

**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, 2022**

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**  
(STATE OR OTHER JURISDICTION OF  
INCORPORATION OR ORGANIZATION)

**85-0598378**  
(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	The Nasdaq Stock Market LLC

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

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 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 securities are registered pursuant to Section 12(b) of the Act, indicate by check mark whether the financial statements of the registrant included in the filing reflect the correction of an error to previously issued financial statements. \*

Indicate by check mark whether any of those error corrections are restatements that required a recovery analysis of incentive-based compensation received by any of the registrant's executive officers during the relevant recovery period pursuant to §240.10D-1(b). \*

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 Capital Market as of June 30, 2022, the last business day of the registrant's most recently completed second fiscal quarter, was approximately \$140.4 million.

The number of shares outstanding of the registrant's common stock, \$0.0001 par value, as of March 2, 2023 was 55,578,544.

\*Disclosure is not being provided under this item pursuant to guidance issued by the staff of the Securities and Exchange Commission.

**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 2023 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 2022 fiscal year.

**ASSERTIO HOLDINGS, INC.**  
**FORM 10-K FOR THE FISCAL YEAR ENDED DECEMBER 31, 2022**  
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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. 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 notices 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, 2022.

#### **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 have based these forward-looking statements on our current expectations and projections about future events. Our actual results could differ materially from those discussed in, or implied by, these forward-looking statements. Forward-looking statements are identified by words such as “believe,” “anticipate,” “expect,” “intend,” “plan,” “will,” “may,” “seek,” “estimate,” “could,” “might,” “should,” “goal,” “target,” “project,” “approximate,” “potential,” “opportunity,” “pursue,” “strategy,” “prospective” and other 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.

Examples of forward-looking statements in this Annual Report 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 and sales of generics of our products (including the INDOCIN products which are not patent protected and may face generic competition at any time) and/or other products competitive with any of our products (including compounded indomethacin suppositories that a 503B compounder recently began selling in what we believe to be violation of certain provisions of the Food, Drug and Cosmetic Act (the “FDCA”) and which compete with our INDOCIN suppositories);
- our ability to successfully execute our business strategy, business development, strategic partnerships, and investment opportunities to build and grow for the future, including through product acquisitions, commercialization agreements, licensing or technology agreements, equity investments, and business combinations;
- our ability to achieve the expected financial performance from products we acquire, as well as delays, challenges and expenses, and unexpected costs associated with integrating and operating newly-acquired products;
- our expectations regarding industry trends, including pricing pressures and managed healthcare practices;
- our ability to attract and retain key executive leadership;

- the potential impacts of the COVID-19 pandemic or future outbreaks, 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;
- the outcome of, and our intentions with respect to, any litigation or investigations, including antitrust litigation, opioid-related investigations, opioid-related litigation and related claims for negligence and breach of fiduciary duty against our former insurance broker, and other disputes and litigation, and the costs and expenses associated therewith;
- our compliance or non-compliance with, or being subject to, legal and regulatory requirements related to the development or promotion of pharmaceutical products in the United States (“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 fund operations and 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 intentions or expectations regarding the use of available funds and any future earnings or the use of net proceeds from securities offerings;
- our commitments and estimates regarding future obligations, 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, cost and results of any future research and development efforts including potential clinical studies relating to any future product candidates;
- the estimation, projection or availability of net operating losses or credit carryforwards; and
- our common stock maintaining compliance with The Nasdaq Capital Market’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 publicly, 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 commercial pharmaceutical company offering differentiated products to patients utilizing a non-personal promotional model. Our commercial portfolio of branded products focuses on three areas: neurology, rheumatology, and pain and inflammation. We have built our commercial portfolio through a combination of increased opportunities with existing products, as well as through the acquisition or licensing of additional approved products. Our primary marketed products are:

INDOCIN® (indomethacin) Suppositories	A suppository and oral solution of indomethacin used both in hospitals and out-patient settings. Both products are nonsteroidal anti-inflammatory drug (NSAID), indicated for:
INDOCIN® (indomethacin) Oral Suspension	<ul style="list-style-type: none"> <li>• Moderate to severe rheumatoid arthritis including acute flares of chronic disease</li> <li>• Moderate to severe ankylosing spondylitis</li> <li>• Moderate to severe osteoarthritis</li> <li>• Acute painful shoulder (bursitis and/or tendinitis)</li> <li>• Acute gouty arthritis</li> </ul>
Otrexup® (methotrexate) injection for subcutaneous use	A once weekly single-dose auto-injector containing a prescription medicine, methotrexate. Otrexup is folate analog metabolic inhibitor indicated for the: <ul style="list-style-type: none"> <li>• 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.</li> <li>• Symptomatic control of severe, recalcitrant, disabling psoriasis in adults who are not adequately responsive to other forms of therapy.</li> </ul>
Sympazan® (clobazam) oral film	A benzodiazepine indicated for the adjunctive treatment of seizures associated with Lennox-Gastaut Syndrome (LGS) in patients aged two years of age or older . Sympazan is the only product to offer clobazam in a convenient film with PharmFilm® technology. Sympazan is taken without water or liquid, adheres to the tongue, and dissolves to deliver clobazam.
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 an opioid level. SPRIX is a non-narcotic nasal spray that 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.
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.
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 HCl, USP) tablets for oral use only —CII.

On October 27, 2022, we completed a transaction to acquire an exclusive license for Sympazan® (clobazam) oral film and Sympazan product inventory (the “Sympazan Acquisition”) from Aquestive Therapeutics, Inc. (“Aquestive”). Under the terms of the definitive agreement governing the Sympazan Acquisition, we acquired an exclusive license for the Sympazan intellectual property from Aquestive for an upfront payment of \$9.0 million and a \$6.0 million milestone payment contingent upon allowance of an existing patent application which, at the date of the transaction, Aquestive was prosecuting. The patent allowance was granted in the fourth quarter of 2022, which extends the patent coverage until 2040. Accordingly, we have paid in full the \$6.0 million milestone payment. We are also required to pay Aquestive cash royalties on a quarterly basis equal to 10.0% of the gross margin (defined within the definitive agreement) from sales of Sympazan. We also entered into a long-term supply agreement with Aquestive for Sympazan.

On August 22, 2022, we issued \$70.0 million aggregate principal amount of Convertible Senior Notes which mature on September 1, 2027 and bear interest at the rate of 6.5% per annum, payable semi-annually in arrears on March 1 and September 1 of each year beginning March 1, 2023 (the “2027 Convertible Notes”). We used the net proceeds from the 2027 Convertible Notes to repurchase the remaining \$59.0 million aggregate principal amount of our outstanding 13.0% Senior Secured Notes due 2024 (the “2024 Secured Notes”) and \$3.0 million in associated interest payment pursuant to privately negotiated exchange agreements entered into concurrently with the pricing of the 2027 Convertible Notes. We expect to use the remaining net proceeds from the 2027 Convertible Notes for general corporate purposes.

On February 27, 2023, we completed a transaction with a limited number of holders of our outstanding 2027 Convertible Notes (the “Exchanged Notes”) to exchange \$30.0 million aggregate principal amount of Exchanged Notes pursuant to separate, privately negotiated exchange agreements for a combination of (a) a cash payment and (b) an agreed number of shares of our common stock. The shares of our common stock were issued in private placements exempt from registration in reliance on Section 4(a)(2) of the Securities Act. We paid an aggregate of \$10.5 million in cash and issued an aggregate of approximately 7.0 million shares of our common stock in the transactions. We did not receive any cash proceeds from the issuance of the shares of our common stock. Refer to [Note 10](#) of the accompanying Consolidated Financial Statements for additional information on the 2027 Convertible Notes.

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 (the “Otrexup Acquisition”). 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 paid on May 31, 2022, and (iii) \$10.0 million in cash paid on December 15, 2022.

On May 18, 2021, we effected a 1-for-4 reverse stock split of our issued and outstanding par value \$0.0001 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 May 20, 2020, we completed a merger (the “Zyla Merger”) with Zyla Life Sciences (“Zyla”) pursuant to an Agreement and Plan of Merger, dated as of March 16, 2020 (the “Merger Agreement”). Pursuant to the Zyla Merger, we acquired our current commercial products INDOCIN (suppository and oral solution), SPRIX, and OXAYDO.

### ***Collaboration and License Agreements***

*Miravo Pharmaceuticals:* The Company has a license agreement with Tribute Pharmaceuticals Canada Ltd. (known as Miravo Pharmaceuticals, or “Miravo”) 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 digital 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. Secondly, 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 during 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 of a digital sales strategy; a strategy we still maintain today and we plan to maintain. Limitations on elective surgeries and changes in patient behavior after the outbreak of COVID-19 impacted our operations by causing a decline and subsequent volatility in prescriptions associated with those elective procedures. The extent of any future impact of the COVID-19 pandemic on our operational and financial performance will depend largely on future developments, which are highly uncertain and cannot be accurately predicted, including actions by government authorities to contain future outbreaks, the emergence of new COVID-19 variants, the related potential for new surges in infections, the impacts on third parties on which we rely, including suppliers and distributors, 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.

### **Promotion of Products**

Beginning in 2021, we transformed our commercial model. The promotion of our products is now executed by a non-personal promotion model, utilizing omnichannel marketing and a digital selling approach. We have also integrated our virtual sales team with a view 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 is intended to ensure 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 product sales in the U.S.

Three large, national wholesale distributors represent the vast majority of our revenues from net product sales. The following table reflects the percentage of consolidated revenue by customer and the percentage of accounts receivable by customer related to product shipments for the years ended December 31, 2022 and 2021.

	Consolidated Revenue		Accounts Receivable related to product shipments	
	For the years ended December 31,		For the years ended December 31,	
	2022	2021	2022	2021
AmerisourceBergen Corporation	28 %	26 %	21 %	29 %
McKesson Corporation	28 %	24 %	25 %	23 %
Cardinal Health	23 %	34 %	42 %	44 %
All others	21 %	16 %	12 %	4 %
<b>Total</b>	<b>100 %</b>	<b>100 %</b>	<b>100 %</b>	<b>100 %</b>

The change in the percentage of consolidated revenue by customer and the percentage of accounts receivable by customer related to product shipments for the year ended December 31, 2021 to December 31, 2022 was primarily driven by the impact of change in product mix. Each wholesale distributor purchases a different amount of each product, therefore the change in product mix impacts the percentage of consolidated revenue by customer and the percentage of accounts receivable by customer related to product shipments.

### Manufacturing

Our facilities are used for office purposes only and 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.
- Otrexup - Antares Pharma, Inc. and Pharmascience Inc.
- Sympazan - Aquestive Therapeutics, Inc.
- SPRIX - Jubilant HollisterStier LLC and Sharp Packaging Solutions
- CAMBIA - MiPharm, S.p.A. and Tioapack (formerly Pharma 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 a manufacturer based in Germany. Sympazan uses Clobazam as the API, which is procured on a purchase order basis by our supplier from a manufacturer based in Italy.

Oxycodone hydrochloride is classified as a 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.” Clobazam is classified as a benzodiazepine, a DEA Schedule IV controlled substance, having a low potential for abuse and low risk of dependence.

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®, Sympazan®, SPRIX®, CAMBIA®, Zipsor® and 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, 2022, the U.S. patents we own or have in-licensed, and their expiration dates and the marketed products they cover, are as follows:

<b>Product</b>	<b>U.S. Patent Nos. (Exp. Dates)</b>
Otrexup®	8,021,335 (October 4, 2026)
	8,480,631 (March 19, 2030)
	8,562,564 (January 24, 2026)
	8,579,865 (March 19, 2030)
	8,814,834 (May 27, 2031)
	8,945,063 (March 19, 2030)
	9,421,333 (March 19, 2030)
	9,533,102 (January 24, 2026)
	9,629,959 (January 24, 2026)
	9,867,949 (March 10, 2029)
	10,709,844 (March 10, 2029)
	11,446,441 (January 24, 2026)
	11,497,753 (March 19, 2030)
Sympazan®	8,603,514 (April 3, 2024)
	8,765,167 (February 20, 2024)
	11,541,002 (January 31, 2040)
SPRIX® <sup>(1)</sup>	8,277,781 (March 13, 2029) <sup>(2)</sup>
	8,551,454 (March 13, 2029) <sup>(2)</sup>
CAMBIA® <sup>(3)</sup>	7,759,394 (June 16, 2026)
	8,097,651 (June 16, 2026)
	8,927,604 (June 16, 2026)
Zipsor® <sup>(4)</sup>	9,827,197 (June 16, 2026)
	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)
OXAYDO®	9,561,200 (February 24, 2029)
	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) Directed to processes of manufacture related to SPRIX.

(2) Expiration date excludes any potential patent term adjustment.

(3) Certain parties who have entered into settlement agreements with us are able to market generic versions of CAMBIA starting January 2023.

(4) Certain parties who have entered into settlement agreements with us are able to market generic versions of Zipsor starting in March 2022.

Our success depends 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-arthritis. 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. We are aware of other drug companies that have had interactions with regulatory agencies including the U.S. Food and Drug Administration (“FDA”) relating to indomethacin, which could indicate the development of one or more INDOCIN product generics or other formulations of indomethacin. We are also aware of a 503B outsourcing facility (commonly referred to as a 503B compounder) that recently began compounding 100 mg indomethacin suppositories in what we believe to be violation of certain provisions of the Food, Drug and Cosmetic Act (the “FDCA”), including, among others, Section 505 approval requirements for new drugs and labeling requirements related to adequate directions for use. For further discussion of the risks related to the development INDOCIN Product generics and those related to 503B compounders, please refer to “Item 1A. Risk Factors - Cambia and Zipsor recently began facing competition from generics and INDOCIN suppositories recently began facing competition from a 503B outsourcing facility (commonly referred to as a 503B compounder) which adversely affects our business. Approval of generic versions of our other products, including the INDOCIN products which are not patent protected and may face generic competition at any time, could have an adverse effect on our business.”

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 began to market generic versions of CAMBIA 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 began to market generic versions of Zipsor 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. Sympazan competes with other generic and branded products in the treatment of LGS, including clobazam tablets and oral solution options. Competition in the LGS marketplace includes branded and generic anti-seizure medications, surgery, neuromodulations, and diet. 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 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 the FDA and IRBs, and the 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”). 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 review 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 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 Phase 4 clinical 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 the FDA and obtain licenses from certain state agencies. Registration with the FDA subjects entities to periodic unannounced inspections by the 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 health care providers ("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 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 an 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.

#### *Sympazan*

Sympazan, a Clobazam lingual film product, is regulated as a Schedule IV controlled substance by the DEA.

#### *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 are 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 an 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 an 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 are subject to applicable 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, such as our product 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 have and may in the future 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: (i) Centers for Medicare & Medicaid Services’ Medicaid Drug Rebate Program, (ii) Medicare Part B

Program and Medicare Part D Coverage Gap Discount Programs, (iii) the U.S. Department of Veterans Affairs' Federal Supply Schedule Program, and (iv) the Health Resources and Services Administration's 340B Drug Pricing Program. These rebates are subject to our active participation in the respective programs. 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 in the future 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 has put additional pressure on pharmaceutical drug pricing, and reimbursement and usage, and has adversely affected 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, and, from time to time, our business has been affected by the ACA and certain of these provisions. 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.

In addition, the Inflation Reduction Act of 2022 ("IRA") contains provisions intended to lower beneficiary drug spending. Beginning in 2023, the IRA enables Medicare to negotiate prescription drug prices with manufacturers of certain high-cost drugs for the first time. A separate provision requires drug manufacturers to pay rebates to Medicare if their drug prices increase at a higher rate than the rate of inflation (the so-called inflation rebate provision). Additionally, effective in 2024, the IRA will eliminate the 5% coinsurance for catastrophic coverage under Medicare Part D; in 2025, the IRA will cap the beneficiary annual out-of-pocket expenditure. These efforts to reduce aggregate beneficiary spending are expected to shift some costs to drug manufacturers.

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, the 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 subject and are likely to be subject in the future 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); certain other “healthcare providers” (including physician assistants, nurse practitioners, clinical nurse specialists, certified nurse anesthetists, certified nurse-midwives); 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 healthcare 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, from time to time some of our business activities are 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 in the future 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 6, 2023 we had 30 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 believe we offer a desirable set of benefits, a flexible working environment, and career-enhancing development experiences and initiatives that are aligned with our mission, vision, and values. We also believe 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 outlines our 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 make 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.
- Cambia and Zipsor recently began facing competition from generics and INDOCIN suppositories recently began facing competition from a 503B outsourcing facility (commonly referred to as a 503B compounder) which adversely affects our business. Approval of generic versions of our other products, including the INDOCIN products which are not patent protected and may face generic competition at any time, would have an 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 cause 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 are subject to risks from liability 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 and repay our 2027 Convertible Notes.
- Conversions of the 2027 Convertible Notes or future sales of our common stock or equity-linked securities in the public market could lower the market price of our common stock and adversely impact the trading price of the 2027 Convertible Notes.
- 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*

- Future product candidates may not be approved for marketing or, if approved, may not achieve market acceptance.
- We customarily depend on third-party contract research organizations, clinical investigators and clinical sites to conduct clinical trials with regard to product candidates.
- 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. Accordingly, our experience with a digital-only sales model is limited and this model 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.

***Cambia and Zipsor recently began facing competition from generics and INDOCIN suppositories recently began facing competition from a 503B outsourcing facility (commonly referred to as a 503B compounder) which adversely affects our business. Approval of generic versions of our other products, including the INDOCIN products which are not patent protected and may face generic competition at any time, would have an adverse effect on our business.***

Under the FDCA, the FDA can approve an 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 64% of our revenue in 2022), which means that a generic drug company could introduce a generic for these drugs at any time. In addition, we are aware of other drug companies that have had interactions with regulatory agencies including FDA relating to indomethacin, which could indicate the development of one or more INDOCIN product generics or other formulations of indomethacin. Furthermore, a 503B outsourcing facility (commonly referred to as a 503B compounder) recently began compounding 100 mg indomethacin suppositories in what we believe to be violation of certain provisions of the FDCA, including, among others, Section 505 approval requirements for new drugs and labeling requirements related to adequate directions for use. For a 503B compounder to qualify for exemptions from these requirements, the 503B compounder must meet certain conditions set forth in Section 503B of the FDCA, including (1) using only bulk drug substances (i.e., indomethacin) that appear on a list identifying the bulk substances for which the FDA has determined that there is clinical need to use in compounding or that the drug product compounded from a bulk drug substance appears on FDA's drug shortage list; and (2) compounding a drug product that is not “essentially a copy” of an FDA-approved product. We believe that the 503B compounder compounding 100 mg indomethacin suppositories does not meet these conditions as indomethacin is not on FDA's list of bulk substances for which there is a clinical need and INDOCIN suppositories are not on the FDA's drug shortage list; and we believe that the 100 mg indomethacin suppositories being compounded are “essentially a copy” of Zyla's FDA-approved INDOCIN suppositories. As a

result, Zyla currently faces competition for INDOCIN suppositories from what we believe is an unlawful compounder and could face generic competition at any time for the INDOCIN products. Although Zyla is vigorously pursuing remedies against this compounder, we cannot guarantee that Zyla will be successful in causing it to discontinue sales of its unapproved indomethacin suppository product.

With respect to Cambia and Zipsor (which accounted for 16% and 2% of our revenue in 2022, respectively), we have entered into settlement agreements with generic drug companies, under which generic versions of these products can be marketed beginning in January 2023 and March 2022, respectively. As a result, we face generic competition for Cambia and Zipsor.

The introduction of one or more generic versions of our products, as well as sales of indomethacin suppositories by compounders, or disclosure of ANDA filings and/or similar applications in respect to any of our products, have and in the future could adversely impact our business, financial condition, results of operations and stock price. Moreover, if the orange book patents covering Otrexup (which expire in 2031) and/or Sympazan (which expire in 2040) are not upheld in litigation or if a generic competitor is found not to infringe these patents, the resulting generic competition for Otrexup and/or Sympazan would have a further 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 deleveraging 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 an 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, Sympazan, 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 affected 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 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 depends 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, the impact on third parties on which we rely, including suppliers and distributors, 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.

***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 from time to time 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 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.

On October 27, 2022, we completed the Sympazan Acquisition from Aquestive. Sympazan competes with other generic and branded products in the treatment of LGS, including clobazam tablets and oral solution options. Competition in the LGS marketplace includes branded and generic anti-seizure medications, surgery, neuromodulations, and diet.

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-arthritis.

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. Our insurance coverage may not be sufficient to prevent or recover from cyberattacks, including coverage of applicable resulting losses arising from any such incident.

***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 an 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 Asserzio 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 Asserpio 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 IRA and ACA, intended to curb rising healthcare costs. These cost-containment measures may include, among other measures: requirements for pharmaceutical companies to negotiate prescription drug prices with government healthcare programs; controls on government-funded reimbursement for drugs; new or increased requirements to pay prescription drug rebates to government healthcare programs, including if drug prices increase at a higher rate than inflation; 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.

In addition, the IRA contains provisions intended to lower beneficiary drug spending. Beginning in 2023, the IRA enables Medicare to negotiate prescription drug prices with manufacturers of certain high-cost drugs for the first time. A separate provision requires drug manufacturers to pay rebates to Medicare if their drug prices increase at a higher rate than the rate of inflation (the so-called inflation rebate provision). Additionally, effective in 2024, the IRA will eliminate the 5% coinsurance for catastrophic coverage under Medicare Part D; in 2025, the IRA will cap the beneficiary annual out-of-pocket expenditure. These efforts to reduce aggregate beneficiary spending are expected to shift some costs to drug manufacturers.

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 not always able to protect our intellectual property and are subject to risks from liability for infringing the intellectual property of others.***

Our success depends in part on our ability to obtain and maintain patent protection for our products and technologies, and to preserve our trade secrets. 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. We hold patents in the U.S. and in foreign countries. In addition, we may pursue patent applications relating to our technologies in the U.S. and abroad. Any such patent applications may lack priority over other applications or may not result in the issuance of patents. Even if issued, 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, by 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, due to, among other things, the lack of an adequate remedy for breach of an agreement or a finding that an agreement is unenforceable. In addition, our trade secrets may otherwise become known or be independently developed by competitors.

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, 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. Our indebtedness could limit our ability to incur additional debt to fund our operations.***

We have significant indebtedness under the 2027 Convertible Notes. Holders of the 2027 Convertible Notes will have the right to require us to repurchase their 2027 Convertible Notes for cash upon the occurrence of a "fundamental change," as defined in the indenture for the 2027 Convertible Notes, and we may elect to settle all or a portion of the conversion obligation of the 2027 Convertible Notes in cash. Our ability to make scheduled payments of the principal of, to pay interest on, to offer to repurchase the 2027 Convertible Notes upon a fundamental change as defined in the indenture for the 2027 Convertible Notes, or to refinance the 2027 Convertible 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. If we are unable to generate the necessary cash flow, we may be required to adopt one or more alternatives, such as selling assets, restructuring debt or obtaining additional equity capital on terms that may be onerous or highly dilutive. Any failure to generate sufficient cash flow to satisfy our obligations under the 2027 Convertible Notes or any future indebtedness could lead to a default under the 2027 Convertible Notes or such indebtedness.

The indenture for the 2027 Convertible Notes contains covenants limiting our ability in the future to secure our or our subsidiaries' assets or have our subsidiaries issue guarantees without equally and ratably securing or guaranteeing the 2027 Convertible Notes. These covenants may make it more difficult for us to incur indebtedness to fund our operations on attractive terms or at all.

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 any future 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.

***Conversions of the 2027 Convertible Notes or future sales of our common stock or equity-linked securities in the public market could lower the market price of our common stock and adversely impact the trading price of the 2027 Convertible Notes.***

In 2022, we issued the 2027 Convertible Notes, and in the future, we may sell additional shares of our common stock or equity-linked securities to raise capital. A substantial number of shares of our common stock is reserved for issuance upon the exercise of restricted stock units and stock options, and upon conversion of the 2027 Convertible Notes. We cannot predict the effect, if any, that conversions of the 2027 Convertible Notes or of any future issuances of common stock or equity-linked securities, may have on the market price of our common stock. The issuance and sale or conversion of substantial amounts of common stock or equity-linked securities, or the perception that such issuances and sales may occur, could adversely affect the trading price of the 2027 Convertible Notes and the market price of our common stock and impair our ability to raise capital through the sale of additional equity or equity-linked securities.

***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 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 acquired. We review the carrying value of our long-lived assets when indicators of impairment are present, as was the case in the third quarter of 2022 and the fourth quarter of 2021. 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**

***The development of drug candidates is inherently difficult and uncertain, and we cannot be certain that any of our future product candidates or those of our collaborative partners will be approved for marketing or, if approved, will achieve market acceptance.***

Clinical development is a long, expensive and uncertain process and is subject to delays and failures. As a condition to regulatory approval, each future product candidate must undergo extensive and expensive preclinical studies and clinical trials to demonstrate to a statistically significant degree that any such product candidate is safe and effective. The results at any stage of the development process may lack the desired safety, efficacy or pharmacokinetic characteristics. Positive or encouraging results of prior clinical trials are not necessarily indicative of the results obtained in later clinical trials. Further, product candidates in later clinical trials may fail to show the desired safety and efficacy despite having progressed in development. In addition, data obtained from pivotal clinical trials are susceptible to varying interpretations, which could delay, limit or prevent regulatory approval.

Product candidates are subject to the risk that any or all of them may be found to be ineffective or unsafe, or otherwise may fail to receive necessary regulatory clearances. The FDA or other applicable regulatory agencies may determine that our data is not sufficiently compelling to warrant marketing approval and require us to engage in additional clinical trials or provide further analysis, which may be costly and time-consuming. A number of companies in the pharmaceutical industry have suffered significant setbacks in clinical trials, even in advanced clinical trials after showing positive results in preclinical studies or earlier clinical trials. If our future product candidates fail at any stage of development, they will not receive regulatory approval, we will not be able to commercialize them and we will not receive any return on our investment in any such product candidates.

Other factors could delay or result in the termination of our or our collaborative partner's future clinical trials and related development programs, including:

- negative or inconclusive results;
- patient enrollment requirements and rates;
- patient noncompliance with the protocol;
- adverse medical events or side effects among patients during the clinical trials;
- any findings resulting from FDA inspections of clinical operations;
- failure to meet FDA preferred or recommended clinical trial design, end points or statistical power;
- failure to comply with good clinical practices;
- failure of third-party clinical trial vendors to comply with applicable regulatory laws and regulations;
- compliance with applicable laws and regulations;
- inability of third-party clinical trial vendors to satisfactorily perform their contractual obligations, comply with applicable laws and regulations or meet deadlines;
- delays or failures in obtaining clinical materials or manufacturing sufficient quantities of the product candidate for use in clinical trials;
- delays or failures in recruiting qualified patients to participate in clinical trials;
- unexpected external medical threats such as the COVID-19 pandemic or future outbreaks; and

- actual or perceived lack of efficacy or safety of the product candidate.

We are unable to predict whether any future product candidates will receive regulatory clearances or be successfully manufactured or marketed. Further, due to the extended testing and regulatory review process required before marketing clearance can be obtained, the time frame for commercializing a product is long and uncertain. Even if product candidates receive regulatory clearance, these products may not achieve or maintain market acceptance. If it is discovered that our or our collaborators' products or technologies have potential adverse effects or other characteristics that indicate they may be ineffective as therapeutics, our product development efforts and our business could be significantly harmed.

Even assuming our or our collaborative partners' products obtain regulatory approval, successful commercialization requires:

- market acceptance;
- a cost-effective commercial-scale production; and
- reimbursement under private or governmental health plans.

Any material delay or failure in the governmental approval process, the successful production of commercial product or the successful commercialization of any future approved product candidates, or those of our collaborative partners, could adversely impact our business, financial condition and results of operations.

***We and our collaborative partners customarily depend on third-party contract research organizations, clinical investigators and clinical sites to conduct clinical trials with regard to product candidates, and if they do not perform their regulatory, legal and contractual obligations, or successfully enroll patients in and manage our clinical trials, we and our collaborative partners may not be able to obtain regulatory approvals for future product candidates.***

We and our collaborative partners customarily rely on third-party contract research organizations and other third parties to assist us in designing, managing, monitoring and otherwise conducting clinical trials. We and our collaborative partners do not directly control these third parties and, as a result, we and our collaborative partners may be unable to control the amount and timing of resources that they devote to our or our collaborative partners' clinical trials.

