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

Form 10-Q

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

For the quarterly period ended June 30, 2024
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: 001-35986

Esperion Therapeutics, Inc.

(Exact name of registrant as specified in its charter)

Delaware	**26-1870780**
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.)

3891 Ranchero Drive, Suite 150
Ann Arbor, MI 48108
(Address of principal executive office) (Zip Code)
Registrant's telephone number, including area code:
(734) 887-3903

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, par value $0.001 per share	ESPR	NASDAQ Stock Market LLC

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 is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes ☐ No ☒

As of August 1, 2024, there were 196,224,695 shares of the registrant's Common Stock, $0.001 par value per share, outstanding.

Esperion Therapeutics, Inc.
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From time to time, we may use our website, our X (formerly Twitter) account (@EsperionInc) or our LinkedIn profile at www.linkedin.com/company/esperion-therapeutics to distribute material information. Our financial and other material information is routinely posted to and accessible on the Investors & Media section of our website, available at www.esperion.com. Investors are encouraged to review the Investors & Media section of our website because we may post material information on that site that is not otherwise disseminated by us. Information that is contained in and can be accessed through our website or our LinkedIn page is not incorporated into, and does not form a part of, this Quarterly Report on Form 10-Q.

We use various trademarks and trade names in our business, including without limitation our corporate name and logo. This Quarterly Report on Form 10-Q may also contain trademarks, service marks and trade names of third parties, which are the property of their respective owners. Our use or display of third parties' trademarks, service marks, trade names or products in this Quarterly Report on Form 10-Q is not intended to, and does not imply a relationship with, or endorsement or sponsorship by us. Solely for convenience, the trademarks and trade names in this Quarterly Report on Form 10-Q may be referred to without the ® and ™ symbols, but the omission of such references should not be construed as any indicator that their respective owners will not assert, to the fullest extent under applicable law, their rights thereto.

Esperion Therapeutics, Inc.
Condensed Balance Sheets
(in thousands, except share data)

	June 30, 2024 (unaudited)	December 31, 2023
Assets		
Current assets:		
Cash and cash equivalents	$ 189,304	$ 82,248
Accounts receivable	60,360	48,494
Prepaid clinical development costs	349	193
Inventories, net	84,469	65,623
Other prepaid and current assets	10,626	4,507
Total current assets	345,108	201,065
Property and equipment, net	307	—
Right of use operating lease assets	6,848	4,675
Intangible assets	56	56
Total assets	$ 352,319	$ 205,796
Liabilities and stockholders' equity		
Current liabilities:		
Accounts payable	$ 47,669	$ 31,718
Accrued clinical development costs	3,419	3,441
Accrued variable consideration	44,851	34,284
Other accrued liabilities	23,294	24,998
Revenue interest liability	—	34,828
Royalty sale liability	32,754	—
Deferred revenue from collaborations	20,672	25,402
Operating lease liabilities	2,679	1,553
Total current liabilities	175,338	156,224
Convertible notes, net of issuance costs	262,475	261,596
Revenue interest liability	—	239,950
Royalty sale liability	254,745	—
Operating lease liabilities	3,981	3,020
Total liabilities	696,539	660,790
Commitments and contingencies (Note 5)		
Stockholders' equity:		
Preferred stock, $0.001 par value; 5,000,000 shares authorized and no shares issued or outstanding as of June 30, 2024 and December 31, 2023	—	—
Common stock, $0.001 par value; 480,000,000 shares authorized as of June 30, 2024 and 480,000,000 shares authorized as of December 31, 2023; 196,619,606 shares issued at June 30, 2024 and 120,204,513 shares issued at December 31, 2023	195	118
Additional paid-in capital	1,260,770	1,149,170
Treasury stock, at cost; 1,994,198 shares at June 30, 2024 and December 31, 2023	(54,998)	(54,998)
Accumulated other comprehensive income (loss)	—	—
Accumulated deficit	(1,550,187)	(1,549,284)
Total stockholders' deficit	(344,220)	(454,994)
Total liabilities and stockholders' deficit	$ 352,319	$ 205,796

See accompanying notes to the condensed financial statements.

Esperion Therapeutics, Inc.
Condensed Statements of Operations and Comprehensive Loss
(in thousands, except share and per share data)
(unaudited)

	Three Months Ended June 30,		Six Months Ended June 30,	
	2024	2023	2024	2023
Revenues:				
Product sales, net	$ 28,302	$ 20,293	$ 53,058	$ 37,324
Collaboration revenue	45,532	5,493	158,511	12,791
Total Revenues	73,834	25,786	211,569	50,115
Operating expenses:				
Cost of goods sold	15,609	6,786	25,684	18,438
Research and development	11,461	22,099	24,864	53,480
Selling, general and administrative	44,185	33,959	86,173	63,860
Total operating expenses	71,255	62,844	136,721	135,778
Income (loss) from operations	2,579	(37,058)	74,848	(85,663)
Interest expense	(13,723)	(14,537)	(27,747)	(28,924)
Loss on extinguishment of debt	(53,235)	—	(53,235)	—
Other income, net	2,454	1,660	5,231	2,933
Net loss	$ (61,925)	$ (49,935)	$ (903)	$ (111,654)
Net loss per common share - basic and diluted	$ (0.33)	$ (0.46)	$ (0.01)	$ (1.19)
Weighted-average shares outstanding - basic and diluted	188,793,816	109,243,845	179,026,191	93,927,148
Other comprehensive income (loss):				
Unrealized gain on investments	$ —	$ 1	$ —	$ 2
Comprehensive loss	$ (61,925)	$ (49,934)	$ (903)	$ (111,652)

See accompanying notes to the condensed financial statements.

Esperion Therapeutics, Inc.
Condensed Statements of Stockholders' Deficit
(in thousands, except share data)
(unaudited)

	Common Stock		Additional Paid-In Capital	Accumulated Deficit	Accumulated Other Comprehensive Income (Loss)	Treasury Stock	Total Stockholders' Deficit
	Shares	Amount					
Balance at December 31, 2022	74,570,198	$ 75	$ 1,071,183	$ (1,340,036)	$ (2)	$ (54,998)	$ (323,778)
Vesting of restricted stock units and performance-based restricted stock units	372,117	—	—	—	—	—	—
Vesting of ESPP shares	95,654	—	502	—	—	—	502
Stock-based compensation	—	—	2,903	—	—	—	2,903
Issuance of common stock, warrants, and pre-funded warrants, net of issuance costs	12,205,000	12	52,416	—	—	—	52,428
Other comprehensive gain	—	—	—	—	1	—	1
Net loss	—	—	—	(61,719)	—	—	(61,719)
Balance at March 31, 2023	87,242,969	$ 87	$ 1,127,004	$ (1,401,755)	$ (1)	$ (54,998)	$ (329,663)
Vesting of restricted stock units	215,903	1	—	—	—	—	1
Stock-based compensation	—	—	3,160	—	—	—	3,160
Issuance of common stock from ATM program, net of issuance costs	3,312,908	3	4,445	—	—	—	4,448
Exercise of pre-funded warrants	10,098,747	10	—	—	—	—	10
Other comprehensive gain	—	—	—	—	1	—	1
Net loss	—	—	—	(49,935)	—	—	(49,935)
Balance at June 30, 2023	100,870,527	$ 101	$ 1,134,609	$ (1,451,690)	$ —	$ (54,998)	$ (371,978)

	Common Stock		Additional Paid-In Capital	Accumulated Deficit	Accumulated Other Comprehensive Income (Loss)	Treasury Stock	Total Stockholders' Deficit
	Shares	Amount					
Balance at December 31, 2023	118,210,315	$ 118	$ 1,149,170	$ (1,549,284)	$ —	$ (54,998)	$ (454,994)
Vesting of restricted stock units and performance-based restricted stock units	439,783	1	—	—	—	—	1
Stock-based compensation	—	—	3,235	—	—	—	3,235
Issuance of common stock from offering, net of issuance costs	65,205,000	65	90,607	—	—	—	90,672
Exercise of warrants	4,000,000	4	5,762	—	—	—	5,766
Other comprehensive gain	—	—	—	—	—	—	—
Net income	—	—	—	61,022	—	—	61,022
Balance at March 31, 2024	187,855,098	$ 188	$ 1,248,774	$ (1,488,262)	$ —	$ (54,998)	$ (294,298)
Vesting of restricted stock units	479,921	1	—	—	—	—	1
Stock-based compensation	—	—	2,931	—	—	—	2,931
Exercise of stock options	17,606	—	29	—	—	—	29
Exercise of warrants	6,272,783	6	9,036	—	—	—	9,042
Other comprehensive gain	—	—	—	—	—	—	—
Net loss	—	—	—	(61,925)	—	—	(61,925)
Balance at June 30, 2024	194,625,408	$ 195	$ 1,260,770	$ (1,550,187)	$ —	$ (54,998)	$ (344,220)

See accompanying notes to the condensed financial statements.

Esperion Therapeutics, Inc.
Condensed Statements of Cash Flows
(in thousands)
(unaudited)

	Six Months Ended June 30,	
	2024	**2023**
Operating activities		
Net loss	$ (903)	$ (111,654)
Adjustments to reconcile net loss to net cash provided by (used in) operating activities:		
Non-cash loss on extinguishment of debt	53,235	—
Non-cash royalty revenue	(7,531)	—
Depreciation expense	10	132
Amortization of premiums and discounts on investments	—	(412)
Amortization of debt issuance costs	879	839
Non-cash interest expense related to the revenue interest liability	21,569	22,785
Stock-based compensation expense	6,166	6,063
Changes in assets and liabilities:		
Accounts receivable	(11,866)	(7,070)
Prepaids and other assets	(6,275)	3,712
Deferred revenue	(4,730)	12,127
Inventories	(18,846)	(10,475)
Accounts payable	15,898	1,518
Other accrued liabilities	(983)	3,329
Net cash provided by (used in) operating activities	46,623	(79,106)
Investing activities		
Proceeds from sales/maturities of investments	—	42,500
Purchase of property and equipment	(150)	—
Net cash (used in) provided by investing activities	(150)	42,500
Financing activities		
Payments on revenue interest liability	(5,832)	(6,616)
Repurchase of revenue interest liability	(343,750)	—
Proceeds from royalty sale liability	304,656	—
Proceeds from issuance of common stock, warrants, and pre-funded warrants, net of issuance costs	—	52,428
Proceeds from issuance of common stock, net of issuance costs	90,672	—
Proceeds from issuance of common stock from ATM program, net of issuance costs	—	4,479
Proceeds from exercise of common stock options	29	—
Proceeds from exercise of warrants, net of issuance costs	14,808	—
Proceeds from exercise of pre-funded warrants	—	10
Net cash provided by financing activities	60,583	50,301
Net increase in cash and cash equivalents	107,056	13,695
Cash and cash equivalents at beginning of period	82,248	124,775
Cash and cash equivalents at end of period	$ 189,304	$ 138,470
Supplemental disclosure of cash flow information:		
Common stock issuance costs not yet paid	$ —	$ 31
Royalty sale issuance costs not yet paid	9,626	—
Purchase of property and equipment not yet paid	167	—
Non-cash right of use asset	84	36

See accompanying notes to the condensed financial statements.

Esperion Therapeutics, Inc.
Notes to Condensed Financial Statements
(unaudited)

1. The Company and Basis of Presentation

The Company

Esperion Therapeutics, Inc. ("the Company" or "Esperion") is a commercial stage biopharmaceutical company currently focused on bringing new medicines to patients that address unmet medical needs. The Company has developed and is commercializing U.S. Food and Drug Administration ("FDA") approved oral, once-daily, non-statin medicines for patients who are at risk for cardiovascular disease and are struggling with elevated low density lipoprotein cholesterol ("LDL-C"). Through commercial execution, international partnerships and collaborations and advancement of its pre-clinical pipeline, the Company continues to evolve into a leading global biopharmaceutical company.

The Company's lead products, NEXLETOL® (bempedoic acid) tablets and NEXLIZET® (bempedoic acid and ezetimibe) tablets, are oral, once-daily, non-statin medicines indicated to reduce the risk of myocardial infarction and coronary revascularization in adults who are unable to take recommended statin therapy (including those not taking a statin) with established cardiovascular disease ("CVD"), or at high risk for a CVD event but without established CVD, and to reduce LDL-C in adults with primary hyperlipidemia. The Company's products were approved by the FDA, European Medicines Agency ("EMA") and Swiss Agency for Therapeutic Products ("Swissmedic") in 2020. The FDA approved expanded indications for NEXLETOL and NEXLIZET tablets in March 2024. The EMA approved expanded indications for NILEMDO® (bempedoic acid) tablets and NUSTENDI (bempedoic acid and ezetimibe) tablets in May 2024. In addition, Otsuka Pharmaceutical Co., Ltd ("Otsuka"), Esperion's Japanese collaborator, announced that the primary endpoint of LDL-C reduction from baseline at Week 12 was achieved with statistical significance in the Phase 3 clinical trial in Japan for bempedoic acid as a treatment for hypercholesterolemia. Otsuka plans to file a New Drug Application ("NDA") in Japan in the second half of 2024, with expected approval and National Health Insurance ("NHI") pricing in 2025. The Company plans to file supplemental New Drug Applications for product approvals in Canada, Australia and Israel by the end of this year.

The Company completed a global cardiovascular outcomes trial ("CVOT"), —known as **C**holesterol **L**owering via B**E**mpedoic Acid, an **A**CL-inhibiting **R**egimen ("CLEAR") Outcomes. The trial was designed to evaluate whether treatment with bempedoic acid reduced the risk of cardiovascular events in patients who are statin averse and who have CVD or are at high risk for CVD. The Company initiated the CLEAR Outcomes CVOT in December 2016 and fully enrolled the study with nearly 14,000 patients in August 2019. The primary endpoint of the study was the effect of bempedoic acid on four types of major adverse cardiovascular events ("MACE") (cardiovascular death, non-fatal myocardial infarction, non-fatal stroke, or coronary revascularization; also referred to as "four-component MACE"). CLEAR Outcomes was an event-driven trial and concluded once the predetermined number of MACE endpoints occurred. The study showed that bempedoic acid demonstrated significant cardiovascular risk reductions and significantly reduced the risk of heart attack and coronary revascularization as compared to placebo. These results were seen in a broad population of primary and secondary prevention patients who are unable to maximize or tolerate a statin. The proportions of patients experiencing adverse events and serious adverse events were similar between the active and placebo treatment groups. Bempedoic acid, contained in NEXLETOL (bempedoic acid) tablets and NEXLIZET (bempedoic acid and ezetimibe) tablets, became the first LDL-C lowering therapy since statins proven to lower hard ischemic events, not only in those with atherosclerotic cardiovascular disease ("ASCVD") but also in the large number of primary prevention patients for whom limited therapies exist.

On January 2, 2024, the Company entered into a settlement agreement with Daiichi Sankyo Europe GmbH ("DSE") to amicably resolve and dismiss the commercial dispute then pending in the Southern District of New York ("Settlement Agreement"). Under the Settlement Agreement, DSE agreed to pay the Company an aggregate of $125 million, including (1) a $100-million payment within 15 business days of the effective date of the Settlement Agreement and (2) a $25-million payment received in the second quarter of 2024 after the EMA rendered a decision on the application that was filed with the EMA for a Type II(a) variation for the Company's oral non-statin products marketed as NILEMDO tablets and NUSTENDI tablets in Europe. The legal action pending in the United States District Court for the Southern District of New York has now been dismissed. Refer to Note 3 "Collaborations with Third Parties" and Note 5 "Commitments and Contingencies" for further information.

On January 18, 2024, the Company entered into an Underwriting Agreement (the "Underwriting Agreement") with Jefferies LLC ("Jefferies"), as representative of several underwriters (the "Underwriters"), related to an underwritten public offering (the "January 2024 Offering") of 56,700,000 shares of Common Stock of the Company, par value $0.001 per share, at a purchase price to the public of $1.50 per share. The Underwriters were also granted a 30-day option to purchase up to an additional 8,505,000 shares of Common Stock, at the public offering price. On January 19, 2024, Jefferies gave notice to the Company of its election to exercise the option to purchase additional shares, in full. Giving effect to the exercise of Underwriters' option, the January Offering closed on January 23, 2024, with proceeds to the Company of approximately $90.7 million, after deducting the underwriting discount and estimated offering expenses of $7.1 million.

On March 22, 2024, the Company announced that the FDA approved new label expansions for NEXLETOL and NEXLIZET based on positive CLEAR Outcomes data that include indications for cardiovascular risk reduction and expanded LDL-C lowering in both primary and secondary prevention patients. In addition, the enhanced labels support the use of NEXLETOL and NEXLIZET either alone or in combination with statins. They also include new indications for primary hyperlipidemia, alone or in combination with a statin, and are now the only LDL-C lowering non-statin drugs indicated for primary prevention patients.

On May 22, 2024, the Company announced that the European Commission ("EC") approved the label update of both NILEMDO and NUSTENDI as treatments for hypercholesterolemia and to reduce the risk of adverse cardiovascular events. The EC’s decisions to update the labels of bempedoic acid and the bempedoic acid / ezetimibe fixed dose combination are based on the positive CLEAR Outcomes trial results and makes them the first and only LDL-C lowering treatments indicated for primary and secondary prevention of cardiovascular events. NILEMDO and NUSTENDI are approved to reduce cardiovascular risk in patients with or at high risk for atherosclerotic cardiovascular disease.

On June 27, 2024, the Company entered into a Royalty Purchase Agreement (the “Purchase Agreement”) with OCM IP Healthcare Portfolio LP (“OMERS”), a limited partnership formed under the laws of the Province of Ontario, Canada (the “Purchaser”). Pursuant to the Purchase Agreement, the Company sold to the Purchaser, and the Purchaser purchased for $304,656,180, a portion of the royalties payable on net sales of Bempedoic Acid (as defined in the License and Collaboration Agreement) and any other Licensed Products (as defined in the License and Collaboration Agreement) in the DSE Territory (as defined in the License and Collaboration Agreement) pursuant to the License and Collaboration Agreement dated January 2, 2019, between Daiichi Sankyo Europe GMBH and the Company, as amended (the “License and Collaboration Agreement” and such royalties being the “Royalty Interests”).

The Purchaser acquired 100% of the Royalty Interests until such time as the Purchaser has received an aggregate amount equal to 1.700x of the Purchase Price (equivalent to $517,915,506). Following receipt of such amount, 100% of all Royalty Interests will revert to the Company. The Purchase Agreement contains other customary terms and conditions, including representations and warranties, covenants and indemnification obligations in favor of each party. Refer to Note 9 "Sale of Future Royalties" for further information.

On June 27, 2024, the Company repurchased Revenue Interests outstanding under the Revenue Interest Purchase Agreement (the “RIPA”), dated effective as of June 26, 2019, as amended, by and among the Company, the purchasers party thereto (the “Purchasers”), and Eiger III SA LLC ("Oberland"), as the collateral agent and administrative agent (the “Purchaser Agent”), and satisfied all other Obligations (as defined in the RIPA) owed to the Purchasers and the Purchaser Agent by paying to the Purchaser Agent, for the benefit of the Purchasers, a payment in cash of $343,750,000 (the “Repurchase Consideration”). Following the payment of the Repurchase Consideration, (a) all Revenue Interests were deemed to have been repurchased and all Obligations, debts and liabilities of the Company under the RIPA and the Transaction Documents (as defined in the RIPA) were deemed to have been paid and satisfied in full, and automatically released, discharged and terminated, and the RIPA and all other Transaction Documents automatically terminated, and all liens, security interests and pledges in favor of, granted to or held by the Purchaser Agent to secure the Obligations under the Transaction Documents were automatically terminated and released. Refer to Note 10 "Liability Related to the Revenue Interest Purchase Agreement" for further information.

The Company's primary activities since incorporation have been conducting research and development activities, including nonclinical, preclinical and clinical testing, performing business and financial planning, recruiting personnel, raising capital, and commercializing its products. The Company received approval by the FDA in February 2020 to commercialize NEXLETOL and NEXLIZET in the U.S., and accordingly commenced principal operations on March 30, 2020 with the commercialization of NEXLETOL. The Company is subject to risks and uncertainties which include the need to successfully commercialize its products, research, develop, and clinically test therapeutic products; obtain regulatory approvals for its products; successfully manage relationships with its collaboration partners; expand its management, commercial and scientific staff; and finance its operations with an ultimate goal of achieving profitable operations.

The Company has sustained annual operating losses since inception and expects such losses to continue over the foreseeable future. While management believes current cash resources and future cash received from the Company's net product sales and collaboration agreements with DSE, Otsuka, and Daiichi Sankyo Co. Ltd ("DS"), entered into on January 2, 2019,

April 17, 2020 and April 26, 2021, respectively, will fund operations for the foreseeable future, management may continue to fund operations and advance the development of the Company's products and product candidates through a combination of collaborations with third parties, strategic alliances, licensing arrangements, debt financings, royalty-based financings, and private and public equity offerings or through other sources. If adequate funds are not available, the Company may not be able to continue the development of its current products or future product candidates, or to commercialize its current or future product candidates, if approved.

Basis of Presentation

The accompanying condensed interim financial statements are unaudited and were prepared by the Company in accordance with generally accepted accounting principles in the United States of America ("GAAP"). In the opinion of management, the Company has made all adjustments, which include only normal recurring adjustments necessary for a fair presentation of the Company's financial position and results of operations for the interim periods presented. Certain information and disclosures normally included in the annual financial statements prepared in accordance with GAAP, but that is not required for interim reporting purposes, have been condensed or omitted. These condensed interim financial statements should be read in conjunction with the audited financial statements as of and for the year ended December 31, 2023, and the notes thereto, which are included in the Company's Annual Report on Form 10-K for the year ended December 31, 2023. The results of operations for the interim periods are not necessarily indicative of the results to be expected for a full year, any other interim periods or any future year or period.

2. Summary of Significant Accounting Policies

Use of Estimates

The preparation of financial statements in accordance with GAAP in the United States requires management to make estimates and assumptions that affect the reported amounts of assets, liabilities, net revenues, expenses and related disclosures. Actual results could differ from those estimates.

Cash and Cash Equivalents

The Company invests its excess cash in bank deposits, money market accounts, and short-term investments. The Company considers all highly liquid investments with an original maturity of 90 days or less at the time of purchase to be cash equivalents. Cash equivalents are reported at fair value.

Investments

Investments are considered to be available-for-sale and are carried at fair value. Unrealized gains and losses, if any, are reported in accumulated other comprehensive income (loss). The cost of investments classified as available-for-sale are adjusted for the amortization of premiums and accretion of discounts to maturity and recorded in other income, net. Realized gains and losses, if any, are determined using the specific identification method and recorded in other income, net. Investments with original maturities beyond 90 days at the date of purchase and which mature at, or less than twelve months from, the balance sheet date are classified as current. Investments with a maturity beyond twelve months from the balance sheet date are classified as long-term.

Concentration of Risk

The Company enters into a limited number of distribution agreements with distributors and specialty pharmacies. The Company's net product sales are with these customers. As of June 30, 2024 and December 31, 2023, eleven customers accounted for all of the Company's net trade receivables. As of June 30, 2024 and December 31, 2023, three customers hold approximately 98% and 96% of the Company's trade receivables associated with net product sales, respectively. In the six months ended June 30, 2024 and 2023, three customers accounted for approximately 98% and 98% of gross sales of NEXLETOL and NEXLIZET, respectively.

Revenue Recognition

In accordance with ASC 606, *Revenue from Contracts with Customers*, the Company recognizes revenue when a customer obtains control of promised goods or services, in an amount that reflects the consideration the Company expects to receive in exchange for the goods or services provided. To determine revenue recognition for arrangements within the scope of ASC 606, the Company performs the following five steps: identify the contracts with a customer; identify the performance obligations in

the contract; determine the transaction price; allocate the transaction price to the performance obligations in the contract; and recognize revenue when or as the entity satisfies a performance obligation. At contract inception, 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 derives revenue through two primary sources: collaboration revenue and product sales. Collaboration revenue consists of the collaboration payments to the Company for collaboration arrangements outside of the United States for the development, manufacturing and commercialization, including royalties, of the Company's product candidates by the Company's partners and product sales consists of sales of NEXLETOL and NEXLIZET.

a. Collaboration Revenue

The Company has entered into agreements related to its activities to develop, manufacture, and commercialize its product candidates. The Company earns collaboration revenue in connection with a collaboration agreement to develop and/or commercialize product candidates where the Company deems the collaborator to be the customer. Revenue is recognized when (or as) the Company satisfies performance obligations under the terms of a contract. Depending on the terms of the arrangement, the Company may defer the recognition of all or a portion of the consideration received as the performance obligations are satisfied.

The collaboration agreements may require the Company to deliver various rights, services, and/or goods across the entire life cycle of a product or product candidate. In an agreement involving multiple goods or services promised to be transferred to a customer, the Company must assess, at the inception of the contract, whether each promise represents a separate performance obligation (i.e., is "distinct"), or whether such promises should be combined as a single performance obligation.

The terms of the agreement typically include consideration to be provided to the Company in the form of non-refundable up-front payments, development milestones, sales milestones, and royalties on sales of products within a respective territory. The Company recognizes regulatory and approval milestones as consideration when it is probable that a future reversal is unlikely to occur. For sales-based milestones and royalties based on sales of product in a territory, the Company applies the sales-based royalty exception in ASC 606-10-55-65 to all of these milestones and royalties.

At the inception of the contract, the transaction price reflects the amount of consideration the Company expects to be entitled to in exchange for transferring promised goods or services to its customer. In the arrangement where the Company satisfies performance obligation(s) during the regulatory phase over time, the Company recognizes collaboration revenue typically using an input method on the basis of regulatory costs incurred relative to the total expected cost which determines the extent of progress toward completion. The Company reviews the estimate of the transaction price and the total expected cost each period and makes revisions to such estimates as necessary. Under contracted supply agreements with collaborators, the Company, through its third party contract manufacturing partners, may manufacture and supply quantities of active pharmaceutical ingredient (“API”) or bulk tablets reasonably required by collaboration partners for the development or sale of licensed products in their respective territory. The Company recognizes revenue when the collaboration partner has obtained control of the API or bulk tablets. The Company records the costs related to the supply agreement in cost of goods sold on the condensed statements of operations and comprehensive income (loss).

Under the Company's collaboration agreements, product sales and cost of sales may be recorded by the Company's collaborators as they are deemed to be the principal in the transaction. The Company receives royalties from the commercialization of such products, and records its share of the variable consideration, representing a percentage of net product sales, as collaboration revenue in the period in which such underlying sales occur and costs are incurred by the collaborator. On May 22, 2024, the Company announced that the EC approved the label update of both NILEMDO and NUSTENDI as treatments for hypercholesterolemia and to reduce the risk of adverse cardiovascular events. The EC’s decisions to update the labels of bempedoic acid and bempedoic acid / ezetimibe FDC are based on the positive CLEAR Outcomes trial results and makes them the first and only LDL-C lowering treatments indicated for primary and secondary prevention of cardiovascular events. NILEMDO and NUSTENDI are approved to reduce cardiovascular risk in patients with or at high risk for atherosclerotic cardiovascular disease.

b. Product Sales, Net

On February 21, 2020, the Company announced that the FDA approved NEXLETOL as an adjunct to diet and maximally tolerated statin therapy for the treatment of adults with HeFH or established ASCVD who require additional lowering of LDL-C. On February 26, 2020, the Company announced that the FDA approved NEXLIZET as an adjunct to diet and maximally tolerated statin therapy for the treatment of adults with HeFH or established ASCVD who require additional lowering of LDL-C. On March 30, 2020, NEXLETOL was commercially available in the U.S. through prescription and on June 4, 2020, NEXLIZET was commercially available in the U.S. through prescription. On March 22, 2024, the Company announced that the FDA approved new label expansions for NEXLETOL and NEXLIZET based on positive CLEAR Outcomes data that include indications for cardiovascular risk reduction and expanded LDL-C lowering in both primary and secondary prevention patients. In addition, the enhanced labels support the use of NEXLETOL and NEXLIZET either alone or in combination with statins. They also include new indications for primary hyperlipidemia, alone or in combination with a statin. Product sales, net totaled $28.3 million and $53.1 million, respectively, for the three and six months ended June 30, 2024, and $20.3 million and $37.3 million, respectively, for the three and six months ended June 30, 2023.

The Company sells NEXLETOL and NEXLIZET to wholesalers in the U.S. and, in accordance with ASC 606, recognizes revenue at the point in time when the customer is deemed to have obtained control of the product. The customer is deemed to have obtained control of the product at the time of physical receipt of the product at the customers' distribution facilities, or free on board ("FOB") destination, the terms of which are designated in the contract.

Product sales are recorded at the net selling price, which includes estimates of variable consideration for which reserves are established for (a) rebates and chargebacks, (b) co-pay assistance programs, (c) distribution fees, (d) product returns, and (e) other discounts. Where appropriate, these estimates take into consideration a range of possible outcomes which are probability-weighted for relevant factors such as current contractual and statutory requirements, and forecasted customer buying and payment patterns. Overall, these reserves reflect the Company's best estimates of the amount of consideration to which it is entitled based on the terms of the applicable contract. The amount of variable consideration may be constrained and is included in the net sales price only to the extent that it is probable that a significant reversal in the amount of the cumulative revenue recognized will not occur in a future period. Given the early stage of the Company's commercial operations it has provided constraint of its variable consideration due to its potential consumption trends. Actual amounts of consideration ultimately received may differ from the Company's estimates. If actual results in the future vary from estimates, the Company adjusts these estimates, which would affect net product revenue and earnings in the period such variances become known.

Liabilities for co-pay assistance, expected product returns, rebates, and distributor fees are classified as "Accrued variable consideration" in the condensed balance sheets. Discounts, such as prompt pay discounts, and chargebacks are recorded as a reduction to accounts receivable in the condensed balance sheets.

Forms of Variable Consideration

Rebates and Chargebacks: The Company estimates reductions to product sales for Public Health Service Institutions, such as Medicaid, Medicare and Veterans' Administration ("VA") programs, as well as certain other qualifying federal and state government programs, and other group purchasing organizations. The Company estimates these reductions based upon the Company's contracts with government agencies and other organizations, statutorily defined discounts and estimated payor mix. These organizations purchase directly from the Company's wholesalers at a discount and the wholesalers charge the Company back the difference between the wholesaler price and the discounted price. The Company's liability for Medicaid rebates consists of estimates for claims that a state will make for a current quarter. The Company's reserve for this discounted pricing is based on expected sales to qualified healthcare providers and the chargebacks that customers have already claimed.

Co-pay assistance: Eligible patients who have commercial insurance may receive assistance from the Company to reduce the patient's out of pocket costs. The Company will buy down the difference between the amount of the eligible patient's co-pay when the drug is purchased at the pharmacy at a determined price. Liabilities for co-pay assistance are calculated by actual program participation from third-party administrators.

Distribution Fees: The Company has written contracts with its customers that include terms for distribution fees and costs for inventory management. The Company estimates and records distribution fees due to its customers based on gross sales.

Product Returns: The Company generally offers a right of return based on the product's expiration date and certain spoilage and damaged instances. The Company estimates the amount of product sales that may be returned and records the estimate as a reduction of product sales in the period the related product sales is recognized. The Company's estimates for

expected returns are based primarily on an ongoing analysis of sales information and visibility into the inventory remaining in the distribution channel.

Discounts: The Company provides product discounts, such as prompt pay discounts, to its customers. The Company estimates cash discounts based on terms in negotiated contracts and the Company's expectations regarding future payment patterns.

Inventories

Inventories are stated at the lower of cost or net realizable value and recognized on a first-in, first-out ("FIFO") method. The Company uses standard cost to determine the cost basis for inventory. Inventory is capitalized based on when future economic benefit is expected to be realized.

The Company analyzes its inventory levels on a periodic basis to determine if any inventory is at risk for expiration prior to sale or has a cost basis that is greater than its estimated future net realizable value. Any adjustments are recognized through cost of goods sold in the period in which they are incurred.

Liability Related to the Sale of Future Royalties

The Company treats the sale of future DSE royalties as debt, amortized under the effective interest rate method over the estimated life of the royalty sale agreement. The royalty sale liability is presented net of deferred issuance costs on the balance sheets. The amortization of the liability related to future royalties and related interest expense are based on the Company's current estimates of future royalties, which the Company determines by using third-party forecasts of sales and other relevant information. The Company periodically assesses the forecasted sales and to the extent the amount or timing of future estimated royalty payments is materially different than previous estimates, the Company will account for any such change by adjusting the liability related to the sale of future royalties and prospectively recognize the related non-cash interest expense. Royalty revenue is recognized and the related liability reduced as earned.

