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, 2021
OR

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

For the transition period from to

Commission file number: 001-35986

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 x No o

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 x No o

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 x	Accelerated filer o
Non-accelerated filer o	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. o

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

As of August 1, 2021, there were 28,277,493 shares of the registrant's Common Stock, $0.001 par value per share, outstanding.

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

	June 30, 2021 (unaudited)	December 31, 2020
Assets		
Current assets:		
Cash and cash equivalents	$ 219,186	$ 304,962
Accounts receivable	21,854	12,388
Prepaid clinical development costs	650	844
Inventories	23,714	16,136
Other prepaid and current assets	9,770	11,566
Total current assets	275,174	345,896
Property and equipment, net	970	1,276
Right of use operating lease assets	4,261	6,030
Intangible assets	56	56
Total assets	$ 280,461	$ 353,258
Liabilities and stockholders' equity		
Current liabilities:		
Accounts payable	$ 29,353	$ 51,975
Accrued clinical development costs	2,873	7,663
Other accrued liabilities	31,673	24,790
Revenue interest liability	12,469	5,392
Deferred revenue from collaborations	3,930	1,662
Operating lease liabilities	2,346	2,587
Total current liabilities	82,644	94,069
Convertible notes, net of issuance costs	272,098	179,367
Revenue interest liability	225,762	171,212
Operating lease liabilities	1,920	3,454
Deferred revenue from collaborations	1,057	—
Other long-term liabilities	1,290	1,290
Total liabilities	584,771	449,392
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, 2021 and December 31, 2020	—	—
Common stock, $0.001 par value; 120,000,000 shares authorized as of June 30, 2021 and December 31, 2020; 28,268,533 shares issued at June 30, 2021 and 27,910,366 shares issued at December 31, 2020	26	26
Additional paid-in capital	722,534	797,655
Treasury stock, at cost; 1,994,198 shares at June 30, 2021 and December 31, 2020	(54,998)	(54,998)
Accumulated deficit	(971,872)	(838,817)
Total stockholders' deficit	(304,310)	(96,134)
Total liabilities and stockholders' deficit	$ 280,461	$ 353,258

See accompanying notes to the condensed financial statements.

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

	Three Months Ended June 30,		Six Months Ended June 30,	
	2021	2020	2021	2020
Revenues:				
Product sales, net	$ 10,610	$ 609	$ 16,960	$ 1,467
Collaboration revenue	30,049	211,627	31,677	212,609
Total Revenues	40,659	212,236	48,637	214,076
Operating expenses:				
Cost of goods sold	1,800	398	3,584	429
Research and development	25,074	34,987	53,028	69,689
Selling, general and administrative	46,318	47,681	107,382	89,234
Total operating expenses	73,192	83,066	163,994	159,352
(Loss) income from operations	(32,533)	129,170	(115,357)	54,724
Interest expense	(11,144)	(4,640)	(19,269)	(8,811)
Other income, net	9	81	23	449
Net (loss) income	$ (43,668)	$ 124,611	$ (134,603)	$ 46,362
Net (loss) income per common share - basic	$ (1.67)	$ 4.50	$ (5.16)	$ 1.68
Net (loss) income per common share - diluted	$ (1.67)	$ 4.32	$ (5.16)	$ 1.60
Weighted-average shares outstanding - basic	26,225,073	27,665,728	26,109,089	27,592,479
Weighted-average shares outstanding - diluted	26,225,073	28,854,445	26,109,089	28,948,058
Other comprehensive loss:				
Unrealized loss on investments	$ —	$ (9)	$ —	$ (23)
Comprehensive (loss) income	$ (43,668)	$ 124,602	$ (134,603)	$ 46,339

See accompanying notes to the condensed financial statements.

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

	Common Stock		Additional Paid-In Capital	Accumulated Deficit	Accumulated Other Comprehensive Income (Loss)	Treasury Stock	Total Stockholders' Equity (Deficit)
	Shares	Amount					
Balance at December 31, 2019	27,497,911	$ 27	$ 715,166	$ (695,266)	$ 23	$ —	$ 19,950
Exercise of stock options	40,133	1	1,013	—	—	—	1,014
Vesting of restricted stock units	10,089	—	—	—	—	—	—
Stock-based compensation	—	—	7,053	—	—	—	7,053
Other comprehensive loss	—	—	—	—	(14)	—	(14)
Net loss	—	—	—	(78,249)	—	—	(78,249)
Balance March 31, 2020	27,548,133	$ 28	$ 723,232	$ (773,515)	$ 9	$ —	$ (50,246)
Exercise of stock options	160,024	—	3,738	—	—	—	3,738
Vesting of restricted stock units	43,498	—	—	—	—	—	—
Stock-based compensation	—	—	7,395	—	—	—	7,395
Other comprehensive gain	—	—	—	—	(9)	—	(9)
Net loss	—	—	—	124,611	—	—	124,611
Balance at June 30, 2020	27,751,655	$ 28	$ 734,365	$ (648,904)	$ —	$ —	$ 85,489

