UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-K

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

FOR THE FISCAL YEAR ENDED DECEMBER 31, 2021

OR

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

FOR THE TRANSITION PERIOD FROM TO

Commission File Number: 001-39294

ASSERTIO HOLDINGS, INC.

(Exact Name of Registrant as Specified in its Charter)

Delaware	**85-0598378**
(STATE OR OTHER JURISDICTION OF INCORPORATION OR ORGANIZATION)	(I.R.S. EMPLOYER IDENTIFICATION NUMBER)
100 South Saunders Road, Suite 300, Lake Forest, Illinois (Address of Principal Executive Offices)	**60045** (Zip Code)

Registrant's telephone number, including area code: **(224) 419-7106**

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	ASRT	Nasdaq Stock Market

Securities registered pursuant to Section 12(g) of the Act: **None**

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ☐ No ☒

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes ☐ No ☒

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

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

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

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

Indicate by check mark whether the registrant has filed a report on and attestation to its management's assessment of the effectiveness of its internal control over financial reporting under Section 404(b) of the Sarbanes-Oxley Act (15 U.S.C.7262(b)) by the registered public accounting firm that prepared or issued its audit report. ☒
If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

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

The aggregate market value of the shares of common stock held by non-affiliates of the registrant, computed by reference to the closing price as reported on the Nasdaq Stock Market as of June 30, 2021, the last business day of the registrant's most recently completed second fiscal quarter, was approximately $68.4 million.

The number of shares outstanding of the registrant's common stock, $0.0001 par value, as of March 1, 2022 was 45,331,803.

Documents Incorporated by Reference

Part III of this Annual Report on Form 10-K incorporates by reference portions of the registrant's Proxy Statement for its 2021 Annual Meeting of Stockholders, which Proxy Statement will be filed with the United States Securities and Exchange Commission within 120 days after the end of the registrant's 2021 fiscal year.

ASSERTIO HOLDINGS, INC.
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In May 2020, Assertio Therapeutics, Inc. implemented a holding company reorganization through which Assertio Therapeutics, Inc. became a subsidiary of Assertio Holdings, Inc. (Assertio Reorganization) and, subsequently, Assertio Holdings, Inc. merged with Zyla Life Sciences (Zyla) in a transaction we refer to as the "Zyla Merger." Unless otherwise noted or required by context, use of "Assertio," "Company," "we," "our" and "us" refer to Assertio Holdings, Inc. and/or its applicable subsidiary or subsidiaries.

Assertio and Zyla are registered trademarks of the Company. All other trade names, trademarks and service marks appearing in this Annual Report on Form 10-K are the property of their respective owners. We have assumed that the reader understands that all such terms are source indicating. Accordingly, such terms, when first mentioned in this Annual Report on Form 10-K, appear with the trade name, trademark or service mark notice and then throughout the remainder of this Annual Report on Form 10-K without the trade name, trademark or service mark notices for convenience only and should not be construed as being used in a descriptive or generic sense. Unless otherwise indicated, all statistical information provided about our business in this report is as of December 31, 2021.

NOTE REGARDING FORWARD-LOOKING STATEMENTS

Statements made in this Annual Report on Form 10-K that are not statements of historical fact are forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended (the Securities Act), and Section 21E of the Securities Exchange Act of 1934, as amended (the Exchange Act). We may, in some cases, use terms such as "believes," "estimates," "anticipates," "expects," "plans," "intends," "may," "could," "might," "will," "should," "approximately," "goal," "intent," "target" and similar expressions. In addition, any statements that refer to expectations, projections or other characterizations of future events or circumstances are forward-looking statements. By their nature, forward-looking statements involve risks and uncertainties because they relate to events, competitive dynamics and industry change, and depend on economic or other circumstances that may or may not occur in the future or may occur on longer or shorter timelines than anticipated. Although we believe that we have a reasonable basis for each forward-looking statement contained in this Annual Report, we caution you that forward-looking statements are not guarantees of future performance and that our actual results of operations, financial condition and liquidity, and the development of the industry in which we operate may differ materially from the forward-looking statements contained in this Annual Report. In addition, even if our results of operations, financial condition and liquidity, and the development of the industry in which we operate are consistent with the forward-looking statements contained in this Annual Report, they may not be predictive of results or developments in future periods.

Forward-looking statements include, but are not necessarily limited to, those relating to:

- the commercial success and market acceptance of our products, including the coverage of our products by payors and pharmacy benefit managers;
- our ability to successfully develop and execute our sales, marketing and non-personal and digital promotion strategies, including developing and maintaining relationships with customers, physicians, payors and other constituencies;
- the entry of generics or other products competitive with any of our products;
- our ability to successfully execute business development, strategic partnerships, and investment opportunities to build and grow for the future;
- our ability to achieve the expected financial performance from our product Otrexup® (methotrexate), which we recently acquired from Antares Pharma, Inc., as well as delays, challenges and expenses, and unexpected costs associated with integrating and operating the Otrexup business;
- our ability to attract and retain key executive leadership;
- the potential impacts of the ongoing COVID-19 pandemic, including volatility in prescriptions associated with elective procedures, on our liquidity, capital resources, operations and business and those of the third parties on which we rely, including suppliers and distributors;
- the ability of our third-party manufacturers to manufacture adequate quantities of commercially salable inventory and active pharmaceutical ingredients for each of our products, and our ability to maintain our supply chain, which relies on single-source suppliers, in the face of global challenges such as the COVID-19 pandemic;

- the outcome of opioid-related investigations, opioid-related litigation and related claims for insurance coverage, and other disputes and litigation, and the costs and expenses associated therewith;
- our compliance or non-compliance with legal and regulatory requirements related to the development or promotion of pharmaceutical products in the U.S.;
- our ability to obtain and maintain intellectual property protection for our products and operate our business without infringing the intellectual property rights of others;
- our ability to generate sufficient cash flow from our business to make payments on our indebtedness, our ability to restructure or refinance our indebtedness, if necessary, and our compliance with the terms and conditions of the agreements governing our indebtedness;
- our ability to raise additional capital or refinance our debt, if necessary;
- our estimates regarding contingent consideration obligations and other expenses, future revenues, capital requirements and needs for additional financing;
- our counterparties' compliance or non-compliance with their obligations under our agreements;
- variations in revenues obtained from commercialization agreements, including contingent milestone payments, royalties, license fees and other contract revenues, including non-recurring revenues, and the accounting treatment with respect thereto;
- the timing and results of any future research and development efforts including potential clinical studies relating to any future product candidates; and
- our common stock maintaining compliance with Nasdaq's minimum closing bid requirement of at least $1.00 per share.

Factors that could cause actual results or conditions to differ from those anticipated by these and other forward-looking statements include those more fully described in "ITEM 1A. RISK FACTORS" and elsewhere in this Annual Report on Form 10-K. Forward-looking statements are made as of the date of this report. Except as required by law, we assume no obligation to update any forward-looking statement, or to revise any forward-looking statement to reflect events or developments occurring after the date of this Annual Report on Form 10-K, even if new information becomes available in the future. Thus, you should not assume that our silence over time means that actual events are bearing out as expressed or implied in any such forward-looking statement.

PART I

ITEM 1. BUSINESS

Our Company

We are a specialty pharmaceutical company offering differentiated products to patients utilizing a non-personal promotional model. We have built and continue to build our commercial portfolio by identifying new opportunities within our existing products as well as acquisitions or licensing of additional approved products. Our primary marketed products are:

INDOCIN® (indomethacin) Suppositories INDOCIN® (indomethacin) Oral Suspension	A suppository form and oral solution of indomethacin used in the hospital as well as in the out-patient setting. Both products are nonsteroidal anti-inflammatory drug (NSAID), approved for: • Moderate to severe rheumatoid arthritis including acute flares of chronic disease • Moderate to severe ankylosing spondylitis • Moderate to severe osteoarthritis • Acute painful shoulder (bursitis and/or tendinitis) • Acute gouty arthritis
CAMBIA® (diclofenac potassium for oral solution)	A prescription NSAID indicated for the acute treatment of migraine attacks with or without aura in adults 18 years of age or older. CAMBIA can help patients with migraine pain, nausea, photophobia (sensitivity to light), and phonophobia (sensitivity to sound). CAMBIA is not a pill, it is a powder, and combining CAMBIA with water activates the medicine in a unique way.
Otrexup® (methotrexate) injection for subcutaneous use	A once weekly single-dose auto-injector containing a prescription medicine, methotrexate. Methotrexate is used to: • Treat certain adults with severe, active rheumatoid arthritis, and children with active polyarticular juvenile idiopathic arthritis (pJIA), after treatment with other medicines including non-steroidal anti-inflammatory drugs (NSAIDS) have been used and did not work well. • Control the symptoms of severe, resistant, disabling psoriasis in adults when other types of treatment have been used and did not work well.
SPRIX® (ketorolac tromethamine) Nasal Spray	A prescription NSAID indicated in adult patients for the short term (up to five days) management of moderate to moderately severe pain that requires analgesia at the opioid level. SPRIX is a non-narcotic nasal spray provides patients with moderate to moderately severe short-term pain a form of ketorolac that is absorbed rapidly but does not require an injection administered by a healthcare provider (HCP).
Zipsor® (diclofenac potassium) Liquid filled capsules	A prescription NSAID used for relief of mild-to-moderate pain in adults (18 years of age and older). Zipsor uses proprietary ProSorb® delivery technology to deliver a finely dispersed, rapid and consistently absorbed formulation of diclofenac.

Other commercially available products include OXAYDO® (oxycodone HCI, USP) tablets for oral use only —CII.

On December 15, 2021, we, through a newly-formed subsidiary, Otter Pharmaceuticals, LLC, entered into an Asset Purchase Agreement (the "Purchase Agreement") with Antares Pharma, Inc. ("Antares"), and concurrently consummated the Otrexup transaction. Pursuant to the terms of the Purchase Agreement, we acquired Antares' rights, title and interest in and to Otrexup, including certain related assets, intellectual property, contracts, and product inventory for (i) $18.0 million in cash paid at closing, (ii) $16.0 million in cash payable on May 31, 2022 and (iii) and $10.0 million in cash payable on December 15, 2022.

In September 2020, we terminated our Second Amended and Restated Nano-Reformulated Compound License Agreement (the "iCeutica License"), with iCeutica Inc. and iCeutica Pty Ltd. (collectively, "iCeutica"). The iCeutica License allowed us to utilize certain technology and intellectual property related to iCeutica's SOLUMATRIX technology and certain other rights of iCeutica. Effective upon the termination of the iCeutica License, we ceased manufacturing products using SOLUMATRIX technology and will sell through the remaining inventory.

On May 20, 2020, we completed a Merger (the Zyla Merger) with Zyla Life Sciences (Zyla) pursuant to an Agreement and Plan of Merger (Merger Agreement), dated as of March 16, 2020. Pursuant to the Zyla Merger, we acquired our current

commercial products INDOCIN (suppository and oral solution), SPRIX, and OXAYDO, as well as the SOLUMATRIX® products).

On February 13, 2020, we completed the sale of our remaining rights, title and interest in and to the NUCYNTA® franchise to Collegium Pharmaceutical, Inc. (Collegium) for $375.0 million, less royalties, in cash at closing.

On January 10, 2020, we completed the sale of Gralise® (gabapentin) to Golf Acquiror LLC, an affiliate to Alvogen, Inc. (Alvogen), for cash proceeds of $130.3 million. The total value included $75.0 million in cash at closing, with the remaining balance settled through June 2020.

Collaboration and License Agreements

Miravo Pharmaceuticals: In November 2010, our predecessor entered into a license agreement with Tribute Pharmaceuticals Canada Ltd. (now known as Miravo Pharmaceuticals) granting them the rights to commercially market CAMBIA in Canada. Miravo independently contracts with manufacturers to produce a specific CAMBIA formulation in Canada. We receive royalties on net sales on a quarterly basis as well as certain one-time contingent milestone payments upon the occurrence of certain events. We may receive additional one-time contingent milestone payments upon the achievement of scaling twelve-month cumulative sales targets and certain development milestones in the future.

Business Strategy

Our success depends on our people, the unique and scalable platform we have created, and the opportunities that exist in the marketplace. We believe the following key elements enable us to be commercially successful:

- Leadership with a proven track record of successful results;
- Significant experience in completing business development transactions in the healthcare space such as mergers, asset acquisitions, asset divestitures, and commercialization/licensing arrangements;
- A strategy that leverages digital and non-personal promotion to engage our customers and drive efficiency;
- Experience in key elements of commercialization including, but not limited to, market access, patient services, distribution, brand and digital marketing, non-personal promotion, analytics, and market research;
- Impactful brand promise for physicians and patients that reduces hassle and improves accessibility through access programs; and
- Commercial capabilities and financial position that enable us to seamlessly expand our product offerings.

Our strategy is to grow through product acquisitions, commercialization agreements, licensing or technology agreements, equity investments, and business combinations. Our products have been acquired or licensed through business development activities. We continue to seek additional products, with a preference for accretive, on-market products that have patent life or exclusivity remaining that we can add to our portfolio of medicines. Secondarily, we also remain open to late-stage assets or other investments into medical devices, informatics, or technology. We are seeking products that are a fit with our Commercial platform and can be leveraged and distributed via digital and non-personal promotional means. Our platform is specialty area agnostic and we can potentially acquire products across a number of therapeutic areas, while requiring minimal additional resources.

Impact of COVID-19 on our Business

Following the outbreak of COVID-19 in early 2020, our priority was and remains the health and safety of our employees, their families, and the patients we serve. Because COVID-19 impacted our ability to see in-person providers who prescribe our products, we transformed our commercial approach during 2020 and increased virtual visits, ultimately eliminating our in-person sales force in favor a digital sales strategy. Additionally, due to the limitations on elective surgeries and changes in patient behavior since the outbreak of COVID-19, we have experienced a decline and subsequent volatility in prescriptions associated with those elective procedures. The extent to which our operations may continue to be impacted by the COVID-19 pandemic will depend largely on future developments, which are highly uncertain and cannot be accurately predicted, including actions by government authorities to contain the outbreak, the emergence of new COVID-19 variants and the related potential for new surges in infections and the impacts of increases in virtual physician visits on prescriber behavior. For example, although many public health restrictions have eased, future surges could result in additional restrictions or other factors that may contribute to decreases in elective procedures. The impact of the pandemic on the global financial markets may reduce our ability to access capital, which could negatively impact our liquidity. We do not yet know the full extent of potential delays or impacts on our business, financing or on healthcare systems or the global economy as a whole. However, these effects could have a material impact on our liquidity, capital resources, operations and business and those of the third parties on which we rely, including suppliers and distributors.

Promotion of Products

Beginning in 2021, we transformed our commercial model. The promotion of our products is now executed by a virtual model, implementing artificial intelligence to support our omnichannel marketing and selling approach. We have also integrated our virtual sales team to maximize effectiveness with the providers and various sites-of-care that utilize our therapies.

Using virtual and digital promotion allows us to quickly scale resources to meet the needs of our growing portfolio and ensures that we can be competitive across multiple therapeutic areas. Our commercial organization is comprised of multiple capabilities, including marketing, trade and distribution, and market access. The organization's focus is finding new and novel ways to distribute product and improve patient access to our therapies.

Seasonality

Our product revenues have historically been lower in the first quarter of the year as compared to the fourth quarter of the preceding year. This variation is influenced by both wholesaler buying patterns and the reset of annual limits on deductibles and out-of-pocket costs of many health insurance plans and government programs at the beginning of each calendar year. For additional information, please also refer to "Item 1A. Risk Factors - Our product revenues have typically been lower in the first quarter of the year as compared to the fourth quarter of the preceding year."

Segment and Customer Information

We manage our business within one reportable segment. Segment information is consistent with how management reviews the business, makes investing and resource allocation decisions and assesses operating performance. To date, substantially all of our revenues are related to sales in the U.S.

Three large, national wholesale distributors represent the vast majority of our net product sales revenues. The following table reflects the percentage of consolidated revenue by customer and the percentage accounts receivable by customer related to product shipments for the years ended December 31, 2021 and 2020.

	Consolidated Revenue		Accounts Receivable related to product shipments	
	For the year ended December 31,		For the year ended December 31,	
	2021	2020	2021	2020
Cardinal Health	34 %	42 %	44 %	53 %
McKesson Corporation	24 %	14 %	23 %	20 %
AmerisourceBergen Corporation	26 %	13 %	29 %	18 %
Collegium	— %	11 %	— %	— %
All others	16 %	20 %	4 %	9 %
Total	100 %	100 %	100 %	100 %

The change in the percentage of consolidated revenue by customer and the percentage accounts receivable by customer related to product shipments for the year ended December 31, 2020 to December 31, 2021 was primarily driven by the impact of change in product mix as a result of the acquired products from the Zyla Merger in May 2020 as well as the sale of Gralise and NUCYNTA in January 2020 and February 2020, respectively.

Manufacturing

Our facilities are used for office purposes, no commercial manufacturing takes place at our facilities.

We are responsible for the supply and distribution of our marketed products. Our approved products are manufactured at contract manufacturing facilities in the U.S., Canada, and Italy. We have manufacturing, packaging and supply agreements with sole commercial suppliers for each of our marketed products, as follows:

- INDOCIN Products - Patheon Pharmaceuticals, Inc. (Patheon) and Cosette Pharmaceuticals, Inc;
- CAMBIA - MiPharm, S.p.A. and Pharma Packaging Solutions
- Otrexup - Antares Pharma, Inc. and Pharmascience Inc.
- SPRIX - Jubilant HollisterStier LLC and Sharp Packaging Solutions

- Zipsor - Catalent Ontario Limited (Catalent) and Mikart Inc.
- OXAYDO - UPM Pharmaceuticals, Inc.

Drug Substances

The active pharmaceutical ingredient ("API") used in SPRIX is ketorolac tromethamine and in OXAYDO is oxycodone hydrochloride. Both INDOCIN oral suspension and suppositories use indomethacin as the API. We currently procure these APIs on a purchase order basis, some of which are pursuant to an agreement with one of our suppliers. We acquire ketorolac tromethamine and indomethacin from European-based manufacturers while we secure oxycodone hydrochloride from a U.S.-based manufacturer. Both CAMBIA and Zipsor use diclofenac potassium as the API which we source from suppliers in Italy and Taiwan. OTREXUP uses Methotrexate as the API which is sourced by our supplier from Germany.

Oxycodone hydrochloride is classified as narcotic controlled substance under U.S. federal law and, as such, OXAYDO is classified as a Schedule II controlled substance by the U.S. Drug Enforcement Administration ("DEA"). Schedule II controlled substances are classified as having the highest potential for abuse and dependence among drugs that are recognized as having an accepted medical use. Consequently, the manufacturing, shipping, dispensing and storing of OXAYDO are subject to a high degree of regulation, as described in more detail under the caption "Governmental Regulation—Controlled Substances."

For additional information regarding our manufacturing, please also refer to "Item 1A. Risk Factors - We depend on one qualified supplier for the active pharmaceutical ingredient in each of our products, and we depend on third parties that are single source suppliers to manufacture our products. Insufficient availability of our products or the active pharmaceutical ingredients and other raw materials necessary to manufacture our products, or the inability of our suppliers to manufacture and supply our products, will adversely impact our sales upon depletion of the active ingredient and product inventories."

Intellectual Property

We regard the protection of patents, designs, trademarks and other proprietary rights that we own as critical to our success and competitive position.

Our Trademarks

Assertio™, Zyla™, INDOCIN®, Otrexup®, CAMBIA®, SPRIX®, Zipsor®, OXAYDO® are trademarks owned by or licensed to Assertio. All other trademarks and trade names referenced in this Annual Report on Form 10-K are the property of their respective owners.

Our Patents and Proprietary Rights

As of December 31, 2021, the U.S. patents we own or have in-licensed, and their expiration dates and the marketed products they cover, are as follows:

Product	U.S. Patent Nos. (Exp. Dates)
CAMBIA® [1]	7,759,394 (June 16, 2026)
	8,097,651 (June 16, 2026)
	8,927,604 (June 16, 2026)
	9,827,197 (June 16, 2026)
SPRIX® [2]	8,277,781 (March 13, 2029) [3]
	8,551,454 (March 13, 2029) [3]
Zipsor® [4]	7,662,858 (February 24, 2029)
	7,884,095 (February 24, 2029)
	7,939,518 (February 24, 2029)
	8,110,606 (February 24, 2029)
	8,623,920 (February 24, 2029)
	9,561,200 (February 24, 2029)
Otrexup®	8,480,631 (March 19, 2030)
	8,579,865 (March 19, 2030)
	8,945,063 (March 19, 2030)
	9,421,333 (March 19, 2030)
	9,750,881 (March 19, 2030)
	9,393,367 (March 12, 2034)
	10,675,400 (March 12, 2034) [3]
OXAYDO®	7,510,726 (November 26, 2023)
	7,981,439 (November 26, 2023)
	8,409,616 (November 26, 2023)
	8,637,540 (November 26, 2023)
	9,492,443 (May 26, 2024)
	7,201,920 (March 16, 2025)

(1) Certain parties who have entered into settlement agreements with us will be able to market generic versions of CAMBIA starting January 2023.
(2) Directed to processes of manufacture related to SPRIX.
(3) Expiration date excludes any potential patent term adjustment.
(4) Certain parties who have entered into settlement agreements with us will be able to market generic versions of Zipsor starting in March 2022.

Our success will depend in part on our ability to obtain and maintain patent protection for our products and technologies. Our policy is to seek to protect our proprietary rights, by among other methods, filing patent applications in the U.S. and foreign jurisdictions to cover certain aspects of our technology. Our patents may not be sufficiently broad to provide protection against competitors with similar technologies and may be challenged, invalidated or circumvented, which could limit our ability to stop competitors from marketing related products or may not provide us with competitive advantages against competing products. We also rely on trade secrets and proprietary know how, which are difficult to protect. We seek to protect such information, in part, through entering into confidentiality agreements with employees, consultants, collaborative partners and others before such persons or entities have access to our proprietary trade secrets and know how. These confidentiality agreements may not be effective in certain cases. In addition, our trade secrets may otherwise become known or be independently developed by competitors. For further information regarding risks associated with the protection of our intellectual property rights, please also refer to “Item 1A. “Risk Factors - We are not always able to protect our intellectual property and are subject to risks from liability for infringing the intellectual property of others.”

Competition

We face competition and potential competition from several sources, including pharmaceutical and biotechnology companies, generic drug companies, and medical devices and drug delivery companies. SPRIX and INDOCIN Products compete with currently marketed oral opioids, transdermal opioids, local anesthetic patches, stimulants and implantable and external infusion pumps that can be used for infusion of opioids and local anesthetics, non-narcotic analgesics, local and topical

analgesics and anti-arthritics. There are no patents covering the INDOCIN Products, which means that a generic drug company could file for and obtain approval of, and launch, a generic form of these drugs at any time. CAMBIA competes with a number of triptans that are used to treat migraines and certain other headaches. Currently, eight triptans are available generically and sold in the U.S. (almotriptan, eletriptan, frovatriptan, naratriptan, rizatriptan, sumatriptan, sumatriptan-naproxen and zolmitriptan). There are other products prescribed for or under development for the treatment or prevention of migraines that are now or may become competitive with CAMBIA, including CGRP inhibitor products. Certain parties who have entered into settlement agreements with us will be able to market generic versions of CAMBIA starting in January 2023. Zipsor competes against other drugs that are widely used to treat mild to moderate pain in the acute setting, including both branded and generic versions of diclofenac. Certain parties who have entered into settlement agreements with us will be able to market generic versions of Zipsor starting in March 2022. Otrexup competes with other branded methotrexate products, including other injection and auto-injector products. Competition in the methotrexate market also includes tablets and parenteral dosage forms. In addition, other commonly used pharmaceutical treatments for rheumatoid arthritis include analgesics, NSAIDs, corticosteroids and biologic response modifiers. Competing products developed in the future may prove superior to our products, either generally or in particular market segments. These developments could make our products noncompetitive or obsolete.

Government Regulation

FDA Approval Process

In the U.S. pharmaceutical products are subject to extensive regulation by the Food and Drug Administration ("FDA"). The Federal Food, Drug and Cosmetic Act and other federal and state statutes and regulations, govern, among other things, the research, development, testing, manufacture, storage, recordkeeping, approval, labeling, promotion and marketing, distribution, post approval monitoring and reporting, sampling, and import and export of pharmaceutical products. Failure to comply with applicable U.S. requirements may subject a company to a variety of administrative or judicial sanctions, such as FDA delay or refusal to approve pending new drug applications ("NDAs") or other marketing applications, warning letters, product recalls, product seizures, total or partial suspension of production or distribution, injunctions, fines, civil penalties, and criminal prosecution. The FDA approval process can be time consuming and cost intensive and companies may, and often do, re-evaluate the path of a particular product or product candidate at different points in the approval and post-approval process, even deciding, in some cases, to discontinue development of a product candidate or take a product off the market.

Preclinical and Clinical Studies

Governmental approval is required of all potential pharmaceutical products prior to the commercial use of those products. The regulatory process takes several years and requires substantial funds. Pharmaceutical product development in the U.S. for a new product or changes to an approved product typically involves preclinical laboratory and animal tests, the submission to the FDA of an investigational new drug application ("IND"), which must become effective before clinical testing may commence, and adequate and well-controlled clinical trials to establish the safety and effectiveness of the drug for each indication for which FDA approval is sought. Satisfaction of FDA pre-market approval requirements typically takes many years and the actual time required may vary substantially based upon the type, complexity, and novelty of the product or disease.

Preclinical tests include laboratory evaluation of product chemistry, formulation, and toxicity, as well as animal studies to assess the characteristics and potential safety and efficacy of the product. The conduct of the preclinical tests must comply with federal regulations and requirements, including good laboratory practices. The results of preclinical testing, along with other information that is known about an investigational drug product, are submitted to the FDA as part of an IND along with other information, including information about product chemistry, manufacturing and controls, and a proposed clinical trial protocol. Longer-term preclinical tests, such as animal tests of reproductive toxicity and carcinogenicity, may continue after the IND is submitted.

A 30-day waiting period after the submission of each IND is required prior to the commencement of clinical testing in humans, unless the FDA authorizes that the clinical investigations in the IND may begin sooner than 30 days after submission. If the FDA has neither commented on nor questioned the IND within this 30-day period, the clinical trial proposed in the IND may begin, as long as other necessary approvals (for example, an institutional review board ("IRB") overseeing clinical study sites) have been granted.

Clinical trials involve the administration of the investigational new drug to human subjects under the supervision of qualified investigators in accordance with Current Good Clinical Practice (cGCP), which includes the requirement that all research subjects provide their informed consent in writing for their participation in any clinical trial. Clinical trials are conducted under protocols detailing the objectives of the trial, the parameters to be used in monitoring safety and the effectiveness criteria to be evaluated. Each protocol intended to study an investigational new drug formulation must be

submitted to the FDA as part of the IND. Additionally, an independent IRB at each institution participating in the clinical trial must review and approve the plan for any clinical trial before it commences.

The FDA may order the temporary, or permanent, discontinuation of a clinical trial at any time, or impose other sanctions, if it believes that the clinical trial either is not being conducted in accordance with FDA requirements or presents an unacceptable risk to the clinical trial subjects. The study protocol and informed consent information for subjects in clinical trials must also be submitted to an IRB for approval. An IRB may also require the clinical trial at the site to be halted, either temporarily or permanently, for failure to comply with the IRB's requirements, concerns about subjects, or may impose other conditions. Sponsors have ongoing submission and reporting obligations to FDA and IRBs, and FDA and IRBs may exercise continuing oversight of a clinical trial.

Marketing Approval

FDA approval of an NDA is required before a product may be marketed in the U.S. Assuming successful completion of the required clinical testing, the results of the preclinical and clinical studies, together with detailed information relating to the product's chemistry, manufacture, controls, and proposed labeling, among other things, are submitted to the FDA requesting approval to market the product for one or more indications. If the FDA determines that the application is not sufficiently complete to permit substantive review, it may request additional information and decline to accept the application for filing until the information is provided. Once the submission is accepted for filing, the FDA begins an in-depth substantive review. The FDA reviews an NDA to determine, among other things, whether the drug is safe and effective and whether the facility in which it is manufactured, processed, packaged or held meets standards designed to assure the product's continued safety, quality and purity. During the review process, the FDA also reviews the drug's product labeling to ensure that appropriate information is communicated to healthcare professionals and consumers.

As part of an application, the FDA may require submission of a Risk Evaluation and Mitigation Strategy ("REMS") plan to mitigate any identified or suspected serious risks. The REMS plan could include medication guides, physician communication plans, assessment plans and elements to assure safe use, such as restricted distribution methods, patient registries or other risk minimization tools. In addition, under the Pediatric Research Equity Act of 2003, certain NDAs or supplements to an NDA must contain adequate data to assess the safety and effectiveness of the drug for the claimed indications in all relevant pediatric subpopulations, and to support dosing and administration for each pediatric subpopulation for which the product is safe and effective. The FDA may grant deferrals for submission of some or all pediatric data until after approval of the product for use in adults, or partial or full waivers from the pediatric data requirements.

Before an NDA is approved, the FDA generally inspects one or more clinical sites and facilities at which the drug is manufactured to ensure they are in compliance with the FDA's cGCPs and Current Good Manufacturing Practices ("cGMP"), respectively. If the FDA determines the application, data or manufacturing facilities are not acceptable, the FDA may note the deficiencies in the submission and request additional testing or information.

After evaluating the NDA, including all related information and clinical and manufacturing inspection reports, the FDA may issue an approval letter, or, in some cases, a complete response letter ("CRL"). A CRL generally contains a statement of specific conditions that must be met in order to obtain final approval of the NDA and may require additional clinical or preclinical testing in order for the FDA to reconsider the application. Even with submission of this additional information, the FDA ultimately may decide that the application does not satisfy the regulatory criteria for approval. If and when those conditions have been met to the FDA's satisfaction, the FDA will typically issue an approval letter. An approval letter authorizes commercial marketing of the drug with specific prescribing information for specific indications.

The testing and approval process for an NDA requires substantial time, effort and financial resources. Data obtained from preclinical and clinical testing are not always conclusive and may be susceptible to varying interpretations, which could delay, limit or prevent regulatory approval. The FDA may not grant approval of an NDA on a timely basis, or at all.

If approved, the FDA may still limit the approved indications for use of the product, require that contraindications, warnings or precautions be included in the product labeling, require that post-marketing or Phase 4 clinical studies be conducted, require surveillance programs to monitor the product after commercialization, or impose other conditions, including distribution and use restrictions or other risk management mechanisms under a REMS, which can materially affect the potential market and profitability of the product. The results of post-marketing studies may cause the FDA to prevent or limit further marketing of a product. After approval, certain changes to the approved product, such as manufacturing changes, new labeling claims and new indications, are subject to additional requirements and FDA review and approval.

Foreign regulatory approval of a product must also be obtained prior to marketing a product internationally. The clinical testing requirements and the time required to obtain foreign regulatory approvals may differ from that required for FDA approval and the time required for approval may delay or prevent marketing in certain countries.

Post Approval Requirements

Ongoing adverse event reporting and submission of periodic reports is required following FDA approval of an NDA. The FDA also may require post marketing testing, known as Phase 4 testing, REMS, and surveillance to monitor the effects of an approved product, or the FDA may place conditions on an approval that could restrict the distribution or use of the product. In addition, quality control, drug manufacture, packaging, and labeling procedures must continue to conform to cGMPs and NDA specifications after approval. Drug manufacturers and certain of their subcontractors are required to register their establishments with FDA and obtain licenses from certain state agencies. Registration with the FDA subjects entities to periodic unannounced inspections by FDA, during which the agency inspects manufacturing facilities to assess compliance with cGMPs or other applicable laws, such as adverse event recordkeeping and reporting. Accordingly, manufacturers must continue to expend time, money, and training and compliance effort in the areas of production and quality control to maintain compliance with cGMPs or other applicable laws, such as adverse event recordkeeping and reporting requirements. Regulatory authorities may require remediation, withdraw product approvals or request product recalls if a company fails to comply with regulatory standards, if it encounters problems following initial marketing, or if previously unrecognized problems or new concerns are subsequently discovered. In addition, other regulatory action, including, among other things, warning letters, the seizure of products, injunctions, consent decrees placing significant restrictions on or suspending manufacturing operations, civil penalties, and criminal prosecution may be pursued.

Prescription Drug Marketing Act

The Prescription Drug Marketing Act of 1987 and the Prescription Drug Amendments of 1992 govern the storage, handling, and distribution of prescription drug samples. The law prohibits the sale, purchase, or trade (including an offer to sell, purchase or trade) of prescription drug samples; it also imposes various requirements upon manufacturers, including but not limited to, proper storage of samples, documentation of request and receipt of samples, validation of a requesting practitioner's professional licensure, periodic inventory and reconciliation of samples, notification to the FDA of loss or theft of samples, and procedures for auditing sampling activity. Some similar state laws apply. In addition, section 6004 of the Patient Protection and Affordable Care Act also requires manufacturers to annually report the identity and quantity of drug samples that were requested and distributed to licensed HCPs in a given year.

Orange Book Listing

In seeking approval for a drug through an NDA, applicants are required to list with the FDA certain patents whose claims cover the applicant's product, active ingredient, or method of use. Upon approval of a drug, each of the listed patents covering the approved drug is then published in the FDA's Approved Drug Products with Therapeutic Equivalence Evaluations, commonly known as the Orange Book. Drugs listed in the Orange Book can, in turn, be cited by potential generic competitors in support of approval of an abbreviated new drug application ("ANDA"). An ANDA provides for marketing of a drug product that has the same active ingredient(s) in the same strengths and dosage form, with essentially the same labeling as the listed drug, and that has been shown through bioequivalence testing to be therapeutically equivalent to the listed drug. Other than the requirement for bioequivalence testing, ANDA applicants are generally not required to conduct, or submit results of, preclinical or clinical tests to prove the safety or effectiveness of their drug product. Drugs approved under an ANDA are commonly referred to as "generic equivalents" to the listed drug and often can or are required to be substituted by pharmacists fulfilling prescriptions written for the original listed drug.

The ANDA applicant is required to certify or make certain representations to the FDA concerning any patents currently listed for the approved product in the FDA's Orange Book. Specifically, the applicant must certify that: (i) no relevant patent information has been filed, (ii) a listed patent has expired, (iii) a listed patent has not expired but will expire on a particular date and approval is sought after patent expiration, or (iv) a listed patent is invalid, unenforceable or will not be infringed by the marketing of the new product. The ANDA applicant may also elect to submit a section viii statement certifying that its proposed ANDA labeling does not contain (or carves out) any language regarding a patented method-of-use. If the ANDA applicant does not challenge the applicability of the listed patents, the ANDA application will not be approved until all the listed patents claiming the referenced NDA product have expired.

A certification that the ANDA product will not infringe the already approved NDA product's listed patents, or that such patents are invalid or unenforceable, is called a Paragraph IV certification. If the ANDA applicant has provided a Paragraph IV certification to the FDA, the applicant must also send notice of the Paragraph IV certification to the NDA and

patent holders once the ANDA has been accepted for filing by the FDA. The NDA and patent holders may then initiate a patent infringement lawsuit in response to the notice of the Paragraph IV certification. The filing of a patent infringement lawsuit within 45 days of the receipt of a Paragraph IV certification automatically prevents the FDA from approving the ANDA until the earliest of 30 months, expiration of the patent, settlement of the lawsuit, or a decision in the infringement case that is favorable to the ANDA applicant.

The ANDA application also will not be approved until any applicable non-patent exclusivity listed in the Orange Book for the referenced product has expired.

Manufacturing Requirements

We, our suppliers, contract manufacturers and other entities involved in the manufacturing and distribution of approved drugs are required to comply with certain post-approval requirements and are subject to periodic unannounced inspections by the FDA and state agencies to assess compliance with cGMP requirements. Accordingly, manufacturers must continue to expend time, money and effort in the area of production and quality control to maintain cGMP compliance. Failure to achieve or maintain cGMP standards for our products would adversely impact their marketability.

We use third-party manufacturers to produce our products in clinical and commercial quantities, and we cannot be certain that future FDA inspections will not identify compliance issues at the facilities of our contract manufacturers that may disrupt production or distribution, or require substantial resources to correct. Additionally, new government requirements may be established that could delay or prevent regulatory approval of our products under development.

Third-Party Payor Coverage and Reimbursement

The commercial success of our products is partially dependent on the availability of coverage and adequate reimbursement from public (i.e., federal and state government) and private (i.e., commercial) payors. These third-party payors may deny coverage or reimbursement for a product or therapy— either in whole or in part— if they determine that the product or therapy was not medically appropriate or necessary. Also, third-party payors will continue to control costs by limiting coverage through the use of formularies and other cost-containment mechanisms, and the amount of reimbursement for particular procedures or drug treatments.

The cost of pharmaceutical products continues to generate substantial governmental and third-party payor interest. We expect the pharmaceutical industry will continue to experience pricing pressures, given the trend toward managed healthcare, the increasing influence of managed care organizations, and additional regulatory and legislative proposals. Our results of operations and business could be adversely affected by current and future third-party payor policies, as well as healthcare legislative reforms.

Some third-party payors also require pre-approval of coverage for new or innovative drug therapies before they will reimburse healthcare providers who use such therapies. While we cannot predict whether any proposed cost containment measures will be adopted or otherwise implemented in the future, these requirements or any announcement or adoption of such proposals could have a material adverse effect on our ability to obtain adequate prices for any future product candidates and to operate profitably.

Fraud and Abuse

The Foreign Corrupt Practices Act (“FCPA”), prohibits any U.S. individual or business from paying, offering or authorizing payment or offering of anything of value, directly or indirectly, to any foreign official, political party or candidate for influencing any act or decision of the foreign entity to assist the individual or business in obtaining or retaining business. The FCPA also obligates companies whose securities are listed in the U.S. to comply with accounting provisions requiring the companies to maintain books and records that accurately and fairly reflect all transactions of the companies, including international subsidiaries, and to devise and maintain an adequate system of internal accounting controls for international operations.

Pharmaceutical companies that participate in federal healthcare programs are subject to various U.S. federal and state laws pertaining to healthcare “fraud and abuse,” including anti-kickback and false claims laws. Violations of U.S. federal and state fraud and abuse laws may be punishable by criminal or civil sanctions, including fines, civil monetary penalties and exclusion from federal healthcare programs (including Medicare and Medicaid).

Federal statutes that apply to us include the federal Anti-Kickback Statute, which prohibits persons from knowingly and willfully soliciting, offering, receiving or providing remuneration in exchange for or to generate business, including the purchase or prescription of a drug, that is reimbursable by a federal healthcare program such as Medicare and Medicaid, and the Federal False Claims Act ("FCA"), which generally prohibits knowingly and willingly presenting, or causing to be presented, for payment to the federal government any false, fraudulent or medically unnecessary claims for reimbursed drugs or services. Government enforcement agencies and private whistleblowers have asserted liability under the FCA for claims submitted involving inadequate care, kickbacks, improper promotion of off-label uses and misreporting of drug prices to federal agencies.

Similar state laws and regulations, such as state anti-kickback and false claims laws, may apply to sales or marketing arrangements and claims involving healthcare items or services reimbursed by non-governmental payors, including private insurers. These state laws may be broader in scope than their federal analogues, such as state false claims laws that apply where a claim is submitted to any third-party payor, regardless of whether the payor is a private health insurer or a government healthcare program, and state laws that require pharmaceutical companies to certify compliance with the pharmaceutical industry's voluntary compliance guidelines.

Federal and state authorities have increased enforcement of fraud and abuse laws within the pharmaceutical industry, and private individuals have been active in alleging violations of the law and bringing suits on behalf of the government under the FCA and under state and local laws. These laws are broad in scope and there may not be regulations, guidance or court decisions that definitively interpret these laws and apply them to particular industry practices. In addition, these laws and their interpretations are subject to change.

Controlled Substances

The DEA is the federal agency responsible for domestic enforcement of the Controlled Substances Act of 1970 ("CSA"). The DEA regulates controlled substances as Schedule I, II, III, IV and V substances. Schedule I substances, by definition, have high potential for abuse, no currently accepted medical use in the U.S and lack accepted safety for use under medical supervision and may not be marketed or sold in the U.S. except for research and industrial purposes. A pharmaceutical product may be listed as Schedule II, III, IV or V, with Schedule II substances considered to present the highest risk of abuse and Schedule V substances the lowest relative risk of abuse among such substances.

Oxycodone

OXAYDO, an immediate release oxycodone product designed to discourage abuse via snorting, is regulated as a Schedule II controlled substance as defined in the CSA. Other companies' oxycodone products have been subject to recent scrutiny, litigation, and concerns.

In addition, a DEA quota system controls and limits the availability and production of controlled substances in Schedule II. Distributions of any Schedule II controlled substance must also be accompanied by special order forms. Any of our products regulated as Schedule II controlled substances will be subject to the DEA's production and procurement quota scheme. The DEA establishes annually an aggregate quota for how oxycodone may be produced in total in the U.S. based on the DEA's estimate of the quantity needed to meet legitimate scientific and medicinal needs. The limited aggregate number of opioids that the DEA allows to be produced in the U.S. each year is allocated among individual companies, who must submit applications annually to the DEA for individual production and procurement quotas. Our company (and our license partners and contract manufacturers) receive an annual quota from the DEA that enables us to produce or procure specific quantities of Schedule II substances, including oxycodone hydrochloride for use in manufacturing OXAYDO. The DEA may adjust aggregate production quotas and individual production and procurement quotas from time to time during the year, although the DEA has substantial discretion in whether to make such adjustments. The quotas we are provided for specific active ingredients may not be sufficient to meet commercial demand or complete clinical trials. Any delay, limitation or refusal by the DEA in establishing our, or our contract manufacturers', quota for controlled substances could delay or stop our clinical trials or product commercialization, which could have a material adverse effect on our business, financial position, and results of operations.

To enforce these requirements, the DEA conducts periodic inspections of registered establishments that handle controlled substances. Failure to maintain compliance with applicable requirements, particularly as manifested in loss or diversion, can result in administrative, civil or criminal enforcement action, which could have a material adverse effect on our business, results of operations and financial condition. The DEA may seek civil penalties, refuse to renew necessary registrations, or initiate administrative proceedings to revoke those registrations. In certain circumstances, violations could result in criminal proceedings.

Individual states also independently regulate controlled substances. We and our license partners and our contract manufacturers will be subject to state regulation on distribution of these products.

Prescription Limitations

Many states, including the Commonwealths of Massachusetts, and Virginia and the States of New York, Ohio, Arizona, Maine, New Hampshire, Vermont, Rhode Island, Colorado, Wisconsin, Alabama, South Carolina, Washington and New Jersey, have either recently enacted, intend to enact or have pending legislation or regulations designed to, among other things, limit the duration and quantity of initial prescriptions of the immediate-release form of opiates (OXAYDO), mandate the use by prescribers of prescription drug databases and mandate prescriber education. These and other state and local laws applicable to the pharmaceutical industry may affect our business and operations as well as those of our commercialization and development partners.

Impact of Public Pressure on Drug Pricing, Healthcare Reform and Legislation Impacting Payor Coverage

The pricing and reimbursement of our pharmaceutical products is partially dependent on government regulation. We offer discounted pricing or rebates on purchases of pharmaceutical products under various federal and state healthcare programs, including: Centers for Medicare & Medicaid Services' Medicaid Drug Rebate Program, Medicare Part B Program and Medicare Part D Coverage Gap Discount Programs, the U.S. Department of Veterans Affairs' Federal Supply Schedule Program, and the Health Resources and Services Administration's 340B Drug Pricing Program. We must also report specific prices to government agencies under healthcare programs, such as the Medicaid Drug Rebate Program and Medicare Part B Program. The calculations necessary to determine the prices reported are complex and the failure to report prices accurately may expose us to penalties.

In the U.S., federal and state government healthcare programs and private third-party payors routinely seek to manage utilization and control the costs of our products. In the U.S., there is an emphasis on managed healthcare, which may put additional pressure on pharmaceutical drug pricing, and reimbursement and usage, and adversely affect our future product sales and results of operations. These pressures can arise from rules and practices of managed care groups, including formulary coverage and positioning, laws and regulations related to Medicare, Medicaid and healthcare reform, pharmaceutical reimbursement policies, and pricing in general.

Efforts by federal and state government officials or legislators to implement measures to regulate prices or payment for pharmaceutical products— including legislation on drug importation— could adversely affect our business if implemented. Recently, there has been considerable public and government scrutiny of pharmaceutical pricing, resulting in proposals to address the perceived high cost of pharmaceuticals, and drug pricing continues to be an agenda item at both the federal and state level.

The U.S. pharmaceutical industry has already been significantly affected by major legislative initiatives, including, for example, the U.S. Patient Protection and Affordable Care Act of 2010, as amended by the Health Care and Education Reconciliation Act ("ACA"). The ACA, among other things, imposes a significant annual fee on companies that manufacture or import branded prescription drug medicines. It also contains substantial provisions intended to broaden access to health insurance, reduce or constrain the growth of healthcare spending, and impose additional health policy reforms— any or all of which may affect our business. Since its enactment, there have been judicial and Congressional challenges to numerous provisions of the ACA. We continue to face uncertainties due to federal legislative and administrative efforts to repeal, substantially modify, or invalidate some or all of the provisions of the ACA.

Any future healthcare reform efforts, including those related specifically to the ACA, and any that further limit coverage and reimbursement of pharmaceutical products, may adversely affect our business and financial results. Any reduction in reimbursement from Medicare or other government programs may result in a similar reduction in payments from private payors.

Other Healthcare Laws and Compliance Requirements

In the U.S., the research, manufacturing, distribution, sale, and promotion of drug products are potentially subject to regulation by various federal, state and local authorities in addition to the FDA, including the Centers for Medicare & Medicaid Services ("CMS"), other divisions of the U.S. Department of Health and Human Services ("HHS") (e.g., the Office of Inspector General, "OIG"), the U.S. Department of Justice, state Attorneys General, and other state and local government agencies. For example, pharmaceutical manufacturers' activities (including sales and marketing activities, as well as scientific/educational grant programs, among other activities) are subject to fraud and abuse laws, such as the federal Anti-Kickback Statute, the

federal False Claims Act, as amended, and similar state laws. Typically, pricing and rebate programs must comply with the Medicaid Drug Rebate Program requirements of the Omnibus Budget Reconciliation Act of 1990, as amended, and the Veterans Health Care Act of 1992, as amended. If products are made available to authorized users of the Federal Supply Schedule of the General Services Administration, additional laws and requirements apply. These activities are also potentially subject to federal and state consumer protection and unfair competition laws.

The federal Anti-Kickback Statute prohibits any person or entity, including a prescription drug manufacturer, or a party acting on its behalf, from knowingly and willfully soliciting, receiving, offering or providing remuneration, directly or indirectly, to induce another to (i) refer an individual for the furnishing of a pharmaceutical product for which payment may be made under a federal healthcare program, such as Medicare or Medicaid ("covered product"); (ii) purchase or order any covered product; (iii) arrange for the purchase or order of a covered product; or (iv) recommend a covered product. This statute has been interpreted broadly to apply to a wide range of arrangements between pharmaceutical manufacturers and others, including, but not limited to, any exchange of remuneration between a manufacturer and prescribers (such as physicians), purchasers, pharmacies, PBMs, formulary managers, group purchasing organizations, hospitals, clinics and other health care providers, and patients. The term "remuneration" has been broadly interpreted to include anything of value, including, for example, gifts, discounts, and rebates, "value-added" services, the furnishing of supplies or equipment at no charge, credit arrangements, payments of cash, waivers of payments, ownership interests, and providing anything at less than its fair market value. Although there are several statutory exceptions and regulatory safe harbors protecting certain business arrangements from prosecution, the exceptions and safe harbors are drawn narrowly and practices that involve remuneration intended to induce referrals, prescribing, purchasing, or recommending covered products may be subject to scrutiny if they do not qualify for an exception or safe harbor.

Additionally, many states have adopted laws like the federal Anti-Kickback Statute, and some of these state prohibitions apply, in at least some cases, to the referral of patients for healthcare items or services reimbursed by any third-party payor— not only the Medicare and Medicaid programs— and do not contain safe harbors. Violations of fraud and abuse laws such as the Anti-Kickback Statute may be punishable by criminal or civil sanctions and/or exclusion from federal healthcare programs (including Medicare and Medicaid). Our arrangements and practices may not, in every case, meet all criteria for applicable exceptions and/or safe harbors for the Anti-Kickback Statute, and thus would not be immune from prosecution under the Statute. Additionally, Anti-Kickback Statute and similar state laws are subject to differing interpretations and may contain ambiguous requirements or require administrative guidance for implementation. Finally, some of the safe harbor rules are currently under review for potential revision. Given these variables, our activities could be subject to the penalties under the Anti-Kickback Statute and similar authorities.

The federal False Claims Act imposes liability on any person or entity that, among other things, knowingly presents, or causes to be presented, a false or fraudulent claim for payment by a federal healthcare program. The "*qui tam*" provisions of the False Claims Act allow a private individual to bring civil actions on behalf of the federal government alleging that the defendant has violated the False Claims Act, and to share in any monetary recovery. In recent years, the number of suits brought by private individuals has increased dramatically. In addition, various states have enacted false claims laws analogous to the False Claims Act. Many of these state laws apply where a claim is submitted to any third-party payor, not merely a federal healthcare program.

There are many potential bases for liability under the False Claims Act. Liability arises, primarily, when an entity knowingly submits, or causes another to submit, a false claim for reimbursement to the federal government. The False Claims Act has been used to assert liability based on inadequate care, kickbacks and other improper referrals, improperly reported government pricing metrics, such as Best Price or Average Manufacturer Price, improper use of Medicare numbers when detailing the provider of services, improper promotion of off-label uses not expressly approved by FDA in a drug's label, and allegations as to misrepresentations with respect to the services rendered. Our activities relating to the reporting of discount and rebate information and other information affecting federal, state, and third-party reimbursement of our products, and the sale and marketing of our products and our service arrangements or data purchases, among other activities, may be subject to scrutiny under these laws.

We are unable to predict whether we would be subject to actions under the False Claims Act or a similar state law, or the impact of such actions. However, the cost of defending such claims, as well as any sanctions imposed, could adversely affect our financial performance. Also, the federal Health Insurance Portability and Accountability Act of 1996 ("HIPAA") created several federal crimes, including healthcare fraud and false statements relating to healthcare matters. The healthcare fraud statute prohibits knowingly and willfully executing a scheme to defraud any healthcare benefit program, including private third-party payors. The false statements statute prohibits knowingly and willfully falsifying, concealing, or covering up a material fact or making any materially false, fictitious, or fraudulent statement about the delivery of or payment for healthcare benefits, items or services.

In addition, our marketing activities may be limited by data privacy and security regulation by both the federal government and the states in which we conduct our business. For example, HIPAA and its implementing regulations established standards for "covered entities," which are certain healthcare providers, health plans and healthcare clearinghouses, regarding the security and privacy of protected health information. While we are not a covered entity under HIPAA, many of our customers are, and this limits the information they can share with us. The Health Information Technology for Economic and Clinical Health Act ("HITECH") expanded the applicability of HIPAA's privacy, security, and breach notification standards. Among other things, HITECH makes HIPAA's security and breach standards (and certain privacy standards) directly applicable to "business associates," which are entities that perform certain services on behalf of covered entities involving the exchange of protected health information. HITECH also increased the civil and criminal penalties that may be imposed against covered entities, business associates, and possibly other persons, and gave state attorneys general new authority to file civil actions for damages or injunctions in federal courts to enforce the federal HIPAA laws and seek attorney's fees and costs associated with pursuing federal civil actions. While we do not currently perform any services that would render us a business associate under HIPAA/HITECH, it is possible that we may provide such services in the future and would be subject to the applicable provisions of HIPAA/HITECH. Finally, we are likely to be directly subject to state privacy and security laws, regulations and other authorities— specifically including the California Consumer Privacy Act— which may limit our ability to use and disclose identifiable information, and may impose requirements related to safeguarding such information, as well as reporting on breaches.

Additionally, the federal Open Payments program, created under Section 6002 of the Affordable Care Act and its implementing regulations, requires that manufacturers of prescription drugs for which payment is available under Medicare, Medicaid or the Children's Health Insurance Program (with certain exceptions) report annually to HHS information related to "payments or other transfers of value" provided to U.S. "physicians" (defined to include doctors, dentists, optometrists, podiatrists and chiropractors) and "teaching hospitals." The Open Payments program also requires that manufacturers and applicable group purchasing organizations report annually to HHS ownership and investment interests held in them by physicians (as defined above) and their immediate family members. Manufacturers' reports are filed annually with the CMS by March 31, covering the previous calendar year. CMS posts disclosed information on a publicly available website annually by June 30.

There are also an increasing number of state laws that regulate or restrict pharmaceutical manufacturers' interactions with health care providers licensed in the respective states. Beyond prohibiting the provision of certain payments or items of value, these laws require pharmaceutical manufacturers to, among other things, establish comprehensive compliance programs, adopt marketing codes of conduct, file periodic reports with state authorities regarding sales, marketing, pricing, and other activities, and register/license their sales representatives. Laws require manufacturers to file reports regarding payments and items of value provided to health care providers (similar to the federal Open Payments program). Many of these laws contain ambiguities as to what is required to comply with the laws. These laws may affect our sales, marketing, and other promotional activities by imposing administrative and compliance burdens on us. Given the lack of clarity with respect to these laws and their implementation, despite our best efforts to act in full compliance, our reporting actions could be subject to the penalty provisions of the pertinent state and federal authorities.

Because of the breadth of these laws and the narrowness of available statutory and regulatory exemptions, it is possible that some of our business activities could be subject to challenge under one or more of such laws. If our operations are found to be in violation of any of the federal and state laws described above or any other governmental regulations that apply to us, we may be subject to penalties— including criminal and significant civil monetary penalties, damages, fines, imprisonment, exclusion from participation in government healthcare programs, injunctions, recall or seizure of products, total or partial suspension of production, denial or withdrawal of pre- marketing product approvals, private *qui tam* actions brought by individual whistleblowers in the name of the government, or refusal to allow us to enter into supply contracts including government contracts and the curtailment or restructuring of our operations— any of which could adversely affect our ability to operate our business and our results of operations. With respect to any of our products sold in a foreign country, we may be subject to similar foreign laws and regulations, which may include, for instance, applicable privacy laws and post-marketing requirements, including safety surveillance, anti-fraud and abuse laws, and implementation of corporate compliance programs, and reporting of payments or transfers of value to healthcare professionals.

For additional information and risks regarding the above-described government regulations, please also refer to "Item 1A. Risk Factors."

Employees

As of March 1, 2022, we had 19 full-time employees, all employed in the U.S. None of our employees are represented by a collective bargaining agreement, nor have we experienced any work stoppage. We believe that our relations with our employees are good.

We recognize that our industry is specialized and dynamic, and a significant aspect of our success is our continued ability to execute our human capital strategy of attracting, engaging, developing and retaining highly skilled talent that our efficient operating model needs. There is fierce competition for highly skilled talent, and we offer a robust set of benefits, a flexible working environment, and career-enhancing development experiences and initiatives that are aligned with our mission, vision, and values. We offer competitive compensation for our employees and strongly embrace a pay for performance culture underpinned by our commitment to ethics and compliance.

Our Employee Handbook and Code of Business Conduct and Ethics clearly outlines our unwavering commitment to diversity and inclusion, where all employees are welcomed in an environment designed to make them feel comfortable, respected, and accepted regardless of their age, race, national origin, sex, gender, identity, religion, disability or sexual orientation. We have a set of policies explicitly setting forth our expectations for nondiscrimination and a harassment-free work environment. We are also a proud equal opportunity employer and cultivate a highly collaborative, fast paced, and entrepreneurial culture.

Corporate Information

The address of our website is *http://www.assertiotx.com*. We make available, free of charge through our website, our Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K and other periodic Securities and Exchange ("SEC") reports, along with amendments to all of those reports, as soon as reasonably practicable after we file the reports with the SEC.

ITEM 1A. RISK FACTORS

In addition to other information in this report, please consider the following discussion of factors that makes an investment in our securities risky. The risks or uncertainties described in this Form 10-K can materially and adversely affect our business, results of operations or financial condition. The risks and uncertainties described below have been grouped under general risk categories, one or more of which categories may be applicable to the risk factors described. The risks and uncertainties described in this Form 10-K are not the only ones facing us. Additional risks and uncertainties of which we are unaware or that we currently deem immaterial may also become important factors that can harm our business, results of operations and financial condition.

Summary of Risk Factors

The following is a summary of the risks more fully described below and should not be relied upon as an exhaustive summary of the material risks facing our business.

Risks Related to Commercial, Regulatory and Other Business Matters

- We may not be successful in commercializing our products using our transformative non-personal and digital promotion strategies.
- Approval for generic versions of our products, including the INDOCIN Products which may face generic competition at any time and Cambia and Zipsor which may face generic competition starting in 2023 and 2022, respectively, will have a materially adverse effect on our business.
- We may not succeed in executing business development, strategic partnerships and investment opportunities.
- Failure to successfully identify and acquire complementary businesses, products or technologies will limit our business growth and prospects.
- Strategic transactions may fail.
- We may not be able to integrate any business, product or technology we acquire.
- Our success is dependent in large part upon continued services of our executive management team with whom we do not have employment agreements.
- The COVID-19 pandemic has been affecting the Company's business and operations and may continue to do so.

- We depend on one qualified supplier for the active pharmaceutical ingredient in each of our products and single source suppliers to manufacture our products.
- Failure to comply with ongoing regulatory requirements for approved products could adversely impact our ability to commercialize our products and result in increased costs.
- Commercial disputes may adversely affect the commercial success of our products.
- We may be unable to compete successfully in the pharmaceutical industry.
- We may be unable to negotiate acceptable pricing or obtain adequate reimbursement for our products.
- Business interruptions can adversely impact our ability to operate our business.
- Data breaches and cyber-attacks can damage to our business.
- Our corporate structure may not prevent veil piercing.
- We are impacted by governmental investigations, regulatory actions and lawsuits regarding Assertio Therapeutics' historical commercialization of opioids.
- We may not be able to adequately protect ourselves from product liability losses and other litigation liability.

Risks Related to Our Industry

- We are impacted by changes in laws and regulations applicable to, and increased scrutiny and investigations of, the pharmaceutical industry.
- We may fail to comply with applicable statutes or regulations.
- We may incur significant liability if it is determined that we have promoted "off-label" use of drugs.
- Healthcare reform may increase our expenses and impact our products.
- We are not always able to protect our intellectual property and may be liable for infringing the intellectual property of others.
- Settlements to ANDA litigation can be challenged and have the potential to lead to significant damage awards.

Risks Related to Our Financial Position

- We may not have sufficient capital resources or be able to obtain future debt or equity financing necessary to fund our future operations or product acquisitions and strategic transactions.
- We may be unable to generate sufficient cash flow from our business to make payments on our debt.
- We have incurred operating losses in the past and may incur operating losses in the future.
- We have significant amounts of long-lived assets which depend upon future positive cash flows to support the values recorded in our balance sheet.
- We may be impacted by our customer concentration.
- Our product revenues have typically been lower in the first quarter of the year as compared to the fourth quarter of the preceding year.
- The fair value of contingent consideration obligation assumed as part of the Zyla Merger may change.
- We may be unable to satisfy regulatory requirements relating to internal controls.
- Our financial results are impacted by management's assumptions and use of estimates.

Risks Related to Future Product Development

- We may not obtain necessary regulatory approvals.
- We are subject to risks associated with NDAs submitted under Section 505(b)(2) of the FDCA.

Risks Related to Share Ownership and Other Stockholder Matters

- The price of our common stock historically has been volatile.
- Our common stock may be delisted from the Nasdaq Capital Market if we are unable to maintain compliance with Nasdaq's continued listing standards.
- We are a "smaller reporting company" and we take advantage of reduced disclosure and governance requirements applicable to such companies, which could result in our common stock being less attractive to investors.
- We are subject to risks from future proxy fights or the actions of activist shareholders.
- We are subject to risks related to unsolicited takeover attempts in the future.

Risks Related to Commercial, Regulatory and Other Business Matters

If we do not successfully commercialize our products, our business, financial condition and results of operations will be materially and adversely affected.

In addition to the risks discussed elsewhere in this section, our ability to successfully commercialize and generate revenues from our products depends on a number of factors, including, but not limited to, our ability to:

- develop and execute our digital and non-personal sales and marketing strategies for our products;
- achieve, maintain and grow market acceptance of, and demand for, our products;
- obtain and maintain adequate coverage, reimbursement and pricing from managed care, government and other third-party payors;
- maintain, manage or scale the necessary sales, marketing, manufacturing, managed markets and other capabilities and infrastructure that are required to successfully integrate and commercialize our products;
- obtain adequate supply of our products;
- maintain and extend intellectual property protection for our products; and
- comply with applicable legal and regulatory requirements.

In December 2020, we eliminated our in-person sales force and have since moved to a digital sales and product promotion model. We do not have prior experience with a digital-only sales model and this may be less successful than in-person promotion, particularly as pandemic restrictions ease and in-person promotion resumes, including for competing products. If we are unable to successfully achieve or perform these functions, we will not be able to maintain or increase our revenues and our business, financial condition and results of operations will be materially and adversely affected.

We have no patent protection for Indocin, while Cambia and Zipsor may face generic competition starting in 2023 and 2022, respectively. If we face competition with generic versions of our marketed products, our revenues will be adversely affected.

Under the Federal Food, Drug, and Cosmetic Act (FDCA), the FDA can approve an abbreviated new drug application ("ANDA") for a generic version of a branded drug without the ANDA applicant undertaking the clinical testing necessary to obtain approval to market a new drug. In place of such clinical studies, an ANDA applicant usually needs only to submit data demonstrating that its product has the same active ingredient(s) and is bioequivalent to the branded product, in addition to any data necessary to establish that any difference in strength, dosage, form, inactive ingredients or delivery mechanism does not result in different safety or efficacy profiles, as compared to the reference drug.

There are no patents covering the INDOCIN Products (which accounted for 55% of our revenue in 2021), which means that a generic drug company could file for and obtain approval of, and launch, a generic form of these drugs at any time. With respect to Cambia and Zipsor (which accounted for 23% and 9% of our revenue in 2021, respectively), we have entered into settlement agreements with generic drug companies, under which generic versions of these products can be marketed beginning in 2023 and 2022, respectively. We expect to face generic competition in the near term for one or both of these drugs and could face generic competition at any time for the INDOCIN Products.

Any introduction of one or more generic versions of our products would harm our business, financial condition and results of operations. The filing of the ANDAs described above, or any other ANDA or similar application in respect to any of our products, could have an adverse impact on our stock price. Moreover, if the patents covering our Otrexup (which expire in 2030) are not upheld in litigation or if a generic competitor is found not to infringe these patents, the resulting generic competition for Otrexup would have a further material adverse effect on our business, financial condition and results of operations.

Our success is dependent on our executive management team's ability to successfully execute business development, strategic partnerships and investment opportunities to build and grow for the future.

Since 2017, we have been in the process of transforming into a leading diversified, specialty pharmaceutical company with a goal of rapidly de-leveraging our balance sheet, growing our core business and opportunistically building for the future via business development. Since then, we have completed a number of transactions to advance toward achieving our stated goals. As a result of the transformation from these transactions, we have positioned ourselves to actively pursue business development, strategic partnerships, and investment opportunities to build and grow for the future. Given the near-term

potential for generic competition with a number of our marketed products, we are focused on pursuing business development opportunities.

If our executive management team is not able, in a timely manner, to develop, implement and execute successful business strategies and plans to maintain and increase our product revenues, our business, financial condition and results of operations will be materially and adversely affected, and the existing business may be required to take steps to reduce its costs at some point in time. While our executive officers have significant industry-related experience, it may take time to develop, implement and execute our business strategies and plans. Any delay in the execution of our business plans by our executive management team, or any future changes to such management team, could affect our ability to develop, implement and execute our business strategies and plans, which could have a material adverse effect on our business, financial condition and results of operations.

Further, our future business strategies and plans may differ materially, or may continue to evolve, from those we previously pursued. If our business strategies and plans, or our efforts to realize future operational efficiencies, cause disruption in our business or operations or do not achieve the level of success or results we anticipate, our business, financial condition and results of operations will be materially and adversely affected.

Acquisition of new and complementary businesses, products and technologies is a key element of our corporate strategy. Failure to successfully identify and acquire such businesses, products or technologies will limit our business growth and prospects.

An important element of our business strategy is to actively seek to acquire products or companies and to in-license or seek co-promotion rights to additional products. In the past we have acquired Otrexup, NUCYNTA, NUCYNTA ER (both of which were subsequently divested to Collegium in February 2020), CAMBIA, Zipsor, as well as, INDOCIN Products and SPRIX. We cannot be certain that we will be able to successfully identify, pursue and complete any further acquisitions or whether we would be able to successfully integrate or develop any acquired business, product or technology or retain any key employees. If we are unable to enhance and broaden our product offerings, our business and prospects will be limited.

Strategic transactions that fail to achieve the anticipated results and synergies will cause our business to suffer.

We seek to engage in strategic transactions with third parties, such as product or company acquisitions, strategic partnerships, joint ventures, divestitures or business combinations. We may face significant competition in seeking potential strategic partners and transactions, and the negotiation process for acquiring any product or engaging in strategic transactions can be time-consuming and complex. Engaging in strategic transactions, such as acquisitions of companies and product rights, divestitures and commercialization arrangements, may require us to incur non-recurring and other charges, increase our near- and long-term expenditures, pose integration challenges and fail to achieve the anticipated results or synergies or distract our management and business, which may harm our business.

As part of an effort to acquire a product or company or to enter into other strategic transactions, we conduct business, legal and financial due diligence with the goal of identifying, evaluating and assessing material risks involved in the transaction. Despite our efforts, we ultimately may be unsuccessful in ascertaining, evaluating and accurately assessing all such risks and, as a result, might not realize the intended advantages of the transaction. We may also assume liabilities and legal risks in connection with a transaction, including those relating to activities of the seller prior to the consummation of the transaction and contracts that we assume. Failure to realize the expected benefits from acquisitions or strategic transactions that we may consummate, or that we have completed, such as those described above, whether as a result of identified or unidentified risks, integration difficulties, regulatory setbacks, governmental investigations, independent actions of or financial position of our collaborative partners, litigation or other events, could adversely affect our business, results of operations and financial condition.

Failure to integrate any business, product or technology we acquire, will cause our business, financial condition and operating results to suffer.

Integrating any business, product or technology we acquire is expensive and time-consuming and can disrupt and adversely affect our ongoing business, including product sales, and distract our management. Our ability to successfully integrate any business, product or technology we acquire depends on a number of factors, including, but not limited to, our ability to:

- minimize the disruption and distraction of our management and other employees in connection with the integration of any acquired business, product or technology;
- maintain and increase sales of our existing products;
- establish or manage the transition of the manufacture and supply of any acquired product, including the necessary active pharmaceutical ingredients, excipients and components;
- identify and add the necessary sales, marketing, manufacturing, regulatory and other related personnel, capabilities and infrastructure that are required to successfully integrate any acquired business, product or technology;
- manage the transition and migration of all commercial, financial, legal, clinical, regulatory and other pertinent information relating to any acquired business, product or technology;
- comply with legal, regulatory and contractual requirements applicable to any acquired business, product or technology;
- obtain and maintain adequate coverage, reimbursement and pricing from managed care, government and other third-party payors with respect to any acquired product; and
- maintain and extend intellectual property protection for any acquired product or technology.

If we are unable to perform the above functions or otherwise effectively integrate any acquired businesses, products or technologies, our business, financial condition and operating results will suffer.

Our success is dependent in large part upon the continued services of our executive management team with whom we do not have employment agreements.

Our success is dependent in large part upon the continued services of members of our executive management team, and on our ability to attract and retain key management and operating personnel. We do not have agreements with any of our executive officers that provide for their continued employment with us. Management, scientific and operating personnel are in high demand in our industry and are often subject to competing offers. The loss of the services of one or more members of management or key employees or the inability to hire additional personnel as needed could result in delays in the research, development and commercialization of our products and potential product candidates, or otherwise adversely impact our business.

The COVID-19 pandemic has been affecting our business and operations and may continue to affect these operations for a sustained period.

Because COVID-19 impacted our ability to see in-person providers who prescribe our products, we adapted our approach during 2020 and increased virtual visits, ultimately eliminating our in-person sales force in favor a fully digital sales strategy. Additionally, due to the limitations on elective surgeries and changes in patient behavior since the outbreak of COVID-19, we have experienced a decline and subsequent volatility in prescriptions associated with those elective procedures. The extent to which our operations may continue to be impacted by the COVID-19 pandemic will depend largely on future developments, which are highly uncertain and cannot be accurately predicted, including actions by government authorities to contain the outbreak, the emergence of new COVID-19 variants and the related potential for new surges in infections and the impacts of increases in virtual physician visits on prescriber behavior. For example, although many public health restrictions have eased, future surges could result in additional restrictions or other factors that may contribute to decreases in elective procedures. The impact of the pandemic on the global financial markets may reduce our ability to access capital, which could negatively impact our liquidity. We do not yet know the full extent of potential delays or impacts on our business, financing or on healthcare systems or the global economy as a whole. However, these effects could have a material impact on our liquidity, capital resources, operations and business and those of the third parties on which we rely, including suppliers and distributors.

We depend on one qualified supplier for the active pharmaceutical ingredient in each of our products, and we depend on third parties that are single source suppliers to manufacture our products. Insufficient availability of our products or the active pharmaceutical ingredients and other raw materials necessary to manufacture our products, or the inability of our suppliers to manufacture and supply our products, will adversely impact our sales upon depletion of the active ingredient and product inventories.

We have one qualified supplier for the active pharmaceutical ingredient in each of our products. We do not have, and we do not intend to establish in the foreseeable future, internal commercial-scale manufacturing capabilities. Rather, we intend to use the facilities of third parties to manufacture products for commercialization and clinical trials. Our dependence on third

parties for the manufacture of our products and any future product candidates may adversely affect our ability to obtain such products on a timely or competitive basis, if at all. Any stock out, quality concern or failure to obtain sufficient supplies of our products, or the necessary active pharmaceutical ingredients, excipients or components, from our suppliers, including as a result to disruptions to supplier operations resulting from factors such as supply chain delays, public health emergencies, climate events or political unrest, or failures by us to satisfy minimum order requirements due to declines in product demand or otherwise, would adversely affect our business, results of operations and financial condition. In particular, our suppliers may be impacted by ongoing supply chain disruptions and inflationary pressures related to the COVID-19 pandemic and general macroeconomic conditions, which may result in supply delays and cost increases.

The manufacturing process for pharmaceutical products is highly regulated, and regulators may shut down manufacturing facilities that they believe do not comply with regulations. We, our third-party manufacturers and our suppliers are subject to numerous regulations, including current FDA regulations governing manufacturing processes, stability testing, record keeping, product serialization and quality standards. Similar regulations are in effect in other countries. Our third-party manufacturers and suppliers are independent entities who are subject to their own unique operational and financial risks which are out of our control. If we or any third-party manufacturer or supplier fails to perform as required or fails to comply with the regulations of the FDA and other applicable governmental authorities, our ability to deliver adequate supplies of our products to our customers on a timely basis, or to conduct clinical trials, could be adversely affected. The manufacturing processes of our third-party manufacturers and suppliers may also be found to violate the proprietary rights of others. To the extent these risks materialize and adversely affect such third-party manufacturers' and/or suppliers' performance obligations to us, and we are unable to contract for a sufficient supply of required products on acceptable terms, or if we encounter delays and difficulties in our relationships with manufacturers or suppliers, our business, results of operation and financial condition could be adversely affected.

Failure to comply with ongoing regulatory requirements for approved products could adversely impact our ability to commercialize our products and result in increased costs.

We are subject to numerous ongoing regulatory requirements and continual review with respect to products that have obtained regulatory approval. In addition, the discovery of previously unknown problems with a product or manufacturer may result in restrictions on the product, manufacturer or manufacturing facility, including withdrawal of the product from the market. Manufacturers of approved products are also subject to ongoing regulation and inspection, including compliance with FDA regulations governing cGMP or Quality System Regulation (QSR). The FDCA, the CSA and other federal and foreign statutes and regulations govern and influence the testing, manufacturing, packing, labeling, storing, record keeping, safety, approval, advertising, promotion, sale and distribution of our products. In addition, we and our partners are also subject to ongoing DEA regulatory obligations, including annual registration renewal, security, record keeping, theft and loss reporting, periodic inspection and annual quota allotments for the raw material for commercial production of our products. The failure to comply with these regulations could result in, among other things, warning letters, fines, injunctions, civil penalties, recall or seizure of products, total or partial suspension of production, non-renewal of marketing applications or authorizations or criminal prosecution, which could adversely affect our business, results of operations and financial condition.

We are also required to report adverse events associated with our products to the FDA and other regulatory authorities. Unexpected or serious health or safety concerns could result in labeling changes, recalls, market withdrawals or other regulatory actions. Recalls may be issued at our discretion or at the discretion of the FDA or other empowered regulatory agencies.

Our commercialization, collaborative and other arrangements may give rise to disputes over commercial terms, contract interpretation and ownership or protection of our intellectual property and may adversely affect the commercial success of our products.

We currently have or have had in the past collaboration or license arrangements with a number of companies, including commercialization or collaborative arrangements, some of which have been based on less definitive agreements, such as memoranda of understanding, material transfer agreements, options or feasibility agreements.

Commercialization and collaborative relationships are generally complex and can give rise to disputes regarding the relative rights, obligations and revenues of the parties, including the ownership of intellectual property and associated rights and obligations, especially when the applicable collaborative provisions have not been fully negotiated and documented. Such disputes have arisen in the past from time to time and, if they arise again could delay collaborative research, development or commercialization of potential products, and can lead to lengthy, expensive litigation or arbitration. The terms of such arrangements may also limit or preclude us from commercializing products or technologies developed pursuant to such collaborations. Additionally, the commercialization or collaborative partners under these arrangements might breach the terms

of their respective agreements or fail to maintain, protect or prevent infringement of the licensed patents or our other intellectual property rights by third parties. Moreover, negotiating commercialization and collaborative arrangements often takes considerably longer to conclude than the parties initially anticipate, which could cause us to enter into less favorable agreement terms that delay or defer recovery of our development costs and reduce the funding available to support key programs. Any failure by our commercialization or collaborative partners to abide by the terms of their respective agreements with us (including their failure to accurately calculate, report or pay any royalties payable to either us or a third party or their failure to repay, in full or in part, either any outstanding receivables or any other amounts for which we are entitled to reimbursement) may adversely affect our results of operations.

We are not always able to enter into commercialization or collaborative arrangements on acceptable terms, which can harm our ability to develop and commercialize our current and potential future products and technologies. Other factors relating to collaborations that may adversely affect the commercial success of our products include:

- any parallel development by a commercialization or collaborative partner of competitive technologies or products;
- arrangements with commercialization or collaborative partners that limit or preclude us from developing products or technologies;
- premature termination of a commercialization or collaboration agreement or the inability to renegotiate existing agreements on favorable terms; or
- failure by a commercialization or collaborative partner to devote sufficient resources to the development and commercial sales of products using our current and potential future products and technologies.

Our commercialization or collaborative arrangements do not necessarily restrict our commercialization or collaborative partners from competing with us or restrict their ability to market or sell competitive products. Our current and any future commercialization or collaborative partners may pursue existing or other development-stage products or alternative technologies in preference to those being commercialized or developed in collaboration with us.

In addition, contract disputes with customers or other third parties may arise from time to time. Our commercialization or collaborative partners, or customers or other third parties, may also terminate their relationships with us or otherwise decide not to proceed with the development, commercialization or purchase of our products.

We and our commercial partners may be unable to compete successfully in the pharmaceutical industry.

Competition in the pharmaceutical industry is intense and we expect competition to increase. Competing products currently under development or developed in the future may prove superior to our products and may achieve greater commercial acceptance. Most of our principal competitors have substantially greater financial, sales, marketing, personnel and research and development resources than we and our commercial partners do.

On December 15, 2021, we acquired Otrexup. Otrexup competes with other branded methotrexate products, including other injection and auto-injector products. Competition in the methotrexate market also includes tablets and parenteral dosage forms. In addition, other commonly used pharmaceutical treatments for rheumatoid arthritis include analgesics, NSAIDs, corticosteroids and biologic response modifiers.

Pursuant to the Zyla Merger, we acquired SPRIX and two forms of INDOCIN. SPRIX is an NSAID indicated in adult patients for the short-term (up to five days) management of moderate to moderately severe pain that requires analgesia at the opioid level. INDOCIN Products are approved for moderate to severe rheumatoid arthritis including acute flares of chronic disease, moderate to severe ankylosing spondylitis, moderate to severe osteoarthritis, acute painful shoulder (bursitis and/or tendinitis) and acute gouty arthritis. We face and will continue to face competition from other companies in the pharmaceutical, medical devices and drug delivery industries with respect to SPRIX and INDOCIN Products. These products compete with currently marketed oral opioids, transdermal opioids, local anesthetic patches, stimulants and implantable and external infusion pumps that can be used for infusion of opioids and local anesthetics, non-narcotic analgesics, local and topical analgesics and anti-arthritics.

