The headings of this Agreement are for convenience of reference and shall not form part of, or affect the interpretation of, this Agreement.

8. Severability. If any provision of this Agreement is prohibited by law or otherwise determined to be invalid or unenforceable by a court of competent jurisdiction, the provision that would otherwise be prohibited, invalid or unenforceable shall be deemed amended to apply to the broadest extent that it would be valid and enforceable, and the invalidity or unenforceability of such provision shall not affect the validity of the remaining provisions of this Agreement so long as this Agreement as so modified continues to express, without material change, the original intentions of the parties as to the subject matter hereof and the prohibited nature, invalidity or unenforceability of the provision(s) in question does not substantially impair the respective expectations or reciprocal obligations of the parties or the practical realization of the benefits that would otherwise be conferred upon the parties. The parties will endeavor in good faith negotiations to replace the prohibited, invalid or unenforceable provision(s) with a valid provision(s), the effect of which comes as close as possible to that of the prohibited, invalid or unenforceable provision(s).

9. Amendments. Any amendments or modifications hereto must be executed in writing by all parties hereto, provided, for the avoidance of doubt, that any amendment to any of the Transaction Documents shall be effected in accordance with the terms of the applicable Transaction Document.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date first above written.

**APRICUS BIOSCIENCES, INC.**

By: \_\_\_\_\_

Name:

Title:

*[Signature Page to 2<sup>nd</sup> Amendment Agreement]*

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IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date first above written.

**SEELOS THERAPEUTICS, INC.**

By: \_\_\_\_\_

Name:

Title:

*[Signature Page to 2<sup>nd</sup> Amendment Agreement]*

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**IN WITNESS WHEREOF**, the parties have duly executed this Agreement as of the date first above written.

**INVESTOR:**

Name of Investor: \_\_\_\_\_

*Signature of Authorized Signatory of Investor:* \_\_\_\_\_

Name of Authorized Signatory: \_\_\_\_\_

Title of Authorized Signatory: \_\_\_\_\_

*[Signature Page to 2<sup>nd</sup> Amendment Agreement]*

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**UNAUDITED PRO FORMA CONDENSED COMBINED FINANCIAL INFORMATION**

The following unaudited pro forma condensed combined financial information was prepared under United States generally accepted accounting principles ("U.S. GAAP"), and gives effect to the transaction between Apricus, Merger Sub and Seelos to be accounted for as a reverse acquisition under U.S. GAAP (the "Merger"). In addition, the pro forma condensed combined financial information gives effect to the proposed issuance of 1,187,336 shares of Seelos common stock and warrants equal to 80% of such shares of Seelos common stock to be issued for an aggregate purchase price of \$18.0 million (the "Financing"). The warrants have a 5-year term and the exercise price is equal to 125% of the final purchase price, subject to adjustment for anti-dilution events. The closing of the Financing will occur immediately prior to the closing of the Merger and is contingent upon the satisfaction or waiver of all conditions precedent to the closing of the Merger.

The Merger is accounted for as a reverse recapitalization under U.S. GAAP because the primary assets of Apricus will be nominal following the close of the Merger. Seelos was determined to be the accounting acquirer based upon the terms of the Merger and other factors including: (i) Seelos stockholders and other persons holding securities convertible, exercisable or exchangeable directly or indirectly for Seelos common stock are expected to own approximately 85% of Apricus immediately following the effective time of the Merger, (ii) Seelos will hold the majority (four of five) of board seats of the combined company and (iii) Seelos' management will hold all key positions in the management of the combined company.

The following unaudited pro forma condensed combined financial statements are based on Seelos' historical financial statements and Apricus' historical financial statements, as adjusted, to give effect to Seelos' reverse recapitalization of Apricus. The unaudited pro forma condensed combined statements of operations for the nine months ended September 30, 2018 and the year ended December 31, 2017 give effect to these transactions as if they had occurred on January 1, 2017. The unaudited pro forma condensed combined balance sheet as of September 30, 2018 gives effect to these transactions as if they had occurred on September 30, 2018.