	Common Stock		Additional Paid-In Capital	Accumulated Deficit	Accumulated Other Comprehensive Income (Loss)	Treasury Stock	Total Stockholders' Deficit
	Shares	Amount					
Balance at December 31, 2020	25,916,168	$ 26	$ 797,655	$ (838,817)	$ —	$ (54,998)	$ (96,134)
Adoption of new accounting pronouncement	—	—	(93,475)	1,548	—	—	(91,927)
Balance at January 1, 2021	25,916,168	26	704,180	(837,269)	—	(54,998)	(188,061)
Exercise of stock options	172,268	—	2,668	—	—	—	2,668
Vesting of restricted stock units	43,465	—	—	—	—	—	—
Vesting of ESPP Shares	50,818	—	1,183	—	—	—	1,183
Stock-based compensation	—	—	5,751	—	—	—	5,751
Net loss	—	—	—	(90,935)	—	—	(90,935)
Balance March 31, 2021	26,182,719	$ 26	$ 713,782	$ (928,204)	$ —	$ (54,998)	$ (269,394)
Exercise of stock options	10,477	—	168	—	—	—	168
Vesting of restricted stock units	81,139	—	—	—	—	—	—
Stock-based compensation	—	—	8,584	—	—	—	8,584
Other comprehensive loss	—	—	—	—	—	—	—
Net loss	—	—	—	(43,668)	—	—	(43,668)
Balance at June 30, 2021	26,274,335	$ 26	$ 722,534	$ (971,872)	$ —	$ (54,998)	$ (304,310)

See accompanying notes to the condensed financial statements.

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

	Six Months Ended June 30,	
	2021	2020
Operating activities		
Net (loss) income	$ (134,603)	$ 46,362
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation expense	306	224
Accretion of premiums and discounts on investments	—	(93)
Amortization of debt issuance costs	804	—
Non-cash interest expense related to the revenue interest liability	12,865	8,811
Stock-based compensation expense	14,335	14,448
Changes in assets and liabilities:		
Accounts receivable	(9,466)	(2,915)
Prepaids and other assets	1,990	533
Deferred revenue	3,325	(1,018)
Inventories	(7,578)	(8,248)
Other long-term assets	—	(1,238)
Accounts payable	(22,182)	921
Other accrued liabilities	3,270	12,257
Net cash (used in) provided by operating activities	(136,934)	70,044
Investing activities		
Purchases of investments	—	(4,420)
Proceeds from sales/maturities of investments	—	36,895
Purchase of property and equipment	—	(776)
Net cash provided by investing activities	—	31,699
Financing activities		
Proceeds from revenue interest liability, net of issuance costs	49,917	25,000
Proceeds from exercise of common stock options	2,836	4,752
Payments on revenue interest liability	(1,155)	(64)
Payment of debt issuance costs	(440)	—
Net cash provided by financing activities	51,158	29,688
Net (decrease) increase in cash and cash equivalents	(85,776)	131,431
Cash, cash equivalents and restricted cash at beginning of period	304,962	167,058
Cash, cash equivalents and restricted cash at end of period	$ 219,186	$ 298,489
Supplemental disclosure of cash flow information:		
Purchase of property and equipment not yet paid	$ —	$ 6
Non cash right of use asset	6	(7)

See accompanying notes to the condensed financial statements.

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

1. The Company and Basis of Presentation

Esperion Therapeutics, Inc. ("the Company") is the Lipid Management Company, a pharmaceutical company singularly focused on developing and commercializing affordable, oral, once-daily, non-statin medicines for the treatment of patients struggling with elevated low density lipoprotein cholesterol ("LDL-C"). The Esperion team of lipid experts are dedicated to lowering bad cholesterol through the discovery, development and commercialization of innovative medicines and their combinations with established medicines. The Company's first two products were approved by the U.S. Food and Drug Administration ("FDA"), European Medicines Agency ("EMA") and Swiss Agency for Therapeutic Products ("Swissmedic") in 2020. Bempedoic acid and the bempedoic acid / ezetimibe combination tablets are oral, once-daily, non-statin, LDL-C lowering medicines for patients with atherosclerotic cardiovascular disease ("ASCVD") or heterozygous familial hypercholesterolemia ("HeFH").

On April 26, 2021, the Company entered into a license and collaboration agreement with Daiichi Sankyo Co. Ltd ("DS"). Pursuant to the agreement, the Company granted DS exclusive development and commercialization rights to 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 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. The Company received an upfront cash payment of $30.0 million in May 2021 and is eligible to receive up to an additional $175.0 million in sales milestones. The Company will also receive tiered royalties ranging from 5 percent to 20 percent on net sales in the DS Territory. Refer to Note 3 "Collaborations with Third Parties" for further information.

On April 26, 2021, the Company entered into Amendment No. 2 (the “RIPA Amendment”) to the Revenue Interest Purchase Agreement with Eiger III SA LLC (“Oberland”), an affiliate of Oberland Capital LLC, as agent for the purchaser parties thereto dated as of June 26, 2019 (as amended by the Amendment No. 1 dated as of November 9, 2020, the “RIPA”). Pursuant to the RIPA Amendment, 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 and the related Security Agreement, which are discussed further in Note 8 "Liability Related to the Revenue Interest Purchase Agreement."

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, and raising capital. 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; 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. The Company's ability to successfully launch, commercialize and generate revenue from NEXLETOL, NEXLIZET, NILEMDO and NUSTENDI has been and may continue to be adversely affected by the economic impact of the COVID-19 pandemic. In response to the Company’s history of operating losses and the uncertainty around the ongoing impact of COVID-19 management has initiated certain cost optimization measures and will implement additional cost reduction measures as needed if additional collaboration or capital funding is not available. Additionally, 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, permitted debt financings, permitted royalty-based financings, and permitted 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 prior year amounts have been

reclassified to conform with current year presentation. 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, 2020, and the notes thereto, which are included in the Company's Annual Report on Form 10-K for the year ended December 31, 2020. 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 generally accepted accounting principles 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.