Recently Implemented Accounting Pronouncements

In November 2023, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") 2023-07, *Segment Reporting (Topic 280): Improvements to Reportable Segment Disclosures*. ASU 2023-07 requires a public entity to disclose, on an annual and interim basis, significant segment expenses that are included within each reported measure of segment profit or loss and regularly reviewed by the chief operating decision maker ("CODM"), the title and position of the CODM, clarification regarding the CODM's use of multiple measures of a segment's profit or loss in assessing segment performance (this must include a measure that is consistent with the measurement principles under U.S. GAAP, but may also include additional measures of a segment's profit or loss), and a description of the composition of amounts within an "Other" segment line item. Further, ASU 2023-07 requires that all annual disclosures about a reportable segment's profit or loss and assets currently required by Topic 280 to be provided in interim periods. This update is effective for fiscal years beginning after December 15, 2023, and interim periods within fiscal years beginning after December 15, 2024. ASU 2023-07 should be adopted retrospectively to all periods presented in the financial statements and early adoption is permitted. The Company is currently in the process of determining the impact the implementation of ASU 2023-07 will have on the Company's financial statement disclosures.

In December 2023, the FASB issued ASU 2023-09, *Income Taxes (Topic 740): Improvements to Income Tax Disclosures*. ASU 2023-09 enhances income tax disclosures to further disaggregate the effective tax rate reconciliation and income taxes paid. This update is effective for fiscal years beginning after December 15, 2024. ASU 2023-09 should be adopted prospectively, but retrospective application is permitted. Further, early adoption is permitted. The Company is currently in the process of determining the impact the implementation of ASU 2023-09 will have on the Company's financial statement disclosures.

There have been no other material changes to the significant accounting policies previously disclosed in the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2023.

3. Collaborations with Third Parties

DSE Agreement Terms

On January 2, 2019, the Company entered into a license and collaboration agreement with DSE, which was further amended on June 18, 2020, and January 2, 2024 (as amended, the "DSE Agreement"). Pursuant to the DSE Agreement, the Company granted DSE exclusive commercialization rights to bempedoic acid and the bempedoic acid / ezetimibe combination tablet in the European Economic Area, United Kingdom, Turkey, and Switzerland (collectively, the "DSE Territory"). DSE is responsible for commercialization in the DSE Territory. DSE's designated affiliate in Turkey will be solely responsible, at its sole cost and expense, for all regulatory matters relating to such products in Turkey, including obtaining regulatory approval for such products in Turkey. The Company remains responsible for clinical development, regulatory and manufacturing activities for the licensed products globally, including in the DSE Territory outside of Turkey.

Pursuant to the DSE Agreement, the Company received upfront cash of $150.0 million in 2019 and a $150.0 million cash milestone payment in 2020 following the completion of the NUSTENDI Marketing Authorisation Applications ("MAA"). The Company is responsible for supplying DSE with certain manufacturing supply of the API or bulk tablets. In addition, the Company is eligible to receive additional sales milestone payments related to total net sales achievements for DSE in the DSE Territory. Finally, the Company is entitled to receive tiered fifteen percent (15%) to twenty-five percent (25%) royalties on net DSE Territory sales.

The DSE Agreement calls for both parties to participate in a Joint Collaboration Committee (the "DSE JCC"). The DSE JCC is comprised of executive management from each company and the Company will lead in all aspects related to development and DSE will lead in all aspects related to commercialization in the DSE Territory.

On January 2, 2024, the Company entered into the Settlement Agreement with DSE to amicably resolve and dismiss their commercial dispute in the Southern District of New York. Under the Settlement Agreement, DSE has agreed to pay the Company an aggregate of $125 million, including (1) a $100-million payment within 15 business days of the effective date of the Settlement Agreement and (2) a $25-million payment in the calendar quarter immediately following the calendar quarter in which the EMA renders a decision on the application that was filed with the EMA for a Type II(a) variation for the Company's oral non-statin products marketed as NILEMDO (bempedoic acid) tablets and NUSTENDI (bempedoic acid and ezetimibe) tablets in Europe. Pursuant to the Settlement Agreement, also on January 2, 2024, the Company entered into a 3rd Amendment (the "DSE Amendment") to the License and Collaboration Agreement dated January 2, 2019 with DSE. The DSE Amendment grants DSE the exclusive rights for clinical development, regulatory activities, manufacture and commercialization of a bempedoic acid/ezetimibe/statin triple combination pill in the DSE Territory. Further, after a transition period, DSE will assume sole responsibility for the manufacture of NILEMDO and NUSTENDI for the DSE Territory. As of January 2, 2024, DSE has sole authority and control of regulatory communications with the EMA regarding the pending marketing authorization applications for NILEMDO and NUSTENDI.

Collaboration Revenue

The Company considered the guidance under ASC 606 and concluded that the Settlement Agreement was in the scope of ASC 606. The Company determined that significantly all the upfront payment of $100 million from the transaction price received under the Settlement Agreement qualified for revenue recognition as it related to settlement of performance obligations completed under the DSE Agreement, including: 1) the settlement of the disputed milestone, which relates to variable consideration for full satisfied performance obligations, and 2) the developmental rights for the triple combination pill. In May 2024, the Company recognized collaboration revenue for a milestone payment of $25 million based on the approval of updated labels for NILEMDO and NUSTENDI by the EMA and received the cash milestone payment in June 2024. In the three and six months ended June 30, 2024, the Company recognized collaboration revenue of $45.4 million and approximately $158.4 million, respectively, made up of payments pursuant to the Settlement Agreement and EMA approval, royalty revenue from DSE and sales of bulk tablets to DSE pursuant to the supply agreement that was executed with DSE. In the three and six months ended June 30, 2023, the Company recognized collaboration revenue of approximately $5.3 million and $12.4 million, respectively, related to royalty revenue from DSE from the sales of NILEMDO and NUSTENDI as well as the sales of bulk tablets to DSE pursuant to the supply agreement that was executed with DSE.

All remaining future potential milestone amounts were not included in the transaction price, as they were all determined to be fully constrained following the concepts of ASC 606 due to the fact that such amounts hinge on sales-based milestones. Additionally, the Company expects that any consideration related to sales-based milestones will be recognized when the subsequent sales occur.

Otsuka Agreement Terms

On April 17, 2020, the Company entered into a license and collaboration agreement (the "Otsuka Agreement") with Otsuka. Pursuant to the Otsuka Agreement, the Company granted Otsuka exclusive development and commercialization rights to NEXLETOL and NEXLIZET in Japan (the "Otsuka Territory"). Otsuka will be responsible for all development, regulatory, and commercialization activities in Japan. In addition, Otsuka will fund all clinical development costs associated with the program in Japan.

Pursuant to the Otsuka Agreement, the consideration consists of a $60.0 million upfront cash payment and the Company will be eligible to receive additional payments of up to $450.0 million if certain regulatory and commercial milestones are achieved by Otsuka. The potential future milestone payments include up to $20.0 million upon first JNDA submissions in the Otsuka Territory, up to $70.0 million upon the first NHI Price Listing (as defined in the Otsuka Agreement) for NEXLETOL in the Otsuka Territory, and following Regulatory Approval and NHI Price Listing, up to $50.0 million upon the achievement of the primary major adverse cardiovascular events (“MACE”) endpoint in the CLEAR Outcomes study and the CV risk reduction rate in the U.S. label, depending on the range of relative risk reduction in the CLEAR Outcomes study. In addition, the Company is eligible to receive additional sales milestone payments up to $310.0 million related to total net sales achievements for Otsuka in Japan. Finally, the Company is entitled to receive tiered fifteen percent (15%) to thirty percent (30%) royalties on net sales in Japan.

Collaboration Revenue

The Company considered the guidance under ASC 606 and concluded that the agreement was in the scope of ASC 606. In the three and six months ended June 30, 2024, the Company recognized collaboration revenue of approximately $0.1 million related to sales of bulk tablets to Otsuka pursuant to the supply agreement that was executed with Otsuka. In the three and six months ended June 30, 2023, the Company did not have any collaboration revenue related to the Otsuka Agreement.

All future potential milestone amounts were not included in the transaction price, as they were all determined to be fully constrained following the concepts of ASC 606 due to the fact that such amounts hinge on development activities, regulatory approvals and sales-based milestones. Additionally, the Company expects that any consideration related to royalties and sales-based milestones will be recognized when the subsequent sales occur.

The Company has not yet recognized any revenue for milestone payments as the related regulatory and commercial milestones have not yet been achieved.

DS Agreement Terms

In April 2021, the Company entered into a license and collaboration agreement with Daiichi Sankyo Co. Ltd (the "DS Agreement"). Pursuant to the DS Agreement, the Company granted DS exclusive rights to develop and commercialize bempedoic acid and the bempedoic acid / ezetimibe combination tablet in South Korea, Taiwan, Hong Kong, Thailand, Vietnam, Brazil, Macao, Cambodia and Myanmar (collectively, the "DS Territory"). The DS Agreement allows for potential expansion across geographies including Saudi Arabia, Kuwait, Oman, UAE, Qatar, Bahrain, Yemen, Colombia and other Latin American countries. Except for certain development activities in South Korea and Taiwan, DS will be responsible for development and commercialization in these territories. In addition, DS will fund all development costs associated with the program in the DS Territory. Pursuant to the DS Agreement, the consideration consists of a $30.0 million upfront cash payment that is non-refundable, non-reimbursable and non-creditable. The Company is also eligible to receive additional one-time payments of up to $175.0 million if certain commercial milestones are achieved by DS. Also, the Company is entitled to receive tiered royalties of five percent (5%) to twenty percent (20%) of net sales in the DS Territory.

Pursuant to the Settlement Agreement, on January 2, 2024, the Company entered into the 1st Amendment (the “DS Amendment”) to the License and Collaboration Agreement with DS. The DS Amendment grants DS exclusive rights for clinical development, regulatory activities, manufacture and commercialization of a bempedoic acid/ezetimibe/statin triple combination pill in the DS Territory. Further, after a transition period, DS will assume sole responsibility for the manufacture of NILEMDO and NUSTENDI for the DS Territory.

Collaboration Revenue

The Company considered the guidance under ASC 606 and concluded that the agreement was in the scope of ASC 606. The Company concluded that the upfront payment of $30.0 million should be included in the transaction price and related to the following performance obligations under the agreement: 1) the license to the Company’s intellectual property and 2) the obligation to provide ongoing development activities. The Company used the adjusted market assessment approach in determining the standalone selling price of the Company’s intellectual property and the expected cost plus margin approach in

determining the standalone selling price of the Company's obligation to provide ongoing development activities. Aside from that discussed in the "DSE Agreement Terms" section above, the Company recognized less than $0.1 million of collaboration revenue in the three and six months ended June 30, 2024 related to royalty revenue from DS. The Company recognized $0.2 million and $0.4 million, respectively, of collaboration revenue related to the ongoing regulatory and development activities for the three and six months ended June 30, 2023.

All future potential milestone amounts were not included in the transaction price, as they were all determined to be fully constrained following the concepts of ASC 606 due to the fact that such amounts hinge on development activities, regulatory approvals and sales-based milestones. Additionally, the Company expects that any consideration related to royalties and sales-based milestones will be recognized when the subsequent sales occur.

4. Inventories, net

Inventories, net consist of the following (in thousands):

	June 30, 2024	December 31, 2023
Raw materials	$ 76,528	$ 61,890
Work in process	4,123	1,728
Finished goods	3,818	2,005
	$ 84,469	$ 65,623

5. Commitments and Contingencies

DSE Litigation

On March 27, 2023, the Company filed a complaint in the United States District Court for the Southern District of New York seeking declaratory judgment against DSE regarding the Company's right to receive a $300 million milestone payment upon inclusion of cardiovascular risk reduction in the EU label that correlates with a relative risk reduction rate of at least 20%, based on the results of the CLEAR Outcomes CVOT. On May 4, 2023, the Company filed an amended complaint against DSE in the Southern District of New York seeking a judicial declaration, on an expedited basis, that DSE is contractually required to make a $300 million milestone payment to the Company upon applicable regulatory approval. On June 20, 2023, DSE filed a response to the amended complaint.

On January 2, 2024, the Company entered into the Settlement Agreement with DSE to amicably resolve and dismiss the commercial dispute then pending in the Southern District of New York. Under the Settlement Agreement, DSE agreed to pay the Company an aggregate of $125 million, including (1) a $100-million payment within 15 business days of the effective date of the Settlement Agreement and (2) a $25-million payment in the calendar quarter immediately following the calendar quarter in which the EMA renders a decision on the application that was filed with the EMA for a Type II(a) variation for the Company's oral non-statin products marketed as NILEMDO® (bempedoic acid) tablets and NUSTENDI® (bempedoic acid and ezetimibe) tablets in Europe. The legal action pending in the United States District Court for the Southern District of New York has now been dismissed. Refer to Note 3 "Collaborations with Third Parties" for further information.

ANDA Litigation

In March and April 2024, the Company received notices from nine pharmaceutical companies, six of which filed exclusively with respect to NEXLETOL and three of which filed with respect to NEXLETOL and NEXLIZET (each, an "ANDA Filer"), notifying the Company that each company had filed an Abbreviated New Drug Application ("ANDA") with the FDA seeking approval of a generic version of NEXLETOL and/or NEXLIZET in the United States, as applicable. The ANDAs each contained Paragraph IV certifications alleging that certain of the Company's Orange Book listed patents covering NEXLETOL or NEXLIZET, as applicable, are invalid and/or will not be infringed by each ANDA Filer's manufacture, use or sale of the medicine for which the ANDA was submitted.

Under the Drug Price Competition and Patent Term Restoration Act of 1984, or the Hatch-Waxman Act to the Federal Food, Drug, and Cosmetic Act (the "FDCA"), the Company had 45 days from receipt of the notice letters to commence patent infringement lawsuits against these generic drug manufacturers in a federal district court to trigger a stay precluding the FDA's approval of any ANDA from being effective any earlier than 7.5 years from the date of approval of the NEXLETOL or NEXLIZET, as applicable, new drug application or entry of judgment holding the patents invalid, unenforceable, or not infringed, whichever occurs first.

Beginning in May 2024, the Company filed patent infringement lawsuits under the Hatch-Waxman Act in the United States District Court, District of New Jersey, against each ANDA Filer: Accord Healthcare Inc.; Alkem Laboratories Ltd.; Aurobindo Pharma Limited (along with an affiliate); Dr. Reddy's Laboratories Inc. (along with an affiliate); Hetero USA Inc. (along with affiliates); Micro Labs USA Inc. (along with an affiliate); MSN Pharmaceuticals Inc. (along with an affiliate); Renata Limited; and Sandoz Inc. The Company's complaints allege that by filing the applicable ANDA, such ANDA Filer has infringed NEXLETOL's and/or NEXLIZET's Orange Book patents, as applicable, included in its Paragraph IV certifications, and seek an injunction preventing the FDA from granting final approval of the ANDA before the expiration of the asserted patents, and a permanent injunction to prevent the ANDA Filer from commercializing a generic version of NEXLETOL and/or NEXLIZET, as applicable, until the expiration of the asserted patents. No trial date has been set.

6. Investments

The following table summarizes the Company's cash equivalents and short-term investments (in thousands):

	June 30, 2024			
	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Estimated Fair Value
Cash equivalents:				
Money market funds	$ 143,285	$ —	$ —	$ 143,285
Certificates of deposit	403	—	—	403
Total	$ 143,688	$ —	$ —	$ 143,688

	December 31, 2023			
	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Estimated Fair Value
Cash equivalents:				
Money market funds	$ 68,445	$ —	$ —	$ 68,445
Certificates of deposit	402	—	—	402
Total	$ 68,847	$ —	$ —	$ 68,847

During the three and six months ended June 30, 2024, other income, net in the statements of operations includes interest income on cash equivalents of $2.4 million and $4.8 million, respectively. During the three and six months ended June 30, 2023, other income, net in the statements of operations includes interest income on cash equivalents and investments of $1.4 million and $2.3 million, respectively. During the three and six months ended June 30, 2024, there was no accretion of premiums and discounts on investments. During the three and six months ended June 30, 2023, other income, net in the statements of operations includes amortization of premiums and discounts on investments of $0.1 million and $0.4 million, respectively.

There were no unrealized gains or losses on investments reclassified from accumulated other comprehensive income (loss) to other income in the statements of operations during the three and six months ended June 30, 2024 and 2023.

In the three and six months ended June 30, 2024 and 2023, there were no allowances for credit losses and all unrealized gains (losses) for available-for-sale securities were recognized in accumulated other comprehensive income (loss). As of June 30, 2024, the Company had no accrued interest receivables.

7. Fair Value Measurements

The Company follows accounting guidance that emphasizes that fair value is a market-based measurement, not an entity-specific measurement. Fair value is defined as "the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date." Fair value measurements are defined on a three level hierarchy:

Level 1 inputs:	Quoted prices for identical assets or liabilities in active markets;
Level 2 inputs:	Observable inputs other than Level 1 prices, such as quoted market prices for similar assets or liabilities or other inputs that are observable or can be corroborated by market data; and
Level 3 inputs:	Unobservable inputs that are supported by little or no market activity and require the reporting entity to develop assumptions that market participants would use when pricing the asset or liability.

The following table presents the Company's financial assets that have been measured at fair value on a recurring basis (in thousands):

Description	Total	Level 1	Level 2	Level 3
June 30, 2024				
Assets:				
Money market funds	$ 143,285	$ 143,285	$ —	$ —
Certificates of deposit	403	403	—	—
Total assets at fair value	$ 143,688	$ 143,688	$ —	$ —
December 31, 2023				
Assets:				
Money market funds	$ 68,445	$ 68,445	$ —	$ —
Certificates of deposit	402	402	—	—
Total assets at fair value	$ 68,847	$ 68,847	$ —	$ —

There were no transfers between Levels 1, 2 or 3 during the three and six months ended June 30, 2024 and 2023.

8. Liability Related to the Revenue Interest Purchase Agreement

On June 26, 2019, the Company entered into a Revenue Interest Purchase Agreement ("RIPA") with Oberland, as agent for purchasers party thereto (the "Purchasers"), and the Purchasers named therein, to obtain financing in respect to the commercialization and further development of bempedoic acid and the bempedoic acid / ezetimibe combination tablet and other working capital needs. Pursuant to the RIPA, the Company received $125.0 million at closing, less certain issuance costs. The Company was entitled to receive up to approximately $75.0 million in subsequent installments subject to the terms and conditions set forth in the RIPA: (i) $25.0 million upon certain regulatory approval of its product candidates and (ii) $50.0 million, at the Company's option, upon reaching $100.0 million trailing worldwide six-month net sales any time prior to December 31, 2021 (the "Third Payment"). In March 2020, the Company received $25.0 million from Oberland upon receiving regulatory approval of NEXLETOL.

As consideration for such payments, the Purchasers will have a right to receive certain revenue interests (the "Revenue Interests") from the Company based upon net sales of the Company's certain products, once approved, which will be tiered payments initially ranging from 2.5% to 7.5% of the Company's net sales in the covered territory (the "Covered Territory"); provided that if annual net sales equal or exceed the Sales Threshold and if the Purchasers receive 100% of their invested capital by December 31, 2024, the revenue interest rate will be decreased to a single rate of 0.4% of the Company's net sales in the Covered Territory beginning on January 1, 2025. If the Third Payment is drawn down by the Company, the applicable royalty rates will increase by one-third. The Covered Territory is the United States, but is subject to expand to include the world-wide net sales if the Company's annual U.S. net sales are less than $350.0 million for the year ended December 31, 2021. The U.S. net sales milestone thresholds are not to be taken as financial guidance. The Purchasers' rights to receive the Revenue Interests shall terminate on the date on which the Purchasers have received Revenue Interests payments of 195% of the then aggregate purchase price (the "Cumulative Purchaser Payments") paid to the Company, unless the RIPA is terminated earlier.

RIPA Amendments

On April 26, 2021, the Company entered into Amendment No. 2 (the "RIPA Amendment 2") to the RIPA with Oberland, as agent for the purchaser parties thereto. Pursuant to the RIPA Amendment 2, Oberland waived the original trailing six-month world-wide net sales condition to the third installment payment under the RIPA and released the final $50 million payment payable to the Company under the terms of the RIPA. The Company and Oberland also agreed to amend additional terms of the RIPA such that the purchasers will have a right to receive certain revenue interests (the "Revenue Interests") from the Company based on net sales of the Company's certain products, once approved, which will be tiered payments ranging from 3.33% to 10% (the "Third Payment Applicable Percentage") of the Company's net sales in the covered territory (the "Covered Territory"); provided that (a) prior to December 31, 2024, with respect to each country defined in the Daiichi Territory, if the percentage of net sales that Company receives from Daiichi (the "Receivables Percentage") is less than the Third Payment Applicable Percentage, then the Revenue Interest for such country payable to the purchasers will be equal to the Receivables Percentages, (b) if annual net sales equal or exceed $350 million and if the Purchasers receive 100% of their invested capital (Cumulative Purchaser Payments") by December 31, 2024, the revenue interest rate will be decreased to a single rate of 3.33% of the Company's net sales in the Covered Territory for all subsequent calendar quarters and (c) if the Purchasers receive Revenue Interest payments less than 100% of Cumulative Purchaser Payments by December 31, 2024, the Third Payment Applicable Percentage will be increased to a single rate of the Company's net sales that would have provided 100% of Cumulative Purchaser Payments had such rate applied from the initial funding by the Purchasers. The Covered Territory was originally the United States, but has been expanded to worldwide for all calendar years beginning on or after January 1, 2022.

On May 16, 2021, the Company entered into an Amendment to the Security Agreement and Waiver ("Amendment and Waiver") with the same parties to the Security Agreement, by and among the Company, Eiger Partners II LP (the "Purchaser") and Eiger III SA LLC (the "Purchaser Agent"), dated as of June 26, 2019 (the "Security Agreement"). Pursuant to the Amendment and Waiver, if (i) the net revenue from sales of NEXLETOL and NEXLIZET and certain other products in the United States (as reported in the Company's financial statements as "product sales, net" in accordance with GAAP and excluding, for the avoidance of doubt, upfront or milestone payments and other collaboration revenue) (the "Specified Net Revenue") for the calendar quarter ended September 30, 2021 does not exceed $15.0 million, or (ii) the Specified Net Revenue for any calendar quarter ending after September 30, 2021 does not exceed $15.0 million, then the Company shall deposit $50.0 million in a deposit account that is subject to a block account control agreement in favor of the Purchase Agent, no later than the earlier of (x) the date the Specified Net Revenue for such calendar quarter has been determined and (y) 45 days after the last day of such calendar quarter. Since the Specified Net Revenue for the calendar quarter ended September 30, 2021 did not exceed $15.0 million, the Company deposited $50.0 million in a deposit account that is subject to a block account control agreement, which is classified as restricted cash on the balance sheets. The Purchaser Agent shall have sole dominion and control over all funds deposited in the deposited account and such funds may be withdrawn therefrom only with the consent of the Purchaser Agent. Upon the occurrence and during the continuance of a Put Option Event, the Purchaser Agent shall have the right to apply amounts held in the deposit account in payment of certain secured obligations in the manner provided for in the Security Agreement. The Amendment and Wavier does not substitute, replace or release the Pledgors from any other obligations under the RIPA or Security Agreement.

On November 23, 2022, the Company entered into Waiver and Amendment No. 3 to Revenue Interest Purchase Agreement and Amendment No. 2 to Security Agreement (the "RIPA Amendment 3"), by and among the Company, the Purchasers and the Purchaser Agent, which amends (i) the Revenue Interest Purchase Agreement, by and among the Company, the Purchasers, and the Purchaser Agent, dated effective as of June 26, 2019 (as amended by Amendment No. 1 to Revenue Interest Purchase Agreement dated as of November 9, 2020 and Amendment No. 2 to Revenue Interest Purchase Agreement dated as of April 26, 2021, and as may be further amended, restated, supplemented or modified from time to time, the "RIPA") and (ii) the Security Agreement, by the Company in favor of the Purchaser Agent, dated as of June 28, 2019 (as amended by the Amendment to Security Agreement and Waiver by and among the Company, the Purchaser and the Purchaser Agent, effective as of May 16, 2021, and as may be further amended, restated, supplemented or modified from time to time, the "Security Agreement"). Pursuant to the RIPA Amendment 3, among other things, (a) the Company agreed to make a one-time partial call payment with regards to the Revenue Interests (as defined in the RIPA) in an amount equal to $50 million from the restricted cash account (the "Partial Call"), (b) the amount of the Cumulative Purchaser Payments (as defined in the RIPA) was reduced to $177,777,778, and (c) the Purchasers and Purchaser Agent waived certain claimed defaults, breaches and Put Option Events under the RIPA and other related documents that may have occurred as a result of the Company's opening of a new bank account.

On June 27, 2024, the Company repurchased Revenue Interests outstanding under the RIPA and satisfied all other Obligations (as defined in the RIPA) owed to the Purchasers and the Purchaser Agent by paying to the Purchaser Agent, for the benefit of the Purchasers, a payment in cash of $343,750,000 (the "Repurchase Consideration"). Following the payment of the Repurchase Consideration, (a) all Revenue Interests were deemed to have been repurchased and all Obligations, debts and liabilities of the Company under the RIPA and the Transaction Documents (as defined in the RIPA) were deemed to have been

paid and satisfied in full, and automatically released, discharged and terminated, and the RIPA and all other Transaction Documents automatically terminated, and all Liens, security interests and pledges in favor of, granted to or held by the Purchaser Agent to secure the Obligations under the Transaction Documents were automatically terminated and released.

In connection with the termination of the RIPA in accordance with ASC 470 *Debt*, the Company recorded a loss on debt extinguishment of $53.2 million in the loss on extinguishment of debt line item of the Condensed Statement of Operations and Comprehensive Loss for the period ended June 30, 2024.

In connection with the termination of the RIPA, as of June 30, 2024, the Company no longer has the liability referred to as the "Revenue interest liability" on the balance sheet. The Company imputed interest expense associated with the liability using the effective interest rate method through the repurchase date of June 27, 2024. The effective interest rate is calculated based on the rate that would enable the debt to be repaid in full over the anticipated life of the arrangement. The interest rate on the liability varied during the term of the agreement depending on a number of factors, including the level of forecasted net sales. The Company evaluated the interest rate quarterly based on its current net sales forecasts utilizing the prospective method.

The Company recorded approximately $10.6 million and $21.6 million, respectively, in interest expense related to this arrangement for the three and six months ended June 30, 2024, and approximately $11.5 million and $22.8 million, respectively, in interest expense related to this arrangement for the three and six months ended June 30, 2023.

The following table summarizes the revenue interest liability activity during the six months ended June 30, 2024:

	(in thousands)
Total revenue interest liability at December 31, 2023	$ 274,778
Interest expense recognized	21,569
Revenue Interests payments	(5,832)
Repurchase of Revenue Interests	(343,750)
Loss on extinguishment of debt	53,235
Total revenue interest liability at June 30, 2024	$ —

9. Sale of Future Royalties

On June 27, 2024, the Company entered into the Purchase Agreement with OCM IP Healthcare Portfolio LP ("the Purchaser") ("OMERS"). Pursuant to the Purchase Agreement, the Company sold to the Purchaser, and the Purchaser purchased for $304,656,180, a portion of the royalties payable on net sales of Bempedoic Acid (as defined in the License and Collaboration Agreement) and any other Licensed Products (as defined in the License and Collaboration Agreement) in the DSE Territory (as defined in the License and Collaboration Agreement) pursuant to the License and Collaboration Agreement dated January 2, 2019, between Daiichi Sankyo Europe GMBH and the Company, as amended (the "License and Collaboration Agreement" and such royalties being the "Royalty Interests"). In connection with the Purchase Agreement, the Company incurred $9.6 million in issuance costs.

The Purchaser acquired 100% of the Royalty Interests until such time as the Purchaser has received an aggregate amount equal to 1.700x of the Purchase Price (equivalent to $517,915,506). Following receipt of such amount, 100% of all Royalty Interests will revert to the Company. The Purchase Agreement contains other customary terms and conditions, including representations and warranties, covenants and indemnification obligations in favor of each party.

The Company evaluated the arrangement and determined that the proceeds from the sale of future royalties should be classified as debt according to ASC 470 *Debt*. The Company imputes interest expense associated with the liability using the effective interest rate method. The effective interest rate is calculated based on the rate that would enable the debt to be repaid in full over the anticipated life of the arrangement. The interest rate on the liability varies during the term of the agreement depending on a number of factors, including the level of forecasted royalties. The Company evaluates the interest rate quarterly based on its current royalty forecasts utilizing the prospective method. The $9.6 million in issuance costs will be amortized over the life of the agreement.

The Company did not record interest expense related to this arrangement for the three and six months ended June 30, 2024.

The effective annual imputed interest rate is 1.3% as of June 30, 2024.

The following table summarizes the royalty sale liability activity during the six months ended June 30, 2024 (in thousands):

	(in thousands)
Beginning balance of royalty sale liability on June 27, 2024	$ 304,656
Royalty sale issuance costs	(9,626)
Royalties recognized and payable to Purchaser	(7,531)
Total royalty sale liability at June 30, 2024	$ 287,499

10. Convertible Notes

In November 2020, the Company issued $280.0 million aggregate principal amount of 4.0% senior subordinated convertible notes due November 2025. The net proceeds the Company received from the offering was approximately $271.1 million, after deducting the initial purchasers' discounts and commissions and offering expenses payable by the Company (the "Convertible Notes") of $8.9 million. The Company used approximately $46.0 million of the net proceeds from the offering of the notes to pay the cost of the Capped Call (as defined below) and $55.0 million of the net proceeds from the offering of the initial notes to finance the Prepaid Forward (as defined below). The Convertible Notes are the Company's senior unsecured obligations and mature on November 15, 2025 (the "Maturity Date"), unless earlier repurchased or converted into shares of Common Stock under certain circumstances described below. The Convertible Notes are convertible into shares of Common Stock, can be repurchased for cash, or a combination thereof, at the Company's election, at an initial conversion rate of 30.2151 shares of Common Stock per $1,000 principal amount of the Convertible Notes, which is equivalent to an initial conversion price of approximately $33.096 per share of Common Stock, subject to adjustment. The Company will pay interest on the Convertible Notes semi-annually in arrears on May 15 and November 15 of each year.

The Convertible Notes are general unsecured obligations of the Company that are subordinated in right of payment to indebtedness, obligations and other liabilities under the Company's RIPA, the revenue interests issued pursuant to such agreement, and any refinancing of the foregoing.

Holders may convert their Convertible Notes at their option at any time prior to the close of business on the business day immediately preceding August 15, 2025 in the following circumstances: (1) during any calendar quarter commencing after the calendar quarter ending on March 31, 2021 (and only during such calendar quarter), if the last reported sale price per share of Common Stock is greater than or equal to 130% of the conversion price for each of at least 20 trading days, whether or not consecutive, during the 30 consecutive trading days ending on, and including, the last trading day of the immediately preceding calendar quarter; (2) during the five business days after any five consecutive trading day period (such five consecutive trading day period, the "measurement period") in which the trading price per $1,000 principal amount of notes for each trading day of the measurement period was less than 98% of the product of the last reported sale price per share of Common Stock and the conversion rate for the notes on each such trading day; (3) if the Company calls such notes for redemption, any such notes that have been called for redemption may be converted at any time prior to the close of business on the second scheduled trading day immediately preceding the redemption date, but only with respect to the notes called for redemption; and (4) upon the occurrence of specified corporate events, as provided in the Indenture. On or after August 15, 2025, to the close of business on the second scheduled trading day immediately before the maturity date, holders may convert all or any portion of their notes at the applicable conversion rate at any time at the option of the holder regardless of the foregoing conditions.

In addition, following certain corporate events or following issuance of a notice of redemption, the Company will, in certain circumstances, increase the conversion rate for a holder who elects to convert its notes in connection with such a corporate event or to convert its notes called (or deemed called) for redemption during the related redemption period, as the case may be.