An alternate formulation of diclofenac is the active ingredient in CAMBIA that is approved in the U.S. for the acute treatment of migraines in adults. CAMBIA competes with a number of triptans that are used to treat migraines and certain other headaches. Currently, eight triptans are available generically and sold in the U.S. (almotriptan, eletriptan, frovatriptan, naratriptan, rizatriptan, sumatriptan, sumatriptan-naproxen and zolmitriptan). There are other products prescribed for or under development for the treatment or prevention of migraines that are now or may become competitive with CAMBIA, including

CGRP inhibitor products.

Diclofenac, the active pharmaceutical ingredient in Zipsor, is an NSAID that is approved in the U.S. for the treatment of mild to moderate pain in adults, including the symptoms of arthritis. Both branded and generic versions of diclofenac are marketed in the U.S. Zipsor competes against other drugs that are widely used to treat mild to moderate pain in the acute setting. In addition, a number of other companies are developing NSAIDs in a variety of dosage forms for the treatment of mild to moderate pain and related indications. Other drugs are in clinical development to treat acute pain.

If we are unable to negotiate acceptable pricing or obtain adequate reimbursement for our products from third-party payors, our business will suffer.

Sales of our products depend significantly on the availability of acceptable pricing and adequate reimbursement from third-party payors such as:

- government health administration authorities;
- private health insurers;
- health maintenance organizations;
- managed care organizations;
- pharmacy benefit management companies; and
- other healthcare-related organizations.

If reimbursement is not available for our products or any future product candidates, demand for our products may be limited. Further, any delay in receiving approval for reimbursement from third-party payors could have an adverse effect on our future revenues.

Third-party payors frequently require pharmaceutical companies to negotiate agreements that provide discounts or rebates from list prices and that protect the payors from price increases above a specified annual limit. We have agreed to provide such discounts and rebates to certain third-party payors. We expect increasing pressure to offer larger discounts and rebates or discounts and rebates to a greater number of third-party payors to maintain acceptable reimbursement levels for and access to our products for patients at co-pay levels that are reasonable and customary. Consolidation among large third-party payors may increase their leverage in negotiations with pharmaceutical companies. If we are forced to provide additional discounts and rebates to third-party payors to maintain acceptable access to our products for patients, our results of operations and financial condition could be adversely affected. If third-party payors or wholesalers do not accurately and timely report the eligibility and utilization of our products under discounted programs, our reserves for rebates or other amounts payable to third-party payors may be lower than the amount we are invoiced and we may be required to dispute the amount payable, which would adversely affect our business, financial condition and results of operations. For example, we have had, and continue to have, disputes with managed care providers over rebates related to our products. Even when rebate claims made by such managed care providers are without merit, we may be forced to pay such disputed amounts to the extent our failure to do so could otherwise adversely impact our business, such as our ability to maintain a favorable position on such provider's formulary. In addition, if competitors reduce the prices of their products, or otherwise demonstrate that they are better or more cost effective than our products, this may result in a greater level of reimbursement for their products relative to our products, which would reduce sales of our products and harm our results of operations. The process for determining whether a third-party payor will provide coverage for a product may be separate from the process for setting the price or reimbursement rate that such third-party payor will pay for the product once coverage is approved. Third-party payors may limit coverage to specific products on an approved list, or formulary, which might not include all of the approved products for a particular indication, including one or more of our products. Any third-party payor decision not to approve pricing for, or provide adequate coverage and reimbursement of, our products, including by reducing, limiting or denying reimbursement for new products or excluding products that were previously eligible for reimbursement, would limit the market acceptance and commercial prospects of our products and harm our business, financial condition and results of operations. For example, sales of SPRIX have been negatively impacted by a formulary action by a large PBM in 2020. In addition, any third-party payor decision to impose restrictions, limitations or conditions on prescribing or reimbursement of our products, including on the dosing or duration of prescriptions for our products, would harm our business, financial condition and results of operations.

Business interruptions can limit our ability to operate our business and adversely impact the success of our commercialization partners.

Our operations and infrastructure, and those of our partners, third-party suppliers, manufacturers and vendors are vulnerable to damage or interruption from cyber-attacks and security breaches, human error, natural disasters, fire, flood, the effects of climate change, actual or threatened public health crises, power loss, telecommunications failures, equipment failures, intentional acts of theft, vandalism, terrorism, public health crises and similar events. We have not established a formal disaster recovery plan, and our back-up operations and our business interruption insurance may not be adequate to compensate us for losses that occur. A significant business interruption could result in losses or damages incurred by us and require us to cease or curtail our operations.

Data breaches and cyber-attacks can compromise our intellectual property or other sensitive information and cause significant damage to our business.

In the ordinary course of our business, we collect, maintain and transmit sensitive data on our computer networks and information technology systems, including our intellectual property and proprietary or confidential business information. The secure maintenance of this information is critical to our business. We believe that companies have been increasingly subject to a wide variety of security incidents, cyber-attacks and other attempts to gain unauthorized access, including ransomware attacks. These threats can come from a variety of sources, ranging in sophistication from an individual hacker to a state-sponsored attack and motives (including corporate espionage). Cyber threats may be generic, or they may be custom-crafted to target our information systems. Cyber-attacks are becoming increasingly more prevalent and much harder to detect and defend against. Our network and storage applications and those of our third-party vendors may be subject to unauthorized access by hackers or breached due to operator error, malfeasance or other system disruptions.

Although our Board of Directors, through our Audit Committee, regularly discusses with management our policies and practices regarding information technology systems, information management systems and related infrastructure, including our information technology and information management security, risk management and back-up policies, practices and infrastructure, it is often difficult to anticipate or immediately detect such incidents and the damage that may be caused by such incidents. These data breaches and any unauthorized access or disclosure of our information or intellectual property could compromise our intellectual property and expose sensitive business information, including our financial information or the information of our business partners. Cyber-attacks could cause us to incur significant remediation costs, result in product development delays, disrupt key business operations and divert attention of management and key information technology resources. Our network security and data recovery measures and those of our third-party vendors may not be adequate to protect against such security breaches and disruptions. These incidents could also subject us to liability, expose us to significant expense and cause significant harm to our business.

Despite our corporate structure, creditors of our operating subsidiaries could be successful in piercing the corporate veil and reaching the assets of one another, which could have an adverse effect on us and our operating results, results from continued operations, and financial condition.

Our operating subsidiaries are separate legal entities within our holding company corporate structure. There can be no assurance that our efforts to preclude corporate veil-piercing, alter ego, control person, or other similar claims by creditors of any one particular entity within our corporate structure from reaching the assets of the other entities within our corporate structure to satisfy claims will be successful. If a court were to allow a creditor to pierce the corporate veil and reach the assets of such other entities within our corporate structure, despite such entities not being directly liable for the underlying claims, it could have a material adverse effect on us and our operating results, results from continued operations, and financial condition.

Governmental investigations and inquiries, regulatory actions and lawsuits brought against us by government agencies and private parties with respect to Assertio Therapeutics' historical commercialization of opioids can adversely affect our business, financial condition and results of operations.

As a result of the greater public awareness of the public health issue of opioid abuse, there has been increased scrutiny of, and investigation into, the commercial practices of opioid manufacturers generally by federal, state and local regulatory and governmental agencies, as well as increased legal action brought by state and local governmental entities and private parties. For example, Assertio Therapeutics is currently named as a defendant, along with numerous other manufacturers and distributors of opioid drugs, in multiple lawsuits alleging common-law and statutory causes of action for alleged misleading or otherwise improper marketing and promotion of opioid drugs. Such litigation and related matters are described in "Item 8. Financial Statements and Supplementary Data - Note 13. Commitments and Contingencies."

In March 2017, Assertio Therapeutics received a letter from Sen. Claire McCaskill (D-MO), the then-Ranking Member on the U.S. Senate Committee on Homeland Security and Governmental Affairs, requesting certain information regarding Assertio Therapeutics' historical commercialization of opioid products. Assertio Therapeutics voluntarily furnished information responsive to Sen. McCaskill's request. Assertio Therapeutics has also received subpoenas or civil investigative demands focused on historical promotion and sales of Lazanda, NUCYNTA, and NUCYNTA ER from various state attorneys general seeking documents and information regarding our historical sales and marketing of opioid products. In addition, the CDI has issued a subpoena to Assertio Therapeutics seeking information relating to its historical sales and marketing of Lazanda. The CDI subpoena also seeks information on Gralise, a non-opioid product which Assertio Therapeutics divested to Alvogen in 2020. Assertio Therapeutics has also received subpoenas from the DOJ and the New York Department of Financial Services seeking documents and information regarding its historical sales and marketing of opioid products. Assertio Therapeutics also from time to time receives and complies with subpoenas from governmental authorities related to investigations primarily focused on third parties, including healthcare practitioners. Assertio Therapeutics is cooperating with the foregoing governmental investigations and inquiries. These matters are described in "Item 8. Financial Statements and Supplementary Data - Note 13. Commitments and Contingencies."

These and other governmental investigations or inquiries, as well as lawsuits, in which we are and may become involved may result in additional claims and lawsuits being brought against us by governmental agencies or private parties. It is not possible at this time to predict either the outcome or the potential financial impact of the opioid-related lawsuits mentioned above or any governmental investigations or inquiries of us or any lawsuits or regulatory responses that may result from such investigations or inquiries or otherwise. It is also not possible at this time to predict the additional expenses related to such ongoing opioid-related litigation and investigations, which may be significant. The initiation of any additional investigation, inquiry or lawsuit relating to us, the costs and expenses associated therewith, or any assertion, claim or finding of wrongdoing by us, could:

- adversely affect our business, financial condition and results of operations;
- result in reputational harm and reduced market acceptance and demand for our products;
- harm our ability and our commercial partners' ability to market our products;
- cause us to incur significant liabilities, costs and expenses; and
- cause our senior management to be distracted from execution of our business strategy.

Furthermore, these pending investigations, inquiries and lawsuits could negatively affect our ability to raise capital and impair our ability to engage in strategic transactions.

We face risks relating to product liability losses and other litigation liability for which we may be unable to maintain or obtain adequate protection.

We are or may be involved in various legal proceedings, lawsuits and certain government inquiries and investigations, including with respect to, but not limited to, patent infringement, product liability, personal injury, antitrust matters, securities class action lawsuits, breach of contract, Medicare and Medicaid reimbursement claims, opioid-related matters, promotional practices and compliance with laws relating to the manufacture and sale of controlled substances. For example, we, along with other opioid manufacturers and, often, distributors, have been named in lawsuits related to the manufacturing, distribution, marketing and promotion of opioids. In addition, we have also received various subpoenas and requests for information related to the distribution, marketing and sale of our former opioid products. Moreover, we recently settled coverage litigation with our primary product liability insurer regarding whether opioid litigation claims noticed by us are covered by our policies with such insurer. Such litigation and related matters are described in "Item 8. Financial Statements and Supplementary Data - Note 13. Commitments and Contingencies." If any of these legal proceedings, inquiries or investigations were to result in an adverse outcome, the impact could have a material adverse effect on our competitive position, business, financial condition, results of operations and cash flows.

We have obtained product liability insurance for sales of our products and any future clinical trials currently underway, but:

- we may be unable to maintain product liability insurance on acceptable terms;
- we may be unable to obtain product liability insurance for future trials;
- we may be unable to obtain product liability insurance for future products; or
- our insurance may not provide adequate protection against potential liabilities (including pending and future claims relating to opioid litigation), or may provide no protection at all.

Our inability to obtain or maintain adequate insurance coverage at an acceptable cost could prevent or inhibit the commercialization of our products. Defending a lawsuit could be costly and significantly divert management's attention from conducting our business. If third parties were to bring a successful product liability or other claims, or series of claims, against us for uninsured liabilities, or in excess of our insured liability limits, our business, results of operations and financial condition could be adversely affected.

Risks Related to Our Industry

We are subject to risks from changes in laws and regulations applicable to, and increased scrutiny and investigations of, the pharmaceutical industry, including the opioid market, which can adversely affect our business, financial condition and results of operations.

The manufacture, marketing, sale, promotion, and distribution of our products are subject to comprehensive government regulation. Changes in laws and regulations applicable to, and increased scrutiny and investigations of, the pharmaceutical industry, including the opioid market, could adversely affect our business and our ability to commercialize our products, thereby adversely affecting our financial condition and results of operations. For example, various federal and state governmental entities, including the U.S. Department of Justice (DOJ) and a number of state attorneys general, have launched investigations into the marketing and sales practices of pharmaceutical companies that market or have marketed opioid and non-opioid pain medications, including us. For instance, we have received subpoenas or civil investigative demands from the DOJ, several state attorneys general, the New York Department of Financial Services and other state regulators seeking documentation and information in connection with Assertio Therapeutics' historical sales and marketing of opioid products.

Any negative regulatory request or action taken by a regulatory agency, including the FDA, with respect to our products could adversely affect our ability to commercialize such products or otherwise adversely affect our business, results of operations, and financial condition and may result in increased administrative costs in responding to government inquiries.

The regulatory actions described above, as well as the related litigation and investigations, not only create financial and operational pressure on us, but could also put pressure on other companies in our industry and with which we have contractual arrangements. Such pressures could negatively impact our contractual counterparties and may give rise to contract cancellations, breaches or rejections in bankruptcy. Furthermore, in the event that a contract counterparty seeks to reject a contract, we may have an unsecured claim for damages, which may not be paid in full (if at all), and we may be forced to return payments made within 90 days of the date of filing for bankruptcy protection. If any of these events should occur, it may have a material adverse effect on our business, financial condition and results of operations.

Pharmaceutical marketing is subject to substantial regulation in the U.S. and any failure by us or our commercial and collaborative partners to comply with applicable statutes or regulations can adversely affect our business.

Our current marketing activities associated with our products, as well as marketing activities related to any other products that we may acquire, or for which we or our collaborative partners obtain regulatory approval, are and will be subject to numerous federal and state laws governing the marketing and promotion of pharmaceutical products. The FDA regulates post-approval promotional labeling and advertising to ensure that they conform to statutory and regulatory requirements. In addition to FDA restrictions, the marketing of prescription drugs is subject to laws and regulations prohibiting fraud and abuse under government healthcare programs. For example, the federal healthcare program anti-kickback statute prohibits giving things of value to induce the prescribing or purchase of products that are reimbursed by federal healthcare programs, such as Medicare and Medicaid. In addition, federal false claims laws prohibit any person from knowingly presenting, or causing to be presented, a false claim for payment to the federal government. Under these laws, in recent years, the federal government has brought claims against drug manufacturers alleging that certain marketing activities caused false claims for prescription drugs to be submitted to federal programs. Many states have similar statutes or regulations that apply to items and services reimbursed under Medicaid and other state programs, and, in some states, such statutes or regulations apply regardless of the payor.

Governmental authorities may also seek to hold us responsible for any failure of our commercialization or collaborative partners to comply with applicable statutes or regulations. If we, or our commercial or collaborative partners, fail to comply with applicable FDA regulations or other laws or regulations relating to the marketing of our products, we could be subject to criminal prosecution, civil penalties, seizure of products, injunctions and exclusion of our products from reimbursement under government programs, as well as other regulatory or investigatory actions against our future product candidates, our commercial or collaborative partners or us.

We may incur significant liability if it is determined that we are promoting or have in the past promoted the "off-label" use of drugs.

Companies may not promote drugs for "off-label" use—that is, uses that are not described in the product's labeling and that differ from those approved by the FDA. Physicians may prescribe drug products for off-label uses, and such off-label uses are common across some medical specialties. Although the FDA and other regulatory agencies do not regulate a physician's choice of treatments, the FDCA and FDA regulations restrict communications on the subject of off-label uses of drug products by pharmaceutical companies. The Office of Inspector General of the U.S. Department of Health and Human Services (OIG), the FDA, and the DOJ all actively enforce laws and regulations prohibiting promotion of off-label use and the promotion of products for which marketing clearance has not been obtained. If any of the investigations of the DOJ, the attorneys general identified above, and the CDI, as well as the actions filed by states and municipalities against us, result in a finding that we engaged in wrongdoing, including sales and marketing practices for our former, current and/or future products that violate applicable laws and regulations, we would be subject to significant liabilities. Such liabilities would harm our business, financial condition and results of operations as well as divert management's attention from our business operations and damage our reputation. For additional information regarding potential liability, see also " - *Governmental investigations and inquiries, regulatory actions and lawsuits brought against us by government agencies and private parties with respect to Assertio Therapeutics' historical commercialization of opioids can adversely affect our business, financial condition and results of operations."*

Healthcare reform can increase our expenses and adversely affect the commercial success of our products.

There have been, and there will continue to be, legislative, regulatory and third-party payor proposals to change the healthcare system in ways that could impact our ability to commercialize our products profitably. We anticipate that the federal and state legislatures and the private sector will continue to consider and may adopt and implement healthcare policies, such as the ACA and the Health Care and Education Reconciliation Act, intended to curb rising healthcare costs. These cost-containment measures may include: controls on government-funded reimbursement for drugs; new or increased requirements to pay prescription drug rebates to government healthcare programs; controls on healthcare providers; challenges to or limits on the pricing of drugs, including pricing controls or limits or prohibitions on reimbursement for specific products through other means; requirements to try less expensive products or generics before a more expensive branded product; and public funding for cost effectiveness research, which may be used by government and private third-party payors to make coverage and payment decisions.

For example, the ACA includes numerous provisions that affect pharmaceutical companies. For example, the ACA seeks to expand healthcare coverage to the uninsured through private health insurance reforms and an expansion of Medicaid. The ACA also imposes substantial costs on pharmaceutical manufacturers, such as an increase in liability for rebates paid to Medicaid, new drug discounts that must be offered to certain enrollees in the Medicare prescription drug benefit and an annual fee imposed on all manufacturers of brand prescription drugs in the U.S. The ACA also requires increased disclosure obligations and an expansion of an existing program requiring pharmaceutical discounts to certain types of hospitals and federally subsidized clinics and contains cost-containment measures that could reduce reimbursement levels for pharmaceutical products. The ACA also includes provisions known as the Physician Payments Sunshine Act, which require manufacturers of drugs, biologics, devices and medical supplies covered under Medicare and Medicaid to record any transfers of value to physicians and teaching hospitals and to report this data to the Centers for Medicare and Medicaid Services for subsequent public disclosure. Similar reporting requirements have also been enacted on the state level domestically, and an increasing number of countries worldwide either have adopted or are considering similar laws requiring transparency of interactions with healthcare professionals. Failure to report appropriate data may result in civil or criminal fines and/or penalties.

Any new laws or regulations that have the effect of imposing additional costs or regulatory burden on pharmaceutical manufacturers, or otherwise negatively affect the industry, could adversely affect our ability to successfully commercialize our products and any future product candidates. The implementation of any price controls, caps on prescription drugs or price transparency requirements, whether at the federal level or state level, could adversely affect our business, operating results and financial condition.

We are subject to risks from liability for infringing the intellectual property of others.

Our ability to develop our technologies and to make commercial sales of products using our technologies also depends on not infringing other patents or intellectual property rights. We are not aware of any such intellectual property claims directly against us. The pharmaceutical industry has experienced extensive litigation regarding patents and other intellectual property rights. Patents issued to third parties could in the future be asserted against us, although we believe that we do not infringe any

valid claim of any patents. If claims concerning any of our products were to arise and it was determined that these products infringe a third party's proprietary rights, we or our commercial partners could be subject to substantial damages for past infringement or could be forced to stop or delay activities with respect to any infringing product, unless we or our commercial partner, as applicable, can obtain a license, or our product may need to be redesigned so that it does not infringe upon such third party's patent rights, which may not be possible or could require substantial funds or time. Such a license may not be available on acceptable terms, or at all. Even if we, our collaborators or our licensors were able to obtain a license, the rights may be nonexclusive, which could give our competitors access to the same intellectual property. In addition, any public announcements related to litigation or interference proceedings initiated or threatened against us, even if such claims are without merit, could cause our stock price to decline.

Settlements to ANDA litigation can be challenged and have the potential to lead to significant damage awards.

In circumstances where we settle patent litigation claims asserted against generic drug companies, the terms of these settlements have the potential to generate new litigation, such as our recent litigation over a term of our Glumetza (metformin) ANDA settlement. Entry into other patent litigation settlement agreements subjects us to additional potential claims challenging these settlements under antitrust laws or other novel theories.

Risks Related to Our Financial Position

Our existing capital resources are not necessarily sufficient to fund our future operations or product acquisitions and strategic transactions that we may pursue.

We fund our operations primarily through revenues from product sales and do not have any committed sources of capital. To the extent that our existing capital resources and revenues from ongoing operations are insufficient to fund our future operations, or product acquisitions and strategic transactions that we may pursue, or our litigation-related costs, we will have to raise additional funds through the sale of our equity securities, through additional debt financing, from development and licensing arrangements or from the sale of assets. We may be unable to raise such additional capital on a timely basis and on favorable terms, or at all. If we raise additional capital by selling our equity or convertible debt securities, the issuance of such securities could result in dilution of our shareholders' equity positions.

Our failure to generate sufficient cash flow from our business to make payments on our debt would adversely affect our business, financial condition and results of operations.

We have significant indebtedness under the 13% senior secured notes due 2024 that we assumed in the Zyla Merger (the Secured Notes). Our ability to make scheduled payments of the principal of, to pay interest on or to refinance the Secured Notes and any additional debt obligations we may incur depends on our future performance, which is subject to economic, financial, competitive and other factors that may be beyond our control. Our business may not generate cash flow from operations in the future sufficient to service our debt and to make necessary capital expenditures. If we are unable to generate sufficient cash flow or if our results of operations cause us to fail to comply with our financial covenants, we may be required to take one or more actions, including refinancing our debt, significantly reducing expenses, renegotiating our debt covenants, restructuring our debt, selling assets or obtaining additional capital, each of which may be on terms that may be onerous, highly dilutive or disruptive to our business. Our ability to refinance our indebtedness will depend on the capital markets and our financial condition at such time. We may not be able to engage in any of these activities or engage in these activities on commercially reasonable or acceptable terms, which could result in a default on our obligations, including the Secured Notes.

We may seek to refinance all or a portion of our outstanding indebtedness in the future. Any such refinancing would depend on the capital markets and business and financial conditions at the time, which could affect our ability to obtain attractive terms if or when desired or at all.

In addition, our significant indebtedness, combined with our other financial obligations and contractual commitments, could have other important consequences to our business. For example, it could:

- make it more difficult for us to meet our payment and other obligations under our indebtedness;
- result in other events of default under our indebtedness, which events of default could result in all of our debt becoming immediately due and payable;
- make us more vulnerable to adverse changes in general economic, industry and competitive conditions and adverse changes in government regulation;

- limit our ability to borrow additional amounts for working capital and other general corporate purposes, including funding possible acquisitions of, or investments in, new and complementary businesses, products and technologies, which is a key element of our corporate strategy;
- subject us to the risk of increased sensitivity to interest rate increases on our indebtedness with variable interest rates;
- require the dedication of a substantial portion of our cash flow from operations to service our indebtedness, thereby reducing the amount of our cash flow available for other purposes, including working capital, business development activities, any future clinical trials and/or research and development, capital expenditures and other general corporate purposes;
- limit our flexibility in planning for, or reacting to, changes in our business and our industry; and
- put us at a disadvantage compared to our competitors who have less debt.

Any of these factors can adversely affect our business, financial condition and results of operations. In addition, if we incur additional indebtedness, the risks related to our business and our ability to service or repay our indebtedness would increase.

We have incurred operating losses in the past and may incur operating losses in the future.

We have incurred net losses in many years. We may continue to incur operating losses in future years. Any such losses may have an adverse impact on our total assets, shareholders' equity and working capital.

We have significant amounts of long-lived assets which depend upon future positive cash flows to support the values recorded in our balance sheet. We are subject to increased risk of future impairment charges should actual financial results differ materially from our projections.

Our consolidated balance sheet contains significant amounts of long-lived assets, including intangible assets representing the product rights which we have been acquired. We review the carrying value of our long-lived assets when indicators of impairment are present. Conditions that could indicate impairment of long-lived assets include, but are not limited to, a significant adverse change in market conditions, significant competing product launches by our competitors, significant adverse change in the manner in which the long-lived asset is being used and adverse legal or regulatory outcomes. In performing our impairment tests, which assess the recoverability of our assets, we utilize our future projections of cash flows. Projections of future cash flows are inherently subjective and reflect assumptions that may or may not ultimately be realized. Significant assumptions utilized in our projections include, but are not limited to, grouping long-lived assets at the lowest level for which there are identifiable cash flows that are largely independent of the cash flows of other assets and liabilities, our evaluation of the market opportunity for our products, the current and future competitive landscape and resulting impacts to product pricing, future regulatory actions, planned strategic initiatives and the realization of benefits associated with our existing patents. Given the inherent subjectivity and uncertainty in projections, we could experience significant unfavorable variances in future periods or revise our projections downward. This would result in an increased risk that our long-lived assets may be impaired.

Our customer concentration can materially adversely affect our financial condition and results of operations.

We sell a significant amount of our products to a limited number of independent wholesale drug distributors. If we were to lose the business of one or more of these distributors, if any of these distributors failed to fulfill their obligations, if any of these distributors experienced difficulty in paying us on a timely basis, or if any of these distributors negotiated lower pricing or extended payment terms, it could have a material adverse effect on our competitive position, business, financial condition, results of operations and cash flows.

Our product revenues have typically been lower in the first quarter of the year as compared to the fourth quarter of the preceding year.

Our product revenues have typically been lower in the first quarter of the year as compared to the fourth quarter of the preceding year. We believe this arises primarily as a result of wholesalers' reductions of inventory of our products in the first quarter and annual changes in health insurance plans that occur at the beginning of the calendar year.

Our wholesalers typically end the calendar year with higher levels of inventory of our products than at the end of the first quarter of the following year. As a result, in such first quarters, net sales are typically lower than would otherwise have

been the case as a result of the reduction of product inventory at our wholesalers. Any material reduction by our wholesalers of their inventory of our products in the first quarter of any calendar year as compared to the fourth quarter of the preceding calendar year can adversely affect our operating results and can cause our stock price to decline.

Many health insurance plans and government programs reset annual limits on deductibles and out-of-pocket costs at the beginning of each calendar year and require participants to pay for substantially all of the costs of medical services and prescription drug products until such deductibles and annual out-of-pocket cost limits are met. In addition, enrollment in high-deductible health insurance plans has increased significantly in recent years. As a result of these factors, patients may delay filling or refilling prescriptions for our products or substitute less expensive generic products until such deductibles and annual out-of-pocket cost limits are met. Any reduction in the demand for our products, including those marketed by our commercialization partners as a result of the foregoing factors or otherwise, can adversely affect our business, operating results and financial condition.

Changes in fair value of contingent consideration obligation assumed as part of the Zyla Merger can adversely affect our results of operations.

Contingent consideration obligations arise from the INDOCIN Product and relate to the potential future contingent milestone payments and royalties payable under the respective agreements. The contingent consideration is initially recognized at its fair value on the acquisition date and is remeasured to fair value at each reporting date until the contingency is resolved with changes in fair value recognized in earnings. The fair value of the contingent consideration is determined using an option pricing model under the income approach based on estimated INDOCIN Product revenues through January 2029 and discounted to present value. The fair value measurement is based on significant inputs not observable in the market and thus represents a Level 3 measurement as defined in fair value measurement accounting. The significant assumptions used in the calculation of the fair value included projections of future INDOCIN Product revenues, revenue volatility, discount rate, and credit spread. Significant judgment is employed in determining these assumptions as of the acquisition date and for each subsequent period. Updates to assumptions could have a significant impact on our results of operations in any given period.

If we are unable to satisfy regulatory requirements relating to internal controls, our stock price could suffer.

Section 404 of the Sarbanes-Oxley Act of 2002 requires companies to conduct a comprehensive evaluation of the effectiveness of their internal control over financial reporting. At the end of each fiscal year, we must perform an evaluation of our internal control over financial reporting, include in our annual report the results of the evaluation and have our external auditors also publicly attest to the effectiveness of our internal control over financial reporting.

Our ability to produce accurate financial statements and comply with applicable laws, rules and regulations is largely dependent on our maintenance of internal control and reporting systems, as well as on our ability to attract and retain qualified management and accounting personnel to further develop our internal accounting function and control policies. If we fail to effectively establish and maintain such reporting and accounting systems or fail to attract and retain personnel who are capable of designing and operating such systems, these failures will increase the likelihood that we may be required to restate our financial results to correct errors or that we will become subject to legal and regulatory infractions, which may entail civil litigation and investigations by regulatory agencies including the SEC. In addition, if material weaknesses are found in our internal controls in the future, if we fail to complete future evaluations on time or if our external auditors cannot attest to the effectiveness of our internal control over financial reporting, we could fail to meet our regulatory reporting requirements and be subject to regulatory scrutiny and a loss of public confidence in our internal controls, which could have an adverse effect on our stock price or expose us to litigation or regulatory proceedings, which may be costly or divert management attention.

Our financial results are impacted by management's assumptions and use of estimates.

The preparation of financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the amounts reported in the consolidated financial statements and accompanying notes. Estimates are used when accounting for amounts recorded in connection with acquisitions, including initial fair value determinations of assets and liabilities as well as subsequent fair value measurements. Additionally, estimates are used in determining items such as product returns, rebates, evaluation of impairment of intangible assets, fair value of contingent consideration obligation and taxes on income. Although management believes these estimates are based upon reasonable assumptions within the bounds of its knowledge of our business and operations, actual results could differ materially from these estimates. Refer to the Critical Accounting Policies and Significant Estimates section within "Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations."

Risks Related to Future Product Development

Failure to obtain regulatory approval for our products, our raw materials or future product candidates, will limit our ability to commercialize our products, and our business will suffer.

The regulatory process is expensive and time consuming. Even after investing significant time and expenditures on clinical trials, we may not obtain regulatory approval of any future product candidates. Data obtained from clinical trials are susceptible to varying interpretations, which could delay, limit or prevent regulatory approval, and the FDA may not agree with our methods of clinical data analysis or our conclusions regarding safety and/or efficacy. Significant clinical trial delays could impair our ability to commercialize any future products and could allow our competitors to bring products to market before we do. In addition, changes in regulatory policy for product approval during the period of product development and regulatory agency review of each submitted new application may cause delays or rejections. Even if we receive regulatory approval, this approval may entail limitations on the indicated uses for which we can market a product.

We are subject to risks associated with NDAs submitted under Section 505(b)(2) of the FDCA.

The products we and our collaborative partners develop or acquire generally are or will be submitted for approval under Section 505(b)(2) of the FDCA, which was enacted as part of the Drug Price Competition and Patent Term Restoration Act of 1984, otherwise known as the Hatch-Waxman Act. Section 505(b)(2) permits the submission of an NDA where at least some of the information required for approval comes from studies not conducted by or for the applicant and for which the applicant has not obtained a right of reference. For instance, the NDA for Cambia relies on the FDA's prior approval of Cataflam, the diclofenac initially approved by the FDA.

For NDAs submitted under Section 505(b)(2) of the FDCA, the patent certification and related provisions of the Hatch-Waxman Act apply. In accordance with the Hatch-Waxman Act, such NDAs may be required to include certifications, known as "Paragraph IV certifications," that certify any patents listed in the Orange Book publication in respect to any product referenced in the 505(b)(2) application are invalid, unenforceable and/or will not be infringed by the manufacture, use or sale of the product that is the subject of the 505(b)(2) application. Under the Hatch-Waxman Act, the holder of the NDA which the 505(b)(2) application references may file a patent infringement lawsuit after receiving notice of the Paragraph IV certification. Filing of a patent infringement lawsuit triggers a one-time automatic 30-month stay of the FDA's ability to approve the 505(b)(2) application. Accordingly, we may invest a significant amount of time and expense in the development of one or more products only to be subject to significant delay and patent litigation before such products may be commercialized, if at all. A Section 505(b)(2) application may also not be approved until any non-patent exclusivity, such as exclusivity for obtaining approval of a new chemical entity, listed in the Orange Book for the referenced product has expired.

The FDA may also require us to perform one or more additional clinical studies or measurements to support the change from the approved product. The FDA may then approve the new formulation for all or only some of the indications sought by us. If the FDA disagrees with the use of the Section 505(b)(2) regulatory pathway for future product candidates, we would need to reconsider our plans and might not be able to obtain approval for any such product candidates in a timely or cost-efficient manner, or at all. The FDA may also reject our future Section 505(b)(2) submissions and may require us to file such submissions under Section 501(b)(1) of the FDCA, which could be considerably more expensive and time-consuming.

Risks Related to Share Ownership and Other Stockholder Matters

The market price of our common stock historically has been volatile. Our results of operations have and may continue to fluctuate and affect our stock price.

The trading price of our common stock has been, and is likely to continue to be, volatile and could be subject to wide fluctuations in response to various factors, some of which are beyond our control. Factors affecting our operating results and that could adversely affect our stock price include:

- the degree of commercial success and market acceptance of our products;
- the outcome of opioid-related investigations, opioid-related litigation and related claims for insurance coverage, and other disputes and litigation, and the costs and expenses associated therewith;
- filings and other regulatory or governmental actions, investigations or proceedings related to our products and any future product candidates and those of our commercialization and collaborative partners;
- developments concerning proprietary rights, including patents, infringement allegations, inter parties review proceedings and litigation matters;

- legal and regulatory developments in the U.S.;
- actions taken by industry stakeholders affecting the market for our products;
- our ability to generate sufficient cash flow from our business to make payments on our indebtedness;
- our and our commercialization and collaborative partners' compliance or noncompliance with legal and regulatory requirements and with obligations under our collaborative agreements;
- our ability to successfully develop and execute our digital and non-personal sales and marketing strategies;
- our plans to acquire, in-license or co-promote other products or compounds or acquire or combine with other companies, and our degree of success in realizing the intended advantages of, and mitigating any risks associated with, any such transaction;
- adverse events related to our products, including recalls;
- interruptions of manufacturing or supply, or other manufacture or supply difficulties;
- variations in revenues obtained from commercialization and collaborative agreements, including contingent milestone payments, royalties, license fees and other contract revenues, including nonrecurring revenues, and the accounting treatment with respect thereto;
- adverse events or circumstances related to our peer companies or our industry or the markets for our products;
- adoption of new technologies by us or our competitors;
- our compliance with the terms and conditions of the agreements governing our indebtedness;
- sales of large blocks of our common stock; and
- variations in our operating results, earnings per share, cash flows from operating activities, deferred revenue, and other financial metrics and non-financial metrics, and how those results are measured, presented and compare to our financial and operating projections and analyst expectations.

As a result of these and other such factors, our stock price may continue to be volatile and investors may be unable to sell their shares at a price equal to, or above, the price paid. Any significant drops in our stock price could give rise to shareholder lawsuits, which are costly and time-consuming to defend against and which may adversely affect our ability to raise capital while the suits are pending, even if the suits are ultimately resolved in our favor.

In addition, if the market for pharmaceutical stocks or the stock market in general experiences uneven investor confidence, the market price of our common stock could decline for reasons unrelated to our business, operating results or financial condition. For example, if one or more securities or industry analysts downgrades our stock or publishes an inaccurate research report about our company, the market price for our common stock would likely decline. The market price of our common stock might also decline in reaction to events that affect other companies within, or outside, our industry even if these events do not directly affect us.

Our common stock may be delisted from the Nasdaq Capital Market if we are unable to maintain compliance with Nasdaq's continued listing standards.

Our common stock is listed on the Nasdaq Capital Market. There are a number of continued listing requirements that we must satisfy in order to maintain our listing on The Nasdaq Capital Market, including the requirement to maintain a minimum bid price of at least $1.00 (the "Bid Price Rule"). If a deficiency with respect to this requirement continues for a period of 30 consecutive business days, Nasdaq may require us to satisfy a minimum bid price per share of our common stock of at least $1.00 for a period in excess of ten consecutive business days, but generally no more than 20 consecutive business days, before determining that we have demonstrated an ability to maintain long-term compliance with the Bid Price Rule. Although we are currently in compliance with the Bid Price Rule, we have been unable to comply with this rule in the past and for periods in 2021 our continued listing on the Nasdaq Capital Market required the grant of a grace period from Nasdaq and the implementation of a one-for-four reverse stock split. If we fail to comply with the Bid Price Rule in the future, there can be no assurance that we will be granted such grace periods or that we will be able to receive the necessary shareholder approval to implement an additional reverse stock split. In particular, we may encounter difficulties obtaining such shareholder approval due to our heavily retail investor shareholder base, which may also affect our ability to obtain shareholder approval of other significant corporate actions.

Any delisting of our common stock would likely adversely affect the market liquidity and market price of our common stock and our ability to obtain financing for the continuation of our operations and/or result in the loss of confidence by investors.

We are a "smaller reporting company" and we take advantage of reduced disclosure and governance requirements applicable to such companies, which could result in our common stock being less attractive to investors.

We are a "smaller reporting company" as defined in SEC rules, and we take advantage of certain exemptions from various reporting requirements that are applicable to other public companies that are not smaller reporting companies including, but not limited to, not being required to comply with reduced disclosure obligations regarding executive compensation in our periodic reports and proxy statements. We cannot predict if investors will find our common stock less attractive because we will rely on these exemptions. If investors find our common stock less attractive as a result of our reduced reporting requirements, there may be a less active trading market for our common stock and our stock price may be more volatile. We may also be unable to raise additional capital as and when we need it.

Our business could be impacted as a result of actions by activist shareholders, including as a result of a potential proxy contest for the election of directors at our annual meeting.

The Company was subjected to a proxy contest in the run up to its 2016 Annual Meeting of Shareholders, which resulted in the negotiation of changes to the Board of Directors and substantial costs being incurred. A future proxy contest would require us to incur significant legal fees and proxy solicitation expenses and require significant time and attention by management and the Board of Directors. The potential of a proxy contest could interfere with our ability to execute our strategic plan, give rise to perceived uncertainties as to our future direction, adversely affect our relationships with customers, suppliers, investors, prospective and current team members and others, result in the loss of potential business opportunities, or make it more difficult to attract and retain qualified personnel, any of which could materially and adversely affect our business and operating results.

We may also be subject, from time to time, to other legal and business challenges in the operation of our company due to actions instituted by activist shareholders. Responding to such actions could be costly and time-consuming.

We are subject to risks related to unsolicited takeover attempts in the future.

We have in the past and may in the future be subject to unsolicited attempts to gain control of our company. Responding to any such attempt would distract management attention away from our business and would require us to incur significant costs. Moreover, any unsolicited takeover attempt may disrupt our business by causing uncertainty among current and potential employees, producers, suppliers, customers and other constituencies important to our success, which could negatively impact our financial results and business initiatives. Other disruptions to our business include potential volatility in our stock price and potential adverse impacts on the timing of, and our ability to consummate, acquisitions of products and companies.

ITEM 1B. UNRESOLVED STAFF COMMENTS

None.

ITEM 2. PROPERTIES

Our corporate headquarters is located in Lake Forest, Illinois, where we lease approximately 31,000 square feet of office space (the Lake Forest lease). We have the right to renew the term of the Lake Forest lease for one period of five years, provided that written notice is made to the Landlord no later than twelve months prior to the expiration of the initial term of the lease, which is on December 31, 2023

Prior to our corporate headquarters relocation in 2018, we had leased our previous corporate office in Newark, California (the Newark lease) which terminates at the end of November 2022 and will not be renewed. The Newark lease is currently partially subleased through the lease term.

In connection with the Zyla Merger, we assumed an operating lease for the corporate offices in Wayne, Pennsylvania, which terminated in February 2022. For additional information regarding the Lake Forest, Newark, and Wayne Leases, see "Item 8. Financial Statements and Supplementary Data - Note 12. Leases."

ITEM 3. LEGAL PROCEEDINGS

For a description of our material pending legal proceedings, see "Item 8. Financial Statements and Supplementary Data - Note 13. Commitments and Contingencies."

ITEM 4. MINE SAFETY DISCLOSURES

Not applicable.

PART II

ITEM 5. MARKET FOR THE REGISTRANT'S COMMON EQUITY, RELATED SHAREHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES

Market Information and Holders of Common Stock

Our common stock trades on the Nasdaq Capital Market (Nasdaq) under the symbol "ASRT." As of December 31, 2021, there were 24 shareholders of record for our common stock, one of which is Cede & Co., a nominee for Depository Trust Company, or DTC. All of the shares of common stock held by brokerage firms, banks and other financial institutions as nominees for beneficial owners are deposited into participant accounts at DTC and are therefore considered to be held of record by Cede & Co. as one shareholder. Accordingly, the number of holders of record does not include beneficial owners whose shares are held by nominees in street name.

Securities Authorized for Issuance Under Equity Compensation Plans

Information regarding securities authorized for issuance under our equity compensation plans is contained in Part III, Item 14 of this Annual Report.

Dividends

We have never declared or paid any cash dividends on our capital stock. We currently intend to retain all available funds and any future earnings to support our operations and finance the growth and development of our business. We do not intend to pay cash dividends on our common stock for the foreseeable future. In addition, our ability to pay cash dividends on our common stock may be prohibited or limited by the terms of any future debt financing arrangement. Any return to shareholders will therefore be limited to the increase, if any, of our stock price.

Recent Sales of Unregistered Securities

We did not sell any equity securities during the period covered by this Annual Report that were not registered under the Securities Act.

Stock Performance Graph

We are a smaller reporting company, as defined by Rule 12b-2 of the Exchange Act, and therefore are not required to provide the stock performance graph.

Issuer Purchases of Equity Securities

We did not repurchase any shares of our common stock during the period covered by this Annual Report, except for shares surrendered to us, as reflected in the following table, to satisfy tax withholding obligations in connection with the vesting of equity awards.

	(a) Total Number of Shares (or Units) Purchased [1]	(b) Average Price Paid per Share	(c) Total Number of Shares (or Units) Purchased as Part of Publicly Announced Plans or Programs	(d) Maximum Number (or Approximate Dollar Value) of Shares (or Units) that May Yet Be Purchased Under the Plans or Programs
October 1, 2021 – October 31, 2021	0	$0.00	N/A	N/A
November 1, 2021 - November 30, 2021	1,795	$1.36	N/A	N/A
December 1, 2021 - December 31, 2021	564	$1.42	N/A	N/A
Total	2,359	$1.38		

(1) Consists of shares withheld to pay employees' tax liability in connection with the vesting of restricted stock units granted under the our stock-based compensation plans. These shares may be deemed to be "issuer purchases" of shares.

ITEM 6. [RESERVED]

ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following discussion and analysis of our financial condition and results of operations should be read in conjunction with our historical consolidated financial statements and the related notes thereto included in this Annual Report. In addition to historical information, some of the information contained in this discussion and analysis or set forth elsewhere in this Annual Report, including information with respect to our plans and strategy for our business and related financing, includes forward-looking statements that involve risks and uncertainties. As a result of many factors, including those factors set forth in the "Risk Factors" section of this Annual Report, our actual results could differ materially from the results described in or implied by the forward-looking statements contained in the following discussion and analysis.

Overview

We are a specialty pharmaceutical company that sells commercial products to wholesale distributors and specialty pharmacies in the United States. Our primary marketed products include:

INDOCIN® (indomethacin) Suppositories INDOCIN® (indomethacin) Oral Suspension	A suppository form and oral solution of indomethacin used in the hospital as well as in the out-patient setting. Both products are nonsteroidal anti-inflammatory drug (NSAID), approved for: • Moderate to severe rheumatoid arthritis including acute flares of chronic disease • Moderate to severe ankylosing spondylitis • Moderate to severe osteoarthritis • Acute painful shoulder (bursitis and/or tendinitis) • Acute gouty arthritis
CAMBIA® (diclofenac potassium for oral solution)	A prescription NSAID indicated for the acute treatment of migraine attacks with or without aura in adults 18 years of age or older. CAMBIA can help patients with migraine pain, nausea, photophobia (sensitivity to light), and phonophobia (sensitivity to sound). CAMBIA is not a pill, it is a powder, and combining CAMBIA with water activates the medicine in a unique way.
Otrexup® (methotrexate) injection for subcutaneous use	A once weekly single-dose auto-injector containing a prescription medicine, methotrexate. Methotrexate is used to: • Treat certain adults with severe, active rheumatoid arthritis, and children with active polyarticular juvenile idiopathic arthritis (pJIA), after treatment with other medicines including non-steroidal anti-inflammatory drugs (NSAIDS) have been used and did not work well.
	• Control the symptoms of severe, resistant, disabling psoriasis in adults when other types of treatment have been used and did not work well.
SPRIX® (ketorolac tromethamine) Nasal Spray	A prescription NSAID indicated in adult patients for the short term (up to five days) management of moderate to moderately severe pain that requires analgesia at the opioid level. SPRIX is a non-narcotic nasal spray provides patients with moderate to moderately severe short-term pain a form of ketorolac that is absorbed rapidly but does not require an injection administered by a healthcare provider (HCP).
Zipsor® (diclofenac potassium) Liquid filled capsules	A prescription NSAID used for relief of mild-to-moderate pain in adults (18 years of age and older). Zipsor uses proprietary ProSorb® delivery technology to deliver a finely dispersed, rapid and consistently absorbed formulation of diclofenac.

Other commercially available products include OXAYDO® (oxycodone HCI, USP) tablets for oral use only —CII.

On December 15, 2021, we, through a newly-formed subsidiary, Otter Pharmaceuticals, LLC, entered into an Asset Purchase Agreement (the "Purchase Agreement") with Antares Pharma, Inc. ("Antares"), and concurrently consummated the transaction. Pursuant to the terms of the Purchase Agreement, we acquired Antares' rights, title and interest in and to Otrexup, including certain related assets, intellectual property, contracts, and product inventory for (i) $18.0 million in cash payable at

the Closing, (ii) $16.0 million in cash payable on May 31, 2022 and (iii) and $10.0 million in cash payable on December 15, 2022.

On May 18, 2021, we effected a 1-for-4 reverse stock split of its issued and outstanding common stock. The par value of the common stock was not adjusted as a result of the reverse stock split. All common stock share and per-share data included in these financial statements have been retrospectively adjusted to reflect the effect of the reverse stock split for all periods presented

On February 9, 2021, we completed a registered direct offering with certain institutional investors and accredited investors to sell 5,650,000 shares of our common stock at a purchase price of $2.48 per share on a post stock split basis. The gross proceeds from the offering were approximately $14.0 million. After placement agent fees and other offering expenses payable by us, we received net proceeds of approximately $13.1 million. On February 12, 2021, we completed a registered direct offering with certain institutional investors and accredited investors to sell 8,750,000 shares of our common stock at a purchase price of $3.92 per share on a post stock split basis. The gross proceeds from the offering were approximately $34.3 million. After placement agent fees and other offering expenses payable by us, we received net proceeds of approximately $32.2 million. We intend to use proceeds from both offerings for general corporate purposes, including general working capital.

In September 2020, we terminated our Second Amended and Restated Nano-Reformulated Compound License Agreement (the "iCeutica License"), with iCeutica Inc. and iCeutica Pty Ltd. (collectively, "iCeutica"). The iCeutica License allowed us to utilize certain technology and intellectual property related to iCeutica's SOLUMATRIX technology and certain other rights of iCeutica. Effective the termination of the iCeutica License, we ceased manufacturing products using SOLUMATRIX technology and will sell through the remaining inventory.

On May 20, 2020, we completed a Merger (the Zyla Merger) with Zyla Life Sciences (Zyla) pursuant to an Agreement and Plan of Merger (Merger Agreement), dated as of March 16, 2020. Pursuant to the Zyla Merger, we acquired our current commercial products of INDOCIN Products, SPRIX, and OXAYDO, as well as ZORVOLEX®(diclofenac) and VIVLODEX® (meloxicam) (which are collectively known as the SOLUMATRIX® products).

On February 13, 2020, we completed the sale of our remaining rights, title and interest in and to the NUCYNTA® franchise to Collegium Pharmaceutical, Inc. (Collegium) for $375.0 million, less royalties, in cash at closing.

On January 10, 2020, we completed the sale of Gralise® (gabapentin) to Golf Acquiror LLC, an affiliate to Alvogen, Inc. (Alvogen), for cash proceeds of $130.3 million. The total value included $75.0 million in cash at closing, with the remaining balance settled through June 2020.

CRITICAL ACCOUNTING POLICIES AND SIGNIFICANT ESTIMATES

Our consolidated financial statements are prepared in accordance with U.S. generally accepted accounting principles ("GAAP") and U.S. Securities and Exchange Commission ("SEC") regulations for annual reporting. Our management's discussion and analysis of our financial condition and results of operations are based on our consolidated financial statements. The preparation of our consolidated financial statements requires us to make estimates, assumptions and judgments that affect the reported amounts of assets, liabilities, revenues and expenses, and related disclosures of contingent assets and liabilities. On an ongoing basis, we evaluate our estimates. We base our estimates on historical experience and various other assumptions that we believe to be reasonable under the circumstances, the results of which form our basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ from those estimates under different assumptions or conditions. We believe the following critical accounting policies reflect the more significant judgements and estimates used in the preparation of our consolidated financial statements.

A more detailed discussion of our critical accounting policies may be found in "Note 1. Organization and Significant Accounting Policies," of the Notes to the Consolidated Financial Statements included in Part II, Item 8 of this report, and the impact and risks associated with our accounting policies are discussed throughout this Annual Report on Form 10-K and in the Notes to the Consolidated Financial Statements.

Revenue Recognition

Product sales revenue is recognized when title has transferred to the customer and the customer has assumed the risks and rewards of ownership, which typically occurs on delivery to the customer. Our performance obligation is to deliver product to the customer, and the performance obligation is completed upon delivery. The transaction price consists of a fixed invoice

price and variable product sales allowances, which include rebates, discounts and returns. Product sales revenues are recorded net of applicable sales tax and reserves for these product sales allowances (gross-to-net sales allowances).

Product sales allowances consist primarily of provisions for product returns, managed care rebates and government rebates (collectively, rebates), wholesaler and pharmacy discounts, prompt pay discounts, patient discount programs, and chargebacks. We consider products sales allowances to be variable consideration and estimate and recognize product sales allowances as a reduction of product sales in the same period the related revenue is recognized. Product sales allowances are based on actual or estimated amounts owed on the related sales. These estimates take into consideration the terms of our agreements with customers, historical product returns, rebates or discounts taken, estimated levels of inventory in the distribution channel, the shelf life of the product and specific known market events, such as competitive pricing and new product introductions. We use the most likely method in estimating product sales allowances. If actual future results vary from our estimates, we may need to adjust the estimates, which could have an effect on product sales and earnings in the period of adjustment.

We believe our estimates related to gross-to-net sales adjustments for product return allowances and rebates are judgmental and are subject to change based on our experience and certain quantitative and qualitative factors. We believe that our estimates related to gross-to-net sales adjustments for wholesaler and pharmacy fees and discounts, prompt payment discounts, patient discount programs and chargebacks do not have a high degree of estimation complexity or uncertainty as the related amounts are settled within a relatively short period of time.

Product Return - We allow customers to return product for credit with respect to that product within 6 months before and up to 12 months after the product expiration date. We estimate product returns and associated credit based on historical return trends by product or by return trends of similar products, taking into consideration the shelf life of the product at the time of shipment, shipment and prescription trends, estimated distribution channel inventory levels and consideration of the introduction of competitive products. We do not assume financial responsibility for returns of NUCYNTA previously sold by Janssen Pharma, Lazanda product previously sold by Archimedes Pharma US Inc., or for Otrexup product previously sold by Antares Pharma. Under the Commercialization Agreement with Collegium for NUCYNTA, the divestiture of Lazanda to Slán and the divestiture of Gralise to Alvogen, we are only financially responsible for product returns for products that were sold by us, which are identified by specific lot numbers.

Shelf lives, from the respective manufacture dates, for our products range from 24 months to 48 months. Because of the shelf life of our products and its return policy of issuing credits with respect to product that is returned within six months before and up to 12 months after its product expiration date, there may be a significant period of time between when the product is shipped and when we issue credit on a returned product. Accordingly, we may have to adjust these estimates, which could have an effect on product sales and earnings in the period of adjustments. Product returns charged against gross sales were approximately $15.2 million in 2021.

Managed Care Rebates - We offer discounts under contracts with certain managed care providers. We generally pay managed care rebates one to three months after prescriptions subject to the rebate are filled. Managed care rebates charged against gross sales were approximately $8.9 million in 2021.

Government Rebates - We participate in both Medicaid and Medicare rebate programs. Medicaid provides assistance to certain low income patients based on each individual state’s guidelines regarding eligibility and services. Under the Medicaid rebate programs, we pay a rebate to each participating state, generally two to three months after the quarter in which prescriptions subject to the rebate are filled. We participate in the Medicare Part D Coverage Gap Discount Program under which it provides rebates on prescriptions that fall within the “donut hole” coverage gap. We generally pay Medicare Part D Coverage Gap rebates two to three months after the quarter in which prescriptions subject to the rebate are filled. Government rebates charged against gross sales were approximately $11.4 million in 2021.

Acquisitions

We account for acquired businesses using the acquisition method of accounting under ASC 805, *Business Combinations* (ASC 805), which requires that assets acquired and liabilities assumed be recorded at date of acquisition at their respective fair values. The fair value of the consideration paid, including contingent consideration, is assigned to the underlying net assets of the acquired business based on their respective fair values. Any excess of the purchase price over the estimated fair values of the net assets acquired is recorded as goodwill.

Significant judgments are used in determining the estimated fair values assigned to the assets acquired and liabilities assumed and in determining estimates of useful lives of long-lived assets. Fair value determinations and useful life estimates are

based on, among other factors, estimates of expected future net cash flows, estimates of appropriate discount rates used to present value expected future net cash flows, the assessment of each asset's life cycle, and the impact of competitive trends on each asset's life cycle and other factors. These judgments can materially impact the estimates used to allocate acquisition date fair values to assets acquired and liabilities assumed and the resulting timing and amounts charged to, or recognized in current and future operating results. For these and other reasons, actual results may vary significantly from estimated results.

If the acquired net assets do not constitute a business under the acquisition method of accounting, the transaction is accounted for as an asset acquisition and no goodwill is recognized. In an asset acquisition, the amount allocated to acquired in-process research and development (IPR&D) with no alternative future use is charged to expense at the acquisition date.

On December 15, 2021, we completed the Otrexup Acquisition, which was accounted under ASC 805. See "Note 2. Acquisitions" in the Notes to the Consolidated Financial Statements included in Part II, Item 8 of this report.

On May 20, 2020, we completed the Zyla Merger, which was accounted under ASC 805. See "Note 2. Acquisitions" in the Notes to the Consolidated Financial Statements included in Part II, Item 8 of this report.

Contingent Consideration Obligation

Pursuant to the May 2020 Zyla Merger, we assumed a contingent consideration obligation which is measured at fair value. We have an obligations to make contingent consideration payments for future royalties to Iroko based upon annual INDOCIN Product net sales over $20.0 million at a 20% royalty through January 2029.

At each reporting date, we re-measure the contingent consideration obligation to estimated fair value which is recognized in Selling, general and administrative expense in the Company's Condensed Consolidated Statements of Comprehensive Income. The fair value of the contingent consideration is determined using an option pricing model under the income approach based on estimated INDOCIN Product revenues through January 2029 and discounted to present value. The fair value measurement is based on significant inputs not observable in the market and thus represents a Level 3 measurement as defined in fair value measurement accounting. The significant assumptions used in the calculation of the fair value include projections of future INDOCIN Product revenues including the probability assigned to the achievement of those projections, revenue volatility, discount rate, and credit spread. During the years ended December 31, 2021 and 2020, the Company recognized a charge of $3.9 million and $1.5 million, respectively, for the change in fair value of contingent consideration, which was recognized in Selling, general and administrative expense in the Company's Consolidated Statements of Comprehensive Income. The significant assumptions used in the calculation of the fair value as of December 31, 2021 included revenue volatility of 35%, discount rate of 7.0%, credit spread of 5.2% and updated projections of future INDOCIN Product revenues.

Impairment of Long-lived Assets

We evaluate long-lived assets, including property and equipment and acquired intangible assets consisting of product rights, for impairment whenever events or changes in circumstances indicate that the carrying value of an asset may not be recoverable. An impairment loss would be recognized when estimated undiscounted future cash flows expected to result from the use of the asset and its eventual disposition are less than its carrying amount. The impairment loss is calculated as the excess of the carrying amount over the fair value. Estimating future cash flows and fair value related to an intangible asset involves significant estimates and assumptions. If our assumptions are not correct, there could be an impairment loss or, in the case of a change in the estimated useful life of the asset, a change in amortization expense.

As of December 31, 2021, we determined that there was an indicator of impairment present based on our market capitalization as of December 31, 2021 compared to our carrying value. After grouping the long-lived assets, including purchased developed technology and trademarks, at the lowest level for which there are identifiable cash flows that are largely independent of the cash flows of other assets and liabilities, we estimated the future net undiscounted cash flows expected to be generated from the use of the long-lived asset group and its eventual disposition. We then compared the estimated undiscounted cash flows to the carrying amount of the long-lived asset group. Based on this test, we determined that the estimated undiscounted cash flows were in excess of the carrying amount of the long-lived asset group and, accordingly, the long-lived asset group is fully recoverable.

As of December 31, 2020, we determined there were indicators of impairment present related to the declining revenues due to the adverse impact of COVID-19 on our business as well as unfavorable changes in product payor mix, resulting in our announcement of a restructuring plan. These factors contributed to higher operating losses and cash used by operating activities during the year ended December 31, 2020, as compared to the prior year. In addition, during the fourth quarter of 2020, our

market capitalization declined from approximately $72.0 million as of September 30, 2020 to $38.0 million as of December 31, 2020. As a result of these recent events, we determined indicators of impairment were present and, accordingly, performed a test for recoverability of long-lived assets to be held and used pursuant to ASC 360, *Impairment Testing: Long Lived Assets Classified as Held and Used.* After grouping the long-lived assets, including purchased developed technology and trademarks, at the lowest level for which there are identifiable cash flows that are largely independent of the cash flows of other assets and liabilities, we estimated the future net undiscounted cash flows expected to be generated from the use of the long-lived asset group and its eventual disposition. We then compared the estimated undiscounted cash flows to the carrying amount of the long-lived asset group. Based on this test, we determined that the estimated undiscounted cash flows were in excess of the carrying amount of the long-lived asset group and, accordingly, the long-lived asset group is fully recoverable.

Goodwill

Under the purchase method of accounting pursuant to ASC 805*,* Goodwill is calculated as the excess of the purchase price over the fair value of the assets acquired and liabilities assumed. Goodwill is recognized within other long-term assets, and is not amortized but subject to an annual review for impairment. Goodwill is tested for impairment at the reporting unit level at least annually or when a triggering event occurs that could indicate a potential impairment by assessing qualitative factors or performing a quantitative analysis in determining whether it is more likely than not that the fair value of net assets are below their carrying amounts. A reporting unit is the same as, or one level below, an operating segment. Our operations are currently comprised of a single reporting unit.

As of December 31, 2020, we determined, due to declining revenues and a decrease in our market capitalization, that it is more likely than not that the fair value of net assets are below their carrying amounts and, therefore, we performed the required goodwill impairment test under ASC 350, *Intangibles - Goodwill and Other*. First, we estimated the fair value of the reporting unit to which goodwill is assigned using a combination of the income and market approach. We then compared the carrying amount of the reporting unit, including goodwill, to its fair value. Since the fair value was less than the reporting unit's carrying amount, we calculated the goodwill impairment as the difference between the reporting unit's fair value and the carrying amount, not to exceed the carrying amount of goodwill. Accordingly, we recorded an impairment charge of $17.4 million, recognized within total costs and expenses in the Consolidated Statement of Comprehensive Income, to impair the carrying amount of goodwill as of December 31, 2020.

Income Taxes

We record the estimated future tax effects of temporary differences between the tax basis of assets and liabilities and amounts reported in our accompanying consolidated balance sheets, as well as operating loss and tax credit carryforwards. We follow the guidelines set forth in the applicable accounting guidance regarding the recoverability of any tax assets recorded on the consolidated balance sheet and provide any necessary allowances as required. Determining necessary allowances requires us to make assessments about the timing of future events, including the probability of expected future taxable income and available tax planning opportunities. When we determine that it is more likely than not that some portion or all of the deferred tax assets will not be realized in the future, the deferred tax assets are reduced by a valuation allowance. The valuation allowance is sufficient to reduce the deferred tax assets to the amount that we determine is more likely than not to be realized.

We are subject to examination of our income tax returns by various tax authorities on a periodic basis. We regularly assess the likelihood of adverse outcomes resulting from such examinations to determine the adequacy of our provision for income taxes. We have applied the provisions of the applicable accounting guidance on accounting for uncertainty in income taxes, which requires application of a more-likely-than-not threshold to the recognition and de-recognition of uncertain tax positions. If the recognition threshold is met, the applicable accounting guidance permits us to recognize a tax benefit measured at the largest amount of tax benefit that, in our judgment, is more than 50 percent likely to be realized upon settlement. It further requires that a change in judgment related to the expected ultimate resolution of uncertain tax positions be recognized in earnings in the period of such change.

We recognize tax liabilities in accordance with ASC Topic 740, Tax Provisions and we adjust these liabilities when our judgment changes as a result of the evaluation of new information not previously available. Due to the complexity of some of these uncertainties, the ultimate resolution may result in a payment that is materially different from our current estimate of the tax liabilities. These differences will be reflected as increases or decreases to income tax expense in the period in which they are determined. Refer to "Note 20. Income Taxes" in the Notes to the Consolidated Financial Statements included in Part II, Item 8 of this report.

RESULTS OF OPERATIONS

The following table reflects our results of operations for the years ended December 31, 2021 and 2020 (in thousands):

	2021	2020
Revenues:		
Product sales, net	$ 109,420	$ 92,090
Commercialization agreement, net	—	11,258
Royalties and milestones	2,579	1,519
Other revenue	(985)	1,408
Total revenues	111,014	106,275
Costs and expenses:		
Cost of sales	15,832	19,872
Research and development expenses	—	4,213
Selling, general and administrative expenses	56,555	104,324
Amortization of intangible assets	28,114	24,783
Loss on impairment of goodwill	—	17,432
Restructuring charges	1,089	17,806
Total costs and expenses	101,590	188,430
Income (loss) from operations	9,424	(82,155)
Other (expense) income:		
Interest expense	(10,220)	(15,926)
Other gain (loss)	243	(3,225)
Gain on sale of Gralise	—	126,655
Loss on debt extinguishment	—	(56,113)
Loss on sale of NUCYNTA	—	(14,749)
Total other (expense) income	(9,977)	36,642
Net loss before income taxes	(553)	(45,513)
Income tax (expense) benefit	(728)	17,369
Net loss and Comprehensive loss	$ (1,281)	$ (28,144)

Revenues

The following table reflects total revenues, net for the years ended December 31, 2021 and 2020 (in thousands):

	Year ended December 31,	
	2021	**2020**
Product sales, net:		
INDOCIN products [(1)]	$ 60,557	$ 31,684
CAMBIA	24,972	28,350
Zipsor	10,185	13,286
SPRIX [(1)]	8,676	11,077
Other products	5,030	7,693
Total product sales, net	109,420	92,090
Commercialization agreement revenue, net	—	11,258
Royalties and milestone revenue	2,579	1,519
Other revenue	(985)	1,408
Total revenues	$ 111,014	$ 106,275

(1) Products acquired in connection with May 20, 2020 Zyla Merger.

Product Sales, net

For the year ended December 31, 2021, product sales primarily consisted of sales from INDOCIN Products, CAMBIA, Zipsor and SPRIX. We began shipping and recognizing product sales for INDOCIN Products and SPRIX upon the Zyla Merger on May 20, 2020.

The increase in INDOCIN net products sales for the year ended December 31, 2021 of $28.9 million from $31.7 million to $60.6 million as compared to the same period in 2020 was primarily due to INDOCIN Products sales only beginning upon the Zyla Merger on May 20, 2020 as well the impact of the price increase in the fourth quarter of 2021.

CAMBIA net product sales for the year ended December 31, 2021 decreased $3.4 million from $28.4 million to $25.0 million as compared to the same period in 2020, primarily due to lower volume partially offset by favorable payor mix.

Zipsor net product sales for the year ended December 31, 2021 decreased $3.1 million from $13.3 million to $10.2 million as compared to the same period in 2020, primarily due to lower volume partially offset by favorable payor mix. Certain parties who have entered into settlement agreements with us will be able to market generic versions of Zipsor starting in 2022.

SPRIX net product sales for the year ended December 31, 2021 decreased $2.4 million from $11.1 million to $8.7 million as compared to the same period in 2020, primarily due to lower volume partially offset by the impact of 2020 as product sales only began upon the Zyla Merger on May 20, 2020.

Other products net sales includes product sales for non-promoted products (OXAYDO and SOLUMATRIX) which were acquired from Zyla in May 2020. In September 2020, we terminated our iCeutica License and as a result will no longer manufacture products using SOLUMATRIX technology and will sell through the remaining inventory.

Commercialization Agreement Revenue, net

We ceased recognizing commercialization revenue and related costs for NUCYNTA effective the closing of the transaction to divest our rights, title and interest in and to the NUCYNTA franchise to Collegium on February 13, 2020. During the year ended December 31, 2020, we recognized net revenue from the Commercialization Agreement of $11.3 million. This included variable royalty revenue of $13.1 million partially offset by the amortization of the $1.8 million net contract asset in connection with the termination of the Commercialization Agreement.

Royalties & Milestone

In November 2010, we entered into a license agreement with Tribute Pharmaceuticals Canada Ltd. (now known as Miravo Pharmaceuticals) granting them the rights to commercially market CAMBIA in Canada. We receive royalties on net sales as well as certain one-time contingent milestone payments. During the years ended December 31, 2021 and 2020, we recognized $2.5 million and $1.5 million of revenue related to CAMBIA in Canada, respectively.

Other Revenue

Other revenue consists of sales adjustments for previously divested products. Sales adjustments for previously divested products primarily include Gralise, which was divested in January 2020, as well as Nucynta and Lazanda, and were $(1.0) million and $1.4 million for the years ended December 31, 2021, and 2020, respectively.

Cost of Sales (excluding amortization of intangible assets)

Cost of sales consists of costs of the active pharmaceutical ingredient, contract manufacturing and packaging costs, royalties payable to third parties, inventory write downs, product quality testing, internal employee costs related to the manufacturing process, distribution costs and shipping costs related to our product sales. Cost of sales excludes the amortization of intangible assets described below under "Amortization of Intangible Assets." Fair value of inventories acquired through business combination or asset acquisition include an inventory step-up within the value of inventories. The inventory step-up value is amortized, as the related inventory is sold, and included in cost of sales.

Cost of sales decreased $4.0 million from $19.9 million to $15.8 million during the year ended December 31, 2021 as compared to the same period in 2020 primarily due to lower cost of sales as a result of the Gralise divestiture in the first quarter of 2020 and lower Zyla Merger related inventory step-up expense in current period, partially offset by higher net product sales.

During the year ended December 31, 2021 cost of sales include $0.6 million amortization of inventory step-up related to Zyla acquired inventories sold. The year ended December 31, 2020 cost of sales included $4.1 million of amortization of inventory step-up related to Zyla acquired inventories sold.

Research and Development Expenses

Our research and development (R&D) expenses include salaries, clinical trial costs, consultant fees, supplies, manufacturing costs for research and development programs and allocations of corporate costs. It is difficult to predict the scope and magnitude of future research and development expenses for our product candidates in research and development, as it is difficult to determine the nature, timing and extent of clinical trials and studies and the FDA's requirements for a particular drug. As potential products proceed through the development process, each step is typically more extensive, and therefore more expensive, than the previous step. Therefore, success in development generally results in increasing expenditures until actual product approval.

As a result of the December 2020 restructuring plan, we did not incur any research and development costs in 2021. Research and development expense decreased for the year ended December 31, 2021 as compared to the same period in 2020 primarily due to the completion of all material research and development activities in 2020.

Selling, General and Administrative Expenses

Selling, general and administrative ("SG&A") expenses primarily consist of personnel, contract personnel, marketing and promotion expenses associated with our commercial products, personnel expenses to support our administrative and operating activities, facility costs, and professional expenses, such as legal fees. In addition, the change in fair value of our contingent consideration liability, which is remeasured quarterly based on the likelihood of the contingent earn-out payments, is recognized within SG&A.

Selling, general, and administrative expenses decreased $47.8 million from $104.3 million to $56.6 million for the year ended December 31, 2021, as compared to the same period in 2020 primarily due to lower employee costs in 2021 as a result of prior restructuring plans, one-time transaction costs in 2020 not repeating, receipt of insurance reimbursement in the first quarter of 2021 for previous opioid-related expenses, partially offset by additional expense for loss contingency provision recognized in 2021.

Intangible Assets

The following table reflects amortization of intangible assets for the years ended December 31, 2021 and 2020 (in thousands):

	Year ended December 31,	
	2021	2020
Amortization of intangible assets—INDOCIN	$ 12,842	$ 7,812
Amortization of intangible assets—CAMBIA	7,247	5,136
Amortization of intangible assets—SPRIX	5,571	3,389
Amortization of intangible assets—Zipsor	2,337	2,337
Amortization of intangible assets—OXAYDO	117	183
Amortization of intangible assets—NUCYNTA	—	5,926
Total amortization of intangible assets	$ 28,114	$ 24,783

Amortization expense during the year ended December 31, 2021 increased $3.3 million from $24.8 million to $28.1 million as compared to the same period in 2020 primarily due to the timing of Zyla Merger in May 2020 partially offset by the February 2020 divestiture of our rights, title and interest to the NUCYNTA franchise of products to Collegium. As a result, we derecognized the remaining carrying value of the NUCYNTA product rights and ceased recognizing related amortization.

Loss on Impairment of Goodwill and Intangible Asset

No impairment loss on goodwill was recognized during the year ended December 31, 2021. During the year ended December 31, 2020, we recognized an impairment loss of $17.4 million on goodwill to reduce the carrying value to its estimated fair value in accordance with ASC 350.

Restructuring Charges

We continually evaluate our operations to identify opportunities to streamline operations and optimize operating efficiencies in anticipation of changes in the business environment.

On December 15, 2020, we announced the December 2020 Plan which was designed to substantially reduce the Company's operating footprint through the reduction of its staff at our headquarters office and remote sales force. We substantially completed the workforce reduction in the first quarter of 2021.

In May 2020, we began implementing reorganization plans of our workforce and other restructuring activities to realize the synergies of the Zyla Merger and to re-align resources to strategic areas and drive growth (Zyla Merger Reorganization). We completed the restructuring activities in 2020 and did not incur significant costs related to the Zyla Merger Reorganization in 2021. For the year ended December 31, 2021 restructuring charges incurred were $1.1 million. The restructuring charges cost and one-time termination costs incurred for the year ended December 31, 2020 were $17.8 million.

Other (Expense) Income

The following table reflects Other (expense) income: for the years ended December 31, 2021 and 2020 (in thousands):

	Year ended December 31,	
	2021	2020
Interest expense	$ (10,220)	$ (15,926)
Other gain (loss)	243	(3,225)
Gain on sale of Gralise	—	126,655
Loss on debt extinguishment	—	(56,113)
Loss on sale of NUCYNTA	—	(14,749)
Total other (expense) income	$ (9,977)	$ 36,642

Other (expense) income: changed by $46.6 million from other income of $36.6 million to other expense of $10.0 million for the year ended December 31, 2021 as compared to the same period in 2020 primarily due to the prior year gain on the sale of Gralise, loss on sale of NUCYNTA, loss on debt extinguishment and change in fair value of Collegium warrants not repeating. Sublease income offset by sublease expense is recorded in Other gain (loss) within the above table.

The following table reflects interest expense for the years ended December 31, 2021 and 2020 (in thousands):

	Year ended December 31,	
	2021	2020
Interest payable on Convertible Notes	$ 6	$ 1,727
Interest payable on 13% Senior Secured Notes due 2024	10,020	6,870
Interest payable on Senior Notes	—	1,648
Amortization of debt discounts, and royalty rights	194	5,680
Other	—	1
Total interest expense	**$ 10,220**	**$ 15,926**

For the year ended December 31, 2021, total interest expense decreased $5.7 million as compared to the same period in 2020 primarily due the settlement of the remaining principal of our Senior Secured Notes and the repurchase of our 2021 and 2024 Convertible Notes in the third quarter of 2020 partially offset by interest expense associated with 13% Senior Secured Notes assumed from the Zyla Merger in May 2020.

Income Tax Provision

During the year ended December 31, 2021, we recorded an income tax expense of approximately $0.7 million, which represents an effective tax rate of (131.6)%. The difference between the income tax expense of $0.7 million and the tax at the statutory rate of 21% is principally due to the recording of a valuation allowance for current year movement in deferred tax assets.

During the year ended December 31, 2020, we recorded an income tax benefit of approximately $17.4 million, which represents an effective tax rate of 38.2%. The difference between the income tax benefit of $17.4 million and the tax at the statutory rate of 21.0% is principally due to the carryback of our 2020 federal net operating loss ("NOL") to our 2018 and 2019 tax years under the NOL carryback provisions enacted as part of the Coronavirus Aid, Relief, and Economic Security ("CARES") Act in early 2020 and the current year reversal of valuation allowance related to the utilization of our deferred tax assets ("DTA") to offset the deferred tax liabilities ("DTL") of Zyla recorded through acquisition accounting.

LIQUIDITY AND CAPITAL RESOURCES

Historically and through December 31, 2021, we have financed our operations and business development efforts primarily from product sales, private and public sales of equity securities, including convertible debt securities, the proceeds of secured borrowings, the sale of rights to future royalties and milestones, upfront license, milestone and fees from collaborative and license partners.

On December 17, 2021, we entered into a Sales Agreement with Roth Capital Partners, LLC ("Roth") as sales agent to sell shares of our common stock, from time to time, through an "at-the-market offering" program having an aggregate offering price of up to $25.0 million. Roth will be entitled to aggregate compensation equal to 3.0% of the gross sales price of the shares sold through it pursuant to the Sales Agreement. As of December 31, 2021, we have not sold any shares under this program.

On February 9, 2021, we completed a registered direct offering with certain institutional investors and accredited investors to sell 5,650,000 shares of our common stock at a purchase price of $2.48 per share on a post stock split basis. The gross proceeds from the offering were approximately $14.0 million. After placement agent fees, we received net proceeds of approximately $13.1 million. On February 12, 2021, we completed a registered direct offering with certain institutional investors and accredited investors to sell 8,750,000 shares of our common stock at a purchase price of $3.92 per share on a post stock split basis. The gross proceeds from the offering were approximately $34.3 million. After placement agent fees, we received net proceeds of approximately $32.2 million. We also incurred $0.5 million direct incremental cost to complete both registered direct offerings. We intend to use proceeds from both offerings for general corporate purposes, including general working capital.

We may incur operating losses in future years. We believe that our existing cash will be sufficient to fund our operations and make the required payments under our debt agreements due for the next twelve months from the date of this filing. We base this expectation on our current operating plan, which may change as a result of many factors.

Our cash needs may vary materially from our current expectations because of numerous factors, including:

- acquisitions or licenses of complementary businesses, products, technologies or companies;
- sales of our marketed products;
- expenditures related to our commercialization of our products;
- milestone and royalty revenue we receive under our collaborative development arrangements;
- interest and principal payments on our current and future indebtedness;
- financial terms of definitive license agreements or other commercial agreements we may enter into
- changes in the focus and direction of our business strategy and/or research and development programs;
- potential expenses relating to any litigation matters, including relating to Assertio Therapeutics' prior opioid product franchise for which we have not accrued any reserves due to an inability to estimate the magnitude and/or probability of such expenses, and former drug Glumetza; and
- effects of the COVID-19 pandemic on our operations.

The inability to raise any additional capital that may be required to fund our future operations, payments due under our debt agreements, or product acquisitions and strategic transactions which we may pursue could have a material adverse effect on our company.

The following table reflects summarized cash flow activities for the years ended December 31, 2021 and 2020 (in thousands)::

	Year ended December 31,	
	2021	**2020**
Net cash provided by (used in) operating activities	$ 5,523	$ (65,572)
Net cash (used in) provided by investing activities	(18,525)	512,801
Net cash provided by (used in) financing activities	29,026	(468,550)
Net increase (decrease) in cash and cash equivalents	$ 16,024	$ (21,321)
Cash and cash equivalents at beginning of year	20,786	42,107
Cash and cash equivalents at end of period	$ 36,810	$ 20,786

Cash Flows from Operating Activities

Cash provided by operating activities was $5.5 million during the year ended December 31, 2021 compared to cash used of $65.6 million in the same period in 2020. The increase in cash provided from operating activities is primarily due to combination of lower net loss after non-cash adjustments and favorable working capital cash flows.

Cash Flows from Investing Activities

Cash used in investing activities was $18.5 million during the year ended December 31, 2021 which included $18.0 million paid related to the Otrexup acquisition. Cash provided from investing activities was $512.8 million during the year ended December 31, 2020, which included cash received for the sales of NUCYNTA, Gralise and Collegium warrants as well as cash acquired in Zyla Merger.