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, 2021 nine customers accounted for all of the Company's net trade receivables and as of December 31, 2020 eight customers accounted for all the Company's net trade receivables.

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 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 (loss) income.

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.

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. Net product sales totaled $10.6 million and $17.0 million for the three and six months ended June 30, 2021 and $0.6 million and $1.5 million for the three and six months ended June 30, 2020, respectively.

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 “Other accrued liabilities” in the condensed balance sheets. Discounts, such as prompt pay discounts, and chargebacks are recorded as a reduction to trade 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 began capitalizing inventory upon receiving FDA approval for NEXLETOL and NEXLIZET on February 21, 2020 and February 26, 2020, respectively. Prior to the FDA approval of NEXLETOL and NEXLIZET, expenses associated with the manufacturing of the Company's products were recorded as research and development expense.

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.

Recently Implemented Accounting Pronouncements

In August 2020, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") 2020-06, *Debt—Debt with Conversion and Other Options (Subtopic 470-20) and Derivatives and Hedging—Contracts in Entity's Own Equity (Subtopic 815-40)* ("ASU 2020-06"). This ASU simplifies the accounting for convertible instruments by removing the separation models for convertible debt with cash conversion features and convertible instruments with a beneficial conversion feature, which requires the fair value of the embedded conversion feature of convertible instruments be allocated to equity. Under ASU 2020-06, a convertible debt instrument with those features will generally be reported as a single liability at its amortized cost with no separate accounting for the embedded conversion features in equity. The adoption of this ASU resulted in the reclassification of the portion of the Company's convertible notes from equity to debt, which also reduces reported interest expense and increases reported net income. ASU 2020-06 requires the application of the if-converted method when calculating diluted earnings per share, eliminating the Company's ability to use the treasury stock method when certain conditions are met. The ASU is effective for annual reporting periods beginning after December 15, 2021, with early adoption permitted no earlier than fiscal years beginning after December 15, 2020. The Company early adopted this standard as of January 1, 2021 which resulted in a net increase in the convertible notes of approximately $92.0 million, an adjustment to accumulated deficit of $1.5 million, and a reduction to additional paid-in capital of $93.5 million. The tax impact of the adoption was not material.

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, 2020.

3. Collaborations with Third Parties

DSE Agreement Terms

On January 2, 2019, the Company entered into a license and collaboration agreement with Daiichi Sankyo Europe GmbH ("DSE"). Pursuant to the agreement, the Company granted DSE exclusive commercialization rights to bempedoic acid and the bempedoic acid / ezetimibe combination tablets in the European Economic Area and Switzerland (“DSE Territory”). DSE will be responsible for commercialization in the DSE Territory. The Company remains responsible for clinical development, regulatory and manufacturing activities for the licensed products globally, including in the DSE Territory.

Pursuant to the agreement, the consideration consists of a $150.0 million upfront cash payment as well as $150.0 million cash payment to the Company upon first commercial sales in the DSE Territory. The Company also is responsible to supply DSE with certain manufacturing supply of the API or bulk tablets. The Company is also eligible to receive a substantial additional regulatory milestone payment upon the grant of the marketing authorisation in the European Union for the CV risk reduction 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 related to total net sales achievements for DSE in the DSE Territory. Finally, the Company will receive tiered fifteen percent (15%) to twenty-five percent (25%) royalties on net DSE Territory sales.

The 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.

Agreement Terms Amendment

On June 18, 2020, the Company entered into an amendment to the license and collaboration agreement with DSE, dated as of January 2, 2019. In June 2020, the Company completed the transfer of the MAAs for NILEMDO® and NUSTENDI®. Pursuant to the terms of the amendment, DSE paid the Company the second $150.0 million milestone based on completion of the NUSTENDI MAA transfer rather than the first product sale in the EU, as previously agreed. Additionally, the Company and DSE have agreed to expand the DSE Territory, or the territory in which DSE has exclusive commercialization rights to NILEMDO and NUSTENDI to include Turkey. 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.

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 $150.0 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 regulatory and 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 regulatory and development activities. In the three and six months ended June 30, 2020, the Company recognized approximately $0.7 million and $1.6 million, respectively, related to the on-going performance obligation for the ongoing regulatory efforts related to the MAA in the DSE Territory, which was transferred to DSE in June 2020.

In the three and six months ended June 30, 2020, the Company recognized the $150.0 million milestone as collaboration revenue based on the successful transfer of the NUSTENDI MAA.

In addition, in the three and six months ended June 30, 2021, the Company recognized collaboration revenue of approximately $2.0 million and $3.6 million related to royalty revenue from DSE following their European launch of NILEMDO and NUSTENDI as well as the 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, 2020, the Company recognized collaboration revenue of $1.0 million related to the sales of bulk tablets of NILEMDO and NUSTENDI to 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 development activities, regulatory approvals and 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 the Otsuka Agreement with Otsuka Pharmaceutical Co., Ltd. ("Otsuka"). Pursuant to the Otsuka Agreement, the Company granted Otsuka exclusive development and commercialization rights to NEXLETOL and NEXLIZET in Japan. 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 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 for NEXLETOL in the Otsuka Territory, and up to $50.0 million upon the achievement of the primary major adverse cardiovascular events (“MACE”) in the CLEAR Outcomes study and the CV risk reduction rate on 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 will receive tiered fifteen percent (15%) to thirty percent (30%) royalties on net sales in Japan.