The Convertible Notes will be redeemable, in whole or in part, at the Company's option at any time, and from time to time, on or after November 20, 2023 and before the 41st scheduled trading day immediately before the maturity date, at a cash redemption price equal to 100% of the principal amount of the notes to be redeemed, plus accrued and unpaid interest, if any, but only if the last reported sale price per share of Common Stock has been at least 130% of the conversion price then in effect for at least 20 trading days (whether or not consecutive), including the trading day immediately preceding the date the Company sends the related redemption notice, during any 30 consecutive trading day period ending on, and including, the trading day immediately preceding the date on which the Company sends such redemption notice. No sinking fund is provided for the notes. If the Company redeems less than all the outstanding notes, at least $125.0 million aggregate principal amount of notes must be outstanding and not subject to redemption as of the relevant redemption notice date.

If the Company undergoes a "fundamental change" (as defined in the Indenture), holders may require the Company to repurchase their notes for cash all or any portion of their notes at a fundamental change repurchase price equal to 100% of the principal amount of the notes to be repurchased, plus accrued and unpaid interest, to, but excluding, the fundamental change repurchase date. The Indenture includes customary terms and covenants, including certain events of default.

On October 22, 2021, the Company entered into a privately negotiated exchange agreement (the "Exchange Agreement") with two co-managed holders (the "Holders") of its Convertible Notes. Under the terms of the Exchange Agreement the Holders agreed to exchange (the "Exchange") with the Company $15.0 million aggregate principal amount of the Convertible Notes held in the aggregate by them (and accrued interest thereon) for shares of Common Stock. Pursuant to the Exchange Agreement, the number of shares of Common Stock to be issued by the Company to the Holders upon consummation of the Exchange was determined based upon the volume-weighted-average-price per share of Common Stock, subject to a floor of $5.62 per share, during the five trading-day averaging period, commencing on the trading day immediately following the date of the Exchange Agreement. The Exchange closed on November 3, 2021, with 1,094,848 shares of Common Stock being exchanged.

As of June 30, 2024, the principal amount of convertible notes was $265.0 million, and the unamortized debt discount and issuance costs were $2.5 million, for a net carrying amount of $262.5 million.

The Company recorded $3.1 million and $6.2 million, respectively, of interest expense during the three and six months ended June 30, 2024, and $3.0 million and $6.1 million, respectively, of interest expense during the three and six months ended June 30, 2023, relating to the cash interest on the convertible notes due semi-annually and amortization of the debt issuance costs.

As of June 30, 2024, no Convertible Notes were convertible pursuant to their terms. The estimated fair value of the Convertible Notes was $244.2 million as of June 30, 2024 and $155.9 million as of December 31, 2023. The estimated fair value of the Convertible Notes was determined through consideration of quoted market prices. As of June 30, 2024, the if-converted value of the Convertible Notes did not exceed the principal value of those notes.

Capped Call Transactions

In connection with the offering of the Convertible Notes, the Company entered into privately-negotiated capped call transactions with one of the initial purchasers of the convertible notes or its affiliate and certain other financial institutions. The Company used approximately $46.0 million of the net proceeds from the offering of the Convertible Notes to pay the cost of the capped call transactions. The capped call transactions are expected generally to reduce potential dilution to Common Stock upon any conversion of the Convertible Notes and/or offset any cash payments the Company is required to make in excess of the principal amount of converted notes, as the case may be, in the event that the market value per share of Common Stock, as measured under the terms of the capped call transactions at the time of exercise, is greater than the strike price of the capped call transactions (which initially corresponds to the initial conversion price of the Convertible Notes, and is subject to certain adjustments), with such reduction and/or offset subject to a cap initially equal to approximately $55.16 (which represents a premium of approximately 100% over the last reported sale price of Common Stock on November 11, 2020), subject to certain adjustments. The capped call transactions are separate transactions, entered into by the Company and are not part of the terms of the Convertible Notes.

Given that the transactions meet certain accounting criteria, the convertible note capped call transactions are recorded in stockholders' equity, and they are not accounted for as derivatives and are not remeasured each reporting period. As of June 30, 2024 and December 31, 2023, the Company had not purchased any shares under the convertible note capped call transactions.

Prepaid Forward

In connection with the offering of the Convertible Notes, the Company entered into a prepaid forward stock repurchase transaction ("Prepaid Forward") with a financial institution ("Forward Counterparty"). Pursuant to the Prepaid Forward, the Company used approximately $55.0 million of the net proceeds from the offering of the Convertible Notes to fund the Prepaid Forward. The aggregate number of shares of Common Stock underlying the Prepaid Forward was approximately 1,994,198. The expiration date for the Prepaid Forward is November 15, 2025, although it may be settled earlier in whole or in part. Upon settlement of the Prepaid Forward, at expiration or upon any early settlement, the Forward Counterparty will deliver to the Company the number of shares of Common Stock underlying the Prepaid Forward or the portion thereof being settled early. The shares purchased under the Prepaid Forward are treated as treasury stock and not outstanding for purposes of the calculation of basic and diluted earnings per share, but will remain outstanding for corporate law purposes, including for purposes of any future stockholders' votes, until the Forward Counterparty delivers the shares underlying the Prepaid Forward to the Company. As of June 30, 2024, 448,698 shares had been delivered to the Company. The Company's Prepaid Forward hedge transaction exposes the Company to credit risk to the extent that its counterparty may be unable to meet the terms of the transaction. The Company mitigates this risk by limiting its counterparty to a major financial institution.

11. Other Accrued Liabilities

Other accrued liabilities consist of the following (in thousands):

	June 30, 2024	December 31, 2023
Accrued legal fees	$ 588	9,202
Accrued debt issuance costs	9,626	—
Accrued compensation	7,473	10,769
Accrued professional fees	4,013	2,712
Accrued interest on convertible notes	1,325	1,325
Accrued other	269	990
Total other accrued liabilities	$ 23,294	$ 24,998

12. Stock Compensation

2022 Stock Option and Incentive Plan

In May 2022, the Company's stockholders approved the 2022 Stock Option and Incentive Plan (as amended, the "2022 Plan"). The number of shares of Common Stock available for awards under the 2022 Plan was set to 4,400,000, with any shares underlying awards that are forfeited, canceled, held back upon exercise of an option or settlement of an award to cover the exercise price or tax withholding, reacquired by the Company prior to vesting, satisfied without the issuance or shares, or otherwise terminated (other than by exercise) under the 2022 Plan may be added back to the shares of Common Stock available for issuance under the 2022 Plan. The 2022 Plan provides for the award of stock options (both incentive and non-qualified options), stock appreciation rights, restricted stock, restricted stock units ("RSUs"), unrestricted stock, cash-based awards, and dividend equivalent rights. Following the approval of the 2022 Plan, no further awards will be issued under the Company's Amended and Restated 2013 Stock Option and Incentive Plan (the "2013 Plan"). In June 2023, the Company's stockholders approved a first amendment to the 2022 Plan, which increased the number of shares of Common Stock reserved for awards under the 2022 Plan to 10,650,000. In May 2024, the Company's stockholders approved a second amendment to the 2022 Plan, which increased the number of shares of Common Stock reserved for awards under the 2022 Plan to 16,900,000.

Employee Stock Purchase Plan

In April 2020, the Company's board of directors approved the Esperion Therapeutics, Inc. 2020 Employee Stock Purchase Plan (as amended, the "ESPP"), which was approved by the Company's stockholders on May 28, 2020 and was subsequently amended by a first amendment to the ESPP adopted by the Company's board of directors on July 31, 2020. The ESPP allows eligible employees to authorize payroll deductions of up to 10% of their base salary or wages up to $25,000 annually to be applied toward the purchase of shares of Common Stock on the last trading day of the offering period. Participating employees will purchase shares of Common Stock at a discount of up to 15% on the lesser of the closing price of Common Stock on the NASDAQ Global Market (i) on the first trading day of the offering period or (ii) the last day of any offering period. Offering periods under the ESPP will generally be in six months increments, commencing on September 1 and March 1 of each calendar year with the administrator having the right to establish different offering periods. During the three and six months ended months ended June 30, 2024, the Company recognized no stock compensation expense related to the ESPP. During the three and six months ended months ended June 30, 2023, the Company recognized approximately $0.1 million and $0.2 million, respectively, of stock compensation expense related to the ESPP. In May 2024, the Company's stockholders approved a second amendment to the ESPP, which increased the number of shares of Common Stock reserved for future issuance under the ESPP by an additional 6,175,000 shares. As of June 30, 2024, there have been 610,506 shares issued and 6,389,494 shares reserved for future issuance under the ESPP. The Company paused the ESPP effective as of September 1, 2023, such that the offering periods which would otherwise have begun on September 1, 2023 and March 1, 2024 did not commence.

2017 Inducement Equity Plan

In May 2017, the Company's board of directors approved the Esperion Therapeutics, Inc. 2017 Inducement Equity Plan (as amended in November 2019 and August 2023, the "2017 Plan"). The number of shares of Common Stock available for awards under the 2017 Plan is 2,650,000, with any shares of Common Stock that are forfeited, cancelled, held back upon the exercise or settlement of an award to cover the exercise price or tax withholding, reacquired by the Company prior to vesting, satisfied without the issuance of Common Stock, or otherwise terminated (other than by exercise) under the 2017 Plan added back to the shares of Common Stock available for issuance under the 2017 Plan. The 2017 Plan provides for the granting of stock options, stock appreciation rights, restricted stock awards, restricted stock units ("RSUs"), unrestricted stock awards and dividend equivalent rights.

Stock Options

The following table summarizes the activity relating to the Company's options to purchase Common Stock for the six months ended June 30, 2024:

	Number of Options	Weighted-Average Exercise Price Per Share	Weighted-Average Remaining Contractual Term (Years)	Aggregate Intrinsic Value
				(in thousands)
Outstanding at December 31, 2023	3,686,191	$ 13.88	7.47	$ 584
Granted	2,082,000	$ 2.08		
Forfeited or expired	(100,121)	$ 34.35		
Exercised	(1,956)	$ 1.62		
Outstanding at June 30, 2024	5,666,114	$ 9.19	8.09	$ 569
Vested and expected to vest at June 30, 2024	5,666,114	$ 9.19	8.09	$ 569
Exercisable at June 30, 2024	2,268,300	$ 17.89	6.48	$ 185

Stock-based compensation related to stock options was $1.1 million and $2.0 million, respectively, for the three and six months ended June 30, 2024, including $0.1 million and $0.2 million, respectively, that was capitalized into inventory, and $1.0 million and $2.0 million, respectively, for the three and six months ended June 30, 2023, including less than $0.1 million and $0.1 million, respectively, that was capitalized into inventory. As of June 30, 2024, there was $7.9 million of unrecognized stock-based compensation expense related to unvested options, which will be recognized over a weighted-average period of 2.5 years.

Performance-Based Stock Options ("PBSOs")

In 2021, 2022, and 2023 the Company granted PBSOs from the 2013 Plan and the 2022 Plan, that vest upon various performance-based milestones as set forth in the individual grant agreements, such as achievement of predetermined clinical or regulatory outcomes. The actual number of units (if any) received under these awards will depend on continued employment and actual performance over the performance period. Each quarter, the Company updates their assessment of the probability that the performance milestone will be achieved. The Company amortizes the fair value of the PBSOs based on the expected performance period to achieve the performance milestone. The performance criteria was met in three months ended March 31, 2024.

The following table summarizes the activity relating to the Company's PBSOs for the six months ended June 30, 2024:

	Number of Options	Weighted-Average Exercise Price Per Share	Weighted-Average Remaining Contractual Term (Years)	Aggregate Intrinsic Value
				(in thousands)
Outstanding at December 31, 2023	661,850	$ 4.97	8.63	$ 312
Granted	—	$ —		
Forfeited or expired	—	$ —		
Exercised	(15,650)	$ 1.62		
Outstanding at June 30, 2024	646,200	$ 5.05	8.10	$ 127
Vested and expected to vest at June 30, 2024	646,200	$ 5.05	8.10	$ 127
Exercisable at June 30, 2024	646,200	$ 5.05	8.10	$ 127

There was no stock-based compensation related to PBSOs for the three months ended June 30, 2024. Stock-based compensation related to PBSOs for the six months ended June 30, 2024 was $0.5 million. Stock-based compensation related to

PBSOs was and $0.2 million and $0.4 million, respectively, for the three and six months ended June 30, 2023. As of June 30, 2024, there was no unrecognized stock-based compensation expense related to unvested PBSOs.

Restricted Stock Units ("RSUs")

The following table summarizes the activity relating to the Company's RSUs for the six months ended June 30, 2024:

	Number of RSUs	Weighted-Average Fair Value Per Share
Outstanding and unvested December 31, 2023	3,047,888	$ 4.69
Granted	3,495,525	$ 2.09
Forfeited	(225,859)	$ 3.58
Vested	(763,329)	$ 4.88
Outstanding and unvested June 30, 2024	5,554,225	$ 3.07

Stock-based compensation related to RSUs was approximately $1.9 million and $3.5 million, respectively, for the three and six months ended June 30, 2024, including $0.2 million and $0.3 million, respectively, that was capitalized into inventory, and approximately $1.8 million and $3.3 million, respectively, for the three and six months ended June 30, 2023, including less than $0.1 million and $0.1 million, respectively, that was capitalized into inventory. As of June 30, 2024, there was $16.2 million of unrecognized stock-based compensation expense related to unvested RSUs, which will be recognized over a weighted-average period of 2.7 years.

Performance-based Restricted Stock Units ("PBRSUs")

In 2021, the Company granted PBRSUs from the 2013 Plan that vest upon various performance-based milestones as set forth in the individual grant agreements, such as achievement of predetermined milestones based on the Company's U.S. net product sales or clinical or regulatory outcomes. The actual number of units (if any) received under these awards will depend on continued employment and actual performance over the performance period. Each quarter, the Company updates their assessment of the probability that the performance milestone will be achieved. The Company amortizes the fair value of the PBRSUs based on the expected performance period to achieve the performance milestone. The fair value of the PBRSUs is based on the quoted market price of Common Stock on the date of grant. The performance criteria was met in three months ended March 31, 2024.

The following table summarizes the activity relating to the Company's PBRSUs for the six months ended June 30, 2024:

	Number of PBRSUs	Weighted-average fair value per share
Outstanding and unvested December 31, 2023	160,275	$ 8.94
Granted	—	$ —
Forfeited	(3,900)	$ 8.94
Vested	(156,375)	$ 8.94
Outstanding and unvested June 30, 2024	—	$ —

There was no stock-based compensation related to PBRSUs for the three months ended June 30, 2024. Stock-based compensation related to the PBRSUs was $0.2 million, for the six months ended June 30, 2024, including less than $0.1 million that was capitalized into inventory. Stock-based compensation related to PBRSUs was $0.1 million and $0.2 million, respectively, for the three and six months ended June 30, 2023, including less than $0.1 million and less than $0.1 million, respectively, that was capitalized into inventory. As of June 30, 2024, there was no unrecognized stock-based compensation expense related to unvested PBRSUs.

13. Income Taxes

There was no provision for income taxes for the three and six months ended June 30, 2024 and 2023, because the Company has incurred annual operating losses since inception. At June 30, 2024, the Company continues to conclude that it is not more likely than not that the Company will realize the benefit of its deferred tax assets due to its history of losses. Accordingly, a full valuation allowance has been applied against the net deferred tax assets.

14. Stockholders' Deficit

Underwriting Agreement

On January 18, 2024, the Company entered into the Underwriting Agreement with Jefferies, as representative of the Underwriters, related to the January 2024 Offering of 56,700,000 shares of Common Stock of the Company, at a purchase price to the public of $1.50 per share. The Underwriters were also granted a 30-day option to purchase up to an additional 8,505,000 shares of Common Stock, at the public offering price. On January 19, 2024, Jefferies gave notice to the Company of its election to exercise the option to purchase additional shares, in full. Giving effect to the exercise of Underwriters' option, the January 2024 Offering closed on January 23, 2024, with proceeds to the Company of approximately $90.7 million, after deducting the underwriting discount and estimated offering expenses of $7.1 million.

ATM Offering

On February 21, 2023, the Company entered into a Controlled Equity Offering Sales Agreement with Cantor Fitzgerald & Co., as sales agent, to provide for the issuance and sale by the Company of up to $70 million of shares of Common Stock from time to time in “at-the-market” offerings (the "2023 ATM Program"), pursuant to its existing Form S-3 and the prospectus supplement filed on February 21, 2023. The Company may continue to use the 2023 ATM Program to address potential short-term or long-term funding requirements that may arise. Such program will continue to be subject to the volatility of the price of Common Stock and general market conditions. During the three and six month periods ended June 30, 2024, the Company did not issue shares pursuant to the 2023 ATM Program. During the three and six month periods ended June 30, 2023, the Company issued 3,312,908 shares of common stock resulting in net proceeds of approximately $4.4 million after deducting $0.4 million of underwriting discounts and commissions and other expenses, pursuant to the 2023 ATM Program.

Warrants

In connection with an underwriting agreement with H.C. Wainwright & Co., LLC ("Wainwright") on December 2, 2021, the Company issued warrants to purchase 36,964,286 shares of Common Stock at an exercise price of $9.00 and an expiration date of December 7, 2023. The warrants were recorded at fair value of $61.9 million to additional-paid-in-capital in accordance with ASC 815-10 based upon the allocation of the proceeds between the common shares issued with the December 2021 Offering and the warrants. On December 7, 2023, 27,940,074 of these warrants expired. The remaining 9,024,212 warrants were amended as described below.

Registered Direct Offering and Warrant Amendment

On March 19, 2023, the Company entered into a Purchase Agreement with the Purchasers pursuant to which the Company agreed to issue and sell, in a Registered Direct Offering, 12,205,000 shares of Common Stock, Pre-Funded Warrants to purchase up to an aggregate of 20,965,747 shares of Common Stock in lieu of shares of Common Stock, and Warrants to purchase up to 33,170,747 shares of Common Stock. The combined purchase price of each share of Common Stock and accompanying Warrant is $1.675 per share. The Warrants expire on September 22, 2026 and have an exercise price of $1.55. The purchase price of each Pre-Funded Warrant is $1.674 (equal to the combined purchase price per share of Common Stock and accompanying Warrant, minus $0.001). The Purchase Agreement contains customary representations, warranties, covenants and indemnification rights and obligations of the Company and the Purchasers. The Registered Direct Offering closed on March 22, 2023. The warrants and pre-funded warrants were recorded at fair value of $22.8 million to additional-paid-in-capital in accordance with ASC 815-10 based upon the allocation of the proceeds between the common shares issued with the Registered Direct Offering and the warrants and pre-funded warrants. The Company estimated the fair value of the warrants using a Black-Scholes option-pricing model, which is based, in part, upon subjective assumptions including but not limited to stock price volatility, the expected life of the warrant, the risk-free interest rate and the fair value of Common Stock underlying the warrant. The Company estimates the volatility based on its historical volatility that is in line with the expected remaining life of the warrants. The risk-free interest rate is based on the U.S. Treasury daily rate for a maturity similar to the expected remaining life of the warrants. The expected remaining life of the warrants is assumed to be equivalent to its remaining contractual term. The Company estimated the fair value of the pre-funded warrants based on the market price of Common Stock at issuance.

In connection with the Registered Direct Offering, the Company amended, pursuant to Warrant Amendment Agreements, certain existing warrants to purchase up to an aggregate of 9,024,212 shares of Common Stock that were previously issued in December 2021 at an exercise price of $9.00 per share and had an expiration date of December 7, 2023, effective upon the closing of the Registered Direct Offering, such that the amended warrants have a reduced exercise price of $1.55 per share and expire three and one half years following the closing of the Registered Direct Offering, or September 22, 2026, for additional consideration of $0.125 per amended warrant. Based on the change in the fair value of the amended warrants, the Company recorded issuance costs to additional paid-in capital of $2.9 million.

The Company received gross proceeds of approximately $55.5 million from the Registered Direct Offering, before deducting placement agent fees and related offering expenses. The net proceeds to the Company from the Registered Direct Offering, after deducting the placement agent fees and expenses and the Company's estimated offering expenses of $4.2 million, were approximately $51.3 million. In addition, the Company received approximately $1.2 million as the gross consideration in connection with the Warrant Amendment Agreements. The net proceeds of the Warrant Amendment Agreements after deducting placement fees of $0.1 million were approximately $1.1 million.

As of June 30, 2024, no pre-funded warrants were outstanding. During the three and six months ended June 30, 2024, 6,272,783 and 10,272,783 warrants were exercised, respectively. The following table summarizes the warrants outstanding for the Company as of June 30, 2024 and December 31, 2023:

	June 30, 2024	December 31, 2023	Weighted average exercise price
Warrants outstanding from Warrant Amendment Agreements, expiring September 22, 2026	6,071,429	9,024,212	$ 1.55
Warrants outstanding from Purchase Agreement, expiring September 22, 2026	20,000,000	27,320,000	$ 1.55
Total warrants outstanding	26,071,429	36,344,212	

15. Net Loss Per Common Share

Basic net loss per share is calculated by dividing net loss by the weighted-average number of common shares outstanding during the period, without consideration for common stock equivalents. Pre-Funded Warrants are included in the weighted-average number of common shares outstanding during the periods. Diluted net loss per share is computed by dividing net loss by the weighted-average number of common stock equivalents outstanding for the period determined using the treasury-stock method. For purposes of this calculation, warrants for common stock, stock options, PBSOs, unvested RSUs and PBRSUs, shares issuable under the ESPP and shares issuable upon conversion of the convertible notes are considered to be common stock equivalents and are only included in the calculation of diluted net loss per share when their effect is dilutive.

The shares outstanding at the end of the respective periods presented below were excluded from the calculation of diluted net loss per share due to their anti-dilutive effect:

	June 30,	
	2024	2023
Common shares under option	5,666,114	4,473,058
Common shares under PBSOs	646,200	433,950
Unvested RSUs	5,554,225	3,036,244
Unvested PBRSUs	—	188,275
Shares issuable related to the ESPP	—	58,626
Shares issuable upon conversion of convertible notes	8,007,010	8,007,010
Warrants	26,071,429	70,135,033
Total potential dilutive shares	45,944,978	86,332,196

Item 2. 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 condensed financial statements and related notes appearing elsewhere in this Quarterly Report on Form 10-Q and our Annual Report on Form 10-K for the fiscal year ended December 31, 2023 and other filings that we make with the Securities and Exchange Commission (the "SEC").

Forward-Looking Statements

This Quarterly Report on Form 10-Q contains "forward-looking statements" within the meaning of Section 27A of the Securities Act and Section 21E of the Securities Exchange Act of 1934, as amended (the Exchange Act). These forward-looking statements are based on our management's belief and assumptions and on information currently available to management. Although we believe that the expectations reflected in these forward-looking statements are reasonable, these statements relate to future events, including our marketing strategy, clinical development and commercialization plans, or our future financial performance and involve known and unknown risks, uncertainties and other factors that may cause our actual results, performance or achievements, including in relation to the clinical development, commercialization plans, timing, designs and plans for the CLEAR Outcomes study and its results, plans for potential future product candidates and expectations regarding future transactions to further improve our balance sheet to be materially different from any future results, performance or achievements, including in relation to the clinical development, commercialization plans, net sales profitability, growth of our commercial products, clinical activities and commercial development plans, expressed or implied by these forward-looking statements.

Forward-looking statements are often identified by the use of words such as, but not limited to, "may," "will," "should," "expects," "intends," "plans," "anticipates," "believes," "estimates," "predicts," "potential," "continue" or the negative of these terms or other similar terminology. These statements are only predictions. You should not place undue reliance on forward-looking statements because they involve known and unknown risks, uncertainties and other factors, which are, in some cases, beyond our control and that could materially affect results. Factors that may cause actual results to differ materially from current expectations include, among other things, those referred to or discussed in or incorporated by reference into the section titled "Risk Factors" included in Item 1A of Part II of this Quarterly Report on Form 10-Q. If one or more of these risks or uncertainties occur, or if our underlying assumptions prove to be incorrect, actual events or results may vary significantly from those implied or projected by the forward-looking statements. No forward-looking statement is a guarantee of future performance.

The forward-looking statements in this Quarterly Report on Form 10-Q represent our views as of the date of this Quarterly Report on Form 10-Q. Except as required by law, we undertake no obligation to update any forward-looking statements to reflect events or circumstances after the date of such statements.

Unless the context requires otherwise, we use the terms "Esperion," "we," "us," "our," or the "Company" in this Quarterly Report on Form 10-Q to refer to Esperion Therapeutics, Inc.

Overview

Corporate Overview

We are a commercial stage biopharmaceutical company currently focused on bringing new medicines to patients that address unmet medical needs. We have developed and are commercializing U.S. Food and Drug Administration, or FDA approved oral, once-daily, non-statin medicines for patients who are at risk for cardiovascular disease and are struggling with elevated low-density lipoprotein cholesterol, or LDL-C. Through commercial execution, international partnerships and collaborations, and advancement of our pre-clinical pipeline, we continue to evolve into a leading global biopharmaceutical company.

Our lead products NEXLETOL® (bempedoic acid) tablets and NEXLIZET® (bempedoic acid and ezetimibe) tablets are oral, once-daily, non-statin medicines indicated to reduce the risk of myocardial infarction and coronary revascularization in adults who are unable to take recommended statin therapy (including those not taking a statin) with established cardiovascular disease, or CVD, or at high risk for a CVD event but without established CVD, and to reduce LDL-C in adults with primary hyperlipidemia. Our products were approved by the FDA, European Medicines Agency, or EMA, and Swiss Agency for Therapeutic Products, or Swissmedic in 2020. The FDA approved expanded indications for NEXLETOL and NEXLIZET tablets in March 2024. The EMA approved expanded indications for NILEMDO® (bempedoic acid) tablets and NUSTENDI (bempedoic acid and ezetimibe) tablets in May 2024. In addition, Otsuka Pharmaceutical Co., Ltd., or Otsuka, our Japanese collaborator, announced that the primary endpoint of LDL-C reduction from baseline at Week 12 was achieved with statistical

significance in the Phase 3 clinical trial in Japan for bempedoic acid as a treatment for hypercholesterolemia. Otsuka plans to file a New Drug Application, or NDA, in Japan in the second half of 2024, with expected approval and National Health Insurance, or NHI, pricing in 2025. We plan to file supplemental New Drug Applications for product approvals in Canada, Australia and Israel by the end of this year.

We completed a global cardiovascular outcomes trial, or CVOT, —known as **C**holesterol **L**owering via B**E**mpedoic Acid, an **A**CL-inhibiting **R**egimen (CLEAR) Outcomes. The trial was designed to evaluate whether treatment with bempedoic acid reduced the risk of cardiovascular events in adult patients who are statin averse and who have CVD or are at high risk for CVD. We initiated the CLEAR Outcomes CVOT in December 2016 and fully enrolled the study with nearly 14,000 patients in August 2019. The primary endpoint of the study was the effect of bempedoic acid on four types of major adverse cardiovascular events, or MACE, (cardiovascular death, non-fatal myocardial infarction, non-fatal stroke, or coronary revascularization; also referred to as "four-component MACE"). CLEAR Outcomes was an event-driven trial and concluded once the predetermined number of MACE endpoints occurred. The study showed that bempedoic acid demonstrated significant cardiovascular risk reductions and significantly reduced the risk of heart attack and coronary revascularization as compared to placebo. These results were seen in a broad population of primary and secondary prevention patients who are unable to maximize or tolerate a statin. The proportions of patients experiencing adverse events and serious adverse events were similar between the active and placebo treatment groups. Bempedoic acid, contained in NEXLETOL (bempedoic acid) tablets and NEXLIZET (bempedoic acid and ezetimibe) tablets, became the first LDL-C lowering therapy since statins to demonstrate the ability to lower hard ischemic events, not only in those with atherosclerotic cardiovascular disease, or ASCVD, but also in the large number of primary prevention patients for whom limited therapies exist.

On May 22, 2024, we announced that the European Commission, or EC, approved the label update of both NILEMDO and NUSTENDI as treatments for hypercholesterolemia and to reduce the risk of adverse cardiovascular events. The EC's decisions to update the labels of bempedoic acid and the bempedoic acid / ezetimibe fixed dose combination are based on the positive CLEAR Outcomes trial results and makes them the first and only LDL-C lowering treatments indicated for primary and secondary prevention of cardiovascular events. NILEMDO and NUSTENDI are approved to reduce cardiovascular risk in patients with or at high risk for atherosclerotic cardiovascular disease.

On June 27, 2024, we entered into a Royalty Purchase Agreement, or the Purchase Agreement, with OCM IP Healthcare Portfolio LP, a limited partnership formed under the laws of the Province of Ontario, Canada, or the Purchaser. Pursuant to the Purchase Agreement, we sold to the Purchaser, and the Purchaser purchased for $304,656,180, a portion of the royalties payable on net sales of Bempedoic Acid (as defined in the License and Collaboration Agreement) and any other Licensed Products (as defined in the License and Collaboration Agreement) in the DSE Territory (as defined in the License and Collaboration Agreement) pursuant to the License and Collaboration Agreement dated January 2, 2019, between Daiichi Sankyo Europe GMBH and the Company, as amended, or the License and Collaboration Agreement and such royalties being the Royalty Interests).

The Purchaser acquired 100% of the Royalty Interests until such time as the Purchaser has received an aggregate amount equal to 1.700x of the Purchase Price (equivalent to $517,915,506). Following receipt of such amount, 100% of all Royalty Interests will revert to us. The Purchase Agreement contains other customary terms and conditions, including representations and warranties, covenants and indemnification obligations in favor of each party.

On June 27, 2024, we repurchased Revenue Interests outstanding under the Revenue Interest Purchase Agreement, or the RIPA, dated effective as of June 26, 2019, as amended, by and among the Company, the purchasers party thereto, or the Purchasers, and Eiger III SA LLC, or Oberland, as the collateral agent and administrative agent, or the Purchaser Agent, and satisfied all other Obligations (as defined in the RIPA) owed to the Purchasers and the Purchaser Agent by paying to the Purchaser Agent, for the benefit of the Purchasers, a payment in cash of $343,750,000.00, or the "Repurchase Consideration. Following the payment of the Repurchase Consideration, (a) all Revenue Interests were deemed to have been repurchased and all Obligations, debts and liabilities of the Company under the RIPA and the Transaction Documents (as defined in the RIPA) were deemed to have been paid and satisfied in full, and automatically released, discharged and terminated, and the RIPA and all other Transaction Documents automatically terminated, and all Liens, security interests and pledges in favor of, granted to or held by the Purchaser Agent to secure the Obligations under the Transaction Documents were automatically terminated and released.

We were incorporated in Delaware in January 2008, and commenced our operations in April 2008. Since our inception, we have focused substantially all of our efforts and financial resources on developing and commercializing bempedoic acid and the bempedoic acid / ezetimibe tablet. In February 2020, the FDA approved NEXLETOL and NEXLIZET. NEXLETOL was commercially available in the U.S. on March 30, 2020 and NEXLIZET was commercially available in the U.S. on June 4, 2020. While we began to generate revenue from the sale of our products in 2020, we have funded our operations to date primarily through proceeds from sales of preferred stock, convertible promissory notes and warrants, public offerings of common stock and warrants, the incurrence of indebtedness, through collaborations with third parties and revenue and royalty interest purchase agreements. We have incurred losses in each year since our inception.

We have never been profitable. Our net losses were $61.9 million and $0.9 million, respectively, for the three and six months ended June 30, 2024. Our net losses were $49.9 million and $111.7 million, respectively, for the three and six months ended June 30, 2023. Substantially all of our net losses resulted from costs incurred in connection with research and development programs and selling, general and administrative costs associated with our operations. We expect to incur significant expenses and operating losses for the foreseeable future in connection with our ongoing activities, including, among others:

- commercializing NEXLETOL and NEXLIZET in the U.S.; and
- pursuing other research and development activities.

Accordingly, we may need additional financing to support our continuing operations and further the development and commercialization of our products. We may seek to fund our operations and further development activities through collaborations with third parties, strategic alliances, licensing arrangements, debt financings, royalty-based financings, public or private equity offerings or through other sources. Adequate additional financing may not be available to us on acceptable terms, or at all. Our failure to raise capital as and when needed would have a material adverse effect on our financial condition and our ability to pursue our business strategy or continue operations. We will need to generate significant revenues to achieve profitability, and we may never do so.