To consummate the Merger, Apricus' stockholders must approve the proposed Apricus Reverse Stock Split. Per the terms of the Merger Agreement, at the closing of the Merger, each outstanding share of Seelos common stock will be converted into the right to receive shares of Apricus common stock (subject to the payment of cash in lieu of fractional shares and after giving effect to a reverse stock split of Apricus common stock). These unaudited pro forma condensed combined financial statements have been retroactively restated to reflect the impact of the proposed one-for-thirty Apricus Reverse Stock Split.

Because Seelos will be treated as the acquirer under the reverse recapitalization, Seelos' and Apricus' assets and liabilities will be recorded at their precombination carrying amounts in the unaudited pro forma condensed combined financial information.

The unaudited pro forma condensed combined financial information is based on the assumptions and adjustments that are described in the accompanying notes. The application of reverse recapitalization accounting is dependent upon certain valuations and other studies that have yet to be completed. Accordingly, the pro forma adjustments are preliminary, subject to further revision as additional information becomes available and additional analyses are performed and have been made solely for the purpose of providing unaudited pro forma condensed combined financial information. Differences between these preliminary estimates and the final reverse recapitalization accounting, expected to be completed after the closing of the transaction, will occur and these differences could have a material impact on the accompanying unaudited pro forma condensed combined financial information and the combined organization's future results of operations and financial position.

The unaudited pro forma condensed combined financial information does not give effect to the potential impact of current financial conditions, regulatory matters, operating efficiencies or other savings or expenses that may be associated with the integration of the two companies. The unaudited pro forma condensed combined financial information is preliminary and has been prepared for illustrative purposes only and is not necessarily indicative of the financial position or results of operations in future periods or the results that actually would have been realized had Apricus and Seelos been a combined organization during the specified periods. The actual results reported in periods following the transaction may differ significantly from those reflected in the pro forma condensed combined financial information presented herein for a number of reasons, including, but not limited to, differences between the assumptions used to prepare this pro forma condensed combined financial information.

The assumptions and estimates underlying the unaudited adjustments to the pro forma condensed combined financial statements are described in the accompanying notes, which should be read together with the pro forma condensed combined financial statements.

The unaudited pro forma condensed combined financial statements should be read together with Apricus' historical financial statements, which are included in Apricus' latest Annual Report on Form 10-K filed with the Securities and Exchange Commission ("SEC") on March 1, 2018 and the September 30, 2018 results included in Apricus' report on Form 10-Q filed with the SEC on October 31, 2018, and Seelos' historical information included herein.

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**Unaudited Pro Forma Condensed Combined Balance Sheet as of September 30, 2018**  
(in thousands, except share and per share amounts)