Although we and our collaborative partners rely on third parties to conduct clinical trials, we and our collaborative partners are responsible for confirming that each clinical trial is conducted in accordance with its general investigational plan and protocol, as well as the FDA's and other applicable regulatory agencies' requirements, including good clinical practices, for conducting, recording and reporting the results of clinical trials to ensure that the data and results are credible and accurate and that the trial participants are adequately protected. If we, contract research organizations or other third parties assisting us or our collaborative partners with clinical trials fail to comply with applicable good clinical practices, the clinical data generated in such clinical trials may be deemed unreliable and the FDA, or other applicable regulatory agencies, may require us or our collaborative partners to perform additional clinical trials before approving any marketing applications with regard to future product candidates. We cannot be certain that, upon inspection, the FDA or other applicable regulatory agencies will determine that any of our clinical trials or our collaborative partners comply with good clinical practices. In addition, clinical trials must be conducted with product produced under the FDA's cGMP regulations and similar regulations outside of the U.S. Our or our collaborative partners' failure, or the failure of our product manufacturers, to comply with these regulations may require the repeat or redesign of clinical trials, which would delay the regulatory approval process.

We and our collaborative partners also customarily rely on clinical investigators and clinical sites to enroll patients and other third parties to manage clinical trials and to perform related data collection and analysis. If clinical investigators and clinical sites fail to enroll a sufficient number of patients in such clinical trials or fail to enroll them on the planned schedule, these trials may not be completed or completed as planned, which could delay or prevent us or our collaborative partners from obtaining regulatory approvals for future product candidates.

Agreements with clinical investigators and clinical sites for clinical testing and for trial management services place substantial responsibilities on these parties, which could result in delays in, or termination of, clinical trials if these parties fail to perform as expected. If these clinical investigators, clinical sites or other third parties do not carry out their contractual duties or obligations or fail to meet expected deadlines, or if the quality or accuracy of the clinical data they obtain is compromised due to their failure to adhere to clinical protocols or for other reasons, clinical trials may be extended, delayed or terminated, and we and our collaborative partners may be unable to obtain regulatory approval for, or successfully commercialize, product candidates. In addition, clinical trials sometimes need to be amended once the trial is in process in order to ensure enrollment and/or successful prosecution of a trial, and such amendments could introduce significant delays and/or additional costs to our or our collaborative partners' clinical programs.

***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, 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 and sales of generics of our products (including the INDOCIN products which are not patent protected and may face generic competition at any time) and/or other products competitive with any of our products (including compounded indomethacin suppositories that a 503B compounder recently began selling in what we believe to be violation of certain provisions of the FDCA and which compete with our INDOCIN suppositories);

- our ability to successfully execute our business strategy, business development, strategic partnerships, and investment opportunities to build and grow for the future, including through product acquisitions, commercialization agreements, licensing or technology agreements, equity investments, and business combinations;
- the outcome of, and our intentions with respect to, any litigation or investigations, including antitrust litigation, opioid-related investigations, opioid-related litigation and related claims for negligence and breach of fiduciary duty against our former insurance broker, 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 fund operations and 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;
- 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.

A decrease in the market price of our common stock would likely adversely impact the trading price of the 2027 Convertible Notes. The market price of our common stock could also be affected by possible sales of our common stock by investors who view the 2027 Convertible Notes as a more attractive means of equity participation in us and by hedging or arbitrage trading activity that we expect to develop involving our common stock. This trading activity could, in turn, affect the trading price of the 2027 Convertible Notes.

***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. If we were delisted from The Nasdaq Capital Market, it would constitute a "fundamental change" under the 2027 Convertible Notes, which would require us to offer to repurchase the 2027 Convertible Notes and would allow the holders of the 2027 Convertible Notes to convert their 2027 Convertible Notes into our common stock at an increased conversion rate, which would make conversion of the 2027 Convertible Notes more dilutive.

***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”). Unless renewed, the Lake Forest Lease will expire on January 31, 2024. Our facilities are used for office purposes only and no commercial manufacturing takes place at our facilities.

Prior to our corporate headquarters relocation in 2018, we had leased our previous corporate office in Newark, California (the “Newark Lease”). The Newark Lease terminated at the end of November 2022. In connection with the Zyla Merger, we assumed an operating lease for the corporate offices in Wayne, Pennsylvania, which terminated in February 2022 (the “Wayne Lease”).

For additional information regarding the Lake Forest Lease, Newark Lease, and Wayne Lease, 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 under the symbol "ASRT." As of December 31, 2022, there were 26 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 on Form 10-K.

#### 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 currently 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 on Form 10-K that were not registered under the Securities Act of 1933, as amended (the "Securities Act").

#### Stock Performance Graph

We are a smaller reporting company, as defined by Rule 12b-2 of the Securities Exchange Act of 1934, as amended (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 the Company's common stock during the period covered by this Annual Report on Form 10-K, 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 <sup>(1)</sup>	(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, 2022 - October 31, 2022	71,533	\$2.27	N/A	N/A
November 1, 2022 - November 30, 2022	1,304	\$2.81	N/A	N/A
December 1, 2022 - December 31, 2022	—	—	N/A	N/A
<b>Total</b>	<b>72,837</b>	<b>\$2.28</b>		

(1) Consists of shares withheld to pay employees' tax liability in connection with the vesting of restricted stock units granted under 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 on Form 10-K. In addition to historical information, some of the information contained in this discussion and analysis or set forth elsewhere in this Annual Report on Form 10-K, 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 on Form 10-K, 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 commercial pharmaceutical company offering differentiated products to patients utilizing a non-personal promotional model. Our commercial portfolio of branded products focuses on three areas: neurology, rheumatology, and pain and inflammation. We have built our commercial portfolio through a combination of increased opportunities with existing products, as well as through the acquisition or licensing of additional approved products. Our primary marketed products are:

<p>INDOCIN® (indomethacin) Suppositories</p> <p>INDOCIN® (indomethacin) Oral Suspension</p>	<p>A suppository and oral solution of indomethacin used both in hospitals and out-patient settings. Both products are nonsteroidal anti-inflammatory drug (NSAID), indicated for:</p> <ul style="list-style-type: none"> <li>• Moderate to severe rheumatoid arthritis including acute flares of chronic disease</li> <li>• Moderate to severe ankylosing spondylitis</li> <li>• Moderate to severe osteoarthritis</li> <li>• Acute painful shoulder (bursitis and/or tendinitis)</li> <li>• Acute gouty arthritis</li> </ul>
<p>Otrexup® (methotrexate) injection for subcutaneous use</p>	<p>A once weekly single-dose auto-injector containing a prescription medicine, methotrexate. Otrexup is folate analog metabolic inhibitor indicated for the:</p> <ul style="list-style-type: none"> <li>• 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.</li> <li>• Symptomatic control of severe, recalcitrant, disabling psoriasis in adults who are not adequately responsive to other forms of therapy.</li> </ul>
<p>Sympazan® (clobazam) oral film</p>	<p>A benzodiazepine indicated for the adjunctive treatment of seizures associated with Lennox-Gastaut Syndrome (LGS) in patients aged two years of age or older . Sympazan is the only product to offer clobazam in a convenient film with PharmFilm® technology. Sympazan is taken without water or liquid, adheres to the tongue, and dissolves to deliver clobazam.</p>
<p>SPRIX® (ketorolac tromethamine) Nasal Spray</p>	<p>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 an 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.</p>
<p>CAMBIA® (diclofenac potassium for oral solution)</p>	<p>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.</p>
<p>Zipsor® (diclofenac potassium) Liquid filled capsules</p>	<p>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.</p>

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

On October 27, 2022, we completed the Sympazan Acquisition from Aquestive. Under the terms of the definitive agreement governing the Sympazan Acquisition, we acquired an exclusive license for the Sympazan intellectual property from Aquestive for an upfront payment of \$9.0 million and a \$6.0 million milestone payment contingent upon allowance of an existing patent application which, at the date of the transaction, Aquestive was prosecuting. The patent allowance was granted in the fourth quarter of 2022, which extends the patent coverage until 2040. Accordingly, we have paid in full the \$6.0 million milestone payment. We are also required to pay Aquestive cash royalties on a quarterly basis equal to 10.0% of the gross margin (defined within the definitive agreement) from sales of Sympazan. We also entered into a long-term supply agreement with Aquestive for Sympazan.

On August 22, 2022, we issued \$70.0 million aggregate principal amount of Convertible Senior Notes which mature on September 1, 2027 and bear interest at the rate of 6.5% per annum, payable semi-annually in arrears on March 1 and September 1 of each year beginning March 1, 2023. We used the net proceeds from the 2027 Convertible Notes to repurchase the remaining \$59.0 million aggregate principal amount of our outstanding 2024 Secured Notes and \$3.0 million in associated interest payment pursuant to privately negotiated exchange agreements entered into concurrently with the pricing of the 2027 Convertible Notes. We expect to use the remaining net proceeds from the 2027 Convertible Notes for general corporate purposes.

On February 27, 2023, we completed a transaction with a limited number of holders of our outstanding 2027 Convertible Notes (the “Exchanged Notes”) to exchange \$30.0 million aggregate principal amount of Exchanged Notes pursuant to separate, privately negotiated exchange agreements for a combination of (a) a cash payment and (b) an agreed number of shares of our common stock. The shares of our common stock were issued in private placements exempt from registration in reliance on Section 4(a)(2) of the Securities Act. We paid an aggregate of \$10.5 million in cash and issued an aggregate of approximately 7.0 million shares of our common stock in the transactions. We did not receive any cash proceeds from the issuance of the shares of our common stock. Refer to [Note 10](#) of the accompanying Consolidated Financial Statements for additional information on the 2027 Convertible Notes.

On December 15, 2021, we, through a newly-formed subsidiary, Otter Pharmaceuticals, LLC, entered into the Purchase Agreement with Antares, and concurrently consummated the Otrexup Acquisition. 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 paid on May 31, 2022, and (iii) \$10.0 million in cash paid on December 15, 2022.

On May 18, 2021, we effected a 1-for-4 reverse stock split of our issued and outstanding par value \$0.0001 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 May 20, 2020, we completed the Zyla Merger with Zyla pursuant to the Merger Agreement. Pursuant to the Zyla Merger, we acquired our current commercial products INDOCIN (suppository and oral solution), SPRIX, and OXAYDO.

## **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 Annual Report on Form 10-K, 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 upon 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 (managed care rebates and government rebates are collectively referred to as “rebates”), wholesaler and pharmacy discounts, prompt pay discounts, patient discount programs, and chargebacks. We consider product 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, although the timing of ultimate settlement of returns and chargebacks-related allowances can be prolonged by our process to validate such adjustments before settlement is finalized.

**Product Returns** - We allow customers to return product for credit with respect to that product within six 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 any of our currently marketed products if those returns relate to sales of that product prior to the period of our ownership of the respective product. For products we have divested, we are only financially responsible for product returns of products sold by us, which are identified by specific lot numbers.

Shelf lives for our products, from the respective manufacture dates, range from 24 months to 48 months. Because of the shelf life of our products and our 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.

**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.

**Government Rebates** - 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 and Medicare Part B Program and Medicare Part D Coverage Gap Discount Programs. We generally pay government rebates three to twelve months after prescriptions subject to the rebate are filled. These rebates are subject to our active participation in the respective programs.

The following table reflects activity relating to the Company's liability for rebates, returns and discounts as of December 31, 2022 and 2021 (in thousands):

	Product Returns	Rebates <sup>(1)</sup>	Other Sales Allowances <sup>(2)</sup>	Total <sup>(4)</sup>
Balance as of December 31, 2020	\$ 19,870	\$ 21,345	\$ 23,227	\$ 64,442
Provisions made in current period to Product Sales, net	14,998	19,906	60,443	95,347
Provisions made in current period to Other revenue <sup>(3)</sup>	210	378	397	985
Payments and credits made in current period	(1,915)	(35,549)	(69,710)	(107,174)
Balance as of December 31, 2021	<u>\$ 33,163</u>	<u>\$ 6,080</u>	<u>\$ 14,357</u>	<u>\$ 53,600</u>
Provisions made in current period to Product Sales, net	7,247	23,299	71,535	102,081
Provisions made in current period to Other revenue <sup>(3)</sup>	1,290	—	—	1,290
Payments and credits made in current period	(10,413)	(21,694)	(74,552)	(106,659)
Balance as of December 31, 2022	<u>\$ 31,287</u>	<u>\$ 7,685</u>	<u>\$ 11,340</u>	<u>\$ 50,312</u>

(1) Rebates consist of managed care rebates and government rebates.

(2) Other Sales Allowances consist of wholesaler and pharmacy discounts, prompt pay discounts, patient discount programs, and chargebacks.

(3) Consists of sales adjustments for previously divested products recognized in Other revenue in the Consolidated Statements of Comprehensive Income (Loss).

(4) Balance includes allowances for cash discounts for prompt payment of \$0.9 million, \$0.9 million and \$1.3 million as of December 31, 2022, 2021 and 2020, respectively, which are recognized in Account receivable, net in the Company's Consolidated Balance Sheets.

### 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, 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.

On October 27, 2022, we completed the Sympazan Acquisition, and on December 15, 2021, we completed the Otrexup Acquisition. Both of these acquisitions were accounted for 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 obligation to make contingent consideration payments for future royalties to an affiliate of CR Group L.P. ("CRG") 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, and recognize the change in fair value in Fair value of contingent consideration in the Company's Consolidated Statements of Comprehensive Income (Loss). 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, 2022 and 2021, we recognized an expense of

\$18.7 million and \$3.9 million, respectively, for the change in fair value of contingent consideration. The significant assumptions used in the calculation of the fair value as of December 31, 2022 included revenue volatility of 40%, discount rate of 9.0%, credit spread of 3.8% 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.

In the third quarter of 2022 and the fourth quarter of 2021, we determined that there was an indicator of impairment present based on our market capitalization compared to our carrying value as of September 30, 2022 and December 31, 2021. For each of the respective periods the indicator was present, 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 performed at both September 30, 2022 and December 31, 2021, 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 both September 30, 2022 and December 31, 2021. There were no indicators of impairment of long-lived assets identified during the three months ended December 31, 2022.

### ***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.

During the year ended December 31, 2022, we reversed \$89.3 million of our previously recorded valuation allowances against the net deferred tax asset. As part of our valuation assessment, we primarily relied on the projected availability of future taxable income from pre-tax income forecasts and reversing taxable temporary differences. We did retain \$12.5 million of valuation allowance because realization of the future benefits for the associated deferred tax assets is not considered more-likely-than-not to occur. We will continue to assess the realizability of our deferred tax assets on a quarterly basis and assess whether an additional reserve or a release of a valuation allowance is required in future periods.

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 derecognition 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% 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 are reflected as increases or decreases to income tax expense in the period in which they are determined. Refer to “Note 19. 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, 2022 and 2021 (in thousands):

	Year ended December 31,	
	2022	2021
Revenues:		
Product sales, net	\$ 155,121	\$ 109,420
Royalties and milestones	2,403	2,579
Other revenue	(1,290)	(985)
Total revenues	156,234	111,014
Costs and expenses:		
Cost of sales	18,748	15,832
Selling, general and administrative expenses	46,786	52,641
Fair value of contingent consideration	18,687	3,914
Amortization of intangible assets	32,608	28,114
Restructuring charges	—	1,089
Total costs and expenses	116,829	101,590
Income from operations	39,405	9,424
Other (expense) income:		
Interest expense	(7,961)	(10,220)
Other (loss) gain	(278)	243
Total other (expense) income	(8,239)	(9,977)
Net income (loss) before income taxes	31,166	(553)
Income tax benefit (expense)	78,459	(728)
Net income (loss) and comprehensive income (loss)	\$ 109,625	\$ (1,281)

## Revenues

The following table reflects total revenues, net for the years ended December 31, 2022 and 2021 (in thousands):

	Year ended December 31,	
	2022	2021
Product sales, net:		
INDOCIN products	\$ 100,338	\$ 60,557
Otrexup	11,148	—
Sympazan	1,768	—
SPRIX	9,110	8,676
CAMBIA	24,720	24,972
Zipsor	3,364	10,185
Other products	4,673	5,030
Total product sales, net	155,121	109,420
Royalties and milestone revenue	2,403	2,579
Other revenue	(1,290)	(985)
Total revenues	\$ 156,234	\$ 111,014

### Product sales, net

For the year ended December 31, 2022, product sales primarily consisted of sales from INDOCIN products, CAMBIA, Otrexup and SPRIX.

INDOCIN net products sales increased \$39.8 million from \$60.6 million for the year ended December 31, 2021 to \$100.3 million for the year ended December 31, 2022, primarily due to favorable net pricing as a result of an increase in gross price and volume mix shift to more profitable channels, partially offset by lower volume.

The Company acquired Otrexup in December 2021 and began shipping and recognizing product sales for Otrexup in January 2022. The Company acquired Sympazan and began shipping and recognizing its product sales in October 2022.

SPRIX net product sales increased \$0.4 million from \$8.7 million for the year ended December 31, 2021 to \$9.1 million for the year ended December 31, 2022, primarily due to higher volume, partially offset by unfavorable payor mix.

CAMBIA net product sales decreased \$0.3 million from \$25.0 million for the year ended December 31, 2021 to \$24.7 million for the year ended December 31, 2022, primarily due to lower volume, partially offset by favorable payor mix. Certain parties who have entered into settlement agreements with us began to market generic versions of CAMBIA in 2023.

Zipsor net product sales decreased \$6.8 million from \$10.2 million for the year ended December 31, 2021 to \$3.4 million for the year ended December 31, 2022, primarily due to lower volume and unfavorable payor mix, as certain parties who previously entered into settlement agreements with us began to market generic versions of Zipsor in 2022.

Other net product sales include 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 no longer manufacture products using SOLUMATRIX technology and ceased sales beginning in July 2022.

For the year ended December 31, 2022, gross-to-net sales allowances increased by \$6.7 million due to the overall increase in gross sales of our products, partially offset by a favorable gross-to-net sales allowance percentage as a result of changes in product mix, specifically, a higher concentration of INDOCIN products that typically require lower levels of product sales allowances relative to our other products. 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,” and [Schedule II](#) to the accompanying Consolidated Financial Statements for additional information about amounts charged as a reduction to revenue for product sales allowances, product return allowances, discounts, chargebacks, and rebates.



### *Royalties & milestone revenue*

In November 2010, we entered into a license agreement with Tribute Pharmaceuticals Canada Ltd. (now known as Miravo Pharmaceuticals, or “Miravo”) 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, 2022 and 2021, we recognized \$1.9 million and \$2.5 million of revenue related to CAMBIA in Canada, respectively.

During the year ended December 31, 2022, we recognized \$0.5 million of milestone revenue associated with the completion of certain service milestones. There was no such milestone revenue associated with the completion of similar service milestones during the year ended December 31, 2021.

### *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, NUCYNTA, and Lazanda, and resulted in a revenue reduction of \$1.3 million and \$1.0 million for the years ended December 31, 2022, and 2021, 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 or scrap costs, 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 “Intangible Assets.” Fair value of inventories acquired through business combinations or asset acquisitions 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 increased \$2.9 million from \$15.8 million for the year ended December 31, 2021 to \$18.7 million for the year ended December 31, 2022, primarily due to the additional cost of sales from Otrexup and Sympazan, which began shipping in January and October 2022, respectively, and the impact of product mix that includes higher net sales of INDOCIN and SPRIX.

During the years ended December 31, 2022 and 2021, cost of sales included \$0.8 million and \$0.6 million, respectively, of amortization of inventory step-up related to acquired inventories sold.

### *Selling, General and Administrative Expenses*

Selling, general and administrative 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 and accounting fees.

Selling, general, and administrative expenses decreased \$5.9 million from \$52.6 million for the year ended December 31, 2021 to \$46.8 million for the year ended December 31, 2022, primarily due to \$10.6 million in loss contingency provisions recognized in 2021 that are not repeating in 2022 and a net decrease of approximately \$2.3 million in general operating expenses in part due to prior restructuring events. This was partially offset by a net increase of \$3.0 million as a result of the \$5.0 million gain for insurance reimbursement in the first quarter of 2021, compared to a \$2.0 million gain for insurance reimbursement in the second quarter of 2022, and an increase of \$4.0 million in stock-based compensation expense.

### ***Fair value of contingent consideration***

Fair value of contingent consideration increased \$14.8 million from \$3.9 million for the year ended December 31, 2021 to \$18.7 million for the year ended December 31, 2022. The fair value of the contingent consideration is remeasured each reporting period, with changes in the fair value resulting from changes in the underlying inputs being recognized in operating expenses until the contingent consideration arrangement is settled. 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, 2022 included revenue volatility of 40%, discount rate of 9.0%, credit spread of 3.8% and updated projections of future INDOCIN product revenues.

### ***Intangible Assets***

The following table reflects amortization of intangible assets for the years ended December 31, 2022 and 2021 (in thousands):

	Year ended December 31,	
	2022	2021
Amortization of intangible assets—INDOCIN	\$ 12,841	\$ 12,842
Amortization of intangible assets—Otrexup	5,511	—
Amortization of intangible assets—Sympazan	202	—
Amortization of intangible assets—SPRIX	5,572	5,571
Amortization of intangible assets—CAMBIA	7,950	7,247
Amortization of intangible assets—Zipsor	532	2,337
Amortization of intangible assets—Oxaydo	—	117
Total amortization of intangible assets	\$ 32,608	\$ 28,114

Amortization expense increased \$4.5 million from \$28.1 million for the year ended December 31, 2021 to \$32.6 million for the year ended December 31, 2022 primarily due to the amortization of the Otrexup product rights acquired in December 2021 and Sympazan product rights acquired in October 2022, the full amortization of Zipsor intangible assets in the first quarter of 2022, and the full amortization of Oxaydo intangible assets in early 2021.

### ***Restructuring Charges***

We regularly 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 completed the workforce reduction in 2021.

For the year ended December 31, 2022 there were no restructuring charges recognized. For the year ended December 31, 2021, restructuring charges recognized were \$1.1 million.

### ***Other (Expense) Income***

The following table reflects Other (expense) income: for the years ended December 31, 2022 and 2021 (in thousands):

	Year ended December 31,	
	2022	2021
Interest expense	\$ (7,961)	\$ (10,220)
Other (loss) gain	(278)	243
Total other (expense) income	\$ (8,239)	\$ (9,977)

Other (expense) income decreased by \$1.7 million from expense of \$10.0 million for the year ended December 31, 2021 to expense of \$8.2 million for the year ended December 31, 2022. The decrease between years is primarily due to lower interest expense and other loss of \$0.3 million in the current year compared to other gain of \$0.2 million in the prior year.

The following table reflects interest expense for the years ended December 31, 2022 and 2021 (in thousands):

	<b>Year ended December 31,</b>	
	<b>2022</b>	<b>2021</b>
Interest on 2027 Convertible Notes	\$ 1,592	\$ —
Interest on 2024 Secured Notes	6,065	10,020
Amortization of Royalty Rights <sup>(1)</sup>	68	185
Amortization of debt issuance costs	236	15
<b>Total interest expense</b>	<b>\$ 7,961</b>	<b>\$ 10,220</b>

(1) As a result of the extinguishment of the Royalty Rights obligation, there will be no additional amortization expense recognized in future periods. Refer to [Note 10](#) of the accompanying Consolidated Financial Statements for additional information on the Royalty Rights obligation.

Total interest expense decreased \$2.3 million from \$10.2 million for the year ended December 31, 2021 to \$8.0 million for the year ended December 31, 2022, primarily due to lower amounts of interest incurred on debt outstanding during the year ended December 31, 2022 compared to the prior year. On August 22, 2022, we issued \$70.0 million in aggregate principal amount of 6.5% Convertible Senior Notes due 2027. We used the net proceeds from the 2027 Convertible Notes issuance to repurchase the remaining \$59.0 million aggregate principal amount of our 2024 Secured Notes, which had been outstanding for the entire period of 2021 and carried a higher interest rate.

Other (loss) gain for the year ended December 31, 2022 was primarily attributable to additional expected credit loss of \$1.6 million recognized in the year associated with our investment in a Convertible Secured Promissory Note from NES Therapeutic, Inc. (“NES”). Also contributing to the Other (loss) gain for the year ended December 31, 2022 was a loss of \$0.3 million recognized for the fair value of a derivative liability associated with an embedded derivative feature of our 2027 Convertible Notes. These losses were partially offset by a \$1.0 million gain on debt extinguishment associated with the derecognition of our Royalty Rights obligation as well as interest income on our short-term cash and cash equivalent investments during the year ended December 31, 2022. Other gain for the year ended December 31, 2021 primarily consisted of interest income and sublease income offset by sublease expense.

#### ***Income Tax Provision***

During the year ended December 31, 2022, we recorded an income tax benefit of approximately \$78.5 million, which represents an effective tax rate of (251.7)%. The difference between the income tax benefit of \$78.5 million and the tax at the statutory rate of 21.0% is principally due to the reversal of previously recorded valuation allowances. During the year ended December 31, 2022, we reversed a majority of our previously recorded valuation allowances against the net deferred tax asset based on our assessment of the availability of future taxable income from pre-tax income forecasts and the reversal of taxable temporary differences.

During the year ended December 31, 2021, we recorded 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 21.0% is principally due to the recording of a valuation allowance for the 2021 movement in deferred tax assets.

#### **LIQUIDITY AND CAPITAL RESOURCES**

Historically and through December 31, 2022, 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 August 22, 2022, we issued \$70.0 million aggregate principal amount of Convertible Notes which mature on September 1, 2027 and bear interest at a rate of 6.5% per annum, payable semi-annually in arrears on March 1 and September 1 of each year beginning March 1, 2023. We used the net proceeds from the 2027 Convertible Notes to repurchase the remaining \$59.0 million aggregate principal amount of our outstanding 2024 Secured Notes and \$3.0 million in associated interest payment pursuant to privately negotiated exchange agreements entered into concurrently with the pricing of the 2027 Convertible Notes. We expect to use the remaining net proceeds from the 2027 Convertible Notes for general corporate purposes.

On February 27, 2023, we completed a transaction with a limited number of holders of our outstanding 2027 Convertible Notes to exchange \$30.0 million aggregate principal amount of Exchanged Notes pursuant to separate, privately negotiated exchange agreements for a combination of (a) a cash payment and (b) an agreed number of shares of our common stock. The shares of our common stock were issued in private placements exempt from registration in reliance on Section 4(a)(2) of the Securities Act. We paid an aggregate of \$10.5 million in cash and issued an aggregate of approximately 7.0 million shares of our common stock in the transactions. We did not receive any cash proceeds from the issuance of the shares of our common stock.

The terms of the 2027 Convertible Notes are governed by an indenture dated August 25, 2022 (the “2027 Convertible Note Indenture”). Pursuant to the terms of the 2027 Convertible Note Indenture, the Company and its restricted subsidiaries must comply with certain covenants, including mergers, consolidations, and divestitures; guarantees of debt by subsidiaries; issuance of preferred and/or disqualified stock; and liens on our properties or assets. We are in compliance with our covenants with respect to the 2027 Convertible Notes as of December 31, 2022.

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 (“ATM”) offering program having an aggregate offering price of up to \$25.0 million. In connection with the 2027 Convertible Note offering, we suspended use of the ATM offering program. Prior to our suspension of the ATM offering program, 2,463,637 shares of our common stock had been issued and settled at an average price of \$3.02, through which we received gross proceeds of \$7.4 million, and net proceeds after commission and fees of \$7.0 million.

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. 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. 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 continue to use the proceeds from both offerings for general corporate purposes, including general working capital.

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;
- expenditures related to future clinical trial costs; 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 the Company.

The following table reflects summarized cash flow activities for the years ended December 31, 2022 and 2021 (in thousands):

	<b>Year ended December 31,</b>	
	<b>2022</b>	<b>2021</b>
Net cash provided by operating activities	\$ 78,598	\$ 5,523
Net cash used in investing activities	(42,673)	(18,525)
Net cash (used in) provided by financing activities	(7,794)	29,026
Net increase in cash and cash equivalents	28,131	16,024
Cash and cash equivalents at beginning of year	36,810	20,786
Cash and cash equivalents at end of year	\$ 64,941	\$ 36,810

### **Cash Flows from Operating Activities**

Cash provided by operating activities was \$78.6 million for the year ended December 31, 2022 compared to \$5.5 million in the same period in 2021, primarily due to a combination of higher net income excluding non-cash items, and favorable working capital cash flows compared to last year.

For the year ended December 31, 2022, net income was \$109.6 million compared to a net loss of \$1.3 million for the same period in 2021. For the year ended December 31, 2022, non-cash items contributed approximately \$56.1 million less to operating cash flows compared to the same period in 2021 primarily due to the \$80.4 million reversal of a majority of our previously recorded valuation allowances against the net deferred tax asset in the fourth quarter of 2022, partially offset by higher depreciation and amortization expense, stock-based compensation expense and expense for recurring fair value measurement of contingent consideration. For the year ended December 31, 2022, working capital contributed approximately \$18.3 million more to operating cash flows compared to the same period in 2021 primarily due to: (i) less cash used in the payment of accounts payable and accrued liabilities due to timing, (ii) less cash used in the settlement of accrued rebates, returns and discounts due to the impact of sales product mix as well as timing of settlement, and (iii) receipt of \$8.3 million in tax refund in the first quarter of 2022, partially offset by increased cash used due to the timing of inventory purchases and receipts as well as accounts receivable payments.