The agreement calls for both parties to participate in a Joint Collaboration Committee (the "Otsuka JCC"). The Otsuka JCC is comprised of executive management from each company and Otsuka will lead in all aspects related to development and commercialization in the Otsuka 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 did not have any collaboration revenue from the Otsuka Agreement during the three and six months ended June 30, 2021. In the three and six months ended June 30, 2020, the Company recognized $60.0 million of collaboration revenue related to the $60.0 million upfront payment.

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

On April 26, 2021, the Company entered into a license and collaboration agreement with Daiichi Sankyo Company, Limited ("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 (the "Products") in South Korea, Taiwan, Hong Kong, Thailand, Vietnam, Brazil, Macao, Cambodia and Myanmar (collectively the "DS Territory"). The 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 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 agreement, the consideration consists of a $30.0 million upfront cash payment that is non-refundable, non-reimbursable and non-creditable. The Company will be eligible to receive additional one-time payments of up to $175.0 million if certain commercial milestones are achieved by DS. Also, the Company will receive tiered royalties of five percent (5%) to twenty percent (20%) of net sales in the DS Territory.

The agreement requires the parties to establish a joint collaboration committee (the "Joint Collaboration Committee" or "JCC"). The Joint Collaboration Committee is composed of six (6) members, with each Party contributing three (3) representatives each who are employees of such Party with main responsibility of overseeing the Development and Commercialization activities relating to the Licensed Products in the Field in the DS Territory and other responsibilities as stated in the Agreement.

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. Accordingly, for the three and six months ended June 30, 2021, the Company recognized $28.1 million of collaboration revenue related to the $30.0 million upfront payment. The $28.1 million relates to the performance obligations for the license to the Company's intellectual property and a portion of ongoing regulatory and development activities conducted during the period ended June 30, 2021, in the amounts of $28.0 million and $0.1 million, respectively. The remaining $1.9 million of the upfront payment was deferred as of June 30, 2021 due to an on-going performance obligation related to the developmental activities in South Korea and Taiwan. This deferred revenue will be recognized ratably over the period leading up to the completion of these developmental activities.

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.

Other Agreements

During December 2020, the Company entered into a licensing agreement with Serometrix to in-license a series of early stage compounds known as scaffolds related to its oral, small molecule PCSK9 inhibitor program. PCSK9 is an enzyme responsible for regulating LDL receptors. PCSK9 inhibitors stop LDL receptors from being broken down, increasing the number of LDL receptors present to remove cholesterol from the blood. The agreement allows the Company use of the PCSK9 compounds, which were patented by Serometrix prior to the licensing agreement, to perform further research and development with the goal of developing a small molecule oral PCSK9 inhibitor that can be taken as a tablet.

In exchange for these rights, the Company agreed to pay Serometrix an upfront payment, milestone payments and royalties on net sales of licensed products under the agreement. The Company is obligated to make milestone payments to Serometrix upon the achievement of specified development, regulatory and commercialization milestones. The development milestone payments due under the agreement depend on the licensed product being developed. As part of the agreement, the Company made an upfront cash payment of $12.5 million in December 2020, which was recorded to research and development expense, to Serometrix, with payments in future years tied to specific milestones. The Company has also agreed to pay tiered royalties based on net sales of all products licensed under the agreement of mid-single-digit to low double-digit percentages.

4. Inventories

Inventories consist of the following (in thousands):

	June 30, 2021	December 31, 2020
Raw materials	$ 21,293	$ 13,788
Work in process	703	2,028
Finished goods	1,718	320
	$ 23,714	$ 16,136

5. Commitments and Contingencies

On January 12, 2016, a purported stockholder of the Company filed a putative class action lawsuit in the United States District Court for the Eastern District of Michigan, against the Company and Tim Mayleben, captioned *Kevin L. Dougherty v. Esperion Therapeutics, Inc., et al.* (No. 16-cv-10089). The lawsuit alleges that the Company and Mr. Mayleben violated Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 and SEC Rule 10b-5 by allegedly failing to disclose in an August 17, 2015, public statement that the FDA would require a cardiovascular outcomes trial before approving the Company's lead product candidate. The lawsuit seeks, among other things, compensatory damages in connection with an allegedly inflated stock price between August 18, 2015, and September 28, 2015, as well as attorneys' fees and costs. On May 20, 2016, an amended complaint was filed in the lawsuit and on July 5, 2016, the Company filed a motion to dismiss the amended complaint.