|   | Seelos   | Apricus   | Pro Forma<br>Adjustments | Note 4 | Pro Forma<br>Combined |
|---|----------|-----------|--------------------------|--------|-----------------------|
| <b>ASSETS</b>                                     |          |           |                          |        |                       |
| Current assets                                    |          |           |                          |        |                       |
| Cash and cash equivalents                         | \$ 339   | \$ 5,283  | \$ 18,000                | (f)    | \$ 23,622             |
|   |          |           | (1,150)                  | (d)    | \$ (1,150)            |
|   |          |           | (4,000)                  | (y)    | \$ (4,000)            |
| Due from related party                            | 2        | —         | —                        |        | 2                     |
| Prepaid expense and other current assets          | 183      | 198       | —                        |        | 381                   |
| Total current assets                              | 524      | 5,481     | 12,850                   |        | 18,855                |
| Property and equipment                            | —        | 46        | —                        |        | 46                    |
| Other long-term assets                            | —        | 37        | —                        |        | 37                    |
| Total assets                                      | \$ 524   | \$ 5,564  | \$ 12,850                |        | \$ 18,938             |
| <b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>       |          |           |                          |        |                       |
| Current liabilities                               |          |           |                          |        |                       |
| Accounts payable                                  | \$ 1,686 | \$ 322    | \$ 1,250                 | (e)    | \$ 3,258              |
| Other payables and accrued expenses               | 145      | 1,103     | 3,075                    | (d)    | 4,323                 |
| Convertible notes payable, at fair value          | 2,180    | —         | (2,180)                  | (c)    | —                     |
| Warrant liability, at fair value                  |          |           | 5,424                    | (f)    | 5,424                 |
| Total current liabilities                         | 4,011    | 1,425     | 7,569                    |        | 13,005                |
| Non-current liabilities                           |          |           |                          |        |                       |
| Other long-term liabilities                       | —        | 26        | —                        |        | 26                    |
| Total liabilities                                 | 4,011    | 1,451     | 7,569                    |        | 13,031                |
| <b>Commitments and contingencies</b>              |          |           |                          |        |                       |
| <b>Stockholders' equity (deficit)</b>             |          |           |                          |        |                       |
| Common Stock, \$.001 par value                    | —        | 28        | (28)                     | (b)    | 10                    |
|   | —        | —         | 10                       | (a)    | —                     |
| Additional paid-in-capital                        | 100      | 327,458   | (10)                     | (a)    | 19,113                |
|   | —        | —         | 2,180                    | (c)    | —                     |
|   | —        | —         | (327,458)                | (b)    | —                     |
|   |          |           | 113                      | (b)    | —                     |
|   |          |           | 4,154                    | (d)    | —                     |
|   |          |           | 12,576                   | (f)    | —                     |
| Accumulated deficit                               | (3,587)  | (323,373) | 323,373                  | (b)    | (13,216)              |
|   | —        | —         | (8,379)                  | (d)    | —                     |
|   | —        | —         | (1,250)                  | (e)    | —                     |
| Total stockholders' equity (deficit)              | (3,487)  | 4,113     | 5,281                    |        | 5,907                 |
| <b>Total liabilities and stockholders' equity</b> | \$ 524   | \$ 5,564  | \$ 12,850                |        | \$ 18,938             |

*See accompanying notes to the unaudited pro forma condensed combined financial statements*

**Unaudited Pro Forma Condensed Combined Statement of Operations – Nine Months Ended  
September 30, 2018  
(in thousands, except per share amounts)**

|   | Seelos     | Apricus    | Pro Forma<br>Adjustments | Note 4 | Pro Forma<br>Combined |
|---|------------|------------|--------------------------|--------|-----------------------|
| Research and development                          | \$ 422     | \$ 1,148   | \$ —                     |        | \$ 1,570              |
| General and administrative                        | 1,722      | 6,144      | —                        |        | 7,866                 |
| Total operating expenses                          | 2,144      | 7,292      | —                        |        | 9,436                 |
| Loss from operations                              | (2,144)    | (7,292)    | —                        |        | (9,436)               |
| Interest expense                                  | (113)      | —          | —                        |        | (113)                 |
| Change in fair value of convertible notes payable | 2          | —          | —                        |        | 2                     |
| Change in fair value of warrant liability         | —          | 222        | —                        |        | 222                   |
| Amendment of equity classified warrants           | —          | (293)      | —                        |        | (293)                 |
| Other income                                      | —          | 1          | —                        |        | 1                     |
| Total other expense                               | (111)      | (70)       | —                        |        | (181)                 |
| Loss from continuing operations                   | \$ (2,255) | \$ (7,362) | \$ —                     |        | \$ (9,617)            |
| Loss from continuing operations per share:        |            |            |                          |        |                       |
| Basic and diluted                                 |            | \$ (11.24) |                          |        | \$ (1.08)             |
| Weighted average number of shares                 |            | 654,933    | 8,224,822                | (g)    | 8,879,755             |

*See accompanying notes to the unaudited pro forma condensed combined financial statements*