Cash Flows from Financing Activities

Cash provided by financing activities for the year ended December 31, 2021 was $29.0 million, which primarily consisted of proceeds from the registered direct offerings in February 2021 partially offset by payments of our debt as well as our contingent consideration obligation. Cash used in financing activities for the year ended December 31, 2020 was $468.6 million, which was primarily due to the settlement of our Senior Notes and the repurchase of our outstanding 2021 Notes and 2024 Notes.

Contractual Obligations

Our principal material cash requirements consist of obligations related to the deferred cash payments for Otrexup acquisition, debt obligations related to Secured Notes and Royalty Rights, continent consideration obligation, payments for rebates, returns and discounts, third-party consent payments, remaining compensation under our restructuring programs, and non-cancelable leases for our office space. Refer to Note 2, Note 10, Note 19, Note 1, Note 18, Note 11 and Note 12, respectively, to the accompanying Consolidated Financial Statements.

Additionally, we have non-cancelable contractual obligations for our purchase commitments, see Note 13 to the accompanying Consolidated Financial Statements.

RECENTLY ADOPTED ACCOUNTING PRONOUNCEMENTS

See "Item 8. Financial Statements and Supplemental Data - Note 1. Organization and Summary of Significant Accounting Policies" for additional information on recent accounting pronouncements.

ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

We are a smaller reporting company, as defined by Rule 12b-2 of the Exchange Act, and therefore are not required to provide the information called for by this Item 7A.

ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

We are a smaller reporting company, as defined by Rule 12b-2 of the Exchange Act, and therefore we are permitted to provide scaled Item 8 disclosure.

ASSERTIO HOLDINGS, INC.
INDEX TO CONSOLIDATED FINANCIAL STATEMENTS

Report of Independent Registered Public Accounting Firm

Board of Directors and Shareholders
Assertio Holdings, Inc.

Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheet of Assertio Holdings, Inc. (a Delaware corporation) and subsidiaries (the "Company") as of December 31, 2021, the related consolidated statements of comprehensive income, shareholders' equity, and cash flows for the year ended December 31, 2021, and the related notes and financial statement schedule (collectively referred to as the "financial statements"). In our opinion, the financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2021, and the results of its operations and its cash flows for the year ended December 31, 2021, in conformity with accounting principles generally accepted in the United States of America.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) ("PCAOB"), the Company's internal control over financial reporting as of December 31, 2021, based on criteria established in the 2013 Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission ("COSO"), and our report dated March 10, 2022 expressed an unqualified opinion.

Basis for Opinion

These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the Company's financial statements based on our audit. We are a public accounting firm registered with the PCAOB and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audit in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether due to error or fraud. Our audit included performing procedures to assess the risks of material misstatement of the financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements. Our audit also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that our audit provides a reasonable basis for our opinion.

Critical Audit Matters

The critical audit matter communicated below is a matter arising from the current period audit of the financial statements that was communicated or required to be communicated to the audit committee and that: (1) relates to accounts or disclosures that are material to the financial statements and (2) involved our especially challenging, subjective, or complex judgments. The communication of a critical audit matter does not alter in any way our opinion on the financial statements, taken as a whole, and we are not, by communicating the critical audit matter below, providing separate opinions on the critical audit matter or on the accounts or disclosures to which they relate.

Contingent consideration
As described further in Note 2 and Note 19 to the consolidated financial statements, the Company's contingent consideration liability consists of future royalty payments to Iroko based on annual INDOCIN Product revenues over $20.0 million. The liability was assumed as a result of the May 2020 Zyla Merger and is $37.9 million as of December 31, 2021. The Company uses an option pricing model to estimate the fair value of the liability each reporting period, which requires significant management judgment given the use of significant unobservable inputs and assumptions. We identified the valuation of the contingent consideration liability as a critical audit matter.

The principal consideration for our determination that the valuation of the contingent consideration liability is a critical audit matter was the significant auditor judgment required to evaluate the projections of future INDOCIN Product revenues and the probability assigned to the achievement of agreed upon milestones, used to determine the fair value.

Addressing the matter involved performing procedures and evaluating audit evidence in connection with forming our overall opinion on the consolidated financial statements. Our audit procedures related to the valuation of the contingent consideration liability included the following, among others.

- We obtained an understanding and tested the design and operating effectiveness of relevant controls within the Company's process to value the contingent consideration liability including the Company's controls over the development of the projections.

- We evaluated the reasonableness of the Company's assumptions related to revenue and the probability of achieving certain milestones by (1) comparing forecasts to current and historical results and (2) comparing Company forecasts to industry forecasts of peer companies.

- We involved our valuation professionals with specialized skills and knowledge, to evaluate key inputs and assumptions used to determine fair value, which included the projections as well as the probability weighting within the valuation model. Our valuation professionals compared the projections against historical, market and industry information and performed sensitivity analysis to determine if the information was reasonable.

/s/ GRANT THORNTON LLP

We have served as the Company's auditor since 2021.

Chicago, Illinois
March 10, 2022

Report of Independent Registered Public Accounting Firm

To the Stockholders and the Board of Directors of Assertio Holdings, Inc.

Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheet of Assertio Holdings, Inc. (the Company) as of December 31, 2020, the related consolidated statements of comprehensive income, shareholders' equity and cash flows for the year then ended, and the related notes and financial statement schedule listed in the Index at Item 15(a)(2) (collectively referred to as the "consolidated financial statements"). In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company at December 31, 2020, and the results of its operations and its cash flows for the year then ended, in conformity with U.S. generally accepted accounting principles.

Basis for Opinion

These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the Company's financial statements based on our audit. We are a public accounting firm registered with the PCAOB and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audit in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether due to error or fraud. Our audit included performing procedures to assess the risks of material misstatement of the financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements. Our audit also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that our audit provide a reasonable basis for our opinion

/s/ Ernst & Young LLP

We have served as the Company's auditor from 1997 to 2021.

Chicago, Illinois
March 12, 2021,
except for the effects of the 1-for-4 reverse stock split and for the effect of the reclassification discussed in Note 1, as to which the date is
March 10, 2022

ASSERTIO HOLDINGS, INC.
CONSOLIDATED BALANCE SHEETS
(in thousands, except share and per share data)

	December 31,	
	2021	**2020**
ASSETS		
Current assets:		
Cash and cash equivalents	$ 36,810	$ 20,786
Accounts receivable, net	44,361	44,350
Inventories, net	7,489	11,712
Prepaid and other current assets	14,838	17,406
Total current assets	103,498	94,254
Property and equipment, net	1,527	2,437
Intangible assets, net	216,054	200,082
Other long-term assets	5,468	6,501
Total assets	$ 326,547	$ 303,274
LIABILITIES AND SHAREHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	$ 6,685	$ 14,808
Accrued rebates, returns and discounts	52,662	63,114
Accrued liabilities	14,699	28,864
Long-term debt, current portion	12,174	11,942
Contingent consideration, current portion	14,500	6,776
Other current liabilities	34,299	7,182
Total current liabilities	135,019	132,686
Long-term debt	61,319	72,160
Contingent consideration	23,159	31,776
Other long-term liabilities	4,636	11,138
Total liabilities	224,133	247,760
Commitments and contingencies		
Shareholders' equity:		
Common stock, $0.0001 par value, 200,000,000 shares authorized; 44,640,444 and 28,392,149 shares issued and outstanding as of December 31, 2021 and 2020, respectively	4	3
Additional paid-in capital	531,636	483,456
Accumulated deficit	(429,226)	(427,945)
Total shareholders' equity	102,414	55,514
Total liabilities and shareholders' equity	$ 326,547	$ 303,274

The accompanying notes are an integral part of these consolidated financial statements.

ASSERTIO HOLDINGS, INC.
CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME
(in thousands, except per share data)

	Year Ended December 31,	
	2021	**2020**
Revenues:		
Product sales, net	$ 109,420	$ 92,090
Commercialization agreement, net	—	11,258
Royalties and milestones	2,579	1,519
Other revenue	(985)	1,408
Total revenues	111,014	106,275
Costs and expenses:		
Cost of sales	15,832	19,872
Research and development expenses	—	4,213
Selling, general and administrative expenses	56,555	104,324
Amortization of intangible assets	28,114	24,783
Loss on impairment of goodwill	—	17,432
Restructuring charges	1,089	17,806
Total costs and expenses	101,590	188,430
Income (loss) from operations	9,424	(82,155)
Other (expense) income:		
Interest expense	(10,220)	(15,926)
Other gain (loss)	243	(3,225)
Gain on sale of Gralise	—	126,655
Loss on debt extinguishment	—	(56,113)
Loss on sale of NUCYNTA	—	(14,749)
Total other (expense) income	(9,977)	36,642
Net loss before income taxes	(553)	(45,513)
Income tax (expense) benefit	(728)	17,369
Net loss and Comprehensive loss	$ (1,281)	$ (28,144)
Basic net loss per share	$ (0.03)	$ (1.07)
Diluted net loss per share	$ (0.03)	$ (1.07)
Shares used in computing basic net loss per share	43,169	26,209
Shares used in computing diluted net loss per share	43,169	26,209

The accompanying notes are an integral part of these consolidated financial statements.

ASSERTIO HOLDINGS, INC.
CONSOLIDATED STATEMENTS OF SHAREHOLDERS' EQUITY
(in thousands)

	Common Stock		Additional Paid-In Capital*	Accumulated Deficit	Shareholders' Equity
	Shares*	Amount*			
Balances as of December 31, 2019	20,222	$ 2	$ 457,757	$ (399,801)	$ 57,958
Issuance of common stock under employee stock purchase plan	46	—	87	—	87
Issuance of common stock in conjunction with vesting of restricted stock units, net of employee's withholding liability	234	—	(336)	—	(336)
Issuance of common stock upon exercise of warrant	1,521	—	—	—	—
Reacquisition of equity component of 2021 and 2024 Notes	—	—	(19,532)	—	(19,532)
Issuance of common stock in connection with the Zyla Merger	6,370	1	22,930	—	22,931
Issuance of warrants and stock options in conjunction with the Zyla Merger	—	—	11,626	—	11,626
Stock-based compensation	—	—	10,924	—	10,924
Net loss and Comprehensive loss	—	—	—	(28,144)	(28,144)
Balances as of December 31, 2020	28,393	3	483,456	(427,945)	55,514
Issuance of common stock upon exercise of options	73	—	193	—	193
Issuance of common stock in connection with stock offering	14,400	1	44,860	—	44,861
Issuance of common stock in conjunction with vesting of restricted stock units, net of employee's withholding liability	583	—	(418)	—	(418)
Issuance of common stock in conjunction with vesting of performance stock units	13	—	—	—	—
Issuance of common stock under employee stock purchase plan	4	—	—	—	—
Issuance of common stock upon exercise of warrant	1,192	—	—	—	—
Stock split fractional shares settlement	(18)	—	—	—	—
Stock-based compensation	—	—	3,545	—	3,545
Net loss and Comprehensive loss	—	—	—	(1,281)	(1,281)
Balances as of December 31, 2021	44,640	$ 4	$ 531,636	$ (429,226)	$ 102,414

(*) Adjusted to reflect the 1-for-4 reverse stock split effected on May 18, 2021.

The accompanying notes are an integral part of these consolidated financial statements.

ASSERTIO HOLDINGS, INC.
CONSOLIDATED STATEMENTS OF CASH FLOWS
(in thousands)

	Year Ended December 31,	
	2021	**2020**
Operating Activities		
Net loss	$ (1,281)	$ (28,144)
Adjustments to reconcile net loss to net cash provided by (used in) operating activities:		
Depreciation and amortization	29,077	26,431
Amortization of debt discount, debt issuance costs and royalty rights	194	5,680
Stock-based compensation	3,545	10,924
Provisions for inventory and other assets	1,368	3,817
Impairment of goodwill	—	17,432
Loss on disposal of equipment and early termination of leases	—	1,588
Income tax provision	—	(8,424)
Gain on sale of Gralise	—	(126,655)
Loss on sale of NUCYNTA	—	14,749
Loss on extinguishment of Convertible Notes	—	47,880
Loss on prepayment of Senior Notes	—	8,233
Recurring fair value measurement of assets and liabilities	3,913	5,129
Changes in assets and liabilities:		
Accounts receivable	(11)	19,800
Inventories	4,268	(291)
Prepaid and other assets	3,079	10,797
Income taxes	522	(8,973)
Accounts payable and other accrued liabilities	(28,699)	(36,479)
Accrued rebates, returns and discounts	(10,452)	(29,066)
Net cash provided by (used in) operating activities	5,523	(65,572)
Investing Activities		
Cash acquired in Zyla Merger	—	7,585
Proceeds from sale of NUCYNTA	—	368,965
Proceeds from sale of Gralise	—	130,261
Purchases of property and equipment	(53)	(10)
Purchase of Otrexup	(18,472)	—
Proceeds from sale of investments	—	6,000
Net cash (used in) provided by investing activities	(18,525)	512,801
Financing Activities		
Payment of contingent consideration	(4,807)	(3,016)
Payment of Royalty Rights	(968)	(500)
Payments in connection with Senior Notes settlement	—	(171,775)
Payments in connection with convertible notes	(335)	(264,731)
Payment in connection with Series A-1 and A-2 debt	(9,500)	(14,750)
Payments on Promissory Note	—	(3,000)
Payments on Revolver	—	(10,000)
Proceeds from issuance of common stock	44,861	88
Proceeds from exercise of stock options	193	—
Shares withheld for payment of employee's withholding tax liability	(418)	(866)
Net cash provided by (used in) financing activities	29,026	(468,550)
Net increase (decrease) in cash and cash equivalents	16,024	(21,321)
Cash and cash equivalents at beginning of year	20,786	42,107
Cash and cash equivalents at end of period	$ 36,810	$ 20,786
Supplemental Disclosure of Cash Flow Information		
Net cash refund of income taxes	$ —	$ 1,136
Cash paid for interest	$ 10,124	$ 17,598
Supplemental Disclosure of Non-Cash Investing Activities		
Acquisition of Otrexup intangible assets	$ 26,021	$ —

The accompanying notes are an integral part of these consolidated financial statements.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 1. ORGANIZATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Organization

In May 2020, Assertio Therapeutics, Inc. implemented a holding company reorganization through which Assertio Therapeutics, Inc. became a subsidiary of Assertio Holdings, Inc. (Assertio Reorganization) and, subsequently, Assertio Holdings, Inc. merged with Zyla Life Sciences (Zyla) in a transaction we refer to as the "Zyla Merger." Unless otherwise noted or required by context, use of "Assertio," "Company," "we," "our" and "us" refer to Assertio Holdings, Inc. and/or its applicable subsidiary or subsidiaries.

Assertio is a specialty pharmaceutical company that sells commercial products to wholesale distributors and specialty pharmacies in the United States ("U.S."). The Company's primary marketed products include:

INDOCIN® (indomethacin) Suppositories INDOCIN® (indomethacin) Oral Suspension	A suppository form and oral solution of indomethacin used in the hospital as well as in the out-patient setting. Both products are nonsteroidal anti-inflammatory drug (NSAID), approved for: • Moderate to severe rheumatoid arthritis including acute flares of chronic disease • Moderate to severe ankylosing spondylitis • Moderate to severe osteoarthritis • Acute painful shoulder (bursitis and/or tendinitis) • Acute gouty arthritis
CAMBIA® (diclofenac potassium for oral solution)	A prescription NSAID indicated for the acute treatment of migraine attacks with or without aura in adults 18 years of age or older. CAMBIA can help patients with migraine pain, nausea, photophobia (sensitivity to light), and phonophobia (sensitivity to sound). CAMBIA is not a pill, it is a powder, and combining CAMBIA with water activates the medicine in a unique way.
Otrexup® (methotrexate) injection for subcutaneous use	A once weekly single-dose auto-injector containing a prescription medicine, methotrexate. Methotrexate is used to: • Treat certain adults with severe, active rheumatoid arthritis, and children with active polyarticular juvenile idiopathic arthritis (pJIA), after treatment with other medicines including non-steroidal anti-inflammatory drugs (NSAIDS) have been used and did not work well. • Control the symptoms of severe, resistant, disabling psoriasis in adults when other types of treatment have been used and did not work well.
SPRIX® (ketorolac tromethamine) Nasal Spray	A prescription NSAID indicated in adult patients for the short term (up to five days) management of moderate to moderately severe pain that requires analgesia at the opioid level. SPRIX is a non-narcotic nasal spray provides patients with moderate to moderately severe short-term pain a form of ketorolac that is absorbed rapidly but does not require an injection administered by a healthcare provider (HCP).
Zipsor® (diclofenac potassium) Liquid filled capsules	A prescription NSAID used for relief of mild-to-moderate pain in adults (18 years of age and older). Zipsor uses proprietary ProSorb® delivery technology to deliver a finely dispersed, rapid and consistently absorbed formulation of diclofenac.

Other commercially available products include OXAYDO® (oxycodone HCI, USP) tablets for oral use only —CII.

On December 15, 2021, the Company, through a newly-formed subsidiary, Otter Pharmaceuticals, LLC, entered into an Asset Purchase Agreement (the "Purchase Agreement") with Antares Pharma, Inc. ("Antares"), and concurrently consummated the transaction. Pursuant to the terms of the Purchase Agreement, the Company acquired Antares' rights, title and interest in and to Otrexup, including certain related assets, intellectual property, contracts, and product inventory for (i) $18.0 million in cash paid at closing, (ii) $16.0 million in cash payable on May 31, 2022 and (iii) and $10.0 million in cash payable on December 15, 2022.

On February 9, 2021, the Company completed a registered direct offering with certain institutional investors and accredited investors to sell 5,650,000 shares of our common stock at a purchase price of $2.48 per share on a post stock split basis. The gross proceeds from the offering were approximately $14.0 million. After placement agent fees and other offering expenses payable by the Company, Assertio received net proceeds of approximately $13.1 million. On February 12, 2021, the

Company completed a registered direct offering with certain institutional investors and accredited investors to sell 8,750,000 shares of our common stock at a purchase price of $3.92 per share on a post stock split basis. The gross proceeds from the offering were approximately $34.3 million. After placement agent fees and other offering expenses payable by the Company, Assertio received net proceeds of approximately $32.2 million. The Company intends to use proceeds from both offerings for general corporate purposes, including general working capital.

In September 2020, the Company terminated its Second Amended and Restated Nano-Reformulated Compound License Agreement as of January 27, 2020 (the "iCeutica License"), with iCeutica Inc. and iCeutica Pty Ltd. (collectively, "iCeutica"). The iCeutica License allowed the Company to utilize certain technology and intellectual property related to iCeutica's SOLUMATRIX technology and certain other rights of iCeutica. Effective the termination of the iCeutica License, the Company ceased manufacturing products using SOLUMATRIX technology and will sell through its remaining inventory.

On February 13, 2020, the Company completed the sale of its remaining rights, title and interest in and to the NUCYNTA® franchise to Collegium Pharmaceutical, Inc. (Collegium) for $375.0 million, less royalties, in cash at closing.
Collegium assumed certain contracts, liabilities and obligations relating to the NUCYNTA products, including those related to manufacturing and supply, post-market commitments and clinical development costs. Collegium also paid for certain inventories relating to the products.

On January 10, 2020, the Company completed the sale of Gralise® (gabapentin) to Golf Acquiror LLC, an affiliate to Alvogen, Inc. (Alvogen), for cash proceeds of $130.3 million. The total value included $75.0 million in cash at closing, with the balance receivable as 75% of Alvogen's first $70.0 million of Gralise net sales after the closing (consideration receivable). Alvogen also paid for certain inventories relating to Gralise. On June 3, 2020, the Company entered into an agreement with Alvogen to settle the remaining balance of $39.7 million in consideration receivable, whereby the Company reduced the consideration receivable by $0.9 million and Alvogen paid $38.8 million in cash.

Basis of Presentation

The Company's consolidated financial statements are prepared in accordance with U.S. generally accepted accounting principles (U.S. GAAP) and U.S. Securities and Exchange Commission (SEC) regulations for annual reporting. Certain amounts in prior periods have been reclassified to conform with current period presentation.

In connection with the preparation of the financial statements for the year ended December 31, 2021, the Company evaluated whether there were conditions and events, considered in the aggregate, which raised substantial doubt as to the entity's ability to continue as a going concern within twelve months after the date of the issuance of these financial statements noting that there did not appear to be evidence of substantial doubt of the entity's ability to continue as a going concern.

Stock Split

On May 18, 2021, the Company effected a 1-for-4 reverse stock split of its issued and outstanding common stock. The par value of the common stock was not adjusted as a result of the reverse stock split. All common stock share and per-share data included in these financial statements have been retrospectively adjusted to reflect the effect of the reverse stock split for all periods presented.

Revenue Reclassification

During the third quarter of 2021, the Company made certain reclassifications within Total Revenues related to product sales adjustments for previously divested products. Product sales adjustments for previously divested products were reclassified from Product sales, net to Other revenue on the Consolidated Statements of Comprehensive Income, which impacted previously reported amounts for the year ended December 31, 2020. The reclassifications were made so the line item Product sales, net would reflect net sales of the Company's current commercialized products. Prior period results were recast to conform with these changes and resulted in an increase to Other revenue and an equal and offsetting decrease to Product sales, net of $1.4 million for the year ended December 31, 2020, respectively. Total net revenue as previously reported remains unchanged.

Impact of COVID-19 on our Business

Following the outbreak of COVID-19 during early 2020, the Company's priority was and remains the health and safety of its employees, their families, and the patients it serves. Because COVID-19 impacted the Company's ability to see in-person providers who prescribe our products, the Company transformed its commercial approach during 2020 and increased virtual visits, ultimately eliminating its in-person sales force in favor of a digital sales strategy. Additionally, due to the

limitations on elective surgeries and changes in patient behavior since the outbreak of COVID-19, the Company has experienced a decline and subsequent volatility in prescriptions associated with those elective procedures. The extent to which the Company's operations may continue to be impacted by the COVID-19 pandemic will depend largely on future developments, which are highly uncertain and cannot be accurately predicted, including actions by government authorities to contain the outbreak, the emergence of new COVID-19 variants and the related potential for new surges in infections and the impacts of increases in virtual physician visits on prescriber behavior. For example, although many public health restrictions have eased, future surges could result in additional restrictions or other factors that may contribute to decreases in elective procedures. The impact of the pandemic on the global financial markets may reduce the Company's ability to access capital, which could negatively impact its liquidity. The Company does not yet know the full extent of potential delays or impacts on its business, financing or on healthcare systems or the global economy as a whole. However, these effects could have a material impact on the Company's liquidity, capital resources, operations and business and those of the third parties on which it relies, including suppliers and distributors.

Principles of Consolidation

The consolidated financial statements include the accounts of the Company and its wholly owned subsidiaries. All intercompany balances and transactions have been eliminated in consolidation.

Use of Estimates

The preparation of consolidated financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the amounts reported in the consolidated financial statements and accompanying notes. Estimates are used when accounting for amounts recorded in connection with acquisitions, including initial fair value determinations of assets and liabilities as well as subsequent fair value measurements. Additionally, estimates are used in determining items such as product returns, rebates, evaluation of impairment of intangible assets, fair value of contingent consideration obligation and taxes on income. Although management believes these estimates are based upon reasonable assumptions within the bounds of its knowledge of the Company, actual results could differ materially from these estimates.

Segment Information

The Company manages its business within one reportable segment. Segment information is consistent with how management reviews the business, makes investing and resource allocation decisions and assesses operating performance. To date, substantially all of the Company's revenues from product sales are related to sales in the U.S.

Cash, Cash Equivalents

Cash and cash equivalents include cash in readily available checking and money market funds. We consider all highly liquid investments purchased with a maturity of three months or less on the date of purchase to be cash equivalents. Cash equivalents are carried at cost, which approximates fair value.

Accounts Receivable

Trade accounts receivable are recorded net of allowances for cash discounts for prompt payment. To date the Company has not recorded a bad debt allowance since the majority of its product revenue comes from sales to a limited number of financially sound companies who have historically paid their balances timely. The need for a bad debt allowance is evaluated each reporting period based on the Company's assessment of the credit worthiness of its customers or any other potential circumstances that could result in bad debt.

Inventories

Inventories are stated at the lower of cost or net realizable value with cost determined by specific manufactured lot. Inventories consist of costs of the active pharmaceutical ingredient, contract manufacturing and packaging costs. Additionally, the Company writes off the value of inventory for potentially excess, dated or obsolete inventories based on an analysis of inventory on hand and projected demand.

Cost of sales includes the cost of inventory sold or reserved, which includes manufacturing and supply chain costs, product shipping and handling costs, and product royalties.

Property and Equipment

Property and equipment are stated at cost, less accumulated depreciation and amortization. Depreciation is calculated using the straight-line method over the estimated useful lives of the respective assets, as follows:

Furniture and office equipment	3 - 5 years
Machinery and equipment	5 - 7 years
Laboratory equipment	3 - 5 years
Leasehold improvements	Shorter of estimated useful life or lease term

Intangible Assets (other than goodwill)

Intangible assets, other than goodwill, consist of product rights that are accounted for as definite-lived intangible assets subject to amortization. The Company determines the fair value of acquired intangible assets as of the acquisition date. Discounted cash flow models are typically used in these valuations, which require the use of significant estimates and assumptions, including but not limited to, developing appropriate discount rates and estimating future cash flows from product sales and related expenses. The fair value recorded is amortized on a straight-line basis over the estimated useful life of the asset. The Company estimated the useful life of the assets by considering competition by products prescribed for the same indication, the likelihood and estimated future entry of non-generic and generic competition for the same or similar indication and other related factors.

Impairment of Long-lived Assets

The Company evaluates long-lived assets, including property and equipment and product rights, for impairment whenever events or changes in circumstances indicate that the carrying value of an asset may not be recoverable. Pursuant to ASC 360, *Impairment Testing: Long Lived Assets Classified as Held and Used,* the Company groups its long-lived assets, including purchased developed technology and trademarks, at the lowest level for which there are identifiable cash flows that are largely independent of the cash flows of other assets and liabilities. The Company estimates the future net undiscounted cash flows expected to be generated from the use of the long-lived asset group and its eventual disposition. An impairment loss would be recognized when estimated undiscounted future cash flows expected to result from the use of the asset and its eventual disposition are less than its carrying amount. The impairment loss is calculated as the excess of the carrying amount over the fair value.

Acquisitions

The Company accounts for acquired businesses using the acquisition method of accounting under ASC 805, *Business Combinations* (ASC 805), which requires that assets acquired and liabilities assumed be recorded at date of acquisition at their respective fair values. The fair value of the consideration paid, including contingent consideration, is assigned to the underlying net assets of the acquired business based on their respective fair values. Any excess of the purchase price over the estimated fair values of the net assets acquired is recorded as goodwill.

Significant judgments are used in determining the estimated fair values assigned to the assets acquired and liabilities assumed and in determining estimates of useful lives of long-lived assets. Fair value determinations and useful life estimates are based on, among other factors, estimates of expected future net cash flows, estimates of appropriate discount rates used to present value expected future net cash flows, the assessment of each asset's life cycle, and the impact of competitive trends on each asset's life cycle and other factors. These judgments can materially impact the estimates used to allocate acquisition date fair values to assets acquired and liabilities assumed and the resulting timing and amounts charged to, or recognized in current and future operating results. For these and other reasons, actual results may vary significantly from estimated results.

Any changes in the fair value of contingent consideration resulting from a change in the underlying inputs is recognized in operating expenses until the contingent consideration arrangement is settled. Changes in the fair value of contingent consideration resulting from the passage of time are recorded within interest expense until the contingent consideration is settled.

If the acquired net assets do not constitute a business under the acquisition method of accounting, the transaction is accounted for as an asset acquisition and no goodwill is recognized. In an asset acquisition, the amount allocated to acquired in-process research and development with no alternative future use is charged to expense at the acquisition date.

Goodwill

Under the purchase method of accounting pursuant to ASC 805, Goodwill is calculated as the excess of the purchase price over the fair value of the assets acquired and liabilities assumed. Goodwill, which is not tax-deductible, is recognized within other long-term assets, and is not amortized but subject to an annual review for impairment. Goodwill is tested for impairment at the reporting unit level at least annually or when a triggering event occurs that could indicate a potential impairment by assessing qualitative factors or performing a quantitative analysis in determining whether it is more likely than not that the fair value of net assets are below their carrying amounts. A reporting unit is the same as, or one level below, an operating segment. Our operations are currently comprised of a single reporting unit.

Revenue Recognition

Under ASC 606, *Revenue from Contracts with Customers* (ASC 606), the Company recognizes revenue when its customer obtains control of the promised goods or services, in an amount that reflects the consideration which the Company expects to receive in exchange for those goods or services. To determine revenue recognition for arrangements that the Company determines are within the scope of ASC 606, the Company performs the following five steps: (i) identify the contract(s) with a customer; (ii) identify the performance obligations in the contract; (iii) determine the transaction price; (iv) allocate the transaction price to the performance obligations in the contract; and (v) recognize revenue when (or as) the Company satisfies a performance obligation. The Company only applies the five-step model to contracts when it is probable that Company will collect the consideration it is entitled to in exchange for the goods or services it transfers to the customer. At contract inception, once the contract is determined to be within the scope of ASC 606, the Company assesses the goods or services promised within each contract and determines those that are performance obligations and assesses whether each promised good or service is distinct. The Company then recognizes as revenue the amount of the transaction price that is allocated to the respective performance obligation, when (or as) the performance obligation is satisfied. The Company assesses the term of the contract based upon the contractual period in which the Company has enforceable rights and obligations.

Variable consideration arising from sales or usage-based royalties, promised in exchange for a license of the Company's Intellectual Property, is recognized at the later of (i) when the subsequent product sales occur or (ii) the performance obligation, to which some or all of the sales-based royalty has been allocated, has been satisfied.

The Company recognizes a contract asset relating to its conditional right to consideration for completed performance obligations. Accounts receivable are recorded when the right to consideration becomes unconditional. A contract liability is recorded for payments received in advance of the related performance obligation being satisfied under the contract.

Product Sales

The Company sells commercial products to wholesale distributors and specialty pharmacies. Product sales revenue is recognized when title has transferred to the customer and the customer has assumed the risks and rewards of ownership, which typically occurs on delivery to the customer. The Company's performance obligation is to deliver product to the customer, and the performance obligation is completed upon delivery. The transaction price consists of a fixed invoice price and variable product sales allowances, which include rebates, discounts and returns. Product sales revenues are recorded net of applicable sales tax and reserves for these product sales allowances. Receivables related to product sales are typically collected one to two months after delivery.

Product Sales Allowances - The Company considers products sales allowances to be variable consideration and estimates and recognizes product sales allowances as a reduction of product sales in the same period the related revenue is recognized. Product sales allowances are based on actual or estimated amounts owed on the related sales. These estimates take into consideration the terms of the Company's agreements with customers, historical product returns, rebates or discounts taken, estimated levels of inventory in the distribution channel, the shelf life of the product and specific known market events, such as competitive pricing and new product introductions. The Company uses the most likely method in estimating product sales allowances. If actual future results vary from the Company's estimates, the Company may need to adjust these estimates, which could have an effect on product sales and earnings in the period of adjustment. The Company's sales allowances include:

Product Returns - The Company allows customers to return product for credit with respect to that product within six months before and up to twelve months after its product expiration date. The Company estimates product returns and associated credit on Zipsor, CAMBIA, NUCYNTA, Gralise, Lazanda and products acquired from Zyla, INDOCIN Products, ZORVOLEX, VIVLODEX and OXAYDO. Estimates for returns are based on historical return trends by product or by return trends of similar products, taking into consideration the shelf life of the product at the time of shipment, shipment and prescription trends, estimated distribution channel inventory levels and consideration of the introduction of competitive

products. The Company did not assume financial responsibility for returns of NUCYNTA previously sold by Janssen Pharma or Lazanda product previously sold by Archimedes Pharma US Inc. Under the Commercialization Agreement with Collegium for NUCYNTA, the divestiture of Lazanda to Slán and the divestiture of Gralise to Alvogen, the Company is only financially responsible for product returns for product that were sold by the Company, which are identified by specific lot numbers.

Shelf lives, from the respective manufacture dates, for the Company's products range from 24 months to 48 months. Because of the shelf life of the Company's products and its return policy of issuing credits with respect to product that is returned within six months before and up to 12 months after its product expiration date, there may be a significant period of time between when the product is shipped and when the Company issues credit on a returned product. Accordingly, the Company may have to adjust these estimates, which could have an effect on product sales and earnings in the period of adjustments.

Managed Care Rebates - The Company offers discounts under contracts with certain managed care providers. The Company generally pays managed care rebates one to three months after prescriptions subject to the rebate are filled.

Government Rebates - The Company participates in both Medicaid and Medicare rebate programs. Medicaid provides assistance to certain low income patients based on each individual state's guidelines regarding eligibility and services. Under the Medicaid rebate programs, the Company pays a rebate to each participating state, generally two to three months after the quarter in which prescriptions subject to the rebate are filled. The Company participates in the Medicare Part D Coverage Gap Discount Program under which it provides rebates on prescriptions that fall within the "donut hole" coverage gap. The Company generally pays Medicare Part D Coverage Gap rebates two to three months after the quarter in which prescriptions subject to the rebate are filled.

Wholesaler and Pharmacy Discounts—The Company offers contractually determined discounts to certain wholesale distributors and specialty pharmacies that purchase directly from it. These discounts are either taken off invoice at the time of shipment or paid to the customer on a quarterly basis one to two months after the quarter in which product was shipped to the customer.

Prompt Pay Discounts - The Company offers cash discounts to its customers (generally 2% of the sales price) as an incentive for prompt payment.

Based on the Company's experience, the Company expects its customers to comply with the payment terms to earn the cash discount.

Patient Discount Programs - The Company offers patient discount co-pay assistance programs in which patients receive certain discounts off their prescriptions at participating retail and specialty pharmacies. The discounts are reimbursed by the Company to program administrators approximately one month after the prescriptions subject to the discount are filled.

Chargebacks - The Company provides discounts to authorized users of the Federal Supply Schedule (FSS) of the General Services Administration under an FSS contract with the Department of Veterans Affairs and 340B eligible entities. These federal and 340B entities purchase products from the wholesale distributors at a discounted price, and the wholesale distributors then charge back to the Company the difference between the current retail price and the price the federal entity paid for the product.

Royalties and Milestone Revenue

For arrangements that include sales-based royalties and the license is deemed to be the predominant item to which the royalties relate, the Company recognizes royalty revenue at the later of (i) when the related sales occur, or (ii) when the performance obligation to which some or all of the royalty has been allocated has been satisfied (or partially satisfied). The Company currently has the right to receive royalties based on sales of CAMBIA in Canada, which are recognized as revenue when the related sales occur as there are no continuing performance obligations by the Company under those agreements.

For arrangements that include milestones, the Company recognizes such revenue using the most likely method. At the end of each reporting period, the Company re-evaluates the probability or achievement of any potential milestone and any related constraints, and if necessary, adjusts its estimates of the overall transaction price. Any such adjustments are recorded on a cumulative catch-up basis, which would affect revenue in the period of adjustment.

Contingent Consideration Obligation

Pursuant to the May 2020 Zyla Merger, the Company assumed a contingent consideration obligation which is measured at fair value. The Company has an obligations to make contingent consideration payments for future royalties to Iroko based upon annual INDOCIN Product net sales over $20.0 million at a 20% royalty through January 2029.

At each reporting date, the Company re-measures the contingent consideration obligation to estimated fair value and any resulting change is recognized in Selling, general and administrative expense in the Company's Condensed Consolidated Statements of Comprehensive Income. The fair value of the contingent consideration is determined using an option pricing model under the income approach based on estimated INDOCIN product revenues through January 2029 and discounted to present value. The fair value measurement is based on significant inputs not observable in the market and thus represents a Level 3 measurement as defined in fair value measurement accounting.

Leases

In accordance with ASC 842, *Leases,* the Company assesses contracts for lease arrangements at inception. Operating right-of-use (ROU) assets and liabilities are recognized at the lease commencement date equal to the present value of future lease payments using the implicit, if readily available, or incremental borrowing rate based on the information readily available at the commencement date. ROU assets include any lease payments as of commencement and initial direct costs but exclude any lease incentives. Lease and non-lease components are generally accounted for separately and the Company recognizes operating lease expense straight-line over the term of the lease. Operating leases are included in Other long-term assets, Other current liabilities, and Other long-term liabilities in the Consolidated Balance Sheet.

The Company accounts for operating leases with an initial term of twelve months or less on a straight-line basis over the lease term in the Consolidated Statements of Comprehensive Income.

Stock Based Compensation

The Company's stock-based compensation generally includes stock options, restricted stock units (RSUs), performance share units (PSUs), and purchases under the Company's employee stock purchase plan (ESPP), which was terminated in June 2021. The Company accounts for forfeitures as they occur for each type of award. Stock-based compensation expense related to restricted stock unit awards (RSUs) is based on the market value of the underlying stock on the date of grant and the related expense is recognized ratably over the requisite service period.

The stock-based compensation expense related to performance share units (PSUs) is estimated at grant date based on the fair value of the award. The PSU awards are measured exclusively to the relative total shareholder return (TSR) performance, which is measured against the three-year TSR of a custom index of companies. The actual number of shares awarded is adjusted to between zero and 200% of the target award amount based upon achievement in each of the three independent successive one-year tranches. TSR relative to peers is considered a market condition under applicable authoritative guidance. For PSUs granted with vesting subject to market conditions, the fair value of the award is determined at grant date using the Monte Carlo model, and expense is recognized ratably over the requisite service period regardless of whether or not the market condition is satisfied. The Monte Carlo valuation model considers a variety of potential future share prices for Assertio and our peer companies in a selected market index.

The Company uses the Black-Scholes option valuation model to determine the fair value of stock options and employee stock purchase plan (ESPP) shares. The determination of the fair value of stock-based payment awards on the date of grant using an option valuation model is affected by our stock price as well as assumptions, which include the expected term of the award, the expected stock price volatility, risk-free interest rate and expected dividends over the expected term of the award. The Company uses historical option exercise data to estimate the expected term of the options. The Company estimates the volatility of our common stock price by using the historical volatility over the expected term of the options. The Company bases the risk-free interest rate on U.S. Treasury zero coupon issues with terms similar to the expected term of the options as of the date of grant. The Company does not anticipate paying any cash dividends in the foreseeable future, and therefore, uses an expected dividend yield of zero in the option valuation model. Stock-based compensation expense related to the ESPP and options is recognized on a straight-line basis over its respective term.

Research and Development Expense

Research and development (R&D) expenses include salaries, clinical trial costs, consultant fees, supplies, manufacturing costs for research and development programs, allocations of corporate costs, as well as post-marketing clinical studies. All such costs are charged to R&D expense as incurred. These expenses result from the Company's independent R&D efforts as well as efforts associated with collaborations. The Company reviews and accrues clinical trial expenses based on work performed, which relies on estimates of total costs incurred based on patient enrollment, completion of patient studies and

other events. The Company follows this method since reasonably dependable estimates of the costs applicable to various stages of a research agreement or clinical trial can be made. Accrued clinical costs are subject to revisions as trials progress to completion. Revisions are charged to expense in the period in which the facts that give rise to the revision become known.

Advertising Costs

Costs associated with advertising are expensed as incurred. Advertising expense for the years ended December 31, 2021 and 2020 were $1.8 million and $0.4 million, respectively.

Restructuring

Restructuring costs are included in Restructuring charges within the Consolidated Statements of Comprehensive Income. The Company has accounted for these costs in accordance with ASC 420, *Exit or Disposal Cost Obligations* (ASC 420) and ASC 712, *Compensation - Nonretirement Postemployment Benefits* (ASC 712). One-time termination benefits are recorded at the time restructuring is communicated to the affected employees. Ongoing benefits are recognized when they are estimable and probable.

Income Taxes

The Company records the estimated future tax effects of temporary differences between the tax basis of assets and liabilities and amounts reported in its Consolidated Balance Sheets, as well as operating loss and tax credit carryforwards. The Company follows the guidelines set forth in the applicable accounting guidance regarding the recoverability of any tax assets recorded on the Consolidated Balance Sheets and provide any necessary allowances as required. Determining necessary allowances requires the Company to make assessments about the timing of future events, including the probability of expected future taxable income and available tax planning opportunities. When it is determined that it is more likely than not that some portion or all of the deferred tax assets will not be realized in the future, the deferred tax assets are reduced by a valuation allowance. The valuation allowance is sufficient to reduce the deferred tax assets to the amount determined is more likely than not to be realized. At this time, the Company has recorded a valuation allowance against its net deferred tax assets.

The Company is subject to examination of its income tax returns by various tax authorities on a periodic basis. The Company regularly assesses the likelihood of adverse outcomes resulting from such examinations to determine the adequacy of its provision for income taxes. The Company has applied the provisions of the applicable accounting guidance on accounting for uncertainty in income taxes, which requires application of a more-likely-than-not threshold to the recognition and de-recognition of uncertain tax positions. If the recognition threshold is met, the applicable accounting guidance permits the Company to recognize a tax benefit measured at the largest amount of tax benefit that, in its judgment, is more than 50 percent likely to be realized upon settlement. It further requires that a change in judgment related to the expected ultimate resolution of uncertain tax positions be recognized in earnings in the period of such change.

The Company recognizes tax liabilities in accordance with ASC Topic 740, *Income Taxes*, and adjusts these liabilities when its judgment changes as a result of the evaluation of new information not previously available. Due to the complexity of some of these uncertainties, the ultimate resolution may result in a payment that is materially different from our current estimate of the tax liabilities. These differences will be reflected as increases or decreases to income tax expense in the period in which they are determined.

Concentration of Risk

The Company is subject to credit risk from its accounts receivable related to product sales. The three large, national wholesale distributors represent the vast majority of the Company’s business and represented the following percentage of consolidated revenue by customer and the percentage accounts receivable by customer related to product shipments for the years ended December 31, 2021 and 2020.

	Consolidated revenue		Accounts receivable related to product sales	
	2021	2020	2021	2020
Cardinal Health	34 %	42 %	44 %	53 %
McKesson Corporation	24 %	14 %	23 %	20 %
AmerisourceBergen Corporation	26 %	13 %	29 %	18 %
Collegium	— %	11 %	— %	— %
All others	16 %	20 %	4 %	9 %
Total	100 %	100 %	100 %	100 %

Accounts receivable balances related to product sales were $43.8 million and $40.8 million for the years ended December 31, 2021 and 2020, respectively. To date, the Company has not experienced any significant bad debt losses with respect to the collection of its accounts receivable and believes that its accounts receivable balances are collectible.

The Company is dependent upon third-party manufacturers to supply product for commercial use. In particular, the Company relies and expects to continue to rely on a small number of manufacturers to supply it with its requirements for all commercialized products. Such production arrangements could be adversely affected by a significant interruption which would negatively impact the supply of final drug product. The Company's sole commercial suppliers for each of its marketed products, as follows:

- INDOCIN Products - Patheon Pharmaceuticals, Inc. (Patheon) and Cosette Pharmaceuticals, Inc;
- CAMBIA - MiPharm, S.p.A. and Pharma Packaging Solutions
- Otrexup - Antares Pharma, Inc. and Pharmascience Inc.
- SPRIX - Jubilant HollisterStier LLC and Sharp Packaging Solutions
- Zipsor - Catalent Ontario Limited (Catalent) and Mikart Inc.
- OXAYDO - UPM Pharmaceuticals, Inc.

Recently Adopted Accounting Pronouncements

In June 2016, the FASB issued ASU 2016-13 *Financial Instruments-Credit Losses* (ASU 2016-13 or Topic 326): Measurement of Credit Losses on Financial Instruments, which requires the measurement and recognition of expected credit losses for financial assets held at amortized cost. ASU 2016-13 replaces the existing incurred loss impairment model with an expected loss methodology, which will result in more timely recognition of credit losses. The Company adopted this standard on January 1, 2020 and updated its internal controls to include certain forward-looking considerations in the current process of developing and recognizing credit losses for in scope financial assets. Refer to "Note 8. Other Long Term Assets for further discussion on impact of adopting ASU 2016-13.

In June 2018, the FASB issued ASU 2018-18 *Collaborative Arrangements* (ASU 2018-18), which clarifies the interaction between ASC 808, *Collaborative Arrangements* (ASC 808) and ASC 606, *Revenue from Contracts with Customers* (ASC 606). The update clarifies that certain transactions between participants in a collaborative arrangement should be accounted for under ASC 606 when the counterparty is a customer. In addition, the update precludes an entity from presenting consideration from a transaction in a collaborative arrangement as revenue if the counterparty is not a customer for that transaction. The Company adopted the standard as of January 1, 2020 and have applied modified retrospective transition method to the date of initial application of ASC 606. The adoption of this guidance did not have a material impact on the Company's consolidated financial statements.

In August 2018, the FASB issued ASU No. 2018-15, *Accounting for Cloud Computing Arrangements* (Subtopic 350-40), which provides new guidance on the accounting for implementation, set-up, and other upfront costs incurred in a hosted cloud computing arrangement. Under the new guidance, entities will apply the same criteria for capitalizing implementation costs as they would for an internal-use software license arrangement. Effective January 1, 2020, the Company adopted the standard using the prospective approach to eligible costs incurred on or after the date of adoption. The adoption of this guidance did not have a material impact on the Company's consolidated financial statements.

In August 2018, the FASB issued ASU 2018-13 *Fair Value Measurement Disclosure Framework* (ASU 2018-03), which is part of a broader disclosure framework project by the FASB to improve the effectiveness of disclosures by more clearly communicating the information to the user. The Company adopted the standard as of January 1, 2020 and included these

disclosures in the consolidated financial statements. The additional elements of this release did not impact the Company's consolidated financial statements.

In December 2019, the FASB issued ASU 2019-12, *Income Taxes* (ASU 2019-12): *Simplifying the Accounting for Income Taxes* which simplifies the accounting for income taxes by removing certain exceptions related to the approach for intraperiod tax allocation, the methodology for calculating income taxes in an interim period, and by clarifying and amending existing guidance in order to improve consistent application of and simplify GAAP for other areas of Topic 740. ASU 2019-12 is effective for annual periods, and interim periods within those annual periods, beginning after December 15, 2020. Early adoption is permitted, including adoption in an interim period. The Company early adopted the standard effective January 1, 2020. The new standard was applied to the presentation of the Company's reacquisition of $19.5 million in equity component of the Company's Convertible Notes, as a result of the private purchase in February 2020 and tender offer in April 2020.

Recently Issued Accounting Pronouncements

In May 2021, the FASB issued ASU 2021-04, *Earnings Per Share (Topic 260), Debt-Modifications and Extinguishments (Subtopic 470-50), Compensation-Stock Compensation (Topic 718), and Derivatives and Hedging-Contracts in Entity's Own Equity (Subtopic 815-40): Issuer's Accounting for Certain Modifications or Exchanges of Freestanding Equity-Classified Written Call Options.* The amendments in ASU 2021-04 provide guidance to clarify and reduce diversity in an issuer's accounting for modifications or exchanges of freestanding equity-classified written call options (for example, warrants) that remain equity classified after modification or exchange. The guidance is effective for fiscal years beginning after December 15, 2021, including interim periods therein, and early adoption is permitted. The Company is currently evaluating the impact of the adoption of this principle on the Company's consolidated financial statements

In October 2021, the FASB issued *ASU 2021-08, Business Combinations (Topic 805): Accounting for Contract Assets and Contract Liabilities from Contracts with Customers,* which requires an acquirer in a business combination to recognize and measure contract assets and contract liabilities in accordance with Accounting Standards Codification Topic 606. ASU 2021-08 is effective for fiscal years beginning after December 15, 2022 and early adoption is permitted. While the Company is continuing to assess the timing of adoption and the potential impacts of ASU 2021-08, it does not expect ASU 2021-08 to have a material effect on its consolidated financial statements.

NOTE 2. ACQUISITIONS

Otrexup Acquisition

On December 15, 2021, the Company, through a newly-formed subsidiary, Otter Pharmaceuticals, LLC, entered into an Asset Purchase Agreement (the "Purchase Agreement") with Antares Pharma, Inc. ("Antares"), and concurrently consummated the transaction. Pursuant to the terms of the Purchase Agreement, the Company acquired Antares' rights, title and interest in and to Otrexup, including certain related assets, intellectual property, contracts, and product inventory for (i) $18.0 million in cash paid at closing, (ii) $16.0 million in cash payable on May 31, 2022 and (iii) and $10.0 million in cash payable on December 15, 2022.

The following table summarizes the aggregate amount paid for the assets acquired by the Company in connection with the acquisition of Otrexup (in thousands):

Cash paid to Antares at closing	$	18,000
Deferred cash payment due in May and December 2022		26,021
Transaction costs		1,478
Total purchase price of assets acquired	$	45,499

The acquisition of Otrexup has been accounted for as an asset acquisition in accordance with FASB ASC 805-50. The Company accounted for the acquisition of Otrexup as an asset acquisition because substantially all of the fair value of the assets acquired is concentrated in a single asset, the Otrexup product rights. The Otrexup products rights consist of certain patents and trademarks, at-market contracts and regulatory approvals, customer lists, marketing assets, and other records, and are considered a single asset as they are inextricably linked. ASC 805-10-55-5A includes a screen test, which provides that if substantially all of the fair value of the assets acquired is concentrated in a single identifiable asset or group of similar identifiable assets, the assets acquired are not considered to be a business. As an asset acquisition, the cost to acquire the group of assets, including transaction costs, is allocated to the individual assets acquired or liabilities assumed based on their relative

fair values. The relative fair values of identifiable assets from the acquisition of Otrexup are based on estimates of fair value using assumptions that the Company believes is reasonable.

The following table summarizes the fair value of assets acquired in the acquisition of Otrexup (in thousands):

Inventories	$	1,413
Intangible assets (Otrexup product rights)		44,086
Total assets acquired	$	45,499

The Otrexup product rights will be amortized over an 8 year period. As of December 31, 2021, cash payable to Antares in 2022 of $26.0 million is recorded in Other current liabilities in the Company's Condensed Consolidated Balance Sheet.

Zyla Life Sciences Merger

On May 20, 2020, Assertio completed the Zyla Merger pursuant to the Agreement and Plan of Merger dated March 16, 2020. Upon consummation of the Zyla Merger, each issued and outstanding share of Zyla common stock converted into 2.5 shares of Assertio Holding's common stock (the Exchange Ratio) on a pre-stock split basis, and each outstanding option or warrant to purchase Zyla common stock converted into the right to purchase shares of Assertio's common stock. The company accounted for the Zyla Merger using the acquisition method of accounting under ASC 805.

The following table reflects the acquisition date fair value of the consideration transferred with respect to the Zyla Merger:

Total number of Company ordinary shares issued		6,369,635
Assertio share price as of May 20, 2020	$	3.60
Fair value of common shares issued (in thousands)	$	22,931
Fair value of warrants and stock options issued (in thousands) [(1)]	$	11,626
Taxes paid by the Company on behalf of Zyla (in thousands)		529
Total purchase consideration (in thousands)	$	35,086

(1) Represents 1,243,091 of Zyla warrants outstanding as of May 20, 2020 at the Exchange Ratio or 3,107,728 Company warrants. The Company's warrants were valued using the Company's share price of $3.60 as of May 20,2020. As these shares are exercisable at any time at an exercise price of $0.0016 per share and Assertio issued replacement awards for these shares, these shares represent consideration transferred.

Costs incurred that were directly attributable to facilitating the close of the Zyla Merger were $6.6 million and were recognized during the first six months of 2020. These costs were recorded to the Selling, general and administrative expenses in the Consolidated Statements of Comprehensive Income.

Pursuant to ASC 805, one of the companies in the transactions shall be designated as the acquirer for accounting purposes based on the evidence available. For accounting purposes, Assertio was treated as the acquiring entity. The Zyla Merger transaction was accounted for as a business combination under the acquisition method of accounting in accordance with ASC 805. Under this method, the acquisition was recorded by allocating the purchase price consideration to the tangible and intangible assets acquired and liabilities assumed from Zyla, based on the estimated fair values at the acquisition date. The excess of purchase price over the fair value of the acquired net assets was recorded as goodwill. The results of operations of this transaction have been included in the Company's consolidated financial statements from the date of acquisition.

As of the merger date in 2020, valuations were performed to assess the fair value of certain assets acquired and liabilities assumed. Accounting guidance provides that the allocation of the purchase price may be modified up to one year from the date of the merger as more information is obtained about the fair value of assets acquired and liabilities assumed. The Company finalized the Zyla Merger purchase price allocation effective December 31, 2020.

The following table reflects the initial preliminary and final fair values of the assets acquired and liabilities assumed, and measurement period adjustments during the year ended December 31, 2020, as of the acquisition date (in thousands):

	Initial Preliminary Purchase Price Allocation (PPA) to Fair Value	Measurement period adjustments	Final PPA to Fair Value
Cash	$ 7,585	$ —	$ 7,585
Accounts receivable	23,133	—	23,133
Inventories	26,742	(12,481)	14,261
Property and equipment	4,512	(3,016)	1,496
Intangible assets	160,900	32,500	193,400
Other assets	9,629	(1,964)	7,665
Total identifiable assets acquired	**$ 232,501**	**$ 15,039**	**$ 247,540**
Accounts payable	21,574	—	21,574
Accrued rebates, returns and discounts	33,254	—	33,254
Other accrued liabilities	15,434	8,424	23,858
Contingent consideration (a)	29,400	10,500	39,900
Debt (b)	111,900	(600)	111,300
Total liabilities assumed	**$ 211,562**	**$ 18,324**	**$ 229,886**
Net identifiable assets acquired	20,939	(3,285)	17,654
Goodwill (c)	14,147	3,285	17,432
Net assets acquired	**$ 35,086**	**$ —**	**$ 35,086**

(a) Contingent consideration obligation was recognized and measured at an estimated fair value as of the acquisition date. The contingent consideration liability assumed is the result of Zyla's previous acquisition of INDOCIN Products. The liability assumed included contingent consideration related to royalties payable in the form of an earnout provision based on INDOCIN Product revenue estimates and a probability assessment with respect to the likelihood of achieving the level of net sales that would trigger the contingent payment. The fair value measurement is based on significant inputs not observable in the market and thus represents a Level 3 measurement as defined in fair value measurement accounting. The key assumptions in determining the fair value are the discount rate and the probability assigned to the potential milestones being achieved. At each reporting date, the Company will subsequently re-measure the contingent consideration obligation to estimated fair value. Any changes in the fair value of contingent consideration will be recognized in operating expenses until the contingent consideration arrangement is settled.

(b) The fair value of acquired debt is comprised of the following (in thousands):

13% Senior Secured Note due 2024	$ 95,000
Royalty rights obligation	3,300
Promissory note	3,000
Credit agreement	10,000
Total debt	$ 111,300

Upon the Zyla Merger, the Company assumed and immediately paid off a $3.0 million promissory note. The promissory note was scheduled to mature on July 31, 2020. Additionally upon the Zyla Merger, the Company assumed and immediately paid off a $10.0 million credit agreement. The credit agreement was recognized by Zyla as a related party transaction as the lenders were also holders of a portion of the Zyla's 13% Notes that were issued on January 31, 2019. The Credit Agreement was scheduled to mature on March 20, 2022. See Note 10, *Debt*, for further information regarding assumed Debt.

(c) The Company recognized $17.4 million of goodwill which represents the fair value of assets net of the fair value of liabilities assumed in excess of consideration paid. Goodwill arising from the Zyla Merger is not expected to be deductible for tax purposes and is subject to material revision as the purchase price allocation is completed. The goodwill recognized is attributable primarily to expected synergies and the assembled workforce of Zyla. Refer "Note 7. Intangible Assets" for discussions around related goodwill impairment.

Stock-based Compensation Plan

On June 4, 2020, the Company filed a Registration Statement with the SEC to register the Zyla Life Sciences Amended and Restated 2019 Stock-Based Incentive Compensation Plan (the 2019 Zyla Plan). The 2019 Zyla Plan was assumed in connection with the Zyla Merger. Pursuant to the Zyla Merger Agreement, each outstanding Zyla stock option was cancelled and converted into a stock option to purchase the Company's Common Stock on the same terms and conditions with (1) the number of shares of Company Common Stock subject to each such option equal to (i) the number of shares of the common stock subject to the option multiplied by (ii) the Merger Exchange Ratio, which was 2.5, rounded on pre-stock split basis, if necessary, to the nearest whole share and (2) an exercise price per share (rounded to the nearest whole cent) equal to the original exercise price of the Zyla stock option divided by (B) the Exchange Ratio. This resulted in the issuance of 1.3 million options with an average fair market value of $2.48 per share value on a post stock split basis, of which $0.4 million was recognized as merger consideration. The term of Zyla options may not exceed 10 years from the date of grant. An option shall be exercisable on or after each vesting date in accordance with the terms set forth in the option agreement. The right to exercise an option generally vests over three years at the rate of at least 33%, by the end of the first year and then ratably in monthly installments over the remaining vesting period of the stock option.

Warrant Agreements

Upon the Zyla Merger, the Company assumed Zyla's warrant agreements (the "Warrant Agreements") with Iroko Pharmaceuticals, Inc. ("Iroko") certain of Iroko's affiliates and certain other parties entitled to receive shares of the Company's common stock as consideration pursuant to Zyla's prior agreements or in satisfaction of certain claims pursuant to the Zyla's prior reorganization plan. The warrants are exercisable at any time at an exercise price of $0.0016 per share, subject to certain ownership limitations including, with respect to Iroko and its affiliates, that no such exercise may increase the aggregate ownership of the Company's outstanding common stock of such parties above 49% of the number of shares of its common stock then outstanding for a period of 18 months. All of the Company's outstanding warrants have similar terms whereas under no circumstance may the warrants be net-cash settled. As such, all warrants are equity-classified.

Pro Forma Information

Supplemental unaudited proforma information is based upon accounting estimates and judgments that the Company believes are reasonable. This supplemental unaudited pro forma financial information has been prepared for comparative purposes only, and is not necessarily indicative of what actual results would have occurred, or of results that may occur in the future. The following table reflects the pro forma consolidated total revenues and net loss for the periods presented, as if the acquisition of Zyla had occurred on January 1, 2020.

	Unaudited Twelve Months Ended December 31,
	2020
Total revenues	$ 131,969
Net loss	$ (60,105)

The unaudited proforma financial results for the year ended December 31, 2020 reflect adjustments directly attributed to the business combination and the Company's divestiture of NUCYNTA and Gralise. See Note 3, *Revenue*, for revenue for the period since the acquisition date to December 31, 2020 related to Zyla acquired products. As the Company operates as one operating entity, earnings of Zyla since the acquisition date are impractical to calculate separate from the consolidated company.

NOTE 3. REVENUE

Disaggregated Revenue

The following table reflects summary revenue, net for the years ended December 31, 2021 and 2020 (in thousands):

	Year ended December 31,	
	2021	2020
Product sales, net:		
INDOCIN products [1]	$ 60,557	$ 31,684
CAMBIA	24,972	28,350
Zipsor	10,185	13,286
SPRIX [1]	8,676	11,077
Other products	5,030	7,693
Total product sales, net	109,420	92,090
Commercialization agreement revenue, net	—	11,258
Royalties and milestone revenue	2,579	1,519
Other revenue	(985)	1,408
Total revenues	$ 111,014	$ 106,275

(1) Products acquired in connection with the May 20, 2020 Zyla Merger

Product Sales, net

For the year ended December 31, 2021, product sales primarily consisted of sales from INDOCIN Products, CAMBIA, Zipsor and SPRIX. The Company began shipping and recognizing product sales for INDOCIN Products and SPRIX upon the Zyla Merger on May 20, 2020.

Other product net sales primarily includes product sales for non-promoted products (OXAYDO and SOLUMATRIX) which were acquired from Zyla in May 2020.

The Company records contract liabilities in the form of deferred revenue resulting from prepayments from customers. As of December 31, 2021, contract liabilities were $0.3 million and included in Other Current Liabilities on the Consolidated Balance Sheet.

Commercialization Agreement Revenue, net

The Company ceased recognizing commercialization revenue and related costs for NUCYNTA effective the closing of the transaction to sell its rights, title and interest in and to the NUCYNTA franchise to Collegium on February 13, 2020. In connection with the sale, the Commercialization Agreement terminated at closing with certain specified provisions of the Commercialization Agreement surviving in accordance with the terms of the purchase agreement. During the year ended December 31, 2020, the Company recognized net revenue from the Commercialization Agreement of $11.3 million. This included variable royalty revenue of $13.1 million offset by the amortization of the $1.8 million net contract asset in connection with the termination of the Commercialization Agreement.

Royalties and Milestone Revenue

In November 2010, the Company entered into a license agreement with Tribute Pharmaceuticals Canada Ltd. (now known as Miravo Pharmaceuticals) granting them the rights to commercially market CAMBIA in Canada. Miravo independently contracts with manufacturers to produce a specific CAMBIA formulation in Canada. The Company receives royalties on net sales on a quarterly basis as well as certain one-time contingent milestone payments upon the occurrence of certain events. The Company recognized revenue related to CAMBIA in Canada of $2.5 million and $1.5 million, respectively, for the years ended December 31, 2021, and 2020.

Other Revenue

Other revenue consists of sales adjustments for previously divested products, which includes adjustments to reserves for product sales allowances (gross to-net sales allowances) and can result in reductions to total revenue during the period. Sales adjustments for previously divested products primarily include Gralise, which was divested in January 2020, Nucynta and Lazanda and were $(1.0) million and $1.4 million for the years ended December 31, 2021, and 2020, respectively.

NOTE 4. ACCOUNTS RECEIVABLES, NET

The following table reflects accounts receivables, net, as of December 31, 2021 and 2020 (in thousands):

	December 31,	
	2021	2020
Receivables related to product sales, net	$ 43,753	$ 40,784
Receivables from Collegium	608	3,566
Total accounts receivable, net	$ 44,361	$ 44,350

As of December 31, 2021 and 2020, allowances for cash discounts for prompt payment were $0.9 million and $1.3 million, respectively.

NOTE 5. INVENTORIES, NET

The following table reflects the components of inventory, net as of December 31, 2021 and 2020 (in thousands):

	December 31,	
	2021	2020
Raw materials	$ 1,242	$ 1,136
Work-in-process	823	1,340
Finished goods	5,424	9,236
Total Inventories, net	$ 7,489	$ 11,712

As of December 31, 2021 and 2020 inventory reserves were $3.7 million and $2.3 million, respectively.

NOTE 6. PROPERTY AND EQUIPMENT, NET

The following table reflects property and equipment, net as of December 31, 2021 and 2020 (in thousands):

	December 31,	
	2021	2020
Furniture and office equipment	$ 2,733	$ 2,680
Laboratory equipment	20	20
Leasehold improvements	10,523	10,523
	13,276	13,223
Less: Accumulated depreciation and amortization	(11,749)	(10,786)
Property and equipment, net	$ 1,527	$ 2,437

Depreciation expense was $1.0 million, and $1.6 million for the years ended December 31, 2021 and 2020, respectively. Depreciation expense is recognized in Selling, general and administrative expense in the Company's Consolidated Statements of Comprehensive Income.

NOTE 7. INTANGIBLE ASSETS

Intangible Assets

The following table reflects the gross carrying amounts and net book values of intangible assets as of December 31, 2021 and 2020 (dollar amounts in thousands):

	December 31, 2021				December 31, 2020		
Product rights	**Remaining Useful Life (In years)**	**Gross Carrying Amount**	**Accumulated Amortization**	**Net Book Value**	**Gross Carrying Amount**	**Accumulated Amortization**	**Net Book Value**
INDOCIN	10.4	$ 154,100	$ (20,654)	$ 133,446	$ 154,100	$ (7,812)	$ 146,288
Otrexup	8.0	44,086	—	44,086	—	—	—
SPRIX	5.4	39,000	(8,960)	30,040	39,000	(3,389)	35,611
CAMBIA	1.0	51,360	(43,410)	7,950	51,360	(36,163)	15,197
Zipsor	0.2	27,250	(26,718)	532	27,250	(24,381)	2,869
Oxaydo	0.0	300	(300)	—	300	(183)	117
Total Intangible Assets		$ 316,096	$ (100,042)	$ 216,054	$ 272,010	$ (71,928)	$ 200,082

Amortization expense was $28.1 million and $24.8 million for the years ended December 31, 2021 and 2020, respectively.

The following table reflects future amortization expense the Company expects for its intangible assets (in thousands):

Year Ending December 31,	**Estimated Amortization Expense**
2022	$ 32,406
2023	23,924
2024	23,924
2025	23,924
Thereafter	111,876
Total	$ 216,054

Goodwill

During the year ended December 31, 2020, the Company recognized $17.4 million of goodwill related to the fair value of the underlying net tangible and identifiable intangible assets net of liabilities resulting from the Zyla Merger (see Note 2, Acquisitions).

As of December 31, 2020, the Company determined, due to declining revenues and a decrease in its market capitalization, that it was more likely than not that the fair value of net assets are below their carrying amounts and, therefore, the Company performed the required goodwill impairment test under ASC 350, *Intangibles - Goodwill and Other*. First, the Company estimated the fair value of the reporting unit to which goodwill is assigned using a combination of the income and market approach. The Company then compared the carrying amount of the reporting unit, including goodwill, to its fair value. Since the fair value was less than the reporting unit's carrying amount, the Company calculated the goodwill impairment as the difference between the reporting unit's fair value and the carrying amount, not to exceed the carrying amount of goodwill. Accordingly, the Company recorded an impairment charge of $17.4 million, recognized within total costs and expenses in the Consolidated Statement of Comprehensive Income, to impair the carrying amount of goodwill as of December 31, 2020.

NOTE 8. OTHER LONG TERM ASSETS

The following table reflects other long-term assets as of December 31, 2021 and 2020 (in thousands):

	December 31, 2021	December 31, 2020
Investment, net	$ 1,579	$ 1,579
Operating lease right-of-use assets	735	1,955
Prepaid asset and deposits	2,456	1,936
Other	698	1,031
Total other long-term assets	$ 5,468	$ 6,501

Investment, net as of December 31, 2021 and 2020 consists of the Company's investment in NES Therapeutic, Inc. (NES). In August 2018, the Company entered into a Convertible Secured Note Purchase Agreement (Note Agreement) with NES. Pursuant the terms of the Note Agreement, the Company purchased a $3.0 million Convertible Secured Promissory Note (NES Note) for $3.0 million which accrues interest annually at a rate of 10% on $3.0 million principal, with both the principal and accrued interest due at maturity on August 2, 2024. Pursuant to the Note Agreement, the NES Note is convertible into equity based on (i) FDA acceptance of the NDA, (ii) initiation of any required clinical trials by NES, or (iii) a qualified financing event by NES.

As a result of the Company's adoption of ASU 2016-13 *Financial Instruments-Credit Losses* (ASU 2016-13 or Topic 326): *Measurement of Credit Losses on Financial Instruments* on January 1, 2020, the Company estimated an expected credit loss of approximately $1.9 million on the NES Note including accrued interest, which was recognized in Other (expense) income in the Company's Consolidated Statement of Comprehensive Income in the first quarter of 2020. To calculate the expected credit loss allowance, the Company utilized a probability-of-default method (PDM). This process estimates the probability of the loan being successfully paid back or converted into equity based on certain qualified events. The Company's expected credit losses can vary from period to period based on several factors, such as progress of the medical research and FDA submission, and overall economic environment and the ability of the investee to fund its operations. As of December 31, 2021, the Company continues to assess an estimated $1.9 million expected credit loss on the NES Note based on evaluation of probability of default that exist.

NOTE 9. ACCRUED LIABILITIES

The following table reflects accrued liabilities as of December 31, 2021 and 2020 (in thousands):

	December 31,	
	2021	2020
Accrued compensation	$ 4,122	$ 5,498
Accrued restructuring	828	8,744
Other accrued liabilities	8,062	12,829
Interest payable	1,687	1,793
Total accrued liabilities	$ 14,699	$ 28,864

NOTE 10. DEBT

The following table reflects the Company's debt as of December 31, 2021 and 2020 (in thousands):

	December 31, 2021	December 31, 2020
13% Senior Secured Note due 2024	$ 70,750	$ 80,250
Royalty rights obligation	2,743	3,533
2.50% Convertible Notes due 2021	—	335
Total principal amount	73,493	84,118
Unamortized debt discounts	—	(16)
Carrying value	73,493	84,102
Less: current portion of long-term debt	(12,174)	(11,942)
Net, long-term debt	$ 61,319	$ 72,160

13% Senior Secured Notes due 2024

In accordance with the Zyla Merger, Assertio assumed $95.0 million aggregate principal amount of 13% senior secured notes due 2024 (the Secured Notes) issued pursuant to an indenture (the Existing Indenture) entered into on January 31, 2019, by and among Zyla Life Sciences, the guarantors party thereto (the Guarantors) and Wilmington Savings Fund Society, FSB (as successor to U.S. Bank National Association), as trustee and collateral agent (the Trustee). The Secured Notes were issued in two series: $50.0 million of Series A-1 Notes and $45.0 million of Series A-2 Notes.

As of May 20, 2020, the Existing Indenture was modified by a Supplemental Indenture (the Supplemental Indenture and the Existing Indenture, as so modified, the Indenture), pursuant to which Assertio (the Issuer) assumed the obligations as issuer of the Secured Notes and the subsidiaries of Assertio became guarantors of the Secured Notes. The Supplemental Indenture, among other things, provides for certain amendments to the restrictive covenants in the Indenture.

Interest on the Secured Notes accrues at a rate of 13% per annum and is payable semi-annually in arrears on May 1 and November 1 of each year (each, a Payment Date). The Existing Indenture also requires payments of outstanding principal on the Secured Notes equal to 10% per annum of the issued principal amount, payable semi-annually on each Payment Date.

The Secured Notes are senior secured obligations of the Issuer and are secured by a lien on substantially all assets of the Issuer and the guarantors. The stated maturity date of the Secured Notes is January 31, 2024. Upon the occurrence of a Change of Control, subject to certain conditions (as defined in the Existing Indenture), holders of the Secured Notes may require the Issuer to repurchase for cash all or part of their Secured Notes at a repurchase price equal to 100% of the principal amount of the Secured Notes to be repurchased, plus accrued and unpaid interest to the date of repurchase.

The Company may redeem the Secured Notes at its option, in whole or in part from time to time, at a redemption price equal to 100% of the principal amount of the Secured Notes being redeemed, plus accrued and unpaid interest, if any, through the redemption date. No sinking fund is provided for the Secured Notes.

Pursuant to the Supplemental Indenture, Assertio and its restricted subsidiaries must also comply with certain covenants, including limitations on the issuance of debt; the issuance of preferred and/or disqualified stock; the payment of dividends and other restricted payments; the prepayment, redemption or repurchase of subordinated debt; mergers, amalgamations or consolidations; engaging in certain transactions with affiliates; and the making of investments. In addition, the Issuer must maintain a minimum level of consolidated liquidity, based on unrestricted cash on hand and availability under any revolving credit facility, equal to the greater of (1) the quotient of the outstanding principal amount of the Secured Notes divided by 9.5 and (2) $7.5 million. The Company was in compliance with its covenants with respect to the Secured Notes as of December 31, 2021.

The Company had Senior Secured Notes obligations of $70.8 million as of December 31, 2021, with $9.5 million classified as current and $61.3 million classified as non-current debt in the Company's Consolidated Balance Sheets.

Royalty Rights Obligation

In accordance with the Zyla Merger, the Company assumed a royalty rights agreement (the Royalty Rights) with each of the holders of its Secured Notes pursuant to which the Company will pay the holders of the Secured Notes an aggregate 1.5% royalty on Net Sales (as defined in the Existing Indenture) through December 31, 2022. The Royalty Rights were determined to be a freestanding element with respect to the Secured Notes and the Company is accounting for the Royalty Rights obligation relating to future royalties as a debt instrument.

The Company has Royalty Rights obligations of $2.7 million as of December 31, 2021, with $2.6 million classified as current and $0.1 million classified as non-current debt in the Company's Consolidated Balance Sheets.

The accounting for the Royalty Rights requires the Company to make certain estimates and assumptions about the future net sales. The estimates of the magnitude and timing of net sales are subject to significant variability due to the extended time period associated with the financing transaction and are thus subject to significant uncertainty.

Convertible Notes

2.50% Convertible Senior Notes Due 2021

On September 9, 2014, the Company issued $345 million aggregate principal amount of 2.50% Convertible Senior Notes Due 2021 (the 2021 Notes). The 2021 Notes were issued pursuant to an indenture, as supplemented by a supplemental indenture dated September 9, 2014, between the Company and The Bank of New York Mellon Trust Company, N.A., as trustee (the Trustee), and mature on September 1, 2021, unless earlier converted, redeemed, or repurchased. The 2021 Notes bear interest at the rate of 2.50% per annum, payable semi-annually in arrears on March 1 and September 1 of each year, beginning March 1, 2015.

On February 19, 2020, the Company entered into purchase agreements with a limited number of holders of the Company's outstanding 2021 Notes to repurchase $102.5 million aggregate principal amount of 2021 Notes. On April 8, 2020, the Company completed its public tender offers to purchase the $42.1 million in aggregate principal amount outstanding 2021 Notes. As of December 31, 2020, only $0.3 million in aggregate principal amount of the 2021 Notes were outstanding and were classified as part of current portion of long-term debt on the Company's Consolidated Balance Sheets. On September 1, 2021, the remaining $0.3 million in aggregate principal amount of the 2021 Notes matured and were paid. As of December 31, 2021, there were no outstanding aggregate principal amounts of the 2021 Notes.

5.00% Convertible Senior Notes Due 2024

On August 13, 2019, the Company issued $120.0 million aggregate principal of Convertible Senior Notes Due 2024 (the 2024 Notes). On February 19, 2020, the Company entered into purchase agreements with a limited number of holders of the Company's outstanding 2024 Notes to repurchase $85.5 million aggregate principal amount of 2024 Notes.

On April 8, 2020, the Company completed its public tender offers to purchase the remaining $34.5 million in aggregate principal amount outstanding 2024 Notes. As of December 31, 2021 and 2020, there were no outstanding aggregate principal amount of the 2024 Notes.

Senior Secured Notes

On April 2, 2015, the Company issued $575.0 million aggregate principal amount of senior secured notes pursuant to a Note Purchase Agreement dated March 12, 2015 (Note Purchase Agreement). On February 13, 2020, the Company repaid in full all outstanding indebtedness, and terminated all commitments and obligations, under its Note Purchase Agreement.

Interest Expense

Debt discount and royalty rights are amortized as interest expense using the effective interest method. The following table reflects debt related interest included in the Interest expense in the Company's Consolidated Statements of Comprehensive Income as of December 31, 2021 and 2020 (in thousands):

	Year ended December 31,	
	2021	2020
Interest payable on Convertible Notes	$ 6	$ 1,727
Interest payable on 13% Senior Secured Notes due 2024	10,020	6,870
Interest payable on Senior Notes	—	1,648
Amortization of debt discounts, and royalty rights	194	5,680
Total interest expense	**$ 10,220**	**$ 15,925**

NOTE 11. RESTRUCTURING CHARGES

The Company continually evaluates its operations to identify opportunities to streamline operations and optimize operating efficiencies as an anticipation to changes in the business environment.

On December 15, 2020, the Company announced the December 2020 Plan which was designed to substantially reduce the Company's operating footprint through the reduction of its workforce. The reorganization plan included a reduction of staff at our headquarters office and remote sales force. As a result, $9.6 million of severance and benefits costs and $1.6 million of other exit costs, including $0.9 million related to the write off of fixed assets no longer in use and $0.7 million related to the early termination of fleet leases, were recognized as restructuring charges, related to the December 2020 Plan, during the year ended December 31, 2020. The Company completed the workforce reduction in 2021 and recognized $0.9 million of severance and benefits costs and $0.2 million of other exit costs during the year ended December 31, 2021

In May 2020, the Company began implementing reorganization plans of its workforce and other restructuring activities to realize the synergies of the Zyla Merger and to re-align resources to strategic areas and drive growth (Zyla Merger Reorganization). The Company completed the restructuring activities in 2020 and incurred $5.6 million of severance and benefits costs, which includes $1.0 million of stock-based compensation expense associated with equity modifications for certain executives, and $0.2 million of other exit costs were incurred during the year ended December 31, 2020. The Company did not incur significant costs related to the Zyla Merger Reorganization in 2021.

In April 2020, the Company executed a limited reduction to its sales force due to the impact of COVID-19 on its ability to see in-person providers who prescribe our products. As a result, $0.3 million of severance and benefits costs and $0.3 million of other costs were recognized as restructuring charges during the year ended December 31, 2020. This initiative was completed during 2020.

In November 2019, the Company announced an acceleration of cost-saving initiatives that included a decision to discontinue its relationship with its contract sales organization, a reduction in the use of certain outside vendors and consultants, and the reorganization of certain functions resulting in a reduction of staff at its headquarters office and remote positions during the fourth quarter of 2019 (the 2019 Plan). As a result, $0.2 million of severance and benefits costs for the reduction of staff were recognized as restructuring charges, related to the 2019 Plan, during the year ended December 31, 2020. The 2019 cost-saving initiative was completed in 2020.