Product Overview

NEXLETOL is a first-in-class ATP Citrate Lyase, or ACL, inhibitor that lowers LDL-C and cardiovascular risk by reducing cholesterol biosynthesis and up-regulating the LDL receptors. Completed Phase 3 studies whose primary endpoint was LDL-C lowering were conducted in more than 3,000 patients, with over 2,000 patients treated with NEXLETOL, and demonstrated an average 18% placebo corrected LDL-C lowering when used in patients on moderate or high-intensity statins. The completed Phase 3 CLEAR Outcomes trial in patients unwilling or unable to take statins and who had, or were at high risk for, cardiovascular disease demonstrated an average 21.1% placebo corrected LDL-C lowering, and a resulting 13% lower risk of major cardiovascular events versus placebo. NEXLETOL was approved by the FDA in February 2020 and received an expanded cardiovascular risk reduction indication from the FDA in March 2024.

NEXLIZET contains bempedoic acid and ezetimibe and lowers elevated LDL-C and cardiovascular risk through complementary mechanisms of action by inhibiting cholesterol synthesis in the liver and absorption in the intestine. Phase 3 data demonstrated NEXLIZET lowered LDL-C by a mean of 38% compared to placebo when added on to maximally tolerated statins. NEXLIZET was approved by the FDA in February 2020 and received an expanded cardiovascular risk reduction indication from the FDA in March 2024.

NILEMDO is a first-in-class ACL inhibitor that lowers LDL-C and cardiovascular risk by reducing cholesterol biosynthesis and up-regulating the LDL receptors. NILEMDO was approved by the European Commission, or EC, in March 2020 for use in adults with primary hypercholesterolemia (heterozygous familial and non-familial) or mixed dyslipidemia, as an adjunct to diet in combination with a statin or statin with other lipid-lowering therapies in adult patients unable to reach LDL-C goals with the maximum tolerated dose of a statin, or alone or in combination with other lipid-lowering therapies as an adjunct to diet in adult patients who are statin-intolerant, or for whom a statin is contraindicated. In May 2024, the EC approved an expanded indication for NILEMDO to reduce cardiovascular risk in patients with or at high risk for atherosclerotic cardiovascular disease.

NUSTENDI contains bempedoic acid and ezetimibe and lowers elevated LDL-C through complementary mechanisms of action by inhibiting cholesterol synthesis in the liver and absorption in the intestine. NUSTENDI was approved by the EC in March 2020 for use in adults with primary hypercholesterolemia (heterozygous familial and non-familial) or mixed dyslipidemia, as an adjunct to diet in combination with a statin in adult patients unable to reach LDL-C goals with the maximum tolerated dose of a statin in addition to ezetimibe, alone in patients who are either statin-intolerant or for whom a statin is contraindicated, and are unable to reach LDL-C goals with ezetimibe alone, or as an adjunct to diet in adult patients already being treated with the combination of bempedoic acid and ezetimibe as separate tablets with or without statin. In May 2024, the EC approved an expanded indication for NUSTENDI to reduce cardiovascular risk in patients with or at high risk for atherosclerotic cardiovascular disease.

During the six months ended June 30, 2024, we incurred $4.3 million in expenses related to ongoing clinical studies.

During the six months ended June 30, 2023, we incurred $35.5 million in expenses related to our CLEAR Outcomes CVOT and other ongoing clinical studies.

Financial Operations Overview

Product sales, net

Product sales, net is related to our sales of NEXLETOL and NEXLIZET. NEXLETOL was commercially available in the U.S. on March 30, 2020 and NEXLIZET was commercially available in the U.S. on June 4, 2020.

Collaboration revenue

Collaboration revenue is related to our collaboration agreements with DSE, Otsuka, and Daiichi Sankyo Co. Ltd, or DS. Collaboration revenue in the three and six months ended June 30, 2024 was primarily related to the Settlement Agreement with DSE and sales of bulk tablets under supply agreements and royalty revenue received from collaboration partners. Collaboration revenue in the three months ended June 30, 2023 was primarily related to sales of bulk tablets under supply agreements and royalty revenue received from collaboration partners. Under contracted supply agreements with ex-U.S. collaborators, we may manufacture and supply quantities of active pharmaceutical ingredient, or API, or bulk tablets reasonably required by ex-U.S. collaboration partners for the development or sale of licensed products in their respective territory. We recognize revenue when the collaboration partner has obtained control of the API or bulk tablets. We also receive royalties from the commercialization of such products, and record our share of the variable consideration, representing a percentage of net product sales, as collaboration revenue in the period in which such underlying sales occur and costs are incurred by the collaborators.

Cost of Goods Sold

Cost of goods sold is related to our net product sales of NEXLETOL and NEXLIZET and the cost of goods sold from our supply agreements with collaboration partners.

Research and Development Expenses

Our research and development expenses consist primarily of costs incurred in connection with the development of bempedoic acid and the bempedoic acid / ezetimibe combination tablet, which include:

- expenses incurred under agreements with consultants, contract research organizations, or CROs, and investigative sites that conduct our preclinical and clinical studies;
- the cost of acquiring, developing and manufacturing clinical study materials and commercial product manufacturing supply prior to product approval, including the procurement of ezetimibe in our continued development of our bempedoic acid / ezetimibe combination tablet;
- employee-related expenses, including salaries, benefits, stock-based compensation and travel expenses;
- allocated expenses for rent and maintenance of facilities, insurance and other supplies; and
- costs related to compliance with regulatory requirements.

We expense research and development costs as incurred. To date, substantially all of our research and development work has been related to bempedoic acid and the bempedoic acid / ezetimibe combination tablet. Costs for certain development activities, such as clinical studies, are recognized based on an evaluation of the progress to completion of specific tasks using data such as patient enrollment, clinical site activations or information provided to us by our vendors. Our direct research and development expenses consist principally of external costs, such as fees paid to investigators, consultants, central laboratories and CROs in connection with our clinical studies. We do not allocate acquiring and manufacturing clinical study materials, salaries, stock-based compensation, employee benefits or other indirect costs related to our research and development function to specific programs.

We will continue to incur research and development expenses as they relate to other development programs or additional indications we choose to pursue such as the development of our next generation ACLY inhibitors. We expect research and development expenses to decrease substantially in 2024 after the completion of the CLEAR Outcomes CVOT and submitting regulatory filings to the FDA and EMA in 2023. We cannot determine with certainty the duration and completion costs associated with the ongoing or future clinical studies of bempedoic acid and the bempedoic acid / ezetimibe combination tablet. The duration, costs and timing associated with the development of bempedoic acid and the bempedoic acid / ezetimibe combination tablet will depend on a variety of factors, including uncertainties associated with the results of our clinical studies

and our ability to obtain regulatory approval outside the U.S. and Europe. For example, if a regulatory authority were to require us to conduct clinical studies beyond those that we currently anticipate will be required for the completion of clinical development or post-commercialization clinical studies of bempedoic acid or the bempedoic acid / ezetimibe combination tablet, we could be required to expend significant additional financial resources and time on the completion of clinical development or post-commercialization clinical studies of bempedoic acid and the bempedoic acid / ezetimibe combination tablet.

Selling, General and Administrative Expenses

Selling, general and administrative expenses primarily consist of salaries and related costs for personnel, including stock-based compensation, associated with our sales, executive, accounting and finance, commercial, operational and other administrative functions. Other general and administrative expenses include selling expenses, facility-related costs, communication expenses and professional fees for legal, patent prosecution, protection and review, consulting and accounting services.

We expect our selling, general and administrative expenses will increase in 2024 in connection with our expanded product indications in the U.S., expanded commercialization initiatives for NEXLETOL and NEXLIZET and increases in our associated headcount to expand our sales team.

Interest Expense

Interest expense is related to our Revenue Interest Purchase Agreement, or RIPA, with Oberland, an affiliate of Oberland Capital and our convertible notes.

Loss on extinguishment of debt

Loss on extinguishment of debt is related to the loss recognized from the termination of our RIPA with Oberland.

Other Income, Net

Other income, net, primarily relates to interest income and the accretion or amortization of premiums and discounts earned on our cash, cash equivalents and investment securities and also includes other income related to the sale of leased vehicles.

Critical Accounting Policies and Significant Judgments and Estimates

Our discussion and analysis of our financial condition and results of operations is based on our financial statements, which have been prepared in accordance with generally accepted accounting principles in the United States. The preparation of these financial statements requires us to make estimates and judgments that affect the reported amounts of assets, liabilities and expenses and the disclosure of contingent assets and liabilities in our financial statements. We evaluate our estimates and judgments on an ongoing basis, including those related to our collaboration agreements, revenue interest liability and royalty sale liability. We base our estimates on historical experience, known trends and events, contractual milestones and other various factors that are believed to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Our actual results may differ from these estimates under different assumptions or conditions.

Liability Related to the Sale of Future Royalties

In June 2024, we entered into a royalty sale agreement for the future royalties from our collaboration agreement with DSE for up to 1.7x the purchase price, or $518 million. The royalty sale liability related to the agreement is presented net of deferred issuance costs on the balance sheets. We impute interest expense associated with this liability using the effective interest rate method which is presented as interest expense on the statements of operations. The effective interest rate is calculated based on the rate that would enable the debt to be repaid in full over the anticipated life of the arrangement. The interest rate on the liability may vary during the term of the agreement depending on a number of factors, including the level of forecasted royalties. This estimate is complex and highly judgmental as it is based on our future royalty projections and expectations about future economic and market conditions. We evaluate the interest rate quarterly based on our current royalty forecasts utilizing the prospective method. A significant increase or decrease in royalties will materially impact the royalty sale liability, interest expense and the time period for repayment. Issuance costs in connection with the royalty sale agreement are amortized to interest expense over the estimated term of the agreement.

There have been no other material changes to the significant accounting policies previously disclosed in our Annual Report on Form 10-K for the fiscal year ended December 31, 2023.

Results of Operations

Comparison of the Three Months Ended June 30, 2024 and 2023

	Three Months Ended June 30,		
	2024	2023	Change
	(unaudited, in thousands)		
Revenue:			
Product sales, net	$ 28,302	$ 20,293	$ 8,009
Collaboration revenue	45,532	5,493	40,039
Operating Expenses:			
Cost of goods sold	15,609	6,786	8,823
Research and development	11,461	22,099	(10,638)
Selling, general and administrative	44,185	33,959	10,226
Income (loss) from operations	2,579	(37,058)	39,637
Interest expense	(13,723)	(14,537)	814
Loss on extinguishment of debt	(53,235)	—	(53,235)
Other income, net	2,454	1,660	794
Net loss	$ (61,925)	$ (49,935)	$ (11,990)

Product sales, net

Product sales, net for the three months ended June 30, 2024 was $28.3 million compared to $20.3 million for the three months ended June 30, 2023, an increase of $8.0 million. The increase is primarily due to prescription growth of NEXLETOL and NEXLIZET compared to the second quarter of 2023.

Collaboration revenue

Collaboration revenue recognized from our collaboration agreements for the three months ended June 30, 2024 was $45.5 million compared to $5.5 million for the three months ended June 30, 2023, an increase of $40.0 million. The increase is primarily due to revenue recognized from our Settlement Agreement with DSE for the EMA approval and increased product sales to our collaboration partners from our supply agreements and royalty sales growth within our partner territories.

Cost of goods sold

Cost of goods sold for the three months ended June 30, 2024 was $15.6 million compared to $6.8 million for the three months ended June 30, 2023, an increase of $8.8 million. The increase is primarily related to increased product sales to our collaboration partners from our supply agreements.

Research and development expenses

Research and development expenses for the three months ended June 30, 2024, were $11.5 million, compared to $22.1 million for the three months ended June 30, 2023, a decrease of $10.6 million. The decrease in research and development expenses was primarily attributable to a decrease in costs related to CLEAR Outcomes study following the announcement and presentation of our CLEAR Outcomes study results.

Selling, general and administrative expenses

Selling, general and administrative expenses for the three months ended June 30, 2024, were $44.2 million, compared to $34.0 million for the three months ended June 30, 2023, an increase of $10.2 million. The increase in selling, general and administrative expenses was primarily attributable to increased commercial headcount, bonuses, and promotional costs in anticipation of the launch of the expanded labels for NEXLETOL and NEXLIZET.

Interest expense

Interest expense for the three months ended June 30, 2024, was $13.7 million, compared to $14.5 million for the three months ended June 30, 2023, a decrease of $0.8 million. The decrease in interest expense was primarily due to lower interest expense attributable to our RIPA with Oberland.

Loss on extinguishment of debt

Loss on extinguishment of debt for the three months ended June 30, 2024, was $53.2 million, with no such loss recognized for the three months ended June 30, 2023. The loss on extinguishment of debt was due to the repurchase of the Revenue Interests under our RIPA with Oberland.

Other income, net

Other income, net for the three months ended June 30, 2024, was $2.5 million, compared to $1.7 million for the three months ended June 30, 2023, an increase of $0.8 million. The increase in other income, net was primarily due to higher interest income on our investments due to higher cash equivalents.

Comparison of the Six Months Ended June 30, 2024 and 2023

	Six Months Ended June 30,		
	2024	2023	Change
	(unaudited, in thousands)		
Revenue:			
Product sales, net	$ 53,058	$ 37,324	$ 15,734
Collaboration revenue	158,511	12,791	145,720
Operating Expenses:			
Cost of goods sold	25,684	18,438	7,246
Research and development	24,864	53,480	(28,616)
Selling, general and administrative	86,173	63,860	22,313
Income (loss) from operations	74,848	(85,663)	160,511
Interest expense	(27,747)	(28,924)	1,177
Loss on extinguishment of debt	(53,235)	—	(53,235)
Other income, net	5,231	2,933	2,298
Net loss	$ (903)	$ (111,654)	$ 110,751

Product sales, net

Product sales, net for the six months ended June 30, 2024 was $53.1 million compared to $37.3 million for the six months ended June 30, 2023, an increase of approximately $15.8 million. The increase is primarily due to prescription growth of NEXLETOL and NEXLIZET compared to the first half of 2023.

Collaboration revenue

Collaboration revenue recognized from our collaboration agreements for the six months ended June 30, 2024 was $158.5 million compared to $12.8 million for the six months ended June 30, 2023, an increase of $145.7 million. The increase is primarily due to revenue recognized from our Settlement Agreement with DSE and increased product sales to our collaboration partners from our supply agreements and royalty sales growth within our partner territories.

Cost of goods sold

Cost of goods sold for the six months ended June 30, 2024 was $25.7 million compared to $18.4 million for the six months ended June 30, 2023, an increase of approximately $7.3 million. The increase is primarily related to increased product sales to our collaboration partners from our supply agreements.

Research and development expenses

Research and development expenses for the six months ended June 30, 2024, were $24.9 million, compared to $53.5 million for the six months ended June 30, 2023, a decrease of $28.6 million. The decrease in research and development expenses was primarily attributable to a decrease in costs related to CLEAR Outcomes study following the announcement and presentation of our CLEAR Outcomes study results in 2023.

Selling, general and administrative expenses

Selling, general and administrative expenses for the six months ended June 30, 2024, were $86.2 million, compared to $63.9 million for the six months ended June 30, 2023, an increase of $22.3 million. The increase in selling, general and administrative expenses was primarily attributable to increased commercial headcount, bonuses, and promotional costs in anticipation of the launch of the expanded labels for NEXLETOL and NEXLIZET.

Interest expense

Interest expense for the six months ended June 30, 2024, was $27.7 million, compared to $28.9 million for the six months ended June 30, 2023, a decrease of $1.2 million. The decrease in interest expense was primarily due to lower interest expense attributable to our RIPA with Oberland.

Loss on extinguishment of debt

Loss on extinguishment of debt for the six months ended June 30, 2024, was $53.2 million, with no such loss recognized for the six months ended June 30, 2023. The loss on extinguishment of debt was due to the repurchase of the Revenue Interests under our RIPA with Oberland.

Other income, net

Other income, net for the six months ended June 30, 2024, was $5.2 million, compared to $2.9 million for the six months ended June 30, 2023, an increase of $2.3 million. The increase in other income, net was primarily due to higher interest income on our investments due to higher cash equivalents.

Liquidity and Capital Resources

While we began to generate revenue from the sales of our products in 2020, we have funded our operations to date primarily through proceeds from sales of preferred stock, convertible promissory notes and warrants, public offerings of common stock and warrants, the incurrence of indebtedness, milestone payments from collaboration agreements, sale of future royalties and our revenue interest purchase agreement. Pursuant to the license and collaboration agreements with DSE, DS, and Otsuka, we are eligible for substantial additional sales and regulatory milestone payments and royalties.

On February 21, 2023, we entered into a Controlled Equity Offering Sales Agreement with Cantor Fitzgerald & Co., as sales agent, to provide for the issuance and sale by us of up to $70 million of shares of our common stock from time to time in “at-the-market” offerings, or the 2023 ATM Program, pursuant to our existing Form S-3 and the prospectus supplement filed on February 21, 2023. During the three and six months period ended June 30, 2023, we issued 3,312,908 shares of common stock resulting in net proceeds of approximately $4.4 million after deducting $0.4 million of underwriting discounts and commissions and other expenses, pursuant to the 2023 ATM Program. During the three and six month periods ended June 30, 2024, we did not issue shares pursuant to the 2023 ATM Program.

On March 19, 2023, we entered into a Securities Purchase Agreement, or Securities Purchase Agreement, pursuant to which we agreed to issue and sell, in a registered direct offering, or the Registered Direct Offering, 12,205,000 shares of our common stock, pre-funded warrants pre-funded warrants to purchase up to an aggregate of 20,965,747 shares of our common stock, and warrants to purchase up to 33,170,747 shares of our common stock. The combined purchase price of each share of common stock and accompanying warrant was $1.675 per share. The purchase price of each pre-funded warrant and the accompanying warrant was $1.674 (equal to the combined purchase price per share of common stock and accompanying warrant, minus $0.001). In connection with the Securities Purchase Agreement, we amended certain existing warrants to purchase up to an aggregate of 9,024,212 shares of our common stock that were previously issued in December 2021 at an exercise price of $9.00 per share and had an expiration date of December 7, 2023, such that the amended warrants have a reduced exercise price of $1.55 per share and expire three and one half years following the closing of the Registered Direct Offering, for additional consideration of $0.125 per amended warrant. We received net proceeds of approximately $51.3 million related to the Registered Direct Offering and approximately $1.1 million in connection with the amended warrants.

On January 2, 2024, we entered into the Settlement Agreement with DSE to amicably resolve and dismiss the commercial dispute then pending in the Southern District of New York. Under the Settlement Agreement, DSE agreed to pay us an aggregate of $125 million, including (1) a $100-million payment within 15 business days of the effective date of the Settlement Agreement, which we received in January 2024, and (2) a $25-million payment in the calendar quarter immediately following the calendar quarter in which the EMA renders a decision on the application that was filed with the EMA for a Type II(a) variation for our oral non-statin products marketed as NILEMDO® (bempedoic acid) tablets and NUSTENDI® (bempedoic acid and ezetimibe) tablets in Europe, which we received in June 2024. The legal action pending in the United States District Court for the Southern District of New York has now been dismissed.

On January 18, 2024, we entered into the Underwriting Agreement with Jefferies, as representative of the Underwriters, related to the January 2024 Offering of 56,700,000 shares of our common stock, at a purchase price to the public of $1.50 per share. The Underwriters were also granted a 30-day option to purchase up to an additional 8,505,000 shares of our common stock, at the public offering price. On January 19, 2024, Jefferies gave us notice of its election to exercise the option to purchase additional shares, in full. Giving effect to the exercise of Underwriters' option, the January Offering closed on January 23, 2024, with proceeds to the Company of approximately $90.7 million, after deducting the underwriting discount and estimated offering expenses of $7.1 million.

We anticipate that we will incur operating losses for the foreseeable future as we continue to incur substantial expenses related to the ongoing commercialization of NEXLETOL and NEXLIZET and expenses associated with our research and development activities. We anticipate that our current cash and cash equivalents, expected future net product sales of NEXLETOL and NEXLIZET, and expected future revenue under our collaboration agreements is sufficient to fund continuing operations for the foreseeable future.

As of June 30, 2024, our primary sources of liquidity were our cash and cash equivalents which totaled $189.3 million. We invest our cash equivalents and investments in highly liquid, interest-bearing investment-grade securities and government securities to preserve principal.

The following table summarizes the primary sources and uses of cash for the periods presented below:

	Six Months Ended June 30,	
	2024	2023
	(in thousands)	
Net cash provided by (used in) operating activities	$ 46,623	$ (79,106)
Net cash (used in) provided by investing activities	(150)	42,500
Net cash provided by financing activities	60,583	50,301
Net increase in cash and cash equivalents	$ 107,056	$ 13,695

Operating Activities

We have incurred and expect to continue to incur, significant costs related to the commercialization of NEXLETOL and NEXLIZET and related to ongoing research and development, regulatory and other clinical study costs associated with the development of bempedoic acid and the bempedoic acid / ezetimibe combination tablet.

Net cash provided by operating activities totaled $46.6 million for the six months ended June 30, 2024, compared to $79.1 million of cash used in operating activities for the six months ended June 30, 2023. Net cash provided by operating activities of $46.6 million for the six months ended June 30, 2024 consisted primarily of net product sales of NEXLETOL and NEXLIZET and collaboration revenue from the Settlement Agreement with DSE partially offset by cash used to fund the commercialization

activities of NEXLETOL and NEXLIZET and the research and development costs related to bempedoic acid and the bempedoic acid / ezetimibe combination tablet, adjusted for non-cash items such as the loss on extinguishment of debt associated with our revenue interest purchase agreement, royalty revenue from DSE to be paid to OCM IP Healthcare Portfolio LP, or OMERS, stock-based compensation expense, interest expense related to our RIPA with Oberland, depreciation and amortization and changes in working capital. Net cash used in operating activities of $79.1 million in for the six months ended June 30, 2023 consisted primarily of net product sales of NEXLETOL and NEXLIZET fully offset by cash used to fund the commercialization activities of NEXLETOL and NEXLIZET and the research and development costs related to bempedoic acid and the bempedoic acid / ezetimibe combination tablet, adjusted for non-cash expenses such as stock-based compensation expense, interest expense related to our RIPA with Oberland, depreciation and amortization and changes in working capital.

Investing Activities

Net cash used in investing activities of $0.2 million for the six months ended June 30, 2024 consisted of purchases of property, plant and equipment. Net cash provided by investing activities of $42.5 million for the six months ended June 30, 2023 consisted of proceeds from the sales of highly liquid, interest bearing investment grade and government securities.

Financing Activities

Net cash provided by financing activities of $60.6 million for the six months ended June 30, 2024 related primarily to our January 2024 Offering, royalty sale agreement and warrant exercises, offset partially by the cash outlays resulting in the extinguishment of our revenue interest liability. Net cash provided by financing activities of $50.3 million for the six months ended June 30, 2023 related primarily to proceeds from our registered direct offering and net proceeds from our 2023 ATM Program, partially offset by payments on our revenue interest liability.

As noted above, we received approximately $90.7 million, after deducting the underwriting discounts and estimated offering expenses, from our January 2024 Offering. Refer to Note 14 “Stockholders’ Deficit—Underwriting Agreement” in our condensed financial statements included in this Quarterly Report on Form 10-Q for further information.

On June 27, 2024, we entered into a Royalty Purchase Agreement (the “Purchase Agreement”) with OMERS. Pursuant to the Purchase Agreement, we sold a portion of the royalties payable on net sales of Bempedoic Acid from our collaboration partner DSE. Pursuant to the Purchase Agreement, we received $304.7 million, less issuance costs. Refer to Note 9 "Sale of Future Royalties" in our condensed financial statements included in this Quarterly Report on Form 10-Q for the quarter ended June 30, 2024 for further information.

On June 27, 2024, we repurchased the Revenue Interests outstanding under the RIPA for $343.8 million and recognized a loss on extinguishment of debt in the statement of operations. Following the repurchase in June 2024, we no longer owe payments under the RIPA. Refer to Note 8 "Liability Related to the Revenue Interest Purchase Agreement" in our condensed financial statements included in this Quarterly Report on Form 10-Q for the quarter ended June 30, 2024 for further information.

On November 16, 2020, we issued $250.0 million aggregate principal amount of 4.00% convertible senior subordinated notes due 2025 to certain financial institutions as the initial purchasers of the convertible notes. An additional $30.0 million of additional convertible notes (collectively, the "Convertible Notes"), which were issued pursuant to the exercise of the initial purchasers' option to purchase such convertible notes, closed on November 18, 2020. On October 22, 2021, we entered into the Exchange Agreement with the Holders of our Convertible Notes. Under the terms of the Exchange Agreement the Holders agreed to exchange with us $15.0 million aggregate principal amount of the Convertible Notes held in the aggregate by them (and accrued interest thereon) for shares of Common Stock, which closed on November 3, 2021. Future payments under the convertible notes include annual interest of $10.6 million and a principal payment of $265.0 million in 2025. Refer to Note 10 "Convertible Notes" in our condensed financial statements included in this Quarterly Report on Form 10-Q for the quarter ended June 30, 2024 for further information.

On February 21, 2023, entered into a Controlled Equity Offering Sales Agreement with Cantor Fitzgerald & Co., as sales agent, to provide for the issuance and sale by us of up to $70 million of shares of our common stock from time to time in “at-the-market” offerings, or the 2023 ATM Program, pursuant to our existing Form S-3 and the prospectus supplement filed on February 21, 2023. During the three and six month periods ended June 30, 2023, we issued 3,312,908 shares of common stock resulting in net proceeds of approximately $4.4 million after deducting $0.4 million of underwriting discounts and commissions and other expenses, pursuant to the 2023 ATM Program. During the three and six month periods ended June 30, 2024, we did not issue shares pursuant to the 2023 ATM Program. We may continue to use the 2023 ATM Program to address potential short-term or long-term funding requirements that may arise. Such program will continue to be subject to the volatility of the price of our common stock and general market conditions.

On March 22, 2023, we issued and sold, in a registered direct offering, or the Registered Direct Offering, 12,205,000 shares of our common stock, pre-funded warrants to purchase up to an aggregate of 20,965,747 shares of our common stock, and warrants to purchase up to 33,170,747 shares of our common stock. The combined purchase price of each share of common stock and accompanying warrant was $1.675 per share. The purchase price of each pre-funded warrant and the accompanying warrant was $1.674 (equal to the combined purchase price per share of common stock and accompanying warrant, minus $0.001). In connection with the Registered Direct Offering, we amended certain existing warrants to purchase up to an aggregate of 9,024,212 shares of our common stock that were previously issued in December 2021 at an exercise price of $9.00 per share and had an expiration date of December 7, 2023, such that the amended warrants have a reduced exercise price of $1.55 per share. The warrants are immediately exercisable and will expire on September 22, 2026, which may provide us with additional funding, if such warrants are exercised by their holders. Each pre-funded warrant is exercisable for one share of our common stock at an exercise price of $0.001 per share. The pre-funded warrants were immediately exercisable and could be exercised at any time. As of June 30, 2024, no pre-funded warrants were outstanding as all were exercised during the year ended 2023. During the year ended December 31, 2023, we received net proceeds of approximately $8.4 million from the exercise of warrants and pre-funded warrants. We received net proceeds of approximately $51.3 million related to the Registered Direct Offering after deducting placement agent fees and related offering expenses of $4.2 million, and we received approximately $1.1 million in connection with the amended warrants after deducting placement fees of $0.1 million. In the six months ended June 30, 2024, we received net proceeds of approximately $14.8 million from the exercise of warrants in connection with the Registered Direct Offering.

Plan of Operations and Funding Requirements

We expect to continue to incur significant expenses and operating losses for the foreseeable future in connection with our continued commercialization activities associated with NEXLETOL and NEXLIZET in the U.S. Pursuant to the license and collaboration agreements with DSE, Otsuka, and DS, we are eligible for substantial additional sales and regulatory milestone payments and royalties. We estimate that current cash resources, proceeds to be received in the future for product sales and proceeds under the collaboration agreements with DSE, DS and Otsuka are sufficient to fund operations for the foreseeable future. We have based these estimates on assumptions that may prove to be wrong, and we may use our available capital resources sooner than we currently expect. Because of the numerous risks and uncertainties associated with the development and ongoing commercialization of bempedoic acid and the bempedoic acid / ezetimibe combination tablet and the extent to which we entered and may enter into collaborations with pharmaceutical partners regarding the development and commercialization of bempedoic acid and the bempedoic acid / ezetimibe combination tablet, we are unable to estimate the amounts of increased capital outlays and operating expenses associated with completing the development and commercialization of bempedoic acid and the bempedoic acid / ezetimibe combination tablet. Our future funding requirements will depend on many factors, including, but not limited to:

- our ability to successfully develop and commercialize NEXLETOL and NEXLIZET or other product candidates;
- the service and payment of potential debt maturities;
- our ability to establish any future collaboration or commercialization arrangements on favorable terms, if at all;
- our ability to realize the intended benefits of our existing and future collaboration and partnerships, including receiving potential milestone payments from collaboration partners;
- the costs of preparing, filing and prosecuting patent applications, maintaining and enforcing our intellectual property rights and defending intellectual property-related claims; and
- the implementation of operational and financial information technology.

Until such time, if ever, as we can generate substantial U.S. product revenues and collaboration royalties, we expect to finance our cash needs through a combination of collaborations with third parties, strategic alliances, licensing arrangements, debt financings, royalty-based financings and equity offerings or other sources. To the extent that we raise additional capital through the sale of equity or convertible debt securities, the ownership interest of our stockholders will be diluted, and the terms of these securities may include liquidation or other preferences that adversely affect your rights as a common stockholder. Debt financing, if available, may involve agreements that include covenants limiting or restricting our ability to take specific actions, such as incurring additional debt, making capital expenditures or declaring dividends. If we raise additional funds through collaborations, strategic alliances or licensing arrangements with pharmaceutical partners or royalty-based financing arrangements, such as the collaboration arrangement with DSE, Otsuka and DS, we may have to relinquish valuable rights to our technologies, future revenue streams or grant licenses on terms that may not be favorable to us. If we raise funds by selling

additional equity, such sale would result in dilution to our stockholders. If we are unable to raise additional funds through equity or debt financings or through collaborations, strategic alliances or licensing arrangements or royalty-based financing arrangements when needed, we may be required to delay, limit, reduce or terminate our product development or future commercialization efforts or grant rights to develop and market bempedoic acid and the bempedoic acid / ezetimibe combination tablet that we would otherwise prefer to develop and market ourselves.

We do not currently have, nor did we have during the periods presented, any off-balance sheet arrangements as defined by the SEC rules.

Item 3. Quantitative and Qualitative Disclosures About Market Risk

There have been no material changes with respect to the information appearing in Part II, Item 7A, "Quantitative and Qualitative Disclosures About Market Risk," in our Annual Report on Form 10-K for the fiscal year ended December 31, 2023.

Item 4. Controls and Procedures

Evaluation of Disclosure Controls and Procedures

We maintain disclosure controls and procedures that are designed to ensure that information required to be disclosed in the reports that we file or submit under the Exchange Act is (1) recorded, processed, summarized, and reported within the time periods specified in the SEC's rules and forms and (2) accumulated and communicated to our management, including our President and Chief Executive Officer, who is our principal executive officer, and our Chief Financial Officer, who is our principal financial officer, to allow timely decisions regarding required disclosure.

As of June 30, 2024, our management, with the participation of our principal executive officer and principal financial officer, evaluated the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act). Our management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving their objectives, and management necessarily applies its judgment in evaluating the cost-benefit relationship of possible controls and procedures. Our principal executive officer and principal financial officer have concluded based upon the evaluation described above that, as of June 30, 2024, our disclosure controls and procedures were effective at the reasonable assurance level.

Changes in Internal Control over Financial Reporting

There were no changes to our internal control over financial reporting that occurred during the period covered by this Quarterly Report on Form 10-Q that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

PART II — OTHER INFORMATION

Item 1. Legal Proceedings

The information required with respect to this item can be found under “Commitments and Contingencies” in Note 5 to our condensed financial statements included elsewhere in this Quarterly Report on Form 10-Q and is incorporated by reference into this Item 1.

In the future, we may become party to legal matters and claims arising in the ordinary course of business, the resolution of which we do not anticipate would have a material adverse impact on our financial position, results of operations or cash flows.