On December 27, 2016, the court granted the Company's motion to dismiss with prejudice and entered judgment in the Company's favor. On January 24, 2017, the plaintiffs in this lawsuit filed a motion to alter or amend the judgment. In May 2017, the court denied the plaintiff's motion to alter or amend the judgment. In May 2017, the court denied the plaintiff's motion to alter or amend the judgment. On June 19, 2017, the plaintiffs filed a notice of appeal to the Sixth Circuit Court of Appeals and on September 14, 2017, they filed their opening brief in support of the appeal. The appeal was fully briefed on December 7, 2017, and it was argued before the Sixth Circuit on March 15, 2018. On September 27, 2018, the Sixth Circuit issued an opinion in which it reversed the district court's dismissal and remanded for further proceedings. On October 11, 2018, the Company filed a petition for rehearing en banc and, on October 23, 2018, the Sixth Circuit Court of Appeals directed plaintiffs to respond to that petition. On December 3, 2018, the Sixth Circuit denied the Company's petition for en banc rehearing, and on December 11, 2018, the case was returned to the federal district court by mandate from the Sixth Circuit. On December 26, 2018, the Company filed an answer to the amended complaint, and on March 28, 2019, the Company filed its amended answer to the amended complaint. On September 15, 2020, the Company filed a motion for summary judgment, and the plaintiffs filed a motion for partial summary judgment, and on October 23, 2020, the parties filed oppositions to both motions for summary judgment. On November 20, 2020, the Company and plaintiffs filed replies in support of their respective motions. On March 12, 2021, the parties agreed to a settlement in principle of the securities class action, and on April 26, 2021, the parties entered into a stipulation of settlement to resolve all legal claims, in which defendants expressly deny that they have committed any act or omission giving rise to any liability under Section 10(b) of the Securities Exchange Act of 1934. Under the terms of the stipulation of settlement, which the court preliminarily approved on May 6, 2021, the Company and certain of the Company's insurance carriers will cause a payment of $18.25 million to be made to the plaintiff class. There is no assurance that the settlement will ultimately become final. If the settlement does not occur and litigation continues, the Company intends to vigorously defend against it. As a result of this settlement agreement, during the three months ended March 31, 2021, the Company recorded a loss on settlement of $13.25 million in selling, general, and administrative expenses on the condensed statement of operations, which represents the litigation settlement of $18.25 million offset by $5.0 million in insurance claim proceeds from our insurance carriers.

On December 15, 2016, a purported stockholder of the Company filed a derivative lawsuit in the Court of Chancery of the State of Delaware against Tim Mayleben, Roger Newton, Mary McGowan, Nicole Vitullo, Dov Goldstein, Daniel Janney, Antonio Gotto Jr., Mark McGovern, Gilbert Omenn, Scott Braunstein, and Patrick Enright. The Company is named as a nominal defendant. The lawsuit alleges that the defendants breached their fiduciary duties to the Company when they made or approved improper statements on August 17, 2015, regarding the Company's lead product candidate's path to FDA approval, and failed to ensure that reliable systems of internal controls were in place at the Company. On February 8, 2019, the Company and defendants filed a motion to dismiss the derivative lawsuit. On April 23, 2019, the plaintiff filed an opposition to the motion to dismiss the derivative lawsuit, and the Company filed a reply brief on May 15, 2019. On November 6, 2019, the court held a hearing on the motion to dismiss. On February 13, 2020, the court granted the motion to dismiss with prejudice and entered judgment in the Company's favor. On March 16, 2020, the plaintiff filed a notice of appeal to the Supreme Court of Delaware. On June 1, 2020, the plaintiff filed his opening brief on appeal to the Supreme Court of Delaware. On July 1, 2020, the Company and the defendants filed an answering brief, and on July 16, 2020, the plaintiff filed a reply brief. On October 14, 2020, the Supreme Court of Delaware held oral arguments on the appeal. On October 29, 2020, the Supreme Court of Delaware issued an order affirming the judgment of the Court of Chancery.

There have been no other material changes to the Company's contractual obligations and commitments and contingencies outside the ordinary course of business from those previously disclosed in the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2020 or noted above.

6. Investments

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

	June 30, 2021			
	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Estimated Fair Value
Cash equivalents:				
Money market funds	$ 201,734	$ —	$ —	$ 201,734
Total	$ 201,734	$ —	$ —	$ 201,734

	December 31, 2020			
	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Estimated Fair Value
Cash equivalents:				
Money market funds	$ 281,783	$ —	$ —	$ 281,783
Total	$ 281,783	$ —	$ —	$ 281,783

During the three and six months ended June 30, 2021, other income, net in the statements of operations includes interest income on investments of less than $0.1 million and less than $0.1 million, respectively.

During the three and six months ended June 30, 2020, other income, net in the statements of operations includes interest income on investments of $0.1 million and $0.5 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, 2021 and 2020.

In the three and six months ended June 30, 2021, 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, 2021, 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, 2021				
Assets:				
Money market funds	$ 201,734	$ 201,734	$ —	$ —
Total assets at fair value	$ 201,734	$ 201,734	$ —	$ —
December 31, 2020				
Assets:				
Money market funds	$ 281,783	$ 281,783	$ —	$ —
Total assets at fair value	$ 281,783	$ 281,783	$ —	$ —

There were no transfers between Levels 1, 2 or 3 during the three and six months ended June 30, 2021 and 2020.

8. Liability Related to the Revenue Interest Purchase Agreement

On June 26, 2019, the Company entered into a 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 tablets and other working capital needs. Pursuant to the RIPA, the Company received $125.0 million at closing, less certain issuance costs. The Company was also 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 have a right to receive certain revenue interests (the "Revenue Interests") from the Company based upon net sales of the Company's certain products 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 (a) if annual net sales equal or exceed $350.0 million by December 31, 2021 (the "Sales Threshold"), the initially tiered revenue interest rate will be decreased to a single rate of 2.5% of the Company's net sales in the Covered Territory, beginning on January 1, 2022, and (b) 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.