The following table reflects total expenses related to restructuring activities recognized within the Consolidated Statement of Comprehensive Income as restructuring costs (in thousands):

	Year ended December 31,	
	2021	2020
Employee compensation costs	$ 876	$ 15,705
Other exit costs	213	2,101
Total restructuring charges	$ 1,089	$ 17,806

The following table reflects cash activity relating to the Company's accrued restructuring cost as of December 31, 2021 and 2020 (in thousands):

	Employee compensation costs	Other exit costs	Total
Balance as of December 31, 2019	$ 3,763	$ —	$ 3,763
Accruals	15,705	2,101	17,806
Adjustment to previous accrual estimate	(594)	—	(594)
Write off of fixed assets, leases and other adjustments	—	(1,888)	(1,888)
Cash paid	(10,130)	(213)	(10,343)
Balance as of December 31, 2020	$ 8,744	$ —	$ 8,744
Restructuring charges	876	213	1,089
Cash paid	(8,792)	(213)	(9,005)
Balance as of December 31, 2021	$ 828	$ —	$ 828

As of December 31, 2021, the accrued restructuring balance of $0.8 million was related to the December 2020 Plan. As of December 31, 2020, the accrued restructuring balance of $8.7 million was comprised of $7.2 million related to the December 2020 Plan, $0.8 million related to the 2019 Plan, and $0.7 million related to Zyla Merger restructuring activities and was classified as accrued liabilities in the Consolidated Balance Sheet. Non-cash charges during the year ended December 31, 2020 primarily related to the write off of fixed assets no longer in use and the early termination of fleet leases in connection with the December 2020 plan.

NOTE 12. LEASES

As of December 31, 2021, the Company has non-cancelable operating leases for its offices and certain office equipment. The Company has the right to renew the term of the Lake Forest lease for one period of five years, provided that written notice is made to the Landlord no later than twelve months prior to the expiration of the initial term of the lease which is on December 31, 2023. In connection with the Zyla Merger, the company assumed an operating lease for offices in Wayne, Pennsylvania, which terminated in February 2022.

Prior to the Company's corporate headquarters relocation in 2018, it had leased its previous corporate office in Newark, California (the Newark lease) which terminates at the end of November 2022 and will not be renewed. The Newark lease is currently partially subleased through the lease term. Operating lease costs and sublease income related to the Newark facility are accounted for in Other gain (loss) in the Consolidated Statements of Comprehensive Income.

The following table reflects lease expense for the years ended December 31, 2021 and 2020 (in thousands):

	Financial Statement Classification	Year ended December 31, 2021	Year ended December 31, 2020
Operating lease cost	Selling, general and administrative expenses	$ 307	$ 1,760
Operating lease cost	Other gain (loss)	591	1,391
Total lease cost		$ 898	$ 3,151
Sublease Income	Other gain (loss)	$ 1,148	$ 2,236

The following table reflects supplemental cash flow information related to leases for the years ended December 31, 2021 and 2020 (in thousands):

	Year ended December 31, 2021	Year ended December 31, 2020
Cash paid for amounts included in measurement of liabilities:		
Operating cash flows from operating leases	$ 2,799	$ 3,004

The following table reflects supplemental balance sheet information related to leases as of December 31, 2021 and 2020 (in thousands):

	Financial Statement Classification	December 31, 2021	December 31, 2020
Liabilities			
Current operating lease liabilities	Other current liabilities	$ 1,978	$ 2,683
Noncurrent operating lease liabilities	Other long term liabilities	397	2,815
Total lease liabilities		$ 2,375	$ 5,498

Future undiscounted cash flows to be received from subleases is expected to be approximately $0.8 million for the year ended December 31, 2022.

The following table reflects other lease information as of December 31, 2021 and 2020:

	December 31, 2021	December 31, 2020
Weighted-average remaining lease term (years):		
Operating leases	1.2	2.2
Weighted-average discount rate:		
Operating leases	7.8 %	6.3 %

The following table reflects future minimum lease payments under the Company's non-cancelable operating leases as of December 31, 2021 (in thousands):

	Lease Payments
2022	$ 1,983
2023	421
Thereafter	—
Total lease payments	$ 2,404
Less: Interest	29
Present value of lease liabilities	$ 2,375

NOTE 13. COMMITMENTS AND CONTINGENCIES

Jubilant HollisterStier Manufacturing and Supply Agreement

Pursuant to the Zyla Merger, the Company assumed a Manufacturing and Supply Agreement (the "Agreement") with Jubilant HollisterStier LLC ("JHS") pursuant to which the Company engaged JHS to provide certain services related to the manufacture and supply of SPRIX for the Company's commercial use. Under the Agreement, JHS will be responsible for supplying a minimum of 75% of the Company's annual requirements of SPRIX through July 30, 2022. The Company has agreed to purchase a minimum number of batches of SPRIX per calendar year from JHS over the term of the Agreement. Total commitments to JHS are approximately $0.7 million through the period ending July 30, 2022 and are expected to be met.

Cosette Pharmaceuticals Supply Agreement

Pursuant to the Zyla Merger, the Company assumed a Collaborative License, Exclusive Manufacture and Global Supply Agreement with Cosette Pharmaceuticals, Inc. (formerly G&W Laboratories, Inc.) (the "Supply Agreement") for the manufacture and supply of INDOCIN Suppositories to Zyla for commercial distribution in the United States. On July 9, 2021, the Company and Cosette entered into Amendment No. 3 to the Supply Agreement, to among other things, extend the expiration date of the Supply Agreement from July 31, 2023 to July 9, 2028. The Company is obligated to purchase all of its requirements for INDOCIN Suppositories from Cosette Pharmaceuticals, Inc., and is required to meet minimum purchase requirements each calendar year during the extended term of the agreement. Total commitments to Cosette are approximately $6.3 million annually through the end of the contract term.

Antares Supply Agreement

In connection with the Otrexup acquisition, the Company entered into a Supply Agreement with Antares pursuant to which Antares will manufacture and supply the finished Otrexup products. Under the Supply Agreement, the Company has agreed to annual minimum purchase obligations from Antares, which approximate $2.0 million annually. The Supply Agreement has an initial term through December 2031 with renewal terms beyond.

Legal Matters

General

The Company is currently involved in various lawsuits, claims, investigations and other legal proceedings that arise in the ordinary course of business. The Company recognizes a loss contingency provision in its financial statements when it concludes that a contingent liability is probable, and the amount thereof is estimable. Costs associated with our involvement in legal proceedings are expensed as incurred. Amounts accrued for legal contingencies are based on management's best estimate of a loss based upon the status of the cases described below, assessments of the likelihood of damages, and the advice of counsel and often result from a complex series of judgments about future events and uncertainties that rely heavily on estimates and assumptions including timing of related payments. As of December 31, 2021 and December 31, 2020 the Company had a legal contingency accrual of approximately $3.4 million and zero, respectively. The Company recognized a loss on contingency provision of $10.6 million during the year ended December 31, 2021. The Company will continue to monitor each matter and adjust accruals as warranted based on new information and further developments in accordance with ASC 450-20- 25. For matters discussed below for which a loss is not probable, or a probable loss cannot be reasonably estimated, no liability has been recorded. Legal expenses are recorded in Selling, general and administrative expense in the Company's Condensed Consolidated Statements of Comprehensive Income and the related accruals are recorded in Accrued liabilities in the Company's Condensed Consolidated Balance Sheets.

Other than matters that we have disclosed below, the Company may from time to time become party to actions, claims, suits, investigations or proceedings arising from the ordinary course of its business, including actions with respect to intellectual property claims, breach of contract claims, labor and employment claims and other matters. The Company may also become party to further litigation in federal and state courts relating to opioid drugs. Although actions, claims, suits, investigations and proceedings are inherently uncertain and their results cannot be predicted with certainty, other than the matters set forth below, the Company is not currently involved in any matters that the Company believes may have a material adverse effect on its business, results of operations or financial condition. However, regardless of the outcome, litigation can have an adverse impact on the Company because of associated cost and diversion of management time.

Glumetza Antitrust Litigation

Antitrust class actions and related direct antitrust actions were filed in the Northern District of California against the Company and several other defendants relating to our former drug Glumetza®. The plaintiffs sought to represent a putative class of direct purchasers of Glumetza. In addition, several retailers, including CVS Pharmacy, Inc., Rite Aid Corporation, Walgreen Co., the Kroger Co., the Albertsons Companies, Inc., H-E-B, L.P., and Hy-Vee, Inc. (the "Retailer Plaintiffs"), filed substantially similar direct purchaser antitrust claims.

On July 30, 2020, Humana Inc. also filed a complaint against the Company and several other defendants in federal court in the Northern District of California alleging similar claims related to Glumetza®. The claims asserted by Humana in its federal case were ultimately withdrawn, and analogous claims were instead asserted by Humana in an action it filed in California state court on February 8, 2021, and subsequently amended in September 2021.

These antitrust cases arise out of a Settlement and License Agreement (the Settlement) that the Company, Santarus, Inc. (Santarus) and Lupin Limited (Lupin) entered into in February 2012 that resolved patent infringement litigation filed by the Company against Lupin regarding Lupin's Abbreviated New Drug Application for generic 500 mg and 1000 mg tablets of Glumetza. The antitrust plaintiffs allege, among other things, that the Settlement violated the antitrust laws because it allegedly included a "reverse payment" that caused Lupin to delay its entry in the market with a generic version of Glumetza. The alleged "reverse payment" is an alleged commitment on the part of the settling parties not to launch an authorized generic version of Glumetza for a certain period. The antitrust plaintiffs allege that the Company and its co-defendants, which include Lupin as well as Bausch Health (the alleged successor in interest to Santarus) are liable for damages under the antitrust laws for overcharges that the antitrust plaintiffs allege they paid when they purchased the branded version of Glumetza® due to delayed generic entry. Plaintiffs seek treble damages for alleged past harm, attorneys' fees and costs.

On September 14, 2021, the Retailer Plaintiffs voluntarily dismissed all claims against the Company pursuant to a settlement agreement with the Company in return for $3.15 million. On February 3, 2022, the Court issued its final order approving a settlement of the direct purchaser class plaintiffs' claims against the Company in return for $3.85 million.

With respect to the Humana lawsuit that is continuing in California state court, on November 24, 2021, the state court granted in part and denied in part a demurrer by the defendants. That case is now moving to discovery.

The Company intends to defend itself vigorously in the Humana California state court lawsuit. A liability for this matter has been recorded in the financial statements.

Securities Class Action Lawsuit and Related Matters

On August 23, 2017, the Company, two individuals who formerly served as its chief executive officer and president, and its former chief financial officer were named as defendants in a purported federal securities law class action filed in the U.S. District Court for the Northern District of California (the District Court). The action (*Huang v. Depomed et al.*, No. 4:17-cv-4830-JST, N.D. Cal.) alleges violations of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934, as amended, and Rule 10b-5 relating to certain prior disclosures of the Company about its business, compliance, and operational policies and practices concerning the sales and marketing of its opioid products and contends that the conduct supporting the alleged violations affected the value of Company common stock and is seeking damages and other relief. In an amended complaint filed on February 6, 2018, the lead plaintiff (referred to in its pleadings as the Depomed Investor Group), which seeks to represent a class consisting of all purchasers of Company common stock between July 29, 2015 and August 7, 2017, asserted the same claims arising out of the same and similar disclosures against the Company and the same individuals as were involved in the original complaint. The Company and the individuals filed a motion to dismiss the amended complaint on April 9, 2018. On March 18, 2019, the District Court granted the motion to dismiss without prejudice, and the plaintiffs filed a second amended complaint on May 2, 2019. The second amended complaint asserted the same claims arising out of the same and similar disclosures against the Company and the same individuals as were involved in the original complaint. The Company and the individuals filed a motion to dismiss the second amended complaint on June 17, 2019, and the District Court granted that motion with prejudice on March 11, 2020. On April 9, 2020, the plaintiffs filed a notice of appeal with the United States Court of Appeals for the Ninth Circuit. The parties completed their briefing of the appeal on December 14, 2020. On March 1, 2021, the court granted the parties' joint motion to stay the appeal pending settlement discussions. On July 30, 2021, the Company reached an agreement to settle the matter subject to District Court approval. On August 13, 2021, the plaintiffs filed an unopposed motion for preliminary approval of the settlement with the District Court. A liability for this matter has been recorded in the financial statements.

In addition, five shareholder derivative actions were filed on behalf of the Company against its officers and directors for breach of fiduciary duty, unjust enrichment, abuse of control, gross mismanagement, waste of corporate assets, and violations of the federal securities laws. The claims arise out of the same factual allegations as the purported federal securities class action described above. The first derivative action was filed in the Superior Court of California, Alameda County on September 29, 2017 (*Singh v. Higgins et al*., RG17877280). The second and third actions were filed in the Northern District of California on November 10, 2017 (*Solak v. Higgins et al*., No. 3:17-cv-6546-JST) and November 15, 2017 (*Ross v. Fogarty et al*., No. 3:17-cv-6592-JST). The fourth action was filed in the District of Delaware on December 21, 2018 (*Lutz v. Higgins et al*, No. 18-2044-CFC). The fifth derivative action was filed in the Superior Court of California, Alameda County on January 28, 2019 (*Youse v. Higgins et al*, No. HG19004409). On December 7, 2017, the plaintiffs in *Solak v. Higgins, et al.* voluntarily dismissed the action. On July 12, 2019, the *Singh* and *Youse* actions were consolidated. All of the derivative actions were stayed pending the resolution of the class action, and the stays have been extended pending the resolution of the appeal. On July 30, 2021, the Company reached an agreement to settle these matters subject to court approval. On August 6, 2021, plaintiffs in the consolidated Singh/Youse derivative action filed an unopposed motion for preliminary approval of the settlement with the Superior Court of California, Alameda County. On October 19, 2021, the Superior Court held a hearing regarding the preliminary approval motion and, on October 28, 2021 and December 14, 2021, respectively, the Superior Court issued its preliminary and final orders approving the settlement.

Opioid-Related Request and Subpoenas

As a result of the greater public awareness of the public health issue of opioid abuse, there has been increased scrutiny of, and investigation into, the commercial practices of opioid manufacturers generally by federal, state, and local regulatory and governmental agencies. In March 2017, the Company's subsidiary Assertio Therapeutics, Inc. (Assertio Therapeutics) received a letter from then-Sen. Claire McCaskill (D-MO), the then-Ranking Member on the U.S. Senate Committee on Homeland Security and Governmental Affairs, requesting certain information regarding Assertio Therapeutics' historical commercialization of opioid products. Assertio Therapeutics voluntarily furnished information responsive to Sen. McCaskill's

request. Since 2017, Assertio Therapeutics has received and responded to subpoenas from the U.S. Department of Justice (DOJ) seeking documents and information regarding its historical sales and marketing of opioid products. Assertio Therapeutics has also received and responded to subpoenas or civil investigative demands focused on its historical promotion and sales of Lazanda, NUCYNTA, and NUCYNTA ER from various state attorneys general seeking documents and information regarding Assertio Therapeutics' historical sales and marketing of opioid products. In addition, Assertio Therapeutics received and responded to a subpoena from the State of California Department of Insurance (CDI) seeking information relating to its historical sales and marketing of Lazanda. The CDI subpoena also seeks information on Gralise, a non-opioid product formerly in Assertio Therapeutics' portfolio. In addition, Assertio Therapeutics received and responded to a subpoena from the New York Department of Financial Services seeking information relating to its historical sales and marketing of opioid products. Assertio Therapeutics also from time to time receives and complies with subpoenas from governmental authorities related to investigations primarily focused on third parties, including healthcare practitioners. Assertio Therapeutics is cooperating with the foregoing governmental investigations and inquiries.

Multidistrict Opioid Litigation

A number of pharmaceutical manufacturers, distributors and other industry participants have been named in numerous lawsuits around the country brought by various groups of plaintiffs, including city and county governments, hospitals, individuals and others. In general, the lawsuits assert claims arising from defendants' manufacturing, distributing, marketing and promoting of FDA-approved opioid drugs. The specific legal theories asserted vary from case to case, but the lawsuits generally include federal and/or state statutory claims, as well as claims arising under state common law. Plaintiffs seek various forms of damages, injunctive and other relief and attorneys' fees and costs.

For such cases filed in or removed to federal court, the Judicial Panel on Multi-District Litigation issued an order in December 2017, establishing a Multi-District Litigation court (MDL Court) in the Northern District of Ohio (In re National Prescription Opiate Litigation, Case No. 1:17-MD-2804). Since that time, more than 2,000 such cases that were originally filed in U.S. District Courts, or removed to federal court from state court, have been filed in or transferred to the MDL Court. Assertio Therapeutics is currently involved in a subset of the lawsuits that have been filed in or transferred to the MDL Court. Plaintiffs may file additional lawsuits in which Assertio Therapeutics may be named. Plaintiffs in the pending federal cases involving Assertio Therapeutics include individuals; county, municipal and other governmental entities; employee benefit plans, health insurance providers and other payors; hospitals, health clinics and other health care providers; Native American tribes; and non-profit organizations who assert, for themselves and in some cases for a putative class, federal and state statutory claims and state common law claims, such as conspiracy, nuisance, fraud, negligence, gross negligence, negligent and intentional infliction of emotional distress, deceptive trade practices, and products liability claims (defective design/failure to warn). In these cases, plaintiffs seek a variety of forms of relief, including actual damages to compensate for alleged personal injuries and for alleged past and future costs such as to provide care and services to persons with opioid-related addiction or related conditions, injunctive relief, including to prohibit alleged deceptive marketing practices and abate an alleged nuisance, establishment of a compensation fund, establishment of medical monitoring programs, disgorgement of profits, punitive and statutory treble damages, and attorneys' fees and costs. No trial date has been set in any of these lawsuits, which are at an early stage of proceedings. Assertio Therapeutics intends to defend itself vigorously in these matters.

State Opioid Litigation

Related to the cases in the MDL Court noted above, there have been hundreds of similar lawsuits filed in state courts around the country, in which various groups of plaintiffs assert opioid-drug related claims against similar groups of defendants. Assertio Therapeutics is currently named in a subset of those cases, including cases in Missouri, Nevada, Pennsylvania, Texas and Utah. Plaintiffs may file additional lawsuits in which Assertio Therapeutics may be named. In the pending cases involving Assertio Therapeutics, plaintiffs are asserting state common law and statutory claims against the defendants similar in nature to the claims asserted in the MDL cases. Plaintiffs are seeking actual damages, disgorgement of profits, injunctive relief, punitive and statutory treble damages, and attorneys' fees and costs. The state lawsuits in which Assertio Therapeutics has been served are generally each at an early stage of proceedings. Assertio Therapeutics intends to defend itself vigorously in these matters.

Insurance Litigation

On January 15, 2019, the Company was named as a defendant in a declaratory judgment action filed by Navigators Specialty Insurance Company (Navigators) in the U.S. District Court for the Northern District of California (Case No. 3:19-cv-255). Navigators is the Company's primary product liability insurer. Navigators was seeking declaratory judgment that opioid litigation claims noticed by the Company (as further described above under "Multidistrict Opioid Litigation" and "State Opioid Litigation") are not covered by the Company's life sciences liability policies with Navigators. On February 3, 2021, the Company entered into a Confidential Settlement Agreement and Mutual Release with Navigators to resolve the declaratory

judgment action and the Company's counterclaims. Pursuant to the Settlement Agreement, the parties settled and the coverage action was dismissed without prejudice.

During the first quarter of 2021, the Company received $5.0 million in insurance reimbursement for previous opioid-related spend, which was recognized within Selling, general and administrative expenses in the Condensed Consolidated Statements of Comprehensive Income.

On July 16, 2021, the Company filed a complaint for declaratory relief against one of its excess products liability insurers, Lloyd's of London Newline Syndicate 1218 and related entities (Newline), in the Superior Court of the State of California for the County of Alameda. Newline removed the case to federal court, and it is currently pending in the U.S. District Court for the Northern District of California (Case No. 3:21-cv-06642). The Company is seeking a declaratory judgment that Newline has a duty to defend the Company or, alternatively, to reimburse the Company's attorneys' fees and other defense costs for opioid litigation claims noticed by the Company. The litigation is in the early stages of discovery and trial has been scheduled for May 2023.

NOTE 14. EMPLOYEE BENEFIT PLANS

The Company's 401(k) Employee Savings Plan (the "401(k) Plan") is available to all U.S. employees meeting certain eligibility criteria. The 401(k) Plan was amended at the time of the Zyla Merger in May 2020 to make matching contributions amount equal to 100% of elective deferral contributions that are not over 3% of compensation, plus 50% of elective deferral contributions that are over 3% of compensation but are not over 6% of compensation. The Company may make discretionary matching contributions for employees.

The Company contributed cash of $0.1 million and $0.2 million to the 401(k) Plan during the years ended December 31, 2021 and 2020, respectively. The Company's common stock is not an investment option available to participants in the 401(k) Plan.

NOTE 15. STOCK-BASED COMPENSATION

The Company's stock-based compensation generally includes stock options, restricted stock units (RSUs), performance share units (PSUs), and purchases under the Company's former employee stock purchase plan (ESPP). The following table reflects stock-based compensation expense recognized in the Company's Consolidated Statements of Comprehensive Income for the years ended December 31, 2021 and 2020 (in thousands):

	Years Ended December 31,	
	2021	2020
Cost of sales (excluding amortization of intangible assets)	$ —	$ 92
Research and development expenses	—	268
Selling, general and administrative expenses	3,545	9,565
Restructuring charges	—	999
Total	$ 3,545	$ 10,924

The recognized tax benefits on total stock-based compensation expense was immaterial for the years ended December 31, 2021 and 2020.

As of December 31, 2021, the Company had $4.7 million and $2.3 million of total unrecognized compensation expense related to RSUs and stock option grants, respectively, that will be recognized over a weighted average vesting period of 1.92 years and 2.91 years, respectively.

The following table reflects assumptions used to calculate the fair value of option grants for the year ended December 31, 2021:

	2021	2020
Risk-free interest rate	1.25%	0.20% - 0.35%
Dividend yield	—%	—%
Expected option term (in years)	6.0	3.4 - 5.0
Expected stock price volatility	284%	80%

The weighted average grant date fair value of options granted during the years ended December 31, 2021 and 2020 was $1.11 and $1.64 per option share, respectively. There were 72,750 stock options were exercised during the year ended December 31, 2021, and no stock options exercised during 2020. The total intrinsic value of options exercised during the year ended December 31, 2021 was $0.1 million and cash received from stock options exercised during the year ended December 31, 2021 was $0.2 million. Total grant date fair value of options that vested during the years ended December 31, 2021 and 2020 was $0.2 million and $0.7 million, respectively.

Employee Stock Purchase Plan

The Company terminated its ESPP program in June 2021 and did not grant any stock purchase rights under the ESPP program during the year ended December 31, 2021. The weighted average grant date fair value of stock purchase rights granted under the ESPP during the years ended December 31, 2020 was $1.64. The following table reflects assumptions used to calculate the fair value of stock purchase rights granted under the ESPP for the year ended December 31, 2020:

	2020
Employee Stock Purchase Plan	
Risk-free interest rate	0.09% - 0.18%
Dividend yield	—%
Expected term (in years)	0.5
Expected stock price volatility	85.8% - 142.3%

2004 Equity Incentive Plan

The Company's 2004 Equity Incentive Plan (2004 Plan) was adopted by the Board of Directors and approved by the shareholders in May 2004. The 2004 Plan provides for the grant to employees of the Company, including officers, of incentive stock options, and for the grant of non-statutory stock options to employees, directors and consultants of the Company. The number of shares authorized under the 2004 Plan was 3,612,500 shares and there were no more shares available for future issuance at December 31, 2021.

Generally, the exercise price of all incentive stock options and non-statutory stock options granted under the 2004 Plan must be at least 100% and 80%, respectively, of the fair value of the common stock of the Company on the grant date. The term of incentive and non-statutory stock options may not exceed 10 years from the date of grant. An option shall be exercisable on or after each vesting date in accordance with the terms set forth in the option agreement. The right to exercise an option generally vests over four years at the rate of at least 25% by the end of the first year and then ratably in monthly installments over the remaining vesting period of the option.

The following tables reflects activity for the year ended December 31, 2021 under the 2004 Plan (dollar amounts in thousands):

	Shares	Weighted-Average Exercise Price	Weighted-Average Remaining Contractual Term (years)	Aggregate Intrinsic Value (in thousands)
Options outstanding as of December 31, 2020	30,875	$ 25.71		
Options granted	—	—		
Options exercised	—	—		
Options forfeited	—	—		
Options expired	(10,875)	20.52		
Options outstanding as of December 31, 2021	20,000	$ 28.54	1.4	$ —
Options vested and expected as of vest at December 31, 2021	20,000	$ 28.54	1.4	$ —
Options exercisable as of December 31, 2021	20,000	$ 28.54	1.4	$ —

There were no restricted stock units granted under the 2004 Equity Incentive Plan.

2014 Omnibus Incentive Plan

The Company's 2014 Omnibus Incentive Plan (2014 Plan) was adopted by the Board of Directors and approved by the shareholders in May 2014, and subsequently amended and restated in June 2020 (2014 Amended Plan). The 2014 Amended Plan provides for the grant of stock options, stock appreciation rights, stock awards, cash awards and performance award to the employees, non-employee directors and consultants of the Company. Shares available for grant under the 2014 Amended Plan were increased during the year ended December 31, 2020 by 3,250,000 shares. The number of shares authorized under the 2014 Amended Plan is 7,195,000 shares, of which 52,317 were available for future issuance at December 31, 2021.

Incentive Stock Options

Generally, the exercise price of all incentive stock options and non-statutory stock options granted under the 2014 Amended Plan must be the fair value of the common stock of the Company on the grant date. The term of incentive and non-statutory stock options may not exceed 10 years from the date of grant. An option shall be exercisable on or after each vesting date in accordance with the terms set forth in the option agreement. The right to exercise an option generally vests over three years at rate of 33% annually or four years at the rate of at least 25% by the end of the first year and then ratably in monthly installments over the remaining vesting period of the option.

The following table reflects option activity for the year ended December 31, 2021 under the 2014 Amended Plan (dollar amounts in thousands):

	Number of Shares	Weighted Average Exercise Price	Weighted-Average Remaining Contractual Term (years)	Aggregate Intrinsic Value (in thousands)
Options outstanding as of December 31, 2020	232,956	$ 36.18		
Options granted	2,100,000	1.31		
Options exercised	—	—		
Options forfeited	(259)	25.73		
Options expired	(128,856)	44.84		
Options outstanding as of December 31, 2021	2,203,841	$ 2.45	9.8	$ 1,827
Options vested and expected to vest as of December 31, 2021	2,203,841	$ 2.45	9.8	$ 1,827
Options exercisable as of December 31, 2021	103,841	$ 25.46	6.5	$ —

Restricted Stock Units

The following table reflects RSU activity for the year ended December 31, 2021 under the 2014 Amended Plan (dollar amounts in thousands):

	Number of Shares	Weighted Average Grant Date Fair Value Per Share	Weighted Average Remaining Contractual Term (in years)
Non-vested performance-based restricted stock units as of December 31, 2020	1,374,358	$ 5.59	
Granted	2,230,065	2.94	
Vested	(707,515)	5.50	
Forfeited	(275,305)	5.24	
Non-vested restricted stock units as of December 31, 2021	2,621,603	$ 3.40	1.1

RSUs generally vest over three or four years, with 33% or 25% of each award vesting annually, respectively. The total fair value of RSUs that vested during the years ended December 31, 2021 and 2020 was $1.7 million and $1.1 million, respectively.

Performance-based Restricted Stock Units

The PSU awards are measured exclusively to the relative total shareholder return (TSR) performance, which is measured against the three-year TSR of a custom index of companies. The actual number of shares awarded is adjusted to between zero and 200% of the target award amount based upon achievement in each of the three independent successive one-year tranches. TSR relative to peers is considered a market condition under applicable authoritative guidance. For PSUs granted with vesting subject to market conditions, the fair value of the award is determined at grant date using the Monte Carlo model, and expense is recognized ratably over the requisite service period regardless of whether or not the market condition is satisfied. The Monte Carlo valuation model considers a variety of potential future share prices for Assertio and its peer companies in a selected market index. The recipients of the PSU awards will have voting rights and the right to receive a dividend, if applicable, once the underlying shares have been issued. No PSUs were granted during the years ended December 31, 2021 and 2020. The total fair value of PSUs that vested during the year ended December 31, 2021 was $0.1 million and no common shares subject to PSU vesting were issued during the year ended December 31, 2020.

The following table reflects PSU activity for the year ended December 31, 2021 under the 2014 Amended Plan (dollar amounts in thousands):

	Number of Shares	Weighted Average Grant Date Fair Value Per Share	Weighted Average Remaining Contractual Term (in years)	Aggregate Intrinsic Value (in thousands)
Non-vested performance-based restricted stock units as of December 31, 2020	226,461	$ 32.93		
Granted	—	—		
Vested	(19,054)	41.37		
Forfeited	(12,181)	41.37		
Non-vested performance-based restricted stock units as of December 31, 2021	195,226	$ 31.58	0.1	$ 426

Zyla Life Sciences Amended and Restated 2019 Stock-Based Incentive Compensation Plan

The 2019 Zyla Plan was assumed in connection with the Zyla Merger, and pursuant to the Zyla Merger Agreement, each outstanding Zyla stock option was cancelled and converted into a stock option to purchase the Company's Common Stock on the same terms and conditions with (1) the number of shares of Company Common Stock subject to each such option equal to (i) the number of shares of the common stock subject to the option multiplied by (ii) the Merger Exchange Ratio, which was 2.5, rounded, if necessary, to the nearest whole share and (2) an exercise price per share (rounded to the nearest whole cent) equal to the original exercise price of the Zyla stock option divided by (B) the Exchange Ratio. This resulted in the issuance of 1.3 million options with an average fair market value of $2.48 per share value, of which $0.4 million was recognized as merger consideration. The term of Zyla options may not exceed 10 years from the date of grant. An option shall be exercisable on or after each vesting date in accordance with the terms set forth in the option agreement. The right to exercise an option generally vests over three years at the rate of at least 33%, by the end of the first year and then ratably in monthly installments over the

remaining vesting period of the stock option. The number of shares authorized under the 2019 Zyla Plan is 1,246,469 shares and there were no more shares available for future issuance as of December 31, 2021

The following table reflects option activity for the year ended December 31, 2021 under the 2019 Zyla Plan (dollar amounts in thousands):

	Shares	Weighted Average Exercise Price	Weighted-Average Remaining Contractual Term (years)	Aggregate Intrinsic Value (in thousands)
Options outstanding as of December 31, 2020	985,944	$ 2.93		
Options granted	—	—		
Options exercised	(72,750)	2.40		
Options forfeited	(402,296)	2.73		
Options expired	(476,340)	2.73		
Options outstanding as of December 31, 2021	34,558	3.23	7.0	—
Options vested and expected to vest as of December 31, 2021	34,558	3.23	7.0	—
Options exercisable as of December 31, 2021	25,029	3.23	6.6	54

There were no restricted stock units granted under the 2019 Zyla Plan.

NOTE 16. SHAREHOLDERS' EQUITY

Equity Raise

On February 9, 2021, the Company completed a registered direct offering with certain institutional investors and accredited investors to sell 5,650,000 shares of our common stock at a purchase price of $2.48 per share on a post stock split basis. The gross proceeds from the offering were approximately $14.0 million. After placement agent fees and other offering expenses payable by the Company, Assertio received net proceeds of approximately $13.1 million. On February 12, 2021, the Company completed a registered direct offering with certain institutional investors and accredited investors to sell 8,750,000 shares of our common stock at a purchase price of $3.92 per share on a post stock split basis. The gross proceeds from the offering were approximately $34.3 million. After placement agent fees and other offering expenses payable by the Company, Assertio received net proceeds of approximately $32.2 million. The Company intends to use proceeds from both offerings for general corporate purposes, including general working capital.

Zyla Merger

On May 20, 2020, Assertio completed the Zyla Merger pursuant to the Agreement and Plan of Merger dated March 16, 2020. Upon consummation of the Zyla Merger, each issued and outstanding share of Zyla common stock converted into 2.5 shares of Assertio Holding's common stock (the Exchange Ratio). The Company issued 6.4 million in common shares related to the Zyla Merger, refer to "Note 2. Acquisitions".

Warrant Agreements

Upon the Zyla Merger, the Company assumed Zyla's outstanding Warrant Agreements which provides the holder the right to receive shares of the Company's common stock. The warrants are exercisable at any time at an exercise price of $0.0016 per share, subject to certain ownership limitations including, with respect to Iroko and its affiliates, that no such exercise may increase the aggregate ownership of the Company's outstanding common stock of such parties above 49% of the number of shares of its common stock then outstanding for a period of 18 months. All of the Company's outstanding warrants have similar terms whereas under no circumstance may the warrants be net-cash settled. As such, all warrants are equity-classified.

During 2021 and 2020, 1.2 million and 1.5 million warrants were exercised and 1.2 million and 1.5 million common shares were issued by the Company, respectively. The Company has 0.4 million warrant shares that remain outstanding as of December 31, 2021.

Employee Stock Purchase Plan

In May 2004 the Employee Stock Purchase Plan (ESPP) was approved by the shareholders. The ESPP is qualified under Section 423 of the Internal Revenue Code, and allows eligible employees to purchase shares of the Company's common stock through periodic payroll deductions. The price of the common stock purchased under the ESPP must be equal to at least 85% of the lower of the fair market value of the common stock on the commencement date of each offering period or the specified purchase date. The Company terminated the ESPP program in June 2021 and therefore had no shares authorized for issuance as of December 31, 2021.

In 2021, the Company sold 3,929 shares of its common stock under the ESPP. The shares were purchased at a weighted-average purchase price of $1.40 and proceeds were immaterial. In 2020, the Company sold 45,682 shares of its common stock under the ESPP. The shares were purchased at a weighted-average purchase price of $1.91 with proceeds of approximately $0.1 million.

Option Exercises

Employees exercised options to purchase 72,750 shares of the Company's common stock with net proceeds to the Company of approximately $0.2 million during 2021. No common stock options were exercised during the year ended December 31, 2020.

NOTE 17. NET INCOME (LOSS) PER SHARE

Basic net income (loss) per share is calculated by dividing the net income (loss) by the weighted-average number of shares of common stock outstanding during the period. Upon consummation of the Zyla Merger in May 2020, the Company inherited outstanding Zyla warrants to purchase Zyla common stock, which were converted into the right to purchase shares of Assertio's common stock. As these warrants are exercisable at any time at an exercise price of $0.0016 per share, they represent contingently issuable shares and therefore are included in the number of outstanding shares used for the computation of basic income per share. There were 392,095 unexercised shares of common stock issuable upon the exercise of warrants as of December 31, 2021.

Diluted net income (loss) per share is calculated by dividing the net income (loss) by the weighted-average number of shares of common stock outstanding during the period, plus potentially dilutive common shares, consisting of stock options, awards, and equivalents and convertible debt. The Company uses the treasury-stock method to compute diluted earnings per share with respect to its stock options and equivalents. The Company uses the if-converted method to compute diluted earnings per share with respect to its convertible debt. For purposes of this calculation, options to purchase stock are considered to be potential common shares and are only included in the calculation of diluted net income (loss) per share when their effect is dilutive.

The following table reflects the calculation of basic and diluted earnings per common share for the years ended December 31, 2021 and 2020 (in thousands, except for per share amounts):

	Year ended December 31,	
	2021	**2020**
Basic net income (loss) per share		
Net loss	$ (1,281)	$ (28,144)
Weighted average common shares and warrants outstanding	43,169	26,209
Basic net loss per share	$ (0.03)	$ (1.07)
Diluted net income (loss) per share		
Net loss	$ (1,281)	$ (28,144)
Weighted average common shares and share equivalents outstanding	43,169	26,209
Add: effect of dilutive stock options, awards, and equivalents	—	—
Diluted net loss per share	$ (0.03)	$ (1.07)

The following table reflects outstanding potentially dilutive common shares that are not included in the computation of diluted net income (loss) per share because, to do so would be anti-dilutive for the years ended December 31, 2021, and 2020 (in thousands):

	Year ended December 31,	
	2021	2020
2.5% Convertible Notes debt 2021	3	336
5.0% Convertible Notes debt 2024	—	1,708
Stock options, awards and equivalents	2,914	2,655
Total potentially dilutive common shares	2,917	4,699

NOTE 18. DISPOSITIONS

Sale of Gralise

On December 12, 2019, the Company entered into an Asset Purchase Agreement with Golf Acquiror LLC, an affiliate of Alvogen, Inc. (Alvogen) to divest its rights, title and interest in and to Gralise, including certain related assets, to Alvogen. The transaction subsequently closed on January 10, 2020. At closing, the Company received $78.6 million, including a $75.0 base purchase price and a preliminary positive inventory adjustment equal to $3.6 million. In addition, the Company was entitled to receive 75% of Alvogen's first $70.0 million of Gralise net sales after closing, as contingent consideration. Alvogen has also assumed, pursuant to the terms of the Asset Purchase Agreement, certain contracts, liabilities and obligations of the Company relating to Gralise, including those related to manufacturing and supply, post-market commitments and clinical development costs.

On June 3, 2020 Alvogen agreed to disburse the contingent consideration due to satisfy its remaining obligations to the Company pursuant to the Asset Purchase Agreement. As consideration for the early disbursement, the Company agreed to reduce the total payments due from Alvogen by $0.9 million, which was recognized as an adjustment to the gain on the sale of Gralise in the Consolidated Statement of Comprehensive Income during the year ended December 31, 2020. During the year ended December 31, 2020, the Company collected a total of $51.6 million from Alvogen in contingent consideration receivable for the sale of Gralise.

Pursuant to ASC 205-20, *Presentation of Financial Statements— Discontinued Operations,* Gralise did not meet the criteria of a discontinued operation as it was not considered a component of an entity that comprises operations and cash flows that can be clearly distinguished, operationally and for financial reporting purposes, from the rest of the Company, nor did it represent a strategic shift of the Company. The Company accounted for the divestiture under ASC 610-20 *Other Income - Derecognition of Nonfinancial Assets*. During the year ended December 31, 2020, the Company recognized a gain of $126.6 million in Other (expense) income: on the Company's Consolidated Statements of Comprehensive Income composed of the $78.6 million in upfront consideration received and $51.6 million in contingent consideration settled and $3.6 million in inventory transferred. In addition, the Company recognized co-promotion service income of approximately $1.3 million and co-promotion services were completed as of the first quarter of 2020.

Termination of Slán Agreements

On November 7, 2017, the Company entered into an agreement with Slán Medicinal Holdings Limited (Slán) under which it (i) acquired from Slán certain rights to market the specialty drug, long-acting cosyntropin in the U.S. and (ii) divested to Slán all of its rights to Lazanda® (fentanyl) Nasal Spray CII. As consideration for this acquisition, the Company provided the seller all of the rights and obligations, as defined under the arrangement, associated with Lazanda and together with $5.0 million in cash to Slán.

On February 6, 2020, the Company entered into an amended agreement with Eolas Pharma Teoranta (Eolas), an affiliate of Slán. Pursuant to the amendment the license granted to the Company for the commercialization of long-acting cosyntropin was terminated and the Company received $2.0 million in settlement for the receivable for reimbursable development expenses. Additionally, the Company may receive up to $10.0 million in future payments based upon commercial sales of long-acting cosyntropin if Eolas successfully obtains regulatory approval for and commercializes the product.

Sale of NUCYNTA

On February 6, 2020, the Company entered into a Purchase Agreement with Collegium, to divest its remaining rights, title and interest in and to the NUCYNTA franchise of products from the Company, and assumed certain contracts, liabilities

and obligations of the Company relating to the NUCYNTA products, including those related to manufacturing and supply, post-market commitments and clinical development costs. The transaction subsequently closed on February 13, 2020.

The Company received $367.9 million in net proceeds, which consisted of $375.0 million in base purchase price, plus $6.0 million in preliminary positive inventory value and less $13.1 million for royalties paid to the Company by Collegium between January 1, 2020 and February 11, 2020 pursuant to the Final Commercialization Agreement Payment Value of the Asset Purchase Agreement. In connection with the sale, the Company entered into a third-party consent agreement which requires two lump sum payments of $4.5 million each payable in 2021 and 2022 subject to Collegium achieving certain net sales in 2020 and 2021, respectively.

Since January 9, 2018, Collegium has been responsible for the commercialization of NUCYNTA in the U.S., including sales and marketing, and the Company received royalties based on certain net sales thresholds, in accordance with the Commercialization Agreement. The Commercialization Agreement terminated at closing with certain specified provisions of the Commercialization Agreement surviving in accordance with the terms of the Purchase Agreement.

Pursuant to ASC 205-20, the divestiture of NUCYNTA did not meet the criteria of a discontinued operation as it was not considered a strategic shift. The Company accounted for the divestiture under ASC 610-20 *Other Income - Derecognition of Nonfinancial Assets*. During the year ended December 31, 2020, the Company recognized a net loss of $15.8 million in Other income which was comprised of the $367.9 million in consideration received less the $369.1 million carrying value of the NUCYNTA intangible derecognized, $9.0 million in net book value of inventory transferred, and $9.0 million in accrued third-party consent fees. During the year ended December 31, 2020, the Company received $1.0 million in net proceeds from Collegium for settlement of expense reimbursement pursuant to the Purchase Agreement which was recognized as a gain in Other (expense) income.

NOTE 19. FAIR VALUE

Fair value is defined as the exchange price that would be received for an asset or paid to transfer a liability (an exit price) in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants on the measurement date. Valuation techniques used to measure fair value must maximize the use of observable inputs and minimize the use of unobservable inputs.

- Level 1: Quoted prices in active markets for identical assets or liabilities.
- Level 2: Inputs other than Level 1 that are observable, either directly or indirectly, such as quoted prices for similar assets or liabilities; quoted prices in markets that are not active; or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the assets or liabilities.
- Level 3: Unobservable inputs that are supported by little or no market activity and that are significant to the fair value of the assets or liabilities.

The following tables reflect the Company's fair value hierarchy for its financial assets and liabilities measured at fair value on a recurring basis as of December 31, 2021 and 2020 (in thousands):

December 31, 2021	Financial Statement Classification	Level 1	Level 2	Level 3	Total
Liabilities:					
Short-term contingent consideration	Contingent consideration liability	$ —	$ —	$ 14,500	$ 14,500
Long-term contingent consideration	Contingent consideration liability	—	—	23,159	23,159
Total		$ —	$ —	$ 37,659	$ 37,659

December 31, 2020	Financial Statement Classification	Level 1	Level 2	Level 3	Total
Assets:					
Money market funds	Cash and cash equivalents	$ 77	$ —	$ —	$ 77
Total		$ 77	$ —	$ —	$ 77
Liabilities:					
Short-term contingent consideration	Contingent consideration liability	$ —	$ —	$ 6,776	$ 6,776
Long-term contingent consideration	Contingent consideration liability	—	—	31,776	31,776
Total		$ —	$ —	$ 38,552	$ 38,552

Cash and Cash Equivalents

Cash equivalents consisted of money market funds with overnight liquidity and no stated maturities. The Company classified cash equivalents as Level 1, due to their short-term maturity, and measured the fair value based on quoted prices in active markets for identical assets.

Contingent Consideration Obligation

Pursuant to the May 2020 Zyla Merger, the Company assumed a contingent consideration obligation which is measured at fair value. The Company has obligations to make contingent consideration payments for future royalties to Iroko based upon annual INDOCIN product net sales over $20.0 million at a 20% royalty through January 2029. The Company classified the acquisition-related contingent consideration liabilities to be settled in cash as Level 3, due to the lack of relevant observable inputs and market activity. As of December 31, 2021 and December 31, 2020, INDOCIN Product contingent consideration was $37.5 million and $38.4 million, respectively with $14.5 million and $6.8 million classified as short-term and $23.0 million and $31.6 million classified as long-term contingent consideration, respectively, in the Consolidated Balance Sheet.

During the years ended December 31, 2021 and 2020, the Company recognized a charge of $3.9 million and $1.5 million, respectively, for the change in fair value of contingent consideration, which was recognized in Selling, general and administrative expense in the Company's Consolidated Statements of Comprehensive Income. The fair value of the contingent consideration is determined using an option pricing model under the income approach based on estimated INDOCIN Product revenues through January 2029 and discounted to present value. The significant assumptions used in the calculation of the fair value as of December 31, 2021 included revenue volatility of 35%, discount rate of 7.0%, credit spread of 5.2% and updated projections of future INDOCIN Product revenues including the probability assigned to the achievement of those projections.

Contingent consideration obligation related to CAMBIA was $0.2 million as of December 31, 2021 and 2020.

The following table summarizes changes in fair value that are measured on a recurring basis using significant unobservable inputs (Level 3) for the years ended December 31, 2021, and 2020 (in thousands):

	December 31,	
	2021	2020
Fair value, beginning of the period	$ 38,552	$ 168
Contingent consideration acquired with Zyla Merger	—	39,900
Change in fair value of contingent consideration recorded within costs and expenses	3,914	1,500
Cash payment related to contingent consideration	(4,807)	(3,016)
Total	$ 37,659	$ 38,552

The carrying value of the Company's debt for the period ended December 31, 2021 approximates its fair value. When determining the estimated fair value of the Company's debt, the Company uses a commonly accepted valuation methodology and market-based risk measurements that are indirectly observable, such as credit risk.

There were no transfers between Level 1, Level 2 or Level 3 of the fair value hierarchy during the years ended December 31, 2021 and 2020.

NOTE 20. INCOME TAXES

The following table reflects Net loss before income taxes by source for the years ended December 31, 2021 and 2020 (in thousands):

	Year ended December 31,	
	2021	2020
U.S.	$ (574)	$ (45,327)
Outside the U.S.	21	(186)
Net loss before income taxes	$ (553)	$ (45,513)

The following table reflects benefit provision for income taxes for the years ended December 31, 2021 and 2020 (in thousands):

	Year ended December 31,	
	2021	2020
Current:		
Federal	$ 124	$ (9,100)
State	387	155
Total current taxes	$ 511	$ (8,945)
Deferred:		
Federal	$ —	$ (7,037)
State	217	(1,387)
Total deferred taxes	217	(8,424)
Total provision (benefit) for income taxes	$ 728	$ (17,369)

The following table reflects a reconciliation of income taxes at the statutory federal income tax rate to the actual tax rate included in the Consolidated Statement of Comprehensive Income for the years ended December 31, 2021 and 2020 (in thousands):

	Year ended December 31,	
	2021	2020
Tax at federal statutory rate	$ (116)	$ (9,558)
State tax, net of federal benefit	242	276
Goodwill impairment	—	3,661
Disallowed officers' compensation	207	818
Non-deductible transaction cost	—	451
Change in valuation allowance	(2,131)	(13,029)
Uncertain tax provisions	233	(190)
Tax return benefit	(63)	—
Return to provision	2,330	—
Other	26	202
Total tax provision (benefit)	$ 728	$ (17,369)

On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security (“CARES”) Act was enacted. The CARES ACT was a massive tax-and-spending package intended to provide additional economic relief to address the impact of the

COVID-19 pandemic. The CARES Act, among other business tax provisions, included legislative changes and updates to net operating losses (NOLs), interest disallowance, and depreciation for qualified improvement property. As the new guidance and regulations continued to be issued during 2021, the Company considered the income tax accounting implications from CARES Act to the Company's income tax provision calculation for the year ended December 31, 2021. Prior to the enactment of the CARES Act, federal NOLs generated after December 31, 2017 could not be carried back to prior tax years. Upon the enactment of the CARES Act, federal NOLs generated in tax years 2018, 2019, and 2020 can now be carried back to the previous five tax years without taxable income limitation. During 2021, the Company filed a carryback claim for the 2020 federal taxable loss to the 2018 and 2019 tax years to offset taxable income (and federal taxes paid) for those two tax years. The estimated cash tax refund is approximately, $8.3 million which is expected to be received in 2022.

During the year ended December 31, 2021, the Company recorded an income tax expense of $0.7 million, principally due to the state tax expense, disallowed officer's compensation, and interest accrued for uncertain tax position, offset by the changes in valuation allowance.

During 2020, the Company recorded an income tax benefit of $17.4 million, principally due to the carryback of the Company's 2020 federal NOL to its 2018 and 2019 tax years under the NOL carryback provisions enacted as part of the CARES Act mentioned above and the current year reversal of valuation allowance related to the utilization of the Company's deferred tax assets ("DTA") to offset the deferred tax liabilities ("DTL") of Zyla recorded through acquisition accounting.

Utilization of the Company's net operating loss and credit carryforwards may be subject to a substantial annual limitation due to ownership change limitations provided by the Internal Revenue Code of 1986 and similar state provisions. The annual limitation may result in the expiration of net operating losses and credits before utilization.

Deferred income taxes reflect the temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income tax purposes. The following table reflects significant components of the Company's deferred tax assets are as of December 31, 2021 and 2020 (in thousands):

	December 31,	
	2021	2020
Deferred tax assets:		
Net operating losses	$ 78,085	$ 81,471
Tax credit carryforwards	2,813	3,360
Stock-based compensation	2,770	2,999
Operating lease liabilities	545	1,248
Fixed assets	—	1,315
Reserves and other accruals not currently deductible	19,800	20,652
Disallowed interest carryforward	15,147	15,496
Total deferred tax assets	119,160	126,541
Valuation allowance for deferred tax assets	(101,775)	(103,906)
	$ 17,385	$ 22,635
Deferred tax liabilities:		
Intangible assets	$ (16,812)	$ (21,739)
Convertible debt	(228)	(459)
Fixed Assets	(349)	—
Operating lease right-of-use assets	(168)	(437)
Net deferred tax liability	$ (172)	$ —

During the year ended December 31, 2021, the Company recorded a valuation allowance of $101.8 million because realization of the future benefits is uncertain. The Company reviewed both positive evidence such as, but not limited to, the projected availability of future taxable income and negative evidence such as the history of cumulative losses in recent years. The Company will continue to assess the realizability of its deferred tax assets on a quarterly basis and assess whether an additional reserve or a release of the valuation allowance is required in future periods.

The valuation allowance decreased $2.1 million to $101.8 million during the year ended December 31, 2021 and increased $13.1 million to $103.9 million during the year ended December 31,2020.

As of December 31, 2021, the Company had federal NOLs of $286.9 million with no expiration and $40.1 million expiring in varying amounts from 2032 through 2036. NOL carryforwards for state income tax purposes are $171.7 million, which begin to expire in 2022. Utilization of the Company's NOL and credit carryforwards may be subject to a substantial annual limitation due to ownership change limitations provided by the Internal Revenue Code of 1986 and similar state provisions. The annual limitation may result in the expiration of net operating losses and credits before utilization.

The Company does not have any significant federal or state tax examinations in process as of December 31, 2021. The federal and state statute of limitations remains open primarily for the 2017 through 2020 tax years. The California statute of limitations is open for the 2007 through 2020 tax years.

The following table reflects activity related to the Company's unrecognized tax benefits for the years ended December 31, 2021 and 2020 (in thousands):

Unrecognized tax benefits—December 31, 2019	$	4,033
Increases related to current year tax positions		194
Changes in prior year tax positions		(2)
Decreases related to lapse of statutes		(124)
Unrecognized tax benefits—December 31, 2020	$	4,101
Increases related to current year tax positions		—
Changes in prior year tax positions		—
Decreases related to lapse of statutes		—
Unrecognized tax benefits—December 31, 2021	$	4,101

The total amount of unrecognized tax benefit that would affect the effective tax rate is $4.1 million as of December 31, 2021 and December 31, 2020.

The Company does not expect a significant change to its unrecognized tax benefits over the next twelve months. The unrecognized tax benefits may increase or change during the next year for items that arise in the ordinary course of business.

SCHEDULE II: VALUATION AND QUALIFYING ACCOUNTS
(in thousands)

Description	Balance at Beginning of Year	Additions Charged as a Reduction to Revenue	Deductions[2]	Balance at End of Year [3]
Sales & return allowances, discounts, chargebacks and rebates:				
Year ended December 31, 2021	$ 64,442	96,332	(107,174)	$ 53,600
Year ended December 31, 2020 [1]	$ 60,183	$ 132,340	$ (128,081)	$ 64,442

Description	Balance at Beginning of Year	Additions	Deductions	Balance at End of Year
Deferred tax asset valuation allowance:				
December 31, 2021 [4]	$ 103,906	$ —	$ (2,131)	$ 101,775
December 31, 2020 [5]	$ 90,820	$ 29,833	$ (16,747)	$ 103,906

(1) Additions charged as a reduction to revenue includes $33.3 million provision for liabilities assumed from the Zyla Merger.
(2) Deductions to sales discounts and allowances relate to discounts or allowances, returns, chargebacks and rebates actually taken or paid.
(3) Balance includes allowances for cash discounts of $0.9 million and $1.3 million as of December 31, 2021 and 2020, respectively, for prompt payment recognized in Accounts Receivable, net on the Company's Consolidated Balance Sheets.

(4) The Company decreased a valuation allowance of $2.1 million during 2021.
(5) The Company recorded a valuation allowance of $13.1 million during 2020. The net addition is primarily attributable to the increase in the DTA for the portion of the 2020 net operating loss that is carried forward to future years and the Zyla Merger. The deduction is related to the DTL recorded in the opening balance sheet for Zyla and the carryback of the 2020 net operating loss carryback to the 2018 and 2019 years.

ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE

None.

ITEM 9A. CONTROLS AND PROCEDURES

(a) Conclusion Regarding the Effectiveness of Disclosure Controls and Procedures

At the end of the period covered by this report, we carried out an evaluation, under the supervision and with the participation of our management, including our principal executive officer, principal financial officer and principal accounting officer, of the effectiveness of the design and operation of our disclosure controls and procedures, as such term is defined under Rule 13a-15(e) promulgated under the Securities Exchange Act of 1934, as amended (the Exchange Act). Based on this evaluation, our principal executive officer, our principal financial officer and principal accounting officer concluded that our disclosure controls and procedures were effective as of December 31, 2021 to ensure that information to be disclosed by us in this Annual Report on Form 10-K was recorded, processed, summarized and reported within the time periods specified in the Securities and Exchange Commission's rules and Form 10-K.

We maintain disclosure controls and procedures that are designed to ensure that information required to be disclosed in our Exchange Act reports is recorded, processed, summarized and reported within the time periods specified in the Securities and Exchange Commission's rules and forms and that such information is accumulated and communicated to our management, including our chief executive officer, principal financial officer and principal accounting officer, as appropriate, to allow for timely decisions regarding required disclosure.

We intend to review and evaluate the design and effectiveness of our disclosure controls and procedures on an ongoing basis and to correct any material deficiencies that we may discover. Our goal is to ensure that our management has timely access to material information that could affect our business. While we believe the present design of our disclosure controls and procedures is effective to achieve our goal, future events affecting our business may cause us to modify our disclosure controls and procedures. In designing and evaluating the disclosure controls and procedures, management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives, and management is required to apply its judgment in evaluating the cost-benefit relationship of possible controls and procedures.

(b) Management's Report on Internal Control Over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting, as such term is defined in Exchange Act Rules 13a-15(f). Under the supervision and with the participation of our management, including our principal executive officer, principal financial officer and principal accounting officer, we conducted an evaluation of the effectiveness of our internal control over financial reporting based on the framework in *Internal Control—Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission (2013 Framework). Based on our evaluation under the framework in *Internal Control—Integrated Framework*, our management concluded that our internal control over financial reporting was effective as of December 31, 2021. Grant Thornton, LLP, our independent registered public accounting firm, has attested to and issued a report on the effectiveness of our internal control over financial reporting, which is included herein.

(c) Changes in Internal Control Over Financial Reporting

During the first quarter of 2021, we finalized the process of integrating our acquisition of Zyla's operations in our internal control environment. There were no other significant changes in our internal controls over financial reporting during the quarter ended December 31, 2021, that have materially affected, or are reasonably likely to materially affect, our internal controls over financial reporting.

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

Board of Directors and Shareholders
Assertio Holdings, Inc.

Opinion on Internal Control over Financial Reporting
We have audited the internal control over financial reporting of Assertio Holdings, Inc. (a Delaware corporation) and subsidiaries (the "Company") as of December 31, 2021, based on criteria established in the 2013 *Internal Control—Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission ("COSO"). In our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of December 31, 2021, based on criteria established in the 2013 *Internal Control—Integrated Framework* issued by COSO.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) ("PCAOB"), the consolidated financial statements of the Company as of and for the year ended December 31, 2021, and our report dated March 10, 2022 expressed an unqualified opinion on those financial statements.

Basis for Opinion
The Company's management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting, included in the accompanying Management's Report on Internal Control Over Financial Reporting. Our responsibility is to express an opinion on the Company's internal control over financial reporting based on our audit. We are a public accounting firm registered with the PCAOB and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audit in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, testing and evaluating the design and operating effectiveness of internal control based on the assessed risk, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

Definition and Limitations of Internal Control Over Financial Reporting
A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

/s/ GRANT THORNTON LLP

Chicago, Illinois
March 10, 2022

ITEM 9B. OTHER INFORMATION

On December 17, 2021, we entered into a Sales Agreement with Roth Capital Partners, LLC ("Roth") as sales agent to sell shares of our common stock, from time to time, through an "at-the-market offering" program having an aggregate offering price of up to $25.0 million. Roth will be entitled to aggregate compensation equal to 3.0% of the gross sales price of the shares sold through it pursuant to the Sales Agreement. As of December 31, 2021, we have not sold any shares under this program.

ITEM 9C. DISCLOSURE REGARDING FOREIGN JURISDICTIONS THAT PREVENT INSPECTION

Not Applicable.

PART III

ITEM 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE

The information required by this Item 10 is incorporated herein by reference to the information set forth under the headings "Board of Directors and Director Nominees," "Executive Officers," "Corporate Governance – Code of Ethics," "Corporate Governance – Board and Board Committees," "Corporate Governance – Director Nominations" and "Delinquent Section 16(a) Reports" in our 2022 Proxy Statement to be filed with the SEC in connection with the solicitation of proxies for our 2022 Annual Meeting of Stockholders (the 2022 Proxy Statement). The 2022 Proxy Statement will be filed with the SEC within 120 days after the end of our 2021 fiscal year.

ITEM 11. EXECUTIVE COMPENSATION

The information required by this Item 11 is incorporated herein by reference to the information set forth under the heading "Executive Compensation" in our 2022 Proxy Statement.

ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED SHAREHOLDER MATTERS

The information required by this Item 12 is incorporated herein by reference to the information set forth under the headings "Security Ownership of Certain Beneficial Owners and Management" and "Securities Authorized for Issuance under Equity Compensation Plans" in our 2022 Proxy Statement.

ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE

The information required by this Item 13 is incorporated herein by reference to the information set forth under the headings "Certain Relationships and Related Transactions" and "Corporate Governance – Board and Board Committees – Board Independence" in our 2022 Proxy Statement.

ITEM 14. PRINCIPAL ACCOUNTANT FEES AND SERVICES

The information required by this Item 14 is incorporated herein by reference to the information set forth under the headings "Audit Related Matters – Fees Paid to Independent Registered Public Accounting Firm" and "Audit Related Matters – Policy on Audit Committee Pre-Approval of Audit and Permissible Non-Audit Services" in our 2022 Proxy Statement.

PART IV

ITEM 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES

(a) **List of documents filed as part of this Annual Report on Form 10-K:**

(1) **Financial Statements**

The financial statements listed in the accompanying Index to Financial Statements included in "Item 8. Financial Statements and Supplementary Data."

(2) **Financial Statement Schedules**

The following financial statement schedule included in "Item 8. Financial Statements and Supplementary Data: Schedule II: Valuation and Qualifying Accounts."

(3) **Exhibits:**

Exhibit Number	Description of Document
1.1	Sales Agreement, dated as of December 17, 2021, by and between the Company and Roth Capital Partners, LLC
1.2	Securities Purchase Agreement by and among the Company and certain investors, dated as of February 10, 2021 (incorporated by reference to Exhibit 1.1 to the Company's Current Report on Form 8-K filed on February 12, 2021)
1.3	Placement Agency Agreement by and between the Company and Roth Capital Partners, LLC, dated as of February 10, 2021 (incorporated by reference to Exhibit 1.2 to the Company's Current Report on Form 8-K filed on February 12, 2021)
1.4	Securities Purchase Agreement by and among the Company and certain investors, dated as of February 5, 2021 (incorporated by reference to Exhibit 1.1 to the Company's Current Report on Form 8-K filed on February 9, 2021)
1.5	Placement Agency Agreement by and between the Company and Roth Capital Partners, LLC, dated as of February 5, 2021 (incorporated by reference to Exhibit 1.2 to the Company's Current Report on Form 8-K filed on February 9, 2021)
2.1†	Asset Purchase Agreement, dated as of December 15, 2021, by and among Otter Pharmaceuticals, LLC, Antares Pharma, Inc. and the Company
2.2	Agreement and Plan of Merger, dated as of May 19, 2020, by and among Assertio Therapeutics, Inc., the Company, and Alligator Merger Sub, Inc. (incorporated by reference to Exhibit 2.1 to the Company's Current Report on Form 8-K filed on March 17, 2020)
2.3	Agreement and Plan of Merger, dated as of March 16, 2020, by and among Assertio Therapeutics, Inc., the Company (formerly, Alligator Zebra Holdings, Inc.), Alligator Merger Sub, Inc., Zebra Merger Sub, Inc. and Zyla Life Sciences (incorporated by reference to Exhibit 2.1 to the Company's Current Report on Form 8-K filed on March 17, 2020)
2.4	Asset Purchase Agreement, dated February 6, 2020, by and between Assertio Therapeutics, Inc. and Collegium Pharmaceutical, Inc. (incorporated by reference to Exhibit 2.1 to the Company's Current Report on Form 8-K filed on February 20, 2020)
2.5	Asset Purchase Agreement, dated December 11, 2019, by and among Assertio Therapeutics, Inc., Golf Acquiror LLC and, solely for the purposes set forth therein, Celtic Intermediate S.A. (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed on December 12, 2019)
2.6	Asset Purchase Agreement, dated October 30, 2018, by and among Egalet Corporation, Egalet US Inc. and Iroko Pharmaceuticals Inc. (incorporated by reference to Exhibit 2.1 to Zyla Life Sciences' Current Report on Form 8-K filed on October 31, 2018)
2.7	Asset Purchase Agreement, dated as of January 8, 2015, by and between Egalet US, Inc. and Luitpold Pharmaceuticals, Inc. (incorporated by reference to Exhibit 2.1 to Zyla Life Sciences' Annual Report on Form 10-K filed on March 16, 2015)
2.8†	Asset Purchase Agreement, dated December 17, 2013 between Assertio Therapeutics, Inc. and Nautilus Neurosciences, Inc. (incorporated by reference to Exhibit 10.51 to the Company's Annual Report on Form 10-K filed on March 17, 2014)

2.9	Asset Purchase Agreement dated June 21, 2012 between Assertio Therapeutics, Inc. and Xanodyne Pharmaceuticals, Inc. (incorporated by reference to Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q filed on August 3, 2012)
3.1	Certificate of Amendment to the Amended and Restated Certificate of Incorporation, dated May 13, 2021 (incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K filed on May 17, 2021)
3.2	Amended and Restated Certificate of Incorporation of the Company, dated May 19, 2020 (incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K12B filed on May 19, 2020)
3.3	Amended and Restated Bylaws of the Company, dated May 19, 2020 (incorporated by reference to Exhibit 3.2 to the Company's Current Report on Form 8-K12B filed on May 19, 2020)
4.1	Indenture by and among the Company (replacing Zyla Life Sciences) and Wilmington Savings Fund Society (replacing U.S. Bank National Association), dated as of January 31, 2019 (incorporated by reference to Exhibit 4.1 to Zyla Life Science's Current Report on Form 8-K filed on February 1, 2019)
4.2	Supplemental Indenture by and among the Company and Wilmington Savings Fund Society, dated as of May 20, 2020 (incorporated by reference to Exhibit 4.2 to the Company's Current Report on Form 8-K filed on May 27, 2020)
4.3	Second Supplemental Indenture, dated as of December 15, 2021, by and among Otter Pharmaceuticals, LLC, the Company, the existing guarantors and Wilmington Savings Fund Society
4.4	Description of Securities (incorporated by reference to Exhibit 4.5 to the Company's Annual Report on Form 10-K filed on March 10, 2020)
10.1*	Form of Indemnification Agreement (incorporated by reference to Exhibit 10.2 to the Company's Current Report on Form 8-K12B filed on May 19, 2020)
10.2*	Form of Management Continuity Agreement
10.3*	Second Amended and Restated 2004 Equity Incentive Plan (incorporated by reference to Exhibit 10.6 to the Company's Quarterly Report on Form 10-Q filed on November 9, 2018)
10.4*	Amended and Restated 2014 Omnibus Incentive Plan, as amended (incorporated by reference to Annex G to Amendment No. 1 to the Company's Registration Statement on Form S-4 filed on April 17, 2020)
10.5*	Form of Equity Award Documents under Amended and Restated 2014 Omnibus Incentive Plan (incorporated by reference to Exhibit 10.7 to the Company's Quarterly Report on Form 10-Q filed on November 9, 2018)
10.6*	Form of Equity Award Documents for Inducement Grants (incorporated by reference to Exhibit 10.8 to the Company's Quarterly Report on Form 10-Q filed on November 9, 2018
10.7*	Amended and Restated Annual Bonus Plan
10.8*	Non-Employee Director Compensation and Grant Policy (incorporated by reference to Exhibit 10.2 to the Company's Quarterly Report on Form 10-Q filed on May 9, 2019)

10.9*	Zyla Life Sciences Amended and Restated 2019 Stock-Based Incentive Compensation Plan, as amended (incorporated by reference to Exhibit 10.27 to Zyla Life Science's Annual Report on Form 10-K filed on March 26, 2020)
10.10*	Form of Non-Qualified Stock Option Agreement of Zyla Life Sciences (incorporated by reference to Exhibit 10.18 to Zyla Life Sciences' Quarterly Report on Form 10-Q filed on May 17, 2019)
10.11*	Transition Agreement, dated as of March 16, 2020, by and among the Company and Arthur Higgins (incorporated by reference to Exhibit 10.3 to the Company's Current Report on Form 8-K filed on March 17, 2020)
10.12*†	Separation Agreement and Release of Claims between Todd N. Smith and Assertio Management, LLC, dated December 14, 2020 (incorporated by reference to Exhibit 10.14 to the Company's Annual Report on Form 10-K filed on March 12, 2021)
10.13*†	Separation Agreement and Release of Claims between Mark Strobeck and Assertio Management, LLC, dated December 14, 2020 (incorporated by reference to Exhibit 10.15 to the Company's Annual Report on Form 10-K filed on March 12, 2021)
10.14†	Collaboration and License Agreement, dated as of January 7, 2015, by and among Egalet Corporation, Egalet US, Inc., Egalet Ltd. and Acura Pharmaceuticals, Inc. (incorporated by reference to Exhibit 10.4 to Zyla Life Sciences' Annual Report on Form 10-K filed on March 16, 2015)
10.15†	License Agreement effective as of November 23, 2000 between Recordati Sa Chemical & Pharmaceutical Company and Roxro Pharma LLC (incorporated by reference to Exhibit 10.13 to Zyla Life Sciences' Annual Report on Form 10-K filed on March 16, 2018)
10.16†	First Amendment dated March 21, 2001 to License Agreement effective as of November 23, 2000 between Recordati Sa Chemical & Pharmaceutical Company and Roxro Pharma LLC (incorporated by reference to Exhibit 10.14 to Zyla Life Sciences' Annual Report on Form 10-K filed on March 16, 2018)
10.17†	Second Amendment dated December 10, 2015 to License Agreement effective as of November 23, 2000 between Recordati Sa Chemical & Pharmaceutical Company and Roxro Pharma LLC (incorporated by reference to Exhibit 10.15 to Zyla Life Sciences' Annual Report on Form 10-K filed on March 16, 2018)
10.18†	Collaborative License, Exclusive Manufacture and Global Supply Agreement between Cosette Pharmaceuticals, Inc. (formerly, G&W Laboratories, Inc.) and Iroko Pharmaceuticals, LLC, as amended by Amendment 1 and Amendment 2 thereto (Zyla Life Sciences succeeded Iroko as a party to this agreement) (incorporated by reference to Exhibit 10.10 to Zyla Life Sciences' Quarterly Report on Form 10-Q filed on May 17, 2019)
10.19†	Amendment No. 3 to Collaborative License, Exclusive Manufacture and Global Supply Agreement between Zyla Life Sciences and Cosette Pharmaceuticals, Inc. effective July 9, 2021 (incorporated by reference to Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q filed on November 4, 2021)
10.20	Form of Royalty Rights Agreement (incorporated by reference to Exhibit 10.1 to Zyla Life Sciences' Current Report on Form 8-K filed on February 1, 2019)
10.21	Collateral Agreement, dated as of January 31, 2019, among the Company, the Subsidiary Parties from time to time party thereto and U.S. Bank National Association as trustee and collateral agent (incorporated by reference to Exhibit 10.2 to Zyla Life Sciences' Current Report on Form 8-K filed on February 1, 2019)
14.1	Code of Conduct (incorporated by reference to Exhibit 14.1 to the Company's Current Report on Form 8-K filed on May 27, 2020)
21.1	List of Subsidiaries
23.1	Consent of Independent Registered Public Accounting Firm
23.2	Consent of Independent Registered Public Accounting Firm
24.1	Power of Attorney (included on signature page hereto)
31.1	Certification pursuant to Rule 13a-14(a) and 15d-14(a) under the Exchange Act
31.2	Certification pursuant to Rule 13a-14(a) and 15d-14(a) under the Exchange Act
32.1**	Certification of the Chief Executive Officer pursuant to 18 U.S.C. Section 1350 of the Chief Executive Officer pursuant to 18 U.S.C. Section 1350

32.2**	Certification of the Chief Financial Officer pursuant to 18 U.S.C. Section 1350 of the Chief Financial Officer pursuant to 18 U.S.C. Section 1350
101.INS	Inline XBRL Instance Document
101.SCH	Inline XBRL Taxonomy Extension Schema Document
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document
101.LAB	Inline XBRL Taxonomy Extension Labels Linkbase Document
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document
104	Cover Page Interactive Data File - The cover page from this Annual Report on Form 10-K is formatted in iXBRL

† Confidential information omitted
* Compensatory Plan or Arrangement
** Furnished Herewith

ITEM 16. FORM 10-K SUMMARY

None.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

ASSERTIO HOLDINGS, INC.

Date: March 10, 2022

By /s/ DANIEL A. PEISERT
Daniel A. Peisert
President and Chief Executive Officer

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below hereby constitutes and appoints Daniel A. Peisert and Paul Schwichtenberg, and each of them acting individually, as his true and lawful attorneys-in-fact and agents, each with full power of substitution, for him in any and all capacities, to sign any and all amendments to this report on Form 10-K and to file the same, with exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, with full power of each to act alone, full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully for all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or his or their substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

/s/ DANIEL A. PEISERT Daniel A. Peisert	President and Chief Executive Officer (Principal Executive Officer)	March 10, 2022
/s/ PAUL SCHWICHTENBERG Paul Schwichtenberg	Chief Financial Officer (Principal Financial Officer)	March 10, 2022
/s/ AJAY PATEL Ajay Patel	Chief Accounting Officer (Principal Accounting Officer)	March 10, 2022
/s/ PETER D. STAPLE Peter D. Staple	Chairman of the Board of Directors	March 10, 2022
/s/ WILLIAM T. MCKEE William T. McKee	Director	March 10, 2022
/s/ HEATHER L. MASON Heather L. Mason	Director	March 10, 2022
/s/ JAMES L. TYREE James L. Tyree	Director	March 10, 2022

Exhibit 1.1

ASSERTIO HOLDINGS, INC.

$25,000,000
Common Stock

($0.0001 par value per share)

Sales Agreement

December 17, 2021

Roth Capital Partners, LLC
888 San Clemente Drive, Suite 400
Newport Beach, CA 92660

Ladies and Gentlemen:

Assertio Holdings, Inc., a Delaware corporation (the "Company"), confirms its agreement (this "Agreement") with Roth Capital Partners, LLC (the "Agent"), as follows:

1. Issuance and Sale of Shares. The Company agrees that, from time to time during the term of this Agreement, on the terms and subject to the conditions set forth herein, it may issue and sell through or to the Agent, shares (the "Placement Shares") of common stock of the Company, $0.0001 par value per share (the "Common Stock"), having an aggregate offering price of up to $25,000,000; *provided, however*, that in no event shall the Company issue or sell through Agent such number of Placement Shares that (a) exceeds the number or dollar amount of shares of Common Stock that may be sold pursuant to the Registration Statement (as defined below), or (b) exceeds the number of authorized but unissued shares of Common Stock of the Company (the "Maximum Amount"). Notwithstanding anything to the contrary contained herein, the parties hereto agree that compliance with the limitations set forth in this Section 1 on the amount of Placement Shares issued and sold under this Agreement shall be the sole responsibility of the Company and that Agent shall have no obligation in connection with such compliance. The issuance and sale of Placement Shares through or to Agent will be effected pursuant to the Registration Statement (as defined below) filed by the Company and declared effective by the Securities and Exchange Commission (the "Commission"), although nothing in this Agreement shall be construed as requiring the Company to use the Registration Statement to issue any Placement Shares. The Company has filed, in accordance with the provisions of the Securities Act of 1933, as amended, and the rules and regulations thereunder (the "Securities Act**"**), with the Commission a registration statement on Form S-3 (File No. 333-252368), including a base prospectus, relating to certain securities, including the Placement Shares to be issued from time to time by the Company, and which incorporates by reference documents that the Company has filed or will file in accordance with the provisions of the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder (the "Exchange Act"). The Company has prepared a prospectus supplement specifically relating to the Placement Shares (the "Prospectus Supplement") to the base prospectus included as part of such registration statement. The Company will furnish to the Agent, for use by the Agent, copies of the base prospectus included as part of such registration statement, as supplemented by the Prospectus Supplement, if any, relating to the Placement Shares. Except where the context otherwise requires, such registration statement, and any post-effective amendment thereto, including all documents filed as part thereof or incorporated by reference therein, and including any information contained in a Prospectus (as defined below) subsequently filed with the Commission pursuant to Rule 424(b) under the Securities Act or deemed to be a part of such registration statement pursuant to Rule 430B of the Securities Act, or any subsequent registration statement on Form S-3 filed pursuant to Rule 415(a)(6) under the Securities Act by the Company to cover any Placement Shares, is herein called the **"**Registration Statement**."** The base prospectus, including all documents incorporated therein by reference, included in the Registration Statement, as it may be supplemented by the Prospectus Supplement, in the form in which such prospectus and/or Prospectus Supplement have most recently been filed by the Company with the Commission pursuant to Rule 424(b) under the Securities Act, together with any then issued Issuer Free Writing Prospectus (defined below), is herein called the "Prospectus." Any reference herein to the Registration Statement, the Prospectus or any amendment or supplement thereto, shall be deemed to refer to

and include the documents incorporated or deemed to be incorporated by reference therein, and any reference herein to the terms "amend," "amendment" or "supplement" with respect to the Registration Statement or the Prospectus shall be deemed to refer to and include the filing after the execution hereof of any document with the Commission deemed to be incorporated by reference therein (the "Incorporated Documents"). For purposes of this Agreement, all references to the Registration Statement, the Prospectus or to any amendment or supplement thereto shall be deemed to include the most recent copy filed with the Commission pursuant to its Electronic Data Gathering Analysis and Retrieval System, or if applicable, the Interactive Data Electronic Application system when used by the Commission (collectively, "EDGAR").

2. Placements. Each time that the Company wishes to issue and sell Placement Shares hereunder (each, a "Placement"), it will notify the Agent by email notice (or other method mutually agreed to in writing by the Parties) of the number or dollar value of Placement Shares, the time period during which sales are requested to be made, any limitation on the number of Placement Shares that may be sold in any one day and any minimum price below which sales may not be made (a "Placement Notice"), the form of which is attached hereto as Schedule 1. The Placement Notice shall originate from any of the individuals from the Company set forth on Schedule 3 (with a copy to each of the other individuals from the Company listed on such schedule), and shall be addressed to each of the individuals from the Agent set forth on Schedule 3, as such Schedule 3 may be amended from time to time. The Placement Notice shall be effective unless and until (i) the Agent declines to accept the terms contained therein for any reason, in its sole discretion, (ii) the entire amount of the Placement Shares thereunder have been sold, (iii) the Company suspends or terminates the Placement Notice or (iv) the Agreement has been terminated under the provisions of Section 12. The amount of any discount, commission or other compensation to be paid by the Company to Agent in connection with the sale of the Placement Shares shall be calculated in accordance with the terms set forth in Schedule 2. It is expressly acknowledged and agreed that neither the Company nor the Agent will have any obligation whatsoever with respect to a Placement or any Placement Shares unless and until the Company delivers a Placement Notice to the Agent and the Agent does not decline such Placement Notice pursuant to the terms set forth above, and then only upon the terms specified therein and herein. In the event of a conflict between the terms of this Agreement and the terms of a Placement Notice, the terms of the Placement Notice will control.