**Unaudited Pro Forma Condensed Combined Statement of Operations – Year Ended December 31, 2017  
(in thousands, except per share amounts)**

|   | Seelos     | Apricus     | Pro Forma<br>Adjustments | Note 4 | Pro Forma<br>Combined |
|---|------------|-------------|--------------------------|--------|-----------------------|
| Research and development                          | \$ 400     | \$ 3,463    | \$ 8,379                 | (d)    | \$ 12,242             |
| General and administrative                        | 654        | 7,210       | —                        |        | 7,864                 |
| Loss on disposal of assets                        | —          | 2           | —                        |        | 2                     |
| Total operating expenses                          | 1,054      | 10,675      | 8,379                    |        | 20,108                |
| Loss from operations                              | (1,054)    | (10,675)    | (8,379)                  |        | (20,108)              |
| Interest expense                                  | (21)       | (83)        | —                        |        | (104)                 |
| Change in fair value of convertible notes payable | (2)        | —           | —                        |        | (2)                   |
| Change in fair value of warrant liability         | —          | (646)       | —                        |        | (646)                 |
| Gain on extinguishment of debt                    | —          | (422)       | —                        |        | (422)                 |
| Other income                                      | —          | 77          | —                        |        | 77                    |
| Total other expenses                              | (23)       | (1,074)     | —                        |        | (1,097)               |
| Loss from continuing operations                   | \$ (1,077) | \$ (11,749) | \$ (8,379)               |        | \$ (21,205)           |
| Loss from continuing operations per share         |            |             |                          |        |                       |
| Basic and diluted                                 |            | \$ (29.64)  |                          |        | \$ (2.46)             |
| Weighted average number of shares                 |            | 396,400     | 8,224,822                | (g)    | 8,621,222             |

*See accompanying notes to the unaudited pro forma condensed combined financial statements*

## Notes to the Unaudited Pro Forma Condensed Combined Financial Information

### Note 1 - Description of Transaction and Basis of Presentation

The unaudited pro forma condensed combined financial information was prepared in accordance with U.S. GAAP and pursuant to the rules and regulations of SEC Regulation S-X and presents the pro forma financial position and results of operations of the combined companies based upon the historical data of Apricus and Seelos.

For the purposes of the unaudited pro forma condensed combined financial information, the accounting policies of Apricus and Seelos are aligned with no differences. Accordingly, no effect has been provided for the pro forma adjustments described in Note 4, “Pro forma adjustments.”

#### *Description of Transaction*

On July 30, 2018, Apricus and Seelos, entered into the Merger Agreement, pursuant to which, among other matters, and subject to the satisfaction or waiver of the conditions set forth in the Merger Agreement, Merger Sub will merge with and into Seelos, with Seelos continuing as a wholly owned subsidiary of Apricus and the surviving corporation of the Merger. The Merger is intended to qualify for federal income tax purposes as a tax-free reorganization under the provisions of Section 368(a) of the Internal Revenue Code of 1986, as amended.

Subject to the terms and conditions of the Merger Agreement, at the closing of the Merger, each outstanding share of Seelos common stock will be converted into the right to receive shares of Apricus common stock such that, immediately following the Effective Time, and after giving effect to the Pre-Merger Financing, preexisting Apricus stockholders are expected to own approximately 15% of the outstanding capital stock of Apricus on a fully diluted basis, and preexisting Seelos stockholders are expected to own approximately 85% of the outstanding capital stock of Apricus on a fully diluted basis, subject to adjustments for net cash held by Apricus and Seelos at the time of closing the Merger. These estimates are subject to adjustment prior to closing of the Merger, including an upward adjustment to the extent that Apricus’ net cash at the Effective Time is less than \$2,700,000 (and as a result, Apricus stockholders could own less, and Seelos stockholders could own more, of the combined organization), or a downward adjustment to the extent that Apricus’ net cash at the Effective Time is more than \$3,300,000 (and as a result, Apricus stockholders could own more, and Seelos stockholders could own less, of the combined organization).