Under the RIPA, the Company has an option (the "Call Option") to terminate the RIPA and repurchase future Revenue Interests at any time upon advance written notice. Additionally, the Purchasers have an option (the "Put Option") to terminate the RIPA and to require the Company to repurchase future Revenue Interests upon enumerated events such as a bankruptcy event, an uncured material breach, a material adverse effect or a change of control. If the Put Option is exercised prior to the first anniversary of the closing date by the Purchasers (except pursuant to a change of control), the required repurchase price will be 120% of the Cumulative Purchaser Payments (minus all payments Company has made to the Purchasers in connection with the Revenue Interests). In all other cases, if the Put Option or the Call Option are exercised, the required repurchase price will be 175% of the Cumulative Purchaser Payments (minus all payments Company has made to the Purchasers in connection with the Revenue Interests), if such option is exercised prior to the third anniversary of the closing date, and 195% of the Cumulative Purchaser Payments (minus all payments Company has made to the Purchasers in connection with the Revenue Interests), if such option is exercised thereafter.

In addition, the RIPA contains various representations and warranties, information rights, non-financial covenants, indemnification obligations and other provisions that are customary for a transaction of this nature.

RIPA Amendments

On April 26, 2021, the Company entered into Amendment No. 2 (the "RIPA Amendment") to the RIPA with Oberland, as agent for the purchaser parties thereto. Pursuant to the RIPA Amendment, 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.

Under the RIPA, the Company has an option (the "Call Option") to terminate the RIPA and repurchase future Revenue Interests at any time upon advance written notice. Additionally, the Purchasers have an option (the "Put Option") to terminate

the RIPA and to require the Company to repurchase future Revenue Interests upon enumerated events such as a bankruptcy event, an uncured material breach, a material adverse effect or a change of control. If the Put Option or the Call Option are exercised, the required repurchase price will be 200% of the Cumulative Purchaser Payments (minus all payments Company has made to the Purchasers in connection with the Revenue Interests), if such option is exercised prior to the third anniversary of the closing date, and 225% of the Cumulative Purchaser Payments (minus all payments Company has made to the Purchasers in connection with the Revenue Interests), if such option is exercised thereafter.

In accordance with the guidance in ASC 470-50, “Debt—Modifications and Extinguishments,” the RIPA Amendment was accounted for as a debt modification. The amendment resulted in a $0.1 million loss on modification of debt, consisting of third-party fees associated with the transaction, which is included in selling, general, and administrative expenses in the statements of operations for the three and six months ended June 30, 2021.

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 ending 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. 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.

In connection with the arrangement, as of June 30, 2021, the Company has recorded a liability, referred to as the “Revenue interest liability” in the condensed balance sheets, of $238.2 million, net of $0.5 million of capitalized issuance costs in connection with the RIPA. The Company imputes interest expense associated with this 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 this liability may vary during the term of the agreement depending on a number of factors, including the level of forecasted net sales. The Company evaluates the interest rate quarterly based on its current net sales forecasts utilizing the prospective method.

A significant increase or decrease in net sales will materially impact the revenue interest liability, interest expense and the time period for repayment. The Company recorded approximately $8.0 million and $12.9 million in interest expense related to this arrangement for the three and six months ended June 30, 2021, and $4.6 million and $8.8 million for the three and six months ended June 30, 2020, respectively.

The repayment of the RIPA to Oberland does not have a fixed repayment schedule, rather it will be completely repaid and extinguished when the Company has repaid 200% of the aggregate purchase price prior to the third anniversary of the closing date, and 225% of the Cumulative Purchaser Payments thereafter, unless the RIPA is terminated earlier. Since there is not a fixed repayment schedule, the Company does not project its future repayments by year. Each period, the Company estimates the future expected sales of its products in the covered territory and determines the effective annual imputed interest rate, which updates and changes the timing of the Company’s payments. Under the terms of the agreement, every $100 million of net sales generated, less than or equal to $250 million in an annual aggregate year, would result in a repayment obligation of approximately $10.0 million or 10.0% at the stated repayment rate in the first year. Annual Net Sales for a calendar year exceeding $250 million would result in a repayment obligation of approximately $3.3 million or 3.3% for every $100 million of sales above the threshold. If the Company equals or exceeds $350 million of sales in the U.S. in 2021, then the repayment amount would drop to $3.3 million for every $100 million of net sales starting in 2022. If the US net sales are less than $350 million for the year ended December 31, 2021, then the Covered Territory is expanded to include worldwide sales beginning in 2022. The Company’s repayments of the RIPA are directly tied to the growth of its net sales, and as the Company’s net sales grow, the Company expects the related repayments of the RIPA to grow as well. The Company currently expects to repay $12.5 million in the next twelve months.

The effective annual imputed interest rate is 17.2% as of June 30, 2021. The Company incurred $0.6 million of issuance costs in connection with the RIPA, which will be amortized to interest expense over the estimated term of the RIPA. Payments made to Oberland as a result of the Company's net sales will reduce the revenue interest liability.

The following table summarizes the revenue interest liability activity during the six months ended June 30, 2021:

		(in thousands)
Total revenue interest liability at December 31, 2020	$	176,604
Oberland funding upon execution of Amendment No. 2, net of issuance costs		49,917
Interest expense recognized		12,865
Revenue Interests payments	$	(1,155)
Total revenue interest liability at June 30, 2021	$	238,231

9. Convertible Notes

On November 16, 2020, the Company issued $250.0 million aggregate principal amount of 4.0% senior subordinated convertible notes due November 15, 2025. The net proceeds the Company received from the offering of the initial notes was approximately $242.0 million, after deducting the initial purchasers' discounts and commissions and offering expenses payable by the Company. In connection with the offering of the senior subordinated convertible notes, the Company granted the initial purchasers of the senior subordinated convertible notes a 30-day option to purchase up to an additional $30.0 million aggregate principal amount of the senior subordinated convertible notes on the same terms and conditions. On November 18, 2020 the option was exercised, which resulted in approximately $29.1 million of additional proceeds, for total aggregate principal of $280.0 million and net proceeds of $271.1 million (the additional notes and, together with the initial notes, collectively called the "Convertible Notes"). 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 the Company's 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 ended on March 31, 2021 (and only during such calendar quarter), if the last reported sale price per share of the Company's common stock, par value $0.001 per share ("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 the Company's 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 the Company's 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.