3. Sale of Placement Shares by Agent. Subject to the provisions of Section 5(a), the Agent, for the period specified in the Placement Notice, will use its commercially reasonable efforts consistent with its normal trading and sales practices and applicable state and federal laws, rules and regulations and the rules of the Nasdaq Global Select Market (the "Exchange"), to sell the Placement Shares up to the amount specified, and otherwise in accordance with the terms of such Placement Notice. The Agent will provide written confirmation to the Company no later than the opening of the Trading Day (as defined below) immediately following the Trading Day on which it has made sales of Placement Shares hereunder setting forth the number of Placement Shares sold on such day, the compensation payable by the Company to the Agent pursuant to Section 2 with respect to such sales, and the Net Proceeds (as defined below) payable to the Company, with an itemization of the deductions made by the Agent (as set forth in Section 5(b)) from the gross proceeds that it receives from such sales. Subject to the terms of the Placement Notice, the Agent may sell Placement Shares by any method permitted by law deemed to be an "at the market offering" as defined in Rule 415 of the Securities Act.

4. Suspension of Sales.
    a. The Company or the Agent may, upon notice to the other party in writing (including by email correspondence to each of the individuals of the other party set forth on Schedule 3, if receipt of such correspondence is actually acknowledged by any of the individuals to whom the notice is sent, other than via auto-reply) or by telephone (confirmed immediately by verifiable facsimile transmission or email correspondence to each of the individuals of the other party set forth on Schedule 3), suspend any sale of Placement Shares; provided, however, that such suspension shall not affect or impair any party's obligations with respect to any Placement Shares sold hereunder prior to the receipt of such notice. Each party agrees that no such notice under this Section 4 shall be effective against any other party unless it is made to one of the individuals named on Schedule 3 hereto, as such Schedule may be amended from time to time.

b. Notwithstanding any other provision of this Agreement, during any period in which the Company is in possession of material non-public information, the Company and the Agent agree that (i) no sale of Placement Shares will take place, (ii) the Company shall not request the sale of any Placement Shares, and (iii) the Agent shall not be obligated to sell or offer to sell any Placement Shares.

5. Sale and Delivery to the Agent; Settlement.

a. Sale of Placement Shares. On the basis of the representations and warranties herein contained and subject to the terms and conditions herein set forth, upon the Agent's acceptance of the terms of a Placement Notice, and unless the sale of the Placement Shares described therein has been declined, suspended, or otherwise terminated in accordance with the terms of this Agreement, the Agent, for the period specified in the Placement Notice, will use its commercially reasonable efforts consistent with its normal trading and sales practices to sell such Placement Shares up to the amount specified in such Placement Notice, and otherwise in accordance with the terms of such Placement Notice. The Company acknowledges and agrees that (i) there can be no assurance that the Agent will be successful in selling Placement Shares, (ii) the Agent will incur no liability or obligation to the Company or any other person or entity if it does not sell Placement Shares for any reason other than a failure by the Agent to use its commercially reasonable efforts consistent with its normal trading and sales practices and applicable law and regulations and the rules of the Exchange to sell such Placement Shares as required under this Agreement and (iii) the Agent shall be under no obligation to purchase Placement Shares on a principal basis pursuant to this Agreement, except as otherwise agreed by the Agent and the Company.

b. Settlement of Placement Shares. Unless otherwise specified in the applicable Placement Notice, settlement for sales of Placement Shares will occur on the second (2nd) Trading Day (or such earlier day as is industry practice for regular-way trading) following the date on which such sales are made (each, a "Settlement Date"). The amount of proceeds to be delivered to the Company on a Settlement Date against receipt of the Placement Shares sold (the "Net Proceeds") will be equal to the aggregate sales price received by the Agent for the Placement Shares, after deduction for (i) the Agent's commission, discount or other compensation for such sales payable by the Company pursuant to Section 2 hereof, and (ii) any transaction fees imposed by any governmental or self-regulatory organization in respect of such sales.

c. Delivery of Placement Shares. On each Settlement Date, against payment of the Net Proceeds, the Company will, or will cause its transfer agent to, electronically transfer the Placement Shares being sold by crediting the Agent's or its designee's account (provided the Agent shall have given the Company written notice of such designee prior to the Settlement Date) at The Depository Trust Company through its Deposit and Withdrawal at Custodian System or by such other means of delivery as may be mutually agreed upon by the parties hereto which in all cases shall be freely tradable, transferable, registered shares in good deliverable form. On each Settlement Date, the Agent will deliver the related Net Proceeds in same day funds to an account designated by the Company on, or prior to, the Settlement Date. The Company agrees that if the Company, or its transfer agent (if applicable), defaults in its obligation to deliver Placement Shares on a Settlement Date, the Company agrees that in addition to and in no way limiting the rights and obligations set forth in Section 10(a) hereto, it will (i) hold the Agent harmless against any loss, claim, damage, or reasonable, documented expense (including reasonable and documented legal fees and expenses), as incurred, arising out of or in connection with such default by the Company or its transfer agent (if applicable) and (ii) pay to the Agent any commission, discount, or other compensation to which it would otherwise have been entitled absent such default.

d. Limitations on Offering Size. Under no circumstances shall the Company cause or request the offer or sale of any Placement Shares if, after giving effect to the sale of such Placement Shares, the aggregate gross sales proceeds of Placement Shares sold pursuant to this Agreement would exceed the lesser of (A) together with all sales of Placement Shares under this Agreement, the Maximum Amount, (B) the amount available for offer and sale under the Registration Statement and (C) the amount authorized from time to time to be issued and sold under this Agreement by

the Company's board of directors, a duly authorized committee thereof or a duly authorized executive committee, and notified to the Agent in writing. Under no circumstances shall the Company cause or request the offer or sale of any Placement Shares pursuant to this Agreement at a price lower than the minimum price authorized from time to time by the Company's board of directors, duly authorized committee thereof or a duly authorized executive committee, and notified to the Agent in writing. Further, under no circumstances shall the Company cause or permit the aggregate offering amount of Placement Shares sold pursuant to this Agreement to exceed the Maximum Amount.

6. Representations and Warranties of the Company. Except as disclosed in the Registration Statement or Prospectus (including the Incorporated Documents), the Company represents and warrants to, and agrees with the Agent that as of the date of this Agreement and as of each Applicable Time (as defined below), unless such representation, warranty or agreement specifies a different date or time:

   a. Registration Statement and Prospectus. The Company and, assuming no act or omission on the part of the Agent that would make such statement untrue, the transactions contemplated by this Agreement meet the requirements for and comply with the conditions for the use of Form S-3 under the Securities Act. The Registration Statement has been filed with the Commission and declared effective under the Securities Act. The Prospectus Supplement will name the Agent as the agent in the section entitled "Plan of Distribution." The Company has not received, and has no notice of, any order of the Commission preventing or suspending the use of the Registration Statement, or threatening or instituting proceedings for that purpose. The Registration Statement and the offer and sale of Placement Shares as contemplated hereby meet the requirements of Rule 415 under the Securities Act and comply in all material respects with said Rule. Any statutes, regulations, contracts or other documents that are required to be described in the Registration Statement or the Prospectus or to be filed as exhibits to the Registration Statement have been so described or filed. Copies of the Registration Statement, the Prospectus, and any such amendments or supplements and all documents incorporated by reference therein that were filed with the Commission on or prior to the date of this Agreement have been delivered, or are available through EDGAR, to Agent and its counsel. The Company has not distributed and, prior to the later to occur of each Settlement Date and completion of the distribution of the Placement Shares, will not distribute any offering material in connection with the offering or sale of the Placement Shares other than the Registration Statement and the Prospectus and any Issuer Free Writing Prospectus to which Agent has consented, such consent not to be unreasonably withheld, conditioned or delayed. The Company has not, in the 12 months preceding the date hereof, received notice from the Exchange to the effect that the Company is not in compliance with the listing or maintenance requirements. The Company has no reason to believe that it will not in the foreseeable future continue to be in compliance with all such listing and maintenance requirements.

   b. No Misstatement or Omission. The Registration Statement, when it became or becomes effective, and the Prospectus, and any amendment or supplement thereto, on the date of such Prospectus or amendment or supplement, conformed and will conform in all material respects with the requirements of the Securities Act. At each Settlement Date, the Registration Statement and the Prospectus, as of such date, will conform in all material respects with the requirements of the Securities Act. The Registration Statement, when it became or becomes effective, did not, and will not, contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading. The Prospectus and any amendment or supplement thereto, on the date thereof and at each Applicable Time (defined below), did not and will not include an untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. The Incorporated Documents did not, and any further documents filed and incorporated by reference therein will not, when filed with the Commission, contain an untrue statement of a material fact or omit to state a material fact required to be stated in such document or necessary to make the statements in such document, in light of the circumstances under which they were made, not misleading. The foregoing shall not apply to statements in, or

omissions from, any such document made in reliance upon, and in conformity with, information furnished to the Company by Agent specifically for use in the preparation thereof.

c. Conformity with Securities Act and Exchange Act. The Registration Statement, the Prospectus, any Issuer Free Writing Prospectus or any amendment or supplement thereto, and the Incorporated Documents, when such documents were or are filed with the Commission under the Securities Act or the Exchange Act or became or become effective under the Securities Act, as the case may be, conformed and will conform in all material respects with the requirements of the Securities Act and the Exchange Act, as applicable.

d. Financial Information. The financial statements of the Company included or incorporated by reference in the Registration Statement, the Prospectus and the Issuer Free Writing Prospectuses, if any, together with the related notes and schedules, present fairly, in all material respects, the financial position of the Company as of the dates indicated and the results of operations, cash flows and changes in stockholders' equity of the Company for the periods specified and have been prepared in compliance with the requirements of the Securities Act and Exchange Act and in conformity with generally accepted accounting principles in the United States ("GAAP") applied on a consistent basis (except for (i) such adjustments to accounting standards and practices as are noted therein, (ii) in the case of unaudited interim financial statements, to the extent such financial statements may not include footnotes required by GAAP or may be condensed or summary statements and (iii) such adjustments which will not be material, either individually or in the aggregate) during the periods involved; the other financial and statistical data with respect to the Company contained or incorporated by reference in the Registration Statement, the Prospectus and the Issuer Free Writing Prospectuses, if any, are accurately and fairly presented in all material respects and prepared on a basis consistent with the financial statements and books and records of the Company; there are no financial statements (historical or pro forma) that are required to be included or incorporated by reference in the Registration Statement, or the Prospectus that are not included or incorporated by reference as required; the Company does not have any material liabilities or obligations, direct or contingent (including any off-balance sheet obligations), not described in the Registration Statement(excluding the exhibits thereto), and the Prospectus; and all disclosures contained or incorporated by reference in the Registration Statement, the Prospectus and the Issuer Free Writing Prospectuses, if any, regarding "non-GAAP financial measures" (as such term is defined by the rules and regulations of the Commission) comply in all material respects with Regulation G of the Exchange Act and Item 10 of Regulation S-K under the Securities Act, to the extent applicable.

e. Conformity with EDGAR Filing. The Prospectus delivered to the Agent for use in connection with the sale of the Placement Shares pursuant to this Agreement will be identical to the versions of the Prospectus created to be transmitted to the Commission for filing via EDGAR, except to the extent permitted by Regulation S-T.

f. Organization. The Company is duly organized, validly existing as a corporation and in good standing under the laws of its jurisdiction of organization. The Company is, and will be, duly licensed or qualified as a foreign corporation for transaction of business and in good standing under the laws of each other jurisdiction in which its ownership or lease of property or the conduct of its business requires such license or qualification, and has all corporate power and authority necessary to own or hold its properties and to conduct its business as described in the Registration Statement and the Prospectus, except where the failure to be so qualified or in good standing or have such power or authority would not, individually or in the aggregate, have a material adverse effect on or affecting the assets, business, operations, earnings, properties, condition (financial or otherwise), prospects, stockholders' equity or results of operations of the Company or prevent or materially interfere with consummation of the transactions contemplated hereby (a "Material Adverse Effect").

g. Subsidiaries. The Company does not own or control, directly or indirectly, any corporation, association or other entity other than the subsidiaries listed in Exhibit 21.1 to the Company's

Annual Report on Form 10-K for the most recently ended fiscal year The Company owns directly or indirectly, all of the equity interests of its subsidiaries free and clear of any lien, charge, security interest, encumbrance, right of first refusal or other restriction, and all the equity interests of its subsidiaries are validly issued and are fully paid, non-assessable and free of preemptive and similar rights.

h. No Violation or Default. The Company is not (i) in violation of its charter or by-laws or similar organizational documents; (ii) in default, and no event has occurred that, with notice or lapse of time or both, would constitute such a default, in the due performance or observance of any term, covenant or condition contained in any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which the Company is a party or by which the Company is bound or to which any of the property or assets of the Company is subject; or (iii) in violation of any law or statute or any judgment, order, rule or regulation of any court or arbitrator or governmental or regulatory authority, except, in the case of each of clauses (ii) and (iii) above, for any such violation or default that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. To the Company's knowledge, no other party under any material contract or other agreement to which it is a party is in default in any respect thereunder where such default would reasonably be expected to have a Material Adverse Effect.

i. No Material Adverse Effect. Subsequent to the respective dates as of which information is given in the Registration Statement, the Prospectus and the Issuer Free Writing Prospectuses, if any, (including any document deemed incorporated by reference therein), there has not been (i) any Material Adverse Effect, (ii) any transaction which is material to the Company, (iii) any obligation or liability, direct or contingent (including any off-balance sheet obligations), incurred by the Company which is material to the Company, (iv) any material change in the capital stock or outstanding long-term indebtedness (other than (A) the grant of additional awards under equity incentive plans, (B) changes in the number of outstanding Common Stock due to the issuance of shares upon exercise or conversion of securities exercisable for or convertible into Common Stock outstanding on the date hereof, (C) any repurchase of capital stock of the Company, (D) as a result of the sale of Placement Shares, or (E) other than as publicly reported or announced), or (v) any dividend or distribution of any kind declared, paid or made on the capital stock of the Company other than in each case above in the ordinary course of business or as otherwise disclosed in the Registration Statement or Prospectus (including any document deemed incorporated by reference therein).

j. Capitalization. The issued and outstanding shares of capital stock of the Company have been validly issued, are fully paid and non-assessable and, other than as disclosed in the Registration Statement or the Prospectus, are not subject to any preemptive rights, rights of first refusal or similar rights. The Company has an authorized, issued and outstanding capitalization as set forth in the Registration Statement and the Prospectus as of the dates referred to therein (other than the grant of additional options and restricted stock units under the Company's existing stock option plans, or changes in the number of outstanding shares of Common Stock of the Company due to the issuance of shares upon the exercise or conversion of securities exercisable for, or convertible into, Common Stock outstanding on the date hereof) and such authorized capital stock conforms to the description thereof set forth in the Registration Statement and the Prospectus. The description of the securities of the Company in the Registration Statement and the Prospectus is complete and accurate in all material respects. As of the date referred to therein, the Company does not have outstanding any options to purchase, or any rights or warrants to subscribe for, or any securities or obligations convertible into, or exchangeable for, or any contracts or commitments to issue or sell, any shares of capital stock or other securities.

k. Authorization; Enforceability. The Company has full legal right, power and authority to enter into this Agreement and perform the transactions contemplated hereby. This Agreement has been duly authorized, executed and delivered by the Company and is a legal, valid and binding agreement of the Company enforceable against the Company in accordance with its terms, except (i) to the extent that enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium

or similar laws affecting creditors' rights generally and by general equitable principles and (ii) the indemnification and contribution provisions of Section 10 hereof may be limited by federal or state securities laws and public policy considered in respect thereof.

l. Authorization of Placement Shares. The Placement Shares, when issued and delivered pursuant to the terms approved by the board of directors of the Company or a duly authorized committee thereof, against payment therefor as provided herein, will be duly and validly authorized and issued and fully paid and non-assessable, free and clear of any pledge, lien, encumbrance, security interest or other claim, including any statutory or contractual preemptive rights, resale rights, rights of first refusal or other similar rights, and will be registered pursuant to Section 12 of the Exchange Act. The Placement Shares, when issued, will conform in all material respects to the description thereof set forth in or incorporated into the Prospectus.

m. No Consents Required. No consent, approval, authorization, order, registration or qualification of or with any court or arbitrator or governmental or regulatory authority having jurisdiction over the Company is required for the execution, delivery and performance by the Company this Agreement, the issuance and sale by the Company of the Placement Shares, except for such consents, approvals, authorizations, orders and registrations or qualifications as may be required under applicable state securities laws or by the by-laws and rules of the Financial Industry Regulatory Authority ("FINRA") or the Exchange in connection with the sale of the Placement Shares by the Agent.

n. No Preferential Rights. (i) No person, as such term is defined in Rule 1-02 of Regulation S-X promulgated under the Securities Act (each, a "Person"), has the right, contractual or otherwise, to cause the Company to issue or sell to such Person any Common Stock or shares of any other capital stock or other securities of the Company (other than upon the exercise of outstanding options, warrants or other rights to purchase Common Stock, or upon the exercise of equity awards that may be granted from time to time under the Company's employee or director stock option or benefits plans, in each case as disclosed in the Registration Statement or Prospectus), (ii) no Person has any preemptive rights, resale rights, rights of first refusal, or any other rights (whether pursuant to a "poison pill" provision or otherwise) to purchase any Common Stock or shares of any other capital stock or other securities of the Company, (iii) no Person has the right to act as an underwriter or as a financial advisor to the Company in connection with the offer and sale of Common Stock, and (iv) no Person has the right, contractual or otherwise, to require the Company to register under the Securities Act any Common Stock or shares of any other capital stock or other securities of the Company, or to include any such shares or other securities in the Registration Statement or the offering contemplated thereby, whether as a result of the filing or effectiveness of the Registration Statement or the sale of the Placement Shares as contemplated thereby or otherwise.

o. Independent Public Accountant. Ernst & Young (the "Accountant"), whose report on the financial statements of the Company will be filed with the Commission as part of the Company's Annual Report on Form 10-K to be filed with the Commission and incorporated into the Registration Statement and the Prospectus, are and, during the periods covered by their report, were an independent registered public accounting firm with respect to the Company within the meaning of the Securities Act and the Public Company Accounting Oversight Board (United States). To the Company's knowledge, the Accountant is not in violation of the auditor independence requirements of the Sarbanes-Oxley Act of 2002 (the "Sarbanes-Oxley Act") with respect to the Company.

p. Enforceability of Agreements. All agreements between the Company and third parties expressly referenced in the Prospectus are legal, valid and binding obligations of the Company enforceable against the Company in accordance with their respective terms, except to the extent that (i) enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general equitable principles and (ii) the indemnification provisions of certain agreements may be limited by federal or state securities laws

or public policy considerations in respect thereof, and except for any unenforceability that, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect.

q. No Litigation. There are no legal, governmental or regulatory actions, suits or proceedings pending, nor, to the Company's knowledge, any legal, governmental or regulatory investigations, to which the Company is a party or to which any property of the Company is the subject that, individually or in the aggregate, if determined adversely to the Company would reasonably be expected to have a Material Adverse Effect or materially and adversely affect the ability of the Company to perform its obligations under this Agreement; to the Company's knowledge, no such actions, suits or proceedings are threatened or contemplated by any governmental or regulatory authority or threatened by others that, individually or in the aggregate, if determined adversely to the Company, would reasonably be expected to have a Material Adverse Effect; and (i) there are no current or pending legal, governmental or regulatory investigations, actions, suits or proceedings that are required under the Securities Act to be described in the Prospectus that are not so described; and (ii) there are no contracts or other documents that are required under the Securities Act to be filed as exhibits to the Registration Statement that are not so filed.

r. Licenses and Permits. The Company possesses or has obtained, all licenses, certificates, consents, orders, approvals, permits and other authorizations issued by, and have made all declarations and filings with, the appropriate federal, state, local or foreign governmental or regulatory authorities that are necessary for the ownership or lease of their respective properties or the conduct of their respective businesses as described in the Registration Statement and the Prospectus (the "Permits"), except where the failure to possess, obtain or make the same would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. The Company has not received written notice of any proceeding relating to revocation or modification of any such Permit or has any reason to believe that such Permit will not be renewed in the ordinary course, except where the failure to obtain any such renewal would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

s. No Material Defaults. The Company has not defaulted on any installment on indebtedness for borrowed money or on any rental on one or more long-term leases, which defaults, individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect. The Company has not filed a report pursuant to Section 13(a) or 15(d) of the Exchange Act since the filing of its last Annual Report on Form 10-K, indicating that it (i) has failed to pay any dividend or sinking fund installment on preferred stock or (ii) has defaulted on any installment on indebtedness for borrowed money or on any rental on one or more long-term leases, which defaults, individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect

t. S-3 Eligibility. (i) At the time of filing the Registration Statement and (ii) at the time of the most recent amendment thereto for the purposes of complying with Section 10(a)(3) of the Securities Act (whether such amendment was by post-effective amendment, incorporated report filed pursuant to Section 13 or 15(d) of the Exchange Act or form of prospectus), the Company met the then applicable requirements for use of Form S-3 under the Securities Act, including compliance with General Instruction I.B.1 of Form S-3.

u. Certain Market Activities. Neither the Company nor, to the Company's knowledge, any of its directors, officers or controlling persons has taken, directly or indirectly, any action designed, or that has constituted or would reasonably be expected to cause or result in, under the Exchange Act or otherwise, the stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the Placement Shares.

v. Broker/Dealer Relationships. Neither the Company nor any related entities is required to register as a "broker" or "dealer" in accordance with the provisions of the Exchange Act or (ii) directly or indirectly through one or more intermediaries, controls or is a "person associated with a member" or "associated person of a member" (within the meaning set forth in the FINRA Manual).

w. No Reliance. The Company has not relied upon the Agent or legal counsel for the Agent for any legal, tax or accounting advice in connection with the offering and sale of the Placement Shares.

x. Taxes. The Company has filed all federal, state, local and foreign tax returns which have been required to be filed and paid all taxes shown thereon through the date hereof, to the extent that such taxes have become due and are not being contested in good faith, except where failure to do so would not reasonably be expected to have a Material Adverse Effect. Except as otherwise disclosed in or contemplated by the Registration Statement or the Prospectus, no tax deficiency has been determined adversely to the Company which has had, or would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. The Company has no knowledge of any federal, state or other governmental tax deficiency, penalty or assessment which has been or might be asserted or threatened against it which would reasonably be expected to have a Material Adverse Effect.

y. Title to Real and Personal Property. The Company has good and valid title in fee simple to all items of real property and good and valid title to all personal property described in the Registration Statement or Prospectus as being owned by it that are material to the business of the Company, in each case free and clear of all liens, encumbrances and claims, except those that (i) do not materially interfere with the use made and proposed to be made of such property by the Company or (ii) would not reasonably expected, individually or in the aggregate, to have a Material Adverse Effect. Any real property described in the Registration Statement or Prospectus as being leased by the Company is held by it under valid, existing and enforceable leases, except those that (A) do not materially interfere with the use made or proposed to be made of such property by the Company or (B) would not be reasonably expected, individually or in the aggregate, to have a Material Adverse Effect.

z. Intellectual Property. The Company owns or possesses adequate enforceable rights to use all patents, patent applications, trademarks (both registered and unregistered), service marks, trade names, trademark registrations, service mark registrations, copyrights, licenses and know-how (including trade secrets and other unpatented and/or unpatentable proprietary or confidential information, systems or procedures) (collectively, the "Intellectual Property"), necessary for the conduct of its business as conducted as of the date hereof, except to the extent that the failure to own or possess adequate rights to use such Intellectual Property would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect; the Company has not received any written notice of any claim of infringement or conflict which asserted Intellectual Property rights of others, which infringement or conflict, if the subject of an unfavorable decision, would reasonably be expected to result in a Material Adverse Effect; there are no pending, or to the Company's knowledge, threatened judicial proceedings or interference proceedings against the Company challenging the Company's rights in or to or the validity of the scope of any of the Company's patents, patent applications or proprietary information, except for such right or claim that would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

aa. Environmental Laws. The Company (i) is in compliance with any and all applicable federal, state, local and foreign laws, rules, regulations, decisions and orders relating to the protection of human health and safety, the environment or hazardous or toxic substances or wastes, pollutants or contaminants (collectively, "Environmental Laws"); (ii) has received and is in compliance with all permits, licenses or other approvals required of it under applicable Environmental Laws to conduct its businesses as described in the Registration Statement and the Prospectus; and (iii) has not received notice of any actual or potential liability for the investigation or remediation of any disposal or release of hazardous or toxic substances or wastes, pollutants or contaminants, except, in the case of any of clauses (i), (ii) or (iii) above, for any such failure to comply or failure to receive required permits, licenses, other approvals or liability as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

ab. Disclosure Controls. The Company maintains systems of internal controls designed to provide reasonable assurance that (i) transactions are executed in accordance with management's general or specific authorizations; (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain asset accountability; (iii) access to assets is permitted only in accordance with management's general or specific authorization; and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences. The Company is not aware of any material weaknesses in its internal control over financial reporting (other than as set forth in the Prospectus). Since the date of the latest audited financial statements of the Company included in the Prospectus, there has been no change in the Company's internal control over financial reporting that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting (other than as set forth in the Prospectus). The Company has established disclosure controls and procedures (as defined in Exchange Act Rules 13a-15 and 15d-15) for the Company and designed such disclosure controls and procedures to ensure that material information relating to the Company is made known to the certifying officers by others within those entities, particularly during the period in which the Company's Annual Report on Form 10-K or Quarterly Report on Form 10-Q, as the case may be, is being prepared. The Company's certifying officers have evaluated the effectiveness of the Company's controls and procedures as of a date within 90 days prior to the filing date of the Form 10-K for the fiscal year most recently ended (such date, the "Evaluation Date"). The Company presented in its Form 10-K for the fiscal year most recently ended the conclusions of the certifying officers about the effectiveness of the disclosure controls and procedures based on their evaluations as of the Evaluation Date. Since the Evaluation Date, there have been no significant changes in the Company's internal controls (as such term is defined in Item 307(b) of Regulation S-K under the Securities Act) or, to the Company's knowledge, in other factors that could significantly affect the Company's internal controls. To the knowledge of the Company, the Company's "internal controls over financial reporting" and "disclosure controls and procedures" are effective.

ac. Sarbanes-Oxley. The Company is not aware of any failure on the part of the Company or any of the Company's directors or officers, in their capacities as such, to comply with any applicable provisions of the Sarbanes-Oxley Act and the applicable rules and regulations promulgated thereunder in all material respects. Each of the principal executive officer and the principal financial officer of the Company (or each former principal executive officer of the Company and each former principal financial officer of the Company as applicable) has made all certifications required by Sections 302 and 906 of the Sarbanes-Oxley Act with respect to all reports, schedules, forms, statements and other documents required to be filed by it or furnished by it to the Commission during the past 12 months. For purposes of the preceding sentence, "principal executive officer" and "principal financial officer" shall have the meanings given to such terms in the Sarbanes-Oxley Act.

ad. Finder's Fees. The Company has not incurred any liability for any finder's fees, brokerage commissions or similar payments in connection with the transactions herein contemplated, except as may otherwise exist with respect to Agent pursuant to this Agreement.

ae. Labor Disputes. No labor disturbance by or dispute with employees of the Company exists or, to the knowledge of the Company, is threatened which would be reasonably likely to have a Material Adverse Effect

af. Investment Company Act. The Company is not or after giving effect to the offering and sale of the Placement Shares, will not be an "investment company" or an entity "controlled" by an "investment company," as such terms are defined in the Investment Company Act of 1940, as amended (the "Investment Company Act").

ag. Operations. The operations of the Company are and have been conducted at all times in compliance with applicable financial record keeping and reporting requirements of the Currency and Foreign Transactions Reporting Act of 1970, as amended, the money laundering statutes of all

jurisdictions to which the Company is subject, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any governmental agency (collectively, the "Money Laundering Laws"), except as would not have a Material Adverse Effect; and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company with respect to the Money Laundering Laws is pending or, to the knowledge of the Company, threatened.

ah. Off-Balance Sheet Arrangements. There are no transactions, arrangements and other relationships between and/or among the Company, and/or, to the knowledge of the Company, any of its affiliates and any unconsolidated entity, including, but not limited to, any structural finance, special purpose or limited purpose entity (each, an "Off Balance Sheet Transaction") that could reasonably be expected to affect materially the Company's liquidity or the availability of or requirements for its capital resources, including those Off Balance Sheet Transactions described in the Commission's Statement about Management's Discussion and Analysis of Financial Conditions and Results of Operations (Release Nos. 33-8056; 34-45321; FR- 61), required to be described in the Prospectus which have not been described as required.

ai. Underwriter Agreements. Other than with respect to this Agreement, the Company is not a party to any agreement with an agent or underwriter for any other "at the market" or continuous equity transaction.

aj. ERISA. To the knowledge of the Company, each material employee benefit plan, within the meaning of Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), that is maintained, administered or contributed to by the Company or any of its affiliates for employees or former employees of the Company has been maintained in material compliance with its terms and the requirements of any applicable statutes, orders, rules and regulations, including but not limited to ERISA and the Internal Revenue Code of 1986, as amended (the "Code"); no prohibited transaction, within the meaning of Section 406 of ERISA or Section 4975 of the Code, has occurred which would result in a material liability to the Company with respect to any such plan excluding transactions effected pursuant to a statutory or administrative exemption; and for each such plan that is subject to the funding rules of Section 412 of the Code or Section 302 of ERISA, no "accumulated funding deficiency" as defined in Section 412 of the Code has been incurred, whether or not waived, and the fair market value of the assets of each such plan (excluding for these purposes accrued but unpaid contributions) exceeds the present value of all benefits accrued under such plan determined using reasonable actuarial assumptions.

ak. Forward Looking Statements. No forward-looking statement (within the meaning of Section 27A of the Securities Act and Section 21E of the Exchange Act) (a "Forward Looking Statement") contained in the Registration Statement and the Prospectus has been made or reaffirmed without a reasonable basis or has been disclosed other than in good faith. The Forward Looking Statements incorporated by reference in the Registration Statement and the Prospectus from the Company's Annual Report on Form 10-K for the fiscal year most recently ended (i) are within the coverage of the safe harbor for forward looking statements set forth in Section 27A of the Securities Act, Rule 175(b) under the Securities Act or Rule 3b-6 under the Exchange Act, as applicable, (ii) were made by the Company with a reasonable basis and in good faith and reflect the Company's good faith commercially reasonable best estimate of the matters described therein, and (iii) have been prepared in accordance with Item 10 of Regulation S-K under the Securities Act.

al. Agent Purchases. The Company acknowledges and agrees that Agent has informed the Company that the Agent may, to the extent permitted under the Securities Act and the Exchange Act, purchase and sell Common Stock for its own account while this Agreement is in effect, provided, that (i) no such purchase or sales shall take place while a Placement Notice is in effect (except to the extent each Agent may engage in sales of Placement Shares purchased or deemed purchased from the Company as a "riskless principal" or in a similar capacity) and (ii) the Company shall not be deemed to have authorized or consented to any such purchases or sales by the Agent.

am. Margin Rules. Neither the issuance, sale and delivery of the Placement Shares nor the application of the proceeds thereof by the Company as described in the Registration Statement and the Prospectus will violate Regulation T, U or X of the Board of Governors of the Federal Reserve System or any other regulation of such Board of Governors.

an. Insurance. The Company carries, or is covered by, insurance in such amounts and covering such risks as the Company reasonably believes is adequate for the conduct of its business and as is customary for companies engaged in similar businesses in similar industries.

ao. No Improper Practices. (i) Neither the Company, nor to the Company's knowledge, any of its executive officers has, in the past five years, made any unlawful contributions to any candidate for any political office (or failed fully to disclose any contribution in violation of law) or made any contribution or other payment to any official of, or candidate for, any federal, state, municipal, or foreign office or other person charged with similar public or quasi- public duty in violation of any law or of the character required to be disclosed in the Prospectus; (ii) no relationship, direct or indirect, exists between or among the Company or, to the Company's knowledge, any affiliate of the Company, on the one hand, and the directors, officers and stockholders of the Company, that is required by the Securities Act to be described in the Registration Statement and the Prospectus that is not so described; (iii) no relationship, direct or indirect, exists between or among the Company, or any affiliate of the Company, on the one hand, and the directors, officers, stockholders or directors of the Company that is required by the rules of FINRA to be described in the Registration Statement and the Prospectus that is not so described; (iv) there are no material outstanding loans or advances or material guarantees of indebtedness by the Company to or for the benefit of any of its officers or directors or any of the members of the families of any of them; (v) the Company has not offered, or caused any placement agent to offer, Common Stock to any person with the intent to influence unlawfully (A) a customer or supplier of the Company to alter the customer's or supplier's level or type of business with the Company or (B) a trade journalist or publication to write or publish favorable information about the Company or any of its products or services, and, (vi) neither the Company nor, to the Company's knowledge, any employee or agent of the Company has made any payment of funds of the Company or received or retained any funds in violation of any law, rule or regulation (including, without limitation, the Foreign Corrupt Practices Act of 1977, which payment, receipt or retention of funds is of a character required to be disclosed in the Registration Statement or the Prospectus).

ap. Compliance with Applicable Laws. The Company (A) to its knowledge, is and at all times has been in material compliance with all statutes, rules and regulations applicable to the ownership, testing, development, manufacture, packaging, processing, use, distribution, marketing, labeling, promotion, sale, offer for sale, storage, import, export or disposal of any product under development, manufactured or distributed by the Company ("Applicable Laws"), (B) has not received any Form 483 from the FDA, notice of adverse finding, warning letter, or other written correspondence or notice from the FDA or any other federal, state, local or foreign governmental or regulatory authority alleging or asserting material noncompliance with any Applicable Laws or any licenses, certificates, approvals, clearances, authorizations, permits and supplements or amendments thereto required by any such Applicable Laws ("Authorizations"), which would, individually or in the aggregate, result in a Material Adverse Effect; (C) possesses all material Authorizations and such Authorizations are valid and in full force and effect and the Company is not in material violation of any term of any such Authorizations; (D) has not received written notice of any claim, action, suit, proceeding, hearing, enforcement, investigation, arbitration or other action from the FDA or any other federal, state, local or foreign governmental or regulatory authority or third party alleging that any Company product, operation or activity is in material violation of any Applicable Laws or Authorizations and has no knowledge that the FDA or any other federal, state, local or foreign governmental or regulatory authority or third party is considering any such claim, litigation, arbitration, action, suit, investigation or proceeding against the Company; (E) has not received notice that the FDA or any other federal, state, local or foreign governmental or regulatory authority has taken, is taking or intends to take action to limit,

suspend, modify or revoke any material Authorizations and has no knowledge that the FDA or any other federal, state, local or foreign governmental or regulatory authority is considering such action; and (F) to its knowledge, has filed, obtained, maintained or submitted all reports, documents, forms, notices, applications, records, claims, submissions and supplements or amendments as required by any Applicable Laws or Authorizations except where the failure to file such reports, documents, forms, notices, applications, records, claims, submissions and supplements or amendments would not result in a Material Adverse Effect, and that all such reports, documents, forms, notices, applications, records, claims, submissions and supplements or amendments were materially complete and correct on the date filed (or were corrected or supplemented by a subsequent submission).

aq. Clinical Studies. All clinical trials conducted by the Company or on behalf of the Company were, and, if still pending are, to the Company's knowledge, being conducted in all material respects in compliance with all Applicable Laws and in accordance with experimental protocols, procedures and controls generally used by qualified experts in the clinical trials of new drugs and biologics as applied to comparable products to those being developed by the Company; the descriptions of the results of such clinical trials contained in the Registration Statement and the Prospectus are accurate in all material respects, and the Company has no knowledge of any other clinical trials, the results of which reasonably call into question the clinical trial results described or referred to in the Registration Statement and the Prospectus when viewed in the context in which such results are described; and the Company has not received any written notices or correspondence from the FDA or any other domestic or foreign governmental agency requiring the termination or suspension of any clinical trials conducted by or on behalf of the Company that are described in the Registration Statement and the Prospectus or the results of which are referred to in the Registration Statement and the Prospectus.

ar. Status Under the Securities Act. The Company was not and is not an ineligible issuer as defined in Rule 405 under the Securities Act at the times specified in Rules 164 and 433 under the Securities Act in connection with the offering of the Placement Shares.

as. No Misstatement or Omission in an Issuer Free Writing Prospectus. Each Issuer Free Writing Prospectus, as of its issue date and as of each Applicable Time (as defined in Section 24 below), did not, does not and will not include any information that conflicted, conflicts or will conflict with the information contained in the Registration Statement or the Prospectus, including any incorporated document deemed to be a part thereof that has not been superseded or modified. The foregoing sentence does not apply to statements in or omissions from any Issuer Free Writing Prospectus based upon and in conformity with written information furnished to the Company by the Agent specifically for use therein.

at. No Conflicts. Neither the execution of this Agreement, nor the issuance, offering or sale of the Placement Shares, nor the consummation of any of the transactions contemplated herein and therein, nor the compliance by the Company with the terms and provisions hereof and thereof will conflict with, or will result in a breach of, any of the terms and provisions of, or has constituted or will constitute a default under, or has resulted in or will result in the creation or imposition of any lien, charge or encumbrance upon any property or assets of the Company pursuant to the terms of any contract or other agreement to which the Company may be bound or to which any of the property or assets of the Company is subject, except (i) such conflicts, breaches or defaults as may have been waived and (ii) such conflicts, breaches and defaults that would not have a Material Adverse Effect; nor will such action result (x) in any violation of the provisions of the organizational or governing documents of the Company, or (y) in any material violation of the provisions of any statute or any order, rule or regulation applicable to the Company or of any court or of any federal, state or other regulatory authority or other government body having jurisdiction over the Company.

au. OFAC. Neither the Company or any director, officer, agent, employee, affiliate or representative of the Company is a government, individual or entity (in this paragraph (uu), "Person") that is, or

is owned or controlled by a Person that is, currently subject to any U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury ("OFAC"), the United Nations Security Council ("UNSC"), the European Union ("EU"), Her Majesty's Treasury ("HMT"), or other relevant sanctions authority (collectively, "Sanctions"), nor located, organized or resident in a country or territory that is the subject of Sanctions; provided however, that for the purposes of this paragraph (uu), no person shall be an affiliate of the Company solely by reason of owning less than a majority of any class of voting securities of the Company. The Company will not directly or indirectly use the proceeds of the offering of the Securities hereunder, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other person or entity, for the purpose of financing the activities of any person currently subject to any U.S. sanctions administered by OFAC. The Company represents and covenants that, except as detailed in the Prospectus, for the past 5 years, the Company has not knowingly engaged in, is not now knowingly engaged in, and will not engage in, any dealings or transactions with any Person, or in any country or territory, that at the time of the dealing or transaction is or was the subject of Sanctions.

av. Stock Transfer Taxes. On each Settlement Date, all stock transfer or other taxes (other than income taxes) which are required to be paid in connection with the sale and transfer of the Placement Shares to be sold hereunder will be, or will have been, fully paid or provided for by the Company and all laws imposing such taxes will be or will have been fully complied with. Any certificate signed by an officer of the Company and delivered to the Agent or to counsel for the Agent pursuant to or in connection with this Agreement shall be deemed to be a representation and warranty by the Company, as applicable, to the Agent as to the matters set forth therein.

7. Covenants of the Company. The Company covenants and agrees with Agent that:

a. Registration Statement Amendments. After the date of this Agreement and during any period in which a Prospectus relating to any Placement Shares is required to be delivered by Agent under the Securities Act (including in circumstances where such requirement may be satisfied pursuant to Rule 172 under the Securities Act) (the "Prospectus Delivery Period") (i) the Company will notify the Agent promptly of the time when any subsequent amendment to the Registration Statement, other than documents incorporated by reference, has been filed with the Commission and/or has become effective or any subsequent supplement to the Prospectus has been filed and of any request by the Commission for any amendment or supplement to the Registration Statement or Prospectus or for additional information, (ii) the Company will prepare and file with the Commission, promptly upon the Agent's request, any amendments or supplements to the Registration Statement or Prospectus that, in such Agent's reasonable opinion, may be necessary or advisable in connection with the distribution of the Placement Shares by the Agent (provided, however, that the failure of the Agent to make such request shall not relieve the Company of any obligation or liability hereunder, or affect the Agent's right to rely on the representations and warranties made by the Company in this Agreement and provided, further, that the only remedy the Agent shall have with respect to the failure to make such filing shall be to cease making sales under this Agreement until such amendment or supplement is filed); (iii) the Company will not file any amendment or supplement to the Registration Statement or Prospectus relating to the Placement Shares or a security convertible into the Placement Shares unless a copy thereof has been submitted to Agent within a reasonable period of time before the filing and the Agent has not objected thereto (provided, however, that (A) the failure of the Agent to make such objection shall not relieve the Company of any obligation or liability hereunder, or affect the Agent's right to rely on the representations and warranties made by the Company in this Agreement and (B) the Company has no obligation to provide the Agent any advance copy of such filing or to provide the Agent an opportunity to object to such filing if the filing does not name the Agent or does not relate to the transaction herein provided; and provided, further, that the only remedy Agent shall have with respect to the failure to by the Company to obtain such consent shall be to cease making sales under this Agreement) and the Company will furnish to the Agent at the time of filing thereof a copy of any document that upon filing is deemed to be incorporated by reference into the Registration Statement or Prospectus, except for those documents available via EDGAR; and (iv)

the Company will cause each amendment or supplement to the Prospectus to be filed with the Commission as required pursuant to the applicable paragraph of Rule 424(b) of the Securities Act or, in the case of any document to be incorporated therein by reference, to be filed with the Commission as required pursuant to the Exchange Act, within the time period prescribed (the determination to file or not file any amendment or supplement with the Commission under this Section 7(a), based on the Company's reasonable opinion or reasonable objections, shall be made exclusively by the Company).

b. Notice of Commission Stop Orders. The Company will advise the Agent, promptly after it receives notice or obtains knowledge thereof, of the issuance or threatened issuance by the Commission of any stop order suspending the effectiveness of the Registration Statement, of the suspension of the qualification of the Placement Shares for offering or sale in any jurisdiction, or of the initiation or threatening of any proceeding for any such purpose; and it will promptly use its commercially reasonable efforts to prevent the issuance of any stop order or to obtain its withdrawal if such a stop order should be issued. The Company will advise the Agent promptly after it receives any request by the Commission for any amendments to the Registration Statement or any amendment or supplements to the Prospectus or any Issuer Free Writing Prospectus or for additional information related to the offering of the Placement Shares or for additional information related to the Registration Statement, the Prospectus or any Issuer Free Writing Prospectus.

c. Delivery of Prospectus; Subsequent Changes. During the Prospectus Delivery Period, the Company will comply with all requirements imposed upon it by the Securities Act, as from time to time in force, and to file on or before their respective due dates all reports and any definitive proxy or information statements required to be filed by the Company with the Commission pursuant to Sections 13(a), 13(c), 14, 15(d) or any other provision of or under the Exchange Act. If the Company has omitted any information from the Registration Statement pursuant to Rule 430A under the Securities Act, it will use its best efforts to comply with the provisions of and make all requisite filings with the Commission pursuant to said Rule 430A and to notify the Agent promptly of all such filings. If during the Prospectus Delivery Period any event occurs as a result of which the Prospectus as then amended or supplemented would include an untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances then existing, not misleading, or if during the Prospectus Delivery Period it is necessary to amend or supplement the Registration Statement or Prospectus to comply with the Securities Act, the Company will promptly notify Agent to suspend the offering of Placement Shares during such period and the Company will promptly amend or supplement the Registration Statement or Prospectus (at the expense of the Company) so as to correct such statement or omission or effect such compliance; provided, however, that the Company may delay the filing of any amendment or supplement, if in the judgment of the Company, it is in the best interests of the Company.

d. Listing of Placement Shares. During the Prospectus Delivery Period, the Company will use its commercially reasonable efforts to cause the Placement Shares to be listed on the Exchange and to qualify the Placement Shares for sale under the securities laws of such jurisdictions as Agent reasonably designates and to continue such qualifications in effect so long as required for the distribution of the Placement Shares; provided, however, that the Company shall not be required in connection therewith to qualify as a foreign corporation or dealer in securities or file a general consent to service of process in any jurisdiction.

e. Delivery of Registration Statement and Prospectus. The Company will furnish to the Agent and its counsel (at the expense of the Company) copies of the Registration Statement, the Prospectus (including all documents incorporated by reference therein) and all amendments and supplements to the Registration Statement or Prospectus that are filed with the Commission during the Prospectus Delivery Period (including all documents filed with the Commission during such period that are deemed to be incorporated by reference therein), in each case as soon as reasonably practicable and in such quantities as the Agent may from time to time reasonably request and, at Agent's request, will also furnish copies of the Prospectus to each exchange or market on which

sales of the Placement Shares may be made; provided, however, that the Company shall not be required to furnish any document (other than the Prospectus) to the Agent to the extent such document is available on EDGAR.

f. Earnings Statement. The Company will make generally available to its security holders as soon as practicable, but in any event not later than 15 months after the end of the Company's current fiscal quarter, an earnings statement covering a 12-month period that satisfies the provisions of Section 11(a) and Rule 158 of the Securities Act.

g. Use of Proceeds. The Company will use the Net Proceeds as described in the Prospectus in the section entitled "Use of Proceeds."

h. Notice of Other Sales. Without the prior written consent of Agent, the Company will not, directly or indirectly, offer to sell, sell, contract to sell, grant any option to sell or otherwise dispose of any Common Stock (other than the Placement Shares offered pursuant to this Agreement) or securities convertible into or exchangeable for Common Stock, warrants or any rights to purchase or acquire, Common Stock during the period beginning on the date on which any Placement Notice is delivered to Agent hereunder and ending on the second (2^{nd}) Trading Day immediately following the final Settlement Date with respect to Placement Shares sold pursuant to such Placement Notice (or, if the Placement Notice has been terminated or suspended prior to the sale of all Placement Shares covered by a Placement Notice, the date of such suspension or termination); and will not directly or indirectly in any other "at the market" or continuous equity transaction offer to sell, sell, contract to sell, grant any option to sell or otherwise dispose of any Common Stock (other than the Placement Shares offered pursuant to this Agreement) or securities convertible into or exchangeable for Common Stock, warrants or any rights to purchase or acquire, Common Stock prior to the termination of this Agreement; provided, however, that such restrictions will not be required in connection with the Company's issuance or sale of (i) Common Stock, restricted stock units, options to purchase Common Stock or Common Stock issuable upon the exercise of options, pursuant to any employee or director stock option or benefits plan, stock ownership plan or dividend reinvestment plan (but not Common Stock subject to a waiver to exceed plan limits in its dividend reinvestment plan) of the Company whether now in effect or hereafter implemented, (ii) Common Stock issuable upon conversion of securities or the exercise of warrants, options or other rights in effect or outstanding, and disclosed in filings by the Company available on EDGAR or otherwise in writing to the Agent, and (iii) Common Stock, or securities convertible into or exercisable for Common Stock, offered and sold in a negotiated transaction to vendors, customers, strategic partners or potential strategic partners, acquisition candidates or other investors conducted in a manner so as not to be integrated with the offering of Common Stock hereby.

i. Change of Circumstances. The Company will, at any time during the pendency of a Placement Notice advise the Agent promptly after it shall have received notice or obtained knowledge thereof, of any information or fact that would alter or affect in any material respect any opinion, certificate, letter or other document required to be provided to the Agent pursuant to this Agreement.

j. Due Diligence Cooperation. The Company will cooperate with any reasonable due diligence review conducted by the Agent or its representatives in connection with the transactions contemplated hereby, including, without limitation, providing information and making available documents and senior corporate officers, during regular business hours and at the Company's principal offices, as the Agent may reasonably request.

k. Required Filings Relating to Placement of Placement Shares. The Company agrees that on such dates as the Securities Act shall require, the Company will (i) file a prospectus supplement with the Commission under the applicable paragraph of Rule 424(b) under the Securities Act (each and every filing under Rule 424(b), a "Filing Date"), which prospectus supplement will set forth, within the relevant period, the amount of Placement Shares sold through the Agent, the Net Proceeds to the Company and the compensation payable by the Company to the Agent with

respect to such Placement Shares, and (ii) deliver such number of copies of each such prospectus supplement to each exchange or market on which such sales were effected as may be required by the rules or regulations of such exchange or market.

l. Representation Dates; Certificate. On the date of this Agreement and within five (5) trading days of each time the Company:

i. files the Prospectus relating to the Placement Shares or amends or supplements (other than a prospectus supplement relating solely to an offering of securities other than the Placement Shares), the Registration Statement or the Prospectus relating to the Placement Shares by means of a post-effective amendment, sticker, or supplement but not by means of incorporation of documents by reference into the Registration Statement or the Prospectus relating to the Placement Shares;

ii. f iles an annual report on Form 10-K under the Exchange Act (including any Form 10-K/A containing amended financial information or a material amendment to the previously filed Form 10-K);

iii. files a quarterly report on Form 10-Q under the Exchange Act; or

iv. files a current report on Form 8-K containing amended financial information (other than information "furnished" pursuant to Items 2.02 or 7.01 of Form 8-K or to provide disclosure pursuant to Item 8.01 of Form 8-K relating to the reclassification of certain properties as discontinued operations in accordance with Statement of Financial Accounting Standards No. 144) under the Exchange Act; (Each date of filing of one or more of the documents referred to in clauses (i) through (iv) shall be a "Representation Date") the Company shall furnish the Agent (but in the case of clause (iv) above only if the Agent reasonably determines that the information contained in such Form 8-K is material) with a certificate, in the form attached hereto as Exhibit 7(l) (the "Representation Date Certificate"); provided however, if no Placement Notice is pending at such Representation Date, then before the Company delivers a Placement Notice or the Agent sells any Placement Shares, the Company shall provide the Agent with a Representation Date Certificate. The requirement to provide a Representation Date Certificate shall be waived for any Representation Date occurring at a time at which no Placement Notice is pending, which waiver shall continue until the earlier to occur of the date the Company delivers a Placement Notice hereunder (which for such calendar quarter shall be considered a Representation Date) and the next occurring Representation Date; provided, however, that such waiver shall not apply for any Representation Date on which the Company files its annual report on Form 10-K. Notwithstanding the foregoing, if the Company subsequently decides to sell Placement Shares following a Representation Date when the Company relied on such waiver and did not provide the Agent with a Representation Date Certificate, then before the Company delivers the Placement Notice or the Agent sells any Placement Shares, the Company shall provide the Agent with a Representation Date Certificate, dated the date of the Placement Notice.

m. Legal Opinion. On the date of this Agreement, the Company shall cause to be furnished to the Agent a written opinion and negative assurance letter of Gibson, Dunn & Crutcher LLP ("Company Counsel"), or other counsel satisfactory to the Agent, in form and substance satisfactory to Agent and its counsel, and a written opinion of Global Patent Group, LLC ("Company IP Counsel"), or other counsel satisfactory to the Agent, in form and substance satisfactory to Agent and its counsel. Thereafter, within five (5) Trading Days of each Representation Date with respect to which the Company is obligated to deliver a Representation Date Certificate for which no waiver is applicable, the Company shall cause to be furnished to the Agent a negative assurance letter of Company Counsel in form and substance satisfactory to Agent and its counsel; provided however, if no placement notice is pending at such Representation Date, then before the Company delivers a Placement Notice or the Agent sells any Placement Shares, the

Company shall provide the Agent with such negative assurance letter; provided, further, that in lieu of such negative assurance letter for subsequent periodic filings under the Exchange Act, counsel may furnish the Agent with a letter (a "Reliance Letter") to the effect that the Agent may rely on a prior negative assurance letter delivered under this Section 7(m) to the same extent as if it were dated the date of such letter (except that statements in such prior negative assurance letter shall be deemed to relate to the Registration Statement and the Prospectus as amended or supplemented as of the date of the Reliance Letter).

n. Comfort Letter. (1) On the date of this Agreement and (2) within five (5) Trading Days of each Representation Date, with respect to which the Company is obligated to deliver a certificate in the form attached hereto as Exhibit 7(l) for which no waiver is applicable, the Company shall cause its independent accountants to furnish the Agent letters (the "Comfort Letters"), dated the date the Comfort Letter is delivered, which shall meet the requirements set forth in this Section 7(n); provided however, if no placement notice is pending at such Representation Date, then before the Company delivers a Placement Notice or the Agent sells any Placement Shares, the Company shall provide the Agent with the Comfort Letter; provided, further, that if requested by the Agent, the Company shall cause a Comfort Letter to be furnished to the Agent within ten (10) Trading Days of the date of occurrence of any material transaction or event, including the restatement of the Company's financial statements. The Comfort Letter from the Company's independent accountants shall be in a form and substance reasonably satisfactory to the Agent, (i) confirming that they are an independent public accounting firm within the meaning of the Securities Act and the Public Company Accounting Oversight Board (the "PCAOB"), (ii) stating, as of such date, the conclusions and findings of such firm with respect to the financial information and other matters ordinarily covered by accountants' "comfort letters" to underwriters in connection with registered public offerings (the first such letter, the "Initial Comfort Letter") and (iii) updating the Initial Comfort Letter with any information that would have been included in the Initial Comfort Letter had it been given on such date and modified as necessary to relate to the Registration Statement and the Prospectus, as amended and supplemented to the date of such letter.

o. Market Activities. The Company will not, directly or indirectly, (i) take any action designed to cause or result in, or that constitutes or might reasonably be expected to constitute, the stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of Common Stock or (ii) sell, bid for, or purchase Common Stock in violation of Regulation M, or pay anyone any compensation for soliciting purchases of the Placement Shares other than the Agent.

p. Investment Company Act. The Company will conduct its affairs in such a manner so as to reasonably ensure that it will not become, at any time prior to the termination of this Agreement, an "investment company," as such term is defined in the Investment Company Act.

q. No Offer to Sell. Other than an Issuer Free Writing Prospectus approved in advance by the Company and the Agent in its capacity as agent hereunder, neither the Agent nor the Company (including its agents and representatives, other than Agent in their capacity as such) will make, use, prepare, authorize, approve or refer to any written communication (as defined in Rule 405 under the Securities Act), required to be filed with the Commission, that constitutes an offer to sell or solicitation of an offer to buy Placement Shares hereunder.

r. Sarbanes-Oxley Act. The Company will maintain and keep accurate books and records reflecting its assets and maintain internal accounting controls in a manner designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP and including those policies and procedures that (i) pertain to the maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of the assets of the Company, (ii) provide reasonable assurance that transactions are recorded as necessary to permit the preparation of the Company's consolidated financial statements in accordance with GAAP, (iii) that receipts and expenditures of the Company are being made only in accordance with management's and the Company's directors'

authorization, and (iv) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the Company's assets that could have a material effect on its financial statements. The Company will use commercially reasonable efforts to comply with all other effective applicable provisions of the Sarbanes-Oxley Act and the applicable regulations thereunder that are designed to ensure that information required to be disclosed by the Company in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the Commission's rules and forms.

8. Payment of Expenses. The Company will pay all expenses incident to the performance of its obligations under this Agreement, including (i) the preparation, filing, including any fees required by the Commission, and printing of the Registration Statement (including financial statements and exhibits) as originally filed and of each amendment and supplement thereto, in such number as the Agent shall deem reasonably necessary, (ii) the printing and delivery to the Agent of this Agreement and such other documents as may be required in connection with the offering, purchase, sale, issuance or delivery of the Placement Shares, (iii) the preparation, issuance and delivery of the certificates, if any, for the Placement Shares to the Agent, including any stock or other transfer taxes and any capital duties, stamp duties or other duties or taxes payable upon the sale, issuance or delivery of the Placement Shares to the Agent, (iv) the fees and disbursements of the counsel, accountants and other advisors to the Company, (v) the reasonable out-of-pocket expenses of Agent, including fees and disbursements of counsel to the Agent up to $40,000 (which amount shall include all fees and disbursements of such counsel described in clause (ix) below), (vi) the printing and delivery to the Agent of copies of any Permitted Issuer Free Writing Prospectus (defined below) and the Prospectus and any amendments or supplements thereto in such number as the Agent shall deem necessary, (vii) the preparation, printing and delivery to the Agent of copies of the blue sky survey and any Canadian "wrapper" and any supplements thereto, in such number as the Agent shall deem necessary, (viii) the fees and expenses of the transfer agent and registrar for the Common Stock, (ix) the fees and expenses incident to any review by FINRA of the terms of the sale of the Placement Shares, including fees and expenses of counsel to the Agent, and (x) the fees and expenses incurred in connection with the listing of the Placement Shares on the Exchange.

9. Conditions to Agent's Obligations. The obligations of the Agent hereunder with respect to a Placement will be subject to the continuing accuracy and completeness of the representations and warranties made by the Company herein, to the due performance by the Company of its obligations hereunder, to the completion by the Agent of a due diligence review satisfactory to it in its reasonable judgment, and to the continuing satisfaction (or waiver by the Agent in its sole discretion) of the following additional conditions:

   a. Registration Statement Effective. The Registration Statement shall have become effective and shall be available for the sale of all Placement Shares contemplated to be issued by any Placement Notice.

   b. No Material Notices. None of the following events shall have occurred and be continuing: (i) receipt by the Company of any request for additional information from the Commission or any other federal or state governmental authority during the period of effectiveness of the Registration Statement, the response to which would require any post-effective amendments or supplements to the Registration Statement or the Prospectus; (ii) the issuance by the Commission or any other federal or state governmental authority of any stop order suspending the effectiveness of the Registration Statement or the initiation of any proceedings for that purpose; (iii) receipt by the Company of any notification with respect to the suspension of the qualification or exemption from qualification of any of the Placement Shares for sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose; or (iv) the occurrence of any event that makes any material statement made in the Registration Statement or the Prospectus or any material document incorporated or deemed to be incorporated therein by reference untrue in any material respect or that requires the making of any changes in the Registration Statement, the Prospectus or documents so that, in the case of the Registration Statement, it will not contain any materially untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading and, that in the case of the Prospectus, it will not contain any materially untrue statement of a material fact or omit to state any material fact

required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

c. No Misstatement or Material Omission. Agent shall not have advised the Company that the Registration Statement or Prospectus, or any amendment or supplement thereto, contains an untrue statement of fact that in the Agent's reasonable opinion is material, or omits to state a fact that in the Agent's reasonable opinion is material and is required to be stated therein or is necessary to make the statements therein not misleading.

d. Material Changes. Except as contemplated in the Prospectus, or disclosed in the Company's reports filed with the Commission, there shall not have been any material adverse change, on a consolidated basis, in the authorized capital stock of the Company or any Material Adverse Effect, or any development that could reasonably be expected to cause a Material Adverse Effect, or a downgrading in or withdrawal of the rating assigned to any of the Company's securities (other than asset backed securities) by any rating organization or a public announcement by any rating organization that it has under surveillance or review its rating of any of the Company's securities (other than asset backed securities), the effect of which, in the case of any such action by a rating organization described above, in the reasonable judgment of the Agent (without relieving the Company of any obligation or liability it may otherwise have), is so material as to make it impracticable or inadvisable to proceed with the offering of the Placement Shares on the terms and in the manner contemplated in the Prospectus.

e. Legal Opinion. The Agent shall have received the opinions of Company Counsel required to be delivered pursuant Section 7(m) on or before the date on which such delivery of such opinion is required pursuant to Section 7(m).

f. IP Opinion. The Agent shall have received the opinions of Company IP Counsel required to be delivered pursuant Section 7(m) on or before the date on which such delivery of such opinion is required pursuant to Section 7(m).

g. Comfort Letter. The Agent shall have received the Comfort Letter required to be delivered pursuant Section 7(n) on or before the date on which such delivery of such Comfort Letter is required pursuant to Section 7(n).

h. Representation Certificate. The Agent shall have received the certificate required to be delivered pursuant to Section 7(l) on or before the date on which delivery of such certificate is required pursuant to Section 7(l).

i. Secretary's Certificate. On the date of this Agreement, the Agent shall have received a certificate, signed on behalf of the Company by its corporate Secretary, in form and substance satisfactory to the Agent and its counsel.

j. No Suspension. Trading in the Common Stock shall not have been suspended on the Exchange, and the Common Stock shall not have been delisted from the Exchange.

k. Other Materials. On each date on which the Company is required to deliver a certificate pursuant to Section 7(l), the Company shall have furnished to the Agent such appropriate further information, certificates and documents as the Agent may reasonably request. All such opinions, certificates, letters and other documents will be in compliance with the provisions hereof. The Company will furnish the Agent with such conformed copies of such opinions, certificates, letters and other documents as the Agent shall reasonably request.

l. Securities Act Filings Made. All filings with the Commission required by Rule 424 under the Securities Act to have been filed prior to the issuance of any Placement Notice hereunder shall have been made within the applicable time period prescribed for such filing by Rule 424.

m. Approval for Listing. The Placement Shares shall either have been approved for listing quotation on the Exchange, subject only to notice of issuance, or the Company shall have filed an application for listing quotation of the Placement Shares on the Exchange at, or prior to, the issuance of any Placement Notice.

n. No Termination Event. There shall not have occurred any event that would permit the Agent to terminate this Agreement pursuant to Section 12(a).

10. Indemnification and Contribution.

a. Company Indemnification. The Company agrees to indemnify and hold harmless the Agent, its partners, members, directors, officers, employees and agents and each person, if any, who controls the Agent within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act as follows:

i. against any and all loss, liability, claim, damage and expense whatsoever, as incurred, joint or several, arising out of or based upon any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement (or any amendment thereto), or the omission or alleged omission therefrom of a material fact required to be stated therein or necessary to make the statements therein not misleading, or arising out of any untrue statement or alleged untrue statement of a material fact included in any related Issuer Free Writing Prospectus or the Prospectus (or any amendment or supplement thereto), or the omission or alleged omission therefrom of a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading;

ii. against any and all loss, liability, claim, damage and expense whatsoever, as incurred, joint or several, to the extent of the aggregate amount paid in settlement of any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or of any claim whatsoever based upon any such untrue statement or omission, or any such alleged untrue statement or omission; provided that (subject to Section 10(d) below) any such settlement is effected with the written consent of the Agent, which consent shall not unreasonably be delayed or withheld; and

iii. against any and all expense whatsoever, as incurred (including the reasonable fees and disbursements of counsel), reasonably incurred in investigating, preparing or defending against any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim whatsoever based upon any such untrue statement or omission, or any such alleged untrue statement or omission, to the extent that any such expense is not paid under (i) or (ii) above, provided, however, that this indemnity agreement shall not apply to any loss, liability, claim, damage or expense to the extent arising out of any untrue statement or omission or alleged untrue statement or omission made solely in reliance upon and in conformity with written information furnished to the Company by the Agent expressly for use in the Registration Statement (or any amendment thereto), or in any related Issuer Free Writing Prospectus or the Prospectus (or any amendment or supplement thereto).

b. Agent Indemnification. Agent agrees to indemnify and hold harmless the Company and its directors and each officer of the Company who signed the Registration Statement, and each person, if any, who (i) controls the Company within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act or (ii) is controlled by or is under common control with the Company against any and all loss, liability, claim, damage and expense described in the indemnity contained in Section 10(a), as incurred, but only with respect to untrue statements or omissions, or alleged untrue statements or omissions, made in the Registration Statement (or any amendments thereto) or the Prospectus (or any amendment or supplement thereto) in reliance upon and in

conformity with information relating to the Agent and furnished to the Company in writing by the Agent expressly for use therein.

c. Procedure. Any party that proposes to assert the right to be indemnified under this Section 10 will, promptly after receipt of notice of commencement of any action against such party in respect of which a claim is to be made against an indemnifying party or parties under this Section 10, notify each such indemnifying party of the commencement of such action, enclosing a copy of all papers served, but the omission so to notify such indemnifying party will not relieve the indemnifying party from (i) any liability that it might have to any indemnified party otherwise than under this Section 10 and (ii) any liability that it may have to any indemnified party under the foregoing provision of this Section 10 unless, and only to the extent that, such omission results in the forfeiture of substantive rights or defenses by the indemnifying party. If any such action is brought against any indemnified party and it notifies the indemnifying party of its commencement, the indemnifying party will be entitled to participate in and, to the extent that it elects by delivering written notice to the indemnified party promptly after receiving notice of the commencement of the action from the indemnified party, jointly with any other indemnifying party similarly notified, to assume the defense of the action, with counsel reasonably satisfactory to the indemnified party, and after notice from the indemnifying party to the indemnified party of its election to assume the defense, the indemnifying party will not be liable to the indemnified party for any legal or other expenses except as provided below and except for the reasonable costs of investigation subsequently incurred by the indemnified party in connection with the defense. The indemnified party will have the right to employ its own counsel in any such action, but the fees, expenses and other charges of such counsel will be at the expense of such indemnified party unless (1) the employment of counsel by the indemnified party has been authorized in writing by the indemnifying party, (2) the indemnified party has reasonably concluded (based on written advice of counsel) that there may be legal defenses available to it or other indemnified parties that are different from or in addition to those available to the indemnifying party, (3) a conflict or potential conflict exists (based on written advice of counsel to the indemnified party) between the indemnified party and the indemnifying party (in which case the indemnifying party will not have the right to direct the defense of such action on behalf of the indemnified party) or (4) the indemnifying party has not in fact employed counsel to assume the defense of such action within a reasonable time after receiving notice of the commencement of the action, in each of which cases the reasonable fees, disbursements and other charges of counsel will be at the expense of the indemnifying party or parties. It is understood that the indemnifying party or parties shall not, in connection with any proceeding or related proceedings in the same jurisdiction, be liable for the reasonable fees, disbursements and other charges of more than one separate firm admitted to practice in such jurisdiction at any one time for all such indemnified party or parties. All such fees, disbursements and other charges will be reimbursed by the indemnifying party promptly after the indemnifying party receives a written invoice relating to fees, disbursements and other charges in reasonable detail. An indemnifying party will not, in any event, be liable for any settlement of any action or claim effected without its written consent. No indemnifying party shall, without the prior written consent of each indemnified party, settle or compromise or consent to the entry of any judgment in any pending or threatened claim, action or proceeding relating to the matters contemplated by this Section 10 (whether or not any indemnified party is a party thereto), unless such settlement, compromise or consent (1) includes an unconditional release of each indemnified party from all liability arising out of such litigation, investigation, proceeding or claim and (2) does not include a statement as to or an admission of fault, culpability or a failure to act by or on behalf of any indemnified party.

d. Contribution. In order to provide for just and equitable contribution in circumstances in which the indemnification provided for in the foregoing paragraphs of this Section 10 is applicable in accordance with its terms but for any reason is held to be unavailable from the Company or the Agent, the Company and the Agent will contribute to the total losses, claims, liabilities, expenses and damages (including any investigative, legal and other expenses reasonably incurred in connection with, and any amount paid in settlement of, any action, suit or proceeding or any claim asserted, but after deducting any contribution received by the Company from persons other than

the Agent, such as persons who control the Company within the meaning of the Securities Act, officers of the Company who signed the Registration Statement and directors of the Company, who also may be liable for contribution) to which the Company and the Agent may be subject in such proportion as shall be appropriate to reflect the relative benefits received by the Company on the one hand and the Agent on the other hand. The relative benefits received by the Company on the one hand and the Agent on the other hand shall be deemed to be in the same proportion as the total net proceeds from the sale of the Placement Shares (before deducting expenses) received by the Company bear to the total compensation received by the Agent (before deducting expenses) from the sale of Placement Shares on behalf of the Company. If, but only if, the allocation provided by the foregoing sentence is not permitted by applicable law, the allocation of contribution shall be made in such proportion as is appropriate to reflect not only the relative benefits referred to in the foregoing sentence but also the relative fault of the Company, on the one hand, and the Agent, on the other hand, with respect to the statements or omission that resulted in such loss, claim, liability, expense or damage, or action in respect thereof, as well as any other relevant equitable considerations with respect to such offering. Such relative fault shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact relates to information supplied by the Company or the Agent, the intent of the parties and their relative knowledge, access to information and opportunity to correct or prevent such statement or omission. The Company and the Agent agree that it would not be just and equitable if contributions pursuant to this Section 10(d) were to be determined by pro rata allocation or by any other method of allocation that does not take into account the equitable considerations referred to herein. The amount paid or payable by an indemnified party as a result of the loss, claim, liability, expense, or damage, or action in respect thereof, referred to above in this Section 10(d) shall be deemed to include, for the purpose of this Section 10(d), any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any such action or claim to the extent consistent with Section 10(c) hereof. Notwithstanding the foregoing provisions of this Section 10(d), the Agent shall not be required to contribute any amount in excess of the commissions received by it under this Agreement and no person found guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) will be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. For purposes of this Section 10(d), any person who controls a party to this Agreement within the meaning of the Securities Act, and any officers, directors, partners, employees or agents of the Agent, will have the same rights to contribution as that party, and each officer of the Company who signed the Registration Statement will have the same rights to contribution as the Company, subject in each case to the provisions hereof. Any party entitled to contribution, promptly after receipt of notice of commencement of any action against such party in respect of which a claim for contribution may be made under this Section 10(d), will notify any such party or parties from whom contribution may be sought, but the omission to so notify will not relieve that party or parties from whom contribution may be sought from any other obligation it or they may have under this Section 10(d) except to the extent that the failure to so notify such other party materially prejudiced the substantive rights or defenses of the party from whom contribution is sought. Except for a settlement entered into pursuant to the last sentence of Section 10(c) hereof, no party will be liable for contribution with respect to any action or claim settled without its written consent if such consent is required pursuant to Section 10(c) hereof.

11. Additional Representations and Covenants.

a. Representations and Covenants of the Agent. The Agent represents and warrants that it is duly registered as a broker-dealer under FINRA, the Exchange Act and the applicable statutes and regulations of each state in which the Placement Shares will be offered and sold, except such states in which the Agent is exempt from registration or such registration is not otherwise required. The Agent shall continue, for the term of this Agreement, to be duly registered as a broker-dealer under FINRA, the Exchange Act and the applicable statutes and regulations of each state in which the Placement Shares will be offered and sold, except such states in which the Agent is exempt from registration or such registration is not otherwise required, during the term of this Agreement. The

Agent shall comply with all applicable law and regulations in connection with the transactions contemplated by this Agreement, including the issuance and sale through the Agent of the Placement Shares.

b. Representations and Agreements to Survive Delivery. The indemnity and contribution agreements contained in Section 10 of this Agreement and all representations and warranties of the Company and the Agent herein or in certificates delivered pursuant hereto shall survive, as of their respective dates, regardless of (i) any investigation made by or on behalf of the Agent, any controlling persons, or the Company (or any of their respective officers, directors or controlling persons), (ii) delivery and acceptance of the Placement Shares and payment therefor or (iii) any termination of this Agreement.

12. Termination.

a. The Agent may terminate this Agreement, by notice to the Company, as hereinafter specified at any time (1) if there has been, since the time of execution of this Agreement or since the date as of which information is given in the Prospectus, any Material Adverse Effect, or any development that is reasonably likely to have a Material Adverse Effect or, in the sole judgment of the Agent, is material and adverse and makes it impractical or inadvisable to market the Placement Shares or to enforce contracts for the sale of the Placement Shares, (2) if there has occurred any material adverse change in the financial markets in the United States or the international financial markets, any outbreak of hostilities or escalation thereof or other calamity or crisis or any change or development involving a prospective change in national or international political, financial or economic conditions, in each case the effect of which is such as to make it, in the judgment of the Agent, impracticable or inadvisable to market the Placement Shares or to enforce contracts for the sale of the Placement Shares, (3) if trading in the Common Stock has been suspended or limited by the Commission or the Exchange, or if trading generally on the Exchange has been suspended or limited, or minimum prices for trading have been fixed on the Exchange, (4) if any suspension of trading of any securities of the Company on any exchange or in the over-the-counter market shall have occurred and be continuing, (5) if a major disruption of securities settlements or clearance services in the United States shall have occurred and be continuing, or (6) if a banking moratorium has been declared by either U.S. Federal or New York authorities. Any such termination shall be without liability of any party to any other party except that the provisions of Section 8 (Expenses), Section 10 (Indemnification), Section 11 (Survival of Representations), Section 17 (Governing Law; Consent to Jurisdiction) and Section 18 (Waiver of Jury Trial) hereof shall remain in full force and effect notwithstanding such termination. If the Agent elects to terminate this Agreement as provided in this Section 12(a), the Agent shall provide the required notice as specified in Section 13 (Notices).

b. The Company shall have the right, by giving five (5) days' written notice as hereinafter specified, to (i) terminate this Agreement or (ii) reduce the amount of Common Stock permitted to be issued and sold under this Agreement and offered by the Prospectus Supplement in its sole discretion at any time after the date of this Agreement. Any such termination shall be without liability of any party to any other party except that the provisions of Section 8, Section 10, Section 11, Section 17 and Section 18 hereof shall remain in full force and effect notwithstanding such termination.

c. The Agent shall have the right, by giving five (5) days' written notice as hereinafter specified, to terminate this Agreement in its sole discretion at any time after the date of this Agreement. Any such termination shall be without liability of any party to any other party except that the provisions of Section 8, Section 10, Section 11, Section 17 and Section 18 hereof shall remain in full force and effect notwithstanding such termination.

d. Unless earlier terminated pursuant to this Section 12, this Agreement shall automatically terminate upon the issuance and sale of all of the Placement Shares through the Agent on the terms and subject to the conditions set forth herein; provided that the provisions of Section 8, Section 10,

Section 11, Section 17 and Section 18 hereof shall remain in full force and effect notwithstanding such termination.

e. This Agreement shall remain in full force and effect unless terminated pursuant to Sections 12(a), (b), (c), or (d) above or otherwise by mutual agreement of the parties; provided, however, that any such termination by mutual agreement shall in all cases be deemed to provide that Section 8, Section 10, Section 11, Section 17 and Section 18 shall remain in full force and effect.

f. Any termination of this Agreement shall be effective on the date specified in such notice of termination; provided, however, that such termination shall not be effective until the close of business on the date of receipt of such notice by the Agent or the Company, as the case may be. Upon termination of this Agreement, the Company shall not have any liability to the Agent for any discount, commission or other compensation with respect to any Placement Shares not otherwise sold by the Agent under this Agreement; provided, however, if such termination shall occur prior to the Settlement Date for any sale of Placement Shares, such Placement Shares shall settle in accordance with the provisions of this Agreement.

g. Subject to the additional limitations set forth in Section 8 of this Agreement, in the event of termination of this Agreement prior to the sale of any Placement Shares, the Agent shall be entitled only to reimbursement of its out-of-pocket expenses actually incurred.

13. Notices. All notices or other communications required or permitted to be given by any party to any other party pursuant to the terms of this Agreement shall be in writing, unless otherwise specified, and if sent to the Agent, shall be delivered to:

Roth Capital Partners, LLC
888 San Clemente Newport Beach, CA 92660
Fax No.: (949) 720-7227
Attention: Managing Director and

Ellenoff Grossman & Schole LLP
1345 Avenue of the Americas
11th Floor
Attn: Robert Charron
E-mail: rcharron@egsllp.com

and if to the Company, shall be delivered to:

Assertio Holdings, Inc.
100 South Saunders Road, Suite 300
Lake Forest, IL 60045
Attn: Legal Department
E-mail: legal@assertiotx.com

with a copy to:

Gibson, Dunn & Crutcher LLP
555 Mission Street
San Francisco, CA 94105
Attn: Ryan A. Murr; Branden C. Berns
E-mail: rmurr@gibsondunn.com; bberns@gibsondunn.com

Each party to this Agreement may change such address for notices by sending to the parties to this Agreement written notice of a new address for such purpose. Each such notice or other communication shall be deemed given (i) when delivered personally or by verifiable facsimile transmission (with an original to follow) on or before 4:30 p.m., New York City time, on a Business Day or, if such day is not a

Business Day, on the next succeeding Business Day, (ii) on the next Business Day after timely delivery to a nationally-recognized overnight courier and (iii) on the Business Day actually received if deposited in the U.S. mail (certified or registered mail, return receipt requested, postage prepaid).

An electronic communication ("Electronic Notice") shall be deemed written notice for purposes of this Section 13 if sent to the electronic mail address specified by the receiving party under separate cover. Electronic Notice shall be deemed received at the time the party sending Electronic Notice receives verification of receipt by the receiving party. Any party receiving Electronic Notice may request and shall be entitled to receive the notice on paper, in a nonelectronic form ("Nonelectronic Notice") which shall be sent to the requesting party within ten (10) days of receipt of the written request for Nonelectronic Notice.

14. Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the Company and the Agent and their respective successors and the affiliates, controlling persons, officers and directors referred to in Section 10 hereof. References to any of the parties contained in this Agreement shall be deemed to include the successors and permitted assigns of such party. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto or their respective successors and permitted assigns any rights, remedies, obligations or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement. Neither party may assign its rights or obligations under this Agreement without the prior written consent of the other party.

15. Adjustments for Stock Splits. The parties acknowledge and agree that all share- related numbers contained in this Agreement shall be adjusted to take into account any stock split, stock dividend or similar event effected with respect to the Placement Shares.