Consummation of the Merger is subject to certain closing conditions, including, among other things, approval by the stockholders of Apricus and Seelos. In accordance with the terms of the Merger Agreement, (i) Raj Mehra, Ph.D., the founder and majority stockholder of Seelos (solely in his capacity as a Seelos stockholder) and (ii) certain executive officers, directors and stockholders of Apricus (solely in their respective capacities as Apricus stockholders) have entered into support agreements. The support agreements include covenants with respect to the voting of shares of Seelos or Apricus capital stock, respectively, in favor of adoption and approving the transactions contemplated by the Merger Agreement and against any competing acquisition proposals.

The Merger Agreement contains certain termination rights for both Apricus and Seelos, and further provides that, upon termination of the Merger Agreement under specified circumstances, either party may be required to pay the other party a termination fee of \$500,000, which may be payable in shares of common stock of the party making such payment in such paying party’s sole discretion, and in some circumstances reimburse the other party’s expenses up to a maximum of \$350,000.

At the Effective Time, Apricus’ board of directors is expected to consist of five members, four of whom will be designated by Seelos and one of whom will be designated by Apricus.

At the closing of the Merger, Apricus, Seelos, Richard Pascoe, as representative of Apricus’ stockholders, and a rights agent will enter into a Contingent Value Rights Agreement (the “CVR Agreement”). Pursuant to the CVR Agreement, Apricus stockholders will receive one CVR for each share of Apricus’ common stock held of record immediately prior to the closing of the Merger. Each CVR will represent the right to receive payments based on the Apricus’ Vitaros assets. In particular, CVR holders will be entitled to receive 90% of any cash payments (or the fair market value of any non-cash payments) exceeding \$500,000 received, during a period of ten years from the closing of the Merger, based on the sale or out-licensing of the Vitaros assets, including any contingent payments, less reasonable transaction expenses. Post-merger Seelos will be entitled to retain the first \$500,000 and 10% of any contingent payments. In order to be eligible for the CVR, an Apricus stockholder must be a holder of record at the close of business immediately prior to the closing of the Merger. Seelos has agreed to use commercially reasonable efforts to out-license or sell the Vitaros assets for a period of three years following the closing of the Merger.

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The CVR will be not be transferable, except in limited circumstances and will not be registered with the SEC. Richard Pascoe, Apricus' current President and CEO, will be appointed to serve as the representative of the CVR holders'/former Apricus stockholders' interests under the CVR Agreement.

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

The unaudited pro forma condensed consolidated financial statements were prepared in accordance with the regulations of the SEC. The unaudited pro forma condensed consolidated balance sheet as of September 30, 2018 is presented as if the Merger had been completed on September 30, 2018. The unaudited pro forma condensed consolidated statement of operations for the nine months ended September 30, 2018 and the year ended December 31, 2017 assumes that the Merger occurred on January 1, 2017 and combines the historical results of Seelos and Apricus.

For accounting purposes, Seelos is considered to be the acquiring company and the Merger will be accounted for as a reverse recapitalization of Apricus by Seelos because the primary assets of Apricus, which include cash and other assets and liabilities, will be nominal following the close of the merger. Under reverse recapitalization accounting, the assets and liabilities of Apricus will be recorded, as of the completion of the merger, at their fair value which is expected to approximate book value because of the short-term nature of the instruments. No goodwill or intangible assets are expected to be recognized and any excess consideration transferred over the fair value of the net assets of Apricus following determination of the actual purchase consideration for Apricus will be reflected as an adjustment to equity. Consequently, the financial statements of Seelos reflect the operations of the acquirer for accounting purposes together with a deemed issuance of shares, equivalent to the shares held by the former stockholders of the legal acquirer and a recapitalization of the equity of the accounting acquirer. The historical financial statements of Apricus and Seelos, which are provided elsewhere in this registration statement, have been adjusted to give pro forma effect to events that are (i) directly attributable to the Merger, (ii) factually supportable, and (iii) with respect to the statements of operations, expected to have a continuing impact on the combined results.