Item 1A. Risk Factors

Except for the historical information contained herein or incorporated by reference, this Quarterly Report on Form 10-Q and the information incorporated by reference contains forward-looking statements that involve risks and uncertainties. These statements include projections about our accounting and finances, plans and objectives for the future, future operating and economic performance and other statements regarding future performance. These statements are not guarantees of future performance or events. Our actual results could differ materially from those discussed in this Quarterly Report on Form 10-Q. Factors that could cause or contribute to these differences include, but are not limited to, those discussed in Part I, Item 2 entitled "Management's Discussion and Analysis of Financial Condition and Results of Operations" and elsewhere throughout this Quarterly Report on Form 10-Q and in any documents incorporated in this Quarterly Report on Form 10-Q by reference.

You should consider carefully the following risk factors, together with those set forth in Part I, Item 1A in our Annual Report on Form 10-K for the fiscal year ended December 31, 2023 and in all of the other information included or incorporated in this Quarterly Report on Form 10-Q. The following risk factors represent new risk factors or those containing changes, including material changes, to the risk factors set forth in Part I, Item 1A of our Annual Report on Form 10-K for the fiscal year ended December 31, 2023. If any of the previously identified or following risks, either alone or taken together, or other risks not presently known to us or that we currently believe to not be significant, develop into actual events, then our business, financial condition, results of operations or prospects could be materially adversely affected. If that happens, the market price of our common stock could decline, and stockholders may lose all or part of their investment.

If we are unable to adequately protect our proprietary technology or maintain issued patents which are sufficient to protect bempedoic acid and the bempedoic acid / ezetimibe combination tablet, others could compete against us more directly, which would have a material adverse impact on our business, results of operations, financial condition and prospects.

Our commercial success will depend in part on our success obtaining and maintaining issued patents and other intellectual property rights in the United States and elsewhere and protecting our proprietary technology. If we do not adequately protect our intellectual property and proprietary technology, competitors may be able to use our technologies and erode or negate any competitive advantage we may have, which could harm our business and ability to achieve profitability.

As of June 30, 2024, our patent estate, including patents we own, on a worldwide basis, included approximately 11 issued United States patents and 12 pending United States patent applications and over 30 issued patents and over 80 pending patent applications in other foreign jurisdictions. Of our worldwide patent estate, only a subset of our patents and pending patent applications relates to our bempedoic acid program.

Bempedoic acid is claimed in U.S. Patent No. 7,335,799 that is scheduled to expire in December 2030, which includes 711 days of patent term adjustment, and five years of patent term extension. We have one granted European patent that has been validated in numerous European countries including France, Germany, Great Britain, Ireland, Italy, the Netherlands, Spain, Sweden and Switzerland. We obtained five year patent term extensions via supplementary protection certificates for 24 national patents validated from the granted European patent, which extends our patent protection in those countries until 2028. Additionally, we have one patent family that includes U.S. Patent Nos. 11,407,705 and 11,987,548, directed to methods of manufacturing high purity bempedoic acid, one pending U.S. patent application directed to the same, U.S. Patent No. 11.613.511 directed to compositions of matter of high purity bempedoic acid, one pending U.S. patent application directed to the same, U.S. Patent No. 11,760,714 directed to pharmaceutical formulations containing the same, and U.S. Patent No. 11,926,584 directed to methods of lowering low-density lipoprotein cholesterol (LDL-C) using the same and one pending U.S. patent application directed to methods of treatment using the same, and one granted patent and 16 pending patent applications outside of the United States. U.S. Patent Nos. 11,407,705, 11,613,511, 11,760,714, 11,926,584, and 11,987,548 and the other patent family members, if issued, are scheduled to expire in June 2040.

In addition, we have three patent families in which we are pursuing patent protection for our bempedoic acid and bempedoic acid / ezetimibe combination tablet in combination with one or more statins. Methods of treating patients with

familial hypercholesterolemia using the bempedoic acid / ezetimibe combination are claimed in U.S. Patent Nos. 10,912,751 and 11,744,816 that are scheduled to expire in March 2036. We also have one pending U.S. patent application, and 9 issued patents and 11 pending applications outside the U.S. with claims directed to methods of treatment using the bempedoic acid / ezetimibe combination. Additionally, we have one pending U.S. patent application, and 8 issued patents and 23 pending applications outside the U.S. directed to the manufacturing of our bempedoic acid / ezetimibe combination tablet. We also have one issued U.S. patent, i.e., U.S. Patent No. 11,116,739, one pending U.S. patent application, and 11 issued patents and 12 pending applications outside the U.S., with claims directed to combinations of bempedoic acid and one or more statins and/or methods of using said combinations. U.S. Patent No. 11,116,739 is scheduled to expire in March 2036.

We may not have identified all patents, published applications or published literature that affect our business either by blocking our ability to commercialize our products and drug candidates, by preventing the patentability of one or more aspects of our products and drug candidates to us or our licensors or co-owners, or by covering the same or similar technologies that may affect our ability to market our products and drug candidates. For example, we (or the licensor of a drug candidate to us) may not have conducted a patent clearance search to identify potentially obstructing third party patents. Moreover, patent applications in the United States are maintained in confidence for up to 18 months after their filing. In some cases, however, patent applications remain confidential in the U.S. Patent and Trademark Office, or the USPTO, for the entire time prior to issuance as a U.S. patent. Patent applications filed in countries outside of the United States are not typically published until at least 18 months from their first filing date. Similarly, publication of discoveries in the scientific or patent literature often lags behind actual discoveries. We cannot be certain that we or our licensors or co-owners were the first to invent, or the first to file, patent applications covering our products and drug candidates. We also may not know if our competitors filed patent applications for technology covered by our pending applications or if we were the first to invent the technology that is the subject of our patent applications. Competitors may have filed patent applications or received patents and may obtain additional patents and proprietary rights that block or compete with our patents.

Others may have filed patent applications or received patents that conflict with patents or patent applications that we own, have filed or have licensed, either by claiming the same methods, compounds or uses or by claiming methods, compounds or uses that could dominate those owned by or licensed to us. In addition, we may not be aware of all patents or patent applications that may affect our ability to make, use or sell any of our products or drug candidates. Any conflicts resulting from third-party patent applications and patents could affect our ability to obtain the necessary patent protection for our products or processes. If other companies or entities obtain patents with conflicting claims, we may be required to obtain licenses to these patents or to develop or obtain alternative technology. We may not be able to obtain any such licenses on acceptable terms or at all. Any failure to obtain such licenses could delay or prevent us from using discovery-related technology to pursue the development or commercialization of our products or drug candidates, which would adversely affect our business.

We cannot assure you that any of our patents have, or that any of our pending patent applications will mature into issued patents that will include, claims with a scope sufficient to protect bempedoic acid or the bempedoic acid / ezetimibe combination or any other product candidates. Others have developed technologies that may be related or competitive to our approach, and may have filed or may file patent applications and may have received or may receive patents that may overlap or conflict with our patent applications, either by claiming the same methods or formulations or by claiming subject matter that could dominate our patent position. The patent positions of biotechnology and pharmaceutical companies, including our patent position, involve complex legal and factual questions, and, therefore, the issuance, scope, validity and enforceability of any patent claims that we may obtain cannot be predicted with certainty. Patents, if issued, may be challenged, deemed unenforceable, invalidated, or circumvented. U.S. patents and patent applications may also be subject to interference proceedings, ex parte reexamination, inter partes review and post-grant review proceedings, supplemental examination and may be challenged in district court. Patents granted in certain other countries may be subjected to revocation, opposition or comparable proceedings lodged in various national and regional patent offices, and national courts. These proceedings could result in either loss of the patent or denial of the patent application or loss or reduction in the scope of one or more of the claims of the patent or patent application. For example, a European Unified Patent Court (UPC) came into force during 2023. The UPC is a common patent court to hear patent infringement and revocation proceedings effective for member states of the European Union. This could enable third parties to seek revocation of any of our European patents in a single proceeding at the UPC rather than through multiple proceedings in each of the jurisdictions in which the European patent is validated. Any such revocation and loss of patent protection could have a material adverse impact on our business and our ability to commercialize or license our technology and products. Moreover, the controlling laws and regulations of the UPC will develop over time, and may adversely affect our ability to enforce our European patents or defend the validity thereof. We may decide to opt out our European patents and patent applications from the UPC. If certain formalities and requirements are not met, however, our European patents and patent applications could be challenged for non-compliance and brought under the jurisdiction of the UPC. We cannot be certain that our European patents and patent applications will avoid falling under the jurisdiction of the UPC, if we decide to opt out of the UPC. Moreover, such interference, re- examination, post-grant review, inter partes review, supplemental examination, opposition, or revocation proceedings may be costly. Thus, any patents that we may own or exclusively license may not provide any protection against competitors. Furthermore, an adverse decision in an interference proceeding can result in a third-party receiving the patent right sought by us, which in turn could affect our ability to develop, market or otherwise commercialize bempedoic acid and the bempedoic acid / ezetimibe combination tablet.

Furthermore, the issuance of a patent, while presumed valid and enforceable, is not conclusive as to its validity or its enforceability and it may not provide us with adequate proprietary protection or competitive advantages against competitors with similar products. Competitors may also be able to design around our patents. Other parties may develop and obtain patent protection for more effective technologies, designs or methods. We may not be able to prevent the unauthorized disclosure or use of our technical knowledge or trade secrets by consultants, vendors, former employees and current employees. The laws of some foreign countries do not protect our proprietary rights to the same extent as the laws of the United States, and we may encounter significant problems in protecting our proprietary rights in these countries. If these developments were to occur, they could have a material adverse effect on our sales.

Furthermore, given the amount of time required for the development, testing and regulatory review of new product candidates, patents protecting such candidates might expire before or shortly after such candidates are commercialized. We have obtained a patent term extension in the United States for U.S. Patent No. 7,335,799 and have obtained supplementary protection certificates for one of the granted, counterpart European patents. In the United States, the Drug Price Competition and Patent Term Restoration Act of 1984 permits a patent term extension of up to five years beyond the normal expiration of the patent, but the total patent term including the restoration period must not exceed 14 years following FDA approval. However, the applicable authorities, including the FDA and the USPTO in the United States, and any equivalent regulatory authority in other countries, may not agree with our assessment of whether such extensions are available, and may refuse to grant extensions to our patents, or may grant more limited extensions than we request. If this occurs, our competitors may be able to take advantage of our investment in development and clinical trials by referencing our clinical and preclinical data and launch their product earlier than might otherwise be the case.

Our ability to enforce our patent rights depends on our ability to detect infringement. It is difficult to detect infringers who do not advertise the components that are used in their products. Moreover, it may be difficult or impossible to obtain evidence of infringement in a competitor's or potential competitor's product. Any litigation to enforce or defend our patent rights, if any, even if we were to prevail, could be costly and time-consuming and would divert the attention of our management and key personnel from our business operations. We may not prevail in any lawsuits that we initiate and the damages or other remedies awarded if we were to prevail may not be commercially meaningful.

In addition, proceedings to enforce or defend our patents could put our patents at risk of being invalidated, held unenforceable, or interpreted narrowly. Such proceedings could also provoke third parties to assert claims against us, including that some or all of the claims in one or more of our patents are invalid or otherwise unenforceable. If, in any proceeding, a court invalidated or found unenforceable our patents covering bempedoic acid or the bempedoic acid / ezetimibe combination tablet, our financial position and results of operations would be materially and adversely impacted. In addition, if a court found that valid, enforceable patents held by third parties covered bempedoic acid or the bempedoic acid / ezetimibe combination tablet, our financial position and results of operations would also be materially and adversely impacted.

Furthermore, in March and April 2024, we received notices from nine pharmaceutical companies, six of which filed exclusively with respect to NEXLETOL and three of which filed with respect to NEXLETOL and NEXLIZET (each, an "ANDA Filer"), that each company had filed an Abbreviated New Drug Application, or ANDA, with the FDA seeking approval of a generic version of NEXLETOL and/or NEXLIZET, as applicable. The ANDAs each contained Paragraph IV certifications alleging that certain of our Orange Book listed patents covering NEXLETOL or NEXLIZET, as applicable, are invalid and/or will not be infringed by each ANDA Filer's manufacture, use or sale of the medicine for which the ANDA was submitted. It is possible that one or more additional companies may file with the FDA an ANDA for a generic version of, or an 505(b)(2) NDA that references, one or both of bempedoic acid or bempedoic acid / ezetimibe combination tablet, in which the competitor would claim that our patents are invalid or not infringed. Competition that our approved products could face from an approved generic and other versions of our approved products could materially and adversely affect our future revenue, profitability, and cash flows and substantially limit our ability to obtain a return on the investments we have made in developing bempedoic acid or bempedoic acid / ezetimibe combination tablet. For further details, please see our risk factor entitled "*If the FDA, EMA or other comparable foreign regulatory authorities approve generic or other versions of bempedoic acid or the bempedoic acid / ezetimibe combination tablet, the sales of our approved products could be adversely affected*."

The degree of future protection for our proprietary rights is uncertain, and we cannot ensure that:

- any of our patents, or any of our pending patent applications, if issued, will include claims having a scope and patent term sufficient to protect bempedoic acid or the bempedoic acid / ezetimibe combination tablet;
- any of our pending patent applications will result in issued patents;
- we will be able to successfully commercialize bempedoic acid or the bempedoic acid / ezetimibe combination tablet in all of the jurisdictions we intend to pursue before our relevant patents expire;
- we were the first to make the inventions covered by each of our patents and pending patent applications;

- we were the first to file patent applications for these inventions;
- others will not develop similar or alternative technologies that do not infringe our patents;
- any of our patents will be valid and enforceable;
- any patents issued to us will provide a basis for an exclusive market for our commercially viable products, will provide us with any competitive advantages or will not be challenged by third parties;
- we will develop additional proprietary technologies or product candidates that are separately patentable; or
- that our commercial activities or products, or those of our licensors, will not infringe upon the patents of others.

We rely upon unpatented trade secrets, unpatented know-how and continuing technological innovation to develop and maintain our competitive position, which we seek to protect, in part, by confidentiality agreements with our employees and our collaborators and consultants. We also have agreements with our employees and selected consultants that obligate them to assign their inventions to us. It is possible that technology relevant to our business will be independently developed by a person that is not a party to such an agreement. Furthermore, if the employees and consultants who are parties to these agreements breach or violate the terms of these agreements, we may not have adequate remedies for any such breach or violation, and we could lose our trade secrets through such breaches or violations. Further, our trade secrets could otherwise become known or be independently discovered by our competitors.

If the FDA, EMA or other comparable foreign regulatory authorities approve generic or other versions of bempedoic acid or the bempedoic acid / ezetimibe combination tablet, the sales of our approved products could be adversely affected.

Once a new drug application, or NDA, is approved, the product covered thereby becomes a "reference listed drug" in the FDA's publication, "Approved Drug Products with Therapeutic Equivalence Evaluations," commonly known as the Orange Book. Under the Drug Price Competition and Patent Term Restoration Act of 1984, or the Hatch-Waxman Act to the Federal Food, Drug, and Cosmetic Act, or FDCA, a company may seek approval of generic versions of reference listed drugs through submission of abbreviated new drug applications, or ANDAs, in the United States. In support of an ANDA, a generic manufacturer need not conduct clinical trials to assess safety and efficacy. Rather, the applicant generally must show that its product has the same active ingredient(s), dosage form, strength, route of administration and conditions of use or labelling as the reference listed drug and that the generic version is bioequivalent to the reference listed drug, meaning it is absorbed in the body at the same rate and to the same extent. Generic products may be significantly less costly to bring to market than the reference listed drug and companies that produce generic products are generally able to offer them at lower prices. Thus, following the introduction of a generic drug, a significant percentage of the sales of any branded product or reference listed drug is typically lost to the generic product.

Under the Hatch-Waxman Act, a company may also submit an NDA under Section 505(b)(2) of the FDCA that references the FDA's prior approval of the innovator product. A 505(b)(2) NDA product may be for a new or improved version of the original innovator product. The Hatch-Waxman Act also provide for certain periods of regulatory exclusivity, which preclude FDA approval (or in some circumstances, FDA filing and review) of an ANDA or 505(b)(2) NDA until any applicable period of non-patent exclusivity for the reference listed drug has expired. For example, a new drug containing a new chemical entity, or NCE, may be eligible for five years of marketing exclusivity in the United States following regulatory approval if that drug is classified as a new chemical entity, or NCE. A drug can be classified as a NCE if the FDA has not previously approved any other drug containing the same active moiety.

In addition to the benefits of regulatory exclusivity, an innovator NDA holder may have patents claiming the active ingredient, product formulation or an approved use of the drug, which would be listed in the Orange Book. If there are patents listed in the Orange Book for a product, an ANDA or 505(b)(2) applicant that seeks to market its product before expiration of the innovator drug patents must include in their applications what is known as a "Paragraph IV" certification, challenging the validity or enforceability, or claiming non-infringement, of the listed patent or patents. Notice of the certification must be given to the patent owner and NDA holder and if, within 45 days of receiving notice, either the patent owner or NDA holder sues for patent infringement, approval of the ANDA or 505(b)(2) NDA is stayed for up to 30 months, or as lengthened or shortened by a court.

Accordingly, competitors could file ANDAs for generic versions or 505(b)(2) NDAs that reference our NEXLETOL and NEXLIZET products, which were granted marketing approval by the FDA on February 21, 2020 and February 26, 2020, respectively. For example, given that NEXLETOL was granted market exclusivity by the FDA on February 21, 2020, an ANDA or 505(b)(2) NDA referencing our NEXLETOL NDA may not be submitted to the FDA until the expiration of five years, e.g., February 21, 2025, unless the submission is accompanied by a Paragraph IV certification that a patent covering the reference listed drug is either invalid or will not be infringed by the generic or 505(b)(2) product, in which case the applicant may submit its application four years following approval of the reference listed drug, e.g., February 21, 2024, for NEXLETOL.

Competitors may seek to launch generic or 505(b)(2) versions of NEXLETOL following the expiration of the applicable exclusivity period for NEXLETOL, even if we still have regulatory exclusivity and/or patent protection for NEXLETOL, and the same could happen for any of our other drug products upon approval.

In March and April 2024, we received notices from each ANDA Filer that each company had filed an ANDA with the FDA seeking approval of a generic version of NEXLETOL and/or NEXLIZET, as applicable. The ANDAs each contained Paragraph IV certifications alleging that certain of our patents covering NEXLETOL or NEXLIZET, as applicable, are invalid and/or will not be infringed by each ANDA Filer's manufacture, use or sale of the medicine for which the ANDA was submitted.

Beginning in May 2024, we filed patent infringement lawsuits under the Hatch-Waxman Act in the United States District Court, District of New Jersey, against each ANDA Filer. Our complaints allege that by filing the applicable ANDA, such ANDA Filer has infringed NEXLETOL's and/or NEXLIZET's Orange Book patents, as applicable, included in its Paragraph IV certifications, and seek an injunction preventing FDA from granting final approval of the ANDA before the expiration of the asserted patents, and a permanent injunction to prevent the ANDA Filer from commercializing a generic version of NEXLETOL and/or NEXLIZET, as applicable, until the expiration of the asserted patents. No trial date has been set.

The success of such litigation will depend on the strength of the patents covering NEXLETOL or NEXLIZET, as applicable, and our ability to prove infringement. The outcome of such litigation will be inherently uncertain and may result in potential loss of market exclusivity for NEXLETOL and/or NEXLIZET. Competition that NEXLETOL or NEXLIZET could face from an approved generic and other versions of NEXLETOL or NEXLIZET could materially and adversely affect our future revenue, profitability, and cash flows and substantially limit our ability to obtain a return on the investments we have made in developing NEXLETOL and NEXLIZET. Furthermore, the Federal Trade Commission, or FTC, has brought lawsuits to challenge ANDA litigation settlements as anti-competitive. If we settle any ANDA litigation, we may also face an FTC challenge with respect to the related settlement which may result in additional expense or penalty.

Item 6. Exhibits

The exhibits filed or furnished as part of this Quarterly Report on Form 10-Q are set forth on the Exhibit Index, which Exhibit Index is incorporated herein by reference.

EXHIBIT INDEX

Exhibit No.	Description	Incorporated by Reference to: Form or Schedule	Exhibit No.	Filing Date with SEC	SEC File Number
3.1	Amended and Restated Certificate of Incorporation of the Registrant	8-K	3.2	June 12, 2013	333-188595
3.2	Certificate of Amendment to Amended and Restated Certificate of Incorporation of the Registrant	8-K	3.1	May 26, 2022	001-35986
3.3	Certificate of Validation relating to Certificate of Amendment to the Amended and Restated Certificate of Incorporation of the Registrant dated May 26, 2022	8-K	3.1	September 20, 2022	001-35986
3.4	Certificate of Amendment No. 2 to Amended and Restated Certificate of Incorporation of the Registrant	8-K	3.1	June 15, 2023	001-35986
3.5	Second Amended and Restated Bylaws of the Registrant dated April 29, 2021	10-Q	3.1	May 4, 2021	001-35986
4.1	Specimen Common Stock Certificate	S-1	4.1	June 12, 2013	333-188595
10.1*†**	Royalty Purchase Agreement by and between the Registrant and OCM IP Healthcare Portfolio LP dated as of June 24, 2024				
31.1*	Certification of Principal Executive Officer pursuant to Rule 13a-14(a) and Rule 15d-14(a) of the Securities Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002				
31.2*	Certification of Principal Financial Officer pursuant to Rule 13a-14(a) and Rule 15d-14(a) of the Securities Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002				
32.1+	Certification of Principal Executive Officer and Principal Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002				
101.SCH*	Inline XBRL Taxonomy Extension Schema Document				
101.CAL*	Inline XBRL Taxonomy Extension Calculation Linkbase Document				
101.LAB*	Inline XBRL Taxonomy Extension Label Linkbase Document				
101.PRE*	Inline XBRL Taxonomy Extension Presentation Linkbase Document				
101.DEF*	Inline XBRL Taxonomy Extension Definition Linkbase Document				
104*	Cover Page Interactive Data File (formatted as inline XBRL with applicable taxonomy extension information contained in Exhibits 101.*)				

* Filed herewith.

+ The certification furnished in Exhibit 32.1 hereto is deemed to be furnished with this Quarterly Report on Form 10-Q and will not be deemed to be "filed" for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, except to the extent that the Registrant specifically incorporates it by reference.

† Annexes, schedules and/or exhibits have been omitted pursuant to Item 601(a)(5) of Regulation S-K. The registrant agrees to furnish supplementally a copy of any omitted attachment to the SEC on a confidential basis upon request.

** Portions of this exhibit (indicated by asterisks) have been omitted in accordance with the rules of the Securities and Exchange Commission.

SIGNATURES

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

ESPERION THERAPEUTICS, INC.

August 12, 2024 By: /s/ Sheldon L. Koenig
Sheldon L. Koenig
President and Chief Executive Officer
(Principal Executive Officer)

August 12, 2024 By: /s/ Benjamin Halladay
Benjamin Halladay
Chief Financial Officer
(Principal Financial Officer and Principal Accounting Officer)

CERTAIN CONFIDENTIAL INFORMATION, MARKED BY [***] HAS BEEN EXCLUDED FROM THIS EXHIBIT BECAUSE IT IS BOTH NOT MATERIAL AND IS THE TYPE THAT THE REGISTRANT TREATS AS PRIVATE OR CONFIDENTIAL.

ROYALTY PURCHASE AGREEMENT

ESPERION THERAPEUTICS, INC.
as Seller

- and -

OCM IP HEALTHCARE PORTFOLIO LP
as Purchaser

June 27, 2024

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Exhibit A Form of Bill of Sale and Assignment

Exhibit B Escrow Agreement

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Exhibit D Seller Disclosure Letter

Exhibit E Press Release

THIS ROYALTY PURCHASE AGREEMENT made as of the 27th day of June, 2024.

BETWEEN:

ESPERION THERAPEUTICS, INC.,
a corporation existing under the laws of the State of Delaware,

(hereinafter referred to as "**Seller**")

- and -

OCM IP HEALTHCARE PORTFOLIO LP,
a limited partnership formed under the laws of the Province of Ontario,

(hereinafter referred to as "**Purchaser**").

WHEREAS capitalized terms have the meanings specified in Section 1.1;

AND WHEREAS Seller is a party to the License Agreement;

AND WHEREAS Seller desires to sell, transfer, assign and convey to Purchaser, and Purchaser desires to purchase, acquire and accept from Seller, Seller's right, title and interest in and to the Purchased Receivables, upon and subject to the terms and conditions set forth in this Agreement;

NOW THEREFORE in consideration of the premises and the mutual agreements, representations and warranties set forth herein and of other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties covenant and agree as follows:

ARTICLE 1
DEFINED TERMS AND RULES OF CONSTRUCTION

1.1 Defined Terms

For the purposes of this Agreement, unless the context otherwise requires, the following terms have the respective meanings specified below, and grammatical variations of such terms have corresponding meanings:

"**Affiliate**" means:

a. with respect to any Person (including Purchaser), any other Person that, directly or indirectly, controls, is controlled by or is under common control with such Person; and
b. with respect to Purchaser, any Person in respect of which OMERS Administration Corporation, as administrator of the OMERS primary pension plan and trustee of

the pension funds thereunder, holds, directly or indirectly, more than 50% of the equity interests (economic) of such Person.

For purposes of this definition, "**control**" of a Person means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of Voting Securities, by contract or otherwise, and the terms "**controlled**" and "**controlling**" have corresponding meanings.

"**Agreement**" means this Royalty Purchase Agreement, including the Schedules and Exhibits attached hereto.

"**Applicable Law**" means, with respect to any Person, all laws, rules, regulations and orders of Governmental Authorities applicable to such Person or any of its properties or assets.

"**Applicable Withholding Certificate**" means, for United States federal withholding tax purposes, a valid, true and properly executed IRS Form W-9 (or any applicable successor form) if Purchaser is a "United States person" (as defined in Section 7701(a)(30) of the Code) or a valid, true and properly executed applicable IRS Form W-8 (or any applicable successor form) certifying that Purchaser is exempt from United States federal withholding tax with respect to all payments in respect of the Purchased Receivables.

"**Bankruptcy Laws**" means bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance, fraudulent transfer or similar laws affecting the enforcement of creditors' rights generally.

"**Bill of Sale**" means that certain Bill of Sale and Assignment to be entered into by Seller and Purchaser substantially in the form of Exhibit A.

"**Business Day**" means any day that is not a Saturday, Sunday or other day on which commercial banks in New York, New York or Toronto, Ontario are authorized or required by Applicable Law to remain closed.

"**Cap Amount**" means $517,915,506.

"**Cap Date**" means the first date on which the Total Net Amount as of such date equals or exceeds the Cap Amount. For purposes of determining the Cap Date (and calculating the Total Net Amount):

a. Purchased Receivables attributable to Royalty Payments made by the Licensee shall be deemed to have been remitted to (and received by) Purchaser in equal installments on each day of the calendar quarter in respect of which such Royalty Payment is made; and
b. all other amounts shall be deemed to have been remitted to Purchaser on the date on which such amounts were remitted to, or otherwise received by, Purchaser.

“**Closing**” has the meaning specified in Section 6.1.

“**Code**” means the U.S. Internal Revenue Code of 1986, as amended, and the regulations thereunder.

“**Confidential Information**” has the meaning specified in Section 5.8(b).

“**Credit Event**” means any insolvency, bankruptcy, receivership, assignment for the benefit of creditors, similar proceeding or financial distress of Licensee, as a result of which Licensee fails to pay, or is delayed in paying, all or a portion of the Purchased Receivables.

“**Data Room**” means the virtual data room established by Seller in connection with the transactions contemplated by this Agreement, as such data room existed as of 5:00 PM (Eastern time) on June 26, 2024.

“**Data Room Deliverable**” has the meaning specified in Section 3.9(b).

“**Disputes**” has the meaning specified in Section 3.11(c).

“**DSE Territory**” has the meaning specified in the License Agreement.

“**DTT US/Germany**” means the Convention between the Federal Republic of Germany and the United States of America for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to tax on income and capital and to certain other taxes.

“**Encumbrance**” means any security interest, mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or otherwise), charge against or interest in property or other priority or preferential arrangement in the nature of a security interest, in each case, to secure payment of a debt or performance of an obligation. An Encumbrance does not include a grant of license, sublicense or similar right that does not secure payment of a debt or performance of an obligation.

“**Escrow Account**” means the “Joint Concentration Account” as defined in the Escrow Agreement.

“**Escrow Agent**” means U.S. Bank National Association.

“**Escrow Agreement**” means that certain Escrow Agreement to be entered into by Seller, Purchaser and the Escrow Agent substantially in the form of Exhibit B.

“**Esperion Patent Rights**” has the meaning specified in the License Agreement.

“**Excluded Assets**” means, collectively:

a. the Seller IP Assets;
b. the Retained Receivables;

c. any and all rights of Seller under or in respect of (i) the License Agreement (other than the Purchased Receivables), including, for the avoidance of doubt, all Milestone Payments, or (ii) any other contract; and
d. any other assets of the Seller.

"**Excluded Liabilities and Obligations**" has the meaning specified in Section 2.3.

"**Financial Crime Laws**" mean all Applicable Law of the United States of America, the United Nations Security Council, the European Union, any Member State of the European Union, Canada, Japan and the United Kingdom relating to the prevention of bribery, corruption, money laundering, terrorist financing, facilitation of tax evasion, fraud or substantially similar or related activities.

"**Financing Statements**" means the financing statements and continuation statements with respect to such financing statements, when applicable, referred to in Section 2.1(b).

"**Fundamental Representations**" has the meaning specified in Section 7.5.

"**Governmental Authority**" means the government of the United States, any other nation or any political subdivision thereof, whether state or local, and any agency, authority (including supranational authority), commission, instrumentality, regulatory body, court, central bank or other Person exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

"**Indemnified Party**" has the meaning specified in Section 7.2(a).

"**Indemnifying Party**" has the meaning specified in Section 7.2(a).

"**Joint Collaboration Committee**" has the meaning specified in the License Agreement.

"**Joint Patent Rights**" has the meaning specified in the License Agreement.

"**Judgment**" means any judgment, order, injunction, writ or decree.

"**Knowledge**" means:
a. with respect to Seller, the actual knowledge of [***], in each case after due inquiry of employees of Seller who would reasonably be expected to have knowledge of the relevant matters based on their roles at Seller; and
b. with respect to Purchaser, the actual knowledge of [***], in each case after due inquiry of employees of Purchaser who would reasonably be expected to have knowledge of the relevant matters based on their roles at Purchaser,

in each case (clauses (a) and (b)), without any requirement to make any inquiries of third parties (including Licensee) or any Governmental Authority, or to perform any search of any public registry office or system.

"**License Agreement**" means the License and Collaboration Agreement dated as of January 2, 2019 between Licensee and Seller, as amended by the 1st Amendment to the

License and Collaboration Agreement dated as of June 18, 2020, as further amended by the 2nd Amendment to the License and Collaboration Agreement dated as of March 19, 2021 and as further amended by the 3rd Amendment to the License and Collaboration Agreement dated as of January 2, 2024, and also includes the Licensee Consent.

"**Licensed Product**" has the meaning specified in the License Agreement.

"**Licensee**" means Daiichi Sankyo Europe GmbH.

"**Licensee Consent**" means the letter agreement dated as of June 25, 2024 between Seller and Licensee pursuant to which, among other things, Licensee consents to the transactions contemplated by this Agreement and agrees to make payments on account of the Purchased Receivables to the Escrow Account.

"**Licensee Deduction**" means a right of setoff, offset, counterclaim, reduction, or deduction crediting against any of the Royalty Payments or other amounts payable by Licensee to Seller pursuant to the License Agreement.

"**Listed Patents**" means the Patents and Supplementary Protection Certificates.

"**Losses**" has the meaning specified in Section 7.1(a).

"**Material Adverse Effect**" means any one or more of:

a. a material adverse effect on the right or ability of Seller to consummate the transactions contemplated by the Transaction Documents and perform its obligations under the Transaction Documents;
b. a material adverse effect on the validity or enforceability of the Transaction Documents against Seller or the rights of Purchaser thereunder;
c. a material adverse effect on the rights of Seller under the License Agreement related to or affecting, directly or indirectly, the Royalty Payment; or
d. a material adverse effect on the value of the Purchased Receivables (including the timing, amount or duration thereof).

"**Milestone Payments**" means all milestone payments payable to Seller by Licensee pursuant to Sections 9.2 and 9.3 of the License Agreement.