### **Cash Flows from Investing Activities**

Cash used in investing activities was \$42.7 million for the year ended December 31, 2022, which primarily consisted of \$27.0 million in cash paid related to the Otrexup Acquisition and \$15.4 million in cash paid related to the Sympazan Acquisition. Cash used in investing activities was \$18.5 million during the year ended December 31, 2021, which primarily related to cash paid related to the Otrexup Acquisition.

### **Cash Flows from Financing Activities**

Cash used in financing activities for the year ended December 31, 2022 was \$7.8 million, which primarily consisted of \$70.8 million in principal payments on the 2024 Secured Notes, \$7.8 million in payments for contingent consideration, and \$1.3 million in payments for Royalty Rights obligations, partially offset by \$65.9 million in net cash proceeds from the issuance of the 2027 Convertible Notes, net of debt issuance costs paid of \$4.1 million, and \$7.0 million in cash proceeds from our ATM offering program. Cash provided by financing activities for the year ended December 31, 2021 was \$29.0 million, which primarily consisted of \$44.9 million of proceeds from the registered direct offerings in February 2021, partially offset by \$9.8 million in payments on our debt, \$4.8 million in payments for contingent consideration, and \$1.0 million in payments for Royalty Rights obligations.

### **Contractual Obligations**

Our principal material cash requirements consist of obligations related to our debt, our contingent consideration obligation, payments for rebates, returns and discounts, non-cancelable contractual obligations for our purchase commitments, and non-cancelable leases for our office space. Refer to Note [10](#), Note [18](#), Note [1](#), Note [13](#) and Note [12](#), respectively, 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 \(PCAOB ID Number 248\)](#)  
[Consolidated Balance Sheets as of December 31, 2022 and 2021](#)  
[Consolidated Statements of Comprehensive Income \(Loss\) for the years ended December 31, 2022 and 2021](#)  
[Consolidated Statements of Shareholders' Equity for the years ended December 31, 2022 and 2021](#)  
[Consolidated Statements of Cash Flows for the years ended December 31, 2022 and 2021](#)  
[Notes to Consolidated Financial Statements](#)  
[Schedule II: Valuation and Qualifying Accounts](#)

#### 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 sheets of Assertio Holdings, Inc. (a Delaware corporation) and subsidiaries (the “Company”) as of December 31, 2022 and 2021, the related consolidated statements of comprehensive income (loss), shareholders’ equity, and cash flows for each of the two years in the period ended December 31, 2022, and the related notes (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, 2022 and 2021, and the results of its operations and its cash flows for each of the two years in the period ended December 31, 2022, 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, 2022, 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 8, 2023, 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 audits. 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 audits 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 audits 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 audits 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 audits provide a reasonable basis for our opinion.

#### Critical audit matter

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 critical audit matters 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 a separate opinion on the critical audit matter or on the accounts or disclosures to which they relate.

### *Contingent consideration*

As described further in Note 18 to the consolidated financial statements, the Company's contingent consideration liability consists of future royalty payments to affiliates of CR Group L.P. based on annual INDOCIN Product revenues over \$20.0 million. The liability was assumed as result of the May 2020 Zyla Merger and is \$48.5 million as of December 31, 2022. 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 those projections, 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 those projections (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 8, 2023



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

	December 31,	
	2022	2021
<b>ASSETS</b>		
Current assets:		
Cash and cash equivalents	\$ 64,941	\$ 36,810
Accounts receivable, net	45,357	44,361
Inventories, net	13,696	7,489
Prepaid and other current assets	8,268	14,838
Total current assets	132,262	103,498
Property and equipment, net	744	1,527
Intangible assets, net	197,996	216,054
Deferred tax asset	80,202	—
Other long-term assets	2,709	5,468
Total assets	\$ 413,913	\$ 326,547
<b>LIABILITIES AND SHAREHOLDERS' EQUITY</b>		
Current liabilities:		
Accounts payable	\$ 5,991	\$ 6,685
Accrued rebates, returns and discounts	49,426	52,662
Accrued liabilities	12,181	14,699
Long-term debt, current portion	470	12,174
Contingent consideration, current portion	26,300	14,500
Other current liabilities	948	34,299
Total current liabilities	95,316	135,019
Long-term debt	66,403	61,319
Contingent consideration	22,200	23,159
Other long-term liabilities	4,269	4,636
Total liabilities	188,188	224,133
Commitments and contingencies (Note 13)		
Shareholders' equity:		
Common stock, \$0.0001 par value, 200,000,000 shares authorized; 48,319,838 and 44,640,444 shares issued and outstanding as of December 31, 2022 and 2021, respectively	5	4
Additional paid-in capital	545,321	531,636
Accumulated deficit	(319,601)	(429,226)
Total shareholders' equity	225,725	102,414
Total liabilities and shareholders' equity	\$ 413,913	\$ 326,547

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

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

	Year Ended December 31,	
	2022	2021
Revenues:		
Product sales, net	\$ 155,121	\$ 109,420
Royalties and milestones	2,403	2,579
Other revenue	(1,290)	(985)
Total revenues	<u>156,234</u>	<u>111,014</u>
Costs and expenses:		
Cost of sales	18,748	15,832
Selling, general and administrative expenses	46,786	52,641
Fair value of contingent consideration	18,687	3,914
Amortization of intangible assets	32,608	28,114
Restructuring charges	—	1,089
Total costs and expenses	<u>116,829</u>	<u>101,590</u>
Income from operations	39,405	9,424
Other (expense) income:		
Interest expense	(7,961)	(10,220)
Other (loss) gain	(278)	243
Total other (expense) income	<u>(8,239)</u>	<u>(9,977)</u>
Net income (loss) before income taxes	31,166	(553)
Income tax benefit (expense)	78,459	(728)
Net income (loss) and comprehensive income (loss)	<u>\$ 109,625</u>	<u>\$ (1,281)</u>
Basic net income (loss) per share	\$ 2.33	\$ (0.03)
Diluted net income (loss) per share	\$ 2.03	\$ (0.03)
Shares used in computing basic net income (loss) per share	47,004	43,169
Shares used in computing diluted net income (loss) per share	54,669	43,169

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, 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
Issuance of common stock upon exercise of options	23	—	34	—	34
Issuance of common stock in connection with at-the-market program	2,464	1	7,019	—	7,020
Issuance of common stock in conjunction with vesting of restricted stock units, net of employee's withholding liability	805	—	(872)	—	(872)
Issuance of common stock upon exercise of warrant	388	—	—	—	—
Stock-based compensation	—	—	7,504	—	7,504
Net income and comprehensive income	—	—	—	109,625	109,625
Balances as of December 31, 2022	48,320	\$ 5	\$ 545,321	\$ (319,601)	\$ 225,725

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

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

	<b>Year Ended December 31,</b>	
	<b>2022</b>	<b>2021</b>
<b>Operating Activities</b>		
Net income (loss)	\$ 109,625	\$ (1,281)
Adjustments to reconcile net income (loss) to net cash from operating activities:		
Depreciation and amortization	33,396	29,077
Amortization of debt issuance costs and Royalty Rights	304	194
Gain on extinguishment of debt	(1,046)	—
Recurring fair value measurements of assets and liabilities	18,939	3,914
Stock-based compensation	7,504	3,545
Provisions for inventory and other assets	3,265	1,368
Deferred income taxes	(80,375)	—
Changes in assets and liabilities, net of acquisition:		
Accounts receivable	(996)	(11)
Inventories	(6,593)	4,268
Prepaid and other assets	8,019	3,600
Accounts payable and other accrued liabilities	(10,208)	(28,699)
Accrued rebates, returns and discounts	(3,236)	(10,452)
Net cash provided by operating activities	<u>78,598</u>	<u>5,523</u>
<b>Investing Activities</b>		
Purchases of property and equipment	(274)	(53)
Purchase of Otrexup	(27,027)	(18,472)
Purchase of Sympazan	(15,372)	—
Net cash used in investing activities	<u>(42,673)</u>	<u>(18,525)</u>
<b>Financing Activities</b>		
Proceeds from issuance of 2027 Convertible Notes	70,000	—
Payment in connection with 2024 Senior Notes	(70,750)	(9,500)
Payment of debt issuance costs	(4,084)	—
Payment of contingent consideration	(7,845)	(4,807)
Payment of Royalty Rights	(1,297)	(968)
Payments in connection with convertible notes	—	(335)
Proceeds from issuance of common stock	7,020	44,861
Proceeds from exercise of stock options	34	193
Shares withheld for payment of employee's withholding tax liability	(872)	(418)
Net cash (used in) provided by financing activities	<u>(7,794)</u>	<u>29,026</u>
Net increase in cash and cash equivalents	28,131	16,024
Cash and cash equivalents at beginning of year	36,810	20,786
Cash and cash equivalents at end of year	<u>\$ 64,941</u>	<u>\$ 36,810</u>
<b>Supplemental Disclosure of Cash Flow Information</b>		
Net cash received for refund of income taxes	\$ 6,913	\$ —
Cash paid for interest	\$ 7,752	\$ 10,124
<b>Supplemental Disclosure of Non-Cash Investing Activities</b>		
Deferred payments for 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. (the “Assertio Reorganization”) and, subsequently, Assertio Holdings, Inc. merged with Zyla Life Sciences (“Zyla”) in a transaction we refer to as the “Zyla Merger.” 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”). 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 offering differentiated products to patients utilizing a non-personal promotional model. The Company’s primary marketed products include INDOCIN<sup>®</sup> (indomethacin) Suppositories, INDOCIN<sup>®</sup> (indomethacin) Oral Suspension, Otrexup<sup>®</sup> (methotrexate) injection for subcutaneous use, Sympazan<sup>®</sup> (clobazam) oral film, SPRIX<sup>®</sup> (ketorolac tromethamine) Nasal Spray, CAMBIA<sup>®</sup> (diclofenac potassium for oral solution), and Zipsor<sup>®</sup> (diclofenac potassium) Liquid filled capsules.

Other commercially available products include OXAYDO<sup>®</sup> (oxycodone HCl, USP) tablets for oral use only —CII.

#### *Basis of Presentation*

The Company’s consolidated financial statements are prepared in accordance with United States (“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, 2022, 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.

#### *Reclassifications*

During the first quarter of 2022, the Company made certain reclassifications within Selling, general and administrative expenses related to changes in the fair value of contingent consideration. These fair value adjustments were reclassified from Selling, general and administrative expenses to Fair value of contingent consideration on the Consolidated Statements of Comprehensive Income (Loss), which impacted previously reported amounts for the year ended December 31, 2021. The reclassifications were made to separately state changes in the fair value of contingent consideration from Selling, general and administrative expenses. Prior period results were recast to conform with these changes, and resulted in a decrease to Selling, general and administrative expenses and an equal and offsetting increase to Fair value of contingent consideration of \$3.9 million for the year ended December 31, 2021. Total cost and expenses and Income (loss) from operations as previously reported remains unchanged.

#### *Impact of COVID-19 on the Company’s 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 its 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; a strategy it still maintains today and plans to maintain. Limitations on elective surgeries and changes in patient behavior after the outbreak of COVID-19 impacted the Company’s operations by causing a decline and subsequent volatility in prescriptions associated with those elective procedures. The extent of any future impact of the COVID-19 pandemic on the Company’s operational and financial

performance will depend largely on future developments, which are highly uncertain and cannot be accurately predicted, including actions by government authorities to contain future outbreaks, the emergence of new COVID-19 variants, the related potential for new surges in infections, the impacts on third parties on which the Company relies, including suppliers and distributors, 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.

### ***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***

The Company considers all highly liquid investments with a maturity date of purchase of three months or less to be cash equivalents. Cash and cash equivalents generally consist of cash on deposits with banks, money market instruments, U.S. Agency discount notes, commercial paper and corporate debt securities. The Company invests its cash in money market funds and marketable securities including U.S. Treasury and government agency securities, commercial paper, and higher quality debt securities of financial and commercial institutions.

### ***Accounts Receivable***

Trade accounts receivable are recorded net of allowances for cash discounts for prompt payment. To date, the Company has not recorded an allowance for estimated expected credit losses 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 an allowance for estimated expected credit losses is evaluated each reporting period based on the Company's assessment of the creditworthiness of its customers or any other potential circumstances that could result in an allowance for estimated expected credit losses.

### ***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 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. 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 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.

## ***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 upon 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. Receivables may also include customer deductions for returns and chargebacks that are pending Company validation.

**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 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 does not assume financial responsibility for returns of any of its currently marketed products if those returns relate to sales of that product prior to the period of the Company’s ownership of the respective product. For products the Company has divested, it is only financially responsible for product returns of products 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 offers discounted pricing or rebates on purchases of pharmaceutical products under various federal and state healthcare programs, including Centers for Medicare and Medicaid Services' Medicaid Drug Rebate Program and Medicare Part B Program and Medicare Part D Coverage Gap Discount Programs. The Company generally pays government rebates three to twelve months after prescriptions subject to the rebate are filled. These rebates are subject to the Company's active participation in the respective programs.

**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 U.S. Department of Veterans Affairs' Federal Supply Schedule Program and the Health Resources and Services Administrations' 340B Dug Pricing Program. 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. These discounts are subject to the Company's active participation in the respective programs.

#### *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 obligation to make contingent consideration payments for future royalties to an affiliate of CR Group L.P. ("CRG") 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 Fair value of contingent consideration in the Company's Consolidated Statements of Comprehensive Income (Loss). 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 Sheets.

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 (Loss).

## ***Stock-Based Compensation***

The Company’s stock-based compensation generally includes time-based restricted stock units (“RSU”) and options, as well as performance-based RSUs and options. The Company accounts for forfeitures as they occur for each type of award. Stock-based compensation expense related to time-based 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 Company uses the Black-Scholes option valuation model to determine the fair value of stock options. 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 its 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. For performance-based RSUs and options 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 scenarios under the market condition vesting criteria, including but not limited to share prices for Assertio and our peer companies in a selected market index.

## ***Advertising Costs***

Costs associated with advertising are expensed as incurred. Advertising expense for the years ended December 31, 2022 and 2021 were \$3.4 million and \$1.8 million, respectively. Advertising costs are included in Selling, general and administrative expenses within the Consolidated Statements of Comprehensive Income (Loss).

## ***Restructuring***

Restructuring costs are included in Restructuring charges within the Consolidated Statements of Comprehensive Income (Loss). 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 provides 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.

During the year ended December 31, 2022, the Company reversed \$89.3 million of its previously recorded valuation allowances against the net deferred tax asset. As part of its valuation assessment, the Company primarily relied on the projected availability of future taxable income from pre-tax income forecasts and reversing taxable temporary differences. The Company did retain \$12.5 million of valuation allowance because realization of the future benefits for the associated deferred tax assets is not considered more-likely-than-not to occur. The Company expects to continue to assess the realizability of its deferred tax assets on a quarterly basis and assess whether an additional reserve or a release of a valuation allowance is required in future periods.

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 derecognition 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% 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* (“ASC 740”), 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, 2022 and 2021.

	Consolidated revenue		Accounts receivable related to product sales	
	Year Ended December 31,		Year Ended December 31,	
	2022	2021	2022	2021
AmerisourceBergen Corporation	28 %	26 %	21 %	29 %
McKesson Corporation	28 %	24 %	25 %	23 %
Cardinal Health	23 %	34 %	42 %	44 %
All others	21 %	16 %	12 %	4 %
<b>Total</b>	<b>100 %</b>	<b>100 %</b>	<b>100 %</b>	<b>100 %</b>

Accounts receivable balances related to product sales were \$45.4 million and \$43.8 million for the years ended December 31, 2022 and 2021, respectively. To date, the Company has not experienced any significant credit 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 Tioapack (formerly 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.
- Sympazan - Aquestive Therapeutics, Inc.

### **Recently Adopted Accounting Pronouncements**

In October 2021, the Financial Accounting Standards Board ("FASB") issued *Accounting Standards Update ("ASU") 2021-08, Business Combinations (Topic 805): Accounting for Contract Assets and Contract Liabilities from Contracts with Customers ("ASU 2021-08")*, 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. The Company adopted ASU 2021-08 on January 1, 2023 and will apply the provisions of the standard to future business combinations.

### **NOTE 2. ACQUISITIONS**

#### *Sympazan License Acquisition*

On October 27, 2022, the Company, through its wholly-owned subsidiary, Otter Pharmaceuticals, LLC, completed a transaction to acquire an exclusive license for Sympazan® (clobazam) oral film and product inventory from Aquestive Therapeutics, Inc. ("Aquestive"). The terms of the definitive agreement included an upfront payment of \$9.0 million and a \$6.0 million milestone payment contingent upon allowance of an existing patent application which, at the date of the transaction, Aquestive was prosecuting. The patent allowance was granted in the fourth quarter of 2022; accordingly, the Company has paid in full the \$6.0 million milestone payment. The Company is required to pay Aquestive cash royalties on a quarterly basis equal to 10% of the gross margin (defined within the definitive agreement) from sales of Sympazan. The Company also entered into a long-term supply agreement with Aquestive for Sympazan, the terms of which the Company has concluded are at market.

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

Cash paid to Aquestive at closing	\$	9,000
Milestone payment		6,000
Transaction costs		850
Total purchase price of assets acquired	\$	<u>15,850</u>

The Sympazan license transaction has been accounted for as an asset acquisition in accordance with ASC 805-50, as substantially all the fair value of the assets acquired is concentrated in a single identifiable asset, the Sympazan product rights. The Sympazan product rights acquired consist of the license for the Sympazan intellectual property, regulatory documentation, domain names, certain at-market contracts, and customers lists, and are considered a single asset as they are inextricably linked. The Company has concluded that the contingent milestone payment and contingent royalty payments are not required to be accounted for as derivatives pursuant to scope exceptions in ASC 815 and therefore has included the contingent milestone payment within, and excluded the contingent royalty payments from, the cost of the asset acquisition. 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 Sympazan are based on estimates of fair value using assumptions that the Company believes are reasonable.

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

Inventories	\$	1,300
Intangible assets (Sympazan product rights)		14,550
<b>Total assets acquired</b>	<b>\$</b>	<b>15,850</b>

The Sympazan product rights will be amortized over a 12-year period.

#### *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 paid on May 31, 2022 and (iii) and \$10.0 million in cash paid 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
Cash paid in May 2022		16,021
Cash paid in December 2022		10,000
Transaction costs		1,478
<b>Total purchase price of assets acquired</b>	<b>\$</b>	<b>45,499</b>

The acquisition of Otrexup has been accounted for as an asset acquisition in accordance with ASC 805-50, as substantially all of the fair value of the assets acquired is concentrated in a single identifiable asset, the Otrexup product rights. The Otrexup product 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. 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 are reasonable.

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

Inventories	\$	1,413
Intangible assets		44,086
<b>Total assets acquired</b>	<b>\$</b>	<b>45,499</b>

The Otrexup product rights will be amortized over an eight year period. As of December 31, 2021, deferred cash payable to Antares was \$26.0 million, and was recorded in Other current liabilities in the Company’s Consolidated Balance Sheets.

### NOTE 3. REVENUE

#### *Disaggregated Revenue*

The following table reflects summary revenue, net for the years ended December 31, 2022 and 2021 (in thousands):

	Year ended December 31,	
	2022	2021
Product sales, net:		
INDOCIN products	\$ 100,338	\$ 60,557
Otrexup	11,148	—
Sympazan	1,768	—
SPRIX	9,110	8,676
CAMBIA	24,720	24,972
Zipsor	3,364	10,185
Other products	4,673	5,030
Total product sales, net	155,121	109,420
Royalties and milestone revenue	2,403	2,579
Other revenue	(1,290)	(985)
Total revenues	\$ 156,234	\$ 111,014

#### *Product sales, net*

For the year ended December 31, 2022, product sales primarily consisted of sales from INDOCIN products, CAMBIA, Otrexup and SPRIX. The Company acquired Otrexup in December 2021 and began shipping and recognizing product sales for Otrexup in January 2022. The Company acquired Sympazan and began shipping and recognizing its product sales Sympazan in October 2022.

Other product sales primarily includes product sales for non-promoted products (OXAYDO). The Company ceased SOLUMATRIX sales beginning in July 2022.

#### *Royalties and milestone revenue*

In November 2010, the Company entered into a license agreement with Tribute Pharmaceuticals Canada Ltd. (now known as Miravo Pharmaceuticals, or “Miravo”) 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 \$1.9 million and \$2.5 million, respectively, for the years ended December 31, 2022, and 2021.

The Company records contract liabilities in the form of deferred revenue resulting from prepayments customers in Other Current Liabilities on the Consolidated Balance Sheets. As of December 31, 2022, and 2021, contract liabilities were \$0.2 million and \$0.3 million, respectively. For the year ended December 31, 2022, the Company recorded an additional \$0.3 million in contract liabilities and recognized \$0.5 million as Milestone revenue associated with the completion of service milestones.

#### *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 or an increase to total revenue during the period.

**NOTE 4. ACCOUNTS RECEIVABLES, NET**

The following table reflects accounts receivables, net, as of December 31, 2022 and 2021 (in thousands):

	December 31,	
	2022	2021
Receivables related to product sales, net	\$ 45,357	\$ 43,753
Other	—	608
Total accounts receivable, net	<u>\$ 45,357</u>	<u>\$ 44,361</u>

As of both December 31, 2022 and 2021, allowances for cash discounts for prompt payment were \$0.9 million.

**NOTE 5. INVENTORIES, NET**

The following table reflects the components of inventory, net as of December 31, 2022 and 2021 (in thousands):

	December 31,	
	2022	2021
Raw materials	\$ 1,367	\$ 1,242
Work-in-process	2,735	823
Finished goods	9,594	5,424
Total inventories, net	<u>\$ 13,696</u>	<u>\$ 7,489</u>

As of December 31, 2022 and 2021, inventory reserves were \$2.8 million and \$3.7 million, respectively.

**NOTE 6. PROPERTY AND EQUIPMENT, NET**

The following table reflects property and equipment, net as of December 31, 2022 and 2021 (in thousands):

	December 31,	
	2022	2021
Furniture and office equipment	\$ 1,712	\$ 2,733
Laboratory equipment	20	20
Leasehold improvements	2,945	10,523
	4,677	13,276
Less: Accumulated depreciation	(3,933)	(11,749)
Property and equipment, net	<u>\$ 744</u>	<u>\$ 1,527</u>

Depreciation expense was \$0.8 million and \$1.0 million for the years ended December 31, 2022 and 2021, respectively. Depreciation expense is recognized in Selling, general and administrative expenses in the Company's Consolidated Statements of Comprehensive Income (Loss).

## NOTE 7. INTANGIBLE ASSETS

The following table reflects the gross carrying amounts and net book values of intangible assets as of December 31, 2022 and 2021 (dollar amounts in thousands):

Product rights	December 31, 2022				December 31, 2021		
	Remaining Useful Life (In years)	Gross Carrying Amount	Accumulated Amortization	Net Book Value	Gross Carrying Amount	Accumulated Amortization	Net Book Value
INDOCIN	9.4	\$ 154,100	\$ (33,495)	\$ 120,605	\$ 154,100	\$ (20,654)	\$ 133,446
Otrexup	7.0	44,086	(5,511)	38,575	44,086	—	44,086
Sympazan	11.8	14,550	(202)	14,348	—	—	—
SPRIX	4.4	39,000	(14,532)	24,468	39,000	(8,960)	30,040
CAMBIA	0.0	51,360	(51,360)	—	51,360	(43,410)	7,950
Zipsor	0.0	27,250	(27,250)	—	27,250	(26,718)	532
Total Intangible Assets		\$ 330,646	\$ (132,650)	\$ 197,996	\$ 316,096	\$ (100,042)	\$ 216,054

Amortization expense was \$32.6 million and \$28.1 million for the years ended December 31, 2022 and 2021, respectively.

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

Year Ending December 31,	Estimated Amortization Expense
2023	\$ 25,136
2024	25,136
2025	25,136
2026	25,136
2027	21,747
Thereafter	75,705
Total	\$ 197,996

The Company evaluates 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. In the third quarter of 2022, the Company determined that there was an indicator of impairment present based on the Company's market capitalization as of September 30, 2022, compared to its 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, the Company estimated the future net undiscounted cash flows expected to be generated from the use of the long-lived asset group and its eventual disposition. The Company then compared the estimated undiscounted cash flows to the carrying amount of the long-lived asset group. Based on this test, the Company 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. There were no indicators of impairment identified during the three months ended December 31, 2022. The Company recognized no impairment of its long-lived assets during the years ended December 31, 2022 and 2021.



## NOTE 8. OTHER LONG-TERM ASSETS

The following table reflects other long-term assets as of December 31, 2022 and 2021 (in thousands):

	December 31,	
	2022	2021
Investment, net	\$ 268	\$ 1,579
Operating lease right-of-use assets	137	735
Prepaid asset and deposits	1,607	2,456
Other	697	698
Total other long-term assets	<u>\$ 2,709</u>	<u>\$ 5,468</u>

Investment, net primarily includes the Company's investment in NES Therapeutic, Inc. ("NES"). In August 2018, the Company entered into a Convertible Secured Note Purchase Agreement (the "Note Agreement") with NES. Pursuant the terms of the Note Agreement, the Company purchased a \$3.0 million aggregate principal Convertible Secured Promissory Note (the "NES Note") which accrues interest annually at a rate of 10% for total consideration of \$3.0 million, with both the aggregate 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) U.S. Food and Drug Administration ("FDA") acceptance of the New Drug Application ("NDA"), (ii) initiation of any required clinical trials by NES, or (iii) a qualified financing event by NES, as defined in the Note Agreement. This investment is accounted as a long-term loan receivable and is valued at amortized cost. As of December 31, 2022, the Company has assessed an estimated \$3.7 million expected credit loss on its investment based on its evaluation of probability of default that exists. The expected credit loss recognized represents the entire aggregate principal amount and outstanding interest incurred on the NES Note as of December 31, 2022. The amount of credit loss related to the NES Note that was recognized in the year ended December 31, 2022 was \$1.6 million and is included in Other loss (gain) in the consolidated statements of comprehensive income (loss). There was no credit loss related to the NES note recognized in the year ended December 31, 2021.

## NOTE 9. ACCRUED LIABILITIES

The following table reflects accrued liabilities as of December 31, 2022 and 2021 (in thousands):

	December 31,	
	2022	2021
Accrued compensation	\$ 3,117	\$ 4,122
Accrued restructuring	—	828
Other accrued liabilities	6,561	7,234
Interest payable	1,593	1,687
Accrued royalties	910	828
Total accrued liabilities	<u>\$ 12,181</u>	<u>\$ 14,699</u>

## NOTE 10. DEBT

The following table reflects the Company's debt as of December 31, 2022 and 2021 (in thousands):

	December 31,	
	2022	2021
6.5% Senior Convertible Notes due 2027	\$ 70,000	\$ —
13.0% Senior Secured Notes due 2024	—	70,750
Royalty Rights obligation	470	2,743
Total principal amount	70,470	73,493
Plus: derivative liability for embedded conversion feature	252	—
Less: unamortized debt issuance costs	(3,849)	—
Carrying value	66,873	73,493
Less: current portion of long-term debt	(470)	(12,174)
Long-term debt, net	\$ 66,403	\$ 61,319

### *6.5% Convertible Senior Notes due 2027*

On August 22, 2022, Assertio entered into a purchase agreement (the "Purchase Agreement"), with U.S. Bank Trust Company as the trustee (the "2027 Convertible Note Trustee") of the initial purchasers (the "Initial Purchasers") to issue \$60.0 million in aggregate principal amount of 6.5% Convertible Senior Notes due 2027 (the "2027 Convertible Notes"). Under the Purchase Agreement, the Initial Purchasers were also granted an overallotment option to purchase up to an additional \$10.0 million aggregate principal amount of the 2027 Convertible Notes solely to cover overallotment (the "Overallotment Option") within a 13-day period from the date the initial 2027 Convertible Notes were issued. On August 24, 2022, the Initial Purchasers exercised the Overallotment Option in full for the \$10.0 million aggregate principal of additional 2027 Convertible Notes. The 2027 Convertible Notes are senior unsecured obligations of the Company.

The terms of the 2027 Convertible Notes are governed by an indenture dated August 25, 2022 (the "2027 Convertible Note Indenture"). The terms of the 2027 Convertible Notes allow for conversion into the Company's common stock, cash, or a combination of cash and common stock, at the Company's election only, at an initial conversion rate of 244.2003 shares of the Company's common stock per \$1,000 principal amount (equal to an initial conversion price of approximately \$4.09 per share), subject to adjustments specified in the 2027 Convertible Note Indenture (the "Conversion Rate"). The 2027 Convertible Notes will mature on September 1, 2027, unless earlier repurchased or converted.

The 2027 Convertible Notes bear interest from August 25, 2022 at a rate of 6.5% per annum payable semiannually in arrears on March 1 and September 1 of each year, beginning on March 1, 2023.