The Company incurred approximately $8.9 million of issuance costs related to the issuance of the Convertible Notes, of which, prior to the adoption of ASU 2020-06 on January 1, 2021, $5.8 million and $3.1 million were allocated and recorded to long-term debt and additional paid-in capital, respectively. The $5.8 million of issuance costs recorded as long-term debt on the condensed balance sheet are amortized over the five-year contractual term of the Convertible Notes using the effective interest method.

Prior to the adoption of ASU 2020-06 on January 1, 2021, the $271.1 million of proceeds received from the issuance of the Convertible Notes were allocated between long-term debt (the "liability component") of $177.6 million and additional paid-in capital (the "equity component") of $93.5 million. The fair value of the liability component was measured using rates determined for similar debt instruments without a conversion feature. The carrying amount of the equity component, representing the conversion option, was determined by deducting the fair value of the liability component from the aggregate face value of the Convertible Notes and was included in additional paid-in capital in the condensed balance sheet and was not remeasured as long as it did not to meet the conditions for equity classification. The liability component was to be accreted up to the face value of the Convertible Notes of $280.0 million, which resulted in additional non-cash interest expense being recognized through the Maturity Date.

With the adoption of ASU 2020-06 as of January 1, 2021, the Company reports the convertible debt liability at the aggregate principal amount less unamortized issuance costs. This resulted in the reclassification of the $93.5 million of the Company's convertible notes recognized at December 31, 2020 from additional paid in capital to the convertible debt liability. The portion of interest expense previously recognized for the accretion of the convertible debt liability and the true-up of the amortization of the issuance costs of $1.5 million was recorded as an adjustment to accumulated deficit.

The following tables summarizes the outstanding principal and debt issuance cost balances as follows (in thousands):

	Convertible note, debt balance	Debt issuance cost	Convertible notes, net
Balance at December 31, 2020	185,100	(5,733)	179,367
Adjustments to net principal due to adoption of ASU 2020-06	94,900	(2,973)	91,927
Balance at January 1, 2021	280,000	(8,706)	271,294
Balance at March 31, 2021	280,000	(8,306)	271,694
Balance at June 30, 2021	280,000	(7,902)	272,098

The Company recorded $3.2 million and $6.4 million of interest expense during the three and six months ended June 30, 2021, relating to the cash interest on the convertible notes due semi-annually and amortization of the debt issuance costs.

As of June 30, 2021, no Convertible Notes were convertible pursuant to their terms. The estimated fair value of the Convertible Notes was $233.6 million and $283.4 million as of June 30, 2021 and December 31, 2020, respectively. The

estimated fair value of the Convertible Notes was determined through consideration of quoted market prices. As of June 30, 2021 and December 31, 2020, 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 the Company's 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 the Company's 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 the Company's 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, 2021 and December 31, 2020, 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 the Company's 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. 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.

10. Other Accrued Liabilities

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

	June 30, 2021	December 31, 2020
Accrued compensation	$ 12,419	$ 15,161
Accrued variable consideration	13,700	5,025
Accrued professional fees	4,046	3,183
Accrued interest on convertible notes	1,400	1,369
Accrued other	108	52
Total other accrued liabilities	$ 31,673	$ 24,790

11. Stock Compensation

Employee Stock Purchase Plan

In April 2020, the board of directors approved the Esperion Therapeutics, Inc. 2020 Employee Stock Purchase Plan (the "ESPP") which was approved by the Company's shareholders on May 28, 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 the Company's common stock on the last trading day of the offering period. Participating employees will purchase shares of the Company's common stock at a discount of up to 15% on the lesser of the closing price of the Company's common stock on the NASDAQ Global Select 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. In the three and six months ended June 30, 2021, the Company recognized approximately $0.1 million and $0.4 million of stock compensation expense related to the ESPP, respectively. As of June 30, 2021, there have been 50,818 shares issued and 774,182 shares reserved for future issuance under the ESPP.

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, 2021:

	Number of Options	Weighted-Average Exercise Price Per Share	Weighted-Average Remaining Contractual Term (Years)	Aggregate Intrinsic Value
				(in thousands)
Outstanding at December 31, 2020	4,176,518	$ 40.24	5.28	$ 18,415
Granted	757,992	$ 28.06		
Forfeited or expired	(876,151)	$ 49.75		
Exercised	(182,745)	$ 15.52		
Outstanding at June 30, 2021	3,875,614	$ 36.87	5.06	$ 10,405

The following table summarizes information about the Company’s stock option plan as of June 30, 2021:

	Number of Options	Weighted-Average Exercise Price Per Share	Weighted-Average Remaining Contractual Term (Years)	Aggregate Intrinsic Value
				(in thousands)
Vested and expected to vest at June 30, 2021	3,875,614	$ 36.87	5.06	$ 10,405
Exercisable at June 30, 2021	2,948,732	$ 36.45	3.94	$ 10,371

Stock-based compensation related to stock options was $6.2 million and $9.9 million for the three and six months ended June 30, 2021, respectively, including $0.2 million and $0.5 million that were capitalized into inventory, and $5.5 million and $11.1 million for the three and six months ended June 30, 2020, respectively, including $0.3 million and $0.5 million that were capitalized into inventory. As of June 30, 2021, there was $20.3 million of unrecognized stock-based compensation expense related to unvested options, which will be recognized over a weighted-average period of 2.7 years. The increase in stock option expense for the three months ended June 30, 2021, was primarily due to an equity modification related to the CEO Departure Agreement entered into between the Company and the Company's former CEO on May 16, 2021.