"**Modification**" has the meaning specified in Section 5.4(a)(iii).

"**Net Sales**" has the meaning specified in the License Agreement.

"**Parties**" means, collectively, Seller and Purchaser, and "**Party**" means either of them.

"**Patents**" means the patent and patent applications listed in Part A of Schedule 3.11.

"**Payoff Letter**" means the letter agreement dated as of June 27, 2024 between Seller, Eiger III SA LLC, and Interlaken ICAV, for and on behalf of Eiger Partners II Fund.

"**Permitted Encumbrances**" means any (i) Encumbrances for taxes not yet due or which are being contested in good faith by appropriate proceedings for which adequate reserves determined in accordance with generally accepted accounting principles have been established; (ii) Encumbrances created, permitted or required by this Agreement in favor of the Purchaser; (iii) any other Encumbrances arising by the operation of Applicable Law; and (iv) subject to Section 5.14, those Encumbrances granted by Seller pursuant to the RIPA and the RIPA Security Agreement that will be terminated, released and discharged pursuant to the Payoff Letter.

"**Person**" means any natural person, firm, corporation, limited liability company, partnership, joint venture, association, joint-stock company, trust, unincorporated organization, Governmental Authority or any other legal entity.

"**Purchase Price**" has the meaning specified in Section 2.2.

"**Purchased Proceeds**" means all amounts received by Seller from any Person as a result of any settlement or resolution of any actions, suits, proceedings, claims or disputes exclusively related to, and solely to the extent involving, the Receivables (other than such amounts that relate exclusively to the Retained Receivables or that are otherwise used to reimburse or indemnify Seller for costs, expenses, legal fees or other fees relating to such actions, suits, proceedings, claims or disputes).

"**Purchased Receivables**" means, collectively, during the Purchased Receivables Period:

a. 100% of the Receivables;
b. the Purchased Proceeds and other amounts that are paid or become payable pursuant to the License Agreement in lieu of any of the Receivables; and
c. the interest (if any) that is payable in respect of any of the payments referred to in clause (a) or (b) above pursuant to Section 9.8 of the License Agreement.

"**Purchased Receivables Period**" means, with respect to any country, the period beginning on (and including) April 1, 2024 and ending on (and including) the Cap Date.

"**Purchaser GP**" means OCM IP Healthcare Portfolio G.P. Inc., in its capacity as general partner of Purchaser.

"**Purchaser Indemnified Party**" has the meaning specified in Section 7.1(a).

"**Qualified Action**" has the meaning specified in Section 8.3(e).

"**Receivables**" means the Royalty Payments in respect of Net Sales of any Licensed Product that occurred during the Purchased Receivables Period.

"Relevant Withholding Tax Decision" has the meaning specified in Section 5.12(e)(v).

"Relevant Withholding Tax Matter" has the meaning specified in Section 5.12(e)(vi).

"**Representatives**" means:

a. with respect to Purchaser, (i) Purchaser GP, (ii) Purchaser's limited and general partners, and (iii) Purchaser's and Purchaser GP's directors, officers, employees, attorneys, consultants and advisors; and
b. with respect to Seller, its directors, officers, employees, attorneys, consultants and advisors.

"**Repurchase Consideration**" has the meaning specified in the Payoff Letter.

"**Retained Proceeds**" means all amounts received by Seller from any Person as a result of any settlement or resolution of any actions, suits, proceedings, claims or disputes exclusively related to, and solely to the extent involving, the Retained Receivables (other than such amounts that relate exclusively to the Purchased Receivables or that are otherwise used to reimburse or indemnify Purchaser for costs, expenses, legal fees or other fees relating to such actions, suits, proceedings, claims or disputes).

"**Retained Receivables**" means, collectively:

a. all of the Royalty Payments that do not constitute Purchased Receivables, including Royalty Payments in respect of Net Sales of Licensed Products that occurred prior to the commencement of, or that occur following, the Purchased Receivables Period;
b. all Milestone Payments;
c. Retained Proceeds and other amounts that are paid or become payable pursuant to the License Agreement in lieu of any of the payments referred to in clause (a) or (b) above; and
d. the interest (if any) that is payable in respect of any of the payments referred to in clause (a), (b), or (c) above pursuant to Section 9.8 of the License Agreement.

"**RIPA**" means the Revenue Interest Purchase Agreement dated as of June 26, 2019 between Seller, the purchasers thereunder and Eiger III SA LLC, as collateral agent and administrative agent for the such purchasers, as amended from time to time.

"**RIPA Security Agreement**" means the Security Agreement dated June 28, 2019 entered into by Seller in favor of Eiger III SA LLC, as collateral agent, as amended.

"**Royalty Payment**" means the royalties on Net Sales of all Licensed Products in the DSE Territory during the Royalty Term that are payable by Licensee to Seller pursuant to Section 9.4 of the License Agreement, including all royalties that are payable following the exercise by Seller of its rights under Section 9.10 of the License Agreement.

"**Royalty Reports**" means the reports required to be delivered by Licensee pursuant to Section 9.5 of the License Agreement.

"**Royalty Term**" has the meaning specified in the License Agreement.

"**Sanctions**" means any economic or trade sanctions or restrictive measures enacted, administered, imposed or enforced by the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC), the U.S. Department of State, the United Nations Security Council, the Parliament of Canada, the European Union, and/or any present or future member state thereof and/or the United Kingdom's His Majesty's Treasury.

"**Seller Account**" means the bank account of Seller listed in Exhibit C or such other bank account as Seller specifies in a written notice to Purchaser from time to time.

"**Seller Disclosure Letter**" has the meaning specified in the preamble to Article 3.

"**Seller Indemnified Party**" has the meaning specified in Section 7.1(b).

"**Seller IP Assets**" means, collectively:

a. the Listed Patents;
b. any rights to research, develop, commercialize, make, have made, use, sell, have sold, offer to sell, import or otherwise exploit the Licensed Product; and
c. any other intellectual property or other proprietary rights of any kind that are owned or held by, or licensed to, Seller.

"**Seller Monetization Transaction**" means, with respect to the Retained Receivables, (i) any sale, assignment or other transfer of all or a portion of the Seller's right, title and interest in, to and under such Retained Receivables, or (ii) any royalty financing or other monetization transaction, in each case secured by an Encumbrance on, or providing for payments from and based on the cash flows generated by, the Seller's right, title and interest in such Retained Receivables.

"**Specified Infringement**" has the meaning specified in Section 5.11(a).

"**Supplementary Protection Certificates**" means the supplementary protection certificates and applications for supplementary protection certificates listed in Part B of Schedule 3.11.

"**Technology Transfer Agreement**" means the Technology Transfer Agreement dated as of January 2, 2024 between Licensee, Daiichi Sankyo Company, Limited and Seller.

"**Term**" has the meaning specified in Section 8.1.

"**Third-Party Claim**" has the meaning specified in Section 7.2(a).

"**Total Net Amount**" means, as of any date, the excess of:

a. the aggregate amount of all payments remitted to, or otherwise received by, or deemed to have been received by, Purchaser on or prior to such date pursuant to the Transaction Documents (and, for such purpose, any tax withholding on payments of Purchased Receivables shall be deemed to have been received by Purchaser for purposes of calculating the Total Net Amount, provided that any subsequent Withholding Tax Refunds received by Purchaser shall not thereafter be counted again for purpose of calculating the Total Net Amount), including:

i. all payments in respect of Purchased Receivables pursuant to the Escrow Agreement, Section 5.1 and Section 5.3 (or otherwise);
ii. the aggregate amount of proceeds that are remitted to, or otherwise received by, Purchaser pursuant to Section 5.5 and Section 5.11(d) (or otherwise);
iii. the aggregate amount of consideration remitted to, or otherwise received by, Purchaser by virtue of its consent rights hereunder; and
iv. the aggregate amount of all payments made by Seller pursuant to Section 7.1(a) (except, in all cases of this clause (iv), to the extent such payments are paid to make Purchaser or any other Purchaser Indemnified Party whole with respect to any out-of-pocket Losses incurred by Purchaser or such other Purchaser Indemnified Party),

over:

a. the sum of:
   i. the aggregate amounts actually paid by Purchaser on or prior to such date as reimbursements for overpayments of Receivables in the case of a Purchased Receivables Overpayment or pursuant to Section 5.1(f) (but only to the extent that such overpayments have been included in the calculation of the Total Net Amount as of such date under clause (a) of this definition); plus
   ii. any amounts to which Section 5.1(b) applies (but only to the extent that such amounts have been included in the calculation of the Total Net Amount as of such date under clause (a) of this definition).

"**Transaction Documents**" means this Agreement, the Bill of Sale, and the Escrow Agreement.

"**UCC**" means the Uniform Commercial Code as in effect from time to time in the State of Delaware.

"**Voting Securities**" means, with respect to any Person, securities of any class or kind ordinarily having the power to vote for the election of directors, managers or other voting members of the governing body of such Person.

"**Withholding Tax Refund**" means a refund, credit or other repayment of any German tax that is withheld or otherwise deducted from payments of the Purchased Receivables, whether received in cash, by way of set-off, by way of a reduction of a tax obligation or otherwise, including any interest paid or credited with respect thereto.

1.2 Rules of Construction

Except as may be otherwise specifically provided in this Agreement and unless the context otherwise requires, in this Agreement:

a. the terms "Agreement", "this Agreement", "the Agreement", "hereto", "hereof", "herein", "hereby", "hereunder" and similar expressions

refer to this Agreement in its entirety and not to any particular provision hereof;

b. references to an “Article”, “Section”, or “Exhibit” followed by a number or letter refer to the specified Article or Section of or Exhibit to this Agreement;

c. references to a “Schedule” followed by a number refer to the specified Schedule to the Seller Disclosure Letter;

d. the table of contents, the division of this Agreement into Articles and Sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement;

e. words importing the singular number only shall include the plural and *vice versa* and words importing the use of any gender shall include all genders;

f. the words “either” and “or” are not exclusive, and the word “including” is deemed to mean “including without limitation”;

g. the word “extent” in the phrase “to the extent” means the degree to which a subject or other thing extends, and such phrase does not mean simply “if;”

h. any reference to any agreement (including this Agreement) means such agreement as amended, modified, replaced or supplemented from time to time;

i. all dollar amounts (“**$**”) refer to U.S. dollars;

j. any reference to any statute includes all regulations made under or in connection with that statute, as amended, modified, replaced or supplemented from time to time, and any reference to a specific provision of any statute or regulation also refers to any successor provision thereto of like or similar effect;

k. any time period within which a payment is to be made or any other action is to be taken hereunder shall be calculated excluding the day on which the period commences and including the day on which the period ends;

l. whenever any payment is required to be made, action is required to be taken or period of time is to expire on a day other than a Business Day, such payment shall be made, action shall be taken or period shall expire on the next following Business Day; and

m. references in this Agreement to any term defined in the License Agreement and to any Section or other provision of the License Agreement refer to such term, Section or other provision of the License Agreement as in existence on the date of this Agreement, unless such term, Section or other provision of the License Agreement is amended, modified, supplemented or waived from time to time in compliance with Section 5.4(a)(iii) of this Agreement,

in which case such references in this Agreement shall be to such term, Section or other provision of the License Agreement as so amended, modified, supplemented or waived from time to time.

ARTICLE 2
PURCHASE AND SALE OF THE PURCHASED RECEIVABLES

2.1 Purchase and Sale

a. Subject to the terms and conditions of this Agreement, at the Closing, Seller shall sell, transfer, assign and convey to Purchaser, and Purchaser shall purchase, acquire and accept from Seller, Seller's right, title and interest in and to the Purchased Receivables, free and clear of any and all Encumbrances other than those Encumbrances created in favor of Purchaser by the Transaction Documents. For the avoidance of doubt, the Purchaser is not entitled to a Total Net Amount in excess of the Cap Amount under this Agreement.

b. It is the intention of the Parties that the sale, transfer, assignment and conveyance contemplated by this Agreement shall constitute a sale of the Purchased Receivables from Seller to Purchaser and not a financing transaction, borrowing or loan; and accordingly, Seller will treat the sale, transfer, assignment and conveyance of the Purchased Receivables as sales of "accounts" in accordance with the UCC and Seller does hereby authorize Purchaser, from and after the date hereof, to file or to cause to be filed such financing statements (and continuation statements with respect to such financing statements when applicable) naming Seller as the seller and Purchaser as the purchaser of the Purchased Receivables as may be necessary to perfect such sale. If, notwithstanding the intent of the Parties in this regard, the sale, transfer, assignment and conveyance contemplated hereby is held not to be a sale, this Agreement shall constitute a security agreement and Seller does hereby grant security interests in and to the Purchased Receivables and any "proceeds" thereof (as such term is defined in the UCC), for the benefit of Purchaser to secure payment to Purchaser of amounts equal to the Purchased Receivables as they become due and payable under the License Agreement, and Seller does hereby authorize Purchaser to file or to cause to be filed such financing statements (and continuation statements with respect to such financing statements when applicable) as may be necessary to perfect such security interests.

2.2 Purchase Price

a. In full consideration for the sale, transfer, assignment and conveyance of the Purchased Receivables, and subject to the terms and conditions set forth herein, Purchaser shall pay (or cause to be paid) to Seller a purchase price of $304,656,180 (the "**Purchase Price**") at the Closing.

b. Seller hereby directs Purchaser to pay the Purchase Price to the account specified in Schedule A of the Payoff Letter in partial satisfaction of Seller's obligation to pay the Repurchase Consideration thereunder.

2.3 No Assumed Obligations; No Assigned Rights

a. Notwithstanding any provision in this Agreement, any other Transaction Document or any other writing to the contrary, Purchaser is purchasing, acquiring and accepting only the Purchased Receivables and is not assuming any liability or obligation of Seller or any of Seller's Affiliates of whatever nature, whether presently in existence or arising or asserted hereafter, under the License Agreement, the RIPA, any other contract, the Permitted Encumbrances or otherwise (the "**Excluded Liabilities and Obligations**"). As between Seller and Purchaser, Seller shall remain exclusively responsible for the satisfaction and performance of the Excluded Liabilities and Obligations.

b. Notwithstanding any provision in this Agreement, any other Transaction Document or any other writing to the contrary, Seller is selling, transferring, assigning and conveying only the Purchased Receivables and, except as expressly set forth in this Agreement, is not assigning any rights or powers of Seller or any of Seller's Affiliates of whatever nature, whether presently in existence or arising or asserted hereafter, under the License Agreement, any other contract, or otherwise.

2.4 No Purchase or Sale of Excluded Assets

Notwithstanding anything to the contrary contained in this Agreement, any other Transaction Document or any other writing, Seller shall retain all its right, title and interest in and to, and there shall be excluded from the sale, transfer, assignment and conveyance to Purchaser under this Agreement, all Excluded Assets.

ARTICLE 3
REPRESENTATIONS OF SELLER

Except as set forth on Exhibit D (the "**Seller Disclosure Letter**"), Seller hereby represents to Purchaser as of the date hereof as follows and acknowledges that Purchaser is relying on these representations and warranties in connection with the transactions contemplated by this Agreement:

3.1 Organization

Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware.

3.2 Authorization and Enforceability

Seller has all powers and authority to execute and deliver, and perform its obligations under, the Transaction Documents and to consummate the transactions

contemplated hereby and thereby. The execution and delivery of each of the Transaction Documents and the performance by Seller of its obligations hereunder and thereunder have been duly authorized by Seller. Each of the Transaction Documents constitutes the legal, valid and binding obligation of Seller, enforceable against Seller in accordance with its respective terms, subject to applicable Bankruptcy Laws, general equitable principles and principles of public policy.

3.3 No Conflicts

None of the execution and delivery by Seller of any of the Transaction Documents, the performance by Seller of the obligations contemplated hereby or thereby or the consummation of the transactions contemplated hereby or thereby will conflict with or result in a breach or default under (a) any Applicable Law or any Judgment of any Governmental Authority, to which Seller may be subject or bound, (b) any term or provision of the License Agreement, the Technology Transfer Agreement or the RIPA, or (c) any term or provision of any other contract to which Seller is a party, except, in each case (clause (a), (b) or (c)), for any such conflict, breach or default that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

3.4 Ownership of Purchased Receivables

Seller is the sole owner of, has good title to, and holds all right and interest in and to the Purchased Receivables, free and clear of all Encumbrances other than Permitted Encumbrances. Upon payment of the Purchase Price, Purchaser will be the sole owner of, will have good title to, and will hold all right and interest in and to the Purchased Receivables, free and clear of all Encumbrances other than those Encumbrances created in favor of Purchaser under the Transaction Documents. Seller has full right to sell, transfer, assign and convey the Purchased Receivables to Purchaser. There are no contracts, agreements or understandings (whether written or oral) to which Seller is a party and which are in effect as of the date hereof pursuant to which any third party has any right, entitlement or privilege to or in respect of the Purchased Receivables, in whole or in part, other than the Transaction Documents.

3.5 Governmental and Third-Party Authorizations

a. The execution and delivery by Seller of the Transaction Documents, the performance by Seller of its obligations hereunder and thereunder and the consummation by Seller of any of the transactions contemplated hereunder and thereunder (including the sale, transfer, assignment and conveyance of the Purchased Receivables to Purchaser) do not require any consent, approval, license, order, authorization or declaration from, notice to, action or registration by or filing with any Governmental Authority having jurisdiction over Seller or any other Person, except for those that have been previously obtained or made and the Financing Statements.
b. Schedule 3.5(b) sets forth a true, correct and complete copy of the Payoff Letter. The Payoff Letter is (i) in full force and effect, (ii) the legal, valid and binding

obligation of Seller and, to the Knowledge of Seller, the other parties thereto, and (iii) enforceable against Seller and, to the Knowledge of Seller, the other parties thereto, in accordance with its terms, subject in each case, as to enforcement of remedies, to Bankruptcy Laws, general equitable principles and principles of public policy.

3.6 No Litigation

There is no pending or, to the Seller's Knowledge, threatened action, suit, proceeding or investigation before any Governmental Authority, court or arbitrator against Seller that, individually or in the aggregate, (a) would reasonably be expected to have a Material Adverse Effect or (b) challenges or seeks to prevent or delay the consummation of any of the transactions contemplated by the Transaction Documents.

3.7 No Brokers' Fees

Seller is solely responsible for any commission or broker's fee owing in connection with the transactions contemplated by this Agreement that is or becomes owing to J. Wood Capital Advisors, the full amount of which is included in the Excluded Liabilities and Obligations. Seller has not taken any action that would entitle any other Person to any commission or broker's fee in connection with the transactions contemplated by this Agreement.

3.8 Compliance with Laws

Seller is not in violation of and, to the Knowledge of Seller, is not under investigation by any Governmental Authority with respect to and has not been threatened to be charged with any violation of, any Applicable Law or any Judgment of any Governmental Authority, in each case that would reasonably be expected to have a Material Adverse Effect. Without limiting the generality of the foregoing, (a) Seller is not, and has not been in the three (3) years prior to the date of this Agreement, in violation of any Sanctions or Financial Crime Laws, and (b) Seller is not conducting, and has not conducted in the three (3) years prior to the date of this Agreement, any business dealings or activities in violation of Sanctions or in any other manner that would expose Seller to the risk of adverse measures pursuant to Sanctions.

3.9 License Agreement

a. Schedule 3.9(a) sets forth true, correct and complete copies of:
    i. the License Agreement; and
    ii. the Technology Transfer Agreement.
b. True, correct and complete copies of each of the following documents have been made available in the Data Room:
    i. all Royalty Reports delivered, as of the date of this Agreement, to Seller by Licensee pursuant to the License Agreement; and

ii. all material written notices delivered, as of the date of this Agreement, to Seller by Licensee, or to Licensee by Seller, in each case since April 1, 2020 pursuant to the License Agreement in relation to the Royalty Payments and the Milestone Payments that would, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, except, in each case, with respect to such notices relating to disputes that have been fully resolved prior to the date hereof and have, as part of that resolution, resulted in an amendment to the License Agreement.

A complete copy of the Data Room will be made available to Purchaser at, or promptly following, the Closing, by (A) delivery of an electronic copy of the Data Room by Seller to Purchaser, or (B) making all of the contents of the Data Room available for downloading by Purchaser (in either case, the "**Data Room Deliverable**").

c. Each of the License Agreement and the Technology Transfer Agreement is (i) in full force and effect, (ii) the legal, valid and binding obligation of Seller and, to the Knowledge of Seller, Licensee, and (iii) enforceable against Seller and, to the Knowledge of Seller, Licensee, in accordance with its terms, subject in each case, as to enforcement of remedies, to Bankruptcy Laws, general equitable principles and principles of public policy.

d. Seller is not in breach or violation of, or in default under, the License Agreement or the Technology Transfer Agreement in any material respect, and, to the Knowledge of Seller, Licensee is not in breach or violation of, or in default under, the License Agreement or the Technology Transfer Agreement in any material respect, in each case, in such a manner that would reasonably be expected to adversely affect the value of the Purchased Receivables (including the timing, amount or duration thereof).

e. Each of Nilemdo® (bempedoic acid) and Nustendi® (bempedoic acid and ezetimibe) is a Licensed Product.

f. Seller has not waived its right to receive payment in respect of any portion of the Royalty Payments, in whole or in part, or released Licensee, in whole or in part, from its obligation to pay the Royalty Payments in accordance with the License Agreement.

g. To the Knowledge of Seller, no event has occurred that would give (i) any party to the License Agreement or the Technology Transfer Agreement the right to terminate the License Agreement (except with respect to Section 13.2.1 of the License Agreement) or the Technology Transfer Agreement (except with respect to Section 5.5 of the Technology Transfer Agreement), as applicable, in whole or in part, or (ii) Licensee the right to cease paying the Royalty Payments under the License Agreement (except with respect to Section 13.2.1 of the License Agreement) in accordance with the terms thereof. Seller has not received any written notice from Licensee challenging the validity or enforceability of the License Agreement or the obligation to pay the Royalty Payments under the License Agreement in accordance with the terms thereof. Seller has not

received any notice of termination of the License Agreement by Licensee pursuant to Section 13.2.1 of the License Agreement. Seller has not agreed with Licensee to terminate the License Agreement in whole or in part.

h. Seller has not consented to an assignment by Licensee of the License Agreement in whole or in part, and Seller does not have Knowledge of any assignment by Licensee of the License Agreement.

i. Other than the License Agreement, there are no contracts (whether written or oral) between Seller and Licensee that adversely affect the value of the Purchased Receivables (including the timing, amount or duration thereof).

j. Seller has received from Licensee all of the Royalty Payments and the Milestone Payments that Seller is entitled to receive pursuant to the License Agreement based on the information provided in the Royalty Reports that Seller has received from Licensee. To the Knowledge of Seller, Seller has not received any payments from Licensee on account of the Royalty Payments that would otherwise have comprised part of the Purchased Receivables.

k. Licensee has not taken, and Seller has not received any written notice from Licensee expressing an intention by Licensee to take, any Licensee Deduction from any Royalty Payments or other amounts payable by Licensee to Seller pursuant to the License Agreement because of any amount owed or claimed owed from Seller or an Affiliate of Seller to Licensee, and to the Knowledge of Seller, no event or condition exists that would permit Licensee to do so for such reason.

l. To the Knowledge of Seller, (i) Licensee is not, and has not been in the three (3) years prior to the date of this Agreement, in violation of any Sanctions or Financial Crime Laws, and (ii) Licensee is not conducting, and has not conducted in the three (3) years prior to the date of this Agreement, any business dealings or activities in violation of Sanctions or in any other manner that would expose Seller to the risk of adverse measures pursuant to Sanctions.

m. To the Knowledge of Seller, Licensee has not granted any sublicense pursuant to Section 8.1.2 of the License Agreement.

n. Seller has not exercised its audit right under Section 9.6 of the License Agreement.

o. Seller has not delivered to, or received from, Licensee a notice of dispute arising out of or in connection with the License Agreement, other than any dispute that has been fully resolved prior to the date hereof.

p. Seller has not made any claim for indemnification by Licensee pursuant to Section 11.1 of the License Agreement, and Licensee has not made any claim for indemnification by Seller pursuant to Section 11.2 of the License Agreement.

q. Schedule 3.9(q) specifies the date of the first quarter during which the First Commercial Sale (as defined in the License Agreement) for each Licensed Product in the DSE Territory occurred.

3.10 Solvency

Upon consummation of the transactions contemplated by this Agreement:

a. the fair saleable value of the assets of Seller will be greater than the sum of its existing debts, liabilities and other obligations, including known contingent liabilities;
b. the present fair saleable value of the assets of Seller will be greater than the amount that would be required to pay its probable liabilities on its existing debts, liabilities and other obligations, including known contingent liabilities, as they become absolute and matured;
c. Seller will be able to pay its existing debts, liabilities and other obligations, including known contingent obligations, as they come due in the ordinary course; and
d. Seller will not be rendered insolvent under applicable Bankruptcy Laws.

3.11 Intellectual Property

a. Schedule 3.11 specifies:
    i. with respect to each Listed Patent that is an issued patent:
        A. the jurisdiction in which such Listed Patent has been issued as a patent; and
        B. the patent number of such Listed Patent;
    ii. with respect to each Listed Patent that is a pending patent application:
        A. the jurisdiction in which such Listed Patent is pending; and
        B. the patent application number of such Listed Patent;
    iii. with respect to each Listed Patent that is a Supplementary Protection Certificate:
        A. the jurisdiction in which such Listed Patent has been granted; and
        B. the Supplementary Protection Certificate number of such Listed Patent.
b. The Listed Patents include all Esperion Patent Rights under the License Agreement. There are no Joint Patent Rights.
c. There are no pending or, to the Knowledge of Seller, threatened *inter partes* reviews, post-grant reviews, injunctions, claims, suits, actions,

citations, summons, subpoenas, complaints, arbitrations, mediations, demands, decrees, disputes, disagreements, litigations, interferences, re-examinations, reissue applications/proceedings, oppositions, hearings, inquiries, investigations, invalidation actions or like proceedings, in each case other than patent prosecution (including third party observations) in the ordinary course (collectively, "**Disputes**") involving any of the Listed Patents.

d. The Listed Patents are not subject to any outstanding Judgment, ruling, settlement or other disposition of a Dispute.

e. Seller is the owner of the entire right, title and interest in each of the Listed Patents, free and clear of any Encumbrances (other than Permitted Encumbrances).

f. Seller and, to Seller's Knowledge, its Affiliates, have not received any written notice that any Person other than Seller has a claim to ownership of any of the Listed Patents.

g. Seller has not and, to the Knowledge of Seller, its Affiliates and Licensee have not, received any written notice from any Person, and otherwise has no Knowledge, that there is a Person who is or claims to be an inventor under any of the Listed Patents who is not a named inventor thereof.

h. To the Knowledge of Seller, each of the issued Listed Patents is valid and enforceable. Seller has not, and, to the Knowledge of Seller, its Affiliates and Licensee have not, received any written notice or written legal opinion that alleges that any of the issued Listed Patents is invalid or unenforceable.

i. None of the issued Listed Patents have lapsed, expired or otherwise been terminated other than pursuant to the expiration of their natural terms. Seller has not and, to the Knowledge of Seller, its Affiliates and Licensee have not, received any written notice relating to the lapse, expiration or other termination of any of the Listed Patents other than pursuant to the expiration of their natural terms.

j. Seller has not and, to the Knowledge of Seller, its Affiliates and Licensee have not, received any written notice from any Person, and otherwise has no Knowledge, of any claim by any Person asserting that the discovery, development, manufacture, marketing, importation, distribution, sale, offer for sale or use of a Licensed Product infringes any Person's patents or other intellectual property rights.

k. To the Knowledge of Seller, there is no Person who is engaging in or has engaged in any activity that infringes upon any of the Listed Patents.

l. Seller has and, to the Knowledge of Seller, its Affiliates and Licensee have, used commercially reasonable efforts to prosecute and maintain the Listed Patents, including timely filing and maintaining Supplementary Protection Certificates or like counterparts with respect to the Listed Patents where available and commercially reasonable to pursue and have

paid, or caused to be paid, all required maintenance fees and like payments with respect to the issued Listed Patents.

3.12 Regulatory Approvals and Exclusivity

To the Knowledge of Seller, Licensee is the regulatory authorization holder of the Licensed Product in each of Belgium, Germany, France, United Kingdom, Italy, Spain, Austria, Luxembourg, Switzerland, Netherlands, Portugal, Slovakia, Czech, Ireland, Croatia and Bulgaria. To the Knowledge of Seller, Licensee has complied with its obligations to obtain and maintain all regulatory approvals, including marketing authorizations approved by the European Medicines Agency under the centralized European procedure and by the Medicines and Healthcare products Regulatory Authority, for the Licensed Product as required under the License Agreement.

3.13 UCC Representations and Warranties

a. Seller's exact legal name is, and for the preceding ten (10) years has been, "Esperion Therapeutics, Inc."
b. Seller is, and for the preceding five (5) years has been, a corporation existing under the laws of the State of Delaware, with its principal place of business located at 3891 Ranchero Drive, Suite 150, Ann Arbor, MI 48108.

3.14 Taxes

a. No deduction or withholding for or on account of any tax has been made from any Royalty Payment or Milestone Payment by Licensee to Seller under the License Agreement, and Seller has not received any written notice from Licensee that any such deduction or withholding will be required or requested in the future.
b. Seller has obtained the required exemption certificates to execute and receive payments (including, without limitation, payments of the Purchased Receivables) without withholding tax, including a German Exemption Certificate.
c. To the Knowledge of Seller, Seller is entitled under the DTT US/Germany and Section 50d paragraph 3 German Income Tax Act (Einkommensteuergesetz), to the benefits of the DTT US/Germany pursuant to Articles 12, 28 of the DTT US/Germany with respect to Royalty Payments (including, for greater certainty, the Purchased Receivables) or Milestone Payments.
d. Seller has its registered office and place of effective management in the US, and does not have any permanent establishments for income tax or value added tax (or similar tax) purposes outside such jurisdiction.
e. Seller has filed (or caused to be filed) all material tax returns and material tax reports required to be filed under Applicable Law and has paid all material taxes required to be paid, except for any such taxes that are being contested in good faith by appropriate proceedings and for which

adequate reserves have been provided in accordance with generally accepted accounting principles applicable to Seller, as in effect from time to time.

3.15 No Implied Representations and Warranties

A. EXCEPT AS EXPRESSLY SET FORTH IN THIS Article 3, SELLER MAKES NO REPRESENTATION OR WARRANTY, EXPRESSED OR IMPLIED, AT LAW OR IN EQUITY, INCLUDING WITH RESPECT TO MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, AND ANY SUCH REPRESENTATIONS OR WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED. PURCHASER ACKNOWLEDGES THAT, (A) EXCEPT AS SPECIFICALLY PROVIDED IN THIS Article 3, SELLER HAS ASSUMED NO RESPONSIBILITIES OF ANY KIND WITH RESPECT TO ANY ACT OR OMISSION OF LICENSEE WITH RESPECT TO THE DESIGN, DEVELOPMENT, MANUFACTURE, USE, SALE, DISTRIBUTION, MARKETING OR OTHER ACTIVITIES OF LICENSEE WITH RESPECT TO ANY OF THE LICENSED PRODUCTS, AND (B) PURCHASER ASSUMES ALL RISKS ARISING FROM OR IN CONNECTION WITH ANY CREDIT EVENT TO THE EXTENT SUCH CREDIT EVENT AFFECTS THE VALUE OF THE PURCHASED RECEIVABLES (INCLUDING THE TIMING, AMOUNT OR DURATION THEREOF), PROVIDED, HOWEVER, THAT SUCH ASSUMPTION OF RISK SHALL NOT RELIEVE SELLER FROM ANY OF ITS OBLIGATIONS UNDER SECTION 5.4 OR SECTION 5.5, and (c) Purchaser has not relied and is not relying on any statement, representation or warranty, oral or written, express or implied, made by Seller or any of its Affiliates or Representatives, except as expressly set forth IN THIS Article 3.

ARTICLE 4
REPRESENTATIONS AND WARRANTIES OF PURCHASER

Purchaser hereby represents and warrants to Seller as of the date hereof as follows and acknowledges that Seller is relying on these representations and warranties in connection with the transactions contemplated by this Agreement:

4.1 Organization

Purchaser is a limited partnership formed and existing under the laws of the Province of Ontario. Purchaser GP is a corporation duly organized, validly existing and in good standing under the laws of the Province of Ontario and is the sole general partner of Purchaser.