Pursuant to the terms of the 2027 Convertible Note Indenture, the Company and its restricted subsidiaries must comply with certain covenants, including mergers, consolidations, and divestitures; guarantees of debt by subsidiaries; issuance of preferred and/or disqualified stock; and liens on the Company's properties or assets. The Company is in compliance with its covenants with respect to the 2027 Convertible Notes as of December 31, 2022.

The Company incurred approximately \$4.0 million in issuance costs including legal fees, accounting service fees, printing fees, and trustee fees associated with the 2027 Convertible Notes. The issuance costs were recognized as a discount to the 2027 Convertible Notes and are amortized as interest expense over the term of the 2027 Convertible Notes using the effective interest method with an effective interest rate determined to be 7.8%.

The following table reflects the carrying balance of the 2027 Convertible Notes as of December 31, 2022 (in thousands):

	<u>December 31,</u>
	<u>2022</u>
Principal balance	\$ 70,000
Derivative liability for embedded conversion feature	252
Unamortized debt issuance costs	(3,849)
Carrying balance	<u>\$ 66,403</u>

During the year ended December 31, 2022, the Company amortized \$0.2 million of debt issuance costs on the 2027 Convertible Notes.

The Company determined that an embedded conversion feature included in the 2027 Convertible Notes required bifurcation from the host contract and to be recognized as a separate derivative liability carried at fair value. The estimated fair value of the derivative liability, which represents a Level 3 valuation, was \$0.3 million as of December 31, 2022 and was determined using a binomial lattice model using certain assumptions and consideration of an increased conversion ratio on the underlying convertible notes that could result from the occurrence of certain events. Accordingly, the Company has recognized a loss on the fair value adjustment of the derivative liability in the amount of \$0.3 million in Other (loss) gain in the Consolidated Statements of Comprehensive Income (Loss) for the year ended December 31, 2022. All of the other embedded features of the 2027 Convertible Notes were clearly and closely related to the debt host and did not require bifurcation as a derivative liability, or the fair value of the bifurcated features was immaterial to the Company's financial statements.

On February 27, 2023, the Company completed a transaction with a limited number of holders of its outstanding 2027 Convertible Notes (the "Exchanged Notes") to exchange \$30.0 million aggregate principal amount of Exchanged Notes pursuant to separate, privately negotiated exchange agreements for a combination of (a) a cash payment, and (b) an agreed number of shares of the Company's common stock. The Company paid an aggregate of \$10.5 million in cash and issued an aggregate of approximately 7.0 million shares of its common stock in the transactions. The Company did not receive any cash proceeds from the issuance of the shares of its common stock.

### ***13.0% Senior Secured Notes due 2024***

In accordance with the Zyla Merger, Assertio assumed \$95.0 million aggregate principal amount of 13.0% senior secured notes due 2024 (the "2024 Secured Notes") issued pursuant to an indenture entered into on January 31, 2019 (the "2024 Secured Notes Indenture"), 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 "2024 Secured Notes Trustee"). The 2024 Secured Notes were issued in two series: (i) \$50.0 million of Series A-1 Notes and (ii) \$45.0 million of Series A-2 Notes.

The Company used the net proceeds from the issuance of the 2027 Convertible Notes to repurchase the remaining \$59.0 million aggregate principal amount of its outstanding 2024 Secured Notes and \$3.0 million in associated interest payment pursuant to privately negotiated exchange agreements entered into concurrently with the pricing of the 2027 Convertible Notes. The 2024 Secured Notes were derecognized upon extinguishment with no gain or loss recognized, as no unamortized cost remained at time of extinguishment. The Company expects to use the remaining net proceeds from the issuance of the 2027 Convertible Notes for general corporate purposes. As of December 31, 2022, there was no outstanding aggregate principal amount of the 2024 Secured Notes.

### ***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 2024 Secured Notes pursuant to which the Company agreed to pay an aggregate 1.5% royalty on net sales (as defined in the 2027 Secured Notes Indenture) through December 31, 2022. The Royalty Rights terminated on December 31, 2022 and the Company has no further Royalty Rights obligations on net sales subsequent to December 31, 2022. The Royalty Rights were determined to be a freestanding element with respect to the 2024 Secured Notes and as such, the Company accounted for the obligation relating to future royalties as a debt instrument at fair value in conjunction with the Zyla Merger.

On December 31, 2022, as the Royalty Rights had terminated, the Company concluded that the conditions had been met to derecognize the remaining debt balance in excess of the final amount payable as of December 31, 2022, and recorded a gain on extinguishment of debt of \$1.0 million in Other (loss) gain in the Consolidated Statements of Comprehensive Income (Loss) for the year ended December 31, 2022.

The Company has Royalty Rights obligations of \$0.5 million which are classified as Long-term debt, current portion as of December 31, 2022. As of December 31, 2021, the Company had Royalty Rights obligations of \$2.6 million and \$0.1 million which are classified as Long-term debt, current portion and Long-term debt, respectively, in the Company's Consolidated Balance Sheets.

### **Interest Expense**

Royalty Rights and debt issuance costs are amortized as interest expense using the effective interest method. The following table reflects debt related interest included in Interest expense in the Company's Consolidated Statements of Comprehensive Income (Loss) as of December 31, 2022 and 2021 (in thousands):

	<b>Year ended December 31,</b>	
	<b>2022</b>	<b>2021</b>
Interest on 2027 Convertible Notes	\$ 1,592	\$ —
Interest on 2024 Secured Notes	6,065	10,020
Amortization of Royalty Rights <sup>(1)</sup>	68	185
Amortization of debt issuance costs	236	15
<b>Total interest expense</b>	<b>\$ 7,961</b>	<b>\$ 10,220</b>

(1) As a result of the extinguishment of the Royalty Rights obligation, there will be no additional amortization expense recognized in future periods.

### **NOTE 11. RESTRUCTURING CHARGES**

The Company regularly 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 a restructuring plan which was designed to substantially reduce the Company's operating footprint through the reduction of its staff at its office headquarters and remote sales force. The Company completed this restructuring plan in 2021.

The following table reflects total expenses related to restructuring activities recognized within the Consolidated Statements of Comprehensive Income (Loss) as Restructuring charges (in thousands):

	<b>Year ended December 31,</b>	
	<b>2022</b>	<b>2021</b>
Employee compensation costs	\$ —	\$ 876
Other exit costs	—	213
<b>Total restructuring costs</b>	<b>\$ —</b>	<b>\$ 1,089</b>

The following table reflects cash activity relating to the Company’s accrued restructuring costs as of December 31, 2022 and 2021 (in thousands):

	<b>Employee compensation costs</b>	<b>Other exit costs</b>	<b>Total</b>
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
Cash paid	(828)	—	(828)
Balance as of December 31, 2022	\$ —	\$ —	\$ —

#### NOTE 12. LEASES

As of December 31, 2022, the Company has a non-cancelable operating lease for its corporate office, which is located in Lake Forest, Illinois (the “Lake Forest Lease”). Unless renewed, the Lake Forest Lease will expire on January 31, 2024. 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, the Company had leased its previous corporate office in Newark, California (the “Newark Lease”), which terminated at the end of November 2022. The Newark lease was partially subleased through the lease term of November 2022. Operating lease costs and sublease income related to the Newark Lease are accounted for in Other (loss) gain in the Consolidated Statements of Comprehensive Income (Loss). During the first quarter of 2022, the Company recognized a gain of \$0.6 million from the early termination and settlement of a Newark Lease sublease.

The following table reflects lease expense and sublease income for the years ended December 31, 2022 and 2021 (in thousands):

		<b>Year ended December 31,</b>	
		<b>2022</b>	<b>2021</b>
<b>Financial Statement Classification</b>			
Operating lease cost	Selling, general and administrative expenses	\$ 158	\$ 307
Operating lease cost	Other (loss) gain	541	591
Total lease cost		\$ 699	\$ 898
Sublease income	Other (loss) gain	\$ 1,223	\$ 1,148

The following table reflects supplemental cash flow information related to leases for the years ended December 31, 2022 and 2021 (in thousands):

	<b>Year ended December 31,</b>	
	<b>2022</b>	<b>2021</b>
Cash paid for amounts included in measurement of liabilities:		
Operating cash flows used in operating leases	\$ 1,983	\$ 2,799

The following table reflects supplemental balance sheet information related to leases as of December 31, 2022 and 2021 (in thousands):

	<b>Financial Statement Classification</b>	<b>December 31,</b>	
		<b>2022</b>	<b>2021</b>
Liabilities			
Current operating lease liabilities	Other current liabilities	\$ 401	\$ 1,978
Noncurrent operating lease liabilities	Other long-term liabilities	—	397
<b>Total lease liabilities</b>		<b>\$ 401</b>	<b>\$ 2,375</b>

The following table reflects other lease information as of December 31, 2022 and 2021:

	<b>December 31,</b>	
	<b>2022</b>	<b>2021</b>
Weighted-average remaining lease term (years):		
Operating leases	1.0	1.2
Weighted-average discount rate:		
Operating leases	11.1 %	7.8 %

The following table reflects future minimum lease payments under the Company's non-cancelable operating leases as of December 31, 2022 (in thousands):

	<b>Lease Payments</b>	
2023	\$	421
Thereafter		—
<b>Total lease payments</b>	<b>\$</b>	<b>421</b>
Less: Interest		20
<b>Present value of lease liabilities</b>	<b>\$</b>	<b>401</b>

### 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 "Jubilant HollisterStier 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 Jubilant HollisterStier Agreement, JHS is responsible for supplying a minimum of 75% of the Company's annual requirements of SPRIX. The Company agreed to purchase a minimum number of batches of SPRIX per calendar year from JHS over the term of the Jubilant HollisterStier Agreement. Total commitments to JHS through the period ending July 30, 2022 have been met, and total commitments through the period ending July 30, 2023 are approximately \$1.1 million.

#### *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 "Cosette 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 Cosette Supply Agreement, to among other things, extend the expiration date of the Cosette 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 Cosette Supply Agreement. Total commitments to Cosette under the Cosette Supply Agreement 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 (the “Antares Supply Agreement”). Under the Antares Supply Agreement, the Company has agreed to annual minimum purchase obligations from Antares, which approximate \$2.0 million annually. The Antares Supply Agreement has an initial term through December 2031 with renewal terms beyond.

### ***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, 2022 and December 31, 2021, the Company had a legal contingency accrual of approximately \$3.2 million and \$3.4 million, respectively. The Company continues 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. The Company recognized a loss on contingency provision of \$10.6 million during the year ended December 31, 2021. There was no loss on contingency provision recognized during the year ended December 31, 2022. Provisions for loss contingencies are recorded in Selling, general and administrative expense in the Company’s Consolidated Statements of Comprehensive Income (Loss) and the related accruals are recorded in Accrued liabilities in the Company’s 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, cash flows 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. Additionally, on April 5, 2022, Health Care Service Corporation (“HCSC”) filed a complaint against the Company and the same other defendants in California state court alleging similar claims related to Glumetza.

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, and trial is scheduled for August 25, 2023.

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

### ***Securities Class Action Lawsuit and Related Matters***

On August 28, 2022, the U.S. District Court for the Northern District of California issued a final order approving the settlement of a purported federal securities law class action that was pending against the Company, two individuals who formerly served as its chief executive officer and president, and its former chief financial officer, thereby concluding this matter. The action (Huang v. Depomed et al., No. 4:17-cv-4830-JST, N.D. Cal.) alleged violations of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934, as amended, and Rule 10b-5 related to certain prior disclosures of the Company about its business, compliance, and operational policies and practices concerning the sales and marketing of its former opioid products and contended that the conduct supporting the alleged violations affected the value of Company's common stock and was seeking damages and other relief.

Additionally, on December 14, 2021, the Superior Court of California, Alameda County, issued a final order approving the settlement of the shareholder derivative actions that 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, thereby concluding these matters. The claims in the shareholder derivative actions arose out of the same factual allegations as the purported federal securities class action described above.

### ***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.

In July 2022, the Company became aware that the DOJ issued a press release stating that it had settled claims against a physician whom the DOJ alleged had received payments for paid speaking and consulting work from two pharmaceutical companies, including Depomed, Inc. (now known as Assertio Therapeutics), in exchange for prescribing certain of the companies' respective products. As part of the settlement, the physician did not admit liability for such claims and the press release stated that there has been no determination of any liability for such claims. The Company denies any wrongdoing and disputes DOJ's characterization of the payments from Depomed.



### ***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. Assertio Holdings has also been named in one such case. Plaintiffs may file additional lawsuits in which Assertio Therapeutics or Assertio Holdings may be named. Plaintiffs in the pending federal cases involving Assertio Therapeutics or Assertio Holdings 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 and Assertio Holdings intend to defend themselves 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 Delaware, 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, Assertio Therapeutics 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 Assertio Therapeutics' primary product liability insurer. Navigators was seeking declaratory judgment that opioid litigation claims noticed by Assertio Therapeutics (as further described above under "Multidistrict Opioid Litigation" and "State Opioid Litigation") are not covered by Assertio Therapeutics' life sciences liability policies with Navigators. On February 3, 2021, Assertio Therapeutics entered into a Confidential Settlement Agreement and Mutual Release with Navigators to resolve the declaratory judgment action and Assertio Therapeutics' counterclaims. Pursuant to the Settlement Agreement, the parties settled and the coverage action was dismissed without prejudice.

During the first quarter of 2021, Assertio Therapeutics received \$5.0 million in insurance reimbursement for previous opioid-related spend, which was recognized within Selling, general and administrative expenses in the Consolidated Statements of Comprehensive Income (Loss) for the year ended December 31, 2021.

On July 16, 2021, Assertio Therapeutics 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 the U.S. District Court for the Northern District of California (Case No. 3:21-cv-06642). Assertio Therapeutics was seeking a declaratory judgment that Newline has a duty to

defend Assertio Therapeutics or, alternatively, to reimburse Assertio Therapeutics' attorneys' fees and other defense costs for opioid litigation claims noticed by Assertio Therapeutics. On May 18, 2022, Assertio Therapeutics entered into a Confidential Settlement Agreement and Mutual Release with Newline to resolve Assertio Therapeutics' declaratory judgment action. Pursuant to the Settlement Agreement, the parties settled and the coverage action was dismissed with prejudice.

During the second quarter of 2022, Assertio Therapeutics received \$2.0 million in insurance reimbursement for previous opioid-related spend, which was recognized within Selling, general and administrative expenses in the Consolidated Statements of Comprehensive Income (Loss) for the year ended December 31, 2022.

On April 1, 2022, Assertio Therapeutics filed a complaint for negligence and breach of fiduciary duty against its former insurance broker, Woodruff-Sawyer & Co. ("Woodruff"), in the Superior Court of the State of California for the County of Alameda (Case No. 22CV009380). Assertio Therapeutics is seeking to recover its damages caused by Woodruff's negligence and breaches of its fiduciary duties in connection with negotiating and procuring products liability insurance coverage for Assertio Therapeutics. The litigation is in the early stages. Trial is set for February 2, 2024.

#### ***Indemnification Dispute with Collegium Pharmaceutical, Inc.***

On May 24, 2022, Assertio Therapeutics filed an action in the Superior Court of Delaware against Collegium Pharmaceutical, Inc. ("Collegium") seeking indemnification for Collegium's breach of an asset purchase agreement related to Assertio Therapeutics' former product, NUCYNTA. Assertio Therapeutics alleged that Collegium agreed to assume certain liabilities associated with customer returns of NUCYNTA products sold by Collegium, but that Collegium failed to honor that agreement. On July 14, 2022, Collegium answered the complaint asserting as a defense that, among other things, the Superior Court of Delaware does not have jurisdiction over all aspects of the action because Collegium contends that a portion of the dispute is subject to the alternative dispute resolution procedures under a different agreement. On July 18, 2022, Assertio Therapeutics moved to strike that defense, and on August 8, 2022 in opposition to the motion to strike, Collegium filed a cross-motion to stay the case. Assertio Therapeutics filed its opposition to Collegium's cross-motion to stay on August 19, 2022. After oral argument on September 20, 2022, the Court granted in part Assertio Therapeutics' motion to strike and denied in full Collegium's cross-motion to stay. On January 5, 2023, Assertio Therapeutics voluntarily dismissed all claims against Collegium pursuant to a settlement agreement with Collegium in return for \$2.9 million.

#### **NOTE 14. EMPLOYEE BENEFIT PLANS**

The Company's 401(k) Employee Savings Plan (the "401(k) Plan") is available to U.S. employees meeting certain eligibility criteria. The 401(k) Plan was amended effective January 1, 2022, to make matching contributions in an amount equal to 100% of elective deferral contributions that are not over 5% of compensation. The previous matching contributions amount was 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 \$0.2 million and \$0.1 million to the 401(k) Plan during the years ended December 31, 2022 and 2021, 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 time-based restricted stock units ("RSU") and options, as well as performance-based RSUs and options.

For the years ended December 31, 2022 and 2021, stock-based compensation expense of \$7.5 million and \$3.5 million, respectively, was recognized in Selling, general and administrative expenses in the Company's Consolidated Statements of Comprehensive Income (Loss). The recognized tax benefits on total stock-based compensation expense was \$0.5 million and immaterial for the years ended December 31, 2022 and 2021, respectively.

As of December 31, 2022, the Company had \$5.6 million and \$4.0 million of total unrecognized compensation expense related to RSU and stock option grants, respectively, that will be recognized over a weighted-average vesting period of 1.5 years and 1.9 years, respectively.

### 2014 Omnibus Incentive Plan

The Company's 2014 Omnibus Incentive Plan was adopted by the Board of Directors and approved by the shareholders in May 2014, and subsequently amended and restated in June 2020 (the "2014 Amended Plan"). The 2014 Amended Plan provides for the grant of stock options, stock appreciation rights, stock awards, cash awards and performance awards to the employees, non-employee directors and consultants of the Company. At December 31, 2022, the number of shares authorized under the 2014 Amended Plan was 12,595,000 shares, of which 1,298,518 were available for future issuance.

Generally, the exercise price of 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. A stock option shall be exercisable on or after each vesting date in accordance with the terms set forth in the stock option agreement. The right to exercise a stock option generally vests over three years at a rate of 33% annually or ratably in monthly installments over the vesting period.

### Time-Based Stock Options

The following table reflects assumptions used to calculate the fair value of time-based stock option grants for the years ended December 31, 2022 and 2021:

	December 31,			
	2022		2021	
Risk-free interest rate	2.84%	—	3.85%	1.25%
Dividend yield	—%	—	—%	—%
Expected option term (in years)	6.0		6.0	
Expected stock price volatility	290%	—	294%	284%

The weighted-average grant date fair value of time-based stock options granted during the years ended December 31, 2022 and 2021 was \$2.29 and \$1.11 per option share, respectively. There were 22,631 time-based stock options exercised during the year ended December 31, 2022. The total intrinsic value of options exercised during the year ended December 31, 2022 was \$0.1 million, and cash received from stock options exercised during the year ended December 31, 2022 was immaterial. Total grant date fair value of options that vested during the years ended December 31, 2022 and 2021 was \$0.8 million and \$0.2 million, respectively.

The following tables reflects the time-based stock option activity for the year ended December 31, 2022 (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, 2021	2,258,399	\$ 2.69		
Options granted	1,048,487	\$ 2.64		
Options exercised	(22,631)	\$ 1.52		
Options forfeited	—	\$ —		
Options expired	(13,776)	\$ 17.61		
Options outstanding as of December 31, 2022	3,270,479	\$ 2.62	8.9	\$ 8,047
Options vested and expected as of vest at December 31, 2022	3,270,479	\$ 2.62	8.9	\$ 8,047
Options exercisable as of December 31, 2022	820,543	\$ 4.83	8.3	\$ 2,115

### ***Time-Based Restricted Stock Units***

The following table reflects the time-based RSU activity for the year ended December 31, 2022 (dollar amounts in thousands):

	<b>Number of Shares</b>	<b>Weighted Average Grant Date Fair Value Per Share</b>	<b>Weighted Average Remaining Contractual Term (in years)</b>
Non-vested restricted stock units as of December 31, 2021	2,621,603	\$ 3.40	
Granted	1,460,515	\$ 2.54	
Vested	(1,148,022)	\$ 3.53	
Forfeited	—	\$ —	
Non-vested restricted stock units as of December 31, 2022	<u>2,934,096</u>	\$ 2.92	0.9

Time-based RSUs generally vest over one or three years, with 100% or 33% of each award vesting annually, respectively. The total fair value of time-based RSUs that vested during the years ended December 31, 2022 and 2021 was \$4.1 million and \$1.7 million, respectively.

### ***Performance-based Stock Options and Restricted Stock Units***

During the year ended December 31, 2022, the Company granted 1.0 million performance-based stock options and 1.0 million performance-based RSUs (collectively referred to as “Performance Awards”) under the 2014 Amended Plan. These Performance Awards vest only if the trading price of the Company’s common stock exceeds certain stock price targets prior to the eighth calendar day after the registrant releases its earnings for the second quarter of 2025, which was considered a market condition. The fair value of the Performance Awards was determined using a Monte Carlo simulation model which considered a variety of potential future share prices for Assertio. The weighted-average grant date fair value per share of the performance-based RSUs was \$2.24 using a risk-free interest rate of 2.84% and contractual term of 3.25 years. The weighted-average grant date fair value per share of the performance-based options was \$1.80 using the following key assumptions: (i) weighted-average exercise price of \$2.63, (ii) expected stock price volatility of 95.5%, (iii) risk-free interest rate of 2.84%, (iv) expected option term of 3.25 years, and (v) dividend yield of zero percent. The Company is recognizing the stock-based compensation expense associated with the Performance Awards ratably over the derived service period of one year regardless of whether or not the market condition for vesting is satisfied. The recipients of the Performance Awards will have voting rights and the right to receive a dividend, if applicable, once the underlying shares of common stock have been issued. If vested, the term of the performance-based options may not exceed 10 years from the date of grant. None of the Performance Awards vested during the year ended December 31, 2022 and all of the Performance Awards granted during the year ended December 31, 2022 remain outstanding as of December 31, 2022.

The Company had previously granted separate performance-based RSUs (“PSUs”) under the 2014 Amended Plan with a market-condition based on relative total shareholder return (“TSR”) performance, which was measured against the three-year TSR of a custom index of companies. As of December 31, 2021, there were 195,226 unvested PSUs outstanding with a weighted-average grant date fair value per share of \$31.58, all of which were forfeited during the year ended December 31, 2022, as the performance criteria was not met. There are no PSUs outstanding as of December 31, 2022.

### ***Other Equity Incentive Plans***

The Company’s other equity incentive plans as of December 31, 2022 include the Second Amended and Restated 2004 Equity Incentive Plan (“2004 Plan”) and the Zyla Life Sciences Amended and Restated 2019 Stock-Based Incentive Compensation Plan (the “2019 Zyla Plan”). Neither plan was utilized for new equity grants in 2021 and 2022 as they have no more shares available for future issuance.

The Company terminated its Employee Stock Purchase Plan (“ESPP”) program in June 2021 (refer to Note 16 for further details) and did not grant any stock purchase rights under the ESPP program during the years ended December 31, 2022 and 2021.

## NOTE 16. SHAREHOLDERS' EQUITY

### *At-The-Market Program*

On December 17, 2021, the Company entered into a sales agreement with Roth Capital Partners, LLC (“Roth”) as sales agent to sell shares of the Company’s common stock, from time to time, through an at-the-market (“ATM”) offering program having an aggregate offering price of up to \$25.0 million. As a result of the issuance of the 2027 Convertible Notes (See Note 10. Debt), the Company has suspended use of its ATM offering program. Prior to the suspension of the ATM offering program, during the second quarter of 2022, 2,463,637 shares of the Company’s common stock had been issued under the program and settled at an average price of \$3.02, through which the Company received gross proceeds of \$7.4 million, and net proceeds after commission and fees of \$7.0 million.

### *Equity Raise*

On February 9, 2021, the Company completed a registered direct offering with certain institutional and accredited investors to sell 5,650,000 shares of its common stock at a purchase price of \$2.48 per share. 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 and accredited investors to sell 8,750,000 shares of its common stock at a purchase price of \$3.92 per share. 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 continue to use the proceeds from both offerings for general corporate purposes, including general working capital.

### *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 Warrant Agreements provide the holder the right to receive shares of the Company’s common stock. Pursuant to the Warrant Agreements, 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 2022 and 2021, 0.4 million and 1.2 million warrants, respectively, were exercised and 0.4 million and 1.2 million common shares were issued by the Company, respectively. As of December 31, 2022, there were no outstanding warrants remaining.

### *Employee Stock Purchase Plan*

In May 2004, the 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 Company’s 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, 2022 and 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.

### *Option Exercises*

Employees exercised options to purchase 22,631 shares of the Company’s common stock during the year ended December 31, 2022 with an immaterial amount of net proceeds to the Company. 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 the year ended December 31, 2021.

## 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. Any warrants outstanding under the Warrant Agreements represent contingently issuable shares and therefore are included in the number of outstanding shares used for the computation of basic income (loss) per share. There were no unexercised shares of common stock issuable upon the exercise of warrants as of December 31, 2022, and 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-based awards and equivalents, and convertible debt. For purposes of this calculation, stock-based awards and convertible debt 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 Company uses the treasury-stock method to compute diluted earnings per share with respect to its stock-based awards and equivalents. The Company uses the if-converted method to compute diluted earnings per share with respect to its convertible debt. Under the if-converted method, the Company assumes any convertible debt outstanding was converted at the beginning of each period presented. As a result, interest expense and the fair value adjustment of the derivative liability associated with the 2027 Convertible Notes, net of tax, is added back to net income (loss) used in the diluted earnings per share calculation. Additionally, the diluted shares used in the diluted earnings per share calculation includes the dilution effect of the convertible debt if converted into the Company's common stock.

The following table reflects the calculation of basic and diluted earnings per common share for the years ended December 31, 2022 and 2021 (in thousands, except for per share amounts):

	Year ended December 31,	
	2022	2021
<b>Basic net income (loss) per share</b>		
Net income (loss)	\$ 109,625	\$ (1,281)
Weighted-average common shares and warrants outstanding	47,004	43,169
Basic net income (loss) per share	\$ 2.33	\$ (0.03)
<b>Diluted net income (loss) per share</b>		
Net income (loss)	\$ 109,625	\$ (1,281)
Add: Convertible debt interest expense and fair value adjustment, net of tax	1,560	—
Adjusted net income (loss)	111,185	(1,281)
Weighted-average common shares and share equivalents outstanding	47,004	43,169
Add: effect of dilutive stock-based awards and equivalents	1,530	—
Add: effect of dilutive convertible debt under if-converted method	6,135	—
Denominator for diluted income (loss) per share	54,669	43,169
Diluted net income (loss) per share	\$ 2.03	\$ (0.03)

The following table reflects outstanding potentially dilutive common shares that are not included in the computation of diluted net income (loss) per share for the years ended December 31, 2022, and 2021, because to do so would be anti-dilutive (in thousands):

	Year ended December 31,	
	2022	2021
Convertible notes	—	3
Stock-based awards and equivalents	836	2,914
Total potentially dilutive common shares	836	2,917

## NOTE 18. 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, 2022 and 2021 (in thousands):

<b>December 31, 2022</b>	<b>Financial Statement Classification</b>	<b>Level 1</b>	<b>Level 2</b>	<b>Level 3</b>	<b>Total</b>
<b>Assets:</b>					
Commercial paper	Cash and cash equivalents	\$ —	\$ 4,983	\$ —	\$ 4,983
U.S. Treasuries	Cash and cash equivalents	—	3,981	—	3,981
U.S. Government agencies	Cash and cash equivalents	—	10,937	—	10,937
Money market funds	Cash and cash equivalents	38,478	—	—	38,478
<b>Total</b>		<b>\$ 38,478</b>	<b>\$ 19,901</b>	<b>\$ —</b>	<b>\$ 58,379</b>
<b>Liabilities:</b>					
Short-term contingent consideration	Contingent consideration, current portion	\$ —	\$ —	\$ 26,300	\$ 26,300
Long-term contingent consideration	Contingent consideration	—	—	22,200	22,200
Derivative liability	Long-term debt	—	—	252	252
<b>Total</b>		<b>\$ —</b>	<b>\$ —</b>	<b>\$ 48,752</b>	<b>\$ 48,752</b>
<b>December 31, 2021</b>					
<b>Liabilities:</b>					
Short-term contingent consideration	Contingent consideration, current portion	\$ —	\$ —	\$ 14,500	\$ 14,500
Long-term contingent consideration	Contingent consideration	—	—	23,159	23,159
<b>Total</b>		<b>\$ —</b>	<b>\$ —</b>	<b>\$ 37,659</b>	<b>\$ 37,659</b>

### *Cash and Cash Equivalents*

The Company considers all highly liquid investments with a maturity date of purchase of three months or less to be cash equivalents. The Company invests its cash in money market funds and marketable securities including U.S. Treasury and government agency securities, commercial paper, and higher quality debt securities of financial and commercial institutions. The Company classified money market funds as Level 1, due to their short-term maturity, and measured the fair value based on quoted prices in active markets for identical assets. The Company classified commercial paper, U.S. Treasury and government agency securities as Level 2, as the inputs used to value these instruments are directly observable or can be corroborated by observable market data for substantially the full term of the assets.