16. Entire Agreement; Amendment; Severability. This Agreement (including all schedules and exhibits attached hereto and Placement Notices issued pursuant hereto) constitutes the entire agreement and supersedes all other prior and contemporaneous agreements and undertakings, both written and oral, among the parties hereto with regard to the subject matter hereof. Neither this Agreement nor any term hereof may be amended except pursuant to a written instrument executed by the Company and the Agent. In the event that any one or more of the provisions contained herein, or the application thereof in any circumstance, is held invalid, illegal or unenforceable as written by a court of competent jurisdiction, then such provision shall be given full force and effect to the fullest possible extent that it is valid, legal and enforceable, and the remainder of the terms and provisions herein shall be construed as if such invalid, illegal or unenforceable term or provision was not contained herein, but only to the extent that giving effect to such provision and the remainder of the terms and provisions hereof shall be in accordance with the intent of the parties as reflected in this Agreement.

17. GOVERNING LAW AND TIME; WAIVER OF JURY TRIAL. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO THE PRINCIPLES OF CONFLICTS OF LAWS. SPECIFIED TIMES OF DAY REFER TO NEW YORK CITY TIME. EACH PARTY HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

18. CONSENT TO JURISDICTION. EACH PARTY HEREBY IRREVOCABLY SUBMITS TO THE NON-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 WITH ANY TRANSACTION CONTEMPLATED HEREBY, 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 (CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED) TO SUCH PARTY AT THE ADDRESS IN EFFECT FOR NOTICES TO IT UNDER THIS

AGREEMENT AND AGREES THAT SUCH SERVICE SHALL CONSTITUTE GOOD AND SUFFICIENT SERVICE OF PROCESS AND NOTICE THEREOF. NOTHING CONTAINED HEREIN SHALL BE DEEMED TO LIMIT IN ANY WAY ANY RIGHT TO SERVE PROCESS IN ANY MANNER PERMITTED BY LAW.

19. Use of Information. The Agent may not use any information gained in connection with this Agreement and the transactions contemplated by this Agreement, including due diligence, to advise any party with respect to transactions not expressly approved by the Company.

20. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery of an executed Agreement by one party to the other may be made by facsimile transmission.

21. Effect of Headings. The section and Exhibit headings herein are for convenience only and shall not affect the construction hereof.

22. Permitted Free Writing Prospectuses.

The Company represents, warrants and agrees that, unless it obtains the prior consent of the Agent, which consent shall not be unreasonably withheld, conditioned or delayed, and the Agent represents, warrants and agrees that, unless it obtains the prior consent of the Company, which consent shall not be unreasonably withheld, conditioned or delayed, it has not made and will not make any offer relating to the Placement Shares that would constitute an Issuer Free Writing Prospectus, or that would otherwise constitute a "free writing prospectus," as defined in Rule 405, required to be filed with the Commission. Any such free writing prospectus consented to by the Agent or by the Company, as the case may be, is hereinafter referred to as a "Permitted Free Writing Prospectus." The Company represents and warrants that it has treated and agrees that it will treat each Permitted Free Writing Prospectus as an "issuer free writing prospectus," as defined in Rule 433, and has complied and will comply with the requirements of Rule 433 applicable to any Permitted Free Writing Prospectus, including timely filing with the Commission where required, legending and record keeping.

23. Absence of Fiduciary Relationship.

The Company acknowledges and agrees that:

(a) The Agent is acting solely as agent in connection with the public offering of the Placement Shares and in connection with each transaction contemplated by this Agreement and the process leading to such transactions, and no fiduciary or advisory relationship between the Company or any of its respective affiliates, stockholders (or other equity holders), creditors or employees or any other party, on the one hand, and the Agent, on the other hand, has been or will be created in respect of any of the transactions contemplated by this Agreement, irrespective of whether or not the Agent has advised or is advising the Company on other matters, and the Agent has no obligation to the Company with respect to the transactions contemplated by this Agreement except the obligations expressly set forth in this Agreement;

(b) it is capable of evaluating and understanding, and understands and accepts, the terms, risks and conditions of the transactions contemplated by this Agreement;

(c) the Agent has not provided any legal, accounting, regulatory or tax advice with respect to the transactions contemplated by this Agreement and it has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate;

(d) it is aware that the Agent and its affiliates are engaged in a broad range of transactions which may involve interests that differ from those of the Company and the Agent has no obligation to disclose such interests and transactions to the Company by virtue of any fiduciary, advisory or agency relationship or otherwise; and

(e) it waives, to the fullest extent permitted by law, any claims it may have against the Agent for breach of fiduciary duty or alleged breach of fiduciary duty in connection with the sale of Placement Shares under this Agreement and agrees that the Agent shall not have any liability (whether direct or indirect, in contract, tort or otherwise) to it in

respect of such a fiduciary duty claim or to any person asserting a fiduciary duty claim on its behalf or in right of it or the Company, employees or creditors of Company, other than in respect of the Agent's obligations under this Agreement and to keep information provided by the Company to the Agent and the Agent's counsel confidential to the extent not otherwise publicly-available.

24. Definitions.

As used in this Agreement, the following terms have the respective meanings set forth below:

"Applicable Time" means (i) each Representation Date, (ii) the time of each sale of any Placement Shares pursuant to this Agreement and (iii) each Settlement Date.

"Business Day" shall mean any day on which the Exchange and commercial banks in the City of New York are open for business.

"Issuer Free Writing Prospectus" means any "issuer free writing prospectus," as defined in Rule 433, relating to the Placement Shares that (1) is required to be filed with the Commission by the Company, (2) is a "road show" that is a "written communication" within the meaning of Rule 433(d)(8)(i) whether or not required to be filed with the Commission, or (3) is exempt from filing pursuant to Rule 433(d)(5)(i) because it contains a description of the Placement Shares or of the offering that does not reflect the final terms, in each case in the form filed or required to be filed with the Commission or, if not required to be filed, in the form retained in the Company's records pursuant to Rule 433(g) under the Securities Act.

"Rule 172," "Rule 405," "Rule 415," "Rule 424," "Rule 424(b)," "Rule 430B," and "Rule 433" refer to such rules under the Securities Act.

"Trading Day" means any day on which shares of Common Stock are purchased and sold on the Exchange.

All references in this Agreement to financial statements and schedules and other information that is "contained," "included" or "stated" in the Registration Statement or the Prospectus (and all other references of like import) shall be deemed to mean and include all such financial statements and schedules and other information that is incorporated by reference in the Registration Statement or the Prospectus, as the case may be.

All references in this Agreement to the Registration Statement, the Prospectus or any amendment or supplement to any of the foregoing shall be deemed to include the copy filed with the Commission pursuant to EDGAR; all references in this Agreement to any Issuer Free Writing Prospectus (other than any Issuer Free Writing Prospectuses that, pursuant to Rule 433, are not required to be filed with the Commission) shall be deemed to include the copy thereof filed with the Commission pursuant to EDGAR; and all references in this Agreement to "supplements" to the Prospectus shall include, without limitation, any supplements, "wrappers" or similar materials prepared in connection with any offering, sale or private placement of any Placement Shares by the Agent outside of the United States.

If the foregoing correctly sets forth the understanding between the Company and the Agent, please so indicate in the space provided below for that purpose, whereupon this letter shall constitute a binding agreement between the Company and the Agent.

Very truly yours,

ASSERTIO HOLDINGS, INC.

By: /s/ Daniel A. Peisert
Name: Daniel A. Peisert
Title: President and Chief Executive Officer

ACCEPTED as of the date first-above written:

ROTH CAPITAL PARTNERS, LLC

By: /s/ Aaron M. Gurewitz
Name: Aaron M. Gurewitz
Title: Head of Equity Capital Markets

SCHEDULE 1

FORM OF PLACEMENT NOTICE

From: ASSERTIO HOLDINGS, INC.

To: ROTH CAPITAL PARTNERS, LLC

Attention:

Subject: Placement Notice Date:

Gentlemen:

Pursuant to the terms and subject to the conditions contained in the Sales Agreement between, Assertio Holdings, Inc. (the "Company") and Roth Capital Partners, LLC ("Agent"), dated , 2021, the Company hereby requests that the Agent sell up to of the Company's Common Stock, $0.0001 par value per share, at a minimum market price of
$ per share, during the time period beginning [month, day, time] and ending [month, day, time].

SCHEDULE 2

Compensation

The Company shall pay to the Agent in cash, upon each sale of Placement Shares pursuant to this Agreement, an amount equal to up to 3% of the gross proceeds from each sale of Placement Shares.

SCHEDULE 3

Notice Parties

The Company

Daniel A. Peisert dpeisert@assertiotx.com

With a copy to legal@assertiotx.com

The Agent

James Antonopoulos jantonopoulos@roth.com
Lou Ellis LEllis@roth.com
Nazan Akdeniz NAkdeniz@roth.com

With a copy to RothECM@roth.com

EXHIBIT 7(l)

Form of Representation Date Certificate

, 20

This Representation Date Certificate (this "Certificate") is executed and delivered in connection with Section 7(l) of the Sales Agreement (the "Agreement"), dated February_, 2021, and entered into between Assertio Holdings, Inc. (the "Company") and Roth Capital Partners, LLC. All capitalized terms used but not defined herein shall have the meanings given to such terms in the Agreement

The undersigned, a duly appointed and authorized officer of the Company, having made all necessary inquiries to establish the accuracy of the statements below and having been authorized by the Company to execute this certificate, hereby certifies as follows:

1. As of the date of this Certificate, (i) the Registration Statement does not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein not misleading and (ii) neither the Registration Statement nor the Prospectus contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading and (iii) no event has occurred as a result of which it is necessary to amend or supplement the Prospectus in order to make the statements therein not untrue or misleading.

2. Each of the representations and warranties of the Company contained in the Agreement were, when originally made, and are, as of the date of this Certificate, true and correct in all material respects.

3. Except as waived by the Agent in writing, each of the covenants required to be performed by the Company in the Agreement on or prior to the date of the Agreement, this Representation Date, and each such other date as set forth in the Agreement, has been duly, timely and fully performed in all material respects and each condition required to be complied with by the Company on or prior to the date of the Agreement, this Representation Date, and each such other date as set forth in the Agreement or in the Waivers has been duly, timely and fully complied with in all material respects.

4. Subsequent to the date of the most recent financial statements in the Prospectus, except as described in the Prospectus, including the Incorporated Documents, there has been no Material Adverse Effect.

5. No stop order suspending the effectiveness of the Registration Statement or of any part thereof has been issued, and no proceedings for that purpose have been instituted or are pending or threatened by any securities or other governmental authority (including, without limitation, the Commission).

The undersigned has executed this Representation Date Certificate as of the date first written above.

ASSERTIO HOLDINGS, INC.

By:
Name:
Title:

Exhibit 2.1

CERTAIN CONFIDENTIAL INFORMATION CONTAINED IN THIS DOCUMENT, MARKED BY [***], HAS BEEN OMITTED BECAUSE IT IS BOTH (I) NOT MATERIAL AND (II) IS OF THE TYPE THAT THE REGISTRANT TREATS AS PRIVATE OR CONFIDENTIAL.

ASSET PURCHASE AGREEMENT

by and between

OTTER PHARMACEUTICALS, LLC,

ANTARES PHARMA, INC.,

and

ASSERTIO HOLDINGS, INC.

Dated as of December 15, 2021

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ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this "Agreement") is entered into as of December 15, 2021 ("Execution Date"), by and between Otter Pharmaceuticals, LLC, a Delaware limited liability company (the "Buyer"), Antares Pharma, Inc., a Delaware corporation (the "Seller"), and Assertio Holdings, Inc., a Delaware corporation (the "Guarantor"). Each of the Buyer and the Seller is referred to herein as a "Party" and collectively as the "Parties."

PRELIMINARY STATEMENT

WHEREAS, the Seller desires to sell, transfer and assign to the Buyer, and the Buyer desires to purchase from the Seller, the Acquired Assets (as defined below) subject to the assumption by the Buyer of the Assumed Liabilities (as defined below), upon the terms and subject to the conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing and the respective representations, warranties, covenants and agreements set forth below, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Buyer and the Seller agree as follows:

ARTICLE I
DEFINITIONS

1.1 "Business Day" means any day except Saturday, Sunday or any other day on which commercial banks located in the States of New York and Delaware are authorized or required by Law to close.

1.2 [***]

1.3 [***]

1.4 "Cutover Date" means [***].

1.5 "FDA Fees" means the FDA annual program fees for the period beginning on October 1, 2021 and ending on September 30, 2022.

1.6 "Fixed Payments" means each of the First Fixed Payment and the Second Fixed Payment, and collectively, the First Fixed Payment and the Second Fixed Payment.

1.7 "Fraud" means, with respect to any Party hereto, an actual and intentional fraud with respect to the making of the representations and warranties contained in ARTICLE III or ARTICLE IV (as applicable), provided that such actual and intentional fraud of such Party shall be deemed to exist only if any of the individuals listed in the definition of "Seller's Knowledge" (in the case of the Seller) or "Buyer's Knowledge" (in the case of the Buyer) had actual knowledge (as opposed to imputed or constructive knowledge) that the representations and warranties made by such Party were actually untrue when made, with the express intention that the Buyer (in the case of the Seller) or the Seller (in the case of the Buyer) rely thereon to its detriment.

1.8 "GAAP" means generally accepted accounting principles in the United States.

1.9 "IND(s)" means all investigational new drug applications in effect, as defined in the Act, as amended, and the regulations promulgated thereunder, and other related registrations

and approvals required by any Governmental Entity associated with the conduct of nonclinical and clinical studies of pharmaceutical products.

1.10 "Indications" means (i) management of patients with severe, active rheumatoid arthritis (RA) and polyarticular juvenile idiopathic arthritis (pJIA), who are intolerant of or had an inadequate response to first-line therapy, and (ii) symptomatic control of severe, recalcitrant, disabling psoriasis in adults who are not adequately responsive to other forms of therapy.

1.11 "Know-How" means all proprietary know-how, updates, enhancements, improvements, discoveries, developments, trade secrets, information, data and materials, operating records, development reports, instructions, processes, methods, techniques, formulas, inventions (whether or not patentable), discoveries, ideas, concepts, assays, practices, software, devices, procedures, compositions, constructs, compounds, plans, applications, research, formulation information, manufacturing technology, validations, package specifications, copies of the master batch records (manufacturing and packaging), chemical specifications, chemical and finished goods analytical test methods, data, stability samples and prototypes, non-clinical, pre-clinical and clinical data, regulatory information, product and raw material specifications and test methods, scale-up and other technical data, reports, documentation and samples, including: biological, chemical, pharmacological, toxicological, pharmaceutical, physical and analytical, pre-clinical, clinical, safety, manufacturing and quality control data and information, including study designs and protocols; assays and biological methodology, packaging component specifications, labeling specifications, manufacturing in-process and finished product specifications and test methods, drawings and technology, and all other manufacturing data and information, source code, documentation, technology, customer lists, business and marketing plans, inventions, marketing information, systems architecture, research in progress, algorithms, data, designs, schematics, drawings, blueprints, flow charts, and models.

1.12 [***]

1.13 "Methotrexate" means the compound known as methotrexate (including its geometric isomers and stereoisomers, and any pharmaceutically acceptable salts, esters, or metabolites thereof).

1.14 "Molds and Equipment" means the molds and equipment related to the Sub-Assembly Component [***].

1.15 "NDA(s)" means all new drug applications and supplemental new drug applications, as defined in the Act, as amended, and the regulations promulgated thereunder, and other registrations and approvals required by any Governmental Entity associated with the sale of pharmaceutical products.

1.16 [***].

1.17 [***]

1.18 "Pre-Closing Tax Period" means any taxable period ending on or before the Closing Date and, with respect to any taxable period beginning before and ending after the Closing Date, the portion of such taxable period ending on and including the Closing Date.

1.19 "Product" means all of the pharmaceutical products (including all dosages) approved by the U.S. Food and Drug Administration under NDA N204824 (the "Product NDA") and currently sold under the trademark of Otrexup®, together with any improvements, enhancements, modifications or extensions of said products and any new uses, kits, formulations, dosage forms or strengths included in the Product NDA. For clarity, Product does not include

the Sub-Assembly Component on a standalone basis or any other device identified in any device master file, device design history file or master access file whether referenced in the Product NDA or otherwise and held by the Seller, its Affiliates or a third party.

1.20 "Product Business" means the Seller's business of manufacturing or having made, marketing, promoting, distributing, selling, offering for sale and otherwise commercializing the Product for the approved Indications.

1.21 "Product Inventory" means all of (i) the Seller's inventory of the Product in finished quantities, (ii) samples of the Product and (iii) WIP Product Inventory, in each case, whether held by the Seller or by a third party on behalf of the Seller, and as set forth on Schedule 1.21.

1.22 "Regulatory Approvals" means all federal regulatory filings, marketing authorizations, permits, licenses, registrations, regulatory clearances and approvals issued by the United States Food and Drug Administration (the "FDA"), and all correspondence with the FDA related thereto, including any NDAs, NDA supplements and any INDs, in each case solely related to the Product. For clarity, Regulatory Approvals do not include any device master file, device design history file or master access file referenced in the Product NDA or otherwise and held by the Seller, its Affiliates or a third party for the Sub-Assembly Component or any other device listed in such files.

1.23 "Regulatory Documentation" means all (i) documentation comprising the Regulatory Approvals, and (ii) material correspondence and reports submitted to or received from Governmental Entities in the United States (including minutes and official contact reports relating to any material communications with any such Governmental Entity) and all supporting documents with respect thereto solely related to the Product, including any safety reports or updates, Product Adverse Drug Event Reports (PADER's) and adverse event files, complaint files and product quality reviews, Corrective and Preventive Actions (CAPAs), clinical or pre-clinical data derived from clinical studies conducted or sponsored by or on behalf of the Seller or its Affiliates, Development Safety Update Reports (DSURs), reports and materials relating to any post-marketing requirements and post-marketing commitments imposed by the FDA or the subject of a post-marketing requirement or commitment to the FDA, and medical device reports (MDR), but excluding Marketing Assets. For clarity, Regulatory Documentation does not include any documentation comprising any device master file, device design history file or master access file referenced in the Product NDA or otherwise and held by the Seller, its Affiliates or a third party, and any correspondence or reports submitted to or received from Governmental Entities related to any device master file, device design history file, or master access file for the Sub-Assembly Component or any other device listed in such files.

1.24 "Sub-Assembly Component" means the auto-injector sub-assembly component related to the Product and supplied to the Seller from [***].

1.25 "WIP Product Inventory" [***].

1.26 Other Defined Terms. The following defined terms shall have the meaning ascribed to such term in the corresponding section set forth below:

Defined Term	Section
Acquired Assets	2.1
Act	3.13(b)
Affiliate	5.7(b)
Agreement	Preamble
[***]	[***]
Ancillary Documents	2.6(b)(ix)
Anti-Kickback Statute	3.13(f)

Assumed Commercial Contracts	2.1(f)
Assumed Liabilities	2.3(d)
Assumption Agreement	2.6(b)(vi)
Bill of Sale	2.6(b)(ii)
Books and Records	2.1(g)
Business Day	1.1
[***]	[***]
Buyer	Preamble
Buyer's Knowledge	7.16
Buyer FDA Letter	5.5(a)
[***]	[***]
cGMP	3.9
[***]	[***]
[***]	[***]
Claim Notice	6.3(b)
Closing	2.6(a)
Closing Date	2.6(a)
Closing Payment	2.5(a)(i)
[***]	[***]
[***]	[***]
[***]	[***]
Confidential Information	5.1
Contract	2.1(f)
Copyrights	3.5(a)
[***]	[***]
[***]	[***]
Damages	6.1
DDR	5.9(a)
Definitions	ARTICLE I
Disclosure Schedule	ARTICLE III
Domain Names	3.5(a)
Excluded Assets	2.2
Excluded Liabilities	2.4
Execution Date	Preamble
[***]	[***]
FDA	1.22
FDA Fees	1.5
[***]	[***]
[***]	[***]
[***]	[***]
First Fixed Payment	2.5(a)(ii)
Fixed Payments	1.6
Fraud	1.7
GAAP	1.8
Governmental Entity	3.2(c)
Guarantor	Preamble
HCR Fees	3.13(l)
Health Authorities	3.13(b)
Health Laws	3.13(b)
HIPAA	3.13(b)
HITECH	3.13(b)
IND(s)	1.9
Indemnified Party	6.3(a)
Indemnifying Party	6.3(a)
[***]	[***]
Indications	1.10
Intellectual Property	3.5(a)
[***]	[***]
Know-How	1.11
Law(s)	3.10
Legal Proceeding	3.7
Liabilities	2.3(d)
License Agreement	2.6(b)(v)
Licensed Intellectual Property	3.5(a)
Licensed Know-How	3.5(a)
Licensed Patent Rights	3.5(a)
Liens	3.2(b)
Marketing Assets	2.1(g)
Material Adverse Effect	3.1(b)
Methotrexate	1.13
Molds and Equipment	1.14
NDAs	1.15
[***]	[***]
[***]	[***]
Order	3.5(f)

Ordinary Course of Business	3.2(b)	Seller's Knowledge	7.16
[***]	[***]	Seller's Taxes	2.4(d)
Other Financial Data	1.16	[***]	[***]
Party(ies)	Preamble	[***]	[***]
Patent Rights	3.5(a)	Sub-Assembly Component	1.24
Patent Rights Assignment	2.6(b)(iii)	Subject Court	7.12
Permitted Liens	3.2(b)	Supply Agreement	2.6(b)(vii)
Person	3.5(e)	Tax Returns	3.4(a)
[***]	[***]	Taxes	3.4(a)
[***]	[***]	Taxing Authority	3.4(a)
Pre-Closing Tax Period	1.18	Third Party Claim Notice	6.3(a)
Product	1.19	Trademark Assignment	2.6(b)(iv)
Product Business	1.20	Trademark Period	5.6(b)
Product Inventory	1.21	Trademarks	3.5(a)
Product NDA	1.19	Transferred Copyrights	2.1(g)(v)
Purchase Price	2.5(a)	Transferred Domain Names	2.1(d)
Quality Agreement	2.6(b)(viii)	Transferred Intellectual Property	3.5(a)
[***]	[***]	Transferred Patents	2.1(b)
Regulatory Approvals	1.22	Transferred Trademark	2.1(c)
Regulatory Documentation	1.23	Transfer Taxes	2.7
[***]	[***]	[***]	[***]
Safety Data Exchange Agreement	2.6(b)(ix)	[***]	[***]
[***]	[***]	[***]	[***]
Second Fixed Payment	2.5(a)(iii)	[***]	[***]
Seller	Preamble	[***]	[***]
Seller Brands	5.6(a)	WIP Product Inventory	1.25
Seller FDA Letter	5.5(a)		
Seller Permits	3.11		

ARTICLE II
PURCHASE AND SALE OF THE ASSETS

1.1 Purchase and Sale of Assets. Upon the terms and subject to the conditions set forth in this Agreement, at the Closing, the Seller shall sell, convey, transfer, assign and deliver to the Buyer, and the Buyer shall purchase from the Seller, all of the Seller's right, title and interest in and to the Acquired Assets, free and clear of any Liens, other than Permitted Liens. For purposes of this Agreement, the term "Acquired Assets" means:

(a) the Product Inventory, to be delivered [***] in accordance with Section 2.11 following the Closing Date;

(b) all of the Seller's patents set forth on Schedule 2.1(b) and all rights therein (the "Transferred Patents");

(c) the Seller's Otrexup® Trademark and all rights therein and all applications and registrations for such Trademark including those set forth on Schedule 2.1(c) (the "Transferred Trademark");

(d) all Domain Names set forth on Schedule 2.1(d)(i) (the "Transferred Domain Names") and that certain website solely related to the Product Business set forth on Schedule 2.1(d)(ii);

(e) all Regulatory Approvals listed on Schedule 2.1(e) and all Regulatory Documentation (but excluding records or files not reasonably separable from documents or databases that do not relate solely to the Product or the Acquired Assets) to be delivered within [***] following the Closing Date to a reasonable location provided by Buyer in writing; provided, however, that the Seller may retain copies of the Regulatory Approvals and Regulatory Documentation or may retain originals of the Regulatory Approvals and Regulatory Documentation and provide the Buyer with copies in their place;

(f) those legally binding contracts, agreements, instruments, commitments, obligations, understandings, or undertakings of any nature (including licenses, notes, guarantees, sublicenses, subcontracts, covenants not to compete, and covenants not to sue) ("Contracts") set forth on Schedule 2.1(f)(i), [***] (collectively, the "Assumed Commercial Contracts");

(g) the following current and, for the last [***]from the Execution Date, historical records, files and lists relating solely to the Product or the Acquired Assets to the extent owned, maintained, and in the possession of the Seller or any of its Affiliates (but excluding records or files not reasonably separable from documents or databases that do not relate solely to the Product or the Acquired Assets, including any stock images):

(i) customer and physician target and detail lists and records;

(ii) a list of the distributors for the Product;

(iii) pricing lists, calculations and the related pricing submissions for the Product;

(iv) records relating to Transferred Intellectual Property that is registered or pending registration and not otherwise publicly available;

(v) the marketing assets set forth on Schedule 2.1(g) (the "Marketing Assets"), including all of the Seller's Copyrights in such Marketing Assets (the "Transferred Copyrights") to be delivered to Buyer in the data room within [***] following Closing; and

(vi) development, quality control and pharmacovigilance records;

in each case, to the extent that such records are permitted to be transferred under applicable Law and do not relate to the Sub-Assembly Component (the foregoing records and documents described in this Section 2.1(g), collectively, the "Books and Records"); provided, however, that the Seller may retain copies of the Books and Records or may retain originals of the Books and Records and provide the Buyer with copies in their place; and provided, further

that the Books and Records shall exclude, in all cases, (A) all books, documents, records and files prepared in connection with or relating to the negotiation, preparation, execution and delivery of this Agreement or the consummation of transactions contemplated by this Agreement, including bids received from third parties and strategic, financial or tax analyses relating to the divestiture of the Acquired Assets, the Assumed Liabilities, the Product or the Product Business; (B) trade secrets of third parties in which Seller has no legal right to disclose; (C) any books or records relating to the manufacturing of the Product or the Product Business; (D) any attorney work product, attorney-client communications and other items protected by established legal privilege; and (E) any tax records or tax workpapers;

(h) all claims, counterclaims, defenses, causes of action, rights under express or implied warranties, rights of recovery, rights of set-off, rights of subrogation, judgements, demands, and all other rights of any kind against any third party (other than rights to assert claims with respect to any insurance recoveries), to the extent solely relating to any Assumed Liabilities or Acquired Assets;

(i) all rights of indemnification, warranty, contribution, credits, refunds, reimbursement and other rights of recovery (regardless of whether such rights are currently exercisable) possessed by the Seller against third parties (excluding any form of insurance recovery from insurance carriers or otherwise) that arise out of or relate to any of the Acquired Assets to the extent such rights of indemnification, warranty, contribution, credits, refunds, reimbursement or other rights of recovery relate solely to the Product and are not Excluded Assets;

(j) [***]; and

(k) all goodwill relating to the Acquired Assets.

1.2 Excluded Assets. Notwithstanding anything to the contrary in this Agreement, the Acquired Assets shall not include any Excluded Assets. For purposes of this Agreement, the term "Excluded Assets" means all assets, property, rights and interests of the Seller and its Affiliates other than the Acquired Assets including:

(a) all of the Seller's or any Affiliate's accounts receivable related to the Product or the Product Business sold prior to the Closing Date;

(b) all cash, checks, money orders, marketable securities, short-term investments and other cash equivalents, funds in time and demand deposits or similar accounts, of the Seller or any Affiliate;

(c) any Contract (or rights therein or thereunder) of the Seller or any Affiliate that is not an Assumed Commercial Contract;

(d) all Intellectual Property of the Seller or any Affiliate other than the Transferred Intellectual Property;

(e) all of the Seller's or any Affiliate's inventory of the Sub-Assembly Component and the Molds and Equipment;

(f) all employees of the Seller or any Affiliate and independent contractor personnel of the Seller or its Affiliates (excluding, for the avoidance of doubt, contractors under [***] Assumed Commercial Contracts);

(g) all real property (whether owned or leased) of the Seller or its Affiliates;

(h) all Tax assets (including refunds, rebates or credits) of the Seller or its Affiliates;

(i) any regulatory documentation related to any device (including the Sub-Assembly Component) identified in any device master file, device design history file or master access file referenced in the Product NDA or otherwise and held by the Seller, its Affiliates or a third party;

(j) any current and prior insurance policies of the Seller or its Affiliates and all rights of any nature with respect thereto, including all insurance recoveries thereunder and rights to assert claims with respect to any such insurance recoveries;

(k) any rights, refunds, reimbursements, claims, credits and other rights of recovery (regardless of whether such rights are currently exercisable) of the Seller or any of its Affiliates that arise out of or relate to any Excluded Asset or any Excluded Liability, including any contribution, guarantees, warranties, indemnities and similar rights in favor of the Seller or any of its Affiliates relating to any Excluded Asset or any Excluded Liability; and

(l) all other assets, rights and properties of the Seller or any Affiliate other than those listed in the definition of Acquired Assets.

1.3 Assumption of Liabilities. Upon the terms and subject to the conditions set forth in this Agreement, at the Closing, the Buyer shall assume and timely satisfy and discharge all Liabilities of the Seller and its Affiliates under, or in respect of or relating, to the Acquired Assets or the Product to the extent that they:

(a) arise out of or relate to the Buyer's or its Affiliates' ownership, operation, development, commercialization, manufacturing, packaging, importing, marketing, distribution, supply or sale of the Product or the Product Business or use of the Acquired Assets from and after the Closing (even if ordered prior to the Closing) and regardless of whether such Liabilities are based on allegations of the design or development of the Product or the Acquired Assets before Closing;

(b) arise out of or relate to Legal Proceedings, regardless of when such Legal Proceeding was commenced or made, and irrespective of the legal theory asserted (including product liability claims, including claims alleging defects in the Product and claims involving the death of or injury to any individual relating to the Product), to the extent arising from the development, commercialization, manufacturing, packaging, importing, marketing, distribution or sale of any unit of the Product or the use of the Acquired Assets (even if ordered prior to Closing), in each case, by or on behalf of the Buyer or its Affiliates from and after the Closing, including all Legal Proceedings relating to the alleged infringement or misappropriation by the Buyer of any third party intellectual property rights for the development, commercialization, manufacture, packaging, import, marketing, distribution, sale or use of the Product from and after Closing, and in each case, regardless of whether such Liabilities are based on allegations of the design or development of the Product or the Acquired Assets before Closing;

(c) arise under the Assumed Commercial Contracts from and after the Closing, except as such Liabilities relate to a breach of such Assumed Commercial Contracts by Seller that occurred on or before the Closing (which are Excluded Liabilities); or

(d) arise or are expressly assumed or borne by the Buyer pursuant to the terms of this Agreement or any Ancillary Documents [***] (collectively, the "Assumed Liabilities"). For purposes of this Agreement, the term "Liabilities" means all liabilities and obligations of every kind, nature, character and description (whether known or unknown, whether accrued or

fixed, whether absolute, contingent or otherwise, whether liquidated or unliquidated, whether asserted or unasserted, matured or unmatured and whether due or to become due).

1.4 Excluded Liabilities. It is expressly understood and agreed that, other than the Assumed Liabilities, the Buyer shall not assume, nor shall it be liable for, any Liabilities of the Seller or its Affiliates (collectively, the "Excluded Liabilities"), and the Seller hereby acknowledges that it is retaining, and is and shall be liable for, the Excluded Liabilities. Excluded Liabilities means:

(a) all Liabilities arising out of or relating to Legal Proceedings, regardless of when such Legal Proceeding was commenced or made, and irrespective of the legal theory asserted (including product liability claims, including claims alleging defects in the Product and claims involving the death of or injury to any individual relating to the Product), to the extent arising from the development, commercialization, manufacturing, packaging, importing, marketing, distribution or sale of the Product or the use of the Acquired Assets, in each case, by or on behalf of the Seller or its Affiliates prior to the Closing, including all Legal Proceedings relating to the alleged infringement or misappropriation by the Seller of any third party intellectual property rights for the development, commercialization, manufacture, packaging, import, marketing, distribution, sale or use of the Product before the Closing (provided, that for the avoidance of doubt, this Section 2.4(a) does not include Liabilities from such Legal Proceedings arising from Buyer's or its Affiliates' operation of the Product Business or use of the Acquired Assets from and after the Closing Date regardless of whether such Liabilities are based on allegations of the design or development of the Product or Acquired Assets before the Closing, all of which are Assumed Liabilities);

(b) all Liabilities arising out of or relating to any Assumed Commercial Contract, to the extent relating to the period of time prior to the Closing, [***];

(c) all Liabilities related to any invoices, bills, accounts payable or other payables due and owed to any third party arising prior to the Closing out of or in connection with developing, commercializing, manufacturing (or having manufactured), packaging, importing, exploiting, marketing, distributing or selling the Products by or on behalf of the Seller or its Affiliates prior to the Closing [***];

(d) any Liability for (i) expenses, fees or Taxes incident to or arising out of the negotiation, preparation, approval or authorization of this Agreement or the consummation (or preparation for the consummation) of the transactions contemplated hereby (including all attorneys' and accountants' fees and transfer Taxes) [***], (ii) Taxes of the Seller (or any stockholder or Affiliate of the Seller) relating to the Product, the Product Business or the Acquired Assets which are attributable to any Pre-Closing Tax Period, or (iii) other Taxes of the Seller (or any stockholder or Affiliate of the Seller) of any kind that becomes a Liability of the Buyer under any doctrine of *de facto* merger or transferee or successor liability (clauses (i)-(iii) collectively, "Seller's Taxes");

(e) any Liability with respect to any employee of the Seller or any Affiliate or independent contractor personnel of the Seller or its Affiliates to the extent services from such independent contractor personnel were provided prior to Closing;

(f) [***]

(g) any Liability in respect of any of the Excluded Assets; and

(h) except as otherwise set forth in this Agreement or any Ancillary Document, any other Liability to the extent arising out of or relating to the ownership, operation,

development, commercialization, manufacture, packaging, import, marketing, distribution or sale of the Product or the Product Business or the use of the Acquired Assets prior to the Closing Date (provided, that for the avoidance of doubt, this Section 2.4(h) does not include Liabilities arising from Buyer's or its Affiliate's operation of the Product Business or use of the Acquired Assets from and after the Closing Date regardless of whether such Liabilities are based on allegations of the design or development of the Product or Acquired Assets before the Closing, all of which are Assumed Liabilities).

1.5 Consideration.

(a) Purchase Price. As consideration for the Acquired Assets and the license of the Licensed Intellectual Property, in addition to assuming the Assumed Liabilities, subject to the terms and conditions of this Agreement, the Buyer shall pay to the Seller $44,021,327 (the "Purchase Price") in cash as follows:

(i) $18,000,000 (the "Closing Payment");

(ii) $16,021,327 on May 31, 2022 by wire transfer of immediately available funds to the account designated by the Seller prior to May 31, 2022 (the "First Fixed Payment"); and

(iii) $10,000,000 on December 15, 2022 by wire transfer of immediately available funds to the account designated by the Seller prior to December 15, 2022 (the "Second Fixed Payment").

(b) Late Payments. In addition to any other remedies available to the Seller pursuant to this Agreement, any failure by the Buyer to make a payment within [***] after the date when due shall obligate the Buyer to pay computed interest, the interest period commencing on the due date and ending on the actual payment date, to the Seller at a rate of [***] calculated for the period of the delinquent payment, or the highest rate allowed by applicable Law, whichever is lower. [***]

1.6 Closing; Delivery and Payment.

(a) Closing Date. The Closing of the sale and transfer of the Acquired Assets and the assumption of the Assumed Liabilities (the "Closing") shall occur by means of exchange of signature pages by facsimile or other electronic means (to be followed by delivery of hard copies of all Closing deliveries) or at the offices of Seller's counsel or other location as the Parties may agree on the Execution Date (the "Closing Date") simultaneously with the execution of this Agreement by the Seller, the Buyer and the Guarantor. All transactions contemplated hereby to be effective as of the Closing shall be deemed effective at 12:01 a.m. Eastern Time on the Closing Date.

(b) Closing Deliveries. At the Closing:

(i) the Buyer shall pay the Closing Payment to the Seller, by wire transfer of immediately available funds to such account or accounts as the Seller shall designate in writing to the Buyer;

(ii) the Seller shall have executed and delivered a Bill of Sale attached hereto as Exhibit A (the "Bill of Sale");

(iii) the Seller shall have executed and delivered a Patent Rights Assignment attached hereto as Exhibit B (the "Patent Rights Assignment");

(iv) the Seller shall have executed and delivered a Trademark Assignment attached hereto as Exhibit C (the "Trademark Assignment");

(v) the Seller and the Buyer shall have executed and delivered a License Agreement attached hereto as Exhibit D (the "License Agreement");

(vi) the Buyer shall have executed and delivered to the Seller an Assumption Agreement, attached hereto as Exhibit G (the "Assumption Agreement");

(vii) the Seller and the Buyer shall have executed and delivered a supply agreement attached hereto as Exhibit H (the "Supply Agreement");

(viii) the Seller and the Buyer shall have executed and delivered a quality agreement attached hereto as Exhibit I (the "Quality Agreement");

(ix) the Seller and the Buyer shall have executed and delivered a safety data exchange agreement attached hereto as Exhibit J (the "Safety Data Exchange Agreement", and together with the Bill of Sale, the Patent Rights Assignment, the Trademark Assignment, the License Agreement, the Seller FDA Letter, the Buyer FDA Letter, the Supply Agreement, the Quality Agreement, and the Assumption Agreement and any other agreements entered into by the Parties pursuant hereto, collectively, the "Ancillary Documents")

(x) the Seller shall have delivered to Buyer evidence of collateral release of that certain Lien (other than Permitted Liens) set forth on Schedule 2.6(b)(x) related to the Acquired Assets;

(xi) the Buyer shall have received a certificate pursuant to Treasury Regulations Section 1.1445-2(b)(2) in form and substance reasonably satisfactory to the Buyer, which certificate shall have been duly executed by the Seller certifying that the Seller is not a foreign person within the meaning of Section 1445 of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder;

(xii) the Buyer shall have delivered to the Seller a certificate of its and the Guarantor's Chief Executive Officer dated as of the Closing Date and certifying that attached thereto are (1) true and complete copies of the correct certificate of incorporation and bylaws (or limited liability company agreement, as applicable) of the Buyer and the Guarantor, and all amendments thereto, (2) true copies of all corporate actions taken by it, including resolutions adopted by its respective Board of Directors authorizing the consummation of the transactions contemplated hereby and the execution, delivery and performance of this Agreement and the Ancillary Documents, and that all such resolutions are in full force and effect and are all the resolutions adopted by the Buyer or the Guarantor, as applicable, in connection with the transactions contemplated by this Agreement, and (3) certificates of good standing from the Secretary of State of Delaware, dated as of a date not more than ten (10) days prior to Closing, certifying that each of the Buyer and the Guarantor is in good standing in Delaware; and

(xiii) the Seller shall have delivered to the Buyer a certificate of its Secretary dated as of the Closing Date and certifying that attached thereto are (1) true and complete copies of the correct certificate of incorporation and bylaws of the Seller, and all amendments thereto, (2) true copies of all corporate actions taken by it, including resolutions adopted by its respective Board of Directors, authorizing the consummation of the transactions contemplated hereby and the execution, delivery and performance of this Agreement and the Ancillary Documents, and that all such resolutions are in full force and effect and are all the resolutions adopted by the Seller, in connection with the transactions contemplated by this Agreement, and (3) a certificate of good standing from the Secretary of State of Delaware, dated

as of a date not more than ten (10) days prior to Closing, certifying that the Seller is in good standing in Delaware.

1.7 Taxes and Fees. Sales/use taxes, transfer taxes, excise taxes, tariffs, stamp taxes, conveyance taxes, mortgage taxes, intangible taxes, documentary recording taxes, license and registration fees, value added taxes, recording fees and other similar taxes, charges and fees (including any penalties and interest) imposed by any Governmental Entity, if any, upon the transfer of the Acquired Assets hereunder ("Transfer Taxes") shall be borne by [***]. The Buyer and the Seller shall file all necessary Tax Returns and other documentation with respect to such Transfer Taxes required by a Governmental Entity to be filed by the Buyer and the Seller, respectively. The Buyer, on the one hand, and the Seller, on the other hand, agree to timely sign and deliver such certificates or forms as may be necessary or appropriate to establish an exemption from (or otherwise reduce), or file Tax Returns with respect to, Transfer Taxes. Each party shall provide the other party with copies of all Tax Returns and other documentation for Transfer Taxes and evidence that such Transfer Taxes have been paid.

1.8 Allocation of Purchase Price. The Buyer shall prepare and deliver the allocation of the Purchase Price and the Assumed Liabilities among the Acquired Assets in accordance with Exhibit K to the Seller within [***] of the Closing. The Purchase Price shall be allocated in accordance with applicable Law and the principles set forth in Exhibit K. The Buyer and the Seller each agree (a) to file any Tax Returns and any other governmental filings on a basis consistent with such allocation and in accordance with Section 1060 of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, and (b) not to take any position inconsistent therewith in any Tax Return, in any Tax refund claim, in any litigation or otherwise.

1.9 Nonassignable Contracts. To the extent that the assignment hereunder by the Seller to the Buyer of any Assumed Commercial Contract is not permitted or is not permitted without the consent of any other party to such Assumed Commercial Contract, this Agreement shall not be deemed to constitute an assignment of any such Assumed Commercial Contract if such consent is not given or if such assignment otherwise would constitute a breach of, or cause a loss of contractual benefits under, any such Assumed Commercial Contract. If any assignment of an Assumed Commercial Contract is not permitted and the Closing hereunder is consummated, the Seller shall, for a period of [***] following the Closing Date, cooperate with the Buyer in any reasonable arrangement designed to provide the Buyer with the rights and benefits (subject to the obligations) under any such Assumed Commercial Contract, including, upon the request of the Buyer, enforcement for the benefit of the Buyer of any and all rights of the Seller against any other party arising out of any breach or cancellation of any such Assumed Commercial Contract by such other party and, if requested by the Buyer, acting as an agent on behalf of the Buyer or as the Buyer shall otherwise reasonably request, at the Buyer's expense; provided, that none of the Seller or any of its Affiliates shall be required to pay money to any third party, commence any litigation or offer or grant any material accommodation (financial or otherwise) to any third party in connection with such efforts. For the avoidance of doubt, the Buyer acknowledges and agrees that, to the extent that any of the Transferred Copyrights or materials in connection therewith or any transferred websites contain (i) any Seller Brands, no ownership or transfer of the Seller Brands shall occur and the Seller retains full right, title and interest in and to any such Seller Brands and the Buyer shall only have the limited right to use such Seller Brands pursuant to Section 5.6, or (ii) any marks, images, information or other items of a third party for which the Seller received a right to use from a third party, no right, title or interest in any such third party mark, image, information or item is being transferred or assigned to the Buyer and the Buyer shall have no right to use any such third party mark, image, information or item unless and until the Buyer, in its sole discretion, obtains a license from any such third party for any such use.

1.10 Withholding. Each of the Buyer and its Affiliates, as the case may be, shall be entitled to deduct and withhold from any consideration otherwise payable to any Person pursuant to this Agreement such Taxes as it is required to deduct and withhold under any provision of applicable Law with respect to the making of such payment. To the extent that such amounts are so withheld and paid over to the relevant Governmental Entity by the Buyer or its Affiliates, as the case may be, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to the applicable Person in respect to which such deduction and withholding was made.

1.11 Product Inventory Delivery. Notwithstanding anything to the contrary contained herein, as soon as reasonably practicable, but in any event no later than [***] following the Closing Date, the Buyer shall notify the Seller in writing of the storage location the Buyer desires the Product Inventory to be delivered. The Seller agrees to transfer or cause to be transferred such Product Inventory to such storage location directed by Buyer [***] following Buyer's notice of such location. [***]. Notwithstanding anything to the contrary contained herein, in no event shall the Seller or any of its Affiliates or third party storage facilities be required to transfer the Product Inventory to any location other than Buyer's third party storage facility (and not, for the avoidance of doubt, to any Person to whom such Product Inventory may have been sold).

ARTICLE III
REPRESENTATIONS AND WARRANTIES OF THE SELLER

The Seller represents and warrants to the Buyer that the statements contained in this ARTICLE III are true and correct as of the Execution Date, except as set forth in the disclosure schedule delivered by the Seller to the Buyer (the "Disclosure Schedule") as contemplated by Section 7.14.

1.1 Organization, Standing and Power.

(a) The Seller is a corporation duly organized, validly existing and in good standing under the Laws of the State of Delaware, has all requisite corporate power and authority to own, lease and operate the Acquired Assets and to carry on the Product Business as now being conducted and to license the Licensed Intellectual Property under the License Agreement.

(b) The Seller is duly qualified to do business and, where applicable as a legal concept, is in good standing as a foreign corporation in each jurisdiction in which the character of the properties it owns, operates or leases or the nature of its activities makes such qualification necessary, except for such failures to be so qualified or in good standing, individually or in the aggregate, would not result in a Material Adverse Effect. For the purposes of this Agreement, "Material Adverse Effect" means [***].

1.2 Authority; No Conflict; Required Filings and Consents.

(a) The Seller has all requisite corporate power and authority to enter into this Agreement and each of the Ancillary Documents to which it will be a party and to consummate the transactions contemplated hereby and thereby. The execution, delivery and performance by the Seller of this Agreement and each of the Ancillary Documents to which it will be a party and the consummation of the transactions contemplated hereby and thereby by the Seller have been duly authorized by all necessary corporate action on the part of the Seller. This Agreement has been, and each such Ancillary Document will be, duly executed and delivered by the Seller, and this Agreement is, and each such Ancillary Document when so duly executed and delivered by the Seller and, if applicable, the Buyer, will be, the legal, valid and binding obligation of the Seller, enforceable against the Seller in accordance with its terms, except as enforceability may

be limited by bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium or other similar Laws affecting the rights of creditors generally and by equitable principles.

(b) Except as set forth in Schedule 3.2(b), the execution, delivery and performance by the Seller of this Agreement and each of the Ancillary Documents to which it will be a party, and the consummation by the Seller of the transactions contemplated hereby and thereby, do not and will not, (i) conflict with, or result in any violation or breach of, any provision of the Certificate of Incorporation or By-laws of the Seller, (ii) conflict with, or result in any material violation or breach of, or constitute (with or without notice or lapse of time, or both) a material default (or give rise to a right of termination, cancellation or acceleration of any obligation or loss of any material benefit) under, require a consent or waiver under, or result in the imposition of any mortgage, security interest, pledge, conditional sale or other title retention agreement, lien, charge or encumbrance ("Liens"), other than Permitted Liens, on or with respect to (1) any of the Acquired Assets, (2) any Assumed Commercial Contract or (3) any material permit, concession, franchise, license or Law applicable to the Seller or any of its properties or assets that would, solely with respect to clause (3), prevent the consummation of the transactions contemplated hereby. For the purposes of this Agreement, the term "Permitted Liens" means (A) inchoate mechanic's, materialmen's, worker's, landlord's, laborer's, carrier's, warehouseman's, supplier's, vendor's and similar liens incurred in the Ordinary Course of Business and (B) all statutory or other liens for Taxes, assessments and other charges which are not yet due and payable or delinquent, or the validity or amount of which is being contested in good faith by appropriate proceedings that operate to stay the enforcement of any Lien and for which adequate reserves or accruals have been established in accordance with GAAP. For purposes of this Agreement, "Ordinary Course of Business" shall mean such actions taken in the ordinary course of its normal operations and consistent with its past practices.

(c) Except as set forth in Schedule 3.2(c) and with respect to the notice required to be given to the FDA in connection with the transactions contemplated by this Agreement, no material consent, approval, license, permit, order or authorization of, or registration, declaration, notice or filing with, any Governmental Entity is required by or with respect to the Seller in connection with the execution, delivery and performance by the Seller of this Agreement and each of the Ancillary Documents to which it will be a party or the consummation by the Seller of the transactions contemplated hereby and thereby. For the purposes of this Agreement, "Governmental Entity" means any court, administrative agency or commission or other governmental authority or instrumentality of applicable jurisdiction, whether domestic or foreign.

1.3 Reserved.

1.4 Taxes.

(a) The Seller has timely filed all material Tax Returns that it was required to file that would result in Tax liability to the Buyer or affect the Product or the Acquired Assets, and all such Tax Returns were correct and complete in all material respects. The Seller has paid in full on a timely basis all material Taxes attributable to the Product and the Acquired Assets to the extent failure to do so would result in the Buyer becoming liable or responsible therefor or would affect the Product or the Acquired Assets after the Closing Date. The Seller has complied in all material respects with all applicable Laws relating to the filing of Tax Returns, the payment of Taxes, and the withholding and deposit of Taxes that would result in Tax liability to the Buyer or affect the Product or the Acquired Assets after the Closing Date. None of the Acquired Assets is property treated as owned in any part by persons other than the Seller for income Tax purposes. For the purposes of this Agreement, (i) "Taxes" means (A) (1) all taxes, charges, surcharges, fees, levies or other similar assessments or liabilities in the nature of a tax, including income, gross receipts, ad valorem, premium, value-added, excise, license, real property,

personal property, unclaimed property, escheat, sales, use, service, transfer, withholding, employment, unemployment, payroll and franchise taxes imposed by any Taxing Authority and (2) any liability of the Seller for the payment of amounts with respect to payments of a type described in clause (1) as a result of being a member of an affiliated, consolidated, combined or unitary group, or as a result of any obligation of the Seller under any Tax sharing arrangement or Tax indemnity agreement and (B) any interest, fines, penalties, assessments or additions to tax resulting from, attributable to or incurred in connection with any tax described in clause (A) or any contest or dispute thereof; (ii) "Taxing Authority" means the Internal Revenue Service and any other Governmental Entity or any subdivision, agency, commission or entity thereof or any quasi-governmental entity having or purporting to have jurisdiction with respect to any Tax, and (iii) "Tax Returns" means all reports, returns, declarations, statements or other information actually supplied to or required to be supplied to any Taxing Authority in connection with Taxes (including any attachments thereto and, in each case, including any amendments thereof).

(b) There are no Liens (other than Permitted Liens) with respect to Taxes upon any of the Acquired Assets, other than with respect to Taxes not yet due and payable.

(c) There is no Tax audit, litigation, proceeding or other claim ongoing, pending or, to the Seller's Knowledge, threatened by any Taxing Authority that could result in Tax liability to the Buyer or affect the Product or the Acquired Assets after the Closing Date.

(d) There is not currently in effect any extension or waiver of any statute of limitations with respect to the assessment or collection of any Taxes that could result in Tax liability to the Buyer or affect the Product or the Acquired Assets after the Closing Date.

(e) The Seller has conducted all aspects of the Product Business in all material respects in accordance with the terms and conditions of any Tax abatements, concessions and exemptions received with respect to the Product or the Acquired Assets prior to Closing that are potentially available to Buyer after the Closing. With respect to any Tax abatements, exemptions or concessions that were provided prior to the Closing by any relevant Taxing Authority with respect to the Product or the Acquired Assets, no default of such terms and conditions has been alleged by any Taxing Authority, and no default, recapture, or other payments are owing pursuant to such terms and conditions or will result from the purchase and sale pursuant to this Agreement, in each case that could result in liability to Buyer or otherwise adversely impact any such abatements, exemptions or concessions potentially available to Buyer after the Closing, which for the avoidance of doubt, only include abatements, exemptions or concessions that may be transferred under applicable Law and which are Acquired Assets.

1.5 Intellectual Property.

(a) Other than (x) any Intellectual Property that are licenses for commercial click through, "off-the-shelf" or "shrink-wrap" software, (y) administrative, finance and other back office infrastructure and information technology systems, networks and software, and (z) Intellectual Property relating to (1) the manufacturing or supply of the Product or (2) commercial operations used in connection with other products of Seller that are not the Product, the Transferred Intellectual Property, Licensed Intellectual Property and Assumed Commercial Contracts constitute all Intellectual Property owned or used by the Seller or any of its Affiliates in connection with the promotion, sale, offer for sale, distribution and commercialization of the Product. The Seller is the sole owner of and has good and valid title to all of the Transferred Intellectual Property and any Licensed Intellectual Property, free and clear of all Liens, other than Permitted Liens, and the Transferred Intellectual Property and Licensed Intellectual Property in each case, is enforceable, valid and subsisting. [***] For purposes of this Agreement: (A) the term "Intellectual Property" means collectively, Copyrights, Patent Rights, Trademarks, Know-How and Domain Names; (B) the term "Copyrights" means United States copyrights and

mask works (as defined in 17 U.S.C. §901), whether registered or unregistered, and pending applications to register the same in the United States and all other nations throughout the world, works of authorship in any media now known or hereafter created and whether or not completed, published, or used (including computer programs, software, databases, compilations, files, applications, and Internet site content), moral rights, mask works, drafts, writings, plans, sketches, layouts, designs, artwork, printed or graphic matter, video, films, photographs, illustrations, slides, audio and video recordings and other audiovisual works, software development documentation and programming tools, literary and artistic works, and all derivative works, translations, adaptations, or combinations of any of the foregoing, all of the foregoing whether or not registered, and registrations and applications for registrations for any of the foregoing; (C) the term "Patent Rights" means (i) any national, regional and international patents and patent applications, including United States and foreign patents and provisional patent applications; (ii) any patent applications claiming priority or filed from such patents, patent applications or provisional applications or from an application claiming priority to either of these, including continuations, continuations-in-part, divisions, provisionals, converted provisionals, continued prosecution applications, and substitutions; (iii) any patents that have issued or in the future issue from the foregoing patent applications described in clauses (i) and (ii), including utility models, patents of addition, petty patents and design patents and certificates of invention; and (iv) any patent term extension under 35 U.S.C. §156 or any non-U.S. counterpart or equivalent of the foregoing, including supplementary protection certificates, inventors' certificates, patent term extensions, pediatric data package exclusivity extensions, patent disclosures, industrial designs, inventions (whether or not patentable or reduced to practice) and improvements thereto, and any other extensions that are now available or become available in the future, or any restorations by existing or future extension or restoration mechanisms, including revalidations, reissues, re-examinations and extensions of the foregoing patents or patent applications described in clauses (i), (ii) and (iii); (D) the term "Trademarks" means United States, foreign, and state trademarks, service marks, trade names, trade dress, designs, logos, slogans, 800-numbers, URLs, Domain Names, and other source identifiers, whether registered or unregistered, and pending registrations and applications to register the foregoing; (E) the term "Domain Names" means domain names in the United States and all other nations throughout the world, whether registered or unregistered and pending applications to register the same in the United States and all other nations throughout the world, including all variations, derivations, and combinations thereof, and all common law rights, registrations and applications for registration or renewals of the foregoing and all goodwill associated therewith; (F) the term "Transferred Intellectual Property" means the Transferred Copyrights, Transferred Patents, Transferred Domain Names, Transferred Trademark; (G) the term "Licensed Know-How" shall have the meaning set forth in the License Agreement; (H) the term "Licensed Patent Rights" shall have the meaning set forth in the License Agreement; (I) collectively the Licensed Patent Rights and the Licensed Know-How, means the "Licensed Intellectual Property"; and (J) [***].

(b) Schedule 3.5(b) contains a list and description of all Contracts that are material to the Product or the Product Business and relate to: (i) any Transferred Intellectual Property; (ii) any Licensed Intellectual Property; and (iii) any material Intellectual Property licensed to or used by the Seller or any of its Affiliates solely in connection with the Product or the Product Business (other than, for the avoidance of doubt, manufacturing and supply agreements relating to the Product that are not Assumed Commercial Contracts, click-through and off-the-shelf shrink-wrap agreements).

(c) Except as otherwise set forth on Schedule 3.5(c)(i), the Seller is not a party to any Contract pursuant to which the Seller has purchased or otherwise acquired or licensed any Transferred Intellectual Property or Licensed Intellectual Property from a third party. Except as otherwise set forth on Schedule 3.5(c)(ii), to the Seller's Knowledge, all registrations, issuances and applications for the Transferred Intellectual Property and Licensed Intellectual Property,

including the Transferred Patents, Transferred Trademark and the Transferred Domain Names: (A) have been duly filed or registered (as applicable) with the applicable Governmental Entity and properly maintained, including the timely submission of all necessary filings and payment of fees in accordance with the legal and administrative requirements in the appropriate jurisdictions; (B) have not lapsed or expired or been cancelled, disclaimed or abandoned; and (C) are valid and in force and, with respect to all applications, are pending and in good standing, all without challenge of any kind. The Seller has the sole and exclusive right to bring actions for infringement, misappropriation, dilution, violation or unauthorized use of the Transferred Intellectual Property and the Seller has the right to bring actions for infringement, misappropriation, dilution, violation or unauthorized use of the Licensed Intellectual Property.

(d) To the Seller's Knowledge, each Person who was involved in, or who has participated in or contributed to, the conception, development, authoring, creation, or reduction to practice of the Transferred Patents or the Licensed Patent Rights has been accurately identified to applicable government agencies in all countries where such Transferred Patents or Licensed Patent Rights are nationalized, validated or registered, and all such Persons have, to the Seller's Knowledge, executed valid and enforceable agreements that presently and irrevocably assign all right, title and interest in such Patent Rights to the Seller.

(e) To the Seller's Knowledge, no third party is infringing or violating or misappropriating any of the Transferred Intellectual Property or Licensed Intellectual Property in any material respect. The Seller has not sent nor has the Seller received any written notice to or asserted or threatened in writing any action or claim against any Person nor has any Person asserted or threatened any action or claim against the Seller in writing involving or relating to any of the Transferred Intellectual Property or Licensed Intellectual Property except as set forth on Schedule 3.5(e). There are no claims or proceedings pending by the Seller or any of its Affiliates against any Person involving or relating to any of the Transferred Intellectual Property or Licensed Intellectual Property except as set forth on Schedule 3.5(e). For the purposes of this Agreement, "Person" means any individual, corporation, partnership, limited liability company, joint venture, trust, business association, organization, Governmental Entity or other entity.

(f) Except as otherwise set forth on Schedule 3.5(f), to the Seller's Knowledge, the use, manufacture or having made, marketing, promotion, distribution, sale, offer for sale and commercialization of the Product, as well as the conduct of the Product Business, do not infringe or violate or constitute a misappropriation of any Intellectual Property of any third party existing as of the Execution Date. During the past [***] prior to the Execution Date, the Seller has not received any written claim or notice alleging any such infringement, violation or misappropriation or received any written offer from a third party to take a license to any Intellectual Property of any third party in connection with the Product or the Product Business. Except as otherwise set forth on Schedule 3.5(f), there is no pending or, to the Seller's Knowledge, threatened claim, interference, opposition or demand of any third party challenging the ownership, validity or scope of any Transferred Intellectual Property or Licensed Intellectual Property. The Seller has not been served with or provided written notice that any Transferred Intellectual Property or Licensed Intellectual Property is the subject of any judicial, administrative or arbitral order, award, decree, injunction, lawsuit, proceeding or stipulation ("Order"), and the Seller is not subject to any Order barring or limiting the Seller's use of any Transferred Intellectual Property or Licensed Intellectual Property.

(g) The Seller takes and has taken commercially reasonable and adequate action to protect, preserve, and prevent the unauthorized disclosure or use of the Confidential Information and trade secrets included in the Transferred Intellectual Property or Licensed Intellectual Property, including having all officers, directors, employees and other Persons with access to such trade secrets enter into appropriate confidentiality agreements or otherwise be subject to binding confidentiality obligations. To the Seller's Knowledge, there has been no

unauthorized disclosure or use of the Confidential Information and trade secrets included in the Transferred Intellectual Property or Licensed Intellectual Property.

(h) All past and currently due maintenance fees or annuities for the Transferred Patents and the Licensed Patent Rights, and all past and currently due renewal fees, taxes, or maintenance fees for the Transferred Trademark have been paid and all necessary documents and certificates in connection with such Intellectual Property have been filed with the relevant Governmental Entities in the United States or foreign jurisdictions, as the case may be, for the purposes of maintaining such Intellectual Property.

1.6 Contracts. The Seller has made available to the Buyer a complete and accurate copy of each Assumed Commercial Contract, except to the extent such Assumed Commercial Contracts have been redacted to (i) enable compliance with Laws relating the safeguarding of data privacy or (ii) exclude information not related solely to the Product or the Product Business. Each Assumed Commercial Contract is the legal, valid and binding obligation of the Seller and is in full force and effect with respect to the Seller and, to the Seller's Knowledge, with respect to each other party thereto, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium and other similar Laws affecting the rights of creditors generally and by equitable principles. Neither the Seller nor, to the Seller's Knowledge, any other party to any Assumed Commercial Contract is in material violation of or in material default under any Assumed Commercial Contract, and no event has occurred that, with the giving of notice or lapse of time or both, would constitute a material breach or material default thereunder. As of the Execution Date, the Seller has received no written notice of any material adverse change in the price or availability of any supplies or services provided under any Assumed Commercial Contract that are used in the manufacture, distribution or sale of the Product, except as otherwise provided for in any Assumed Commercial Contract.

1.7 Litigation. Except as set forth on Schedule 3.7, no action, suit, proceeding, claim, arbitration or investigation by or before any Governmental Entity, arbitrator or mediator (each, a "Legal Proceeding") is currently pending against the Seller with respect to the Product or the Product Business and, to the Seller's Knowledge, no Legal Proceeding has been threatened or otherwise asserted in writing against the Seller. There are no unsatisfied judgments or outstanding Orders, against any of the Acquired Assets or against the Seller with respect to the Product or the Product Business.

1.8 Financial Statements. Schedule 3.8 sets forth [***]

1.9 Inventory. All of the Product Inventory [***] .

1.10 Compliance With Laws. The Seller is currently in compliance in all material respects with, is not in material violation of, and has not in the past [***] received any written notice alleging any material violation with respect to, any applicable Law with respect to the manufacture, marketing and sale of the Product, the Product Business or the ownership or operation of the Acquired Assets. For the purposes of this Agreement, "Law" or "Laws" means any federal, state or local law, statute or ordinance, common law or any rule, regulation, judgment, order, writ, injunction, decree, license or permit of any Governmental Entity, including any ruling, directive, pronouncement, requirement, specification, determination, decision or opinion issued, enacted, adopted, passed, approved, promulgated, made, implemented or otherwise binding and put into effect by or under the authority of any Governmental Entity. In the past [***], the Seller has not received any written notice from a Governmental Entity alleging that the Seller has materially violated, or inquiring into allegations related to the material violation of, any Laws applicable to the Product, the Product Business or the Acquired Assets.

1.11 Permits. The Seller has all material permits necessary for the Seller to own, lease or operate the Acquired Assets and operate the Product Business in the manner currently conducted and in which the Product Business has been conducted during the [***] prior to the date of this Agreement. Schedule 3.11 contains a complete listing of all such permits solely relating to the Product (the "Seller Permits"). The Seller is in compliance in all material respects with the terms of the Seller Permits, and has not received any notices that it is in violation of any of the terms or conditions of such Seller Permits. All such Seller Permits are in full force and effect and no action or claim is pending or, to the Seller's Knowledge, threatened or otherwise asserted to revoke, suspend, adversely modify or terminate any such Seller Permit or declare any such Seller Permit invalid in any respect.

1.12 Product Liability. Except as set forth on Schedule 3.12, no product liability, recall or warranty claims are pending or have been settled, terminated or received by the Seller in the [***] prior to the Execution Date and, to the Seller's Knowledge, no such claims have been threatened or otherwise asserted against the Seller, in each case, relating to, or arising from, the sale or use of the Product prior to the Closing. There is no judgment, order or decree outstanding against the Seller (or to Seller's Knowledge, any other Person or entity) relating to product liability or manufacturing defect claims with respect to the Product.

1.13 Regulatory Matters.

(a) Schedule 3.13(a) sets forth, as of the Execution Date, a list of the marketing approvals, clearances or other authorizations necessary to market or sell the Product in the United States and granted to the Seller by, or pending with, any Governmental Entity, including all Regulatory Approvals for the Product. All such marketing approvals, clearances or other authorizations are solely owned by the Seller and registered in the name of the Seller and are in full force and effect. To the Seller's Knowledge, there are no INDs, NDAs or other marketing approvals, clearances or other authorizations in any country held by a third party solely related to the Product. The Seller has paid the FDA Fees and all FDA annual program fees for prior years.

(b) The Product has been researched, developed, tested, manufactured, handled, labeled, packaged, supplied, promoted, co-promoted, distributed, marketed, commercialized, stored and sold by or on behalf of the Seller, as applicable, in compliance in all material respects with applicable Health Laws, and the Product has not been adulterated or misbranded within the meaning of applicable Health Laws. For purposes of this Agreement, (i) the term "Health Laws" means the applicable Laws and legally binding rules, regulations, codes, policies and guidelines of all Governmental Entities relating to the research, development, testing, manufacture, handling, production, preparation, propagation, compounding, conversion, pricing, labeling, packaging, marketing, promotion, sale, distribution, coverage, or reimbursement of a drug, device or other medical or pharmaceutical item, supply or service, including the federal Food, Drug, and Cosmetic Act (21 U.S.C. § 321 et seq.) (the "Act"), the Controlled Substances Act (21 U.S.C. § 801 et seq.), the federal False Claims Act (31 U.S.C. § 3729 et seq.), the federal healthcare program Anti-Kickback Statute (42 U.S.C. § 1320a-7b), the healthcare fraud, false statement and health information privacy and security provisions of the Health Insurance Portability and Accountability Act of 1996, as amended by the Health Information Technology for Economic and Clinical Health ("HITECH") Act, and its implementing regulations (collectively, "HIPAA"), the federal healthcare program civil money penalty and exclusion authorities, the applicable requirements of Medicare, Medicaid and other Governmental Entity healthcare programs, including the Veterans Health Administration and U.S. Department of Defense healthcare and contracting programs, and the analogous Laws of any federal, state, local, or foreign jurisdiction applicable to the Buyer or the Seller, and (ii) the term "Health Authorities" means the Governmental Entities which administer Health Laws, including the FDA and US Customs and Border Protection. The Product has not been seized,

detained, or subject to any suspension of manufacturing, distribution, marketing, or sale by the FDA or any other Governmental Entity which administers applicable Health Laws. In the [***] prior to the Execution Date, the Product has been manufactured in all material respects in accordance with cGMP and has not been adulterated or misbranded.

(c) In the [***] prior to the Execution Date, the Seller has not received any written or oral notice from the FDA or any other Governmental Entity or third party alleging that its research, development, manufacture, distribution, marketing, offering for sale, selling, labeling, storing or testing practices are unlawful or threatening to revoke, suspend, cancel, withdraw, curtail, or seek damages related to any existing certification, license, or approval, including any Regulatory Approvals, necessary to the Product Business.

(d) The Seller has made available to the Buyer complete and correct copies of each NDA and each IND submitted to the FDA with respect to the Product, including all supplements and amendments thereto, and all other material correspondence with and reports and notices from any relevant Health Authorities, including the FDA and U.S. Customs and Border Protection, in each case solely related to the Product. In the [***] prior to the Execution Date, all material reports, documents, notices that are required to be maintained or filed with the FDA or any other Governmental Entity under applicable Laws with respect to the Product, including those relating to complaints, adverse events, product pricing, and rebates, have been maintained or filed and are accurate in all material respects.

(e) The clinical, pre-clinical and other studies and tests conducted by or on behalf of the Seller related to the Product, or in which the Seller or the Product has participated, were conducted in all material respects in accordance with all applicable Health Laws.

(f) Except for ordinary course inquiries, the Seller has not received within the past [***] prior to the Execution Date, with respect to the Product, any written notice or communications from the FDA or any other Governmental Entity which administers applicable Health Laws alleging noncompliance with any applicable Laws, and the Seller is not subject to any enforcement proceedings or, to the Seller's Knowledge, any investigations by the FDA or any other Governmental Entity which administers applicable Health Laws, and, to the Seller's Knowledge, no such investigations or enforcement proceedings have been threatened. To the Seller's Knowledge, within the past [***] prior to the Execution Date, the Seller has not been subject to any investigation related to the Product or the Product Business and, to the Seller's Knowledge, no such investigation has been threatened, including by (i) the FDA, (ii) the Department of Health and Human Services Office of Inspector General or Department of Justice pursuant to the Federal Healthcare Program Anti-Kickback Statute (42 U.S.C. §1320a-7b(b) (known as the "Anti-Kickback Statute")) or the federal False Claims Act (31 U.S.C. §3729), or (iii) state attorneys general pursuant to state false claim or fraud laws.

(g) To the Seller's Knowledge, neither the Seller nor its agents has submitted any claim for payment to any government healthcare program related to the Product in material violation of any Laws relating to false claim or fraud, including the Federal False Claims Act, 31 U.S.C. § 3729, or any applicable state false claim or fraud Law.

(h) To the Seller's Knowledge, the Seller has complied in all material respects with all applicable security and privacy standards regarding protected health information under (i) HIPAA, (ii) HITECH, (iii) state Laws governing the confidentiality, privacy, security and protection of individually identifiable personal information, including state data breach notification Laws, state medical privacy laws and state consumer protection Laws and (iv) other applicable privacy Laws, in each case as related to the Product or the Product Business.

(i) There are no pending or, to the Seller's Knowledge, threatened Legal Proceedings pending or in effect against the Seller for failure to comply with any Health Law, including any pending or threatened Legal Proceeding against the Seller or to the Seller's Knowledge, any of its officers or employees, by or before any Governmental Entity, with respect to the Product or the Product Business, or the Seller's obligations set forth herein, including any which may materially and adversely affect the Seller's ability to perform its obligations under this Agreement. The Seller has not received any written notice that the FDA, any other component of the U.S. Department of Health and Human Services, institutional review board, accreditation body, or any other federal, state or foreign Governmental Entity has recommended, initiated, or threatened to initiate, any action to place on clinical hold, suspend, withdraw approval for, or terminate any investigational new drug application, new drug application, or any comparable foreign regulatory application sponsored by the Seller with respect to the Product or the Product Business. To the Seller's Knowledge, there are no facts that would be reasonably likely to result in such an action of the type described in the preceding sentence by a Governmental Entity under applicable Health Laws which could have a Material Adverse Effect.

(j) Neither the Seller nor any officer or employee, nor, to the Seller's Knowledge, any agent or contractor of the Seller has made an untrue statement of material fact or fraudulent statement to any Health Authority, failed to disclose a material fact required to be disclosed to any Health Authority or any other Governmental Entity, or committed an act, made a statement, or failed to make a statement, including with respect to any scientific data or information, that, at the time such disclosure was made or failure to disclose occurred, would reasonably be expected to provide a basis for the Health Authority or any other Governmental Entity to invoke the FDA Application Integrity Policy respecting "Fraud, Untrue Statements of Material Facts, Bribery and Illegal Gratuities," set forth in FDA's Compliance Policy Guide Sec. 120.100 (CPG 7150.09) or any similar policy. Neither the Seller nor, to the Seller's Knowledge, any officer, employee, agent, or contractor of the Seller has been debarred or convicted of any crime or engaged in any conduct for which debarment is mandated by 21 U.S.C. § 335a(a) or any similar Laws or authorized by 21 U.S.C. § 335a(b) or any similar Laws. Neither the Seller nor, to the Seller's Knowledge, any officer, employee or agent of the Seller has been excluded or convicted of any crime or engaged in any conduct for which such Person could be excluded from participating in the Federal health care programs under Section 1128 of the Social Security Act of 1935, as amended, or any similar Laws.

(k) Neither the Seller nor, to the Seller's Knowledge, any manufacturers of the Product or of the raw materials for the Product have received any Form 483 observations, warning letters, notice of violation letters, or other communications from a Governmental Entity regarding violations or potential violations of Laws related to the raw materials for the Product or the Product Business that would reasonably be expected to adversely impact the manufacture, distribution, marketing, or sale of the Product. Except as set forth on Schedule 3.13(k), during the past [***] prior to the Execution Date, the Product has not been recalled, suspended, or discontinued by the Seller (nor, to the Seller's Knowledge, is there currently under consideration by the Seller, any removal, field correction or recall in respect of any of the Product), nor has the Seller received any written notice from any Health Authority that it has commenced or threatened to initiate, any action to withdraw approval, place sales or marketing restrictions on or request the recall of the Product, or that it has commenced or threatened to initiate any action to enjoin or place restrictions on the Product or distribution of the Product.

(l) The Seller has paid all HCR Fees related to the Product. For purposes of this Agreement, "HCR Fees" means the fees described in Section 9008 of the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by Section 1404 of the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152.

1.14 [***] .

1.15 Title to Acquired Assets. The Seller has and at the Closing the Seller will deliver to the Buyer, good, marketable and valid title to, and/or a valid right to use, each of the Acquired Assets, as the case may be, free and clear of all Liens, other than Permitted Liens. Except as set forth on Schedule 3.15, no Affiliate of the Seller owns, beneficially or of record, or has any rights, title or interest in, to or under any Acquired Asset.

1.16 [***]

1.17 Brokers. Except as set forth on Schedule 3.17, no broker, investment banker, agent, finder or other intermediary acting on behalf of the Seller or under the authority of the Seller is or will be entitled to any broker's or finder's fee or any other commission or similar fee directly or indirectly in connection with any of the transactions contemplated hereby.

1.18 Exclusivity of Representations. EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES CONTAINED IN THIS ARTICLE III, THE SELLER HAS MADE NO REPRESENTATION OR WARRANTY WHATSOEVER HEREIN OR OTHERWISE, EXPRESS OR IMPLIED (INCLUDING ANY REPRESENTATION OR WARRANTY RELATING TO FINANCIAL CONDITION OR RESULTS OF OPERATIONS OF THE PRODUCT BUSINESS OR MAINTENANCE, REPAIR, CONDITION, DESIGN, PERFORMANCE, VALUE, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OF THE ACQUIRED ASSETS) AND THE SELLER HEREBY DISCLAIMS ANY SUCH REPRESENTATIONS AND WARRANTIES.

ARTICLE IV
REPRESENTATIONS AND WARRANTIES OF THE BUYER AND GUARANTOR

The Buyer and Guarantor jointly and severally represent and warrant to the Seller that the statements contained in this ARTICLE IV are true and correct as of the Execution Date.

1.1 Organization, Standing and Power. The Buyer is a limited liability company and the Guarantor is a corporation and each are duly organized, validly existing and in good standing under the Laws of the jurisdiction of its formation, has all requisite company power and authority to own, lease and operate its properties and assets and to carry on its respective business as now being conducted, and each is duly qualified to do business and, where applicable as a legal concept, is in good standing as a foreign entity in each jurisdiction in which the character of the properties it owns, operates or leases or the nature of its respective activities makes such qualification necessary, except for such failures to be so qualified, individually or in the aggregate, that would not reasonably be expected to be material to the Buyer or the Guarantor, as applicable.

1.2 Authority; No Conflict; Required Filings and Consents; Regulatory Representation.

(a) Each of the Buyer and the Guarantor has all requisite company power and authority to enter into this Agreement and each of the Ancillary Documents to which each will be a party and to consummate the transactions contemplated hereby and thereby. The execution, delivery and performance by each of the Buyer and the Guarantor of this Agreement and each of the Ancillary Documents to which each will be a party and the consummation of the transactions contemplated hereby and thereby by the Buyer and the Guarantor have been duly authorized by all necessary corporate action on the part of each of the Buyer and the Guarantor. This Agreement has been, and each such Ancillary Document will be, duly executed and delivered by each of the Buyer and the Guarantor and this Agreement is, and each such Ancillary Document when so duly executed and delivered by each of the Buyer and the Guarantor and, if applicable, the Seller, will be, the valid and binding obligation of each of the Buyer and the Guarantor

enforceable against each of the Buyer and the Guarantor in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium or other similar Laws affecting the rights of creditors generally and by equitable principles.

(b) The execution, delivery and performance by each of the Buyer and the Guarantor of this Agreement and each of the Ancillary Documents to which each will be a party, and the consummation by each of the Buyer and the Guarantor of the transactions contemplated hereby and thereby, shall not, (i) conflict with, or result in any violation or breach of, any provision of the organizational documents of each of the Buyer or the Guarantor, (ii) conflict with, or result in any material violation or material breach of, or constitute (with or without notice or lapse of time, or both) a material default (or give rise to a right of termination, cancellation or acceleration of any obligation or loss of any material benefit) under, require a consent or waiver under, constitute a change in control under, or result in the imposition of any Lien, other than Permitted Liens, on or with respect to each of the Buyer's or the Guarantor's assets or under any material Contract to which Buyer or its Affiliates is a party or (iii) conflict with or violate any material permit, concession, franchise, license or Law applicable to each of the Buyer or the Guarantor or any of its respective properties or assets, except for any of the matters referred to in clause (iii) that would not prevent or materially delay performance by the Buyer or the Guarantor of any of its material obligation under this Agreement.

(c) No material consent, approval, license, permit, order or authorization of any Governmental Entity is required by or with respect to the Buyer or the Guarantor in connection with the execution, delivery and performance by the Buyer or the Guarantor of this Agreement and each of the Ancillary Documents to which they will be a party or the consummation by the Buyer or the Guarantor of the transactions contemplated hereby.