4.2 Authorization and Enforceability

Purchaser GP, in its capacity as general partner of Purchaser, has all powers and authority to execute and deliver, and to perform Purchaser’s obligations under, the Transaction Documents and to consummate the transactions contemplated hereby and thereby. The execution and delivery of each of the Transaction Documents by Purchaser GP, in its capacity as general partner of Purchaser, and the performance

by Purchaser of its obligations hereunder and thereunder have been duly authorized by Purchaser GP, in its capacity as general partner of Purchaser. Each of the Transaction Documents constitutes the legal, valid and binding obligation of Purchaser, enforceable against Purchaser in accordance with its respective terms, subject to applicable Bankruptcy Laws, general equitable principles and principles of public policy.

4.3 No Conflicts

None of the execution and delivery by Purchaser GP, in its capacity as general partner of Purchaser, of any of the Transaction Documents, the performance by Purchaser of the obligations contemplated hereby or thereby or the consummation of the transactions contemplated hereby or thereby will conflict with or result in a breach or default under, (a) any Applicable Law or any Judgment of any Governmental Authority, to which Purchaser or Purchaser GP, in its capacity as general partner of Purchaser, may be subject or bound, (b) any term or provision of any contract to which Purchaser or Purchaser GP, in its capacity as general partner of Purchaser, is a party or (c) any term or provision of any of the organizational documents of Purchaser or Purchaser GP.

4.4 Governmental and Third Party Authorizations

The execution and delivery of the Transaction Documents by Purchaser GP, in its capacity as general partner of Purchaser, the performance by Purchaser of its obligations hereunder and thereunder and the consummation by Purchaser of any of the transactions contemplated hereunder and thereunder do not require any consent, approval, license, order, authorization or declaration from, notice to, action or registration by or filing with any Governmental Authority having jurisdiction over Purchaser or Purchaser GP, except for those that have been previously obtained or made.

4.5 No Litigation

There is no action, suit, arbitration proceeding, claim, demand, citation, summons, subpoena, investigation or other proceeding (whether civil, criminal, administrative, regulatory, investigative or informal) before any Governmental Authority, court or arbitrator pending or, to the Knowledge of Purchaser, threatened, against Purchaser or Purchaser GP, that, in each case, challenges or seeks to prevent, enjoin, alter, delay, make illegal or otherwise interfere with the consummation of any of the transactions contemplated by any of the Transaction Documents.

4.6 Financing

Purchaser has sufficient cash on hand to pay the Purchase Price. Purchaser acknowledges that its obligations under this Agreement are not contingent on obtaining financing.

4.7 No Brokers' Fees

Purchaser has not taken any action that would entitle any Person to any commission or broker's fee in connection with the transactions contemplated by this Agreement.

ARTICLE 5
COVENANTS

The Parties covenant and agree as follows, in each case during the Term:

5.1 Payments on Account of the Purchased Receivables

a. Seller shall not amend, replace or revoke the Licensee Consent prior to the end of the Term without the prior written consent of Purchaser.

b. If Purchaser receives any payment on account of the Retained Receivables or any other Excluded Asset, Purchaser shall:

   i. hold such payment in trust for the benefit of Seller;

   ii. have no right, title or interest whatsoever in such payment; and

   iii. promptly, and in any event no later than ten (10) Business Days following the receipt by Purchaser of such payment, remit the full amount thereof that comprises the Retained Receivables or such other Excluded Asset to the Seller Account by wire transfer of immediately available funds, without set-off, withholding or deduction of any kind.

c. If Seller receives any payment on account of the Purchased Receivables (other than the Purchase Price), Seller shall:

   i. hold such payment in trust for the benefit of Purchaser;

   ii. have no right, title or interest whatsoever in such payment; and

   iii. promptly, and in any event no later than ten (10) Business Days following the receipt by Seller of such payment, remit the full amount thereof that comprises the Purchased Receivables to the Escrow Account by wire transfer of immediately available funds, without set-off, withholding or deduction of any kind, following which Seller shall, jointly with Purchaser in accordance with the Escrow Agreement, direct the Escrow Agent to immediately distribute such funds to Purchaser in accordance with the Escrow Agreement.

e. Without limiting the generality of Section 2.3, if Licensee makes any Licensee Deduction against any Receivables that are Purchased Receivables for (i) any amount owing from Seller to Licensee in respect of any right of Licensee against Seller arising from or in connection with any contract (other than an obligation owing from Seller to Licensee under the License Agreement due to any overpayment of Purchased Receivables by Licensee) or any Excluded Liability and Obligation, or (ii) any amount on

account of any overpayment of Royalty Payments by Licensee to Seller in respect of Net Sales of any Licensed Product in the DSE Territory that occurred during the period prior to the Purchased Receivables Period or any overpayment on account of any Milestone Payment (the amounts referred to in clause (i) and (ii), the "**Seller Obligation**"), then Seller shall promptly (and in any event no later than ten (10) Business Days) following the date on which Seller becomes aware of such Licensee Deduction, notify Purchaser, in writing, thereof, remit to the Escrow Account funds in an amount equal to such Licensee Deduction (not to exceed the amount of such Seller Obligation), without set off, withholding or deduction of any kind, and thereafter jointly with Purchaser in accordance with the Escrow Agreement direct the Escrow Agent to immediately distribute such funds to Purchaser. If Seller disputes with Licensee such Seller Obligation with respect to clause (i) above and such dispute is resolved in Seller's favor, then to the extent that Seller previously remitted such amounts to the Escrow Account for the benefit of Purchaser in accordance with the preceding sentence, Seller shall be entitled to receive from Licensee any payment made by Licensee on account of such Seller Obligation and, to the extent that any such payment is deposited by Licensee in the Escrow Account, Purchaser shall jointly with Seller in accordance with the Escrow Agreement direct the Escrow Agent to immediately distribute such funds to Seller.

f. If, at any time Licensee makes a Licensee Deduction against the Retained Receivables, any other Excluded Asset, or any other payments that Licensee owes to Seller in connection with any matter other than the Purchased Receivables in respect of all or a portion of any overpayment of the Purchased Receivables (any such overpayment, a "**Purchased Receivables Overpayment**"), then Purchaser shall promptly (and in any event within ten (10) Business Days) following receipt of a written request from Seller (which request shall include reasonable supporting details) reimburse to Seller the amount of such Licensee Deduction (not to exceed the Purchased Receivables Overpayment), without set off, withholding or deduction of any kind, by payment to the Seller Account.

g. If the results of an audit pursuant to Section 9.6 of the License Agreement determine that Licensee overpaid amounts comprising Purchased Receivables, Purchaser shall pay to Seller the full amount of such overpayment within ten (10) Business Days following receipt by Purchaser of a copy of the applicable audit report, and Seller shall thereafter pay the full amount thereof to Licensee in accordance with Section 9.6 of the License Agreement.

h. If either Party fails to pay on or before the due date any amount which is payable to the other Party under this Agreement, such other Party may, after giving at least five (5) days' prior written notice of such failure to pay to the Party that failed to pay, charge interest on that amount from the due date until payment is made in full at a rate per annum equal to four percent (4%) over the prime rate published by The Wall Street Journal, from time to time (or, if less, the maximum amount permitted by applicable law).

5.2 Royalty Reports; Notices; Correspondence

a. Promptly (and in any event no later than five (5) Business Days) following the receipt by Seller from Licensee of (i) a Royalty Report, (ii) a report summarizing Licensee's commercialization activities for any Licensed Product delivered pursuant to Section 4.4 of the License Agreement, or (iii) any material written notice or material written correspondence relating to, involving or affecting, (A) the Purchased Receivables or (B) any other material right of Purchaser under this Agreement relating to the Purchased Receivables, Seller shall furnish a copy of such Royalty Report or such notice or correspondence to Purchaser. In addition, Seller shall provide a copy of all materials received by Seller's representatives on the Joint Collaboration Committee that was constituted by Seller and Licensee pursuant to the License Agreement within ten (10) Business Days following the receipt thereof.

b. Except for notices and correspondence required to be given or made by Seller (i) under the License Agreement or (ii) by Applicable Law, Seller shall not send any notice or correspondence to Licensee relating to, involving or affecting the Purchased Receivables or any material right of Purchaser under this Agreement relating to the Purchased Receivables, in each case, without the prior written consent of Purchaser (not to be unreasonably withheld, conditioned, or delayed), unless the sending of such notice or correspondence would not reasonably be expected to (A) adversely affect the value of the Purchased Receivables (including the timing, amount or duration thereof) or (B) otherwise have a Material Adverse Effect. Seller shall, promptly (and in any event no later than five (5) Business Days) following the delivery thereof by Seller to Licensee, provide to Purchaser a copy of any material notice or material correspondence sent by Seller to Licensee relating to, involving or affecting, the Purchased Receivables or any material right of Purchaser under this Agreement relating to the Purchased Receivables.

5.3 Audits of Licensee's Records

a. Seller and Purchaser shall consult with each other as set forth in this Section 5.3 regarding the timing, manner and conduct of any inspection or audit of the Licensee's records with respect to the Receivables pursuant to Section 9.6 of the License Agreement. Seller shall retain the exclusive right to inspect and audit Licensee's records at any time and from time to time at its sole discretion for payments relating to periods prior to the Purchased Receivables Period; provided, however, that Seller shall consult with Purchaser prior to initiating any such inspection and audit; and provided further that the Purchaser expressly understands and agrees that Seller may proceed with any such audit without the approval or consent of Purchaser. If Seller initiates an audit, Purchaser may elect to

have the Purchased Receivables included in the scope of such audit, and Purchaser shall be entitled to receive a copy of the auditor's report.

b. Seller may, and if requested in writing by Purchaser, shall, cause a nationally recognized independent certified public accountant to inspect or audit Licensee's relevant records solely with respect to matters related to the Receivables pursuant and subject to Section 9.6 of the License Agreement; provided, however, that Purchaser shall not be entitled to request such an inspection or audit more frequently than once in any calendar year. With respect to any such inspection or audit carried out at the request of Purchaser, Seller shall select such nationally recognized independent certified public accountant as Purchaser shall recommend for such purpose (provided that such independent certified public accountant is reasonably acceptable to Seller and Licensee pursuant to Section 9.6 of the License Agreement). All of the out-of-pocket costs and expenses of any such inspection or audit carried out at the request of Purchaser (including the fees and expenses of the independent certified public accountant selected for such inspection or audit) that would otherwise be borne by Seller pursuant to the License Agreement shall instead be directly paid by Purchaser promptly following the receipt of an invoice therefor. To the extent Seller reasonably incurs any out-of-pocket costs or expenses in connection with any such inspection or audit carried out at the request of Purchaser, Purchaser shall promptly (and in any event within five (5) Business Days) upon written request (which request shall include reasonable details of costs and expenses for which Seller is seeking reimbursement), without set off, withholding or deduction of any kind, reimburse Seller by payment to the Seller Account.

c. All of the costs and expenses of any inspection or audit initiated by Seller under Section 9.6 of the License Agreement (other than at the request of Purchaser) (including the fees and expenses of any independent certified public accountant selected for such inspection or audit) shall be borne by Seller.

d. If, following the completion of any inspection or audit under Section 9.6 of the License Agreement, Licensee is required to make additional payments to Seller for underpayment of Receivables, then such payments received, after deduction and reimbursement of the Parties' out-of-pocket costs and expenses (including the fees and expenses of the independent certified public accountant selected for such inspection or audit) borne by the Parties in connection with such inspection or audit pursuant to Section 5.3(b) or Section 5.3(c) (and that are not to be reimbursed pursuant to Section 5.3(e)), shall be allocated and paid to Seller, except with respect to such payments that are related to an unpaid portion of the Purchased Receivables, which shall be allocated and paid to Purchaser.

e. If, following the completion of any inspection or audit under Section 9.6 of the License Agreement, Licensee reimburses Seller for the costs and expenses of such inspection or audit pursuant to Section 9.6 of the License Agreement, Seller shall promptly (and in any event within five (5)

Business Days) following receipt by Seller of such reimbursement remit to Purchaser a pro rata amount of such reimbursement based on the portion of the costs and expenses of such inspection or audit that were paid, respectively, by Purchaser and Seller pursuant to Section 5.3(b) or Section 5.3(c).

5.4 Performance of License Agreement; Amendments

a. Seller shall not:
    i. breach any of the provisions of the License Agreement or the Technology Transfer Agreement if the effect of such breach would reasonably be expected to have a Material Adverse Effect, and Seller shall use reasonable best efforts (in consultation with Purchaser) to cure any such breach by Seller of the License Agreement or the Technology Transfer Agreement, as applicable, in a timely manner;
    ii. forgive, release or compromise any amount owed to or payable to Seller under the License Agreement that constitutes the Purchased Receivables, without prior written consent of Purchaser (in its sole discretion); and
    iii. assign, amend, modify, supplement, restate, waive, cancel or terminate (or consent to any cancellation or termination of), in whole or in part, (each, a "**Modification**") all or any provision of the License Agreement without the prior written consent of Purchaser (in its sole discretion) if such Modification (A) would reasonably be expected to have a Material Adverse Effect, (b) addresses provisions of the License Agreement governing the obligation to make the Royalty Payments, the amount or calculation of the Royalty Payments or the procedures or timing for payment of the Royalty Payments, or (c) would expand or otherwise change Purchaser's obligations under Section 5.8(f).
b. If applicable, Seller shall invoice Licensee for unpaid Royalty Payments in the circumstances described in Section 9.10 of the License Agreement.

5.5 Enforcement of License Agreement

a. Promptly upon Seller becoming aware of a breach of or default under, or an alleged breach of or default under, the License Agreement by Licensee that, individually or in the aggregate with other alleged or actual breaches or defaults by Licensee, would reasonably be expected to have a Material Adverse Effect, Seller shall (i) promptly (but in any event within five (5) Business Days) provide written notice to Purchaser describing in reasonable detail the relevant breach or default, and (ii) proceed in consultation with Purchaser. In the case of such breach or default, Seller may, and if requested in writing by Purchaser, shall, take commercially

reasonable actions (including selecting legal counsel reasonably satisfactory to Purchaser and commencing legal action against Licensee) to enforce compliance by Licensee with the relevant provisions of the License Agreement.

b. Purchaser shall, promptly (and in any event within ten (10) Business Days) following receipt of a written request from Seller (which request shall include reasonable details of costs and expenses for which Seller is seeking reimbursement), reimburse Seller for 50% of all documented out-of-pocket costs and expenses (including reasonable attorneys' fees and expenses) reasonably incurred by Seller pursuant to this Section 5.5. The proceeds of the enforcement of Licensee's obligations under the License Agreement pursuant to this Section 5.5 shall first be used to reimburse Purchaser and Seller (to the extent not previously reimbursed by Purchaser), the amount of all documented out-of-pocket costs and expenses (including reasonable attorneys' fees and expenses) reasonably incurred by each of them in connection with such enforcement (including, in the case of Purchaser, to reimburse Purchaser for all amounts reimbursed to Seller by Purchaser pursuant to this Section 5.5(b)). Thereafter, the balance of such proceeds shall be allocated to Seller, except with respect to such proceeds that are for an unpaid portion of the Purchased Receivables, which shall be allocated to Purchaser. For purposes of this Section 5.5(b), "documented" costs and expenses refer to individually identifiable costs and expenses that are evidenced by a written invoice or other supporting documentation that provides a reasonably detailed description of the matters giving rise to such costs and expenses.

5.6 Assignments of License Agreement

a. Promptly (and in any event within five (5) Business Days) following receipt by Seller of a written request from Licensee for consent to assign the License Agreement (in whole or in part) pursuant to Section 14.2 of the License Agreement, Seller shall provide written notice thereof to Purchaser. Seller shall not grant or withhold such consent without the prior written consent of Purchaser (not to be unreasonably withheld, conditioned or delayed).

b. Seller shall not assign the License Agreement (in whole or in part) without the prior written consent of Purchaser (not to be unreasonably withheld, conditioned, or delayed), except in connection with (i) an assignment of this Agreement in its entirety in accordance with Section 8.3(c) to an assignee permitted thereunder or (ii) a Seller Monetization Transaction that would not otherwise adversely affect (A) the ability of Seller to perform any of its obligations hereunder or under any of the other Transaction Documents or (B) the ability of Purchaser to exercise any of its rights hereunder or under any of the other Transaction Documents.

5.7 Termination of License Agreement

Within five (5) Business Days of Seller becoming aware of the occurrence of any event that gives rise to a right on the part of Seller to terminate the License Agreement pursuant to Section 13.2.2, Section 13.2.3 or Section 13.2.7 of the License Agreement, Seller shall provide written notice of such occurrence to Purchaser and consult with Purchaser in determining whether or not to exercise Seller's right to terminate the License Agreement pursuant to such Section of the License Agreement. In any event, Seller shall not exercise its right to terminate the License Agreement pursuant to Section 13.2.2, Section 13.2.3 or Section 13.2.7 of the License Agreement or otherwise, or agree with Licensee to terminate the License Agreement in whole or in part, except with the prior written consent of Purchaser (not to be unreasonably withheld, conditioned, or delayed).

5.8 Confidentiality

a. Subject to this Section 5.8, Purchaser shall keep confidential and not disclose to any Person (other than its Affiliates and its and its Affiliates' Representatives (collectively, "**Purchaser Recipients**")) and shall cause the Purchaser Recipients to keep confidential and not disclose to any Person, any Confidential Information. Purchaser shall, and shall cause the Purchaser Recipients to, use the Confidential Information solely in connection with Purchaser's administration of the Transaction Documents (and not for any other purpose). The foregoing obligations shall continue until the later of (x) five (5) years after the termination of this Agreement and (y) the date of expiration of the confidentiality obligations of Seller under the License Agreement.

b. "**Confidential Information**" means, collectively, all information (whether written or oral, or in electronic or other form, and whether furnished before, on or after the date of this Agreement) concerning or relating to Seller, Seller's Affiliates, this Agreement, Licensee, the License Agreement, the Licensed Products, the Receivables and any information considered to be Confidential Information under the License Agreement that is furnished to Purchaser or its Representatives by or on behalf of Seller, including (i) this Agreement and the License Agreement, and (ii) any Royalty Reports, Modifications, assignments, notices, requests, correspondence, documents or other information furnished pursuant to this Agreement. Notwithstanding the foregoing, "Confidential Information" shall not include any information that (A) was known by Purchaser or any of its Representatives on a non-confidential basis at the time such information was disclosed to Purchaser or its Representatives in accordance herewith or in accordance with the Confidentiality Agreement (as defined below), as evidenced by its written records or other competent evidence; (B) was or becomes generally available to the public (other than as a result of a disclosure by Purchaser or the Purchaser Recipients in violation of this Agreement); (C) became or becomes known to Purchaser or any of the Purchaser Recipients on a non-confidential basis from a source other than Seller, its Affiliates, Licensee, Licensee's Affiliates, and Seller's, Seller's Affiliates', Licensee's, or Licensee's Affiliates' Representatives (and

without any breach of this Agreement or the Confidentiality Agreement by Purchaser or the Purchaser Recipients); provided that Purchaser or the relevant Purchaser Recipient was not aware that the source of such information was breaching any legal, contractual or fiduciary obligation to Seller, Seller's Affiliates, or Licensee by making disclosure; or (D) is or has been independently developed by Purchaser or any of the Purchaser Recipients without use of or reference to the Confidential Information, as evidenced by its written records or other competent evidence.

c. If Purchaser or any of the Purchaser Recipients is requested by a governmental or regulatory or self-regulatory authority or required by Applicable Law, regulation or legal process (including the regulations of a stock exchange or governmental or regulatory or self-regulatory authority or the order or ruling of a court, administrative agency or other government or regulatory body of competent jurisdiction) to disclose any Confidential Information, Purchaser shall promptly, to the extent permitted by Applicable Law, notify Seller in writing of such request or requirement so that Seller, Seller's Affiliate, Licensee, or Licensee's Affiliate may seek an appropriate protective order or other appropriate remedy (and if Seller, Seller's Affiliate, Licensee, or Licensee's Affiliate seeks such an order or other remedy, Purchaser will provide such cooperation, at Seller's sole expense, as Seller shall reasonably request). If no such protective order or other remedy is obtained and Purchaser or the relevant Purchaser Recipients are, in the view of their respective counsel (which may include their respective internal counsel), legally required to disclose such Confidential Information, Purchaser or the applicable Purchaser Recipients, as the case may be, shall only disclose that portion of such Confidential Information that their respective counsel advises that Purchaser or the applicable Purchaser Recipients, as the case may be, are required to disclose and will exercise commercially reasonable efforts to obtain reliable assurance that confidential treatment will be accorded to that portion of the Confidential Information that is being disclosed. Notwithstanding the foregoing, notice to Seller shall not be required where disclosure is made in connection with a routine examination by a regulatory or self-regulatory examiner, where such request or examination does not expressly reference Seller, its Affiliates, the Royalty Payments or this Agreement.

d. Notwithstanding anything herein to the contrary, nothing in this Section 5.8 shall be construed to restrict Purchaser from:

    i. including disclosure of the Purchase Price and the amount and nature of the Purchased Receivables in the footnotes to Purchaser's audited annual financial statements, to the extent so required by Purchaser's independent accountants, or including comparable disclosure in Purchaser's unaudited quarterly financial statements; and

    ii. providing copies of the audited annual and unaudited quarterly financial statements, the Transaction Documents and any Royalty

Reports, Modifications, assignments, notices, requests, correspondence, documents or other information furnished pursuant to this Agreement, to Purchaser's existing or prospective lenders or investors, or its direct or indirect beneficial owners, as long as such lenders, investors or beneficial owners have agreed to be bound by the provisions of this Section 5.8 or are otherwise subject to obligations of confidentiality comparable to those set forth in this Agreement.

e. Effective upon the date hereof, the Confidentiality Agreement dated May 15, 2024 (the "**Confidentiality Agreement**"), between Seller and OMERS Capital Solutions LP shall terminate and be of no further force or effect, and shall be superseded by the provisions of this Section 5.8. OMERS Capital Solutions LP shall be a third-party beneficiary of this Agreement for purposes of this Section 5.8(e).

f. Notwithstanding the foregoing, in the event the confidentiality and non-use terms of the License Agreement are more stringent than those set forth in this Section 5.8, then Purchaser agrees to be bound by such more stringent terms in respect of Confidential Information (as defined in the License Agreement) of Licensee received hereunder by Purchaser.

5.9 Public Announcement; Disclosure

a. Neither Party shall make or cause to be made any filing, press release or similar public announcement or communication regarding the execution of this Agreement or the terms and conditions of this Agreement without the prior written consent of the other Party (not to be unreasonably withheld, conditioned, or delayed), provided that the Parties have agreed to issue a press release in the form attached hereto as Exhibit E to announce the transaction consummated under this Agreement following the Closing.

b. Notwithstanding the foregoing, either Party may disclose this Agreement, or any of the terms and conditions hereof, (i) to the extent that such Party believes in good faith that such disclosure is required to comply with Applicable Law or any Judgment, (ii) in connection with the enforcement of its rights hereunder through legal process, (iii) for governmental, regulatory, tax or customs purposes, (iv) to its Affiliates and Representatives on a need-to-know basis, (v) to its actual or potential investors, co-investors, and other sources of funding, including debt financing, or actual or potential partners, collaborators or acquirers, and their respective accountants, financial advisors and other professional representatives; provided that in the case of such disclosure pursuant to clause (iv) or (v), each recipient must be bound by customary obligations of confidentiality and non-use prior to any such disclosure.

5.10 Prosecution, Maintenance and Defense of Listed Patents

a. Seller shall use commercially reasonable efforts to, subject to the terms of, and the rights of the Licensee under, the License Agreement:
    i. prosecute and maintain the Listed Patents;
    ii. cause all required prosecution and maintenance fees and like payments with respect to the Listed Patents to be paid when due;
    iii. not disclaim or finally abandon any of the Listed Patents without filing a continuation application, or fail to take any commercially reasonable action necessary to prevent the disclaimer or abandonment of any of the Listed Patents; and
    iv. diligently defend any Listed Patents against opposition, interference or like proceedings by any other Person, and against any claims of invalidity or unenforceability, in any jurisdiction

except, in each case, where the failure of Seller to take such actions or where such disclaimer or abandonment would not reasonably be expected to (i) have a Material Adverse Effect or (ii) adversely affect the value of the Purchased Receivables (including the timing, amount or duration thereof.

i. At the reasonable written request by Purchaser from time to time, Seller shall keep Purchaser reasonably informed regarding the prosecution and maintenance of any Listed Patents and shall reasonably consider any recommendations from Purchaser regarding any Listed Patents prosecuted by Seller, subject to the terms of, and the rights of Licensee under, the License Agreement.

j. All costs and expenses (including attorneys' fees and expenses) incurred by Seller in connection with the prosecution, maintenance and defense of the Listed Patents shall be borne equally by Seller and Purchaser. Purchaser shall, promptly (and in any event within ten (10) Business Days) following receipt of a written request from Seller (which request shall include reasonable details of costs and expenses for which Seller is seeking reimbursement), reimburse Seller for 50% of all documented out-of-pocket costs and expenses (including reasonable attorneys' fees and expenses) reasonably incurred by Seller pursuant to this Section 5.10.

k. In relation to any Listed Patent prosecuted by Seller and subject to the terms of, and Licensee's rights under, the License Agreement, Seller shall
    i. use commercially reasonable efforts to cause each such Listed Patent to be opted out from the exclusive jurisdiction of the Unified Patent Court over such patents (in accordance with Article 83(3) of the Council Agreement on a Unified Patent Court (no. OJ 2013 C 175/01)), and
    ii. notify Purchaser in the event that it wishes to withdraw any such opt-out from the exclusive jurisdiction of the Unified Patent Court in respect of such patent (in accordance with Article 83(4) of Agreement no. OJ 2013 C 175/01).

In the event that Seller wishes to withdraw such opt-out pursuant to clause (ii) above, Seller shall provide its notice in good time to Purchaser, so that Purchaser may provide any comments and/or recommendations on the matter, and Seller shall take Purchaser's comments and/or recommendations reasonably into account, subject to the terms of, and the rights of Licensee under, the License Agreement; provided that, in the event of any disagreement, Seller has sole control over the matter.

5.11 Litigation concerning any of the Listed Patents

a. Promptly (and in any event within five (5) Business Days) following Seller becoming aware of any alleged or threatened infringement of any of the Listed Patents (each, a **"Specified Infringement**"), Seller shall provide written notice thereof to Purchaser, together with a copy of the notice provided to, or received from, Licensee pursuant to Section 12.3.1 of the License Agreement. Promptly thereafter, Seller and Purchaser shall consult with each other with a view to determining the appropriate course of action to take with respect to such Specified Infringement, subject to the terms of, and to the extent permitted by, the License Agreement. Seller shall reasonably consider the views of Purchaser regarding such Specified Infringement.

b. Subject to the terms of, and to the extent permitted by, the License Agreement, Seller may, and if requested in writing by Purchaser, shall, proceed, in consultation with Purchaser, to institute such a suit or other legal proceeding and to use commercially reasonable efforts to enforce the Listed Patents, and to exercise such rights and remedies, relating to such Specified Infringement as shall be available to Seller under Applicable Law; provided that Seller shall be obligated to institute such suit or proceeding at the request of Purchaser only to the extent the Specified Infringement would reasonably be expected to result in a Material Adverse Effect on the rights of Purchaser. Subject to the terms of, and to the extent permitted by, the License Agreement, in connection with any such enforcement of the Listed Patents by Seller, Seller shall:

    i. employ lead counsel that is acceptable to Purchaser, acting reasonably;

    ii. keep Purchaser reasonably apprised of material developments, material filings and strategic decisions to be made from time to time, including sharing drafts of substantive filings in advance of filing deadlines if requested by Purchaser, reasonably taking the comments of Purchaser in respect of such material developments, material filings and strategic decisions into account; and

    iii. not settle or otherwise resolve any dispute relating to a Specified Infringement without the prior written consent of Purchaser (not to be unreasonably withheld, conditioned, or delayed) if such settlement or resolution would reasonably be expected to result in a Material Adverse Effect on the rights of Purchaser.

Without prejudice to the position of any Specified Infringement elsewhere, the Parties acknowledge and agree that any Specified Infringement in Belgium, Germany, France, United Kingdom, Italy and Spain would reasonably be expected to result in a Material Adverse Effect on the rights of Purchaser solely with respect to this Section 5.11(b).

Subject to the terms of, and to the extent permitted by, the License Agreement, with respect to any enforcement by Seller pursuant to this Section 5.11, nothing contained herein shall limit Purchaser from retaining separate counsel, at Purchaser's cost and expense, who shall be permitted, where reasonably practicable, to consult with the lead counsel for such enforcement selected pursuant to this Section 5.11.

l. Promptly (and in any event within five (5) Business Days) following Seller becoming aware of any third-party claims pursuant to section 12.4 of the License Agreement that would reasonably be expected to have a Material Adverse Effect on the rights of Purchaser, Seller shall provide written notice thereof to Purchaser, together with a copy of the notice provided to, or received from, Licensee pursuant to Section 12.4 of the License Agreement. Promptly thereafter, Seller and Purchaser shall consult with each other with a view to determining the appropriate course of action to take with respect to such claims, subject to the terms of, and to the extent permitted by, the License Agreement. Seller shall reasonably consider the views of Purchaser regarding such third-party claims.

m. Purchaser shall, promptly (and in any event within ten (10) Business Days) following receipt of a written request from Seller (which request shall include reasonable details of costs and expenses for which Seller is seeking reimbursement), reimburse Seller for 50% of all documented costs and expenses (including reasonable attorneys' fees and expenses) reasonably incurred by Seller as a result of Seller's enforcement of any of the Listed Patents for Specified Infringement. Subject to the terms and conditions of the License Agreement, the proceeds of such enforcement of the Listed Patents for Specified Infringement shall first be used to reimburse Seller and Purchaser for the amount of all documented costs and expenses (including reasonable attorneys' fees and expenses) (i) in the case of Seller, reasonably incurred and not already reimbursed by Purchaser, and (ii) in the case of Purchaser, reimbursed to Seller, in each case under this Section 5.11. The balance of the proceeds shall be allocated to Seller and Purchaser equally, except with respect to such proceeds that are for an unpaid portion of the Purchased Receivables, which shall be allocated to Purchaser.