To the extent there are significant changes to the business following completion of the Merger, the assumptions and estimates set forth in the unaudited pro forma condensed consolidated financial statements could change significantly. Accordingly, the pro forma adjustments are subject to further adjustments as additional information becomes available and as additional analyses are conducted following the completion of the Merger. There can be no assurances that these additional analyses will not result in material changes to the estimates of fair value.

### **Note 2 - Contingent License Acquisitions**

#### ***Acquisition of License from Ligand Pharmaceuticals ("Ligand")***

On September 21, 2016, Ligand Pharmaceuticals, Incorporated, Neurogen Corporation and CyDex Pharmaceuticals, Inc. (collectively, "Ligand") out-licensed four development programs to Seelos, including its aplindore program for Parkinson's disease, a CRTH2 antagonist program for rare pediatric chronic inflammation and other chronic respiratory disorders, a Captisol-enabled acetaminophen program for pain and fever management and an H3 receptor antagonist program for narcolepsy and excessive daytime sleepiness.

Under the license agreement, Ligand is entitled to receive initial payments in equity or cash of \$1.3 million upon Seelos completing a minimum of \$7.5 million financing and up to an additional \$3.5 million if Seelos becomes a public company and up to \$126.7 million of additional cash milestones relating to certain regulatory and commercial achievements, with the first being submission of an application in the United States for a particular licensed product. In addition, Ligand is entitled to net sales royalties ranging from low single digits to low double digits for the various programs licensed. If certain conditions are met, Ligand will provide a three-year convertible loan facility to Seelos in an amount up to \$500,000. Seelos is responsible for all development activities under the license. Seelos has also entered into a supply agreement with Ligand for Captisol at negotiated prices which term is concurrent with the license agreement.

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Seelos became obligated in September 2016 to pay Ligand a \$25,000 option fee which was expensed as research and development costs. Seelos paid this option fee on August 4, 2017. In addition, the potential regulatory and commercial milestones are not yet considered probable, and no milestone payments have been accrued at September 30, 2018.

***Payments Toward the Acquisition of Asset from Vyera Pharmaceuticals, AG (“Vyera”)***

On March 6, 2018, Seelos entered into an asset purchase agreement (the “Agreement”) to acquire TUR-002 from Vyera which is contingent upon certain events, as defined, including Seelos completing a merger transaction. Seelos has previously paid Vyera non-refundable amounts totaling \$0.5 million towards the Agreement. The Agreement was amended on May 22, 2018 (“Amended Agreement”). Under the Amended Agreement, Seelos paid Vyera a non-refundable \$0.15 million upon execution of the Amended Agreement, a non-refundable \$0.15 million upon an announcement of the Merger and \$1.0 million upon the closing of the Merger. Pursuant to the Amended Agreement, Vyera would also be entitled to receive 248,615 unrestricted common shares of Seelos common stock valued at approximately \$4.0 million. Seelos would be responsible to make payments to Vyera and/or the licensor up to \$21.0 million upon the achievement of certain clinical development and regulatory milestones, with the first being \$3.5 million upon the first patient dosing in a Phase III clinical trial for TUR-002. The Amended Agreement also provides for payments of a royalty percentage in the mid-teens on net sales and up to \$75.0 million upon Seelos’ achievement of certain cumulative net sales milestones for TUR-002. Seelos would be responsible for all development activities for TUR-002.

In addition to royalties and milestone payments, Seelos would be obligated to the licensor, until such time as Seelos receives regulatory approval of an NDA for any product derived from the licensed assets, 2.5% of the total external costs incurred in connection with the development of such product. The external investment costs include all expenses related to the development and regulatory approval of the licensed assets incurred and paid to external vendors for the performance of formulation in vitro studies, animal pharmacokinetic studies, efficacy and toxicity studies, and Phase I, II and III clinical trials.

If Seelos were to sublicense to, sell to, assign to, partner with or transfer to a third party the licensed assets, 2.5% - 3.5% of amounts received by Seelos, subject to adjustment downward in certain circumstances, pursuant to such a transaction would be owed by Seelos to the licensor.