### Contingent Consideration Obligation

Pursuant to the 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 CRG 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, 2022 and December 31, 2021, INDOCIN product contingent consideration was \$48.5 million and \$37.5 million, respectively, with \$26.3 million and \$14.5 million classified as short-term and \$22.2 million and \$23.0 million classified as long-term contingent consideration, respectively, in the Consolidated Balance Sheets.

During the years ended December 31, 2022 and 2021, the Company recognized an expense of \$18.7 million and \$3.9 million, respectively, for the change in fair value of contingent consideration, which was recognized in Fair value of contingent consideration in the Company's Consolidated Statements of Comprehensive Income (Loss). 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, 2022 included revenue volatility of 40%, discount rate of 9.0%, credit spread of 3.8%, and updated projections of future INDOCIN product revenues.

Contingent consideration obligation related to CAMBIA was \$0.2 million as of December 31, 2021. During the year ended December 31, 2022, the Company determined this contingent obligation was no longer probable and adjusted its fair value to zero.

The following table summarizes changes in fair value of the contingent consideration that is measured on a recurring basis using significant unobservable inputs (Level 3) for the years ended December 31, 2022, and 2021 (in thousands):

	December 31,	
	2022	2021
Fair value, beginning of the period	\$ 37,659	\$ 38,552
Change in fair value of contingent consideration recorded within costs and expenses	18,687	3,914
Cash payment related to contingent consideration	(7,846)	(4,807)
Fair value, end of the period	\$ 48,500	\$ 37,659

### Financial Instruments Not Required to be Remeasured at Fair Value

The Company's other financial assets and liabilities, including trade accounts receivable and accounts payable, are not remeasured to fair value, as the carrying cost of each approximates its fair value. On August 22, 2022, the Company issued the 2027 Convertible Notes. As of December 31, 2022, the estimated fair value of the 2027 Convertible Notes, excluding the bifurcated embedded conversion option, was approximately \$92.5 million, compared to a par value of \$70.0 million. The Company estimated the fair value of its 2027 Convertible Notes as of December 31, 2022 based on a market approach which represents a Level 2 valuation. The carrying value of the Company's debt as of December 31, 2021 approximated its fair value. As of December 31, 2021, the estimated fair value of the Company's debt was determined using a commonly accepted valuation methodology and market based risk measurements that are indirectly observable, such as credit risk, which also represents a Level 2 valuation.



## NOTE 19. INCOME TAXES

The following table reflects Net income (loss) before income taxes by source for the years ended December 31, 2022 and 2021 (in thousands):

	Year ended December 31,	
	2022	2021
U.S.	\$ 30,734	\$ (574)
Outside the U.S.	432	21
Net income (loss) before income taxes	\$ 31,166	\$ (553)

The following table reflects (benefit) provision for income taxes for the years ended December 31, 2022 and 2021 (in thousands):

	Year ended December 31,	
	2022	2021
<b>Current:</b>		
Federal	\$ 1,023	\$ 124
State	893	387
Total current taxes	\$ 1,916	\$ 511
<b>Deferred:</b>		
Federal	\$ (61,077)	\$ —
State	(19,298)	217
Total deferred taxes	(80,375)	217
Total (benefit) provision for income taxes	\$ (78,459)	\$ 728

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 Statements of Comprehensive Income (Loss) for the years ended December 31, 2022 and 2021 (in thousands):

	Year ended December 31,	
	2022	2021
Tax at federal statutory rate	\$ 6,545	\$ (116)
State tax, net of federal benefit	1,358	242
Disallowed officers' compensation	829	207
Stock based compensation	1,998	1,083
Change in valuation allowance	(89,251)	(2,131)
Uncertain tax provisions	198	233
Tax return benefit	—	(63)
Return to provision	(171)	1,247
Other	35	26
Total tax (benefit) provision	\$ (78,459)	\$ 728

On August 16, 2022, the Inflation Reduction Act of 2022 (“IRA”) was signed into law. The IRA includes a new book-minimum tax on certain large corporations, an excise tax on stock buybacks, and tax incentives to address climate change mitigation and clean energy. The Company considered the income tax accounting implications of the IRA to the Company’s income tax provision calculation for the year ended December 31, 2022, and determined that the impact was not significant.

On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security (“CARES”) Act was enacted. The CARES ACT was a 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. The Company considered the income tax accounting implications from the CARES Act to the Company’s income tax provision calculation for the year ended December 31, 2022. 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 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. During 2022, the Company received the requested tax refund of \$8.3 million for such carryback claim.

During the year ended December 31, 2022, the Company recorded an income tax benefit of \$78.5 million, principally due to a reversal of previously recorded valuation allowances, offset by the state tax expense, stock-based compensation, and disallowed officer’s compensation.

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.

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 income taxes as of December 31, 2022 and 2021 (in thousands):

	December 31,	
	2022	2021
<b>Deferred tax assets:</b>		
Net operating losses	\$ 67,927	\$ 78,085
Tax credit carryforwards	1,362	2,813
Stock-based compensation	1,529	2,770
Operating lease liabilities	96	545
Reserves and other accruals not currently deductible	22,519	19,800
Disallowed interest carryforward	12,060	15,147
Total deferred tax assets	105,493	119,160
Valuation allowance for deferred tax assets	(12,524)	(101,775)
	\$ 92,969	\$ 17,385
<b>Deferred tax liabilities:</b>		
Intangible assets	\$ (12,554)	\$ (16,812)
Convertible debt	—	(228)
Fixed Assets	(180)	(349)
Operating lease right-of-use assets	(33)	(168)
Net deferred tax asset (liability)	\$ 80,202	\$ (172)

The valuation allowance decreased \$89.3 million to \$12.5 million during the year ended December 31, 2022. During the year ended December 31, 2022, the Company reversed a majority of its previously recorded valuation allowances against the net deferred tax asset. As part of its valuation assessment, the Company primarily relied on its projected availability of future taxable income from pre-tax income forecasts and reversing taxable temporary differences. The Company did retain \$12.5 million of valuation allowance because realization of the future benefits for the associated deferred tax assets is not considered more-likely-than-not to occur. The Company continues to assess the realizability of its deferred tax assets on a quarterly basis and assess whether an additional reserve or a release of a valuation allowance is required in future periods.

As of December 31, 2022, the Company had federal NOLs of \$254.9 million with no expiration, and \$31.5 million expiring in 2036. NOL carryforwards for state income tax purposes are \$143.6 million, which begin to expire in 2025. 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, 2022. The federal and state statute of limitations remains open primarily for the 2017 through 2021 tax years. The California statute of limitations is open for the 2007 through 2021 tax years.

The following table reflects activity related to the Company’s unrecognized tax benefits for the years ended December 31, 2022 and 2021 (in thousands):

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
Increases related to current year tax positions		—
Changes in prior year tax positions		—
Decreases related to lapse of statutes		—
Unrecognized tax benefits—December 31, 2022	\$	4,101

The total amount of unrecognized tax benefit that would affect the effective tax rate is \$4.1 million as of December 31, 2022 and December 31, 2021.

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.

#### NOTE 20. SUBSEQUENT EVENT

On February 27, 2023, the Company completed a transaction with a limited number of holders of its outstanding 2027 Convertible Notes (the “Exchanged Notes”) to exchange \$30.0 million aggregate principal amount of Exchanged Notes pursuant to separate, privately negotiated exchange agreements for a combination of (a) a cash payment, and (b) an agreed number of shares of the Company’s common stock. The Company paid an aggregate of \$10.5 million in cash and issued an aggregate of approximately 7.0 million shares of its common stock in the transactions. The Company did not receive any cash proceeds from the issuance of the shares of its common stock.

#### SCHEDULE II: VALUATION AND QUALIFYING ACCOUNTS

(in thousands)

Description	Balance at Beginning of Year	Additions		Deductions <sup>(1)</sup>	Balance at End of Year <sup>(2)</sup>
		Charged as a Reduction to Revenue			
Sales & return allowances, discounts, chargebacks and rebates:					
Year ended December 31, 2022	\$ 53,600	103,371		(106,659)	\$ 50,312
Year ended December 31, 2021	\$ 64,442	96,332		(107,174)	\$ 53,600

Description	Balance at Beginning of Year	Additions	Deductions	Balance at End of Year
Deferred tax asset valuation allowance:				
December 31, 2022 <sup>(3)</sup>	\$ 101,775	\$ —	\$ (89,251)	\$ 12,524
December 31, 2021 <sup>(4)</sup>	\$ 103,906	\$ —	\$ (2,131)	\$ 101,775

- (1) Deductions to sales discounts and allowances relate to discounts or allowances, returns, chargebacks and rebates actually taken or paid.
- (2) Balance includes allowances for cash discounts for prompt payment of \$0.9 million as of both December 31, 2022 and 2021, which are recognized in Accounts receivable, net on the Company's Consolidated Balance Sheets.
- (3) The Company decreased the valuation allowance by \$89.3 million during 2022. The significant reduction is primarily attributable to projected availability of future taxable income from pre-tax income forecasts and reversing taxable temporary differences.
- (4) The Company decreased the valuation allowance by \$2.1 million during 2021.

## 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, 2022 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, 2022. 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

There were no changes in our internal controls over financial reporting during the three months ended December 31, 2022 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, 2022, 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, 2022, 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, 2022, and our report dated March 8, 2023 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 8, 2023

## **ITEM 9B. OTHER INFORMATION**

None.

## **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 2023 Proxy Statement to be filed with the SEC in connection with the solicitation of proxies for our 2023 Annual Meeting of Stockholders (the 2023 Proxy Statement). The 2023 Proxy Statement is expected to be filed with the SEC within 120 days after the end of our 2022 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 2023 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 2023 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 2023 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 2023 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	<a href="#">Sales Agreement, dated as of December 17, 2021, by and between the Company and Roth Capital Partners, LLC (incorporated by reference to Exhibit 1.1 to the Company's Annual Report on Form 10-K, filed on March 10, 2022)</a>
2.1†	<a href="#">Asset Purchase Agreement, dated as of December 15, 2021, by and among Otter Pharmaceuticals, LLC, Antares Pharma, Inc. and the Company (incorporated by reference to Exhibit 2.1 to the Company's Annual Report on Form 10-K filed on March 10, 2022)</a>
2.2	<a href="#">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)</a>
2.3	<a href="#">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)</a>
2.4	<a href="#">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)</a>
2.5	<a href="#">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)</a>
2.6	<a href="#">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)</a>
2.7	<a href="#">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)</a>
2.8†	<a href="#">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)</a>
2.9	<a href="#">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)</a>
3.1	<a href="#">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)</a>
3.2	<a href="#">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)</a>
3.3	<a href="#">Amended and Restated Bylaws of the Company, dated November 2, 2022 (incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K filed on November 8, 2022)</a>
4.1	<a href="#">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)</a>



- 4.2 [Indenture, dated as of August 25, 2022, between Assertio Holdings, Inc. and U.S. Bank Trust Company, National Association, as trustee \(incorporated by reference to Exhibit 4.1 to the Company's Current Report on Form 8-K filed August 25, 2022\)](#)
- 4.3 [Form of 6.50% Convertible Senior Notes due 2027 \(included as Exhibit A in Exhibit 4.5\) \(incorporated by reference to Exhibit 4.1 to the Company's Current Report on Form 8-K filed on August 25, 2022\)](#)
- 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 \(incorporated by reference to Exhibit 10.2 to the Company's Annual Report on Form 10-K filed on March 10, 2022\)](#)
- 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 \(incorporated by reference to Exhibit 99.1 Form S-8 filed on May 12, 2022\)](#)
  
- 10.5\* [Form of Equity Award Documents under Amended and Restated 2014 Omnibus Incentive Plan](#)
- 10.6\* [Form of Equity Award Documents for Inducement Grants](#)
- 10.7\* [Amended and Restated Annual Bonus Plan](#)
- 10.8\* [Non-Employee Director Compensation and Grant Policy](#)
- 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† [Collaboration and License Agreement, dated as of January 7, 2015, by and among Egalet Corporation, Egalet US, Inc., Egalet Ltd. and Acura Pharmaceuticals, Inc. \(incorporated by reference to Exhibit 10.4 to Zyla Life Sciences' Annual Report on Form 10-K filed on March 16, 2015\)](#)
- 10.13† [License Agreement effective as of November 23, 2000 between Recordati Sa Chemical & Pharmaceutical Company and Roxro Pharma LLC \(incorporated by reference to Exhibit 10.13 to Zyla Life Sciences' Annual Report on Form 10-K filed on March 16, 2018\)](#)
- 10.14† [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 \(incorporated by reference to Exhibit 10.14 to Zyla Life Sciences' Annual Report on Form 10-K filed on March 16, 2018\)](#)

- 10.15† [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 \(incorporated by reference to Exhibit 10.15 to Zyla Life Sciences' Annual Report on Form 10-K filed on March 16, 2018\)](#)
- 10.16† [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 \(Zyla Life Sciences succeeded Iroko as a party to this agreement\) \(incorporated by reference to Exhibit 10.10 to Zyla Life Sciences' Quarterly Report on Form 10-Q filed on May 17, 2019\)](#)
- 10.17† [Amendment No. 3 to Collaborative License, Exclusive Manufacture and Global Supply Agreement between Zyla Life Sciences and Cosette Pharmaceuticals, Inc. effective July 9, 2021 \(incorporated by reference to Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q filed on November 4, 2021\)](#)

14.1 [Code of Conduct](#)

21.1 [List of Subsidiaries](#)

23.1 [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

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† 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 8, 2023

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.

<u>/s/ DANIEL A. PEISERT</u> Daniel A. Peisert	President and Chief Executive Officer (Principal Executive Officer)	March 8, 2023
<u>/s/ PAUL SCHWICHTENBERG</u> Paul Schwichtenberg	Chief Financial Officer (Principal Financial Officer)	March 8, 2023
<u>/s/ AJAY PATEL</u> Ajay Patel	Chief Accounting Officer (Principal Accounting Officer)	March 8, 2023
<u>/s/ PETER D. STAPLE</u> Peter D. Staple	Chairman of the Board of Directors	March 8, 2023
<u>/s/ WILLIAM T. MCKEE</u> William T. McKee	Director	March 8, 2023
<u>/s/ HEATHER L. MASON</u> Heather L. Mason	Director	March 8, 2023
<u>/s/ JAMES L. TYREE</u> James L. Tyree	Director	March 8, 2023

**ASSERTIO HOLDINGS, INC.**  
**AMENDED AND RESTATED 2014 OMNIBUS INCENTIVE PLAN**  
**NOTICE OF GRANT OF STOCK OPTION AWARD**

Participant:	[ ]
Address:	[ ]

RE: Grant of Stock Option

**Section A**

Grant Number:	[ ]
Grant Date:	_____, 20__
Type of Grant	[ ]
Option Shares:	[ ]
Purchase Price Per Share:	[ ]
Vesting Base Date:	_____, 20__
Expiration Date:	_____, 20__

**Section B**

<u>Shares Vested</u>	<u>Vesting Date</u>
[ ]	_____, 20__
[ ]	_____, 20__
[ ]	_____, 20__

[**Note to Draft:** Add additional rows to the table above if more than three vesting dates.]

Dear [Name]:

I am pleased to confirm that Assertio Holdings, Inc. (the “**Company**”) has granted you an option to purchase shares of our common stock under the Assertio Holdings, Inc. Amended and Restated 2014 Omnibus Incentive Plan (the “**Plan**”).

**General Terms**

The basic terms of your option grant are identified in the information block at the top of this offer letter, but other important terms and conditions are described in the Plan, this award notice and the Plan Prospectus. By accepting this option, you and the Company agree that this option is granted under and governed by the terms and conditions of this award notice, the Plan and the Plan Prospectus, each of which is attached and made a part of this document. You further acknowledge and agree that you have reviewed each of the foregoing documents in their entirety. You further agree to accept as binding, conclusive and final all decisions or interpretations of the Committee upon any questions relating to this award notice, the Plan or the Plan Prospectus. Copies of the Plan and Plan Prospectus are available at [www.etrade.com](http://www.etrade.com) and on request from our Human Resources Department. Capitalized terms used and not defined herein will have the meaning set forth in the Plan.

## Vesting, Purchase and Payment

Subject to the Plan and your continued employment or service to the Company, your Option Shares (as defined in Section A) vest (and this option becomes exercisable) as set forth in Section B, the above Vest Type schedule, so that the Option Shares will become vested and purchasable on the Fully Vested Date(s), as shown above.

Vesting in Section B on the first line of the above detailed option starts from the Vesting Base Date in Section A. However, if this option has more than one line of vesting shares, then each additional line will start vesting from the Fully Vested Date on the line directly above it. These additional lines of vesting shares do not start vesting from the Vesting Base Date in Section A.

If you decide to purchase shares under this option, you will be required either to submit your exercise electronically at [www.etrade.com](http://www.etrade.com) or submit a completed exercise agreement on a form approved by the Company, together with payment for the shares. You may pay for the shares (plus any associated withholding taxes) using cash, a check, a wire transfer or any other form of payment listed in Section 11 of the Plan and permitted by the Committee at the time you wish to exercise. Shares available under this option must be purchased, if at all, no later than the Expiration Date in Section B.

## Termination of Employment

The following provisions apply in the event of your Termination (as defined below):

- (a) *In General.* Except otherwise provided below, after your Termination your Option Shares shall be exercisable to the extent (but only to the extent) they are vested on the date of your Termination and only during the 90-day period after your Termination, but in no event after the Expiration Date. To the extent you do not exercise your Option Shares within the time specified for exercise, your Option Shares shall automatically terminate.
  - (b) *Death or Disability.* In the case of Termination due to your death, your Option Shares may be exercised as described in the Plan Prospectus. In the case of Termination due to disability, if a guardian or conservator has been appointed to act for you and has been granted this authority as part of that appointment, that guardian or conservator may exercise the Option Shares on your behalf. To the extent Option Shares are not so exercised within the time specified for their exercise, the Option Shares shall automatically terminate.
  - (c) *Divestiture.* If your Termination is due to a Divestiture (as defined below), the Board may take any one or more of the actions described in Section 15(c) of the Plan with respect to your Option Shares.
  - (d) *Termination for Cause.* If your Termination is due to Cause, all of your Option Shares shall automatically terminate and cease to be exercisable at the time of your Termination. “Cause” means employment-related dishonesty, fraud, misconduct or disclosure or misuse of confidential information, or other employment-related conduct that is likely to cause significant injury to the Company, an affiliate, or any of their respective employees, officers or directors (including, without limitation, commission of a felony or similar offense whether or not employment-related), in each case as determined by the Committee. Cause shall not require that a civil judgment or criminal conviction have been entered against or guilty plea shall have been made by you regarding any of the matters referred to in the previous sentence. Accordingly, the Committee shall be entitled to determine Cause based on the Committee’s good faith belief. If you are criminally charged with a felony or similar offense, that shall be a sufficient, but not a necessary, basis for such a belief.
-

### **Certain Tax Consequences**

If this option is an Incentive Stock Option (as defined in Section 3 of the Plan) then it shall be treated as such to the fullest extent permitted by Section 422 of the Code. In the event that the Option Shares are disposed of within two years after the Grant Date or within one year after exercise of this option, immediately prior to the disposition you agree to promptly notify the Company in writing of the date and terms of the disposition and will provide such other information regarding the disposition as the Company may reasonably require.

### **Definitions**

For purposes of this award notice, if the Company or an affiliate sells or otherwise transfers equity securities of an affiliate to a person or entity other than the Company or an affiliate, or leases, exchanges or transfers all or any portion of its assets to such a person or entity, then the Board may specify that such transaction or event constitutes a “**Divestiture**.” “**Termination**” means that you have ceased to be, with or without any cause or for any reason, an Employee, Director or Consultant. However, unless so determined by the Committee, Termination shall not include a change in status from an Employee, Consultant or Director to another such status. An event that causes an affiliate to cease being an affiliate shall be treated as the Termination of that affiliate’s Employees, Directors and Consultants.

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**ASSERTIO HOLDINGS, INC.**

**AMENDED AND RESTATED 2014 OMNIBUS INCENTIVE PLAN**

**NOTICE OF RESTRICTED STOCK UNIT GRANT AND AWARD AGREEMENT**

Unless otherwise defined herein, the terms defined in the Assertio Holdings, Inc. Amended and Restated 2014 Omnibus Incentive Plan, as amended (the “**Plan**”) will have the same defined meanings in this Notice of Restricted Stock Unit Grant and Award Agreement (the “**Award Agreement**”).

Participant:	[_____]
Address:	[_____]

**NOTICE OF GRANT**

You have been granted the right to receive an Award of Restricted Stock Units, subject to the terms and conditions of the Plan, the Plan Prospectus and this Award Agreement, as follows:

Grant Number:	[_____]
Grant Date:	_____, 20__
Vesting Base Date:	_____, 20__
Number of Restricted Stock Units:	[_____]

The Vesting Schedule will be as follows: [\_\_\_\_\_]

The Restricted Stock Unit and Awardee’s right to acquire any shares of Common Stock (“**Shares**”) hereunder will immediately terminate upon Termination (as defined below) of Awardee.

By Awardee’s acceptance of this Award of Restricted Stock Units, Awardee and Assertio Holdings, Inc. (the “**Company**”) agree that this Award of Restricted Stock Units is granted under and governed by the terms and conditions of the Plan, this Award Agreement, including the Terms and Conditions of Restricted Stock Unit Grant, attached hereto as Exhibit A, and the Plan Prospectus, all of which are made a part of this document. Awardee has reviewed the Plan, this Award Agreement and the Plan Prospectus in their entirety, has had an opportunity to obtain the advice of counsel prior to executing this Award Agreement and fully understands all provisions of the Plan, this Award Agreement and the Plan Prospectus. Awardee hereby agrees to accept as binding, conclusive and final all decisions or interpretations of the Committee upon any questions relating to the Plan, this Award Agreement or the Plan Prospectus. Awardee further agrees to notify the Company upon any change in the residence address indicated above.

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## EXHIBIT A

### TERMS AND CONDITIONS OF RESTRICTED STOCK UNIT GRANT

1. Grant. The Company hereby grants to the individual named in the Notice of Grant section of this Award Agreement (the “**Awardee**”) under the Plan an Award of Restricted Stock Units, subject to all of the terms and conditions in this Award Agreement, the Plan and the Plan Prospectus, each of which is incorporated herein by reference. Copies of the Plan and Plan Prospectus are available at [www.etrade.com](http://www.etrade.com), and are available on request from the Company’s Human Resources Department. Capitalized terms used and not defined in this Award Agreement will have the meaning set forth in the Plan.
  2. Company’s Obligation to Pay. Subject to deferral under Section 5, each Restricted Stock Unit represents the right to receive a Share on the date it vests. Unless and until the Restricted Stock Units will have vested in the manner set forth in Section 3, Awardee will have no right to payment of any such Restricted Stock Units. Prior to actual payment of any vested Restricted Stock Units, such Restricted Stock Unit will represent an unsecured obligation of the Company, payable (if at all) only from the general assets of the Company. Any Restricted Stock Units that vest in accordance with Section 3 will be paid to Awardee (or in the event of Awardee’s death, to his or her estate) in whole Shares, subject to Awardee satisfying any applicable tax withholding obligations. Subject to the provisions of Section 4 and Section 5, such vested Restricted Stock Units will be paid in Shares as soon as practicable after vesting, but in each such case within the period ending no later than the date that is two and one-half (2-1/2) months from the end of the Company’s tax year that includes the vesting date. Notwithstanding the foregoing, the Committee may, in its sole and absolute discretion, settle all or a portion of the vested Restricted Stock Units in cash based on the Fair Market Value of a Share on the vesting date.
  3. Vesting Schedule. Except as provided in Section 4, and subject to Section 5, the Restricted Stock Units awarded by this Award Agreement will vest in accordance with the vesting provisions set forth in the Notice of Grant section of this Award Agreement. Restricted Stock Units scheduled to vest on a certain date or upon the occurrence of a certain condition will not vest in Awardee in accordance with any of the provisions of this Award Agreement if Awardee has been Terminated prior to the date such vesting occurs.
  4. Committee Discretion. Notwithstanding anything in the Plan or this Award Agreement to the contrary, if the vesting of the balance, or some lesser portion of the balance, of the Restricted Stock Units is accelerated in connection with Awardee’s Termination (provided that such Termination is a “separation from service” within the meaning of Section 409A, as determined by the Company), other than due to death, and if (x) Awardee is a “specified employee” within the meaning of Section 409A at the time of such Termination and (y) the payment of such accelerated Restricted Stock Units will result in the imposition of additional tax under Section 409A if paid to Awardee on or within the six (6) month period following Awardee’s Termination, then the payment of such accelerated Restricted Stock Units will not be made until the date six (6) months and one (1) day following the date of Awardee’s Termination, unless the Awardee dies following his or her Termination, in which case, the Restricted Stock Units will be paid in Shares to the Awardee’s estate as soon as practicable following his or her death. It is the intent of this Award Agreement to comply with or be exempt from the requirements of Section 409A so that none of the Restricted Stock Units provided under this Award Agreement or Shares issuable thereunder will be subject to the additional tax imposed under Section 409A, and any ambiguities herein will be interpreted to so comply. For purposes of this Award Agreement, “Section 409A” means Section 409A of the Code, and any proposed, temporary or final Treasury Regulations and Internal Revenue Service guidance thereunder, as each may be amended from time to time.
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5. Election to Defer Distribution. If the distribution is subject to U.S. tax law, an eligible Awardee may be allowed to elect to defer the distribution of some or all of the Restricted Stock Units. Such election shall be in accordance with rules established by the Committee and in general must be received in writing by the Company no later than the date specified by the Committee in connection with the establishment of procedures for deferral. The deferral, if elected, will result in the transfer of the Restricted Stock Units into the Company's deferred compensation plan in effect, and applicable to the Awardee at the time the Restricted Stock Units would have otherwise been distributed. The applicable Company deferred compensation plan rules will govern the administration of this Award beginning on the date the Restricted Stock Units are credited to the applicable deferred compensation plan.
  6. Modifications to the Agreement. Awardee expressly warrants that he or she is not accepting this Award Agreement in reliance on any promises, representations, or inducements other than those contained herein. Modifications to this Award Agreement, the Plan or the Plan Prospectus can be made only in an express written contract executed by a duly authorized officer of the Company. Notwithstanding anything to the contrary in the Plan, this Award Agreement or the Plan Prospectus, the Company reserves the right to revise this Award Agreement as it deems necessary or advisable, in its sole discretion and without the consent of Awardee, to comply with Section 409A or to otherwise avoid imposition of any additional tax or income recognition under Section 409A in connection to this Award of Restricted Stock Units.
  7. Meaning of Termination. For purposes of this Award Agreement, "**Termination**" means that the Awardee has ceased to be, with or without any cause or for any reason, an Employee, Director or Consultant. However, unless so determined by the Committee, or otherwise provided in this Plan, "**Termination**" shall not include a change in status from an Employee, Consultant or Director to another such status. An event that causes an affiliate to cease being an affiliate shall be treated as the "**Termination**" of that affiliate's Employees, Directors and Consultants.
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**ASSERTIO HOLDINGS, INC.**

**AMENDED AND RESTATED 2014 OMNIBUS INCENTIVE PLAN**

**NOTICE OF EXECUTIVE PERFORMANCE RESTRICTED STOCK UNIT GRANT AND AWARD AGREEMENT**

Unless otherwise defined herein, the terms defined in the Assertio Holdings, Inc. Amended and Restated 2014 Omnibus Incentive Plan, as amended (the “**Plan**”) will have the same defined meanings in this Notice of Executive Performance Restricted Stock Unit Grant and Award Agreement (the “**Award Agreement**”).

Participant:	[ ]
Address:	[ ]

**NOTICE OF GRANT**

You have been granted the right to receive an Award of Executive Performance Restricted Stock Units, subject to the terms and conditions of the Plan, the Plan Prospectus and this Award Agreement, as follows:

Grant Number:	[ ]
Date of Grant:	_____, 20__
Target Number of Executive Performance RSUs:	[ ]
Performance Period:	May 12, 2022 to August __, 2025
Settlement Date:	August __, 2025 (or such earlier date on which the Committee certifies the level of achievement of the performance goals as set forth below).

The Vesting Schedule will be as follows:

The Executive Performance Restricted Stock Units will vest if and only if the Company’s common stock closes on any trading day after the Grant Date at or above \$ \_\_\_\_\_ per share (any such date, an “Initial Performance Trigger Date”) and, thereafter, the Company’s common stock also closes at or above \$ \_\_\_\_\_ per share on the one week anniversary of the date of the Company’s second consecutive earnings release following such Initial Performance Trigger Date; provided, however, that the 2022 Executive Performance Restricted Stock Units will expire without value if they have not vested on or before the date that is eight (8) calendar days following the date on which the Company releases its earnings for the second quarter of 2025.