(d) Neither the Buyer, the Guarantor, nor any officer or employee, nor, to Buyer's Knowledge, any agent or contractor of the Buyer or the Guarantor, as applicable, has made an untrue statement of material fact or fraudulent statement to any Health Authority, failed to disclose a material fact required to be disclosed to any Health Authority or any other Governmental Entity, or committed an act, made a statement, or failed to make a statement, including with respect to any scientific data or information, that, at the time such disclosure was made or failure to disclose occurred, would reasonably be expected to provide a basis for the Health Authority or any other Governmental Entity to invoke the FDA Application Integrity Policy respecting "Fraud, Untrue Statements of Material Facts, Bribery and Illegal Gratuities," set forth in FDA's Compliance Policy Guide Sec. 120.100 (CPG 7150.09) or any similar policy. Neither the Buyer nor the Guarantor nor, to Buyer's Knowledge, any officer, employee, agent or contractor of the Buyer or the Guarantor has been debarred or convicted of any crime or engaged in any conduct for which debarment is mandated by 21 U.S.C. § 335a(a) or any similar Laws or authorized by 21 U.S.C. § 335a(b) or any similar Laws. Neither the Buyer nor the Guarantor nor, to Buyer's Knowledge, any officer, employee or agent of the Buyer or the Guarantor has been excluded or convicted of any crime or engaged in any conduct for which such Person could be excluded from participating in the Federal health care programs under Section 1128 of the Social Security Act of 1935, as amended, or any similar Laws.

1.3 Litigation. There is no Legal Proceeding pending or, to the knowledge of the Buyer or the Guarantor, threatened, against the Buyer or the Guarantor, and neither the Buyer nor the Guarantor is subject to any outstanding order, writ, judgment, injunction or decree of any Governmental Entity that, in either case, would, individually or in the aggregate, (a) prevent or materially delay the consummation by the Buyer or the Guarantor of the transactions contemplated by this Agreement or (b) otherwise prevent or materially delay performance by the Buyer or the Guarantor of any of its material obligations under this Agreement.

1.4 Brokers. Except as set forth on Schedule 4.4, no broker, investment banker, agent, finder or other intermediary acting on behalf of the Buyer or the Guarantor or under the authority of the Buyer or the Guarantor is or will be entitled to any broker's or finder's fee or any other commission or similar fee directly or indirectly in connection with any of the transactions contemplated hereby.

1.5 Financial Capacity. The Buyer and the Guarantor collectively have immediately available cash sufficient to enable it to complete the transactions contemplated hereby and to perform its respective obligations under its Agreement and the Ancillary Documents, including the payment of each Fixed Payment.

1.6 Solvency. After giving effect to all of the transactions contemplated by this Agreement, including the payment of the Purchase Price, (a) the "fair saleable value" of the assets of the Buyer and the Guarantor will exceed (i) the value of all liabilities of the Buyer and the Guarantor, including contingent and other liabilities as of the Closing Date and (ii) the amount that will be required to pay the liabilities of the Buyer and the Guarantor on its respective existing debts (including contingent liabilities) as such debts become absolute and matured, (b) each of the Buyer and the Guarantor will not have, as of such date, unreasonably small capital for the operation of its respective businesses in which it is engaged or proposed to be engaged following such date and (c) each of the Buyer and the Guarantor will be able to pay its liabilities as they become due.

1.7 No Other Representations; Buyer's Investigation and Reliance. Neither the Buyer nor the Guarantor is relying on any statement or representation made by or on behalf of the Seller with respect to the Acquired Assets or Product Business (including (a) as to the accuracy or completeness of any of the information provided to the Buyer or any of its Affiliates or representatives or (b) with respect to any projections, forecasts, estimates, plans or budgets of future revenues, expenses or expenditures, future results of operations, future cash flows or future financial condition of the Product Business provided to the Buyer or any of its Affiliates or representatives), other than the representations made in ARTICLE III. In entering into this Agreement, except as expressly provided herein, the Buyer has relied solely upon the representations set forth in ARTICLE III and its independent investigation and analysis of the Product Business. The Buyer acknowledges that there are inherent uncertainties in attempting to make such projections, forecasts, estimates, plans or budgets and that it takes full responsibility for making its own evaluation of the adequacy and accuracy of any such projections, forecasts, estimates, plans or budgets (including the reasonableness of the assumptions underlying any such projections, forecasts, estimates, plans or budgets).

ARTICLE V
ADDITIONAL AGREEMENTS; COVENANTS

1.1 Confidentiality. From and after the Closing Date, the Seller shall treat and hold as confidential, and not disclose, any of the Confidential Information to any third party, except (a) as expressly permitted by this Agreement or any Ancillary Document; (b) as necessary to perform this Agreement or any Ancillary Document, including to defend, prosecute, arbitrate any indemnification claim or any Legal Proceeding relating to this Agreement or any Ancillary Document; (c) as required by Law or the rules and regulations of each stock exchange upon which the securities of the Seller or its Affiliates are listed, if any; or (d) with respect to Confidential Information relating to the Product Business, the Acquired Assets or the Assumed Liabilities, as reasonably necessary to operate any of the Seller's business other than the Product Business as conducted as of the Execution Date and without limitation of any of the Seller's rights under this Agreement or any Ancillary Document (provided, that the Seller shall not disclose any such Confidential Information to a third party unless such third party is subject to a confidentiality obligation in favor of the Seller no less restrictive than this Section 5.1). In the

event that the Seller is requested or required (by oral question or request for information or documents in any legal proceeding, interrogatory, subpoena, civil investigative demand or similar process or as otherwise required by Law) to disclose any Confidential Information (other than in connection with the rules and regulations of each stock exchange upon which the securities of the Seller or its Affiliates are listed, if any), the Seller shall notify the Buyer promptly of the request or requirement so that the Buyer may seek, at its expense, an appropriate protective order or waive compliance with the provisions of this Section 5.1. If, in the absence of a protective order or the receipt of a waiver hereunder the Seller is compelled to disclose any Confidential Information to any Governmental Entity, the Seller may disclose the Confidential Information to the Governmental Entity; provided, however, that the Seller shall (x) disclose only that portion of the Confidential Information that it is advised by counsel is required to be disclosed and (y) use commercially reasonable efforts to obtain, at the request and expense of the Buyer, reliable assurance that confidential treatment will be accorded to such portion of the Confidential Information required to be disclosed. For the purposes of this Agreement, "Confidential Information" shall mean any nonpublic confidential or proprietary information relating solely to the Product or the Product Business for the Indications or Acquired Assets in the possession of the Seller or its Affiliates. "Confidential Information" shall not include any information that (i) was publicly available prior to the date of this Agreement or hereafter becomes publicly available not as a result of any breach of this Agreement by Seller or (ii) becomes available on a non-confidential basis to the Seller or its Affiliates from a Person (other than the Seller or any of its Affiliates) that is not subject to any legally binding obligation to keep such information confidential. The Seller shall be responsible for any use or disclosure of Confidential Information by any of the Seller's Affiliates or representatives that would breach this Section 5.1 if such Affiliate or representative was a party hereto.

1.2 Post-Closing Access. Except as otherwise set forth in any Ancillary Document, for a period of [***] following the Closing Date (and solely, in the case of access to personnel, for a period of [***] following the Closing Date), the Seller shall afford to the Buyer and the Buyer's authorized accountants, counsel and other designated representatives, during normal business hours, upon reasonable advance notice in writing, to the extent permitted by applicable Law and at Buyer's sole cost and expense, access to the books, records, data, files and personnel of the Seller, in each case, to the extent (a) relating primarily to the Product or the Product Business and reasonably requested by the Buyer and (b) not otherwise provided to the Buyer pursuant to Section 2.1 hereof; provided, however, that such access shall not unreasonably interfere with the Seller's operation of its businesses; provided, further, that the Seller may restrict the foregoing access to the extent that (i) such access or provision of information would result in a violation of confidentiality obligations to a third party or disclosure of a trade secret of the Seller, (ii) any persons fail to execute a customary confidentiality and access agreement with Seller or (iii) disclosure of any such information would result in the loss or waiver of any attorney-client privilege, in which case the Seller shall use commercially reasonable efforts to provide the Buyer with an acceptable alternative means of obtaining such information; provided, further, that the Seller may redact any material provided under this Section 5.2 to the extent such material relates to any assets or products other than such reasonable financial and operating data that is available to the Seller with respect to the Acquired Assets, the Assumed Liabilities or the Product Business as the Buyer may from time to time reasonably request.

1.3 Further Assurances. From time to time, as and when requested by either Party, each of the Parties shall, at its expense (except as otherwise expressly provided in this Agreement), execute such additional documents and take such further actions as may be reasonably requested to carry out the provisions hereof and consummate and evidence the transactions contemplated hereby, including executing and delivering or causing to be executed and delivered to the other Party such additional documents as the other Party or its counsel may reasonably request as necessary for such purpose; provided, that after the Closing Date, apart from such customary further assurances, Seller shall have no other obligations except as set forth

in and described herein or in the Ancillary Documents, including having any obligation to pay any amount of money or make any material concessions. Without limitation of the foregoing, except as expressly set forth in Section 5.5 or in the Ancillary Documents, the Seller shall have no obligation to assist or otherwise participate in the amendment or supplementation of the Regulatory Approvals or in any filings or other activities relating to the Regulatory Approvals.

1.4 [***]

(a)

1.5 Notification to FDA; Customers.

(a) Notification to FDA. No later than [***] following the date the Seller provides all required Regulatory Approvals and Regulatory Documentation pursuant to Section 2.1(e), (i) the Seller shall execute and deliver to both the FDA contact described therein and the Seller a letter from the Seller to the FDA notifying the FDA of the transfer to the Buyer of the rights to the applicable Regulatory Approvals issued by the FDA, in the form of letter attached hereto as Exhibit E (the "Seller FDA Letter") and (ii) the Buyer shall execute and deliver to both the FDA contact described therein and the Seller a letter from the Buyer to the FDA of Buyer assuming responsibility for the applicable Regulatory Approvals issued by the FDA, in the form attached hereto as Exhibit F (the "Buyer FDA Letter"). Further, each of the Buyer and the Seller shall work together to make all other filings with and give all other notices to all Governmental Entities, including the FDA, required in connection with the transfer of the Product and the Regulatory Approvals promptly following the Closing.

(b) Notification of Customers. [***], the Buyer shall be responsible for processing customer orders and for shipping and invoicing customers for the Product. [***], the Parties shall jointly issue a letter reasonably satisfactory to both Parties to customers within the trade (wholesalers and distributors) and to commercial Chargeback customers notifying such customers (i) that the Buyer has acquired the rights to market and sell the Product, (ii) that all future Product orders are to be placed with the Buyer, (iii) that all returns of finished goods are to be delivered to the Buyer, (iv) of the Seller's and the Buyer's responsibilities in connection with Assumed Commercial Contracts providing for payment of Chargebacks, Rebates, Other Charges, and administrative fees and (v) providing the appropriate contact information for the Buyer's personnel. After the issuance of such letter, the Parties shall at all times reasonably cooperate in (A) notifying and continuing to notify such customers that all future Product orders are to be placed with the Buyer and that all returns of finished goods are to be delivered to the Buyer and (B) taking such other actions as are reasonably necessary to effect the foregoing, including forwarding to the Buyer any orders placed prior to the Closing Date for the purchase of Product by customers that are unfulfilled as of the Closing Date.

1.6 Use of Seller Brands.

(a) The Seller hereby grants to the Buyer a fully-paid, royalty-free, non-exclusive, non-sublicensable, irrevocable, non-transferable and non-assignable limited right and license to use any universal product codes or Trademarks used on or in connection with the Product that are not included in the Transferred Intellectual Property or Licensed Intellectual Property (the "Seller Brands") for the purposes expressly set forth below in Section 5.6(b) for the Trademark Period.

(b) The Buyer shall be permitted, for a period commencing on the Closing Date and ending no later than the date of the latest expiration date for any individual units of finished Product included in the Product Inventory that bear or contain the Seller Brands (the "Trademark Period") to use the Seller Brands only to the extent they appear on Product Inventory and Marketing Assets and only as necessary to sell off the Product Inventory and use up Marketing Assets that in each case exist as of the Closing Date. The Buyer shall use commercially reasonable efforts to stop using the Seller Brands as promptly as reasonably practical following the Closing.

(c) Nothing contained in this Agreement shall be construed as an assignment to the Buyer of any right, title or interest in the Seller Brands; it being understood that all rights, title and interest relating to the Seller Brands are expressly reserved by the Seller.

1.7 Regulatory Matters.

(a) Each of the Seller and the Buyer shall reasonably cooperate and use its commercially reasonable efforts to ensure compliance with all Laws, including FDA regulation 21 C.F.R. 314.72, that may be or become applicable to the performance of its and the other Party's obligations pursuant to this Agreement. The Seller hereby grants to the Buyer a right of reference to use Seller's device master file or master access file for any device covered by the Seller's device master file and/or master access file that is identified in the Product NDA, including the Sub-Assembly Component. Reasonably promptly upon the Buyer's request in writing, the Seller will provide the Buyer with a right of reference letter to use Seller's device master file or master access file for any device covered by the Seller's device master file and/or master access file that is identified in the Product NDA, including the Sub-Assembly Component.

(b) From the Closing Date [***], each Party shall promptly notify the other Party of any communication it or any of its Affiliates receives from any Governmental Entity relating to the matters that are the subject of this Agreement and shall, to the extent permitted by applicable Law, permit the other Party to review in advance any proposed communication by such Party to any Governmental Entity relating to the matters that are the subject of this Agreement. For the purposes of this Agreement, "Affiliate" means, with respect to any Party, any other person, firm, trust, partnership, corporation, company or other entity or combination thereof, which directly or indirectly (i) controls such Party, (ii) is controlled by such Party or (iii) is under common control with such Party. The terms "control" and "controlled" mean ownership of fifty percent (50%) or more, including ownership by trusts with substantially the same beneficial interests, of the voting and equity rights of such Party, firm, trust, corporation or other entity or combination thereof, or the power, indirectly or directly, to direct or cause the direction of the management and policies of such Party, firm, trust, corporation or other entity or combination thereof, whether by Contract or otherwise.

(c) Subject to the terms of the Quality Agreement, as applicable, after the Closing Date, the Buyer shall have all responsibility for investigating and reporting complaints and adverse experiences for the Product arising after the Closing Date to any Governmental Entities and addressing any such Governmental Entities' inquiries related to the safety of the Product, including those that may arise from Product Inventory manufactured prior to the Closing Date; provided, that after the Closing, the Seller shall use its commercially reasonable efforts to assist the Buyer in the investigation of adverse experiences and product complaints reported after the Closing for Product manufactured or distributed by or for the Seller. [***], the Seller shall forward to the Buyer all adverse experience reports and product complaints for the Product received after the Closing by the Seller, its Affiliates, or its or their agents, contractors or licensees.

1.8 [***]

(a)

1.9 [***]

(a)

1.10 [***]

1.11 Seller Contact. The contact for the Seller for all matters relating to Sections 5.4, 5.8 through 5.10 is:

Antares Pharma, Inc.
100 Princeton South
Suite 300
Ewing, New Jersey 08628
Facsimile: (609) 359-3015
Attn: Raymond Taylor, Sr. Director of Managed Care, Trade Relations and Government Pricing

With a copy to:

Antares Pharma, Inc.
100 Princeton South
Suite 300
Ewing, New Jersey 08628
Facsimile: (609) 359-3015
Attn: Peter J. Graham, General Counsel

1.12 Taxes.

(a) The Seller shall be liable for and pay, and in accordance with the applicable requirements and limitations of ARTICLE VI shall indemnify and hold harmless the Buyer from and against all of Seller's Taxes. In cases where a taxable period includes but does not end on the Closing Date, the Tax liability attributable to the Pre-Closing Tax Period and, thus, Seller's Taxes, shall be determined (i) in the case of real, personal and intangible property Taxes and similar ad valorem obligations that are imposed on a periodic basis levied with respect to the Acquired Assets, by apportioning such Taxes between the Pre-Closing Tax Period portion of such Tax period, on the one hand, and the portion of such taxable period beginning after the Closing Date, on the other, based on the number of days of such taxable period up to and including the Closing Date and the number of days of such taxable period after the Closing Date and (ii) in the case of any income Taxes, sales or use Taxes, value-added Taxes, employment Taxes, withholding Taxes, and any Tax based on or measured by income or revenues, based on a closing of the books as of the Closing Date. The Seller be liable for the amount of such Taxes that is attributable to Pre-Closing Tax Period, and the Buyer shall be liable for the amount of such Taxes that is attributable to the portion of the taxable period beginning after the Closing Date.

(b) After the Closing, each of the Seller and the Buyer shall: (i) provide reasonable assistance to the other Party in connection with such Party's preparation of any Tax Returns which such Party is responsible for preparing and filing; (ii) provide reasonable cooperation in preparing for any audits of, or disputes with Taxing Authorities regarding, any

Tax Returns relating to the Product, the Product Business or the Acquired Assets; (iii) make available to the other Party and to any Taxing Authority as reasonably requested all information, records, and documents relating to Taxes relating to the Product or the Acquired Assets; (iv) in the case of the Buyer, provide timely notice to the Seller in writing of any pending or threatened (in writing) Tax audits or assessments relating to the Product, the Product Business or the Acquired Assets for Tax periods for which the Seller may have a liability under this Section 5.12; and (v) in the case of the Buyer, furnish the Seller with copies of all correspondence received from any Taxing Authority in connection with any Tax audit or information request in respect of the Product or the Acquired Assets with respect to Tax periods for which the Seller may have a liability under this Section 5.12.

(c) The Buyer shall promptly forward to or reimburse the Seller for any refunds of Taxes for which the Seller is liable pursuant to Section 5.12(a). The Seller shall promptly forward to or reimburse the Buyer for any refunds of Taxes paid by the Buyer and for which the Buyer is liable pursuant to this Agreement.

1.13 Brokers and Other Expenses. Each Party shall be responsible for its own broker's, finder's, financial advisor's or other similar fee or commission in connection with any of the transactions contemplated by this Agreement. All costs and expenses associated with removing and moving any Acquired Asset to a location designated by the Buyer shall be borne and paid solely by the Buyer when due; provided, however, that if any such amount shall be incurred by the Seller at the request of the Buyer or with the Buyer's prior written consent, the Buyer shall, subject to receipt of satisfactory evidence of the Seller's payment thereof, promptly reimburse the Seller for its out-of-pocket costs. All other costs and expenses (including fees and disbursements of counsel and accountants) not otherwise attributable to a Party as set forth herein, and incurred in connection with this Agreement and the transactions contemplated hereby, shall be paid by the Party incurring such costs and expenses. Notwithstanding anything to the contrary contained herein, following the Closing, the Buyer and the Guarantor each hereby agrees that Guarantor will continue to reimburse the Seller for any Fees (as such term is defined in the Carve-Out Financial Letter Agreement) incurred by the Seller whether before or after the Closing in accordance with the terms of the Carve-Out Financial Letter Agreement, including any Fees above any estimates set forth therein.

1.14 Bulk Transfer Laws. The Buyer hereby waives compliance by the Seller with the provisions of any bulk transfer or similar law of any jurisdiction in connection with the sale of the Acquired Assets to the Buyer.

1.15 Safety Data Exchange Agreement. After the Closing, the Buyer shall be responsible for complying with all applicable adverse event reporting obligations to any Governmental Entity with respect to the Product in accordance with the Safety Data Exchange Agreement. In particular, the Buyer shall be responsible for collecting all pharmacovigilance information and for submitting applicable reports and notifying the relevant Governmental Entity of all reportable events relating to the Product in accordance with the Safety Data Exchange Agreement. In the event that the Seller is contacted by a Governmental Entity regarding the Product or any of the Acquired Assets following the Closing Date, the Seller shall be permitted to respond to such communication by directing any such Governmental Entity to the Buyer.

1.16 [***]

1.17 Acquired Assets. The Buyer shall not assign, transfer, convey or grant any rights in, or to, any of the Acquired Assets, in whole or in part, to a third party without assigning this Agreement to such third party recipient of such Acquired Assets in accordance with the provisions of Section 7.6. In connection with any such assignment, the assignee shall provide

written notification to the Seller confirming that such assignee is bound to the Buyer's obligations set forth in this Agreement in connection with such Acquired Assets.

1.18 [***]

1.19 [***]

ARTICLE VI
INDEMNIFICATION

1.1 Indemnification by the Seller. Subject to the terms and conditions of this ARTICLE VI, from and after the Closing, the Seller shall indemnify and hold harmless the Buyer and its Affiliates, and its and their respective equityholders, officers, directors, managers, employees, agents, partners, representatives, successors and assigns from and against any and all losses, damages, obligations, liabilities, fines, fees, penalties, interest, awards, judgments and claims of any kind, including reasonable attorneys' and consultants' fees and expenses and other reasonable legal costs and expenses incurred in prosecution, investigation, remediation, defense or settlement (collectively, "Damages") to the extent arising from or relating to:

(a) any breach of any of the representations or warranties of the Seller contained in this Agreement;

(b) any breach by the Seller of any covenant or agreement contained in this Agreement;

(c) any Excluded Liabilities; or

(d) Seller's Taxes.

1.2 Indemnification by the Buyer. Subject to the terms and conditions of this ARTICLE VI, from and after the Closing, the Buyer shall indemnify and hold harmless the Seller and its Affiliates, and its and their respective equityholders, officers, directors, managers, employees, agents, partners, representatives, successors and assigns from and against any and all Damages to the extent arising from or relating to:

(a) any breach of any of the representations or warranties of the Buyer contained in this Agreement;

(b) any breach or failure to perform by the Buyer of any covenant or agreement contained in this Agreement; or

(c) any Assumed Liabilities.

1.3 Claims for Indemnification.

(a) Third Party Claims. All claims for indemnification made under this Agreement resulting from, related to or arising out of a third party claim against an Indemnified Party shall be made in accordance with the following procedures. A Person entitled to indemnification under this ARTICLE VI (an "Indemnified Party") shall give prompt written notice to the Indemnifying Party (a "Third Party Claim Notice") of the commencement of any action, suit or proceeding relating to a third party claim for which indemnification may be sought or, if earlier, upon the assertion of any such claim by a third party; provided, however, that failure of the Indemnified Party to timely give the notice provided in this Section 6.3 to the Indemnifying Party shall not preclude the Indemnified Party from recovering Damages unless

and only to the extent that the Indemnifying Party can demonstrate that it was actually prejudiced and directly damaged by such failure. For the purposes of this Agreement, "Indemnifying Party" means (i) in the case of a claim for indemnification by the Buyer, the Seller and (ii) in the case of a claim for indemnification by the Seller, the Buyer. Such Third Party Claim Notice shall include a description in reasonable detail (to the extent known by the Indemnified Party) of the facts constituting the basis for such third party claim and the amount of the Damages claimed. Within [***] after delivery of such Third Party Claim Notice, the Indemnifying Party shall, upon written notice thereof to the Indemnified Party, be entitled to participate in the defense of such action, suit, proceeding or claim at the Indemnifying Party's expense. The Indemnifying Party shall be entitled to control and appoint lead counsel of such defense with reputable counsel reasonably acceptable to the Indemnified Party; provided that the Indemnifying Party shall not have the right to assume control of such defense and shall pay the reasonable fees and expenses of counsel retained by the Indemnified Party, if the claim which the Indemnifying Party seeks to assume control (A) seeks non-monetary relief, (B) involves criminal allegations, or (C) is one in which the Indemnifying Party is also a party and joint representation would be inappropriate or there may be legal defenses available to the Indemnified Party which are different from or additional to those available to the Indemnifying Party. If the Indemnifying Party does not assume control of such defense, the Indemnified Party shall control such defense. The Party controlling such defense shall keep the other Party advised of the status of such action, suit, proceeding or claim and the defense thereof and shall consider recommendations made by the other Party with respect thereto. The Indemnified Party shall not agree to any settlement of such action, suit, proceeding or claim without the prior written consent of the Indemnifying Party. The Indemnifying Party shall not agree to any settlement of such action, suit, proceeding or claim that does not include a complete release of the Indemnified Party from all liability with respect thereto or that imposes any liability or obligation on the Indemnified Party (other than the payment of monetary damages for which the Indemnifying Party shall indemnify the Indemnified Party) without the prior written consent of the Indemnified Party.

(b) Procedure for Claims Not Involving Third Parties. An Indemnified Party wishing to assert a claim for indemnification under this ARTICLE VI that does not involve a third party claim shall deliver to the Indemnifying Party a written notice (a "Claim Notice") which contains (i) a description and the amount of any actual or estimated Damages, (ii) a statement that the Indemnified Party is entitled to indemnification under this ARTICLE VI and a reasonable explanation of the basis therefor and (iii) a demand for payment in the amount of such Damages; provided, however, that failure of the Indemnified Party to timely give the Claim Notice provided in this Section 6.3 to the Indemnifying Party shall not preclude the Indemnified Party from recovering Damages unless and only to the extent that the Indemnifying Party can demonstrate that it was actually prejudiced by such failure. If the Indemnifying Party disputes its liability with respect to any such claim, the Indemnifying Party shall give written notice to the Indemnified Party, promptly but in no event greater than [***] after receipt of written notice of the indemnification sought, of the dispute and describing those portions and the amount (if known and quantifiable) of the claim in dispute, and the basis of the dispute. Upon the Indemnified Party's receipt of a timely notice of dispute, the Indemnifying Party and the Indemnified Party shall proceed to negotiate a resolution of such dispute. If such dispute is not resolved within [***] following the delivery by the Indemnifying Party of such response, the Indemnifying Party and the Indemnified Party shall each have the right to submit such dispute to a court of competent jurisdiction in accordance with the provisions of Section 7.12.

1.4 Survival.

(a) The representations and warranties of the Seller and the Buyer set forth in this Agreement shall survive the Closing and the consummation of the transactions contemplated hereby and continue until [***]. The representations and warranties in Section 3.4 (Taxes) shall survive for [***]. The representations and warranties in Section 3.5 (Intellectual Property) shall

survive [***]. The Fundamental Reps shall survive for a period of [***]. The covenants and agreements of the Seller and the Buyer set forth in this Agreement shall survive the Closing and the consummation of the transactions until fully performed in accordance with their express terms.

(b) If an indemnification claim is asserted in writing pursuant to Section 6.3 prior to the expiration as provided in Section 6.4(a) of the representation or warranty that is the basis for such claim, then such representation or warranty shall survive until, but only for the purpose of, the resolution of such claim.

1.5 Limitations.

(a) [***]

(i)

(b) The amount of Damages recoverable by an Indemnified Party under this ARTICLE VI with respect to an indemnity claim shall be reduced by the amount of any insurance payment actually received by such Indemnified Party (or an Affiliate thereof) with respect to such indemnity claim less any cost associated with receiving such recovery (including any reasonable expenses incurred by the Indemnified Party, the amount of any deductible and the present value of all increases or adjustments to insurance premiums arising from such insurance claim). The Buyer shall use its commercially reasonable efforts to collect insurance proceeds for any claim made by the Seller to the Buyer or by the Buyer to the Seller. If an Indemnified Party (or an Affiliate) receives any insurance payment in connection with any claim for Damages for which it has already been indemnified by the Indemnifying Party, it shall pay to the Indemnifying Party, within [***] of receiving such insurance payment, an amount equal to the excess of (i) the amount previously received by the Indemnified Party under this ARTICLE VI with respect to such claim plus the amount of the insurance payments received, over (ii) the amount of Damages with respect to such claim which the Indemnified Party has become entitled to receive under this ARTICLE VI.

(c) [***], NEITHER THE BUYER NOR THE SELLER SHALL BE LIABLE TO THE OTHER, OR THEIR AFFILIATES, FOR ANY CLAIMS, DEMANDS OR SUITS FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, INDIRECT OR MULTIPLE DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS, REVENUE OR INCOME, DIMINUTION IN VALUE OR LOSS OF BUSINESS OPPORTUNITY WHETHER OR NOT FORESEEABLE AT THE DATE OF THIS AGREEMENT CONNECTED WITH OR RESULTING FROM ANY BREACH AFTER THE CLOSING DATE OF THIS AGREEMENT, OR ANY ACTIONS UNDERTAKEN IN CONNECTION WITH, OR RELATED HERETO, INCLUDING ANY SUCH DAMAGES WHICH ARE BASED UPON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE AND MISREPRESENTATION), BREACH OF WARRANTY, STRICT LIABILITY, STATUTE, OPERATION OF LAW OR ANY OTHER THEORY OF RECOVERY.

(d) [***]the rights of the Indemnified Parties under this ARTICLE VI shall be the sole and exclusive monetary remedies of the Indemnified Parties with respect to claims under, or otherwise relating to the transactions that are the subject of, this Agreement.

1.6 Manner of Payment.

(a) Any payment to any Indemnified Party under this ARTICLE VI for indemnification shall be effected by wire transfer of immediately available funds from or on

behalf of the Indemnifying Party to an account designated by the Indemnified Party within [***]s after the date of the determination of any amounts due and owing under this ARTICLE VI.

(b) The Buyer shall not be entitled to setoff of any amounts due and payable, or any Damages arising, under this Agreement against any amounts due and payable, or any Damages arising, under this Agreement or the Ancillary Documents. The payment obligations under each of this Agreement and the Ancillary Documents remain independent obligations of each Party, irrespective of any amounts owed to any other Party under this Agreement or the respective Ancillary Documents.

1.7 Disclaimers.

(a) Except with respect to claims of Fraud or as expressly set forth in any representation or warranty in ARTICLE III, Buyer acknowledges and agrees that neither it nor any other Buyer Indemnified Parties shall have any claim or right to indemnification pursuant to this ARTICLE VI (or otherwise) with respect to any information, documents, or materials furnished to or for Buyer by Seller or any of its Affiliates or any of their officers, directors, employees, agents or advisors, including any information, documents, or material made available to Buyer in any "data room", management presentation, or any other form in connection with the transactions contemplated by this Agreement or any Ancillary Document. Any claims Buyer may have for breach of representation or warranty of Seller under this Agreement shall be based solely on the representations and warranties of Seller expressly set forth in this Agreement.

(b) WITHOUT LIMITING THE GENERALITY OF ANYTHING SET FORTH IN THIS AGREEMENT, INCLUDING ARTICLE IV, BUYER ACKNOWLEDGES AND AGREES THAT EXCEPT AS EXPRESSLY PROVIDED IN ARTICLE III, BUYER IS ACQUIRING THE ACQUIRED ASSETS ON AN "AS IS, WHERE IS" BASIS WITHOUT ANY EXPRESS OR IMPLIED WARRANTIES, EITHER IN FACT OR BY OPERATION OF LAW, BY STATUTE OR OTHERWISE, INCLUDING ANY WARRANTY OF QUALITY, THE FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, CONDITION OF THE ASSETS, AS TO THE NON-INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS OF ANY PERSON OR AS TO ANY OTHER MATTER.

1.8 Indemnification Payments. All indemnification payments made hereunder shall be treated by all Parties as adjustments to the Purchase Price for Tax purposes unless otherwise required by Law.

ARTICLE VII
MISCELLANEOUS

1.1 Notices. All notices and other communications hereunder shall be in writing and shall be deemed duly delivered (i) on the day of delivery if delivered in person; (ii) one (1) Business Day after being sent for next Business Day delivery, fees prepaid, via a reputable nationwide overnight courier service or (iii) on the date of confirmation of receipt (or, the first Business Day following such receipt if the date of such receipt is not a Business Day) of transmission by e-mail or facsimile, in each case to the intended recipient as set forth below:

(a) if to the Buyer, to

Assertio Therapeutics, Inc.
100 South Saunders Road, Suite 300
Lake Forest, Illinois 60045
Attention: Sam Schlessinger, General Counsel

and

Baker Botts L.L.P.
98 San Jacinto Blvd, #1500
Austin, TX 78701
Email: margaret.sampson@bakerbotts.com
Attn: Margaret Sampson

(b) if to the Seller, to

Antares Pharma, Inc.
100 Princeton South
Suite 300
Ewing, New Jersey 08628
Facsimile: (609) 359-3015
Email: Ed Tykot, Sr. VP Corporate Development

with a copy to:

Antares Pharma, Inc.
100 Princeton South
Suite 300
Ewing, New Jersey 08628
Email: pgraham@antarespharma.com
Attn: Peter J. Graham, General Counsel

with a copy (which shall not constitute notice) to:

Morgan, Lewis & Bockius LLP
101 Park Avenue
Suite 40
New York, New York 10178
Facsimile: (212) 309-6001
Email: Allison.gargano@morganlewis.com
Attn: Allison D. Gargano

Any Party may give any notice or other communication hereunder using any other means (including personal delivery, messenger service or ordinary mail), but no such notice or other communication shall be deemed to have been duly given unless and until it actually is received by the Party for whom it is intended. Any Party may change the address to which notices and other communications hereunder are to be delivered by giving the other Parties notice in the manner herein set forth.

1.2 Disclosure. Without limiting any Party's obligations under existing confidentiality agreements, each Party shall not, and shall not permit any of its Affiliates to, issue any press release or make any disclosure regarding the transactions contemplated hereunder unless: (a) the other Party shall have approved such press release or disclosure in writing; or (b) such Party shall have determined in good faith, (i) upon the advice of outside legal counsel, that such disclosure is required by applicable Law, or (ii) disclosure is required under the rules and regulations of each stock exchange upon which the securities of such Party are listed, if any, and, to the extent practicable, before such press release or disclosure is issued or made, such Party advises the other Party of, and consults with the other Party regarding, the text of such

press release or disclosure. Notwithstanding the foregoing, nothing in this Section 7.2 shall prevent a Party from making disclosures: (A) to persons employed or engaged by such Party in evaluating, approving, structuring or administering this Agreement or any Ancillary Document; (B) to such Party's legal counsel or accountants, partners or investors (including outside auditors and legal counsel of such Party's accountants, partners or investors) or to such Party's employees, officers, directors or Affiliates, so long as such persons are notified of, and under confidentiality obligations with respect to, the confidential nature of such information; (C) to any investor, lender or potential investor or lender of such Party, in connection with investment or lending decisions with respect to such Party or otherwise in connection with customary reports to such investors, lenders or potential investors or lenders regarding such Party's portfolio and performance, so long as such persons are notified of the confidential nature of, and under confidentiality obligations with respect to, such information; (D) to any assignee or potential assignee that has agreed to comply with the covenant contained in this Section 7.2 (and any such assignee or potential assignee may disclose such information to persons employed or engaged by it as described in clauses (A) - (C) above) or (E) required by the rules and regulations of the United States Securities and Exchange Commission. Notwithstanding Section 7.2(E) or any other provision above, in the event this Agreement or any Ancillary Document is to be filed with the United States Securities and Exchange Commission, each Party agrees, prior to making any such filing, to provide the other Party and its counsel with a redacted version of this Agreement (and any other Ancillary Document) that it intends to file, and use reasonable efforts to ensure the confidential treatment by the Securities and Exchange Commission of those sections.

1.3 Entire Agreement. This Agreement (including the Ancillary Documents, Disclosure Schedule, the Carve-Out Financial Letter Agreement and the Schedules and Exhibits hereto and the documents and instruments referred to herein that are to be delivered at the Closing) constitutes the entire agreement between the Parties and supersedes any prior understandings, agreements or representations by or between the Parties, written or oral, with respect to the subject matter hereof. In the event of any inconsistency between any such Schedules and Exhibits and this Agreement, the terms of this Agreement shall govern.

1.4 Amendments and Waivers. This Agreement may not be amended except by an instrument in writing signed on behalf of each Party hereto. Any term or condition of this Agreement may be waived at any time by the Party that is entitled to the benefit thereof, but no such waiver shall be effective unless set forth in a written instrument duly executed by or on behalf of the Party waiving such term or condition. No waiver by either Party of any term or condition of this Agreement, in any one or more instances, shall be deemed to be or construed as a waiver of the same or any other term or condition of this Agreement on any future occasion.

1.5 No Third Party Beneficiaries. This Agreement is not intended, and shall not be deemed, to confer any rights or remedies upon any person other than the Parties and their respective successors and permitted assigns, to create any agreement of employment with any Person or to otherwise create any third party beneficiary hereto.

1.6 Assignment. Neither this Agreement nor any of the rights, interests or obligations under this Agreement may be transferred or assigned, in whole or in part, by operation of Law or otherwise, by either of the Parties without the prior written consent of the other Party [***]. Within [***] after any transfer or assignment by a Party pursuant to this Section 7.6, the transferring or assigning Party shall provide notice to the other Party of such transfer or assignment. Subject to this Section 7.6, this Agreement shall be binding upon, inure to the benefit of, and be enforceable by, the Parties and their respective successors and permitted assigns. Any attempted assignment in violation of this Section 7.6 shall be void and of no effect.

1.7 Severability. Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of

the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction. If the final judgment of a court of competent jurisdiction declares that any term or provision hereof is invalid or unenforceable, the Parties agree that the court making such determination shall have the power to limit the term or provision, to delete specific words or phrases, or to replace any invalid or unenforceable term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision, and this Agreement shall be enforceable as so modified.

1.8 Counterparts and Signature. This Agreement may be executed in two (2) counterparts, each of which shall be deemed an original but all of which together shall be considered one and the same agreement and shall become effective when counterparts have been signed by each of the Parties and delivered to the other Party, it being understood that both Parties need not sign the same counterpart. This Agreement may be executed and delivered by facsimile or .pdf transmission.

1.9 Interpretation. When reference is made in this Agreement to an Article or a Section, such reference shall be to an Article or Section of this Agreement, unless otherwise indicated. The table of contents, table of defined terms and headings contained in this Agreement are for convenience of reference only and shall not affect in any way the meaning or interpretation of this Agreement. The language used in this Agreement shall be deemed to be the language chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against any Party. Whenever the context may require, any pronouns used in this Agreement shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural, and vice versa. Unless the context otherwise requires, references herein: (a) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof and by this Agreement; and (b) to any federal, state or local Law means such statute as amended from time to time and shall be deemed also to refer to all rules and regulations promulgated thereunder. Whenever the words “include,” “includes” or “including” are used in this Agreement, they shall be deemed to be followed by the words “without limitation.” The words “shall” and “will” have the same meaning and are used interchangeably in this Agreement. The word “or” shall not be exclusive when used in this Agreement. Any capitalized terms used in any Schedule or Exhibit attached hereto and not otherwise defined therein shall have the meanings set forth in this Agreement.

1.10 Governing Law. This Agreement shall be governed by and construed in accordance with the Laws of the State of Delaware, without giving effect to any choice or conflict of Law provision or rule that would cause the application of Laws of any jurisdiction other than those of the State of Delaware.

1.11 Remedies. Except as otherwise provided herein, any and all remedies herein expressly conferred upon a Party shall be deemed cumulative with and not exclusive of any other remedy conferred hereby, or by Law or equity upon such Party, and the exercise by a Party of any one (1) remedy shall not preclude the exercise of any other remedy.

1.12 Submission to Jurisdiction. Each of the Parties (a) consents to submit itself to the exclusive personal jurisdiction of the Court of Chancery of the State of Delaware, or if the Court of Chancery of the State of Delaware does not have jurisdiction, the exclusive personal jurisdiction of any state or federal court sitting in the State of Delaware (any such court, the “Subject Court”), in any action or proceeding arising out of or relating to this Agreement or any of the transactions contemplated by this Agreement, (b) agrees that all claims in respect of such action or proceeding may be heard and determined in the Subject Court, (c) agrees that it shall not attempt to deny or defeat such personal jurisdiction by motion or other request for leave from

the Subject Court and (d) agrees not to bring any action or proceeding arising out of or relating to this Agreement or any of the transactions contemplated by this Agreement in any other court. Each of the Parties waives any defense of inconvenient forum to the maintenance of any action or proceeding so brought and waives any bond, surety or other security that might be required of any other Party with respect thereto. Any Party may make service on another Party by sending or delivering a copy of the process to the Party to be served at the address and in the manner provided for the giving of notices in Section 7.1.

1.13 Waiver of Jury Trial. EACH PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY WAIVES TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT, THE ANCILLARY DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY AND FOR ANY COUNTERCLAIM THEREIN.

1.14 Disclosure Schedule. The Disclosure Schedule shall be arranged in sections corresponding to the numbered Sections contained in ARTICLE III; provided, that any numbering or references in the Disclosure Schedules or Sections of this Agreement are for convenience only and do not in any way limit, and shall not be regarded as limiting the disclosure concerning such numbered or referred to Sections; and provided, further, that any information disclosed under any section number shall be deemed to have been disclosed and incorporated into any other section number under this Agreement where such disclosure would be readily apparent from a reading of the disclosure that such disclosure is applicable to such other sections and subsections. The inclusion of any information in the Disclosure Schedule shall not be deemed to be an admission or acknowledgment, in and of itself, that such information is required by the terms hereof to be disclosed, is material, has resulted in or would reasonably be expected to result in a Material Adverse Effect, or is outside the Ordinary Course of Business.

1.15 Specific Performance. Each of the Parties acknowledges and agrees that the other Party would be damaged irreparably in the event any of the provisions of this Agreement are not performed in accordance with their specific terms or otherwise are breached. Accordingly, each of the Parties agrees that the other Party shall be entitled to seek an injunction or injunctions to prevent breaches of the provisions of this Agreement and to seek specific performance of this Agreement and the terms and provisions hereof in any action instituted in any court of the United States or any state thereof having jurisdiction over the Parties and the matter (subject to the provisions set forth in Section 7.12 above), in addition to any other remedy to which they may be entitled, at Law or in equity.

1.16 Knowledge. For the purposes of this Agreement, the term "Seller's Knowledge" means the actual knowledge, following reasonable inquiry of such Person's direct reports concerning such subject matter, of each of [***]. For the purposes of this Agreement, the term "Buyer's Knowledge" means the actual knowledge, following reasonable inquiry of such Person's direct reports concerning such subject matter, of each of [***].

1.17 Guarantee. The Guarantor hereby unconditionally and irrevocably guarantees to the Seller the punctual, full and complete performance by the Buyer when due of all the Buyer's obligations under or arising out of this Agreement or any Ancillary Document, including the payment of the Purchase Price, and undertakes, upon the occurrence and continuance of any default by the Buyer under this Agreement or any Ancillary Document, that the Guarantor will duly and properly perform or procure the performance of such obligations as provided in this Agreement or applicable Ancillary Document. The Guarantor unconditionally and irrevocably waives, to the fullest extent permitted by Law, presentment, demand for payment, notice of non-performance, default, dishonor and protest, and all other notices and defenses of any kind. The Guarantor agrees that this guaranty constitutes a guaranty of payment and performance when due and not of collection. The liability of the Guarantor as guarantor hereunder shall not be released

or diminished by (a) any amendment of the terms of this Agreement or Ancillary Document pursuant to their respective terms, (b) any delay or neglect in seeking performance of the obligations imposed under this Section 7.17, (c) any release of or granting of time or any other indulgence to the Buyer or any third party, (d) the liquidation, insolvency, receivership or any other analogous event occurring in relation to the Buyer or (e) any other act, event or omission, which but for this paragraph would or might operate to impair or discharge the Guarantor's liability hereunder or under any Ancillary Document. One or more separate actions may be brought and prosecuted against the Guarantor, regardless of whether any action is brought against the Buyer or whether the Buyer or any other Person is joined in any such actions. Guarantor acknowledges that it will receive direct and indirect benefits from the transactions contemplated by this Agreement and the other Ancillary Documents, and that the waivers set forth in this guaranty are knowingly made in contemplation of such benefits.

[*Remainder of Page Intentionally Left Blank.*]

IN WITNESS WHEREOF, the Buyer, the Seller and the Guarantor have caused this Agreement to be signed by their respective officers thereunto duly authorized as of the date first written above.

OTTER PHARMACEUTICALS, LLC

By: /s/ Dan Peisert
Name: Dan Peisert
Title: Chief Executive Officer

ANTARES PHARMA, INC.

By: /s/ Robert Apple
Name: Robert F. Apple
Title: President and Chief Executive Officer

ASSERTIO HOLDINGS, INC.

By: /s/ Dan Peisert
Name: Dan Peisert
Title: Chief Executive Officer

Exhibit A

Bill of Sale

[***]

Exhibit B

Patent Rights Assignment

[***]

Exhibit C

Trademark Assignment

[***]

Exhibit D

License Agreement

[***]

Exhibit E

Form of Seller FDA Letter

[***]

Exhibit F

Form of Buyer FDA Letter

[***]

Exhibit G

Assumption Agreement

[***]

Exhibit H

Supply Agreement

[***]

Exhibit I

Quality Agreement

[***]

Exhibit J

Safety Data Exchange Agreement

[***]

Exhibit K

Allocation of Purchase Price

[***]

Exhibit 4.3

SECOND SUPPLEMENTAL INDENTURE

This SECOND SUPPLEMENTAL INDENTURE (this "Supplemental Indenture") dated as of December 15, 2021 is by and among Otter Pharmaceuticals, LLC, a Delaware limited liability company (the "New Guarantor"), a subsidiary of Assertio Holdings, Inc. (f/k/a Alligator Zebra Holdings, Inc.), a Delaware corporation (as successor in interest to Zyla Life Sciences (f/k/a Egalet Corporation), the "Issuer"), the Issuer, the existing guarantors (the "Existing Guarantors") under the Indenture referred to below, and Wilmington Savings Fund Society, FSB (as successor to U.S. Bank National Association), as trustee (the "Trustee") and as collateral agent (the "Collateral Agent") under such Indenture.

W I T N E S S E T H :

WHEREAS the Issuer and the Existing Guarantors have heretofore executed and delivered to the Trustee and the Collateral Agent an indenture (as amended, supplemented or otherwise modified, the "Indenture") dated as of January 31, 2019, providing for the issuance of the Issuer's 13% Senior Secured Notes due 2024 (the "Securities");

WHEREAS Section 4.10 of the Indenture provides that under certain circumstances the Issuer is required to cause the New Guarantor to execute and deliver to the Trustee a supplemental indenture pursuant to which the New Guarantor shall guarantee the Issuer's Obligations under the Securities and the Indenture pursuant to a Guarantee on the terms and conditions set forth herein and in the Indenture; and

WHEREAS, pursuant to Section 9.01(v) of the Indenture, the Trustee, the Issuer and the Existing Guarantors are authorized to execute and deliver this Supplemental Indenture without notice to or consent of any Holder.

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt of which is hereby acknowledged, the New Guarantor, the Issuer, the Existing Guarantors and the Trustee mutually covenant and agree for the equal and ratable benefit of the Holders as follows:

1. Defined Terms. As used in this Supplemental Indenture, terms defined in the Indenture or in the recitals hereto are used herein as therein defined, except that the term "Holders" in this Supplemental Indenture shall refer to the term "Holders" as defined in the Indenture and the Trustee acting on behalf of and for the benefit of such Holders. The words "herein", "hereof" and "hereby" and other words of similar import used in this Supplemental Indenture refer to this Supplemental Indenture as a whole and not to any particular section hereof.

2. Agreement to Guarantee. The New Guarantor hereby, jointly and severally, with each Existing Guarantor, irrevocably and unconditionally guarantees as a primary obligor and not merely as a surety on a senior basis to each Holder and to the Trustee and its successors and assigns the Guaranteed Obligations, on the terms and subject to the conditions set forth in Article 10 of the Indenture, and agrees to be bound by all other applicable provisions of the Indenture and the Securities and to perform all of the obligations and agreements of a Guarantor under the Indenture.

3. Notices. All notices or other communications to the New Guarantor shall be given as provided in Section 12.01 of the Indenture.

4. Ratification of Indenture; Supplemental Indentures Part of Indenture. Except as expressly amended hereby, the Indenture is in all respects ratified and confirmed and all the terms, conditions and provisions thereof shall remain in full force and effect. This Supplemental Indenture shall form a part of the Indenture for all purposes, and every Holder shall be bound hereby.

5. Governing Law. THIS SUPPLEMENTAL INDENTURE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW (OTHER THAN SECTIONS 5-1401 AND 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW).

6. Trustee Makes No Representation. The Trustee makes no representation as to the validity or sufficiency of this Supplemental Indenture.

7. Counterparts. The parties may sign any number of copies of this Supplemental Indenture. Each signed copy shall be an original, but all of them together represent the same agreement. The exchange of copies of this Supplemental Indenture and of signature pages by facsimile or PDF transmission shall constitute effective execution and delivery of this Supplemental Indenture as to the parties hereto and may be used in lieu of the original Supplemental Indenture for all

purposes. Signatures of the parties hereto transmitted by facsimile or PDF shall be deemed to be their original signatures for all purposes.

8. Effect of Headings. The Section headings herein are for convenience of reference only and shall not affect the construction thereof.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Supplemental Indenture to be duly executed as of the date first above written.

NEW GUARANTOR:

OTTER PHARMACEUTICALS, LLC

By: /s/ Dan Peisert
Name: Dan Peisert
Title: President and CEO

ISSUER:

ASSERTIO HOLDINGS, INC. (F/K/A ALLIGATOR ZEBRA HOLDINGS, NC.)

By: /s/ Dan Peisert
Name: Dan Peisert
Title: President and CEO

EXISTING GUARANTORS:

ZYLA LIFE SCIENCES US INC.

By: /s/ Dan Peisert
Name: Dan Peisert
Title: President and CEO

EGALET LIMITED

By: /s/ Dan Peisert
Name: Dan Peisert
Title: Director

ASSERTIO THERAPEUTICS, INC. (F/K/A DEPOMED INC.)

By: /s/ Dan Peisert
Name: Dan Peisert
Title: President and CEO

ASSERTIO MANAGEMENT, LLC (F/K/A A-

TO-Z MANAGEMENT, LLC)

By: /s/ Dan Peisert
Name: Dan Peisert
Title: President and CEO

ASSERTIO DISTRIBUTION, LLC (F/K/A A-TO-Z DISTRIBUTION, LLC)

By: /s/ Dan Peisert
Name: Dan Peisert
Title: President and CEO

ALLIGATOR IP, LLC

By: /s/ Dan Peisert
Name: Dan Peisert
Title: President and CEO

DEPO NF SUB, LLC

By: /s/ Dan Peisert
Name: Dan Peisert
Title: President and CEO

WILMINGTON SAVINGS FUND SOCIETY, FSB, as Trustee

By: /s/ Raye Goldsborough
Name: Raye Goldsborough
Title: Vice President

WILMINGTON SAVINGS FUND SOCIETY, FSB, as Collateral Agent

By: /s/ Raye Goldsborough
Name: Raye Goldsborough
Title: Vice President

FORM OF Exhibit 10.2

ASSERTIO HOLDINGS, INC

MANAGEMENT CONTINUITY AGREEMENT

This Management Continuity Agreement (the "Agreement") is effective as of _____ __, 20__ (the "Effective Date") by and between _____ ("Employee") and Assertio Holdings, Inc., a Delaware corporation (the "Company"). This Agreement is intended to provide Employee with certain benefits described herein upon the occurrence of specific events.

RECITALS

A. It is expected that the Company may from time to time consider the possibility of realigning its organization.

B. It is further expected that another company may from time to time consider the possibility of acquiring the Company or that a change in control may otherwise occur, with or without the approval of the Board of Directors (the "Board of Directors") of the Company.

C. The Board of Directors recognizes that such considerations can be a distraction to Employee and can cause Employee to consider alternative employment opportunities.

D. The Board of Directors has determined that it is in the best interests of the Company and its shareholders to assure that the Company will have the continued dedication and objectivity of the Employee, notwithstanding the foregoing factors.

E. The Board of Directors believes it is in the best interests of the Company and its shareholders to retain Employee and provide incentives to Employee to continue in the service of the Company.

F. The Board of Directors further believes that it is imperative to provide Employee with certain benefits upon certain termination of Employee's employment, including in connection with a Change in Control, which benefits are intended to provide Employee with financial security and provide sufficient income and encouragement to Employee to remain with the Company, including and notwithstanding the possibility of a Change in Control.

G. To accomplish the foregoing objectives, the Board of Directors has directed the Company, upon execution of this Agreement by Employee, to agree to the terms provided in this Agreement.

Now therefore, in consideration of the mutual promises, covenants and agreements contained herein, and in consideration of the employment of Employee by the Company, the parties hereto agree as follows:

1. **At-Will Employment; Term**.

(a) The Company and Employee acknowledge that Employee's employment is and shall continue to be at-will, as defined under applicable law, and that Employee's employment with the Company may (subject to the notice requirement in the following sentence for Other Involuntary Terminations (as defined in Section 3(g)) during the Term) be terminated by either party at any time for any or no reason. During the Term, the Company shall provide thirty (30) days' prior written notice to Employee prior to effecting an Other Involuntary Termination; provided, however, that during such notice period, the Board of Directors, in its sole discretion, may relieve Employee of all duties, responsibilities and authority with respect to the Company and may restrict Employee's access to Company property; provided, further, that the Board of Directors' exercise of such discretion shall not constitute Good Reason (as defined in Section 3(g)). If Employee's employment terminates for any reason, Employee shall not be entitled to any payments, benefits, damages, award or compensation other than as provided in this Agreement or otherwise agreed to by the Company. Employee's right to receive the payments and benefits set forth in Sections 2(a) and 2(b) of this Agreement are contingent upon the Employee's continued compliance with the Restrictive Covenants (as defined in Section 4) and execution of a release of claims against the Company, in substantially the form attached hereto as *Appendix A,* within forty-five (45) days following Employee's termination of employment and the expiration of any statutory revocation period and may not be modified in any way except by a written agreement executed by the Employee and an officer of the Company upon direction from the Board of Directors.

(b) The term of this Agreement shall commence on the Effective Date and shall end on the date on which Employee's employment with the Company terminates for any reason (the period of Employee's employment under this Agreement is referred to as the "Term"); provided, however, that Sections 2 through and including 10 of this Agreement shall survive the termination of the Term and Employee's employment with the Company, in each case, in accordance with the terms of such sections.

2. **Termination Benefits**.

(a) **Benefits Upon a Change in Control Involuntary Termination**.

(i) Treatment of Equity Awards. In the event that Employee is subject to a Change in Control Involuntary Termination, 100% of Employee's unvested Company option shares, restricted stock, restricted stock units, other equity-based awards and other long-term incentive awards, including cash settled components, shall become immediately vested on such termination date and the risk of forfeiture of 100% of Employee's restricted stock shall lapse on such termination date. Each such award shall be exercisable in accordance with the provisions of the award agreement and plan pursuant to which such equity award was granted, including, in the case of stock options, the plan or award agreement provisions regarding any post-termination period of exercisability. Notwithstanding the provisions of such award agreement and plan, any restricted stock units, performance stock units, long-term incentive cash awards and other similar awards shall be settled within ten (10) days after the date of such termination of employment and any payment in respect of open periods of performance-based awards shall be calculated as set forth in the applicable award agreement, or, if not specified in the award agreement, based on the target level of performance. In the event of a Change in Control Involuntary Termination that occurs prior to the date of the applicable Change in Control, then if any of Employee's unvested Company option shares, restricted stock, restricted stock units, other equity-based awards and other long-term incentive awards, including cash settled components, are forfeited as the result of such termination of employment, Employee shall be entitled to receive a lump sum cash payment equal to the value of all such awards that were forfeited as the result of such termination of employment (as determined in good faith by the Board based on the per share value of the Company implied by such Change in Control and for any option or similar award, based on the spread of such option or similar award (not a Black Scholes or similar value), with the value of performance-based awards that had an open performance period as of such termination of employment being calculated as set forth in the applicable award agreement, or, if not specified in the award agreement, based on the target level of performance) (the "Unvested Equity Value Payment").

(ii) Severance. In the event that Employee is subject to a Change in Control Involuntary Termination, Employee shall be entitled to receive severance benefits as follows: (A) a lump sum cash payment in an amount equal to **[one and a half (1.5) times *(if Employee is not the CEO)*] [three (3) times *(if Employee is the CEO)*]** the higher of (1) the base salary which Employee was receiving immediately prior to the Change in Control or (2) the base salary which Employee was receiving immediately prior to the Change in Control Involuntary Termination (the "Salary Payment"); (B) a lump sum cash payment in an amount equal to **[one and a half (1.5) times *(if Employee is not the CEO)*] [three (3) times *(if Employee is the CEO)*]** Employee's Target Annual Bonus (the "Bonus Payment"); (C) payment by the Company of the full cost of the health insurance benefits provided to Employee and Employee's spouse and dependents, as applicable, immediately prior to the Change in Control pursuant to the terms of the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended ("COBRA") or other applicable law through the earlier of the end of the **[eighteen (18) month *(if Employee is not the CEO)*] [thirty-six (36) month *(if Employee is the CEO)*]** period following the Change in Control Involuntary Termination date or the date upon which Employee is no longer eligible for such COBRA or other benefits under applicable law; and (D) payment of any earned but unpaid annual bonus for the year immediately preceding the year of termination, to be paid at the time the Company pays bonuses with respect to such year to its executives generally (and in all events between January 1st and March 15th of the calendar year immediately following the calendar year in which such termination of employment occurs). The benefits to be provided under clauses (a)(i) and (a)(ii)(A) and (B) of this section shall be paid on the sixtieth (60th) day following Employee's termination of employment; except that if a Change in Control occurs after the applicable Change in Control Involuntary Termination, then the Unvested Equity Value Payment, Salary Payment and Bonus Payment shall be payable in a lump sum on the date of such Change in Control. The benefits to be provided under clause (a)(ii)(C) of this section shall be paid on a monthly basis commencing on the sixtieth (60th) day following Employee's termination of employment, or, if earlier, the next payroll cycle following Employee's execution of a release of claims against the Company and the expiration of any statutory waiting period (with a catch-up payment covering any payments that would have been made prior to such first payment had such payments commenced on the date of Employee's termination of employment). In addition, all payments and benefits under Section 2(a)(i) and (ii) (other than the Accrued Benefits) are subject to Employee's continued compliance with the Restrictive Covenants and release of claims against the Company as set forth in Section 1(a). Notwithstanding the foregoing, in the event the Board of Directors concludes in its reasonable judgment that the provision of subsidized COBRA benefits to Employee is likely to cause the Company to become subject to excise tax as a result of the Patient Protection and Affordable Care Act, as amended by the Health Care

and Education Reconciliation Act of 2010 (the "Healthcare Reform Act"), the Company shall pay Employee a monthly amount in cash equal to the amount of the COBRA subsidy during the period the Company is obligated to provide subsidized COBRA benefits to Employee. In addition, Employee shall receive payment(s) for all salary, bonuses and unpaid vacation accrued as of the date of Employee's termination of employment (the "Accrued Benefits") and up to three (3) consecutive months of outplacement services not to exceed $5,000 per month (with a provider and in a program selected by the Employee, provided Employee commences such services within ninety (90) days of Employee's Change in Control Involuntary Termination date).

(b) **Benefits Upon an Other Involuntary Termination**.

[Item (i) - if Employee is CEO only]

(i) Treatment of LTI Awards. In the event that Employee is subject to an Other Involuntary Termination, Employee shall be credited with an additional twelve (12) months of employment for purposes of determining the vesting of the Employee's option shares, restricted stock, restricted stock units, other equity-based awards and other long-term incentive awards, including cashsettled components, which shall result in the immediate vesting as of the date of such termination of employment of those otherwise unvested Company option shares, restricted stock, restricted stock units, other equity-based awards and other long-term incentive awards, including cashsettled components, that would have become vested if the Employee had completed an additional twelve (12) months of employment following the date of such termination of employment; provided that each such equity award shall be exercisable in accordance with the provisions of the award agreement and plan pursuant to which such equity award was granted, including, in the case of stock options, the plan or award agreement provisions regarding any post-termination period of exercisability; provided, further, that notwithstanding the provisions of such award agreement and plan, any restricted stock units, performance stock units, long-term incentive cash awards and other similar awards shall be settled within ten (10) days after the date of such termination of employment and any payment in respect of open periods of performance-based awards shall be calculated as set forth in such award agreement, or, if not specified in the award agreement, based on target performance.

(ii) Severance. In the event that Employee is subject to an Other Involuntary Termination, Employee shall be entitled to receive severance benefits as follows: (A) severance payments for **twelve (12) months *(if Employee is not the CEO)*] [eighteen (18) months *(if Employee is the CEO)*]** after the effective date of the termination (the "Non-CIC Severance Period") equal to the base salary which Employee was receiving immediately prior to the Other Involuntary Termination, which payments shall be paid during the Non-CIC Severance Period in accordance with the Company's standard payroll practices; (B) payment by the Company of the full cost of the health insurance benefits provided to Employee and Employee's spouse and dependents, as applicable, immediately prior to the Other Involuntary Termination pursuant to the terms of COBRA or other applicable law through the earlier of the end of the Non-CIC Severance Period or the date upon which Employee is no longer eligible for such COBRA or other benefits under applicable law; and (C) payment of any earned but unpaid annual bonus for the year immediately preceding the year of termination, to be paid at the time the Company pays bonuses with respect to such year to its executives generally (and in all events between January 1st and March 15th of the calendar year immediately following the calendar year in which such termination of employment occurs). The benefits to be provided under Section 2(b)**[(i)][(ii)]**(A) and (B) shall commence to be paid on the sixtieth (60th) day following Employee's termination of employment (subject to Employee's continued compliance with the Restrictive Covenants and release of claims against the Company as set forth in Section 1(a)), or, if earlier, the next payroll cycle following Employee's execution of a release of claims against the Company and the expiration of any statutory waiting period, with a catch-up payment covering any payments that would have been made prior to such first payment had such payments commenced on the date of Employee's termination of employment. Notwithstanding the foregoing, in the event the Board of Directors concludes in its reasonable judgment that the provision of subsidized COBRA benefits to Employee could cause the Company to become subject to excise tax as a result of the Patient Protection and Affordable Care Act, as amended by the Healthcare Reform Act, the Company shall pay Employee a monthly amount in cash equal to the amount of the COBRA subsidy during the period the Company is obligated to provide subsidized COBRA benefits to Employee. In addition, Employee shall receive payment of the Accrued Benefits and up to three (3) consecutive months of outplacement services not to exceed $5,000 per month (with a provider and in a program selected by the Company, provided Employee commences such services within ninety (90) days of Employee's Other Involuntary Termination date).

(c) **Termination for Cause**. If Employee's employment is terminated for Cause at any time, then Employee shall not be entitled to receive payment of any severance benefits or equity award acceleration. Employee shall receive payment(s) for all Accrued Benefits

(d) **Voluntary Resignation**. If Employee voluntarily resigns from the Company under circumstances which do not constitute a Change in Control Involuntary Termination or an Other Involuntary Termination, then

Employee shall not be entitled to receive payment of any severance benefits or equity award acceleration. Employee shall receive payment(s) for all Accrued Benefits.

(e) **Death or Disability.** If Employee's employment terminates on account of Employee's death or Disability at any time, whether or not in connection with a Change in Control, then Employee shall not be entitled to receive payment of any severance benefits or equity award acceleration. Employee shall receive payment(s) for (x) all Accrued Benefits and (y) any earned but unpaid annual bonus for the year immediately preceding the year of termination, to be paid at the time the Company pays bonuses with respect to such year to its executives generally (and in all events between January 1st and March 15th of the calendar year immediately following the calendar year in which such termination of employment occurs).

3. **Definition of Terms**. The following terms referred to in this Agreement shall have the following meanings:

(a) **Cause**. "Cause" shall mean (i) gross negligence or willful misconduct in the performance of Employee's duties to any member of the Company Group where such gross negligence or willful misconduct has resulted or is likely to result in substantial and material damage to any member of the Company Group, (ii) repeated and documented unexplained or unjustified absence from the performance of services for any member of the Company Group, (iii) a material and willful violation of any federal or state law resulting or likely to result in substantial and material damage to any member of the Company Group; (iv) commission of any act of fraud with respect to any member of the Company Group resulting or likely to result in substantial and material damage to any member of the Company Group, or (v) conviction of a felony or a crime involving moral turpitude causing material harm to the standing and reputation of any member of the Company Group, in each case as determined in good faith by the Board of Directors, subject to the Company's compliance with the "Cause Cure Process". For purposes of this Agreement, "Company Group" shall mean the Company and each of its subsidiaries.

(b) **Cause Cure Process**. "Cause Cure Process" shall mean that (i) Company reasonably determines that Employee has engaged in behavior constituting "Cause"; (ii) Company notifies the Employee in writing of the first occurrence of the behavior constituting "Cause" within ninety (90) days of the first occurrence of such condition; (iii) the Employee shall have thirty (30) business days following such notice (the "Cause Cure Period"), to substantially remedy the condition, if curable; (iv) notwithstanding such efforts, the condition constituting "Cause" continues to exist; and (v) Company terminates Employee's employment due to "Cause" within ninety (90) days after the end of the Cause Cure Period. For avoidance of doubt, if the behavior constituting "Cause" is not substantially curable, then the Cause Cure Period shall end on the date the Employee receives the Company's written notice set forth in clause (ii) above. If the Employee substantially cures the condition constituting "Cause" during the Cause Cure Period, such behavior constituting "Cause" shall be deemed not to have occurred.

(c) **Change in Control**. "Change in Control" means after the Effective Date, any of the following events: (A) a "person" (as such term in used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended (the "1934 Act")), other than a trustee or other fiduciary holding securities under an employee benefit plan of the Company or a corporation owned, directly or indirectly, by the stockholders of the Company in substantially the same proportions as their ownership of stock of the Company, is or becomes the "beneficial owner" (as defined in Rule 13D-3 under the 1934 Act), directly or indirectly, of securities of the Company representing more than fifty percent (50%) of the combined voting power of the Company's then outstanding securities; (B) the Company merges or consolidates with any other corporation, other than in a merger or consolidation that would result in the voting securities of the Company outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity) at least fifty percent (50%) of the combined voting power of the voting securities of the Company or such surviving entity outstanding immediately after such merger or consolidation; or (C) the complete liquidation of the Company or the sale or other disposition of all or substantially all of the Company's assets (other than a transfer of the Company's assets to a majority-owned subsidiary of the Company or any other entity the majority of whose voting power is held by the shareholders of the Company in approximately the same proportion as before such transaction);; provided that in no event shall any such event constitute a Change in Control unless such event is also a "change in control event" as defined in Section 409A of the Internal Revenue Code of 1986, as amended (the "Code"). For the avoidance of doubt, the Closing (as defined in that certain Agreement and Plan of Merger, dated as of March 16, 2020, by and among the Company and other signatories thereto) shall not be considered a Change in Control for purposes of this Agreement.

(d) **Change in Control Involuntary Termination**. "Change in Control Involuntary Termination" shall mean: (i) any termination by the Company other than for Cause, death or Disability, or (ii) Employee's voluntary termination for Good Reason (as defined in this Section 3(d)), in each case within the period beginning (A) ninety (90) days prior to the effective date of a Change in Control and ending (B) twenty-four (24) months following the effective date of a Change in Control. For purposes of this Section 3(d), "Good Reason" shall mean that Employee has complied with the "Good Reason Process" following the occurrence of any of the following

events: (i) a material diminution in Employee's responsibilities, authority or duties; (ii) a material diminution in the authority, duties, or responsibilities of the supervisor to whom Employee is required to report; (iii) a material diminution (which shall be a decrease in excess of five percent (5%)) in Employee's base salary or target annual bonus amount, in each case other than in connection with a general decrease in base salaries or target annual bonuses, as applicable, for officers of the successor corporation; provided, however, that any decrease in base salary and/or target annual bonus greater than five percent (5%) shall provide grounds for "Good Reason" regardless of whether a general decrease in base salaries and/or target bonuses occurs for officers of the successor corporation; (iv) a change in the geographic location at which Employee provides services to the Company that increases Employee's one way commute by twenty-five (25) miles or more; or (v) failure of the successor corporation to assume the obligations under this Agreement.

(e) **Disability**. "Disability" shall mean that in the opinion of a qualified physician, mutually acceptable to the Company and the Employee, by reason of any medically determinable physical or mental impairment that can be expected to result in death or can be expected to last for a continuous period of not less than twelve (12) months, the Employee (x) is unable to engage in any substantial gainful activity or (y) has been receiving income replacement benefits for a period of not less than three (3) months under an accident and health plan covering employees of the Company.

(f) **Good Reason Process**. "Good Reason Process" shall mean that (i) Employee reasonably determines in good faith that a "Good Reason" condition has occurred, as may be applicable; (ii) Employee notifies the Company in writing of the first occurrence of the Good Reason condition within ninety (90) days of the first occurrence of such condition; (iii) Employee cooperates in good faith with the Company's efforts, for a period of thirty (30) business days following such notice (the "Good Reason Cure Period"), to remedy the condition; (iv) notwithstanding such efforts, the Good Reason condition continues to exist; and (v) Employee terminates his employment within ninety (90) days after the end of the Good Reason Cure Period. If the Company substantially cures the Good Reason condition during the Good Reason Cure Period, Good Reason shall be deemed not to have occurred.

(g) **Other Involuntary Termination**. "Other Involuntary Termination" shall mean (i) any termination by the Company other than for Cause, death or Disability, or (ii) Employee's voluntary termination for Good Reason (as defined in this Section 3(g)), in each case during the Term and excluding a Change in Control Involuntary Termination. For purposes of this Section 3(g), "Good Reason" shall mean that Employee has complied with the "Good Reason Process" following the occurrence of any of the following events: (i) a material diminution of Employee's authorities, duties or responsibilities, (ii) a five percent (5%) or greater decrease in Employee's annual base salary or annual bonus target other than in connection with a general decrease in annual base salary or annual bonus target (as applicable) for officers of the Company and the successor corporation, if applicable; or (iii) a change in the geographic location at which Employee provides services to the Company that increases the Employee's one-way commute by twenty-five (25) miles or more.

(h) **Target Annual Bonus**. "Target Annual Bonus" shall mean Employee's target annual bonus that may be earned for performance during the Company's fiscal year in which a termination occurs; provided, however, that sign-on or other special bonuses shall not be taken into account. If Employee's Target Annual Bonus has not been set or determined as of the termination date, the "Target Annual Bonus" shall mean Employee's target annual bonus for the Company's most recently completed fiscal year.

4. **Restrictive Covenants.** The restrictive covenants and other rights and obligations of Employee and the Company (collectively, the "Restrictive Covenants") set forth in that certain Employee Confidential Information and Inventions Agreement between Employee and the Company (the "Employee Restrictive Agreement") are hereby incorporated by reference into this Section 4, mutandis mutatis. Employee shall comply with each of the Restrictive Covenants.

5. **Limitation and Conditions on Payments**.

In the event that the severance and other benefits provided to Employee under this Agreement and any other agreement (i) constitute "parachute payments" within the meaning of Section 280G of the Code and (ii) but for this Section, would be subject to the excise tax imposed by Section 4999 of the Code, then Employee's severance benefits under Sections 2(a) and 2(b) shall be payable either:

(a) in full; or

(b) as to such lesser amount which would result in no portion of such severance benefits being subject to excise tax under Section 4999 of the Code;

whichever of the foregoing amounts, taking into account the applicable federal, state and local income taxes and the excise tax imposed by Section 4999 of the Code, results in the receipt by Employee on an after-tax basis, of the greatest amount of severance benefits under Section 2(a) or Section 2(b) (as applicable), notwithstanding that all or some portion of such severance benefits may be taxable under Section 4999 of the Code. The reduction of payments and benefits hereunder, if applicable, shall be made by reducing, first, cash severance pay that is exempt from Section 409A of the Code (beginning with such payment that would be made last in time and continuing, to the extent necessary, through to such payment that would be made first in time); second, any other cash severance pay (reduced in the same order as the previous item); third, any other payments or benefits to be paid in cash hereunder (reduced in the same order as the previous item); fourth, reducing any benefit to be provided in kind hereunder (reduced in the same order as the previous item), except for equity-based awards; fifth, any equity-based awards valued at full value under Section 280G of the Code, to be reduced in the order of highest value to lowest value under Section 280G of the Code; and lastly, sixth, any equity-based awards valued at a discounted value under Section 280G of the Code, to be reduced in the order of highest value to lowest value under Section 280G of the Code. Unless the Company and Employee otherwise agree in writing, any determination required under this Section 5 shall be made in writing by a qualified independent certified public accounting or law firm selected by the Company and approved by the Employee, which such approval shall not be unreasonably withheld (the "Independent Tax Professional"). The Employee shall not be deemed to have unreasonably withheld approval if the Employee does not consent to an Independent Tax Professional selected by the Company that has provided any services to the Company or any successor corporation within the preceding five (5) year period. The Independent Tax Professional shall provide its determinations and any supporting calculations both to the Company and the Employee in writing setting forth in reasonable detail the basis of the Independent Tax Professional's determinations, which shall be subject to approval by the Employee, which such approval shall not be unreasonably withheld. Such determination shall be conclusive and binding upon Employee and the Company for all purposes. For purposes of making the calculations required by this Section 5, the Independent Tax Professional may make reasonable assumptions and approximations concerning applicable taxes and may rely on reasonable, good faith interpretations concerning the application of Sections 280G and 4999 of the Code. The Company and Employee shall furnish to the Independent Tax Professional such information and documents as the Independent Tax Professional may reasonably request in order to make a determination under this Section. The Company shall bear all costs the Independent Tax Professional may reasonably incur in connection with any calculations contemplated by this Section 5. If, after the payment of severance benefits has been made to the Employee, it is established that the payments made to, or provided for the benefit of Employee, exceed the limitations provided in Section 5(b) (an "Excess Payment") or are less than such limitations (an "Underpayment"), as the case may be, then the following shall apply: (x) if it is determined that an Excess Payment has been made, the Employee shall repay the Excess Payment within 20 days following the determination of such Excess Payment; and (y) if it is determined that an Underpayment has occurred, the Company shall pay an amount equal to the Underpayment to the Employee on the later of (A) 20 days after such determination or resolution and (B) the time period such payment would otherwise have been paid or provided to the Employee absent the application of Section 5(b) (and in all events, within the time period permitted by Section 409A of the Code).

6. **Section 409A**. If Employee's termination of employment hereunder does not constitute a "separation from service" within the meaning of Section 409A of the Code, then any amounts payable hereunder on account of a termination of Employee's employment and which are subject to Section 409A of the Code shall not be paid until Employee has experienced a "separation from service" within the meaning of Section 409A of the Code. If, and only if, Employee is a "specified employee" (as defined in Section 409A of the Code) and a payment or benefit provided for in this Agreement would be subject to additional tax under Section 409A of the Code if such payment or benefit is paid within six (6) months after Employee's separation from service, then such payment or benefit shall not be paid (or commence) during the six (6)-month period immediately following Employee's separation from service except as provided in the immediately following sentence. In such an event, any payment or benefits that otherwise would have been made or provided during such six(6)-month period and that would have incurred such additional tax under Section 409A of the Code shall instead be paid to Employee in a lump-sum payment on the first day following the termination of such six (6)-month period or, if earlier, within ten (10) days following the date of Employee's death (but not earlier than such payment would have been made absent such death). For these purposes, each severance payment or benefit is designated as a separate payment or benefit for purposes of Treas. Reg. § 1.409A-2(b) and will not collectively be treated as a single payment or benefit. This paragraph is intended to comply with the requirements of Section 409A of the Code so that none of the severance payments and benefits to be provided hereunder will be subject to the additional tax imposed under Section 409A of the Code and any ambiguities herein will be interpreted to so comply. Employee and the Company agree to work together in good faith to consider amendments to this Agreement and to take such reasonable actions which are necessary, appropriate or desirable to avoid imposition of any additional tax or income recognition prior to actual payment to Employee under Section 409A of the Code. Notwithstanding anything to the contrary contained herein, to the extent that any amendment to this Agreement with respect to the payment of any severance payments or benefits would constitute under Code Section 409A a delay in a payment or a change in the form of payment, then such amendment must be done in a manner that complies with Code Section 409A(a)(4)(C).

7. **Conflicts**. Employee represents that Employee's performance of all the terms of this Agreement will not breach any other agreement to which Employee is a party. Employee has not, and will not during the term of this Agreement, enter into any oral or written agreement in conflict with any of the provisions of this Agreement. Employee further represents that Employee is entering into or has entered into an employment relationship with the Company of Employee's own free will.

8. **Successors**. Any successor to the Company (whether direct or indirect and whether by purchase, lease, merger, consolidation, liquidation or otherwise) to all or substantially all of the Company's business and/or assets shall assume the obligations under this Agreement and agree expressly to perform the obligations under this Agreement in the same manner and to the same extent as the Company would be required to perform such obligations in the absence of a succession. The terms of this Agreement and all of Employee's rights hereunder shall inure to the benefit of, and be enforceable by, Employee's personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees and legatees.

9. **Notice**. Notices and all other communications contemplated by this Agreement shall be in writing and shall be deemed to have been duly given when personally delivered or when mailed by U.S. registered or certified mail, return receipt requested and postage prepaid. Mailed notices to Employee shall be addressed to Employee at the home address which Employee most recently communicated to the Company in writing. In the case of the Company, mailed notices shall be addressed to its corporate headquarters, and all notices shall be directed to the attention of the Company's Legal Department.

10. **Miscellaneous Provisions**.

(a) **No Duty to Mitigate**. Employee shall not be required to mitigate the amount of any payment contemplated by this Agreement (whether by seeking new employment or in any other manner), nor shall any such payment be reduced by any earnings that Employee may receive from any other source.

(b) **Waiver**. No provision of this Agreement shall be modified, waived or discharged unless the modification, waiver or discharge is agreed to in writing and signed by Employee and by an authorized officer of the Company (other than Employee). No waiver by either party of any breach of, or of compliance with, any condition or provision of this Agreement by the other party shall be considered a waiver of any other condition or provision or of the same condition or provision at another time.