**Note 3 - Preliminary Fair value of the Assets Acquired and the Liabilities Assumed**

The following is the preliminary estimate of the fair value of the assets acquired and the liabilities assumed by Seelos in the Merger (in thousands):

|  | <b>Dr (Cr.)</b> |
|--|-----------------|
| Cash and cash equivalents                | \$ 5,283        |
| Prepaid expense and other current assets | 198             |
| Property and Equipment                   | 46              |
| Other long-term assets                   | 37              |
| Accounts payable                         | (322)           |
| Other payables and accrued expenses      | (5,103)         |
| Other long-term liabilities              | (26)            |
| Net assets acquired                      | \$ 113          |

**Note 4 - Pro forma adjustments**

The following adjustments have been reflected in the unaudited pro forma condensed combined financial information:

- (a) Represents the issuance of 8,224,822 shares of common stock of Apricus and its effect on the shares of common stock and additional paid in capital accounts (in thousands).

|                                   | <b>Common Stock</b> | <b>Additional Paid<br/>in Capital</b> |
|-----------------------------------|---------------------|---------------------------------------|
| Issuance of 8,224,822 shares      | \$ 8                | \$ (8)                                |
| Adjustments due to reverse merger | 2                   | (2)                                   |
|                                   | \$ 10               | \$ (10)                               |

- (b) Represents the elimination of the historical equity of Apricus and recognizes the change in control obligation payments as follows (in thousands):

|                                |                         |
|--------------------------------|-------------------------|
| Cash                           | \$ 4,000 <sup>(y)</sup> |
| Common Stock, \$.001 par value | (28)                    |
| Additional paid-in-capital     | (327,458)               |
| Accumulated deficit            | 323,373                 |
| Recapitalization adjustment    | \$ (113)                |

- (y) Represents the payment of change of control obligations for Apricus employees and other obligations that will become due at the closing of the Merger.
- (c) Reflects a conversion of \$2.2 million in Seelos convertible notes payable into 214,366 shares of Seelos common stock pursuant to the terms of that certain Conversion Agreement effective as of October 15, 2018, by and among Seelos and the holders set forth on the Schedule of Holders attached thereto, entered into in connection with the Merger.
- (d) Reflects the fair value of the issuance of 439,737 shares of Seelos common stock valued at approximately \$4.1 million, the recording of a \$3.1 million liability, and the payment of \$1.15 million in cash to purchase certain in process research and development ("IPR&D") assets from Ligand and Vyera. These transactions will be accounted for as asset acquisitions pursuant to ASU 2017-01 as the majority of the fair value of the assets acquired was concentrated in a group of similar assets, and the acquired assets did not have outputs or employees. Because the underlying development programs have not yet received regulatory approval, the purchase price paid to date for these assets will be expensed in Seelos' statement of operations. In addition, the potential milestone payments are not yet considered probable, and no milestone payments have been accrued at September 30, 2018.
- (e) Reflects an adjustment of approximately \$1.25 million for the estimated transaction costs for both Seelos and Apricus, such as adviser fees, legal and accounting expenses that were not incurred as of September 30, 2018.
- (f) Represents the issuance of 1,187,336 shares of Seelos common stock and warrants equal to 80% of such shares of Seelos common stock for an aggregate purchase price of \$18.0 million. The warrants have a 5-year term and the exercise price is equal to 125% of the final purchase price, subject to adjustment for anti-dilution events. Seelos has preliminarily determined that the exercise features of certain of these warrants are not indexed to Seelos' own stock and is therefore not afforded equity treatment. In accordance with ASC 815, Seelos has presented the pro-forma effect of the issuance of the liability classified warrants based upon the preliminary determination of the fair value of \$5.4 million as a warrant liability. ASC 815 requires Seelos to assess the fair value of warrant liabilities at each reporting period and recognize any change in the fair value as items of other income or expense.
- (g) Represents the increase in the weighted average shares due to the issuance of 8,224,822 shares of Apricus common stock in connection with the Merger.
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