The Executive Performance Restricted Stock Units and Awardee’s right to acquire any shares of Common Stock (“**Shares**”) hereunder will immediately terminate upon Termination (as defined below) of Awardee.

By Awardee’s acceptance of this Award of Executive Performance Restricted Stock Units, Awardee and Assertio Holdings, Inc. (the “**Company**”) agree that this Award of Executive Performance Restricted Stock Units is granted under and governed by the terms and conditions of the Plan, this Award Agreement, including the Terms and Conditions of Executive Performance Restricted Stock Unit Grant, attached hereto as Exhibit A, and the Plan Prospectus, all of which are made a part

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of this document. Awardee has reviewed the Plan, this Award Agreement and the Plan Prospectus in their entirety, has had an opportunity to obtain the advice of counsel prior to executing this Award Agreement and fully understands all provisions of the Plan, this Award Agreement and the Plan Prospectus. Awardee hereby agrees to accept as binding, conclusive and final all decisions or interpretations of the Committee upon any questions relating to the Plan, this Award Agreement or the Plan Prospectus. Awardee further agrees to notify the Company upon any change in the residence address indicated above.

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## EXHIBIT A

### TERMS AND CONDITIONS OF EXECUTIVE PERFORMANCE RESTRICTED STOCK UNIT GRANT

1. Grant. The Company hereby grants to the individual named in the Notice of Grant section of this Award Agreement (the “**Awardee**”) under the Plan an Award of Executive Performance Restricted Stock Units, subject to all of the terms and conditions in this Award Agreement, the Plan and the Plan Prospectus, each of which is incorporated herein by reference. Copies of the Plan and Plan Prospectus are available at [www.etrade.com](http://www.etrade.com), and are available on request from the Company’s Human Resources Department. Capitalized terms used and not defined in this Award Agreement will have the meaning set forth in the Plan.
  2. Company’s Obligation to Pay. Subject to deferral under Section 5, each Executive Performance Restricted Stock Unit represents the right to receive a Share on the date it vests. Unless and until the Executive Performance Restricted Stock Units will have vested in the manner set forth in Section 3, Awardee will have no right to payment of any such Executive Performance Restricted Stock Units. Prior to actual payment of any vested Executive Performance Restricted Stock Units, such Executive Performance Restricted Stock Unit will represent an unsecured obligation of the Company, payable (if at all) only from the general assets of the Company. Any Executive Performance Restricted Stock Units that vest in accordance with Section 3 will be paid to Awardee (or in the event of Awardee’s death, to his or her estate) in whole Shares, subject to Awardee satisfying any applicable tax withholding obligations. Subject to the provisions of Section 4 and Section 5, such vested Executive Performance Restricted Stock Units will be paid in Shares as soon as practicable after vesting, but in each such case within the period ending no later than the date that is two and one-half (2-1/2) months from the end of the Company’s tax year that includes the vesting date. Notwithstanding the foregoing, the Committee may, in its sole and absolute discretion, settle all or a portion of the vested Executive Performance Restricted Stock Units in cash based on the Fair Market Value of a Share on the vesting date.
  3. Vesting Schedule. Except as provided in Section 4, and subject to Section 5, the Executive Performance Restricted Stock Units awarded by this Award Agreement will vest in accordance with the vesting provisions set forth in the Notice of Grant section of this Award Agreement. Executive Performance Restricted Stock Units scheduled to vest on a certain date or upon the occurrence of a certain condition will not vest in Awardee in accordance with any of the provisions of this Award Agreement if Awardee has been Terminated prior to the date such vesting occurs.
  4. Committee Discretion. Notwithstanding anything in the Plan or this Award Agreement to the contrary, if the vesting of the balance, or some lesser portion of the balance, of the Executive Performance Restricted Stock Units is accelerated in connection with Awardee’s Termination (provided that such Termination is a “separation from service” within the meaning of Section 409A, as determined by the Company), other than due to death, and if (x) Awardee is a “specified employee” within the meaning of Section 409A at the time of such Termination and (y) the payment of such accelerated Executive Performance Restricted Stock Units will result in the imposition of additional tax under Section 409A if paid to Awardee on or within the six (6) month period following Awardee’s Termination, then the payment of such accelerated Executive Performance Restricted Stock Units will not be made until the date six (6) months and one (1) day following the date of Awardee’s Termination, unless the Awardee dies following his or her Termination, in which case, the Executive Performance Restricted Stock Units will be paid in Shares to the Awardee’s estate as soon as practicable following his or her death. It is the intent of this Award Agreement to comply with or be exempt from the requirements of Section 409A so that none of the Executive Performance Restricted Stock Units provided under this Award Agreement or Shares issuable thereunder will be subject to the additional tax imposed under Section 409A, and any ambiguities herein will be interpreted
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to so comply. For purposes of this Award Agreement, “Section 409A” means Section 409A of the Code, and any proposed, temporary or final Treasury Regulations and Internal Revenue Service guidance thereunder, as each may be amended from time to time.

5. Election to Defer Distribution. If the distribution is subject to U.S. tax law, an eligible Awardee may be allowed to elect to defer the distribution of some or all of the Executive Performance Restricted Stock Units. Such election shall be in accordance with rules established by the Committee and in general must be received in writing by the Company no later than the date specified by the Committee in connection with the establishment of procedures for deferral. The deferral, if elected, will result in the transfer of the Executive Performance Restricted Stock Units into the Company’s deferred compensation plan in effect, and applicable to the Awardee at the time the Executive Performance Restricted Stock Units would have otherwise been distributed. The applicable Company deferred compensation plan rules will govern the administration of this Award beginning on the date the Executive Performance Restricted Stock Units are credited to the applicable deferred compensation plan.
  6. Modifications to the Agreement. Awardee expressly warrants that he or she is not accepting this Award Agreement in reliance on any promises, representations, or inducements other than those contained herein. Modifications to this Award Agreement, the Plan or the Plan Prospectus can be made only in an express written contract executed by a duly authorized officer of the Company. Notwithstanding anything to the contrary in the Plan, this Award Agreement or the Plan Prospectus, the Company reserves the right to revise this Award Agreement as it deems necessary or advisable, in its sole discretion and without the consent of Awardee, to comply with Section 409A or to otherwise avoid imposition of any additional tax or income recognition under Section 409A in connection to this Award of Executive Performance Restricted Stock Units.
  7. Meaning of Termination. For purposes of this Award Agreement, “**Termination**” means that the Awardee has ceased to be, with or without any cause or for any reason, an Employee, Director or Consultant. However, unless so determined by the Committee, or otherwise provided in this Plan, “**Termination**” shall not include a change in status from an Employee, Consultant or Director to another such status. An event that causes an affiliate to cease being an affiliate shall be treated as the “**Termination**” of that affiliate’s Employees, Directors and Consultants.
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ASSERTIO HOLDINGS, INC.

AMENDED AND RESTATED 2014 OMNIBUS INCENTIVE PLAN

NOTICE OF GRANT OF EXECUTIVE PERFORMANCE STOCK OPTION AWARD

Participant:	[_____]
Address:	[_____]

RE: Grant of Executive Performance Stock Option

**Section A**

Grant Number:	[_____]
Grant Date:	_____, 20__
Type of Grant	[_____]
Option Shares:	[_____]
Purchase Price Per Share:	[_____]
Vesting Base Date:	_____, 20__
Expiration Date:	_____, 20__
Performance Period:	May 12, 2022 to August __, 2025
Settlement Date:	August __, 2025 (or such earlier date on which the Committee certifies the level of achievement of the performance goals as set forth below).

**Section B**

The Vesting Schedule will be as follows:

The Executive Performance Stock Option will vest if and only if the Company's common stock closes on any trading day after the Grant Date at or above \$ \_\_\_\_\_ per share (any such date, an "Initial Performance Trigger Date") and, thereafter, the Company's common stock also closes at or above \$ \_\_\_\_\_ per share on the one week anniversary of the date of the Company's second consecutive earnings release following such Initial Performance Trigger Date; provided, however, that the 2022 Executive Performance Stock Option will expire without value if they have not vested on or before the date that is eight (8) calendar days following the date on which the Company releases its earnings for the second quarter of 2025.

Dear [\_\_\_\_\_]:

I am pleased to confirm that Assertio Holdings, Inc. (the "**Company**") has granted you an option to purchase shares of our common stock under the Assertio Holdings, Inc. Amended and Restated 2014 Omnibus Incentive Plan (the "**Plan**").

**General Terms**

The basic terms of your option grant are identified in the information block at the top of this offer letter, but other important terms and conditions are described in the Plan, this award notice and the Plan Prospectus. By accepting this option, you and the Company agree that this option is granted under and governed by the terms and conditions of this award notice, the Plan and the Plan Prospectus,

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each of which is attached and made a part of this document. You further acknowledge and agree that you have reviewed each of the foregoing documents in their entirety. You further agree to accept as binding, conclusive and final all decisions or interpretations of the Committee upon any questions relating to this award notice, the Plan or the Plan Prospectus. Copies of the Plan and Plan Prospectus are available at [www.etrade.com](http://www.etrade.com) and on request from our Human Resources Department. Capitalized terms used and not defined herein will have the meaning set forth in the Plan.

### **Vesting, Purchase and Payment**

Subject to the Plan and your continued employment or service to the Company, your Option Shares (as defined in Section A) vest (and this option becomes exercisable) as set forth in Section B, the above Vest Type schedule, so that the Option Shares will become vested and purchasable on the Fully Vested Date(s), as shown above.

Vesting in Section B on the first line of the above detailed option starts from the Vesting Base Date in Section A. However, if this option has more than one line of vesting shares, then each additional line will start vesting from the Fully Vested Date on the line directly above it. These additional lines of vesting shares do not start vesting from the Vesting Base Date in Section A.

If you decide to purchase shares under this option, you will be required either to submit your exercise electronically at [www.etrade.com](http://www.etrade.com) or submit a completed exercise agreement on a form approved by the Company, together with payment for the shares. You may pay for the shares (plus any associated withholding taxes) using cash, a check, a wire transfer or any other form of payment listed in Section 11 of the Plan and permitted by the Committee at the time you wish to exercise. Shares available under this option must be purchased, if at all, no later than the Expiration Date in Section B.

### **Termination of Employment**

The following provisions apply in the event of your Termination (as defined below):

- (e) *In General.* Except otherwise provided below, after your Termination your Option Shares shall be exercisable to the extent (but only to the extent) they are vested on the date of your Termination and only during the 90-day period after your Termination, but in no event after the Expiration Date. To the extent you do not exercise your Option Shares within the time specified for exercise, your Option Shares shall automatically terminate.
  - (f) *Death or Disability.* In the case of Termination due to your death, your Option Shares may be exercised as described in the Plan Prospectus. In the case of Termination due to disability, if a guardian or conservator has been appointed to act for you and has been granted this authority as part of that appointment, that guardian or conservator may exercise the Option Shares on your behalf. To the extent Option Shares are not so exercised within the time specified for their exercise, the Option Shares shall automatically terminate.
  - (g) *Divestiture.* If your Termination is due to a Divestiture (as defined below), the Board may take any one or more of the actions described in Section 15(c) of the Plan with respect to your Option Shares.
  - (h) *Termination for Cause.* If your Termination is due to Cause, all of your Option Shares shall automatically terminate and cease to be exercisable at the time of your Termination. “Cause” means employment-related dishonesty, fraud, misconduct or disclosure or misuse of confidential information, or other employment-related conduct that is likely to cause significant injury to the Company, an affiliate, or any of their respective employees, officers or directors (including, without limitation, commission of a felony or similar offense whether or not employment-related), in each case as determined by the Committee. Cause shall not require that a civil judgment or criminal conviction have been entered against or guilty plea shall have been made by you regarding any of the matters referred to in the previous sentence. Accordingly, the
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Committee shall be entitled to determine Cause based on the Committee's good faith belief. If you are criminally charged with a felony or similar offense, that shall be a sufficient, but not a necessary, basis for such a belief.

### **Certain Tax Consequences**

If this option is an Incentive Stock Option (as defined in Section 3 of the Plan) then it shall be treated as such to the fullest extent permitted by Section 422 of the Code. In the event that the Option Shares are disposed of within two years after the Grant Date or within one year after exercise of this option, immediately prior to the disposition you agree to promptly notify the Company in writing of the date and terms of the disposition and will provide such other information regarding the disposition as the Company may reasonably require.

### **Definitions**

For purposes of this award notice, if the Company or an affiliate sells or otherwise transfers equity securities of an affiliate to a person or entity other than the Company or an affiliate, or leases, exchanges or transfers all or any portion of its assets to such a person or entity, then the Board may specify that such transaction or event constitutes a "**Divestiture.**" "**Termination**" means that you have ceased to be, with or without any cause or for any reason, an Employee, Director or Consultant. However, unless so determined by the Committee, Termination shall not include a change in status from an Employee, Consultant or Director to another such status. An event that causes an affiliate to cease being an affiliate shall be treated as the Termination of that affiliate's Employees, Directors and Consultants.

**ASSERTIO HOLDINGS, INC.**  
**NOTICE OF RESTRICTED STOCK UNIT GRANT AND**  
**AWARD AGREEMENT**  
**(Inducement Award)**

This Award (as defined below) is an inducement material to the Participant's entry into employment within the meaning of Nasdaq Listing Rule 5635(c)(4). This Award is granted outside of the Assertio Holdings, Inc. Amended and Restated 2014 Omnibus Incentive Plan, as amended (the "**Plan**"), however, the Award will be subject to terms and conditions substantially identical to the terms and conditions set forth in the Plan as if the Award were granted under the Plan, and the terms and conditions of the Plan applicable to an award of restricted stock units granted under the Plan are incorporated herein by this reference. As such, unless otherwise defined herein, the terms defined in the Plan will have the same defined meanings in this Notice of Restricted Stock Unit Grant and Award Agreement (the "**Award Agreement**").

[Awardee Name Address]

**NOTICE OF GRANT**

We are very pleased to notify you that, in connection with the commencement of your employment with Assertio Holdings, Inc. (the "**Company**"), you have been granted the right to receive an Award of Restricted Stock Units, subject to the terms and conditions of the Plan and this Award Agreement, as follows:

Grant Number: [\_\_\_\_\_]
   
Date of Grant: [\_\_\_\_\_]
   
Vesting Commencement Date: [\_\_\_\_\_]
   
Number of Restricted Stock Units: [\_\_\_\_\_]
   
Vesting Schedule: [\_\_\_\_\_]

The Restricted Stock Unit and Awardee's right to acquire any shares of Common Stock ("**Shares**") hereunder will immediately terminate upon Termination (as defined below) of Awardee.

By Awardee's acceptance of this Award, Awardee and the Company agree that this Award is granted under and governed by the terms and conditions of the Plan applicable to this Award and this Award Agreement, including the Terms and Conditions of Restricted Stock Unit Grant, attached hereto as Exhibit A, all of which are made a part of this document. Awardee has reviewed the Plan and this Award Agreement in their entirety, has had an opportunity to obtain the advice of counsel prior to executing this Award Agreement and fully understands all provisions of the Plan applicable to this Award and this Award Agreement. Awardee hereby agrees to accept as binding, conclusive and final all decisions or interpretations of the Committee upon any questions relating to the Plan or this Award Agreement. Awardee further agrees to notify the Company upon any change in the residence address indicated above.

**EXHIBIT A**  
**TERMS AND CONDITIONS OF RESTRICTED STOCK UNIT GRANT**

1. Grant. The Company hereby grants to the individual named in the Notice of Grant section of this Award Agreement (the “Awardee”) an Award of Restricted Stock Units, subject to all of the terms and conditions in this Award Agreement. This Award is an inducement material to the Participant’s entry into employment within the meaning of Nasdaq Listing Rule 5635(c)(4). This Award is granted outside of the Plan, however, the Award will be subject to terms and conditions substantially identical to the terms and conditions set forth in the Plan as if the Award were granted under the Plan, and the terms and conditions of the Plan applicable to an award of restricted stock units granted under the Plan are incorporated herein by this reference. A copy of the Plan is available at [www.etrade.com](http://www.etrade.com), and is available on request from the Company’s Human Resources Department. Capitalized terms used and not defined in this Award Agreement will have the meaning set forth in the Plan.

2. Company’s Obligation to Pay. Subject to deferral under Section 5, each Restricted Stock Unit represents the right to receive a Share on the date it vests. Unless and until the Award will have vested in the manner set forth in Section 4, Awardee will have no right to payment of any such Restricted Stock Units. Prior to actual payment of any vested Restricted Stock Units, the Award will represent an unsecured obligation of the Company, payable (if at all) only from the general assets of the Company. Any Restricted Stock Units that vest in accordance with Section 4 will be paid to Awardee (or in the event of Awardee’s death, to his or her estate) in whole Shares, subject to Awardee satisfying any applicable tax withholding obligations. Subject to the provisions of Section 5 and Section 6, such vested Restricted Stock Units will be paid in Shares as soon as practicable after vesting, but in each such case within the period ending no later than the date that is two and one-half (2-1/2) months from the end of the Company’s tax year that includes the vesting date. Notwithstanding the foregoing, the Committee may, in its sole and absolute discretion, settle all or a portion of the vested Restricted Stock Units in cash based on the Fair Market Value of a Share on the vesting date.

3. Dividend Equivalents. Dividend equivalents payable on the Award, if any, will be accrued on behalf of the Awardee at the time that cash dividends are otherwise paid to owners of Shares. Interest will be credited on accrued dividend equivalent balances and will vest and will be paid to the Awardee with the distribution of the shares following the vesting date pursuant to Section 2.

4. Vesting Schedule. Except as provided in Section 5, and subject to Section 6, the Award will vest in accordance with the vesting provisions set forth in the Notice of Grant section of this Award Agreement. Restricted Stock Units scheduled to vest on a certain date or upon the occurrence of a certain condition will not vest in Awardee in accordance with any of the provisions of this Award Agreement if Awardee has been Terminated prior to the date such vesting occurs.

5. Committee Discretion. Notwithstanding anything in this Award Agreement to the contrary, if the vesting of the balance, or some lesser portion of the balance, of the Restricted Stock Units is accelerated in connection with Awardee’s Termination (provided that such Termination is a “separation from service” within the meaning of Section 409A, as determined by the Company), other than due to death, and if (x) Awardee is a “specified employee” within the meaning of Section 409A at the time of such Termination and (y) the payment of such accelerated Restricted Stock Units will result in the imposition of additional tax under Section 409A if paid to Awardee on or within the six (6) month period following Awardee’s Termination, then the payment of such accelerated Restricted Stock Units will not be made until the date six (6) months and one (1) day following the date of Awardee’s Termination, unless the Awardee dies following his or her Termination, in which case, the Restricted Stock Units will be paid in Shares to the Awardee’s estate as soon as practicable following his or her death. It is the intent of this Award Agreement to comply with or be exempt from the requirements of Section 409A so that none of the Restricted Stock Units provided under this Award Agreement or Shares issuable thereunder will be subject to the additional tax imposed under Section 409A, and any ambiguities herein will be interpreted to so comply. For purposes of this Award Agreement, “**Section 409A**” means Section 409A of the Code, and any proposed, temporary or final Treasury Regulations and Internal Revenue Service guidance thereunder, as each may be amended from time to time.

6. Election to Defer Distribution. If the distribution is subject to U.S. tax law, an eligible Awardee may be allowed to elect to defer the distribution of some or all of the Shares earned under the Award. Such election shall be in accordance with rules established by the Committee and in general must be received in writing by the Company no later than the date specified by the Committee in connection with the establishment of procedures for deferral. The deferral, if elected, will result in the transfer of the Restricted Stock Units into the Company's deferred compensation plan in effect, and applicable to the Awardee at the time the Restricted Stock Units would have otherwise been distributed. The applicable Company deferred compensation plan rules will govern the administration of this Award beginning on the date the Restricted Stock Units are credited to the applicable deferred compensation plan.

7. Forfeiture upon Termination. Notwithstanding any contrary provision of this Award Agreement, the portion of the Award that has not vested as of the time of Awardee's Termination for any or no reason and Awardee's right to acquire any Shares hereunder will immediately terminate. For purposes of this Award Agreement, "**Termination**" means that the Awardee has ceased to be, with or without any cause or for any reason, an Employee, Director or Consultant. However, unless so determined by the Committee, "**Termination**" shall not include a change in status from an Employee, Consultant or Director to another such status. An event that causes an affiliate to cease being an affiliate shall be treated as the "**Termination**" of that affiliate's Employees, Directors and Consultants.

8. Withholding of Taxes. Notwithstanding any contrary provision of this Award Agreement, no certificate representing the Shares will be issued to Awardee, unless and until satisfactory arrangements (as determined by the Committee) will have been made by Awardee with respect to the payment of income, employment and other taxes which the Company determines must be withheld with respect to such Shares. The Committee, in its sole discretion and pursuant to such procedures as it may specify from time to time, may permit Awardee to satisfy such tax withholding obligation, in whole or in part (without limitation) by (a) paying cash, (b) electing to have the Company withhold otherwise deliverable Shares having a Fair Market Value equal to the minimum amount required to be withheld, (c) delivering to the Company already vested and owned Shares having a Fair Market Value equal to the amount required to be withheld, or (d) selling a sufficient number of such Shares otherwise deliverable to Awardee through such means as the Company may determine in its sole discretion (whether through a broker or otherwise) equal to the amount required to be withheld. To the extent determined appropriate by the Company in its discretion, it will have the right (but not the obligation) to satisfy any tax withholding obligations by reducing the number of Shares otherwise deliverable to Awardee; provided, however, that such reduction shall be the sole method of satisfying tax withholding obligations for any Awardee who is subject to Section 16 of the Exchange Act. If Awardee fails to make satisfactory arrangements for the payment of any required tax withholding obligations hereunder at the time any applicable Restricted Stock Units otherwise are scheduled to vest, Awardee will permanently forfeit such Restricted Stock Units and any right to receive Shares thereunder and the Restricted Stock Units will be returned to the Company at no cost to the Company.

9. Rights as Shareholder. Neither Awardee nor any person claiming under or through Awardee will have any of the rights or privileges of a shareholder of the Company in respect of any Shares deliverable hereunder unless and until certificates representing such Shares will have been issued, recorded on the records of the Company or its transfer agents or registrars, and delivered to Awardee. After such issuance, recordation and delivery, Awardee will have all the rights of a shareholder of the Company with respect to voting such Shares and receipt of dividends and distributions on such Shares.

10. No Guarantee of Continued Service. AWARDEE ACKNOWLEDGES AND AGREES THAT THE VESTING OF THE RESTRICTED STOCK UNITS PURSUANT TO THE VESTING SCHEDULE HEREOF IS EARNED ONLY BY CONTINUING AS AN EMPLOYEE, DIRECTOR OR CONSULTANT AT THE WILL OF THE COMPANY (OR THE PARENT OR SUBSIDIARY EMPLOYING OR RETAINING AWARDEE) AND NOT THROUGH THE ACT OF BEING HIRED, BEING GRANTED THIS AWARD OF RESTRICTED STOCK UNITS OR ACQUIRING SHARES HEREUNDER. AWARDEE FURTHER ACKNOWLEDGES AND AGREES THAT THIS AWARD AGREEMENT, THE TRANSACTIONS CONTEMPLATED HEREUNDER AND THE VESTING SCHEDULE SET FORTH HEREIN DO NOT CONSTITUTE AN EXPRESS OR IMPLIED PROMISE OF CONTINUED ENGAGEMENT AS AN EMPLOYEE, DIRECTOR OR CONSULTANT FOR THE VESTING PERIOD, FOR ANY PERIOD, OR AT ALL, AND WILL NOT INTERFERE IN ANY WAY

WITH AWARDEE'S RIGHT OR THE RIGHT OF THE COMPANY (OR THE PARENT OR SUBSIDIARY EMPLOYING OR RETAINING AWARDEE) TO TERMINATE AWARDEE'S RELATIONSHIP AS AN EMPLOYEE, DIRECTOR OR CONSULTANT AT ANY TIME, WITH OR WITHOUT CAUSE.

11. Binding Agreement. Subject to the limitation on the transferability of this grant contained herein, this Award Agreement will be binding upon and inure to the benefit of the heirs, legatees, legal representatives, successors and assigns of the parties hereto.

12. Additional Conditions to Issuance of Shares. If at any time the Company will determine, in its discretion, that the listing, registration or qualification of the Shares upon any securities exchange or under any state or federal law, or the consent or approval of any governmental regulatory authority is necessary or desirable as a condition to the issuance of Shares to Awardee (or his or her estate), such issuance will not occur unless and until such listing, registration, qualification, consent or approval will have been effected or obtained free of any conditions not acceptable to the Company. Where the Company determines that the delivery of the payment of any Shares will violate federal securities laws or other applicable laws, the Company will defer delivery until the earliest date at which the Company reasonably anticipates that the delivery of Shares will no longer cause such violation. The Company will make all reasonable efforts to meet the requirements of any such state or federal law or securities exchange and to obtain any such consent or approval of any such governmental authority.

13. Plan Governs. This Award Agreement is subject to terms and provisions substantially identical to the terms and provisions of the Plan applicable to similar awards granted under the Plan.

14. Committee Authority. The Committee will have the power to interpret the Plan (as applicable to this Award) and this Award Agreement and to adopt such rules for the administration, interpretation and application of the Plan to this Award as are consistent therewith and to interpret or revoke any such rules (including, but not limited to, the determination of whether or not any Restricted Stock Units have vested). All actions taken and all interpretations and determinations made by the Committee in good faith will be final and binding upon Awardee, the Company and all other interested persons. No member of the Committee will be personally liable for any action, determination or interpretation made in good faith with respect to the Plan or this Award Agreement.

15. Electronic Delivery. The Company may, in its sole discretion, decide to deliver any documents related to this Award by electronic means or request Awardee's consent to participate in this Award by electronic means. Awardee hereby consents to receive such documents by electronic delivery and agrees to participate in this Award through any on-line or electronic system established and maintained by the Company or another third party designated by the Company.

16. Captions. Captions provided herein are for convenience only and are not to serve as a basis for interpretation or construction of this Award Agreement.

17. Agreement Severable. In the event that any provision in this Award Agreement will be held invalid or unenforceable, such provision will be severable from, and such invalidity or unenforceability will not be construed to have any effect on, the remaining provisions of this Award Agreement.

18. Modifications to the Agreement. Awardee expressly warrants that he or she is not accepting this Award Agreement in reliance on any promises, representations, or inducements other than those contained herein. Modifications to this Award Agreement or the Plan as applied to this Award can be made only in an express written contract executed by a duly authorized officer of the Company. Notwithstanding anything to the contrary in the Plan or this Award Agreement, the Company reserves the right to revise this Award Agreement as it deems necessary or advisable, in its sole discretion and without the consent of Awardee, to comply with Section 409A or to otherwise avoid imposition of any additional tax or income recognition under Section 409A in connection to this Award of Restricted Stock Units.

19. Acknowledgment. By accepting this Award, Awardee expressly warrants that he or she has received, read and understood a description of the Plan as applied to this Award.

**ASSERTIO HOLDINGS, INC.**  
**NOTICE OF GRANT OF STOCK OPTION AWARD**  
**(Inducement Award)**

This Option (as defined below) is an inducement material to the Participant’s entry into employment within the meaning of Nasdaq Listing Rule 5635(c)(4). The Option described herein is granted outside of the Assertio Holdings, Inc. Amended and Restated 2014 Omnibus Incentive Plan, as amended (the “**Plan**”), however, the Option will be subject to terms and conditions substantially identical to the terms and conditions set forth in the Plan as if the Option were granted under the Plan, and the terms and conditions of the Plan applicable to a stock option granted under the Plan are incorporated herein by this reference. As such, unless otherwise defined herein, the terms defined in the Plan will have the same defined meanings in this Notice of Grant of Stock Option Award (the “**Award Agreement**”).

Participant:	[ ]
Address:	[ ]

RE: Grant of Stock Option

**Section A**

Grant Number:	[ ]
Grant Date:	_____, 20__
Type of Grant	[ ]
Option Shares:	[ ]
Purchase Price Per Share:	[ ]
Vesting Base Date:	_____, 20__
Expiration Date:	_____, 20__

**Section B**

<u>Shares Vested</u>	<u>Vesting Date</u>
[ ]	_____, 20__
[ ]	_____, 20__
[ ]	_____, 20__

**[Note to Draft:** Add additional rows to the table above if more than three vesting dates.]

Dear [Name]:

I am pleased to confirm that Assertio Holdings, Inc. (the “**Company**”) has granted you an option to purchase shares of our common stock (the “**Option**”) under this Award Agreement.

### **General Terms**

The basic terms of your Option grant are identified in the information block at the top of this Award Agreement, but other important terms and conditions are described in the Plan, this Award Agreement and the Inducement Plan Prospectus.