(c) **Whole Agreement**. No agreements, representations or understandings (whether oral or written and whether express or implied) which are not expressly set forth in this Agreement have been made or entered into by either party with respect to the subject matter hereof. This Agreement (along with the Employee Restrictive Agreement) supersedes any agreement of the same title and concerning similar subject matter dated prior to the date hereof, and by execution of this Agreement both parties agree that any such predecessor agreement shall be deemed null and void. All prior management continuity agreements between the Employee and any member of the Company Group are hereby terminated (with no obligation or liability thereunder for either party thereto) effective upon the execution of this Agreement by both parties.

(d) **Choice of Law**. The validity, interpretation, construction and performance of this Agreement shall be governed by the laws of the State of Delaware without reference to conflict of laws provisions.

(e) **Severability**. If any term or provision of this Agreement or the application thereof to any circumstance shall, in any jurisdiction and to any extent, be invalid or unenforceable, such term or provision shall be ineffective as to such jurisdiction to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining terms and provisions of this Agreement or the application of such terms and provisions to circumstances other than those as to which it is held invalid or unenforceable, and a suitable and equitable term or provision shall be substituted therefor to carry out, insofar as may be valid and enforceable, the intent and purpose of the invalid or unenforceable term or provision.

(f) **Arbitration**. All claims, demands, causes of action, disputes, controversies or other matters in question ("Claims") arising out of this Agreement or the Employee's service (or termination from service) with the Company, whether arising in contract, tort or otherwise and whether provided by statute, equity or common law, that the Company may have against the Employee or that the Employee may have against the Company, or its parents or subsidiaries, or against each of the foregoing entities' respective officers, directors, employees or agents in their capacity as such or otherwise, shall be settled in accordance with the procedures described in Section 10(f)(i) and (ii). Claims covered by this Section 10(f) include, without limitation, claims by the Employee for breach of this Agreement, wrongful termination, discrimination (based on age, race, sex, disability, national origin, sexual orientation, or any other factor), harassment and retaliation.

(i) Agreement to Negotiate. First, the parties shall attempt in good faith to resolve any Claims promptly by negotiations between the Employee and executives or directors of the Company or its affiliates (or, following the occurrence of a Change in Control, any person or committee selected by the Compensation Committee of the Board of Directors prior to the Change in Control (referred to as the "Independent Decision Maker"), who shall act on behalf of the Company or its affiliates), who shall have authority to settle the Claims. Either party may give the other disputing party written notice of any Claim not resolved in the normal course of business. Within five (5) days after the effective date of that notice, the Employee and such executives or directors of the Company, or, following the occurrence of a Change in Control, the Independent Decision Maker, shall agree upon a mutually acceptable time and place to meet and shall meet at that time and place, and thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the Claim. The first of those meetings shall take place within thirty (30) days of the date of the disputing party's notice. If the Claim has not been resolved within sixty (60) days of the date of the disputing party's notice, or if the parties fail to agree on a time and place for an initial meeting within five (5) days of that notice, either party may elect to undertake arbitration in accordance with Section 10(f)(ii).

(ii) Agreement to Arbitrate. If a Claim is not resolved by negotiation pursuant to Section 10(f)(i), such Claim must be resolved through arbitration regardless of whether the Claim involves claims that the Agreement is unlawful, unenforceable, void, or voidable or involves claims under statutory, civil or common law. Any arbitration shall be conducted in accordance with the then-current International Arbitration Rules of the American Arbitration Association ("AAA"). If a party refuses to honor its obligations under this Section 10(f)(ii), the other party may compel arbitration in any federal or state court of competent jurisdiction. The arbitrator shall apply the substantive law of Delaware (excluding choice-of-law principles that might call for the application of some other jurisdiction's law) or federal law as applied by the United States Court of Appeals for the Third Circuit, or both as applicable to the Claims asserted. The arbitration shall be conducted by a single arbitrator selected by the parties according to the rules of AAA. In the event that the parties fail to agree on the selection of the arbitrator within 30 days after either party's request for arbitration, the arbitrator will be chosen by AAA. The arbitration proceeding shall commence on a mutually agreeable date within 90 days after the request for arbitration, unless otherwise agreed by the parties. The arbitrator shall have exclusive authority to resolve any dispute relating to the interpretation, applicability or enforceability or formation of this Agreement (including this Section 10(f)), including any claim that all or part of the Agreement is void or voidable and any Claim that an issue is not subject to arbitration. The results of arbitration will be binding and conclusive on the parties hereto. Any arbitrator's award or finding or any judgment or verdict thereon will be final and unappealable. The seat of arbitration shall be in the State of Delaware, and unless agreed otherwise by the parties, all hearings shall take place at the seat. Any and all of the arbitrator's orders, decisions and awards may be enforceable in, and judgment upon any award rendered by the arbitrator may be confirmed and entered by any federal or state court having jurisdiction. All evidentiary privileges under applicable state and federal law, including attorney-client, work product and party communication privileges, shall be preserved and protected. The decision of the arbitrator will be binding on all parties. Arbitrations will be conducted in such a manner that the final decision of the arbitrator will be made and provided to the Employee and the Company no later than 120 days after a matter is submitted to arbitration. All proceedings conducted pursuant to this agreement to arbitrate, including any order, decision or award of the arbitrators, shall be kept confidential by all parties. Each party shall pay its own attorneys' fees and disbursements and other costs of arbitration and the parties to the arbitration shall split all of the arbitrator's fees equally; provided, however, that following the occurrence of a Change in Control, the Company will bear the forum fees required by AAA and any other administrative fees associated with the arbitration and shall advance to the Employee the fees and expenses (including legal fees) in connection with any arbitration proceeding provided that Employee shall be obligated to repay all such amounts in the event the Employee does not prevail in such proceeding. EMPLOYEE ACKNOWLEDGES THAT, BY SIGNING THIS AGREEMENT, EMPLOYEE IS WAIVING ANY RIGHT THAT EMPLOYEE MAY HAVE TO A JURY TRIAL OR A COURT TRIAL OF ANY SERVICE RELATED CLAIM ALLEGED BY EMPLOYEE.

(g) **Legal Fees and Expenses**. The parties shall each bear their own expenses, legal fees and other fees incurred in connection with entering into this Agreement.

(h) **No Assignment of Benefits**. The rights of any person to payments or benefits under this Agreement shall not be made subject to option or assignment, either by voluntary or involuntary assignment or by operation of law, including (without limitation) bankruptcy, garnishment, attachment or other creditor's process, and any action in violation of this Section 10(h) shall be void.

(i) **Employment Taxes**. All payments made pursuant to this Agreement will be subject to withholding of applicable income and employment taxes.

(j) **Assignment by Company**. The Company may assign its rights under this Agreement to an affiliate, and an affiliate may assign its rights under this Agreement to another affiliate of the Company or to the

Company. In the case of any such assignment, the term "Company" when used in a section of this Agreement shall mean the company that actually employs the Employee. Notwithstanding the foregoing, neither the Company (or any successor thereto) nor the Employee may assign its obligations under this Agreement without the prior written consent of the other party hereto, unless such assignment by the Company is in connection with the assignment of this Agreement to the entity that actually employs the Employee.

(k) **Counterparts**. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together will constitute one and the same instrument.

[SIGNATURE PAGE FOLLOWS]

The parties have executed this Management Continuity Agreement on the date first written above.

ASSERTIO HOLDINGS, INC.

By:
Name:
Title:

EMPLOYEE

[_____]

Address:

APPENDIX A

ASSERTIO HOLDINGS, INC.

WAIVER AND RELEASE AGREEMENT

Assertio Holdings, Inc. has offered to pay me certain benefits (the "Benefits") pursuant to Section 2 of my Management Continuity Agreement with Assertio Holdings, Inc., effective as of , 20__ (the "Management Continuity Agreement"), which were offered to me in exchange for my agreement, among other things, to waive all of my claims against and release Assertio Holdings, Inc. and its predecessors, successors and assigns (collectively referred to as the "Company"), all of the affiliates (including parents and subsidiaries) of the Company (collectively referred to as the "Affiliates") and the Company's and Affiliates' directors and officers, employees and agents, insurers, employee benefit plans and the fiduciaries and agents of said plans (collectively, with the Company and Affiliates, referred to as the "Corporate Group") from any and all claims, demands, actions, liabilities and damages; provided, however, that this Waiver and Release shall not apply to (1) any existing right I have to indemnification, contribution and a defense, (2) any directors and officers and general liability insurance coverage, (3) any rights I may have as a shareholder of the Company, (4) any rights I have to the Benefits, (5) rights to vested benefits under the Company's benefit plans and (6) any rights which cannot be waived or released as a matter of law.

I understand that signing this Waiver and Release is an important legal act. The Company hereby advises me to consult an attorney before signing this Waiver and Release and has given me at least [twenty-one (21)] [forty-five (45)] calendar days from the day I received a copy of this Waiver and Release to sign it. I understand my termination is an ["Other Involuntary Termination"]["Change in Control Involuntary Termination"] pursuant to the Management Continuity Agreement.

In exchange for the payment to me of Benefits, I, on behalf of myself and my heirs, executors, personal representatives, administrators, and assigns: (1) knowingly and voluntarily waive all claims and release the Corporate Group from any and all claims, demands, actions, liabilities, and damages, whether known or unknown, arising at any time prior to or on the date that I sign this Waiver and Release, including but not limited to all claims arising out of or relating in any way to my employment with or separation from the Company or the Affiliates (including any claim for a bonus in respect of actual performance for the year of termination in the event that such bonus has not yet been paid), (2) agree not to assert in any local, state and/or federal court any claim released by this Waiver and Release, and (3) waive any rights that I may have under any of the Company's involuntary severance benefit plans (other than the Management Continuity Agreement), except to the extent that my rights are vested under the terms of an employee benefit plan sponsored by the Company or an Affiliate and except with respect to such rights or claims as may arise after the date this Waiver and Release is executed. This Waiver and Release includes, but is not limited to, claims and causes of action under: Title VII of the Civil Rights Act of 1964, as amended ("Title VII"); the Age Discrimination in Employment Act of 1967, as amended, including the Older Workers Benefit Protection Act of 1990 ("ADEA"); the Civil Rights Act of 1866, as amended; the Civil Rights Act of 1991; the Americans with Disabilities Act of 1990 ("ADA"); the Energy Reorganization Act, as amended, 42 U.S.C. §§ 5851; the Workers Adjustment and Retraining Notification Act of 1988; the Sarbanes-Oxley Act of 2002; the Employee Retirement Income Security Act of 1974, as amended; the Family and Medical Leave Act of 1993; the Fair Labor Standards Act; the Occupational Safety and Health Act; the Illinois Human Rights Act; retaliation claims; claims arising under any "whistle blower" statutes (except to the extent prohibited by law); and/or contract, tort, defamation, slander, wrongful termination or any other state or federal regulatory, statutory or common law. Further, I expressly represent that no promise or agreement which is not expressed in the Management Continuity Agreement has been made to me in executing this Waiver and Release, and that I am relying on my own judgment in executing this Waiver and Release, and that I am not relying on any statement or representation of the Company, any of the Affiliates or any other member of the Corporate Group or any of their agents. I agree that this Waiver and Release is valid, fair, adequate and reasonable, is entered into with my full knowledge and consent, was not procured through fraud, duress or mistake and has not had the effect of misleading, misinforming or failing to inform me.

I agree that I am not entitled to any severance or benefits, bonus, commissions, equity, paid time off, vehicle allowance, other wages, or any other payments of any kind. In particular, I agree that I have been paid all compensation, bonuses, commissions, and equity, received all benefits due to me as a result of my employment with or separation from the Company, and am not aware of any facts or circumstances constituting a violation of the Fair Labor Standards Act ("FLSA") or any other federal, state or local constitution, statute, rule, regulation, or common law. I understand that I will not be entitled to receive any amounts under any other plan, program, or agreement with the Company, including, without limitation, incentive bonuses, stock options, equity, profit interest units, and any grant agreements, which bonuses, options, agreements, and unvested awards shall automatically terminate, cancel, forfeit, and expire on the [Separation Date], and all other benefits and perquisites that I am currently receiving cease on my [Separation Date].

The Company takes its obligations to comply with applicable laws and regulations very seriously and, therefore, needs to be made aware of any violations of applicable rules as well as applicable laws and regulations so that the Company may continuously improve their compliance efforts. Therefore, I certify that during my employment with the Company, I had an opportunity to read the Company's policies, employment manuals, and code of conduct, and as the former [POSITION], I was responsible for enforcing and adhering to these policies and programs. I certify that I have not become aware of any violations of law or of such policies by the Company or any of its employees, including, but not limited to, law and policies concerning: compliance with requirements of Medicare, Medicaid, and other federal health care programs; discrimination, harassment and equal employment opportunity; workplace safety; and gifts and gratuities.

In further exchange for the payment to me of Benefits, I agree not to make any disparaging or derogatory statements concerning the Company. The Company hereby agrees to instruct its officers and directors not to make any disparaging statements concerning you. These non-disparagement obligations shall not in any way affect my or the Company's obligation or rights in connection with any legal proceeding. I further acknowledge and agree that I am bound by and will comply with the Employee Confidential Information and Inventions Agreement and any similar agreements that I have entered into with the Company and that I will, within seven (7) calendar days of the date of this Waiver and Release, return all Company property to the Company.

Notwithstanding the foregoing, nothing contained in this Waiver and Release is intended to prohibit or restrict me in any way from (1) bringing a lawsuit against the Company to enforce the Company's obligations under the Management Continuity Agreement; (2) making any disclosure of information permitted or required by law; (3) providing information to, or testifying or otherwise assisting in any investigation or proceeding brought by, any federal regulatory or law enforcement agency or legislative body, any self-regulatory organization, or the Company's legal, compliance or human resources officers; (4) testifying or participating in or otherwise assisting in a proceeding relating to an alleged violation of any federal, state or municipal law relating to fraud or any rule or regulation of the Securities and Exchange Commission or any self-regulatory organization; or (5) filing any claims that are not permitted to be waived or released under applicable law (although my ability to recover damages or other relief is still waived and released to the extent permitted by law). Nothing contained in this Waiver and Release is intended to waive any rights I may have related to unemployment compensation and workers' compensation and indemnification claims.

I acknowledge that I may discover facts different from or in addition to those which I now know or believe to be true and that this Waiver and Release shall be and remain effective in all respects notwithstanding such different or additional facts or the discovery thereof. I hereby expressly waive any and all rights and benefits conferred upon me by the provisions of Section 1542 of the Civil Code of the State of California, and/or any analogous law of any other state.

Section 1542 states:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Should any of the provisions set forth in this Waiver and Release be determined to be invalid by a court, agency or other tribunal of competent jurisdiction, it is agreed that such determination shall not affect the enforceability of other provisions of this Waiver and Release. I acknowledge that this Waiver and Release and the Management Continuity Agreement set forth the entire understanding and agreement between me and the Company or any other member of the Corporate Group concerning the subject matter of this Waiver and Release and supersede any prior or contemporaneous oral and/or written agreements or representations, if any, between me and the Company or any other member of the Corporate Group on the same subject matter. **I understand that** for a period of seven (7) calendar days following the date that I sign this Waiver and Release, I may revoke my acceptance of the offer, provided that my written statement of revocation is received on or before that seventh day by the Human Resources, Assertio Holdings, Inc., 100 S. Saunders Road, Suite 300, Lake Forest, IL 60045, in which case the Waiver and Release will not become effective. In the event I revoke my acceptance of this offer, the Company shall have no obligation to provide me Benefits. I understand that failure to revoke my acceptance of the offer within seven (7) calendar days from the date I sign this Waiver and Release will result in this Waiver and Release being permanent and irrevocable.

I acknowledge that I have read this Waiver and Release, have had an opportunity to ask questions and have it explained to me, have been advised to and have had the opportunity to consult with legal counsel, and that I understand that this Waiver and Release will have the effect of knowingly and voluntarily waiving any action I

might pursue, including breach of contract, personal injury, retaliation, discrimination on the basis of race, age, sex, national origin, or disability and any other claims arising prior to the date of this Waiver and Release. By execution of this document, I do not waive or release or otherwise relinquish any legal rights I may have which are attributable to or arise out of acts, omissions, or events of the Company or any other member of the Corporate Group which occur after the date of the execution of this Waiver and Release.

Employee's Name Company Representative's Signature

Employee's Signature and Title Company's Representative's Name

Employee's Signature Date Company's Execution Date

Exhibit 10.7

ASSERTIO HOLDINGS, INC. AMENDED AND RESTATED ANNUAL BONUS PLAN
(as adopted by the Board of Directors on February 15, 2022)

Assertio Holdings, Inc. ("Assertio" or the "Company) has established an Annual Bonus Plan (the "Bonus Plan") that is designed to align employee performance with annual corporate goals and to reward the achievement of corporate and personal goals during the plan year, which shall coincide with the applicable calendar year.

The Bonus Plan is administered at the absolute discretion of the Company, including its management and Board of Directors, which may, at its discretion, choose not to fund the Bonus Plan or to fund it at any level it chooses; provided, however, that in connection with the occurrence of a Change in Control (as defined in the Company's Amended and Restated 2014 Omnibus Incentive Plan, as amended from time to time), the Board of Directors shall provide for the funding of the Bonus Plan as described below.

Background

Assertio has a history of rewarding its high-performing employees for their efforts and accomplishments. We have formalized the structure of employees' activities to be consistent with Assertio's corporate goals and have defined a specific process for calculating bonuses consistent with the Company's performance and the employees' performance and individual contributions. The Company maintains absolute discretion in administering and deciding whether to fund the Bonus Plan so that it remains flexible in meeting the changing needs of the organization (except in the context of a Change in Control, as described below).

All levels of Assertio employees establish personal goals consistent with Assertio's corporate goals and their department goals. By following defined goals, employees will align their activity with the corporate goals and major department deliverables. Progress toward achievement of personal goals is to be reviewed together by employees and their supervisors, with oversight from department heads, on an ongoing basis throughout the calendar year. The review period for accomplishing personal goals ends on December 31.

Eligibility

All regular Assertio employees who are not field-based sales personnel and work at least 25 hours per week will be eligible to participate in the Bonus Plan. Bonuses for employees regularly scheduled to work less than 40 hours weekly will be prorated based on the number of hours they are regularly scheduled to work. New employees who join the company by the last business day in September of a calendar year will be eligible to participate in the current year's plan on a prorated basis based on the number of full calendar days worked. If an employee's Bonus Target (as defined below) and/or base compensation changes during the plan year due to a promotion or otherwise (excluding base compensation changes due to annual merit increase), the final Bonus Target level will be calculated based on the days the employee worked at each Bonus Target and the base compensation received while at each level. Employees who are on approved leave of absence of more than 6 weeks (or such other period determined by the Company in its discretion) in any calendar year may have their annual bonus award prorated in accordance with applicable law to reflect the time they were on leave.

Field-based sales personnel participate in separate incentive compensation plans and are not subject to this Bonus Plan. Assertio shall have sole discretion to make any eligibility determinations.

Bonus Target

A "Bonus Target" has been identified for different levels of personnel and is based on a percentage of annual base pay, including overtime compensation paid to non-exempt employees during the plan year. The Company seeks to set Bonus Targets based on external compensation benchmarks for similar positions within our industry and on internal equity considerations. The Compensation Committee of the Board of Directors sets the Bonus Targets for the CEO and all other executive officers who report directly to the CEO and are at the Senior Vice President level or above. Except as may be otherwise specified by the Compensation Committee from time to time, management sets Bonus Targets for all other positions and reviews the various Bonus Target levels periodically with the

Compensation Committee. The Bonus Target is comprised of two elements: (i) the employee's achievement of personal goals; and (ii) Assertio's achievement of corporate goals.

Corporate Goals Bonus Calculation

The portion of the Bonus Target attributed to the corporate goals will be subject to a "Corporate Goals Bonus Calculation," which will reflect the Company's overall success and fiscal and other considerations the Board of Directors deems relevant. In a year where all the corporate goals are fully met and the Company's finances are on target, the Corporate Goals Bonus Calculation would usually be 100%. Conversely, in a year where the corporate goals are not fully met, finances are not on target or as other considerations warrant, Corporate Goals Bonus Calculation multiplier of 95%, 90%, 85%, 80% 75%, 50% or 0%, for example, might be applied to the Bonus Target. If the Company has exceeded corporate goals and finances are above target, the Corporate Goals Bonus Calculation may be more than 100%. After the end of each calendar year, the Company's performance will be evaluated by the CEO, CFO, and Head, Investor Relations and Administration, who will recommend a Corporate Goals Bonus Calculation to the Compensation Committee of the Board of Directors. The Compensation Committee then makes a recommendation to the full Board of Directors, which has final authority and discretion on determining the Corporate Multiplier.

Exhibit A reflects the current Bonus Targets for various positions within the Company. Management will update Exhibit A from time to time as appropriate.

Personal Goals

For certain levels of Assertio employees, personal goals consistent with Assertio's corporate goals and applicable department goals are established by management in consultation with employees. Employees may have up to six personal goals. Each personal goal will be assigned a weight reflecting the significance and impact of the goal and the contribution towards corporate and department goals. The minimum weight assigned to each goal is 5%, and the combined weight of the goals must equal 100%. Personal goals will be approved by the next level manager. The Compensation Committee holds discretion on the weighting and distribution of personal goals.

Personal Goals Bonus Calculation

The portion of the Bonus Target attributed to the personal goals will be subject to a "Personal Goals Bonus Calculation," which will reflect each employee's personal success as assessed by management. At the end of each calendar year employees' goals and achievements will be assessed by management. Based on management's assessment of the level of achievement, employees may receive credit at 0%, 50%, 75%, 80%, 85%, 90%, 95% or 100% for achieving any single personal goal. For avoidance of doubt, the maximum credit an employee may receive for achievement of personal goals is 100%. Management determines the final award for the achievement of personal goals.

Performance Assessment and Payment of Bonuses

Following the plan year, personal goals and corporate goals will be assessed and performance reviews will be prepared and delivered to employees. Employees receiving an overall performance rating of "Partially Meets" will receive no more than 50% of their target bonus payout. Employees who receive an overall performance rating of "Fails to Meet" will not be eligible to receive any bonus payout. Bonuses will be calculated and payment of bonuses will be made to eligible employees no later than March 15 (unless otherwise determined by the Company).

The CEO's direct reports will recommend the bonus award for achievement of personal goals for employees in their departments subject to approval or modification by the CEO. Management maintains absolute discretion in determining the scope and impact of accomplishments as well as the final bonus payout for all employees. Employees' final bonus payouts generally are based on the Corporate Goals Bonus Calculation and aggregate personal goal calculation but may be modified as deemed appropriate by management or the Compensation Committee, as applicable.

Employees must be employed by Assertio on the day payment is made to earn and be eligible for a bonus payment, since the payments are intended to incent successful employees to remain with Assertio. For avoidance of doubt, in the event of a Change in Control that occurs following the end of the plan year, an eligible employee shall only be

required to remain employed by Assertio on the closing date of the Change in Control in the event that payment cannot be made on or before such closing date.

Employees who have received formal disciplinary action during or after a plan year may have their bonus payout reduced or eliminated for that plan year, at the sole discretion of management.

Change in Control

In the event of a Change in Control (which shall have the meaning given such term in the Amended and Restated Assertio, Inc. 2014 Omnibus Incentive Plan) that occurs prior to the end of a plan year, each eligible employee who is employed by Assertio on the closing date of the Change in Control will receive a pro-rated bonus payout on such closing date based on (1) such employee's Bonus Target and individual weighting of corporate and personal goals as well as (2) the number of days in the plan year that have elapsed, through and including the closing date. The amount of the payout shall be based on the following principles, which shall control in the event that there is any inconsistency with any other provision of the Bonus Plan: (1) the Personal Goals Bonus Calculation shall be deemed to be achieved at 100% and (2) the Corporate Goals Bonus Calculation shall be deemed to be achieved at100% of target. For avoidance of doubt, in the event that a Change in Control occurs following the completion of the plan year, each eligible employee who is employed by Assertio on the closing date of the Change in Control will receive the full bonus for such completed plan year based on actual performance for both the Personal Goals Bonus Calculation and the Corporate Goals Bonus Calculation as determined in accordance with the Bonus Plan.

Assertio retains the right to alter or eliminate the Bonus Plan and to alter its terms and conditions at any time and for any reason, before, during or after the plan year; provided, however, that Assertio may not alter or eliminate the Bonus Plan in connection with a Change in Control in the event that such alteration or termination would adversely affect a participant's rights hereunder without such participant's written consent. All decisions made by the Company, including management and the Board of Directors, will be in their absolute discretion, and are final and not subject to dispute of appeal.

No participant shall have any vested right to receive any payment until actual delivery of any such payment. This Bonus Plan does not constitute a contract or other agreement concerning employment with Assertio. Employment at Assertio is and remains "at will" and may be terminated at any time by Assertio or by the employee, either with or without cause.

All payments made under this Bonus Plan shall be subject to recovery or clawback by the Company under any clawback policy adopted by the Company, whether before or after the date of any payment made under this Bonus Plan.

Exhibit A to Assertio Holdings, Inc. Bonus Plan Bonus Targets
(Effective as of February 10, 2021)

Title/Level	Bonus Target	Weighting of Corporate Goals	Weighting of Personal Goals[1]
President and Chief Executive Officer	110%	70%	30%
Chief Financial Officer, Chief Accounting Officer & General Counsel	45%	70%	30%
Sr Vice Presidents (SVP)	30%	70%	30%
Vice Presidents (VP)	30%	70%	30%
Heads	25%	70%	30%
Executive Directors / Directors	25%	55%	45%
Sr Managers / Managers / Individual Contributors	15%	45%	55%

1: The Compensation Committee holds discretion on the weighting and distribution of personal and corporate goals.

ASSERTIO HOLDINGS, INC. RETENTION BONUS PLAN
(as adopted by the Board of Directors on February 10, 2021)

Assertio Holdings, Inc. ("Assertio" or the "Company) has established a Retention Bonus Plan (the "Retention Bonus Plan") that is designed to motivate and retain key talent that is critical to the success of the Company's strategy. This plan is time bound and will expire after all pay outs to eligible employees (as described below in "Eligibility) are completed in September 2022.

The Retention Bonus Plan is administered at the absolute discretion of the Company, including its management and Board of Directors, which may, at its discretion, choose not to fund the Retention Bonus Plan or to fund it at any level it chooses; provided, however, that in connection with the occurrence of a Change in Control (as defined in the Company's Amended and Restated 2014 Omnibus Incentive Plan, as amended from time to time), the Board of Directors shall provide for the funding of the Retention Bonus Plan as described below.

Background

Given Assertio's announcement in December 2021 of a significant Company-wide restructuring as well as a competitive and dynamic marketplace for highly skilled talent, the Company put in place the Retention Bonus Plan in an effort to retain the key talent it needs to execute on its newly stated strategy. Given the relatively small number of full time employees at Assertio and the importance of their respective roles to successfully complete its stated restructuring and strategy shift, the Company believes it is critical to its success, especially at this transformational period, to retain the expertise and knowledge of the eligible employees (see "Eligibility" below).

We have formalized the structure of employees' activities to be consistent with Assertio's corporate and personal goals and have defined a specific process for calculating bonuses consistent with the Company's performance and the employees' performance and individual contributions. The Company maintains absolute discretion in administering and deciding whether to fund the Bonus Plan so that it remains flexible in meeting the changing needs of the organization (except in the context of a Change in Control, as described below).

Certain levels of Assertio employees establish personal goals consistent with Assertio's corporate goals and their department goals. By following defined goals, employees will align their activity with the corporate goals and major department deliverables. Progress toward achievement of personal goals is to be reviewed together by employees and their supervisors, with oversight from department heads, on an ongoing basis throughout the calendar year. The review period for accomplishing personal goals ends on December 31, 2021.

Eligibility

Salaried Assertio employees who were employed on February 10, 2021 and work at least 25 hours per week will be eligible to participate in the Retention Bonus Plan. Any new hires or rehires that start with Assertio after February 10, 2021 are not eligible for the Retention Bonus Plan. Bonuses for eligible employees regularly scheduled to work less than 40 hours weekly will be prorated based on the number of hours they are regularly scheduled to work. If an employee's Bonus Target (as defined below) and/or base compensation changes during the plan year due to a promotion or otherwise (excluding base compensation changes due to annual merit increase), the final Bonus Target level will be calculated based on the days the employee worked at each Bonus Target and the base compensation received while at each level.

Employees who are on approved leave of absence of more than 6 weeks (or such other period determined by the Company in its discretion) in any calendar year may have their annual bonus award prorated in accordance with applicable law to reflect the time they were on leave.

Assertio shall have sole discretion to make any eligibility determinations.

Bonus Target

A "Bonus Target" has been identified for different levels of personnel and is based on a percentage of annual base pay. The Company seeks to set Bonus Targets based on external compensation benchmarks for similar positions

within our industry and on internal equity considerations. The Compensation Committee of the Board of Directors sets the Bonus Targets for the CEO and all other executive officers who report directly to the CEO and are at the Senior Vice President level or above. Except as may be otherwise specified by the Compensation Committee from time to time, management sets Bonus Targets for all other positions and reviews the various Bonus Target levels periodically with the Compensation Committee. The Bonus Target is comprised of two elements: (i) the employee's achievement of personal goals; and (ii) Assertio's achievement of corporate goals.

Corporate Goals Bonus Calculation

The portion of the Bonus Target attributed to the corporate goals will be subject to a "Corporate Goals Bonus Calculation," which will reflect the Company's overall success and fiscal and other considerations the Board of Directors deems relevant. In a year where all the corporate goals are fully met and the Company's finances are on target, the Corporate Goals Bonus Calculation would usually be 100%. Conversely, in a year where the corporate goals are not fully met, finances are not on target or as other considerations warrant, Corporate Goals Bonus Calculation multiplier of 95%, 90%, 85%, 80% 75%, 50% or 0%, for example, might be applied to the Bonus Target. If the Company has exceeded corporate goals and finances are above target, the Corporate Goals Bonus Calculation may be more than 100%. After the end of each calendar year, the Company's performance will be evaluated by the CEO, CFO, and Head, Investor Relations and Administration, who will recommend a Corporate Goals Bonus Calculation to the Compensation Committee of the Board of Directors. The Compensation Committee then makes a recommendation to the full Board of Directors, which has final authority and discretion on determining the Corporate Multiplier.

Exhibit A reflects the current Bonus Targets for various positions within the Company. Management will update Exhibit A from time to time as appropriate.

Personal Goals

For certain levels of Assertio employees, personal goals consistent with Assertio's corporate goals and applicable department goals are established by management in consultation with employees. Employees may have up to six personal goals. Each personal goal will be assigned a weight reflecting the significance and impact of the goal and the contribution towards corporate and department goals. The minimum weight assigned to each goal is 5%, and the combined weight of the goals must equal 100%. Personal goals will be approved by the next level manager. The Compensation Committee holds discretion on the weighting and distribution of personal goals.

Personal Goals Bonus Calculation

The portion of the Bonus Target attributed to the personal goals will be subject to a "Personal Goals Bonus Calculation," which will reflect each employee's personal success as assessed by management. At the end of each calendar year employees' goals and achievements will be assessed by management. Based on management's assessment of the level of achievement, employees may receive credit at 0%, 50%, 75%, 80%, 85%, 90%, 95% or 100% for achieving any single personal goal. For avoidance of doubt, the maximum credit an employee may receive for achievement of personal goals is 100%. Management determines the final award for the achievement of personal goals.

Performance Assessment and Payment of Bonuses

Following the 2021 plan year, personal goals and corporate goals will be assessed and performance reviews will be prepared and delivered to employees. Retention bonuses will be calculated and accrued and payment of bonuses will be made to eligible employees on September 15, 2022.

The CEO's direct reports will recommend the bonus award for achievement of personal goals for employees in their departments subject to approval or modification by the CEO. Management maintains absolute discretion in determining the scope and impact of accomplishments as well as the final bonus payout for all employees. Employees' final bonus payouts generally are based on the Corporate Goals Bonus Calculation and aggregate personal goal calculation but may be modified as deemed appropriate by management or the Compensation Committee, as applicable.

Employees must be employed by Assertio on the day payment is made to earn and be eligible for a bonus payment, since the payments are intended to incent successful employees to remain with Assertio. For avoidance of doubt, in the event of a Change in Control that occurs following the end of the plan year, an eligible employee shall only be required to remain employed by Assertio on the closing date of the Change in Control in the event that payment cannot be made on or before such closing date.

Employees who have received formal disciplinary action during or after a plan year may have their bonus payout reduced or eliminated for that plan year, at the sole discretion of management.

Change in Control

In the event of a Change in Control (which shall have the meaning given such term in the Amended and Restated Assertio, Inc. 2014 Omnibus Incentive Plan) that occurs prior to the end of a plan year, each eligible employee who is employed by Assertio on the closing date of the Change in Control will receive a pro-rated bonus payout on such closing date based on (1) such employee's Bonus Target and individual weighting of corporate and personal goals as well as (2) the number of days in the plan year that have elapsed, through and including the closing date. The amount of the payout shall be based on the following principles, which shall control in the event that there is any inconsistency with any other provision of the Bonus Plan: (1) the Personal Goals Bonus Calculation shall be deemed to be achieved at 100% and (2) the Corporate Goals Bonus Calculation shall be deemed to be achieved at 100% of target. For avoidance of doubt, in the event that a Change in Control occurs following the completion of the plan year, each eligible employee who is employed by Assertio on the closing date of the Change in Control will receive the full bonus for such completed plan year based on actual performance for both the Personal Goals Bonus Calculation and the Corporate Goals Bonus Calculation as determined in accordance with the Bonus Plan.

Assertio retains the right to alter or eliminate the Retention Bonus Plan and to alter its terms and conditions at any time and for any reason, before, during or after the plan year; provided, however, that Assertio may not alter or eliminate the Retention Bonus Plan in connection with a Change in Control in the event that such alteration or termination would adversely affect a participant's rights hereunder without such participant's written consent. All decisions made by the Company, including management and the Board of Directors, will be in their absolute discretion, and are final and not subject to dispute of appeal.

No participant shall have any vested right to receive any payment until actual delivery of any such payment. This Retention Bonus Plan does not constitute a contract or other agreement concerning employment with Assertio. Employment at Assertio is and remains "at will" and may be terminated at any time by Assertio or by the employee, either with or without cause.

All payments made under this Retention Bonus Plan shall be subject to recovery or clawback by the Company under any clawback policy adopted by the Company, whether before or after the date of any payment made under this Bonus Plan.

Exhibit A to Assertio Holdings, Inc. Bonus Plan Bonus Targets
(Effective as of February 10, 2021)

Title/Level	Bonus Target	Weighting of Corporate Goals[3]	Weighting of Personal Goals[3]
President and Chief Executive Officer[1]	110%	70%	30%
Chief Financial Officer and Chief Accounting Officer[2]	45%	70%	30%
Sr Vice Presidents (SVP)	30%	70%	30%
Vice Presidents (VP)	30%	70%	30%
Heads	25%	70%	30%
Executive Directors / Directors	25%	55%	45%
Sr Managers / Managers / Individual Contributors	15%	45%	55%

1: The Chief Executive Officer shall be eligible for a 50% prorated award
2: The Chief Financial Officer and Chief Accounting Officer shall be eligible for a 75% prorated award
3: The Compensation Committee holds discretion on the weighting and distribution of personal goals.

Exhibit 10.12

CERTAIN MATERIAL (INDICATED BY [***]) HAS BEEN OMITTED FROM THIS DOCUMENT BECAUSE IT IS BOTH (I) NOT MATERIAL AND (II) WOULD BE COMPETITIVELY HARMFUL IF PUBLICLY DISCOSED.

SEPARATION AGREEMENT AND RELEASE OF CLAIMS

This SEPARATION AGREEMENT AND RELEASE OF CLAIMS (this "Release") is entered into on this 14th day of December 2020 by and between Todd N. Smith (the "Executive") and Assertio Management, LLC (the "Company").

WHEREAS, the Executive's employment with the Company and its affiliates (including Zyla Life Sciences) will terminate on December 31, 2020 (the "Separation Date");

WHEREAS, the Executive and the Company are parties to that certain Employment Agreement, dated as of June 17, 2020 and effective as of May 20, 2020 (as originally between the Executive and Zyla Life Sciences and later assigned to the Company, the "Employment Agreement");

WHEREAS, the Executive and Zyla Life Sciences are party to that certain letter agreement, dated June 17, 2020 (the "Letter Agreement"); and

WHEREAS, pursuant to Section 6(f) of the Employment Agreement, as modified by the Letter Agreement, the Company has agreed to pay the Executive certain amounts and to provide certain benefits, subject to the Executive's execution, delivery, performance and non-revocation of this Release.

NOW THEREFORE, in consideration of these premises and the mutual promises contained herein, and intending to be legally bound hereby, the Executive agrees as follows:

1. Definitions. All terms used but not defined herein shall have the meanings ascribed to such terms in the Employment Agreement.

2. Employment Separation. From the Effective Date (as defined below) through the Separation Date, the Executive shall remain an employee of the Company; provided that the Executive shall cease to serve as President and Chief Executive Officer effective as of the date of this Release and shall continue employment through the Separation Date as a non-executive employee of the Company. From and after the date hereof, the Executive shall no longer be considered an executive officer of the Company and shall no longer have the authority to bind the Company. From the date hereof through the Separation Date, the Executive shall endeavor to facilitate a timely and orderly transition of Executive's role to his successor and do other things as may reasonably be requested by the Company's successor Chief Executive Officer in connection with such transition. The Company and the Executive hereby agree that the Executive's employment relationship with the Company and all of its affiliates shall end on the Separation Date and the Executive will be deemed to have resigned from the board of directors of Assertio Holdings, Inc. and all of its subsidiaries and affiliates as of the Separation Date.

3. Consideration. Subject to and conditioned upon: (a) the Executive's continued compliance with the terms of this Release, Sections 8 and 9 of the Employment Agreement and continued service through the Separation Date, (b) upon the Executive's execution and nonrevocation of this Release, and compliance with this Release, which Release shall have become effective and irrevocable on the eighth (8th) day following the date the Executive executes this Release (the "Effective Date"), and (c) the Executive executing on the Separation Date and not revoking the supplemental release in the form attached to the Employment Agreement (the "Supplemental Release"), which Supplemental Release shall become effective and irrevocable on the eighth (8th) day following the date the Executive executes such Supplemental Release, the Company shall provide the Executive with the following benefits in connection with the cessation of the Executive's active employment with the Company in full satisfaction of Section 6(f) of the Employment Agreement as modified by the Letter Agreement (all payments under this Section 3 less applicable withholding taxes):

(a) continued payment of the Executive's Base Salary through the Separation Date, with such Base Salary to be paid in accordance with the Company's regular payroll practice;

(b) reimbursement of all reimbursable expenses that have not been reimbursed as of the Separation Date, with such reimbursement to occur in accordance with the procedures set forth in Section 4(e) of the Employment Agreement and payment for unused vacation to be paid within fourteen (14 days) following the Separation Date;

(c) a cash amount equal to $1,125,000 (the "Severance Payment"), of which $675,000 will be paid on the Effective Date and the remaining amount shall be paid in equal installments over a period of twenty-four (24) months following the Separation Date (the "Severance Period"); provided, however, that if a Change in Control occurs prior to the end of the Severance Period, any unpaid portion of the Severance Payment shall be paid in a single lump sum payment upon the date of such Change in Control;

(d) a cash amount equal to $270,600 in respect of the Executive's annual bonus for 2020, payable in full on the Effective Date;

(e) during the portion of the Severance Period during which the Executive and the Executive's eligible dependents are eligible for COBRA coverage, reimbursement for Executive and Executive's eligible dependents COBRA premiums for coverage under the Company's medical, dental, vision and prescription drug plans, with such reimbursement to occur in accordance with the procedures set forth in Section 4(e) of the Employment Agreement; provided, however, that if, at any time during the Severance Period, the Executive and the Executive's eligible dependents cease to be eligible for COBRA coverage (except as a result of the Executive's becoming eligible for coverage under the medical, dental, vision or prescription drug plans of a subsequent employer), the Company shall reimburse the Executive all reasonable premium costs incurred by the Executive to provide private medical, dental, vision and prescription drug insurance coverage for the Executive and the Executive's eligible dependents that is substantially equivalent to the medical, dental, vision and prescription drug insurance by which the Executive and the Executive's eligible dependents were covered on the date of the Executive's termination, until the earlier of (x) the termination of the Severance Period and the date on which the Executive becomes eligible for coverage under the medical, dental, vision and prescription drug plans of a subsequent

employer; provided, further, that if the Executive and the Executive's eligible dependents are not covered by the Company's medical plan and thus not eligible for COBRA coverage, the Company will pay to the Executive a lump sum payment, on the Effective Date, equal to $3,000, which payment shall be satisfaction in full of the Company's obligations under this clause 3(e);

vi. payment by the Company for up to three (3) months of outplacement services not to exceed $5,000 per month (with a provider selected by the Company and reasonably acceptable to the Executive); provided Executive commences such services within ninety (90) days of the Separation Date; and

vii. immediate vesting on such termination date of 100% of the Executive's unvested Company option shares, restricted stock, restricted stock units, other equity-based awards and other long-term incentive awards, including cash-settled components; provided that each such equity award shall be exercisable in accordance with the provisions of the award agreement and plan pursuant to which such equity award was granted, including, in the case of stock options, the plan or award agreement provisions regarding any post-termination period of exercisability; provided, further, that notwithstanding the provisions of such award agreement and plan, any restricted stock units, performance stock units, long-term incentive cash awards and other similar awards shall be settled within ten (10) days after the date of such termination of employment and any payment in respect of open periods of performance-based awards shall be calculated as set forth in such award agreement, or, if not specified in the award agreement, based on target performance.

The Executive acknowledges that: (i) except as otherwise provided specifically in this Release, the payments and benefits described above constitute full settlement of all the Executive's rights under the Employment Agreement and the Letter Agreement, (ii) the Executive has no entitlement under any other severance or similar arrangement maintained by the Company or any of its affiliates, (iii) except as otherwise provided specifically in this Release, the Company does not and will not have any other liability or obligation to the Executive by reason of the cessation of the Executive's employment, (iv) continued payment of any unpaid portion of the payments described in clauses 3(c) through (g) shall immediately cease in the event the Executive breaches any provision of this Release or Sections 8 or 9 of the Employment Agreement, and (v) other than as provided in clause 3(c) above, the Executive shall not be entitled to any additional payments or benefits in the event the Company consummates a Change in Control from and after the date of this Release. The Executive further acknowledges that, in the absence of the Executive's execution of this Release, the payments and benefits specified in clauses 3(c) through (g) above would not otherwise be due to the Executive.

The Company hereby acknowledges and agrees that any material failure (after notice and reasonable opportunity to cure) of the Company to provide the severance compensation to Company employees (other than any employee subject to a separation and release agreement) approved by the Board of Directors of Assertio Holdings, Inc. on December 14, 2020 shall be considered a material breach of this Release by the Company.

4. Consulting Arrangement. Subject to the Executive's execution and nonrevocation of the Supplemental Release, from the Separation Date through the date that is three months after the Separation Date (the "Consulting Period", which shall end on such earlier date as the Executive dies, becomes disabled, or is terminated by the Company for Cause (as defined in the Employment

Agreement)), the Company and the Executive agree that the Executive shall serve as a consultant to the Company providing the Services (as defined below). In exchange for provision of the Services, the Executive shall receive a consulting fee of $11,000 per month, payable in arrears within five (5) business days following the end of the applicable month. During the Consulting Period, the Executive agrees to assist with transition and integration and such other matters as may be reasonably requested by the Company's successor Chief Executive Officer from time to time (the "Services"). The Executive will not be required to provide more than 30 hours of Services per calendar month. The Executive shall direct any and all inquiries regarding the Services to the Company's successor Chief Executive Officer. The Executive acknowledges that the Executive shall be treated as an independent contractor for all purposes with respect thereto and shall not have the independent authority to bind the Company. As such, the Executive shall not participate as an active employee in any employee benefit plan of the Company or an affiliate and no income or other taxes shall be withheld from the amounts paid to the Executive pursuant to this Section 4.

5. Executive's Release. The Executive on the Executive's own behalf and together with the Executive's heirs, assigns, executors, agents and representatives hereby generally releases and discharges the Company, and its predecessors, successors (by merger or otherwise), parents, subsidiaries, affiliates and assigns, together with each and every of their present, past and future officers, managers, directors, shareholders, members, general partners, limited partners, employees and agents and the heirs and executors of same, and all other persons or entities who/that might be claimed to be jointly or severally liable with any of the persons or entities named previously (herein collectively referred to as the "Releasees") from any and all suits, causes of action, complaints, obligations, demands, common law or statutory claims of any kind, whether in law or in equity, direct or indirect, known or unknown (hereinafter "Claims"), other than for coverage under the Company's D&O Insurance policies or other insurance policies that are/were applicable during the Executive's term of employment with the Company for Executive's actions as an officer, employee or agent of the Company, which the Executive ever had, now has or may have against the Releasees, or any one of them arising at any time up to and including the date of the this Release. This Release specifically includes, but is not limited to:

(a) any and all Claims arising out of or relating to the Executive's employment with the Company and/or any of its affiliates or the termination thereof;

(b) any and all Claims for wages and benefits including, without limitation, salary, stock options, stock, royalties, license fees, health and welfare benefits, severance pay, vacation pay, and bonuses, except as otherwise provided specifically in this Release;

(c) any and all Claims for wrongful discharge, breach of contract, whether express or implied, and Claims for breach of implied covenants of good faith and fair dealing;

(d) any and all Claims for alleged employment discrimination on the basis of race, color, religion, sex, age, national origin, veteran status, disability, handicap or any other protected characteristic, or retaliation in violation of any federal, state or local statute, ordinance, judicial precedent or executive order, including but not limited to claims for discrimination or retaliation under the following statutes: Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e et seq.; the Civil Rights Act of 1866, 42 U.S.C. §1981; the Civil Rights Act of 1991; the Age Discrimination in Employment Act, as amended, 29 U.S.C. §621 et seq.; the Older Workers

Benefit Protection Act 29 U.S.C. §§ 623, 626 and 630; the Rehabilitation Act of 1972, as amended, 29 U.S.C. §701 et seq.; the Americans with Disabilities Act, 42 U.S.C. §12101 et seq.; the Family and Medical Leave Act of 1993, 29 U.S.C. §2601, et seq.; the Fair Labor Standards Act, as amended, 29 U.S.C. §201, et seq.; the Fair Credit Reporting Act, as amended, 15 U.S.C. §1681, et seq.; and the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. §1000, et seq., or any comparable state statute or local ordinance;

(e) any and all Claims under any federal or state statute relating to employee benefits or pensions;

(f) any and all Claims in tort, including but not limited to, any Claims for assault, battery, misrepresentation, defamation, interference with contract or prospective economic advantage, intentional or negligent infliction of emotional distress, duress, loss of consortium, invasion of privacy and negligence; and

(g) any and all Claims for attorneys' fees and costs.

The Executive expressly represents that the Executive has not filed a lawsuit or initiated any other administrative proceeding against any Releasee. The Executive further promises not to initiate a lawsuit or to bring or join any other Claim against any Releasee asserting a Claim that is released by this Release. If the Executive does so, and the action is found to be barred in whole or in part by this Release, the Executive agrees to pay the attorneys' fees and costs, or the proportions thereof, incurred by the applicable Releasee in defending against those Claims that are found to be barred by this Release. This Release will not prevent the Executive from filing a charge with the Equal Employment Opportunity Commission (or similar state agency) or participating in any investigation conducted by the Equal Employment Opportunity Commission (or similar state agency); provided, however, that any claims by the Executive for personal relief in connection with such a charge or investigation (such as reinstatement or monetary damages) would be barred. Furthermore, nothing in this Release precludes the Executive from challenging the validity of this Release under the requirements of the Age Discrimination in Employment Act, and the Executive shall not be responsible for reimbursing the attorneys' fees and costs of the Releasees in connection with such a challenge to the validity of the Release. The Executive acknowledges, however, that the Release applies to all Claims that the Executive has under the Age Discrimination in Employment Act, and that, unless the Release is held to be invalid, all of the Executive's Claims under the Age Discrimination in Employment Act shall be extinguished by execution of this Release. Nothing in this Section 5 shall be read as a waiver of a claim for unemployment compensation benefits, vested 401(k) benefits or any match accrued and unused vacation that is owed by the Company or for enforcement of this Release or as a waiver of claims which cannot be released as a matter of law.

6. Acknowledgment. The Executive understands that the release of Claims contained in this Release extends to all of the aforementioned Claims and potential Claims which arose on or before the date that the Executive signs this Release, whether now known or unknown, suspected or unsuspected, and that this constitutes an essential term of this Release. The Executive further understands and acknowledges the significance and consequences of this Release and of each specific release and waiver, and expressly consents that, except as otherwise explicitly provided in this Release, this Release shall be given full force and effect to each and all of its express terms and

provisions, including those relating to unknown and uncompensated Claims, if any, as well as those relating to any other Claims specified herein. The Executive hereby waives any right or Claim that the Executive may have to employment, reinstatement or re-employment with the Company and/or any of its affiliates.

7. Remedies. All remedies at law or in equity shall be available to the Releasees for the enforcement of this Release. This Release may be pleaded as a full bar to the enforcement of any Claim released by this Release that the Executive may assert against the Releasees.

8. No Admission of Liability. This Release is not to be construed as an admission of any violation of any federal, state or local statute, ordinance or regulation or of any duty owed by the Company and/or any of its affiliates to the Executive. The Executive acknowledges that the Company specifically denies any such violations.

9. Severability. If any term or provision of this Release shall be held to be invalid or unenforceable for any reason, then such term or provision shall be ineffective to the extent of such invalidity or unenforceability without invalidating the remaining terms or provisions hereof, and such term or provision shall be deemed modified to the extent necessary to make it enforceable.

10. Advice of Counsel; Revocation Period. The Executive is hereby advised to seek the advice of counsel prior to signing this Release. The Executive hereby acknowledges that the Executive is acting of the Executive's own free will, that the Executive has been afforded a reasonable time to read and review the terms of this Release, and that the Executive is voluntarily executing this Release with full knowledge of its provisions and effects. The Executive further acknowledges that the Executive has been given at least twenty-one (2l) days within which to consider this Release and that the Executive has seven (7) days following the Executive's execution of this Release to revoke the Executive's acceptance, with this Release not becoming effective until the seven (7)-day revocation period has expired. If the Executive elects to revoke the Executive's acceptance of this Release, this Release shall not become effective and the Executive must provide written notice of such revocation by certified mail (postmarked no later than seven days after the date the Executive accepted this Release) to:

Assertio Holdings, Inc.

100 South Saunders Road, Suite 300
Lake Forest, Illinois 60045
Attention: Chief Executive Officer

11. Restrictive Covenants.

(a) The Executive hereby acknowledges and agrees that the Executive remains bound by the restrictive covenants and other agreements set forth in Sections 8 and 9 of the Employment Agreement and that the Non-Compete Period as defined in Section 8 of the Employment Agreement shall continue through the end of the Severance Period consistent with Section 8(b)(i) of the Employment Agreement. Nothing herein shall in any way limit or restrict enforcement of the Company's and its affiliates' rights pursuant to Sections 8 and 9 of the Employment Agreement. ***/[***]/*** In addition, the Executive acknowledges and agrees that the Executive is subject to the confidentiality obligations set forth in Section 8(a) of the Employment Agreement during and after the Non- Compete Period, except as otherwise required by law or judicial process. The Company

acknowledges and agrees that the Executive is currently permitted to provide services to the following entities so long as such services are not in breach of the obligations of Section 8 of the Employment Agreement and may continue to do so during the Non-Compete Period so long as such services do not otherwise breach the provisions of Section 8 of the Employment Agreement or this Section 11: Novum Pharma, LLC and its affiliated entities, Novos Growth, LLC and its affiliated entities, Champion Investments, LLC, Attilio Pharma, LLC and its affiliated entities, Underhill Pharma, LLC, Beaver-Visitec International, Vault Pharma and Bright Path Pharmaceuticals.

(b) Pursuant to Section 9(f) of the Employment Agreement, on or prior to the Separation Date, the Executive shall deliver to the Company all laptops provided by the Company and/or its affiliates, memoranda, books, papers, letters, and other data, and all copies of the same, which were made by the Executive or otherwise came into the Executive's possession or under the Executive's control at any time prior to the Separation Date, and which in any way relate to the business of any member of the Company Group as conducted or as planned to be conducted on the Separation Date. The Executive may retain the Executive's laptop, provided that the Executive removes all confidential information of any member of the Company Group from such laptop no later than the end of the Consulting Period.

(c) The Executive hereby agrees not to make any disparaging or derogatory statements concerning the Company and/or any of its affiliates. The Company hereby agrees to instruct its officers and directors not to make any disparaging or derogatory statements concerning the Executive. These non-disparagement obligations shall not in any way affect the Executive's or the Company's obligation or rights in connection with any legal proceeding. The Company's non-disparagement obligations shall be null and void in the event the Executive breaches its obligations under this Release or under Sections 8 or 9 of the Employment Agreement. The Executive's non-disparagement obligations shall be null and void in the event the Company breaches its obligations under this Release. The Company shall provide the Executive an opportunity to review and provide input prior to the Company's publication of any press release disclosing the Executive's separation from the Company.

(d) ***[***]***

(e) ***[***]***

12. Representations and Warranties. The Executive represents and warrants that the Executive (i) has not assigned any claim that the Executive purports to release hereunder, (ii) has not breached the Executive's obligations under Section 8 of the Employment Agreement, (iii) is not aware of any material undisclosed liabilities or violations of law with respect to the Company and its subsidiaries and affiliates that have not been disclosed to the Board of Directors and (iv) has the full power and authority to enter into this Release and bind each of the persons and entities that the Executive purports to bind.

13. Governing Law. This Release shall be governed by the laws of the State of Delaware without regard to the conflict of law principles of any jurisdiction. Any claims, demands, causes of action, disputes, controversies or other matters in question arising out of or relating to this Release shall be determined in accordance with Section 12(e) of the Employment Agreement; provided, however, that Sections 8(b)(iv)-(vi) of the Employment Agreement shall apply (mutatis

mutandis) with respect to any claims, demands, causes of action, disputes or controversies involving Section 11 of this Release.

IN WITNESS WHEREOF, the parties have executed and delivered this Release as of the dates set forth below.

By: /s/ Dan A. Peisert

Name: Daniel A. Peisert
Title: EVP & CFO
Date: December 14, 2020

EXECUTIVE

/s/ Todd N. Smith
Todd N. Smith
Date: December 14, 2020

Confidential Information indicated by [***] has been omitted from this filing.

Exhibit 10.13

CERTAIN MATERIAL (INDICATED BY [***]) HAS BEEN OMITTED FROM THIS DOCUMENT BECAUSE IT IS BOTH (I) NOT MATERIAL AND (II) WOULD BE COMPETITIVELY HARMFUL IF PUBLICLY DISCOSED.

SEPARATION AGREEMENT AND RELEASE OF CLAIMS

This SEPARATION AGREEMENT AND RELEASE OF CLAIMS (this "Release") is entered into on this 14th day of December 2020 by and between Mark Strobeck (the "Executive") and Assertio Management, LLC (the "Company").

WHEREAS, the Executive's employment with the Company and its affiliates (including Zyla Life Sciences) will terminate on December 31, 2020 (the "Separation Date");

WHEREAS, the Executive and the Company are parties to that certain Offer Letter (the "Offer Letter") effective June 23, 2020 and Management Continuity Agreement (the "MCA") effective June 23, 2020 (each as originally between the Executive and Zyla Life Sciences and later assigned to the Company); and

WHEREAS, pursuant to Section 2(b) of the MCA, the Company has agreed to pay the Executive certain amounts and to provide certain benefits, subject to the Executive's execution, delivery, performance and non-revocation of this Release.

NOW THEREFORE, in consideration of these premises and the mutual promises contained herein, and intending to be legally bound hereby, the Executive agrees as follows:

1. Definitions. All terms used but not defined herein shall have the meanings ascribed to such terms in the MCA.

2. Employment Separation. From the Effective Date (as defined below) through the Separation Date, the Executive shall remain an employee of the Company; provided that the Executive shall cease to serve as Executive Vice President and Chief Operating Officer effective as of the date of this Release and shall continue employment through the Separation Date as a non-executive employee of the Company. From and after the date hereof, the Executive shall no longer be considered an executive officer of the Company and shall no longer have the authority to bind the Company. From the date hereof through the Separation Date, the Executive shall endeavor to facilitate a timely and orderly transition of Executive's role to his successor and do other things as may reasonably be requested by the Company's successor Chief Executive Officer in connection with such transition. The Company and the Executive hereby agree that the Executive's employment relationship with the Company and all of its affiliates shall end on the Separation Date and the Executive will be deemed to have resigned from the board of directors of Assertio Holdings, Inc. and all of its subsidiaries and affiliates as of the Separation Date.

3. Consideration. Subject to and conditioned upon: (a) the Executive's continued compliance with the terms of this Release, Section 4 of the MCA and continued service through the Separation Date, (b) upon the Executive's execution and nonrevocation of this Release, and compliance with this Release, which Release shall have become effective and irrevocable on the eighth (8th) day following the date the Executive executes this Release (the "Effective Date"), and (c) the Executive executing on the Separation Date and not revoking the supplemental release in the form attached to the MCA (the "Supplemental Release"), which Supplemental Release shall become effective and irrevocable on the eighth (8th) day following the date the Executive executes such Supplemental Release, the Company shall provide the

Executive with the following benefits in connection with the cessation of the Executive's active employment with the Company in full satisfaction of Section 2(b) of the MCA (all payments under this Section 3 less applicable withholding taxes):

(a) continued payment of the Executive's Base Salary through the Separation Date, with such Base Salary to be paid in accordance with the Company's regular payroll practice;

(b) reimbursement of all reimbursable expenses that have not been reimbursed as of the Separation Date, with such reimbursement to occur in accordance with the Company's standard expense reimbursement procedures and payment for unused vacation to be paid within fourteen (14 days) following the Separation Date;

(c) a cash amount equal to $733,200 (the "Severance Payment"), of which $439,920 will be paid on the Effective Date and the remaining amount shall be paid in equal installments over a period of twenty-four (24) months following the Separation Date (the "Severance Period"); provided, however, that if a Change in Control occurs prior to the end of the Severance Period, any unpaid portion of the Severance Payment shall be paid in a single lump sum payment upon the date of such Change in Control;

(d) a cash amount equal to $119,199.09 in respect of the Executive's annual bonus for 2020, payable in full on the Effective Date;

(e) during the portion of the Severance Period during which the Executive and the Executive's eligible dependents are eligible for COBRA coverage, reimbursement for Executive and Executive's eligible dependents COBRA premiums for coverage under the Company's medical, dental, vision and prescription drug plans, with such reimbursement to occur in accordance with the Company's expense reimbursement procedures; provided, however, that if, at any time during the Severance Period, the Executive and the Executive's eligible dependents cease to be eligible for COBRA coverage (except as a result of the Executive's becoming eligible for coverage under the medical, dental, vision or prescription drug plans of a subsequent employer), the Company shall reimburse the Executive all reasonable premium costs incurred by the Executive to provide private medical, dental, vision and prescription drug insurance coverage for the Executive and the Executive's eligible dependents that is substantially equivalent to the medical, dental, vision and prescription drug insurance by which the Executive and the Executive's eligible dependents were covered on the date of the Executive's termination, until the earlier of (x) the termination of the Severance Period and (y) the date on which the Executive becomes eligible for coverage under the medical, dental, vision and prescription drug plans of a subsequent employer; provided, further, that if the Executive and the Executive's eligible dependents are not covered by the Company's medical plan and thus not eligible for COBRA coverage, the Company will pay to the Executive a lump sum payment, on the Effective Date, equal to $3,000, which payment shall be satisfaction in full of the Company's obligations under this clause 3(e);

(f) payment by the Company for up to three (3) months of outplacement services not to exceed $5,000 per month (with a provider selected by the Company and reasonably acceptable to the Executive); provided Executive commences such services within ninety (90) days of the Separation Date; and

(g) immediate vesting on such termination date of 100% of the Executive's unvested Company option shares, restricted stock, restricted stock units, other equity-based awards and other long-term incentive awards, including cash-settled components; provided that each such equity award shall be exercisable in accordance with the provisions of the award agreement and plan pursuant to which such equity award was granted, including, in the case of stock options, the plan or award agreement provisions regarding any post-termination period of exercisability; provided, further, that notwithstanding the provisions of such award agreement and plan, any restricted stock units, performance stock units, long-term incentive cash awards and other similar awards shall be settled within ten (10) days after the date of such

termination of employment and any payment in respect of open periods of performance-based awards shall be calculated as set forth in such award agreement, or, if not specified in the award agreement, based on target performance.

The Executive acknowledges that: (i) except as otherwise provided specifically in this Release, the payments and benefits described above constitute full settlement of all the Executive's rights under the Offer Letter and the MCA, (ii) the Executive has no entitlement under any other severance or similar arrangement maintained by the Company or any of its affiliates, (iii) except as otherwise provided specifically in this Release, the Company does not and will not have any other liability or obligation to the Executive by reason of the cessation of the Executive's employment, (iv) continued payment of any unpaid portion of the payments described in clauses 3(c) through (g) shall immediately cease in the event the Executive breaches any provision of this Release or Section 4 of the MCA, and (v) other than as provided in clause 3(c) above, the Executive shall not be entitled to any additional payments or benefits in the event the Company consummates a Change in Control from and after the date of this Release. The Executive further acknowledges that, in the absence of the Executive's execution of this Release, the payments and benefits specified in clauses 3(c) through (g) above would not otherwise be due to the Executive.

4. Consulting Arrangement. Subject to the Executive's execution and nonrevocation of the Supplemental Release, from the Separation Date through the date that is three months after the Separation Date (the "Consulting Period", which shall end on such earlier date as the Executive dies, becomes disabled, or is terminated by the Company for Cause (as defined in the MCA)), the Company and the Executive agree that the Executive shall serve as a consultant to the Company providing the Services (as defined below). In exchange for provision of the Services, the Executive shall receive a consulting fee of $6,666.67 per month, payable in arrears within five (5) business days following the end of the applicable month. During the Consulting Period, the Executive agrees to assist with transition and integration and such other matters as may be reasonably requested by the Company's successor Chief Executive Officer from time to time (the "Services"). The Executive will not be required to provide more than 30 hours of Services per calendar month. The Executive shall direct any and all inquiries regarding the Services to the Company's successor Chief Executive Officer. The Executive acknowledges that the Executive shall be treated as an independent contractor for all purposes with respect thereto and shall not have the independent authority to bind the Company. As such, the Executive shall not participate as an active employee in any employee benefit plan of the Company or an affiliate and no income or other taxes shall be withheld from the amounts paid to the Executive pursuant to this Section 4.

5. Executive's Release. The Executive on the Executive's own behalf and together with the Executive's heirs, assigns, executors, agents and representatives hereby generally releases and discharges the Company, and its predecessors, successors (by merger or otherwise), parents, subsidiaries, affiliates and assigns, together with each and every of their present, past and future officers, managers, directors, shareholders, members, general partners, limited partners, employees and agents and the heirs and executors of same, and all other persons or entities who/that might be claimed to be jointly or severally liable with any of the persons or entities named previously (herein collectively referred to as the "Releasees") from any and all suits, causes of action, complaints, obligations, demands, common law or statutory claims of any kind, whether in law or in equity, direct or indirect, known or unknown (hereinafter "Claims"), other than for coverage under the Company's D&O Insurance policies or other insurance policies that are/were applicable during the Executive's term of employment with the Company for Executive's actions as an officer, employee or agent of the Company, which the Executive ever had, now has or may have against the Releasees, or any one of them arising at any time up to and including the date of the this Release. This Release specifically includes, but is not limited to:

(a) any and all Claims arising out of or relating to the Executive's employment with the Company and/or any of its affiliates or the termination thereof;

(b) any and all Claims for wages and benefits including, without limitation, salary, stock options, stock, royalties, license fees, health and welfare benefits, severance pay, vacation pay, and bonuses, except as otherwise provided specifically in this Release;

(c) any and all Claims for wrongful discharge, breach of contract, whether express or implied, and Claims for breach of implied covenants of good faith and fair dealing;

(d) any and all Claims for alleged employment discrimination on the basis of race, color, religion, sex, age, national origin, veteran status, disability, handicap or any other protected characteristic, or retaliation in violation of any federal, state or local statute, ordinance, judicial precedent or executive order, including but not limited to claims for discrimination or retaliation under the following statutes: Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e et seq.; the Civil Rights Act of 1866, 42 U.S.C. §1981; the Civil Rights Act of 1991; the Age Discrimination in Employment Act, as amended, 29 U.S.C. §621 et seq.; the Older Workers Benefit Protection Act 29 U.S.C. §§ 623, 626 and 630; the Rehabilitation Act of 1972, as amended, 29 U.S.C. §701 et seq.; the Americans with Disabilities Act, 42 U.S.C. §12101 et seq.; the Family and Medical Leave Act of 1993, 29 U.S.C. §2601, et seq.; the Fair Labor Standards Act, as amended, 29 U.S.C. §201, et seq.; the Fair Credit Reporting Act, as amended, 15 U.S.C. §1681, et seq.; and the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. §1000, et seq., or any comparable state statute or local ordinance;

(e) any and all Claims under any federal or state statute relating to employee benefits or pensions;

(f) any and all Claims in tort, including but not limited to, any Claims for assault, battery, misrepresentation, defamation, interference with contract or prospective economic advantage, intentional or negligent infliction of emotional distress, duress, loss of consortium, invasion of privacy and negligence; and

(g) any and all Claims for attorneys' fees and costs.

The Executive expressly represents that the Executive has not filed a lawsuit or initiated any other administrative proceeding against any Releasee. The Executive further promises not to initiate a lawsuit or to bring or join any other Claim against any Releasee asserting a Claim that is released by this Release. If the Executive does so, and the action is found to be barred in whole or in part by this Release, the Executive agrees to pay the attorneys' fees and costs, or the proportions thereof, incurred by the applicable Releasee in defending against those Claims that are found to be barred by this Release. This Release will not prevent the Executive from filing a charge with the Equal Employment Opportunity Commission (or similar state agency) or participating in any investigation conducted by the Equal Employment Opportunity Commission (or similar state agency); provided, however, that any claims by the Executive for personal relief in connection with such a charge or investigation (such as reinstatement or monetary damages) would be barred. Furthermore, nothing in this Release precludes the Executive from challenging the validity of this Release under the requirements of the Age Discrimination in Employment Act, and the Executive shall not be responsible for reimbursing the attorneys' fees and costs of the Releasees in connection with such a challenge to the validity of the Release. The Executive acknowledges, however, that the Release applies to all Claims that the Executive has under the Age Discrimination in Employment Act, and that, unless the Release is held to be invalid, all of the Executive's Claims under the Age Discrimination in Employment Act shall be extinguished by execution of this Release. Nothing in this Section 5 shall be read as a waiver of a claim for unemployment compensation benefits, vested 401(k) benefits or any match accrued and unused vacation that is owed by the Company or for enforcement of this Release or as a waiver of claims which cannot be released as a matter of law.

6. Acknowledgment. The Executive understands that the release of Claims contained in this Release extends to all of the aforementioned Claims and potential Claims which arose on or before the date that the Executive signs this Release, whether now known or unknown, suspected or unsuspected, and that this constitutes an essential term of this Release. The Executive further understands and acknowledges the significance and consequences of this Release and of each specific release and waiver, and expressly consents, except as otherwise explicitly provided in this Release, that this Release shall be given full force and effect to each and all of its express terms and provisions, including those relating to unknown and uncompensated Claims, if any, as well as those relating to any other Claims specified herein. The Executive hereby waives any right or Claim that the Executive may have to employment, reinstatement or re-employment with the Company and/or any of its affiliates.

7. Remedies. All remedies at law or in equity shall be available to the Releasees for the enforcement of this Release. This Release may be pleaded as a full bar to the enforcement of any Claim released by this Release that the Executive may assert against the Releasees.

8. No Admission of Liability. This Release is not to be construed as an admission of any violation of any federal, state or local statute, ordinance or regulation or of any duty owed by the Company and/or any of its affiliates to the Executive. The Executive acknowledges that the Company specifically denies any such violations.

9. Severability. If any term or provision of this Release shall be held to be invalid or unenforceable for any reason, then such term or provision shall be ineffective to the extent of such invalidity or unenforceability without invalidating the remaining terms or provisions hereof, and such term or provision shall be deemed modified to the extent necessary to make it enforceable.

10. Advice of Counsel; Revocation Period. The Executive is hereby advised to seek the advice of counsel prior to signing this Release. The Executive hereby acknowledges that the Executive is acting of the Executive's own free will, that the Executive has been afforded a reasonable time to read and review the terms of this Release, and that the Executive is voluntarily executing this Release with full knowledge of its provisions and effects. The Executive further acknowledges that the Executive has been given at least twenty-one (21) days within which to consider this Release and that the Executive has seven (7) days following the Executive's execution of this Release to revoke the Executive's acceptance, with this Release not becoming effective until the seven (7)-day revocation period has expired. If the Executive elects to revoke the Executive's acceptance of this Release, this Release shall not become effective and the Executive must provide written notice of such revocation by certified mail (postmarked no later than seven days after the date the Executive accepted this Release) to:

Assertio Holdings, Inc.

100 South Saunders Road, Suite 300
Lake Forest, Illinois 60045
Attention: Chief Executive Officer

11. Restrictive Covenants.

(a) The Executive hereby acknowledges and agrees that the Executive remains bound by the restrictive covenants and other agreements set forth in Section 4 of the MCA and that the Restricted Period as defined in Section 4 of the MCA shall continue through the end of the Severance Period consistent with MCA. Nothing herein shall in any way limit or restrict enforcement of the Company's and its affiliates' rights pursuant to Section 4 of the MCA. ***/*** In addition, the Executive acknowledges and agrees that the Executive is subject to the confidentiality obligations set forth in Section 4(a) of the MCA during and after the Restricted Period, except as otherwise required by law or judicial process.

(b) Pursuant to Section 4(c)(vi) of the MCA, on or prior to the Separation Date, the Executive shall deliver to the Company all laptops provided by the Company and/or its affiliates, memoranda, books, papers, letters, and other data, and all copies of the same, which were made by the Executive or otherwise came into the Executive's possession or under the Executive's control at any time prior to the Separation Date, and which in any way relate to the business of any member of the Company Group as conducted or as planned to be conducted on the Separation Date. The Executive may retain the Executive's laptop, provided that the Executive removes all confidential information of any member of the Company Group from such laptop no later than the end of the Consulting Period.

(c) The Executive hereby agrees not to make any disparaging or derogatory statements concerning the Company and/or any of its affiliates. The Company hereby agrees to instruct its officers and directors not to make any disparaging or derogatory statements concerning the Executive. The Company's non-disparagement obligations shall be null and void in the event the Executive breaches its obligations under this Release or under Section 4 of the MCA. The Executive's non-disparagement obligations shall be null and void in the event the Company breaches its obligations under this Release. The Company shall provide the Executive an opportunity to review and provide input prior to the Company's publication of any press release disclosing the Executive's separation from the Company.

(d) ***[***]***

(e) ***[***]***

12. Representations and Warranties. The Executive represents and warrants that the Executive (i) has not assigned any claim that the Executive purports to release hereunder, (ii) has not breached the Executive's obligations under Section 4 of the MCA, (iii) is not aware of any material undisclosed liabilities or violations of law with respect to the Company and its subsidiaries and affiliates that have not been disclosed to the Board of Directors and (iv) has the full power and authority to enter into this Release and bind each of the persons and entities that the Executive purports to bind.

13. Governing Law. This Release shall be governed by the laws of the State of Delaware without regard to the conflict of law principles of any jurisdiction. Any claims, demands, causes of action, disputes, controversies or other matters in question arising out of or relating to this Release shall be determined in accordance with Section 10(f) of the MCA; provided, however, that Sections 4b(v)-(vii) of the MCA shall apply (mutatis mutandis) with respect to any claims, demands, causes of action, disputes or controversies involving Section 11 of this Release.

IN WITNESS WHEREOF, the parties have executed and delivered this Release as of the dates set forth below.

By: /s/ Dan A. Peisert

Name: Daniel A. Peisert
Title: EVP & CFO
Date: December 14, 2020

EXECUTIVE

/s/ Mark Strobeck
Mark Strobeck
Date: December 14, 2020

Confidential Information indicated by [***] has been omitted from this filing.

Exhibit 21.1

SUBSIDIARIES OF THE REGISTRANT

Name of Subsidiary	State of Jurisdiction or Organization
Assertio Therapeutics, Inc.	Delaware
Depo DR Sub, LLC	Delaware
Depo NF Sub, LLC	Delaware
Assertio Management, LLC	Delaware
Assertio Distribution, LLC	Delaware
Alligator IP, LLC	Delaware
Zyla Life Sciences, Inc.	Delaware
Zyla Life Sciences US, Inc.	Delaware
Egalet Limited	United Kingdom
Otter Pharmaceuticals, LLC	Delaware

Exhibit 23.1

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We have issued our reports dated March 10, 2022, with respect to the consolidated financial statements and internal control over financial reporting included in the Annual Report of Assertio Holdings, Inc., and subsidiaries on Form 10-K for the year ended December 31, 2021. We consent to the incorporation by reference of said reports in the Registration Statements of Assertio Holdings, Inc. on Forms S-3 (File No. 333-53486, File No. 333-66688, File No. 333-86542, File No. 333-104956, File No. 333-197433, File No. 333-223420 and File No. 333-252368), on Form S-4 (File No. 333-237599), and on Forms S-8 (File No. 333-116697, File No. 333-145291, File No. 333-156538, File No. 333-167015, File No. 333-181710, File No. 333-196263, File No. 333-211642, File No. 333-211643, File No. 333-224924, File No. 333-228290, File No. 333-231366, File No. 333-238925 and File No. 333-238926).

/s/ GRANT THORNTON LLP

Chicago, Illinois
March 10, 2022

Exhibit 23.2

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in the following Registration Statements:

1. Registration Statements (Forms S-3 No. 333-53486, No. 333-66688, No. 333-86542, No. 333-104956, No. 333-197433, No. 333-223420 and No. 333-252368) and related Prospectuses of Assertio Holdings, Inc.,

2. Registration Statements (Forms S-4 No. 333-237599) of Assertio Holdings, Inc., and

3. Registration Statements (Forms S-8 No. 333-116697, No. 333-145291, No. 333-156538, No. 333-167015, No. 333-181710, No. 333-196263, No. 333-211642, No. 333-211643, No. 333-224924, No. 333-228290, No. 333-231366, No. 333-238925 and No. 333-238926) pertaining to the 2004 Equity Incentive Plan, the Second and Amended and Restated 2004 Employee Stock Purchase Plan, the Amended and Restated 2014 Omnibus Incentive Plan, the Inducement Award Program of Assertio Holdings, Inc. and Zyla Life Sciences Amended and Restated 2019 Stock-Based Incentive Compensation Plan

of our report dated March 12, 2021, except for the effects of the 1-for-4 reverse stock split and for the effect of the reclassification discussed in Note 1, as to which the date is March 10, 2022, with respect to the consolidated financial statements and schedule of Assertio Holdings, Inc., included in this Annual Report (Form 10-K) of Assertio Holdings, Inc. for the year ended December 31, 2021.

/s/ Ernst & Young LLP

Chicago, Illinois
March 10, 2022

Exhibit 31.1

CERTIFICATION OF THE CHIEF EXECUTIVE OFFICER

I, Daniel A. Peisert, certify that:

1. I have reviewed this Annual Report on Form 10-K of Assertio Holdings, Inc.;

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

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

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

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

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

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

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

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

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

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

Date: March 10, 2022

By: /s/ Daniel A. Peisert

Daniel A. Peisert
President and Chief Executive Officer
(Principal Executive Officer)

Exhibit 31.2

CERTIFICATION OF THE CHIEF FINANCIAL OFFICER

I, Paul Schwichtenberg, certify that:

1. I have reviewed this Annual Report on Form 10-K of Assertio Holdings, Inc.;

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

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

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

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

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

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

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

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

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

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

Date: March 10, 2022

By: /s/ Paul Schwichtenberg

Paul Schwichtenberg

Senior Vice President and Chief Financial Officer
(Principal Financial Officer)

Exhibit 32.1

CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Annual Report on Form 10-K of Assertio Holdings, Inc. (the "Company") for the year ended December 31, 2021 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Daniel A. Peisert, President and Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. §1350, as adopted pursuant to §906 of the Sarbanes-Oxley Act of 2002, that:

(1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: March 10, 2022

/s/ Daniel A. Peisert
Daniel A. Peisert
President and Chief Executive Officer
(Principal Executive Officer)

Exhibit 32.2

CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Annual Report on Form 10-K of Assertio Holdings, Inc. (the "Company") for the year ended December 31, 2021 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Paul Schwichtenberg, Senior Vice President and Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. §1350, as adopted pursuant to §906 of the Sarbanes-Oxley Act of 2002, that:

(1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: March 10, 2022

/s/ Paul Schwichtenberg

Paul Schwichtenberg

Senior Vice President and Chief Financial Officer
(Principal Financial Officer)