5.12 Tax Matters

a. Seller and Purchaser agree that for United States federal income tax purposes and, to the extent applicable, U.S. state, local, non-income and non-U.S. tax purposes, the transactions contemplated by this Agreement are intended to be treated as a sale. The Parties shall file tax returns consistent with the foregoing and shall not take a position inconsistent with

the foregoing unless required pursuant to a “determination” that is final within the meaning of Section 1313 of the Code. If there is an inquiry by any taxing authority of Seller or Purchaser related to matters addressed in this Section 5.12, the Parties shall cooperate with each other in responding to such inquiry in a reasonable manner consistent with this Section 5.12.

b. Purchaser agrees:

   i. to notify Seller and the Escrow Agent in writing as soon as practicable, but in any event at least ten (10) Business Days (if known at such time) prior to the next payment of any Purchased Receivables or other amount due to Purchaser hereunder, if (A) Purchaser becomes ineligible to use or deliver any Applicable Withholding Certificate or other tax form previously delivered pursuant to this Agreement, or (B) any Applicable Withholding Certificate, other tax form or information furnished in connection therewith or with this Agreement that was previously delivered pursuant to this Agreement ceases to be accurate or complete; and

   ii. to the extent it is legally eligible to do so, to provide to Seller and the Escrow Agent any additional tax forms or information relating to any Applicable Withholding Certificate (A) upon reasonable request by Seller or the Escrow Agent and (B) subject to 5.12(b)(i)(A), promptly upon any Applicable Withholding Certificate or other tax form previously delivered pursuant to this Agreement becoming obsolete.

c. Subject to Section 5.12(e):

   i. All payments to Purchaser under this Agreement shall be made without any deduction or withholding for or on account of any tax, provided that, if Seller reasonably determines in consultation with Purchaser that deduction or withholding of any tax has become required from any amount payable hereunder (but for this sentence) to Purchaser, then Seller shall be entitled to deduct (or cause to be deducted) such tax prior to remittance to Purchaser, provided, further, that Seller shall provide reasonable advance written notice to Purchaser of its intention to withhold and shall provide Purchaser a reasonable opportunity to take (with Seller’s cooperation) any measures that could reduce or eliminate the amount of such withholding; and

   ii. Seller shall remit (or cause to be remitted) any amount withheld or deducted pursuant to this Section 5.12 to the relevant taxing authority, and any amount so remitted shall be treated as paid hereunder to Purchaser. Seller shall use commercially reasonable efforts to give or cause to be given to Purchaser such assistance and such information concerning the reasons for deduction as may be reasonably necessary to enable Purchaser to claim appropriate exemption therefrom, or credit therefor, and, in each case, shall

furnish Purchaser with proper evidence of the taxes withheld and remitted to the relevant taxing authority.

d. If Purchaser reasonably determines in consultation with Seller that deduction or withholding of any tax has become required from any amount payable hereunder (but for this sentence) to Seller, then Purchaser shall be entitled to deduct (or cause to be deducted) such tax prior to remittance to Seller, provided, further, that Purchaser shall provide reasonable advance written notice to Seller of its intention to withhold and shall provide Seller a reasonable opportunity to take (with Purchaser's cooperation) any measures that could reduce or eliminate the amount of such withholding. Purchaser shall remit (or cause to be remitted) any amount withheld or deducted pursuant to this Section 5.12 to the relevant taxing authority, and any amount so remitted shall be treated as paid hereunder to Seller. Purchaser shall use commercially reasonable efforts to give or cause to be given to Seller such assistance and such information concerning the reasons for deduction as may be reasonably necessary to enable Seller to claim appropriate exemption therefrom, or credit therefor, and, in each case, shall furnish Seller with proper evidence of the taxes withheld and remitted to the relevant taxing authority.

e. Seller and Purchaser shall be required to fully cooperate with each other and use commercially reasonable efforts in order to avoid, eliminate or reduce any German withholding tax obligation in respect of the Purchased Receivables and, if required, to obtain a Withholding Tax Refund. Without limiting the generality of the foregoing:

    i. With respect to payments relating to the Purchased Receivables, Seller shall use commercially reasonable efforts to (A) obtain a tax exemption certificate (*Freistellungsbescheinigung*) under the laws of Germany, and to renew such certificate on a timely basis as and when required , in order to avoid or reduce any withholding tax obligations for payments relating to the Purchased Receivables ("**German Exemption Certificate**") and (B) file any necessary application for a German Exemption Certificate in due time before an existing German Exemption Certificate expires or otherwise becomes invalid. Seller shall provide a draft application for the German Exemption Certificate to Purchaser for review and comments and Seller shall incorporate any reasonable comments provided by Purchaser and shall file the application (and any renewals of such application) as soon as reasonably practicable.

    ii. In anticipation of the German tax authorities requiring the renewal of the German Exemption Certificate due to execution of this Agreement, Seller shall provide a draft German Exception Certificate to Purchaser for review within 20 Business Days of the date hereof.

    iii. Once obtained, Seller shall provide the Licensee with the German Exemption Certificate.

iv. To the extent required to obtain a Withholding Tax Refund, Seller shall use commercially reasonable efforts to obtain from Licensee all original documents, receipts or other evidence, in respect of any such tax that is withheld and shall forward such documents to Purchaser.

v. If the German taxing authority declines to issue the German Exemption Certificate or to grant the Withholding Tax Refund (each a "**Relevant Withholding Tax Decision**"), Seller shall notify Purchaser of such Relevant Withholding Tax Decision promptly (and in any event within five (5) Business Days) after having received the relevant information or knowledge.

vi. Seller shall fully cooperate with Purchaser and its advisors in connection with any tax proceeding relating to a Relevant Withholding Tax Decision (each a "**Relevant Withholding Tax Matter**") and Seller shall act on Purchaser's reasonable direction with regard to a Relevant Withholding Tax Matter; provided that those instructions are in line with Applicable Law. In particular, and without prejudice to the aforementioned, Seller shall:

A. provide to Purchaser, upon Purchaser's request, all relevant documents or other information to the extent available to Seller;

B. permit Purchaser and its advisors to participate at their sole discretion and at Purchaser`s own cost, in all tax proceedings relating to a Relevant Withholding Tax Matter; and

C. challenge and litigate at the request of Purchaser, and acting on Purchaser's reasonable direction, any Relevant Withholding Tax Matter, provided that (i) any costs, fees and expenses in connection with such actions are borne equally by Purchaser and Seller, (ii) any collateral (if any) requested by the German tax authorities as security for any German withholding tax obligation on payments relating to the Purchased Receivables provided by Purchaser .

vii. Seller shall pay a Withholding Tax Refund to Purchaser within 10 Business Days of receipt of such Withholding Tax Refund.

viii. For avoidance of doubt, nothing contained herein requires Seller to make any additional payment to Purchaser in the event of withholding of any German tax by Licensee other than the payment of a Withholding Tax Refund pursuant to 5.12(e)(vii) or any withholding tax that is borne by Seller or an assignee of Seller pursuant to Section 8.3.

f. Seller shall pay all material taxes required to be paid by it when due except for any such taxes that are being contested in good faith by appropriate proceedings and for which Seller has established adequate

reserves determined in accordance with generally accepted accounting principles applicable to Seller, as in effect from time to time.

5.13 Sanctions; Financial Crime Laws

During the Term:

a. each Party shall comply with all Financial Crime Laws;
b. each Party shall not conduct any business dealings or activities in violation of any Sanctions or in any other manner that would expose such Party to the risk of adverse measures pursuant to any Sanctions;
c. each Party shall promptly notify the other Party in writing if it becomes aware of any allegation that it has conducted any business dealings or activities in violation of any Sanctions or Financial Crime Laws; and
d. Seller shall promptly notify Purchaser in writing if it becomes aware of any allegation that Licensee has conducted any business dealings or activities in violation of any Sanctions or Financial Crime Laws.

5.14 Payoff Letter

a. At the Closing, Seller shall pay, in accordance with the Payoff Letter, the portion of the Repurchase Consideration that is not satisfied by payment of the Purchase Price by Purchaser hereunder pursuant to Section 2.2(b).
b. Promptly following the Closing, Seller shall file UCC-3 financing statement terminations and the intellectual property releases that are attached to the Payoff Letter (to the extent such terminations and releases are not promptly filed by Eiger III SA LLC), and Seller shall take such other actions and file such other instruments, releases and documents as may be required to evidence the termination, release and discharge of the Encumbrances granted by Seller in connection with the RIPA and the RIPA Security Agreement.

5.15 Further Assurances

From and after the date hereof, each Party shall, at the sole cost and expense of the requesting Party (including reimbursement of the non-requesting Party's documented, reasonable, out-of-pocket legal fees and expenses), execute and deliver such additional documents, certificates and instruments, and perform such additional acts, as may be reasonably requested and necessary or appropriate to carry out the provisions of this Agreement and the other Transaction Documents, and to consummate the transactions contemplated by this Agreement and the other Transaction Documents.

5.16 Seller's Name, Jurisdiction and Type

Seller shall provide to Purchaser at least thirty (30) days' written notice prior to any change to its legal name, jurisdiction of formation or entity type.

ARTICLE 6
THE CLOSING

6.1 Closing

The closing of the purchase and sale of the Purchased Receivables contemplated hereby (the "**Closing**") shall take place contemporaneously with the execution or delivery of the closing deliverables set forth in this Article 6, on the date hereof, via the electronic (including email of PDF-format documents) exchange of signatures and documents.

6.2 Closing Deliverables of Seller

At the Closing, Seller shall deliver or cause to be delivered to Purchaser the following:

a. the Bill of Sale executed by Seller;

b. a certificate of an executive officer of Seller setting forth the incumbency and specimen signature of the officer or officers of Seller who have executed and delivered the Transaction Documents, and attaching a copy of the organizational documents of Seller;

c. the Payoff Letter executed by Seller, Eiger III SA LLC, and Interlaken ICAV, for and on behalf of Eiger Partners II Fund;

d. the Licensee Consent executed by Seller and Licensee;

e. the Escrow Agreement executed by Seller and the Escrow Agent; and

f. a copy of the index of the Data Room.

6.3 Closing Deliverables of Purchaser

At the Closing, Purchaser shall deliver or cause to be delivered to Seller the following:

a. the Bill of Sale executed by Purchaser;

b. a certificate of an executive officer of Purchaser GP setting forth the incumbency and specimen signature of the officer or officers of Purchaser GP who have executed and delivered the Transaction Documents on behalf of Purchaser GP, in its capacity as general partner of Purchaser;

c. the Escrow Agreement executed by Purchaser and the Escrow Agent;

d. an Applicable Withholding Certificate, duly executed by Purchaser; and

e. payment of the Purchase Price in accordance with Section 2.2.

ARTICLE 7
INDEMNIFICATION

7.1 Obligations of Parties to Indemnify

a. Subject to the limitations set forth in this Article 7, from and after the Closing, Seller shall indemnify Purchaser against any and all losses, liabilities, expenses (including reasonable attorneys' fees and expenses) and damages (collectively, "**Losses**") incurred by Purchaser or its limited partners, general partners, directors, officers, employees or agents (each, a "**Purchaser Indemnified Party**"), to the extent arising or resulting from any of the following:

   i. any breach of any representation or warranty made by Seller in this Agreement;

   ii. any breach of any covenant or agreement of Seller contained in any of the Transaction Documents; and

   iii. the Excluded Liabilities and Obligations;

provided, however, that the foregoing shall exclude any indemnification to any Purchaser Indemnified Party solely to the extent (A) resulting from the gross negligence, willful misconduct, or fraud of any Purchaser Indemnified Party or (B) resulting from acts or omissions of Seller based upon, and in conformity with, Purchaser's express written instructions.

f. Subject to the limitations set forth in this Article 7, from and after the Closing, Purchaser shall indemnify Seller against any and all Losses incurred by Seller or its directors, officers, employees or agents (each, a "**Seller Indemnified Party**"), to the extent arising or resulting from any of the following:

   i. any breach of any representation or warranty made by Purchaser in this Agreement; and

   ii. any breach of any covenant or agreement of Purchaser contained in any of the Transaction Documents;

provided, however, that the foregoing shall exclude any indemnification to any Seller Indemnified Party solely to the extent (A) resulting from the gross negligence, willful misconduct, or fraud of any Seller Indemnified Party or (B) resulting from acts or omissions of Purchaser based upon, and in conformity with, Seller's express written instructions.

7.2 Procedures Relating to Indemnification for Third-Party Claims

a. In order for a Party (an "**Indemnified Party**") to be entitled to any indemnification under Section 7.1 in respect of Losses arising out of or involving a claim or demand made by any Person other than Purchaser or Seller against a Purchaser Indemnified Party or a Seller Indemnified Party, as applicable (a "**Third-Party Claim**"), the Indemnified Party must,

promptly after its receipt of notice of the commencement of such Third-Party Claim, notify the Party from whom indemnification is sought under Section 7.1 (the "**Indemnifying Party**") in writing (including in such notice a brief description of such Third-Party Claim, including damages sought or estimated, to the extent actually known or reasonably capable of estimation by the Indemnified Party); provided, however, that the failure to promptly provide such notice shall not affect the indemnification provided under Section 7.1 except to the extent that the Indemnifying Party has been actually prejudiced as a result of such failure. Thereafter, the Indemnified Party shall deliver to the Indemnifying Party, promptly after the Indemnified Party's receipt thereof, copies of all documents (including court papers) received by the Indemnified Party relating to such Third-Party Claim.

b. The Indemnifying Party shall be entitled to participate in the defense of any Third-Party Claim and, if it so chooses, to assume the defense thereof, at its own expense, with counsel selected by the Indemnifying Party; provided that such counsel is not reasonably objected to by the Indemnified Party. If the Indemnifying Party elects to assume the defense of any Third-Party Claim and thereafter defends the Third-Party Claim, the Indemnifying Party shall not be liable to the Indemnified Party for legal expenses subsequently incurred by the Indemnified Party in connection with the defense thereof, except that, if the Indemnifying Party and the Indemnified Party have conflicting interests with respect to such Third-Party Claim, or if the Indemnifying Party ceases to defend such Third-Party Claim, the Indemnified Party may hire its own separate counsel (provided that such counsel is not reasonably objected to by the Indemnifying Party) with respect to such Third-Party Claim and the related action or suit, and the reasonable fees and expenses of such counsel shall be considered Losses for purposes of this Agreement. If the Indemnifying Party elects to assume the defense of any Third-Party Claim, the Indemnifying Party shall permit the Indemnified Party to participate in, but not control, the defense of such Third-Party Claim through counsel chosen by the Indemnified Party and, except in the circumstances described in the immediately preceding sentence, the fees and expenses of such counsel shall be borne by the Indemnified Party. The Indemnifying Party shall be liable for the reasonable fees and expenses of counsel employed by the Indemnified Party in the defense of a Third-Party Claim (which shall all be considered Losses for purposes of this Agreement) for any period during which the Indemnifying Party has not assumed the defense thereof (other than during the period prior to the time the Indemnified Party shall have notified the Indemnifying Party of such Third-Party Claim and a reasonable period after such notification for such Indemnifying Party to assume the defense of such Third-Party Claim).

c. The Parties shall cooperate in the defense or prosecution of any Third-Party Claim, with such cooperation to include (i) the retention of and the provision to the Indemnifying Party of records and information that are reasonably relevant to such Third-Party Claim and (ii) the making available

of employees on a mutually convenient basis for providing additional information and explanation of any material provided hereunder. If the Indemnifying Party shall have assumed the defense of a Third-Party Claim, the Indemnified Party shall agree to any settlement, compromise or discharge of such Third-Party Claim that the Indemnifying Party may recommend and that by its terms obligates the Indemnifying Party to pay the full amount of the liability (if any) in connection with such Third-Party Claim and which does not impose any non-monetary penalties on the Indemnified Party and releases the Indemnified Party completely and unconditionally in connection with such Third-Party Claim. Regardless of whether the Indemnifying Party shall have assumed the defense of a Third-Party Claim, the Indemnified Party shall not be entitled to be indemnified or held harmless pursuant to Section 7.1 if the Indemnified Party shall settle such Third-Party Claim without the prior written consent of the Indemnifying Party (not to be unreasonably withheld, conditioned, or delayed).

7.3 Procedures Relating to Indemnification for Other Claims

In order for an Indemnified Party to be entitled to any indemnification under Section 7.1 in respect of Losses that do not arise out of or involve a Third-Party Claim, the Indemnified Party must notify the Indemnifying Party promptly in writing (including in such notice a brief description of the claim for indemnification and the Loss, including damages sought or estimated, to the extent actually known or reasonably capable of estimation by the Indemnified Party); provided, however, that the failure to promptly provide such notice shall not affect the indemnification provided under Section 7.1 except to the extent that the Indemnifying Party has been actually prejudiced as a result of such failure.

7.4 Limitations on Indemnification

a. Notwithstanding anything in this Agreement to the contrary, other than with respect to any fraud, willful misconduct or intentional misrepresentation, Seller shall not have any liability under clause (i) of Section 7.1(a):
    i. unless the aggregate liability for all Losses suffered by the Purchaser Indemnified Parties thereunder exceeds 1% of the Purchase Price, in which case Seller shall pay the full amount of all such Losses (from the first dollar thereof) without regard to the foregoing threshold; or
    ii. in excess of the amount by which (x) the Purchase Price actually paid to Seller exceeds (y) the aggregate amount of payments in respect of the Purchased Receivables received by Purchaser, in the aggregate.
b. Notwithstanding anything in this Agreement to the contrary, other than with respect to any fraud, willful misconduct or intentional misrepresentation, Purchaser shall not have any liability under clause (i) of Section 7.1(b):

i. unless the aggregate liability for all Losses suffered by the Seller Indemnified Parties thereunder exceeds 1% of the Purchase Price, in which case Purchaser shall pay the full amount of such Losses (from the first dollar thereof) without regard to the foregoing threshold; or

ii. in excess of the Purchase Price actually paid to Seller, in the aggregate.

7.5 Survival of Representations and Warranties

The representations and warranties contained in this Agreement shall survive the Closing solely for purposes of Section 7.1 and shall terminate on the date that is eighteen (18) months following the date hereof, other than the representations and warranties in Section 3.1, Section 3.2, Section 3.3 (but only with respect to clause (b)), Section 3.4, Section 3.7, Section 3.9(c), Section 3.11(e), Section 3.14, Section 4.1, Section 4.2 and Section 4.7 (the "**Fundamental Representations**"), which shall survive the Closing solely for purposes of Section 7.1 and shall terminate at the end of the Term. No Party shall have any liability or obligation of any nature with respect to any representation or warranty after the termination thereof, unless the other Party shall have delivered a notice to such Party, pursuant to Section 7.2(a) or Section 7.3, claiming such a liability or obligation under Section 7.1, prior to the date that is eighteen (18) months following the date hereof or, in the case of Fundamental Representations, prior to the end of the Term.

7.6 Exclusive Remedy; Specific Performance

a. The Parties acknowledge and agree that, from and after the Closing, this Article 7 (including Section 7.4 and Section 7.5) shall provide the Parties' sole and exclusive monetary remedy with respect to any matter or claim arising out of, relating to or in connection with any of the Transaction Documents or any of the transactions contemplated thereby, except that any such claim or matter based upon fraud shall not be subject to or limited by this Article 7. All indemnification payments made by Seller hereunder shall be treated by the Parties as adjustments to the Purchase Price for tax purposes unless otherwise required by Applicable Law.

b. Each of the Parties further acknowledges and agrees that the other Party would be damaged irreparably in the event that any of the covenants and agreements set forth in this Agreement are not performed in accordance with their specific terms or are otherwise breached or violated. Accordingly, each of the Parties agrees that, without posting bond or other undertaking, the other Party shall be entitled to an injunction or injunctions to prevent breaches or violations of the provisions of this Agreement and to enforce specifically this Agreement and the terms and provisions hereof in any action, suit or other proceeding instituted in any court of the United States or any state thereof having jurisdiction over the parties and the matter. Each Party further agrees that, in the event of any action for

specific performance in respect of such breach or violation, it shall not assert the defense that a remedy at law would be adequate.

7.7 Limitations on Damages

a. Notwithstanding anything to the contrary in this Agreement or any of the other Transaction Documents, in no event, other than circumstances of fraud, shall either Party be liable (including under Section 7.1) for any (i) lost profits or damages based on a multiple of earnings, cash flow, revenue or other metric of the other Party, (ii) special, exemplary, punitive, multiple or consequential damages or (iii) loss of use, business interruption, loss of any contract or other business opportunity or good will, in each case of clauses (i), (ii) and (iii), of the other Party, whether or not caused by or resulting from the actions of such Party or the breach of its covenants, agreements, representations or warranties under any of the Transaction Documents and whether in contract, tort or breach of statutory duty or otherwise, even if such Party has been advised of the possibility of such damages. Nothing in this Section 7.7(a) shall limit an Indemnifying Party's liability for any damages of the nature of those referred to in this Section to the extent that such damages are payable by the Indemnified Party to a third party.

b. For greater certainty, (i) nothing in this Section 7.7 shall have the effect of precluding the recovery of damages in respect of amounts that would otherwise have comprised the Purchased Receivables, notwithstanding that the loss of a receivable or a payment in the nature of the Purchased Receivables might otherwise be characterized as a pure economic loss, and (ii) Purchaser shall be entitled to make indemnification claims in respect of any portion of the Purchased Receivables that Purchaser was or would have been entitled to receive but did not receive timely or at all due to any indemnifiable event under this Agreement, and such portion of the Purchased Receivables shall not be deemed special, exemplary, punitive, multiple or consequential damages for any purpose of this Agreement.

7.8 Payments

Each Party shall make all payments required to be made by it pursuant to this Article 7 by wire transfer of immediately available funds to the bank account specified in writing by the other Party from time to time.

ARTICLE 8
MISCELLANEOUS

8.1 Term

The term of this Agreement (the "**Term**") will commence on the date hereof and will end on the earlier of (a) the expiration of the last to expire of the Royalty Terms or (b) the Cap Date.

8.2 Notices

a. All notices, consents, waivers, requests and other communications hereunder shall be in writing, addressed to the recipient as set out below, and shall be effective (i) upon receipt when sent by an overnight courier, (ii) on the date personally delivered to an authorized officer of the Party to which sent, in all cases, with a copy emailed to the recipient at the applicable address, or (iii) on the date the email is sent, if sent prior to 5:00 P.M., New York City time, on a Business Day or (iv) the next Business Day after the date the email is sent, if sent on a day that is not a Business Day or after 5:00 P.M., New York City time, on any Business Day, in each case to the intended recipient as set forth below; provided, in the cases of clauses (iii) and (iv), that notice shall not be deemed given or effective if the sender receives an automatic system-generated response that such email was undeliverable. The foregoing will be addressed to the recipient as follows:

i. if to Seller, to:
Esperion Therapeutics, Inc.
3891 Ranchero Dr
Ann Arbor, MI 48108
Attention: Chief Financial Officer; General Counsel
Email: corporateteam@esperion.com

With a copy to:

Gibson, Dunn & Crutcher LLP
One Embarcadero Center #2600
San Francisco, CA 94111
Attention: [***]
Email: [***]

iii. if to Purchaser, to:
OCM IP Healthcare Portfolio LP
c/o OCM IP Healthcare Portfolio G.P. Inc.
100 Adelaide St. W, Suite 900
Toronto, ON M5H 0E2 Canada
Attention: [***]
Email: [***]
With a copy to:

OMERS Capital Solutions LP
100 Adelaide St. W, Suite 900
Toronto, ON M5H 0E2 Canada
Attention: [***]
Email: [***]

a. Each Party may, by notice given in accordance herewith to the other Party, designate any further or different address to which subsequent notices, consents, waivers and other communications shall be sent.

8.3 Successors and Assigns

a. The provisions of this Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns.

b. Seller shall not assign any of its obligations and rights under this Agreement or any of the other Transaction Documents without the prior written consent of Purchaser (not to be unreasonably withheld, conditioned, or delayed), and any such purported assignment, delegation or transfer without such consent shall be void *ab initio* and of no effect.

c. Notwithstanding Section 8.3(b), Seller may assign this Agreement in its entirety without Purchaser's prior written consent, (i) to an Affiliate of Seller, or (ii) to any third party that acquires all or substantially all of Seller's business to which this Agreement relates, whether by merger, sale of assets or otherwise, so long as (A) such Affiliate or such third party acquires all of Seller's interest in all of the Listed Patents, the License Agreement (except for Seller's interest in any of the Retained Receivables), this Agreement and the other Transaction documents, (B) upon closing any such transaction, Seller causes such assignee to assume all of the obligations of Seller under the Transaction Documents and agrees in writing to be bound by the provisions of the Transaction Documents as though it was Seller, such agreement to be in form and substance satisfactory to Purchaser (acting reasonably); (C) such assignment shall not result in any additional deduction or withholding by Licensee of any taxes resulting from such assignee's tax status or such assignee being a party to the License Agreement or any of the Transaction Documents, unless such additional deduction or withholding is borne by Seller or such assignee pursuant to a written instrument in favor of Purchaser; (D) Seller shall cause such assignee to provide KYC information reasonably requested by Purchaser; and (E) Seller shall provide written notice of the completion of any such assignment pursuant to this Section 8.3(c) to Purchaser within five (5) Business Days following the completion thereof.

d. Purchaser shall not assign any of its obligations and rights under this Agreement or any of the other Transaction Documents without the prior written consent of Seller (not to be unreasonably withheld, conditioned, or delayed), and any such purported assignment, delegation or transfer without such consent shall be void *ab initio* and of no effect. Notwithstanding the foregoing, Purchaser may assign any of its obligations and rights under this Agreement and the other Transaction Documents without Seller's prior written consent to an Affiliate of Purchaser, provided that (A) such Affiliate assumes all of Purchaser's obligations under the

Transaction Documents and agrees in writing to be bound by the Transaction Documents as though it was Purchaser, such agreement to be in form and substance satisfactory to Seller (acting reasonably); and (B) Purchaser shall provide written notice of the completion of any such assignment to Seller promptly (and in any event within five (5) Business Days) following the completion thereof.

e. Notwithstanding anything to the contrary contained in this Section 8.3, Seller shall not take, or permit to be taken, any Qualified Action. A "**Qualified Action**" for purposes of this Section 8.3(e) means:

   i. a change of domicile, jurisdiction of incorporation or tax residency of Seller;

   ii. an acquisition of all or substantially all of the equity interest of Seller by way of merger or otherwise;

   iii. a change of control of Seller;

   iv. the establishment of a permanent establishment of Seller outside of the United States of America; and

   v. any other action that results in the Seller no longer being entitled under the DTT US/Germany and Section 50d paragraph 3 German Income Tax Act (Einkommensteuergesetz) to the benefits of the DTT US/Germany pursuant to Articles 12, 28 of the DTT US/Germany, with respect to Royalty Payments;

   in each case ((i) through (v)), if such action results in any additional deduction or withholding of any German taxes on payments of the Purchased Receivables, unless such additional deduction or withholding is borne by Seller

8.4 Independent Nature of Relationship

The relationship between Seller and Purchaser is solely that of seller and purchaser, and neither Seller nor Purchaser has any fiduciary or other special relationship with the other Party or any of its Affiliates. Nothing contained herein or in any other Transaction Document shall be deemed to constitute Seller and Purchaser as a partnership, an association, a joint venture or any other kind of entity or legal form. The Parties recognize and agree that each is operating as an independent contractor and not as an agent, partner or fiduciary of the other. For greater certainty, the Parties agree that this Agreement does not, and they do not intend this Agreement to, create a contractual partnership for U.S. federal, state, local or non-U.S. income tax purposes.

8.5 Third Party Beneficiaries

Except to the extent contemplated in Section 5.8(e) and Section 7.1, this Agreement is for the sole benefit of Seller and Purchaser and their respective permitted successors and assigns, and nothing herein expressed or implied shall give or be construed to give to any Person, other than the Parties and such successors and

assigns, any legal or equitable rights hereunder. Purchaser shall hold the benefit of the indemnities in Section 7.1(a) in trust for the Purchaser Indemnified Parties, and Seller shall hold the benefit of the indemnities in Section 7.1(b) in trust for the benefit of the Seller Indemnified Parties.

8.6 Entire Agreement

This Agreement, together with the other Transaction Documents, constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior agreements, understandings and negotiations, both written and oral, between the Parties with respect to the subject matter of this Agreement. No representation, inducement, promise, understanding, condition or warranty not set forth in this Agreement has been made or relied upon by either Party. All express or implied agreements, promises, assurances, arrangements, representations, warranties and understandings as to the subject matter hereof, whether oral or written, heretofore made are superseded by this Agreement.

8.7 Governing Law

a. PURSUANT TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW, THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL SUBSTANTIVE LAWS OF THE STATE OF NEW YORK WITHOUT REFERENCE TO THE RULES THEREOF RELATING TO CONFLICTS OF LAW, AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.

b. Each of the Parties irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of the state courts of the State of New York located in New York County, and the U.S. federal district courts of the Southern District of the State of New York (and any appellate court therefrom) in any action or proceeding arising out of or relating to or in connection with this Agreement, or for recognition or enforcement of any judgment, and each of the Parties hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in any such court. Each of the Parties agrees that a final judgment in any such action or proceeding may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Applicable Law.

c. Each of the Parties hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection that it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to or in connection with this Agreement in any court referred to in Section 8.7(b). Each of the Parties hereby irrevocably waives, to the fullest extent permitted by Applicable Law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

d. Each of the Parties irrevocably consents to service of process in the manner provided for notices in Section 8.2. Nothing in this Agreement will affect the right of any Party to serve process in any other manner permitted by Applicable Law. Each of the Parties waives personal service of any summons, complaint or other process, which may be made by any other means permitted by New York law.

8.8 Waiver of Jury Trial

EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT TO TRIAL BY JURY TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW WITH RESPECT TO ANY SUIT, ACTION OR OTHER PROCEEDING ARISING OUT OF THIS AGREEMENT OR ANY TRANSACTION CONTEMPLATED HEREBY.

8.9 Severability

If one or more provisions of this Agreement are held to be invalid, illegal or unenforceable by a court, arbiter or Governmental Authority, in each case, of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, which shall remain in full force and effect, and the Parties shall replace such invalid, illegal or unenforceable provision with a new provision permitted by Applicable Law and having an economic effect as close as possible to the invalid, illegal or unenforceable provision. Any provision of this Agreement held invalid, illegal or unenforceable only in part or degree by a court of competent jurisdiction shall remain in full force and effect to the extent not held invalid, illegal or unenforceable.

8.10 Counterparts

This Agreement may be executed in any number of counterparts, each of which executed counterparts shall constitute an original, and all of which counterparts together shall constitute one and the same instrument. Copies of executed counterparts transmitted by email with PDF attachment shall be considered original executed counterparts.

8.11 Amendments; No Waivers

Neither this Agreement nor any term or provision hereof may be amended, supplemented, restated, waived, changed or modified except with the written consent of the Parties. No failure or delay by either Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. No notice to or demand on either Party in any case shall entitle it to any notice or demand in similar or other circumstances. No course of dealing between the Parties shall be effective to amend, modify, supplement or waive any provision of this Agreement.

8.12 Termination

a. Subject to Section 8.12(b), this Agreement shall continue in full force and effect until the end of the Term, at which point this Agreement shall automatically terminate in its entirety, save for any rights, obligations or claims of either Party which have accrued prior to such termination (along with any corresponding limitations of liability in respect thereof).

b. The following provisions shall survive any termination of this Agreement pursuant to this Section 8.12: Article 1, 2.3 (No Assumed Obligations; No Assigned Rights), 2.4 (No Purchase or Sale of Excluded Assets), 5.1 (Payments on Account of the Purchased Receivables), Section 5.8 (Confidentiality), Section 5.9 (Public Announcement; Disclosure), Section 5.12 (Tax Matters) and the rights, obligations or claims of either Party accruing prior to termination under Section 8.12(a); Article 7 (Indemnification); and this Article 8 (Miscellaneous). Nothing contained in this Section 8.12 shall relieve either Party from liability for any breach of this Agreement that occurs prior to termination.

(The remainder of this page is intentionally left blank; signature page follows.)

IN WITNESS WHEREOF the Parties have executed this Agreement as of the date first written above.

ESPERION THERAPEUTICS, INC.

by /s/ Authorized Signatory

Name: [***]

Title: [***]

IN WITNESS WHEREOF the Parties have executed this Agreement as of the date first written above.

OCM IP HEALTHCARE PORTFOLIO LP, by its general partner, OCM IP HEALTHCARE PORTFOLIO G.P. INC.

by /s/ Authorized Signatory
Name: [***]
Title: [***]

by /s/ Authorized Signatory
Name: [***]
Title: [***]

Exhibit A Form of Bill of Sale and Assignment
[***]

Exhibit B Escrow Agreement
[***]

Exhibit C Seller Account
[***]

Exhibit D Seller Disclosure Letter
[***]

Exhibit E Press Release
[***]

Exhibit 31.1

Certification

I, Sheldon L. Koenig, certify that:

1. I have reviewed this quarterly report on Form 10-Q for the period ended June 30, 2024, of Esperion Therapeutics, 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 officer(s) 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: August 12, 2024

/s/ Sheldon L. Koenig

Sheldon L. Koenig
President and Chief Executive Officer
(Principal Executive Officer)

Exhibit 31.2

Certification

I, Benjamin Halladay, certify that:

1. I have reviewed this quarterly report on Form 10-Q for the period ended June 30, 2024, of Esperion Therapeutics, 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 officer(s) 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: August 12, 2024

/s/ Benjamin Halladay

Benjamin Halladay
Chief Financial Officer
(Principal Financial Officer and Principal Accounting Officer)

Exhibit 32.1

CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the quarterly report on Form 10-Q of Esperion Therapeutics, Inc. (the "Company") for the period ended June 30, 2024, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), each of the undersigned officers of Esperion Therapeutics, Inc., hereby certify, pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, 18 U.S.C. Section 1350, that, to my knowledge as of the date hereof:

1) the Report which this statement accompanies fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; 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: August 12, 2024

/s/ Sheldon L. Koenig
Sheldon L. Koenig
President and Chief Executive Officer
(Principal Executive Officer)

/s/ Benjamin Halladay
Benjamin Halladay
Chief Financial Officer
(Principal Financial Officer and Principal Accounting Officer)