Your Option is an inducement material to the Participant’s entry into employment within the meaning of Nasdaq Listing Rule 5635(c)(4). Your Option is granted outside of the Plan, however, the Option will be subject to terms and conditions substantially identical to the terms and conditions set forth in the Plan as if the Option were granted under the Plan, and the terms and conditions of the Plan applicable to a stock option award granted under the Plan are incorporated herein by this reference. You acknowledge and agree that you have reviewed this Award Agreement, the Plan and the Inducement Plan Prospectus in their entirety. You further agree to accept as binding, conclusive and final all decisions or interpretations of the Committee upon any questions relating to your Option, this Award Agreement, the Plan or the Inducement Plan Prospectus. A copy of the Plan and the Inducement Plan Prospectus is available at [www.etrade.com](http://www.etrade.com), and is available on request from the Company’s Human Resources Department. Capitalized terms used and not defined in this Award Agreement will have the meaning set forth in the Plan.

### **Vesting, Purchase and Payment**

Subject to the Plan, this Award Agreement and your continued employment or service to the Company, your Option Shares (as defined in [Section A](#)) vest (and this Option becomes exercisable) as set forth in [Section B](#), the above Vest Type schedule, so that the Option Shares will become vested and purchasable on the Fully Vested Date(s), as shown above.

Vesting in [Section B](#) on the first line of the above detailed option starts from the Vesting Base Date in [Section A](#). However, if this option has more than one line of vesting shares, then each additional line will start vesting from the Fully Vested Date on the line directly above it. These additional lines of vesting shares do not start vesting from the Vesting Base Date in [Section A](#).

If you decide to purchase shares under this Option, you will be required either to submit your exercise electronically at [www.etrade.com](http://www.etrade.com) or submit a completed exercise agreement on a form approved by the Company, together with payment for the shares and any tax withholding obligations due in connection therewith. You may pay for the shares (plus any associated withholding taxes) using cash, a check, a wire transfer or any other form of payment listed in Section 11 of the Plan and permitted by the Committee at the time you wish to exercise. Shares available under this Option must be purchased, if at all, no later than the Expiration Date in [Section B](#).

### **Termination of Employment**

The following provisions apply in the event of your Termination (as defined below):

- (a) *In General.* Except otherwise provided below, after your Termination your Option Shares shall be exercisable to the extent (but only to the extent) they are vested on the date of your Termination and only during the 90-day period after your Termination, but in no event after the Expiration

Date. To the extent you do not exercise your Option Shares within the time specified for exercise, your Option Shares shall automatically terminate.

- (b) *Death or Disability.* In the case of Termination due to your death, your Option Shares may be exercised as described in the Inducement Plan Prospectus. In the case of Termination due to disability, if a guardian or conservator has been appointed to act for you and has been granted this authority as part of that appointment, that guardian or conservator may exercise the Option Shares on your behalf. To the extent Option Shares are not so exercised within the time specified for their exercise, the Option Shares shall automatically terminate.
- (c) *Divestiture.* If your Termination is due to a Divestiture (as defined below), the Board may take any one or more of the actions described in Section 15(c) of the Plan with respect to your Option Shares.
- (d) *Termination for Cause.* If your Termination is due to Cause, all of your Option Shares shall automatically terminate and cease to be exercisable at the time of your Termination. “**Cause**” means employment-related dishonesty, fraud, misconduct or disclosure or misuse of confidential information, or other employment-related conduct that is likely to cause significant injury to the Company, an affiliate, or any of their respective employees, officers or directors (including, without limitation, commission of a felony or similar offense whether or not employment-related), in each case as determined by the Committee. Cause shall not require that a civil judgment or criminal conviction have been entered against or guilty plea shall have been made by you regarding any of the matters referred to in the previous sentence. Accordingly, the Committee shall be entitled to determine Cause based on the Committee’s good faith belief. If you are criminally charged with a felony or similar offense, that shall be a sufficient, but not a necessary, basis for such a belief.

### **Certain Tax Consequences**

This Option is not an Incentive Stock Option (as defined in Section 3 of the Plan).

### **Definitions**

For purposes of this Award Agreement, if the Company or an affiliate sells or otherwise transfers equity securities of an affiliate to a person or entity other than the Company or an affiliate, or leases, exchanges or transfers all or any portion of its assets to such a person or entity, then the Board may specify that such transaction or event constitutes a “**Divestiture.**” “**Termination**” means that you have ceased to be, with or without any cause or for any reason, an Employee, Director or Consultant. However, unless so determined by the Committee, Termination shall not include a change in status from an Employee, Consultant or Director to another such status. An event that causes an affiliate to cease being an affiliate shall be treated as the Termination of that affiliate’s Employees, Directors and Consultants.

### **Rights as Shareholder**

Neither you nor any person claiming under or through you will have any of the rights or privileges of a shareholder of the Company in respect of any Option Shares unless and until certificates representing such Option Shares will have been issued, recorded on the records of the Company or its transfer agents or registrars, and delivered to you. After such issuance, recordation and delivery, you will have all the rights of a shareholder of the Company with respect to voting such Option Shares and receipt of dividends and distributions on such Option Shares.

### **No Guarantee of Continued Service**

YOU ACKNOWLEDGE AND AGREE THAT THE VESTING OF THE OPTION PURSUANT TO THE VESTING SCHEDULE HEREOF IS EARNED ONLY BY CONTINUING AS AN EMPLOYEE,



DIRECTOR OR CONSULTANT AT THE WILL OF THE COMPANY (OR THE PARENT OR SUBSIDIARY EMPLOYING OR RETAINING YOU) AND NOT THROUGH THE ACT OF BEING HIRED, BEING GRANTED THIS OPTION OR ACQUIRING OPTION SHARES HEREUNDER. YOU FURTHER ACKNOWLEDGE AND AGREE THAT THIS AWARD AGREEMENT, THE TRANSACTIONS CONTEMPLATED HEREUNDER AND THE VESTING SCHEDULE SET FORTH HEREIN DO NOT CONSTITUTE AN EXPRESS OR IMPLIED PROMISE OF CONTINUED ENGAGEMENT AS AN EMPLOYEE, DIRECTOR OR CONSULTANT FOR THE VESTING PERIOD, FOR ANY PERIOD, OR AT ALL, AND WILL NOT INTERFERE IN ANY WAY WITH YOUR RIGHT OR THE RIGHT OF THE COMPANY (OR THE PARENT OR SUBSIDIARY EMPLOYING OR RETAINING YOU) TO TERMINATE YOUR RELATIONSHIP AS AN EMPLOYEE, DIRECTOR OR CONSULTANT AT ANY TIME, WITH OR WITHOUT CAUSE.

**Additional Conditions to Issuance of Shares**

If at any time the Company will determine, in its discretion, that the listing, registration or qualification of the Option Shares upon any securities exchange or under any state or federal law, or the consent or approval of any governmental regulatory authority is necessary or desirable as a condition to the issuance of Option Shares to you (or your estate), such issuance will not occur unless and until such listing, registration, qualification, consent or approval will have been effected or obtained free of any conditions not acceptable to the Company. Where the Company determines that the delivery of any Option Shares will violate federal securities laws or other applicable laws, the Company will defer delivery until the earliest date at which the Company reasonably anticipates that the delivery of Option Shares will no longer cause such violation. The Company will make all reasonable efforts to meet the requirements of any such state or federal law or securities exchange and to obtain any such consent or approval of any such governmental authority.

**ASSERTIO HOLDINGS, INC. AMENDED AND RESTATED ANNUAL BONUS PLAN**  
(as adopted by the Board of Directors on February 13, 2023)

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.

Assertio retains a separate field sales incentive compensation plan. Those employees, if any, 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. Depending on the level of the employee, the Bonus Target can be 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 Director, Human Resources, 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. 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 Holdings, 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 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 13, 2023)

<b>Title/Level</b>	<b>Bonus Target</b>	<b>Weighting of Corporate Goals</b>	<b>Weighting of Personal Goals<sup>1</sup></b>
President and Chief Executive Officer	110%	100%	0%
Chief Financial Officer, Chief Accounting Officer, and General Counsel	45%	70%	30%
Senior Vice Presidents (SVP)	30%	70%	30%
Vice Presidents (VP)	30%	70%	30%
Executive Directors / Directors	25%	55%	45%
Senior Managers / Managers / Individual Contributors	15%	45%	55%

<sup>1</sup>: The Compensation Committee holds discretion on the weighting and distribution of personal and corporate goals.

**ASSERTIO HOLDINGS, INC.**  
**NONEMPLOYEE DIRECTOR COMPENSATION AND**  
**GRANT POLICY**

1. Annual Cash Retainer. All nonemployee directors of the Company receive an annual cash retainer of \$55,000.
2. Additional Retainer — Chairman of the Board. A non-employee chairman of the Board of Directors receives an additional annual cash retainer of \$50,000.
3. Additional Retainer — Audit Committee. The chair of the audit committee receives an additional annual cash retainer of \$25,000. Each other member of the audit committee receives an additional annual cash retainer of \$12,500.
4. Additional Retainer — Compensation Committee. The chair of the compensation committee receives an additional annual cash retainer of \$20,000. Each other member of the compensation committee receives an additional annual cash retainer of \$10,000.
5. Additional Retainer — Nominating and Corporate Governance Committee. The chair of the nominating and corporate governance committee receives an additional annual cash retainer of \$15,000. Each other member of the nominating and corporate governance committee receives an additional annual cash retainer of \$6,000.
6. Additional Retainer — Special Committees. Each member of any special committee of the Board of Directors receives an additional annual cash retainer of \$6,000.
7. Payments. Payments under the policy are made quarterly in arrears.
8. Automatic Grant of Restricted Stock Unit and Stock Option Awards. Restricted stock unit awards and stock option grants shall be made in accordance with the Company's Amended and Restated 2014 Omnibus Incentive Plan (the "2014 Plan"), as follows:
  - (a) on the date of each Annual Meeting of Stockholders held in calendar year 2023 and thereafter, each nonemployee director then in office (and if a newly appointed or elected nonemployee director, a director whose service commenced prior to January 1 of such calendar year) automatically receives (A) an award of restricted stock units having a value of \$190,000 based on the Fair Market Value (as defined in the 2014 Plan) of the Company's common stock as of the date of grant that vest on the first anniversary of date on which such award of restricted stock units were made; and (B) an award of non-qualified stock options having a value of \$25,000 (based the grant date fair value of the options (i.e., Black-Scholes value) determined in accordance with the reasonable assumptions and methodologies employed by the Company for calculating the fair value of options under Accounting Standards Codification 718 "Compensation-Stock Compensation") that (x) vest on the first anniversary of date on which such award of stock options were made; (y) have a per share exercise price equal to the Fair Market

Value (as defined in the 2014 Plan) of the Company's common stock on the date of grant; and (z) expire no more than ten years from the date of grant; and

(b) each newly elected nonemployee director automatically receives, on the date of the director's initial election or appointment, (A) an award of restricted stock units having a value of \$190,000 based on the Fair Market Value (as defined in the 2014 Plan) of the Company's common stock as of the date of grant that vest in three equal installments on the first three anniversaries of the director's election or appointment; and (B) an award of non-qualified stock options having a value of \$25,000 (based the grant date fair value of the options (i.e., Black-Scholes value) determined in accordance with the reasonable assumptions and methodologies employed by the Company for calculating the fair value of options under Accounting Standards Codification 718 "Compensation-Stock Compensation") that (x) vest in three equal installments on the first three anniversaries of the director's election or appointment; (y) have a per share exercise price equal to the Fair Market Value (as defined in the 2014 Plan) of the Company's common stock on the date of grant; and (z) expire no more than ten years from the date of grant;

provided, however, that directors' total annual equity compensation will be subject to any cap specified in the 2014 Plan, and the Board of Directors may otherwise elect to (i) reduce the dollar value thresholds specified in (a) and (b) above or (ii) forgo such grants, in each case as it may deem appropriate.

Approved: February 13, 2023

Effective: January 1, 2023



## Letter from the CEO

Assertio's Mission Statement includes a commitment to developing and commercializing innovative pharmaceutical products that benefit patients. Doing what is best for patients requires that members of the Assertio team model our core value of Integrity by conducting our business ethically and in compliance with applicable laws and regulations.

As you know, our business is complex, so we have resources in place to help navigate that complexity in a compliant manner. This Code of Business Conduct and Ethics is an important one of those resources because it outlines and helps us understand general guidelines relating to our commitment to act with integrity and high ethical standards.

At Assertio, the following is expected of all of us:

- Read and understand this Code of Business Conduct and Ethics, as well as the policies contained within Assertio's Comprehensive Compliance Program ("CCP") and the policies, procedures, and business rules related to your function;
- Ask questions when you have them;
- Voice concerns should they arise; and
- Bring this Code of Business Conduct and Ethics to life by upholding and enhancing our well-deserved culture of compliance.

Together we will make Assertio an even greater place to work, all the while making positive contributions to the lives of patients and succeeding the right way.

**Daniel A. Peisert**

*President and Chief Executive Officer*

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## CODE OF BUSINESS CONDUCT AND ETHICS

### **Introduction — General Statement of Company Policy**

Assertio Holdings, Inc. (the “Company”) requires lawful and ethical behavior at all times. The purpose of this Code of Business Conduct and Ethics (“Code of Conduct”) is to provide you with a statement of certain key policies and procedures of the Company for you to follow in conducting business in a legally and ethically appropriate manner. This Code of Conduct is intended as one element in the Company’s efforts to ensure lawful and ethical conduct on the part of you and the Company. This Code of Conduct is part of the Company’s broader commitment to “relentless responsibility” that includes thorough training on and compliance with the Company policies themselves, fostering an open relationship between you and your supervisor that is conducive to transparency, good business conduct and, above all, your integrity and good judgment.

In that regard, you must:

- comply with all applicable laws, rules, and regulations;
- comply with all Company policies and procedures, including the CCP
- conduct all dealings with patients, medical professionals, and the Company’s customers, suppliers and competitors fairly, honestly and with integrity;
- ethically handle conflicts of interest, both real and perceived, in personal and professional relationships;
- produce, or cause to be produced, full, fair, accurate, timely and understandable disclosure in reports and documents that the Company files with or submits to the Securities and Exchange Commission (the “SEC”) and in other public communications;
- protect information, in any form, that belongs to the Company, its customers and suppliers;
- protect the Company’s assets and ensure their efficient use and report any suspected incident of fraud or theft immediately; and
- never use your position with the Company or Company assets or information for improper personal gain.

### **Application of Code**

This Code of Conduct applies to all directors, officers and employees of the Company, as well as designated contract representatives and agents. This Code of Conduct includes general principles. You will have to apply these principles to y

own specific responsibilities. If you have any questions about the proper application of the principles or about what is required by the law, the Company's policies and procedures or the CCP in any given situation, you must consult with your supervisor, the Legal Department, or the Company's Chief Compliance Officer (the "Compliance Officer").

### **Administration of the Code**

The Audit Committee of the Board of Directors ("The Audit Committee") is responsible for overseeing the implementation of this Code, while the Board of Directors is responsible for approving material or substantive amendments to this Code. The Audit Committee has made Assertio's Chief Compliance Officer responsible for the administration of this Code, the review of violations under this Code, and the monitoring of activity raising questions under this Code.

### **Discipline for Violations of the Code**

If you violate the law, this Code of Conduct, the CCP, or another Company policy or procedure, you will be subject to discipline, up to and including immediate termination of employment. A good faith effort to comply with this Code of Conduct will be taken into consideration when determining disciplinary action. Supervisors who ignore or fail to correct misconduct may also be subject to discipline.

Nothing in this Code of Conduct is intended to interfere with any employee's rights under the National Labor Relations Act.

### **Reporting Violations of the Code**

You must report violations or potential violations of this Code of Conduct, any applicable law, rule or regulation, or a Company policy or procedure including the CCP. In most cases, you should discuss a potential violation with your immediate supervisor, Human Resources or Compliance. Directors should discuss a potential violation the General Counsel, the Chief Compliance Officer, or the Chairman of the Audit Committee. A form for submitting reports and a copy of this Code of Conduct is available on the Company's ADP site and at [www.assertiotx.com](http://www.assertiotx.com).

**However, if you believe that your concerns cannot be addresses in this manner or if you do not feel comfortable reporting your concerns in this way, you may also report any such violations or potential violations in an anonymous and confidential manner at 800-779-3381 and online at <https://assertiocompliancereport.alertline.com>.**

Any reports of suspected wrongdoing will be treated seriously by the Company and you must cooperate with any investigations of wrongdoing. The Company will maintain confidentiality of the identity of individuals making reports of wrongdoing to the extent the Company is capable of conducting a thorough and fair investigation without revealing such identity.

**Non-Retaliation Policy**

Company policy prohibits retaliatory action against an employee who lawfully, and in good faith, reports potential violations of any applicable law, rule or regulation, or a Company policy or procedure including the CCP. Company policy also prohibits retaliatory action against anyone who provided information or assistance in investigations of potential violations. All reports of suspected wrongdoing will be appropriately investigated by the Company, including those of suspected retaliation.

The Company also recognizes the potentially serious impact of a false accusation. Making known false or malicious reports will not be tolerated, and you will be subject to appropriate disciplinary action if you file such reports, up to and including termination of employment.

**Ongoing Commitment**

No representation is expressed or implied that the policies and procedures stated in this Code of Conduct are all of the Company’s relevant policies and procedures, or that they are a comprehensive, full or complete explanation of the laws or standards of conduct that are applicable to you or the Company. You have a continuing obligation to familiarize yourself with applicable law and Company policies and procedures, including the CCP.

**Certification**

You must read and certify to your receipt and understanding of your obligations under this Code of Conduct. This Code of Conduct and related reporting form are available from the Company’s Human Resources Department and is posted on the Company’s ADP site. This Code of Conduct is also available to the public on the Company’s website at [www.assertiotx.com](http://www.assertiotx.com).

**Unaffiliated Parties**

Investors and others unaffiliated with the Company who wish to report potential or actual violations of law or this Code of Conduct may do so by writing to the General Counsel at the following address: Assertio Therapeutics, Inc., Attention: General Counsel, 100 South Saunders Drive, Suite 300, Lake Forest, Illinois 60045. All letters received will be categorized, processed, and routed to the appropriate Company personnel by the General Counsel. Comments or questions regarding the Company’s accounting, internal controls or auditing matters will be referred to members of the Audit Committee. At their option, investors and others unaffiliated with the Company may direct such questions directly to the Chairman of the Audit Committee at the same address, rather than the General Counsel.

**\*\*\*\*\* Nothing contained in this Code of  
Conduct is intended by the Company to be, nor shall it be construed as, an  
employment agreement.**

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## **1. Lawful and Ethical Behavior**

The foundation on which this Code of Conduct is built is obeying the law and acting ethically. It is the Company's policy that you conduct business in accordance with applicable federal, state and local laws, rules and regulations and with the laws, rules and regulations of other countries in which the Company does business which are not in conflict with your responsibilities under United States laws and regulations. In addition, the Company's policy requires that you adhere to the highest standard of business ethics and conduct.

You must be alert and sensitive to situations that could result in illegal, unethical, or improper action. When you are faced with a business decision that seems to have ethical overtones, here are some questions that should be helpful to determine if your actions are proper:

- Do I have all the necessary facts?
- Am I informed about all of the legal implications?
- Who has an important stake in the outcome (e.g., employees, customers, suppliers, etc.), and what is that stake?
- Does the issue raise ethical issues that go deeper than legal or institutional concerns?
- What are the options for acting, and which options will produce the most good and do the least harm? Which options respect the dignity of all stakeholders?

If you remain uncertain about what to do, if you need advice, or if you have reason to believe that a United States or foreign law could be violated in connection with Company business or that this Code of Conduct has been violated in any way, notify your supervisor, the General Counsel, the Compliance Officer or the Chairman of the Audit Committee.

## **2. Code of Ethics**

This Code of Ethics is promulgated by the Board of Directors under Section 406 of the Sarbanes Oxley Act of 2002 and the rules of the SEC promulgated thereunder and applies to all employees, officers and directors of the Company. It should be read in conjunction with the rest of this Code of Conduct and it contains standards reasonably necessary to promote:

- Honest and ethical conduct, including the ethical handling of actual or apparent conflicts of interest between personal and professional relationships;
- Full, fair, accurate, timely, and understandable disclosure in the periodic

reports required to be filed by the issuer and in other public communications; and

- Compliance with applicable governmental laws, rules and regulations. You must:

a. Act with honesty and integrity and be able to identify and appropriately handle actual or apparent conflicts of interest. You should recognize that even the appearance of a conflict of interest can damage the Company. A conflict of interest may exist because of a relationship of yours or of a family member that could cause a conflict with your ability to perform your job responsibilities.

b. Produce, or cause to be produced, full, fair, accurate, timely and understandable disclosure in reports and documents that the Company files with or submits to the SEC and in other public communications.

c. Comply with applicable governmental laws, rules and regulations.

d. Promptly report any violation of this Code of Ethics to the Chairman of the Audit Committee or the General Counsel or the Compliance Officer, as applicable. Reports also may be made anonymously via the Company's confidential reporting hotline.

e. Promote ethical behavior by Company officers and employees involved in financial reporting.

You will be held accountable for your adherence to this Code of Ethics. Your failure to observe the terms of this Code of Ethics may result in disciplinary action, up to and including immediate termination of your employment.

If you are an executive officer or director, any request by you for a waiver of any provision of this Code of Ethics must be in writing and addressed to the Chairman of the Audit Committee. If you are not an executive officer or director, any request by you for a waiver of any provision of this Code of Ethics must be in writing and addressed to the General Counsel.

With regard to executive officers and directors, the Board will have the sole and absolute discretionary authority, acting upon such recommendation as may be made by the Audit Committee, to approve any waiver from this Code of Ethics. Any waiver for executive officers or directors from this Code of Ethics will be disclosed within four days on Form 8-K or any other means approved by the Securities and Exchange Commission.

### **3. Compliance with Laws, Regulations and Industry Codes**

The Company is committed to conducting its business activities in accordance with applicable federal, state and local laws and regulations. You are expected to have a level of familiarity with important laws and regulations applicable to your duties for the

Company that is appropriate for your position. You may contact the Legal Department with any questions regarding laws and regulations applicable to your duties.

*Food and Drug Laws.* The FDA is the federal agency responsible for overseeing the safety of pharmaceuticals, biologics, medical devices, and other products. The FDA regulates almost every aspect of the Company's business, including the research, development, manufacturing, distribution, marketing, and promotion of our products.

*Labeling, Advertising, and Promotion.* FDA regulations require drug labeling and promotional material to be adequate, balanced, and truthful. Among other things, FDA regulations require all materials and messaging used to promote our products to be fair and balanced and consistent with FDA-approved labeling. To ensure compliance with FDA regulations, you must comply with all Company policies and procedures related to promotional activities.

*Product Samples.* The Prescription Drug Marketing Act of 1987 (the "PDMA") regulates the storage, distribution and accounting of prescription drug and biologic samples. It also prohibits the sale, purchase, or trade of drug samples. In addition, several state laws affect the distribution of samples. The Company has policies and procedures in place to ensure that our sampling activities comply with federal and state law. If your job function involves the handling or tracking of product samples, you must know and comply with these policies and procedures.

*Product Safety and Reporting Adverse Events.* As required by applicable laws and regulations, the Company closely monitors all reports of adverse events associated with the use of Company products to ensure that we consistently adhere to the highest levels of safety and accountability. You are required to identify, record, and promptly report any safety, quality, or performance issues, or any circumstance that suggests the occurrence of any of these issues, in accordance with applicable law and Company policy. Anyone who becomes aware of an adverse event or product complaint must report it by calling 866-458-6389 within one (1) business day of becoming aware.

*Independent Medical Education Programs.* The FDA does not regulate industry- supported scientific and educational activities that are independent of the supporting company's influence. If a company influences a scientific or educational activity, however, then the activity may be considered "promotional" and subject to all FDA regulations on product promotion. When we want to support scientific or educational activities without being subject to FDA regulation, we must ensure that the activities are designed and carried out without any influence from the Company. We have policies and procedures in place to ensure that our support of scientific and educational activities is appropriate.

*The PhRMA Code.* The purpose of the PhRMA Code is to ensure that healthcare decisions are made for the benefit of patients and are not based on undue influence from pharmaceutical companies. It provides examples of proper and improper practices regarding pharmaceutical companies' interactions with HCPs. Compliance with the PhRMA Code substantially reduces the risk of violating the federal Anti- Kickback Statute. The majority of the pharmaceutical industry, including the Company,



has adopted and embraced the PhRMA Code, and your activities must comply with it.

*Physician Payment Sunshine Act.* The Physician Payment Sunshine Act (the “Sunshine Act”) requires disclosure to the federal government of defined transfers of value to any HCPs in the U.S. during the preceding calendar year. It is the Company’s policy to maintain all records necessary in order to comply with the requirements of the Sunshine Act and you are required to follow Company procedure and support the Company’s effort to comply with the Sunshine Act by accurately and timely recording applicable HCP transfers of value.

*Federal Anti-Kickback Statute.* The federal Anti-Kickback Statute and certain state laws make it a crime to pay or receive anything of value with the intent to induce the purchase of or prescription of drugs or devices reimbursable under federal or state healthcare programs (e.g., TRICARE, Medicare, or Medicaid). The purpose of these laws is to ensure that money, or anything else of value, does not interfere with our customers’ independent clinical and formulary decisions. The Anti-Kickback Statute is interpreted broadly and prohibits a wide range of activities, such as:

- Providing an educational or research grant to an HCP (including a pharmacist) with the goal of encouraging the HCP to prescribe, dispense, or recommend a pharmaceutical product;
- Providing certain services to HCPs or other customers on the condition that they purchase or prescribe a certain amount of pharmaceutical or medical device products;
- Providing a grant to a managed care organization with the goal of influencing the formulary position of a product; and
- Paying an HCP a fee above the reasonable fair market value for services, such as participating in a Company-sponsored advisory board, in order to reward or induce purchases or prescriptions.

Some state laws are broader and apply to all items and services, beyond those reimbursed under a government healthcare program. The Company treats all HCPs and other customers as if they are subject to the anti-kickback laws, even if they do not participate in government healthcare programs. We and customers are subject to penalties for violating the anti-kickback laws. The penalties for violations include imprisonment and fines.

The federal Anti-Kickback Statute is so broad that it could be read to prohibit otherwise legitimate marketing activities and even some non-promotional activities. As a result, the OIG has defined certain “safe harbors.” Activities that fall entirely within a safe harbor do not violate the Anti-Kickback Statute. A number of safe harbors exist, including the Discount Safe Harbor, the Managed Care Safe Harbor, and the Personal Services Safe Harbor. You must ensure that your activities do not violate the Anti-Kickback Statute and wherever possible are structured to fall within a safe harbor.

*False Claims Act.* The False Claims Act prohibits entities and individuals from submitting, or inducing someone else to submit, a false claim for reimbursement by the federal government. Violating the False Claims Act can result in criminal prosecution and steep fines for each false claim. To avoid violating the False Claims Act, you must ensure that all promotional activities and materials comply with Company policies and procedures.

*Medicaid Best Price Law.* Under federal law, Medicaid is entitled to quarterly rebates based in part on the lowest price a pharmaceutical company offers to any non- government customer for a particular product. This is generally referred to as the “best price” of the product. The Company must calculate and report the metrics it uses to calculate these rebates to the federal government.

If the Company does not accurately account for discounts or other price concessions, it might result in the Company reporting an inaccurate best price to the federal government. This could violate the Medicaid Best Price Law, in which case the Company would have to pay significant penalties and be subjected to operating restrictions and criminal penalties.

Most states also have a version of pricing legislation and impose stiff penalties for violations of those laws.

*State Reporting and Marketing Laws.* Some state laws limit or restrict the way pharmaceutical companies interact with HCPs, especially with respect to marketing practices and items of value provided to HCPs. Some state laws place greater restrictions and requirements on companies than the PhRMA Code or federal laws.

*Privacy Laws.* In the course of conducting certain aspects of its business, the Company may collect and process various types of personal information. You may also have incidental or inadvertent contact with a patient’s personal information in the course of your activities with the Company. Regardless of the source, the Company safeguards the confidentiality of personal information in accordance with federal and state privacy laws and regulations. The spirit of all privacy laws is that individuals should know when companies are using their personal information, how the personal information is being used, and how the personal information is protected. Personal information may include medical histories or records and personal identifiers such as names, birth dates, and Social Security numbers.

The most important privacy law that affects the healthcare industry in the U.S. is the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”). The HIPAA “Privacy Rule,” as it is commonly called, aims to protect the privacy of individually identifiable health information of patients and research subjects. The HIPAA Privacy Rule directly applies to HCPs, health plans, and healthcare clearinghouses and indirectly applies to pharmaceutical company operations.

To ensure compliance with federal and state privacy laws, the Company has adopted policies and procedures with which you are required to comply.

*Fair Competition Laws and Fair Dealing.* Fair competition laws are designed to prohibit activities that reduce market competition and harm consumers. The Company is committed to conducting all of its business dealings in compliance with applicable antitrust laws. Pursuant to this policy, you may never:

- Collaborate with a competitor or take other actions that have the effect of improperly discouraging competition. If you have any questions about the potential impact of an action or communication, first discuss such questions with a member of the Legal Department;
- Make an agreement or have an informal understanding with competitors, either directly or indirectly, to fix prices, divide customers or territories, or restrict sales;
- Exchange information on pricing, discounting, allowances, royalties, costs, quotas, allocation of customers or territories, contract terms, or other similar proprietary information, with competitors;
- Attempt to monopolize or dominate markets with anything other than the use of superior products, service, or performance;
- Engage in illegal tying (i.e., an agreement to sell one product on the condition that the customer also purchase a different product, or agrees to forego purchasing the product from another supplier), illegal price discrimination, or refusals to deal;
- Enter into agreements with distributors regarding resale prices; or
- Discuss any of these topics with competitors. If a competitor initiates a similar conversation with you, you should politely decline to reciprocate and report the incident to the Legal Department.

You should always be fair in your dealings with clients, customers, suppliers, competitors, and any other third parties. You may not engage in the practice of manipulation, concealment, abuse of privileged information, misrepresentation, or any other unfair-dealing practice.

*Export and Trade Laws.* The U.S. and other countries have laws that restrict or prohibit even ordinary sales, research, manufacturing, and other commercial relationships with certain countries or parties. Even the simple act of carrying laboratory equipment from the U.S. to a European facility may constitute an export and be subject to applicable trade laws and controls. In addition, disclosing (including oral or visual disclosures) or transferring controlled data to a non-U.S. person, even if the disclosure or transfer occurs within the U.S., would be deemed an export to the home country or countries of the non-U.S. person and could require a license or other authorization. You are encouraged to contact your supervisor or the Legal Department when interacting with any person or entity with a presence outside the U.S. to ensure that your actions are in compliance with these trade laws.

*Foreign Corrupt Practices Act and Anti-Bribery and Corruption Laws.* The Company observes the highest ethical standards in all of its business transactions, including those involving foreign countries. In doing business anywhere in the world, neither the Company or anyone associated with the Company, shall offer, pay, promise, solicit or receive any bribe, kickback or other illicit payment or benefit in violation of the Foreign Corrupt Practices Act (“FCPA”), the United Kingdom Bribery Act (“UKBA”) or the anti-corruption laws of any other country in which it does or intends to do business. You may not take any action in connection with any international transaction or any action in any foreign country that would be illegal or improper in the United States. Furthermore, you are required to observe all applicable foreign laws to which you or the Company may be subject and which are not in conflict with your responsibilities under United States laws and regulations, including foreign tax laws, customs duties and regulations, drug testing, licensing, manufacturing and marketing laws, rules and regulations and currency restrictions. You should not take any actions that are intended to improperly circumvent the application of such laws.

With limited exceptions, the FCPA prohibits the Company and you from, among other things, making an offer, payment, promise to pay or authorization of the payment of any money, or offer, gift, promise to give, or authorization of the giving of anything of value to any foreign official, any foreign political party or official thereof or any candidate for foreign political office, or any other person, such as a foreign agent or consultant, knowing that all or a portion of such money or thing of value will be offered, given or promised, directly or indirectly, to any foreign official, any foreign political party or official thereof, or any candidate for foreign political office, for the purpose of (i) influencing any act or decision of such foreign official in his or her official capacity, (ii) inducing such foreign official to do or omit to do any act in violation of the lawful duty of such official, or securing any improper advantage, or inducing such foreign official to use his or her influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality, in order to assist the Company in obtaining or retaining business for or with, or directing business to, any person.

The UKBA is broader than the FCPA in that it prohibits all commercial bribery, i.e., giving bribes to anyone, not only government officials, is illegal. The UKBA also criminalizes both receiving a bribe and giving a bribe so not only is the act of offering, promising or giving a bribe criminal, the passive acceptance of a bribe is also illegal. In addition, the UKBA covers bribes made in the United States.

To ensure compliance with the FCPA, the UKBA and related anti-corruption laws of other countries in which the Company does or intends to do business, Company personnel and third parties representing the Company are prohibited from directly or indirectly offering, giving, soliciting or receiving any form of bribe, kickback or other corrupt payment, or anything of value, to or from any person or organization anywhere in the world, including government agencies, individual government officials, private companies and employees of those private companies under any circumstances. If you are asked to make any such payment, you should consult with your supervisor and a member of the Legal Department or the Compliance Officer before taking any action. Violations of anti-corruption laws can subject the Company and its representatives to

criminal and civil penalties.

**Antiboycott Laws.** United States antiboycott laws prohibit or severely restrict the Company from participating in boycotts against countries friendly to the United States, and require the Company to report both legal and illegal boycott requests to the United States government. If you are involved in selling the Company's products internationally, you must become familiar with the antiboycott laws and observe all of their requirements. Further information and guidance can be obtained from a member of the Legal Department or the Compliance Officer.

#### **4. Maintain Accurate Books and Records**

All Company books, records and accounts must be accurate and complete, and transactions must be recorded in a timely manner. As noted in the Company's Code of Ethics, the Company requires full, fair, accurate, timely and understandable recording and reporting of all Company information. You must act in a manner that ensures that all of the Company's books, records, accounts and financial statements are maintained in reasonable detail, appropriately reflect the Company's transactions and conform both to applicable legal requirements and to the Company's system of internal controls.

You must execute and record transactions in accordance with all internal control procedures implemented by Company management. You are personally responsible for the integrity of the information, reports, and records under your control. You must never make any false or artificial entries for any purpose.

All of your expense reimbursements must accurately reflect the true nature and amount of the expenses. In addition, if you are in any way involved in preparing the Company's disclosure documents (such as SEC filings or press releases), you must produce full, fair, accurate, timely and understandable disclosure in such documents. The Company's financial statements must be prepared in accordance with generally accepted accounting principles and must represent, in all material respects, the financial condition and results of the Company.

Company records must be maintained, stored and, when appropriate, destroyed in compliance with applicable laws and regulations (e.g., drug regulatory, environmental, tax, employment, government programs, and trade relations) and Company policy concerning record and document retention. You must not destroy records that are potentially relevant to a violation of the law, any litigation, or any pending, threatened, or foreseeable government investigation or proceeding. It is a crime to alter, destroy, modify or conceal documentation or other objects that are relevant to a government investigation, or to otherwise obstruct, influence or impede an official proceeding. The law applies equally to all Company records, including formal reports as well as informal data such as e-mail, expense reports and internal memos.

*It is very important that you do not create, or participate in the creation, or perpetuation of, any records that are intended to mislead anyone or conceal any improper act or conduct.*

## 5. Confidential Information and Intellectual Property

***Confidential Information.*** Confidential information of the Company is an important corporate asset that merits the same protection as the Company's physical assets. You have entered into a non-disclosure or confidentiality agreement detailing your obligations regarding the Company's confidential information, and you must adhere to this agreement.

You are responsible for safeguarding the confidential information. This includes confidential information that belongs to the Company, its suppliers, its customers, and even fellow employees. The Company's information, products, services, ideas, and concepts are important proprietary assets for the Company. Various laws enable the Company to protect these assets. Examples of confidential or proprietary information include marketing plans and strategies, sales and marketing data, customer and employee records, research and technical data, manufacturing techniques, pricing information, information pertaining to business development opportunities, and new products and services.

Help protect the Company's confidential information by following these principles:

- Be careful when using the telephone, e-mail, fax, and other electronic means of storing and sending information;
- Do not forward confidential or proprietary information to non-Company email accounts;
- Do not discuss confidential information in public places where others may overhear;
- Never provide confidential information to outsiders without first getting a written confidentiality agreement and approval from the Legal Department; and
- Beware of informal telephone or email requests from outsiders seeking information.

***Intellectual Property.*** Protecting the Company's intellectual property is essential to maintaining the Company's competitive advantage. The Company's intellectual property includes its patents, trade secrets, and copyrights, as well as the trademarks, scientific and technical knowledge, know-how, and the experience developed in the course of the Company's activities. You are expected to support the establishment, protection, maintenance, and defense of the Company's rights in all commercially significant intellectual property and to use those rights in a responsible way.

In addition to protecting the Company's intellectual property rights, you must respect the valid intellectual property rights of others. Unauthorized use of the intellectual property rights of others may expose the Company to civil lawsuits and damages. For example, you must not use, disclose to the Company, or induce the

Company to use any confidential, proprietary, or trade secret information that belongs to any of your prior employers or any other third party without that party's written consent. Theft and misappropriation of intellectual property may result in significant fines and criminal penalties for the Company and you.

Nothing contained in this Code of Conduct limits your ability to file a charge or complaint with the Equal Employment Opportunity Commission, the National Labor Relations Board, the Occupational Safety and Health Administration, the Securities and Exchange Commission or any other federal, state or local governmental agency or commission (the "Government Agencies"). This Code of Conduct also does not limit your ability to communicate with any of the Government Agencies or otherwise participate in any investigation or proceeding that may be conducted by any of the Government Agencies, including providing documents or other information, without notice to the Company.

Pursuant to 18 USC Section 1833(b), an employee will not be held criminally or civilly liable under any federal or state trade secret law for any disclosure of a trade secret that is made (i) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney; and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or is made in a complaint or other document that is filed under seal in a lawsuit or other proceeding. If an employee files a lawsuit for retaliation by the Company for reporting a suspected violation of law, the employee may disclose the Company's trade secrets to the employee's attorney and use the trade secret information in the court proceeding if the employee: (i) files any document containing the trade secret under seal, and (ii) does not disclose the trade secret, except pursuant to court order.

## **6. Securities Laws and Prohibition of Insider Trading**

It is against federal law and Company policy to trade securities on the basis of material non-public information. The Company's policy is that you cannot buy or sell Company stock or other securities while in possession of material non-public information. Insider trading is taken very seriously by the federal government and is punishable by fine and/or imprisonment.

The rules relating to trading in the Company's securities and those of other companies with which the Company does business are covered in detail in the Company's policy entitled "Insider Trading Policy" (the "Insider Trading Policy"). You must become familiar with the Insider Trading Policy and comply with it. If you are uncertain about the legal rules involving your purchase, sale or transfer of any securities of the Company or any securities in companies that are familiar to you by virtue of your work for the Company, you should consult with the Insider Trading Compliance Officer identified in the Insider Trading Policy before making any such purchase or sale.

## **7. Conflicts of Interest**

The Company knows that it can only be truly successful through the diligence and loyalty of its employees. Therefore, you must put the best interests of the Company

at the forefront of any work-related activity or decision and be able to identify and appropriately handle conflicts of interest.

While it is not possible to identify every particular activity that might give rise to a conflict of interest, a conflict of interest may exist because of a relationship of yours or of a family member that could cause a conflict with your ability to perform your job responsibilities. If you or your family members are engaged in any of the activities listed below, then there may be a conflict of interest, and you must disclose the facts concerning this activity to your immediate supervisor, the General Counsel or the Compliance Officer in order to have the Company address the situation:

- Any ownership interest in any supplier, customer or competitor (other than nominal amounts of stock in publicly traded companies);
- Any consulting or employment relationship with any customer, supplier or competitor;
- Any outside activity that harms a relationship between the Company and any customer or potential customer, or that interferes with a current or potential contract relationship;
- Any outside business activity that is competitive with any of the Company's businesses;
- Any service on any board of directors or advisory board of any customer, supplier or competitor unless such board service has been approved by an authorized Company officer;
- Any direct supervisory, review or other influential position on the job evaluation, pay or benefits of any close relative;
- Any sales or purchases of anything to or from the Company (unless it is pursuant to a routine program of disposal of surplus property that is offered to all employees in general); and
- Any situation in which, without proper authorization, you are required or tempted to disclose, or do disclose, any trade secret, confidential or proprietary information or intellectual property of the Company.

The above list is not exhaustive. Any other actual or potential conflict of interest must be reported. If you have any questions regarding activity which may create a conflict of interest, please discuss the situation with your supervisor, the Human Resources Department, the General Counsel or the Compliance Officer.

The Company reserves the right to determine when actual or potential conflicts of interest exist, and then to take any action, which the Company deems appropriate in its sole judgment. Such action may include, but is not limited to, having you divest the conflicting interest or return the benefit or gain received, realigning your duties and



responsibilities, or disciplinary action, up to and including immediate termination of your employment.

## **8. Receipt of Gifts and Entertainment**

Generally, you and members of your immediate family may not accept gifts, services, discounts or favors from those with whom the Company does business or considers doing business. Receipt of gifts, entertainment, favors or gratuities are subject to the guidelines below.

- You may accept gifts of nominal value ordinarily used for sales promotion (for example, calendars, appointment books, pens, etc.) that do not otherwise violate this Code of Conduct, applicable law, the CCP or any other Company policy.
- Ordinary “business meals” or reasonable business-associated entertainment consistent with local social and business customs may also be permissible if these actions are reasonable in cost and frequency and do not otherwise violate this Code of Conduct, applicable law, the CCP or any other Company policy.

If you receive a gift that does not fall within these guidelines, you should report it to the Compliance Officer so that appropriate action may be taken.

## **9. Prohibition of Gifts, Meals, or Entertainment as Bribes and Kickbacks**

Offering gifts, meals or entertainment that are not reasonable complements to a business relationship, but that are primarily intended to obtain sales or otherwise win favor or influence, must be avoided with all parties with whom the Company does business. Reasonable non-cash gifts and entertainment of modest value are generally permissible business courtesies when dealing with non-government personnel and non- healthcare professionals. Such business courtesies must be reasonably related to a legitimate purpose and otherwise in compliance with the CCP and Company policies and procedures.

Offering or accepting bribes or kickbacks to secure business is not only unacceptable, it may result in criminal prosecution. Offering of gifts, meals or entertainment to anyone to influence prescribing habits of Company products is prohibited. Payments and other items of value to induce or reward healthcare professionals (“HCPs”) to purchase or prescribe products may constitute violations of federal and state anti-kickback laws and are strictly prohibited. You may offer meals and items of value to HCPs only in accordance with the CCP.

Special rules apply when dealing with foreign nations and government officials. Employees should learn these rules and follow specific Company policies and procedures when doing business with the government. See “**Sales and Marketing Practices**”; “**Grants and Sponsored Trips**”; “**Compliance with Laws**” and “**Relations**”

**with Governments”.**

If you have any questions regarding bribes or kickbacks, please discuss the situation with the Compliance Officer.

#### **10. Charitable Contributions**

While contributions to the community make a positive difference, we must ensure that these contributions are appropriately approved and provided only in accordance with Company policies, including the CCP, and applicable laws and regulations.

#### **11. Corporate Opportunities**

You must not (a) take for yourself personally opportunities that are discovered through the use of corporate property, information or position, (b) use corporate property, information or position for personal gain or (c) compete with the Company. You owe a duty to the Company to advance its legitimate interests when the opportunity to do so arises.

#### **12. Communications with the Media, Analysts and the Public**

Communications with the media, investors, analysts, and the general public can affect the Company's reputation and business. It is important that all communications from the Company be consistent and satisfy all regulatory and legal requirements that may apply. Except for certain specified individuals set forth in the Company's Fair Disclosure Policy, employees are not permitted to speak on behalf of the Company to the media, financial analysts, investors, or other members of the public seeking Company information, whether the request is formal or informal, in person, over the phone, email or otherwise. Any inquiry seeking a comment from the Company must be immediately directed to the Chief Executive Officer or General Counsel. Any inquiry concerning a financial matter, or inquiry from an investor or potential investor, must be directed to the Chief Financial Officer. Employees may not represent themselves as spokespersons for the Company or that they are otherwise speaking on the Company's behalf.

#### **13. Social Media**

The Company respects the rights of all employees to utilize social media platforms and tools as a form of self-expression, networking, and in some cases, furthering the Company's interests. However, when participating in social media platforms or online conversations that reference the Company (or an employee's relationship with the Company), it is expected that we all take reasonable steps to ensure that we are not seen as speaking for or acting on behalf of the Company, and that all content is appropriate. The Company expects that all employees use social media responsibly:

*Company-Sponsored Social Media*. Employees must consult with and receive approval from the Chief Executive Officer and the Company General Counsel prior to

creating new Company-sponsored social media pages or accounts. The FDA also regulates Company's use of the internet and social media to promote its products, and therefore, the use of such platforms to disseminate promotional, medical and scientific, disease state or media information must be reviewed and approved according to the applicable Company policies and procedures, including the CCP.

*Personal Use of Social Media.* References to both investigational and approved products, as well as competitors' products, are strictly prohibited. Personal posts on external social media related to any aspect of the Company's business that is not publicly available are also strictly prohibited. If unsure about what information is publicly available, employees must consult with Legal. Personal posts must be in an individual capacity and may be presented as representative of the Company, e.g., inclusive of titles, or affiliations to the Company.

#### **14. Unauthorized Use of Company Property or Services**

You may only use Company property for legitimate business purposes. You may not use or remove from Company premises any Company property or services for any personal benefit or the personal benefit of anyone else. If you are uncertain about the distinction between personal and Company benefit, you should consult with your supervisor, the Human Resources Department or the Compliance Officer.

#### **15. Product Quality; Regulatory Requirements**

The safety and quality of the Company's pharmaceutical products are essential to physicians and their patients, and are a key component of our values. The Company maintains quality and regulatory systems to ensure compliance with our internal requirements and applicable laws and regulations. These systems are and will be described in Company policies, standard operating procedures and training programs adopted from time to time by the Company.

Employees should become familiar with these systems and work with their supervisors to obtain all necessary training. Violations of the Company's quality system policies and procedures may lead to disciplinary actions, up to and including termination of employment. You are responsible for the quality of your work, for implementing the relevant provisions of the quality system and for complying with the Company's policies and procedures.

You are expected to exert due diligence in preventing and detecting violations of laws and regulations related to the Company's quality systems. If you violate the Company's quality policies, practices and procedures, you may be personally liable for intentional violations of regulatory and legal requirements. If you are a supervisor, you may be liable for violations committed by employees under your supervision.

Any questions or reports of violations may be referred to a senior member of the Quality or Regulatory departments, to the Compliance Officer or confidentially at 800- 779-3381 and online at <https://assertiocompliancereport.alertline.com>.

## **16. Scientific Integrity**

All Company employees are expected to protect the integrity of the Company's research and development process by ensuring that all research, nonclinical and clinical development, is conducted according to applicable laws and regulations and to generally accepted ethical standards, principles, and guidelines in the scientific community, including but not limited to current Good Manufacturing Processes (cGMPs), Good Clinical Processes (cGCPs).

Scientific misconduct in all of its possible forms is prohibited. Examples of scientific misconduct include, but are not limited to, fabrication, falsification, or plagiarism in proposing, conducting, or reporting research, disregarding the intellectual contributions or property of others, impeding the progress of research, and corruption the scientific record.

## **17. Research Transparency**

The Company is committed to providing a high degree of transparency relative to the research that it conducts and sponsors, as well as the results and outcomes of such research. The Company registers and regularly submits information about the clinical trials it conducts and sponsors on a publicly available database. Further, the Company strives to present and publish the results of clinical trials that it conducts or sponsors in a timely manner and seeks the same commitment from the clinical investigators with whom it collaborates, regardless of outcome.

## **18. Sales and Marketing Practices; No Off-Label Promotion**

Each employee or other Company representative, in performing his or her duties, is responsible for truthfully conveying product attributes in accordance with government- approved labeling. You must not misstate facts or create misleading impressions in any labeling, advertising, packaging, literature or public statements. You must not promote a product for a use other than that specified in the approved product label. Omissions of important facts, safety information or wrongful emphasis of material may be misleading; the total impression of the message must be fairly balanced.

Many laws, regulations, guidelines, policies and procedures are applicable to the sale and marketing of our products, including regulations of the U.S. Food and Drug Administration (the "FDA"), the PhRMA Code on Interactions with Healthcare Professionals (the "PhRMA Code") and the Office of Inspector General (the "OIG") guidelines, among others. The Company provides specific training in these matters to its sales and marketing personnel and others in the Company involved in these activities. Violations of these laws, regulations, policies and procedures, including violations of the CCP, will lead to disciplinary actions, up to and including immediate termination of employment.

Vendors, consultants and third-party service suppliers of services in connection with our sales and marketing activities must comply with all applicable laws, regulations,

guidelines, policies and procedures. Each employee who engages a third party to perform these activities is responsible to ensure compliance by the third parties.

If you have any questions regarding sales and marketing practices and whether such practices might constitute a violation of this Code of Conduct, please discuss the situation with the Compliance Officer.

## **19. Grants and Sponsored Trips**

In the normal course of conducting business in the pharmaceutical industry, the Company may have opportunities to foster knowledge of its business, products and facilities, or to enhance the level of medical practice, by:

- Awarding grants;
- Sponsoring medical seminars; or
- Paying speakers' fees.

Such payments must be carefully reviewed to determine whether they are permitted under the laws, regulations and ethical codes of the country or countries involved. If such payments are permitted, they must be made in accordance with the Company's policies, including the CCP, and financial control procedures. Those policies and procedures require that all such payments must be made only in exchange for bona fide services at their fair market value.

Special training is provided to employees involved in the marketing and sale of the Company's products and related activities to help ensure compliance with rules, regulations and reporting requirements applicable to applicable grants and sponsored trips. You should seek advice from a member of the Legal Department or the Compliance Officer if you have any questions concerning these types of payments.

## **20. Fair Competition**

The Company intends to succeed in the marketplace through superior performance, not by unethical or manipulative practices.

- You must treat customers and suppliers honestly and fairly.
- You must never engage in illegal or unethical business practices.
- Do not make false or misleading remarks to customers or suppliers about other customers/suppliers or about competitors of the Company, their products or their services.
- You must avoid deprecation and criticism of competitors, their products or services, but you may state truthful descriptions of specifications and shortcomings of such products or services.

- You must never make comparative or superiority claims about a competitor product or treatment in violation of applicable laws and regulations.
- You should never attempt to improperly obtain proprietary information, including trade secret information, from another company. In addition, you should not obtain trade secret information from past or present employees of other companies.

## **21. Relations with Governments**

*General.* All relations with government agencies, officials and employees must be conducted with honesty and integrity and must be in compliance with the letter and intent of applicable laws and regulations.

*Government Procurement.* It is the Company's policy to sell to all customers, including government-related entities, in an ethical, honest and fair manner. Some of the key requirements for employees working on business with the government are:

- Providing high-quality products at appropriate prices;
- Not offering or accepting kickbacks, bribes, gifts or other gratuities that are not permitted by applicable laws, regulations, policies and procedures;
- Not soliciting or obtaining proprietary or source-selection information from government officials prior to the award of a contract;
- Hiring present and former government personnel only in compliance with applicable laws and regulations;
- Complying with laws and regulations ensuring the ethical conduct of participants in procurement set forth by federal, state and municipal agencies; and
- Accurately reporting required pricing information to government agencies.

Government procurement regulations can be highly complex. If you are involved with government transactions, you are responsible for understanding these requirements, and you should work closely with the Company's Legal Department and Finance Department.

*Responding to Government Requests and Investigations.* It is the Company's policy to cooperate with all reasonable requests concerning Company operations from federal, state, municipal and foreign government agencies, such as the FDA, the SEC, the Drug Enforcement Agency, the Federal Trade Commission, and the Department of Justice, including in connection with a government investigation. The Company has adopted policies on how to respond to government requests. Consult with the Legal Department before responding to these requests in order to ensure compliance with the requests and with the Company's policies.

Political Contributions. No one is permitted to use Company assets, including funds, telephones, postage, stationary or offices, to support a candidate for public office.

## **22. Employee Matters**

Employment and Equal Opportunity. The Company is an equal opportunity employer. It does not discriminate against applicants or employees based on race, religion, color, sex, sexual orientation, age, national origin, veteran's status, disability, membership or service in the U.S. armed forces, or any other legally protected characteristic. Company policy applies to all personnel transactions, and terms and conditions of employment, such as recruitment, hiring, placement, promotion, transfer, discipline, termination, layoff, education, tuition reimbursement, compensation, benefits, and participation in any company-sponsored programs. The Company will make reasonable accommodations where required because of an individual's disability or religion.

Discrimination and Harassment. The Company is committed to prohibiting harassment, whether of a verbal or physical nature, based on sex or other legally protected characteristic. Any employee who feels that they have been a victim of harassment or discrimination, or who has witnessed harassment or other discriminatory behavior, must report the situation in accordance with the process for **Reporting Violations of the Code** as outlined within this document. The Company's anti-discrimination and harassment policies are detailed in the Company's Employee Handbook and are updated from time to time in accordance with applicable laws and regulations and the Company's employment practices. You are required to comply with these policies.

Drugs and Alcohol Use/Abuse. The Company is a "drug-free" workplace. This means that we expect and require all employees to perform their duties without using illegal drugs and without impairment caused by alcohol use or the abuse of over the counter or prescription drugs.

Employee Health and Safety. The Company is committed to protecting the health and safety of its employees. To ensure that employees are kept healthy and safe, you must not only follow all health and safety requirements but must also take personal responsibility for your safety and the safety of those you work with. This includes never reporting to work in a state that could impair your ability to work safely and conscientiously (such as under the influence of illegal drugs or alcohol). If you are involved in, or know of, an accident or dangerous situation in the workplace, you must immediately report it to your supervisor, the Human Resources Department and/or the Legal Department.

## **23. Internal Audits and Investigations**

As part of the CCP and other Company policies and procedures, from time to time the Company will monitor and audit its compliance with internal policies as well as laws and regulations. You must cooperate with all audits and be truthful and accurate

when responding to audit requests.

In addition, the Company promptly investigates all reports of misconduct. As with audits, you must cooperate with such investigations and provide truthful and accurate information if you are questioned in the course of an investigation. You must not mislead an investigator, alter or destroy any relevant documents, or otherwise impede or interfere with the investigation in any way.

#### **24. Compliance with Company Policies and Procedures**

*Policies and Procedures.* In addition to this Code of Conduct, the Company has adopted policies and procedures that govern all aspects of our business, including the CCP. Policies provide detailed legal and compliance standards. Procedures set forth specific processes to follow. While some policies and procedures apply to all Company employees, others are tailored to specific job functions. By way of example, certain individuals may be subject to any Executive Compensation Clawback Policy or other similar policy (or amendment thereto) adopted by the Company, which policy shall supersede the terms and conditions of any other agreement between the Company and such individual. You must know and comply with all internal policies and procedures that apply to you, including those specified in the CCP.

*Seeking Guidance.* If you are unsure whether particular conduct is consistent with a Company policy or procedure, you should consult your supervisor, the Human Resources Department, the General Counsel or the Compliance Officer before engaging in the conduct.

#### **25. Reporting Violations**

This Code of Conduct applies to all officers, employees, contract representatives, and agents of the Company.

You must immediately report any violations or potential violations of this Code of Conduct, any applicable law or regulation, or a Company policy or procedure, including the CCP, to your supervisor, the General Counsel, the Compliance Officer or, as applicable, the Chairman of the Audit Committee.

You may also confidentially report any such violations or potential violations at **800-779-3381** and online at <https://assertiocompliancereport.alertline.com>.

#### **26. Dissemination and Amendment**

The Company reserves the right to amend, alter or terminate this Code of Conduct at any time for any reason.

#### **27. Approval and Adoption**

Approved and adopted by the Board of Directors: December 5, 2003. Approved by the Board of

Directors: May 20, 2020.



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**Certification to Code of Business Conduct and Ethics**

I am a representative of Assertio Holdings, Inc. ("Assertio") and I understand that I am responsible for complying with all of the requirements of the Assertio Code of Business Conduct and Ethics ("Code"). By signing below, I hereby certify that I have received, read and agree to comply with the Code and as of the date below I have no knowledge of any violation of the Code, either by me or any other Assertio representative.

I further understand that if I have any questions about the Code, I will contact the Compliance Officer.

\_\_\_\_\_This

certification shall be valid whether signed manually or electronically. Signature    Date

\_\_\_\_\_

Print Name    Title

**Assertio Compliance Hotline 1-800-779-3381**  
<https://assertiocompliancereport.alertline.com>

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, LLC	Delaware
Zyla Life Sciences US, LLC	Delaware
Otter Pharmaceuticals, LLC	Delaware

**CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

We have issued our reports dated March 8, 2023, 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, 2022. 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. 333-264880, 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 8, 2023

## 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 8, 2023

By: /s/ Daniel A. Peisert

Daniel A. Peisert  
President and Chief Executive Officer  
(Principal Executive Officer)

**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 8, 2023

By: /s/ Paul Schwichtenberg

Paul Schwichtenberg  
Senior Vice President and Chief Financial Officer  
(Principal Financial Officer)

**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, 2022 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 8, 2023

/s/ Daniel A. Peisert

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Daniel A. Peisert  
President and Chief Executive Officer  
(Principal Executive Officer)

**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, 2022 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 8, 2023

/s/ Paul Schwichtenberg

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Paul Schwichtenberg  
Senior Vice President and Chief Financial Officer  
(Principal Financial Officer)