Restricted Stock Units (or RSUs)

The following table summarizes the activity relating to the Company's RSUs for the six months ended June 30, 2021:

	Number of RSUs	Weighted-Average Fair Value Per Share
Outstanding and unvested December 31, 2020	401,234	$ 46.92
Granted	823,301	$ 26.53
Forfeited	(115,616)	$ 42.90
Vested	(124,604)	$ 45.15
Outstanding and unvested June 30, 2021	984,315	$ 30.56

Stock-based compensation related to RSUs was approximately $2.2 million and $4.0 million for the three and six months ended June 30, 2021, respectively, including $0.1 million and $0.2 million that were capitalized into inventory, and approximately $1.8 million and $3.3 million for the three and six months ended June 30, 2020, respectively, including $0.1 million and $0.1 million that were capitalized into inventory. As of June 30, 2021, there was $28.2 million of unrecognized stock-based compensation expense related to unvested RSUs, which will be recognized over a weighted-average period of 3.2 years.

Performance-based Restricted Stock Units ("PBRSUs")

The Company's PBRSUs vest after a two-year performance period contingent upon the achievement of predetermined performance-based milestones based on the Company's U.S. net product sales. The actual number of units (if any) received under this award will depend on continued employment and actual performance over the two-year 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 our common stock on the date of grant. During the three and six months ended June 30, 2021 the Company granted 64,200 PBRSUs with a weighted-average fair value per share of $22.52. The Company expects the performance criteria to be met.

12. Income Taxes

There was no provision for income taxes for the three and six months ended June 30, 2021 and 2020, because the Company has incurred annual operating losses since inception. At June 30, 2021, 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.

13. Net (Loss) Income Per Common Share

Basic net (loss) income per share is calculated by dividing net (loss) income by the weighted-average number of common shares outstanding during the period, without consideration for common stock equivalents. Diluted net (loss) income per share is computed by dividing net (loss) income by the weighted-average number of common stock equivalents outstanding for the period, including shares that potentially could be dilutive if they were exercised or vested during the period, determined using the treasury-stock method. For purposes of this calculation, stock options, unvested RSUs, unvested 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 following table summarizes the calculation of basic and diluted net (loss) income per share:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2021	2020	2021	2020
Net (loss) income (in thousands)	$ (43,668)	$ 124,611	$ (134,603)	$ 46,362
Weighted average common shares outstanding - basic	26,225,073	27,665,728	26,109,089	27,592,479
Effect of dilutive shares:				
Common shares under option	—	1,139,280	—	1,291,353
Unvested RSUs	—	49,437	—	64,226
Dilutive shares	—	1,188,717	—	1,355,579
Weighted average common shares outstanding - diluted	26,225,073	28,854,445	26,109,089	28,948,058
Net (loss) income per common share - basic	$ (1.67)	$ 4.50	$ (5.16)	$ 1.68
Net (loss) income per common share - diluted	$ (1.67)	$ 4.32	$ (5.16)	$ 1.60

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

	Three Months Ended June 30,		Six Months Ended June 30,	
	2021	2020	2021	2020
Common shares under option	3,875,614	2,427,074	3,875,614	2,391,374
Unvested RSUs	984,315	295,423	984,315	190,565
Unvested PBRSUs	64,200	—	64,200	—
Shares issuable related to the ESPP	33,412	—	33,412	—
Shares issuable upon conversion of convertible notes	8,460,237	—	8,460,237	—
Total potential dilutive shares	13,417,778	2,722,497	13,417,778	2,581,939

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, 2020 and other filings that we make with the Securities and Exchange Commission.

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 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, or approval of expanded indications for bempedoic acid and the bempedoic acid / ezetimibe combination tablets to be materially different from any future results, performance or achievements, including in relation to the clinical development, commercialization plans, or approval of expanded indications for bempedoic acid and the bempedoic acid / ezetimibe combination tablets, and the impact of COVID-19 on our business, 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 report represent our views as of the date of this quarterly report. 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.

We use the terms "we," "us," "our," or the "Company" in this report to refer to Esperion Therapeutics, Inc.

Overview

Corporate Overview

We are the Lipid Management Company, a pharmaceutical company singularly focused on developing and commercializing affordable, oral, once-daily, non-statin medicines for the treatment of patients struggling with elevated low density lipoprotein cholesterol, or LDL-C. Our team of lipid experts are dedicated to lowering bad cholesterol through the discovery, development and commercialization of innovative medicines and their combinations with established medicines. Our first two products were approved by the U.S. Food and Drug Administration, or FDA, European Medicines Agency, or EMA, and Swiss Agency for Therapeutic Products, or Swissmedic, in 2020. Bempedoic acid and the bempedoic acid / ezetimibe combination tablets are oral, once-daily, non-statin, LDL-C lowering medicines for patients with atherosclerotic cardiovascular disease, or ASCVD, or heterozygous familial hypercholesterolemia, or HeFH.

On April 26, 2021, we entered into a license and collaboration agreement with Daiichi Sankyo Co. Ltd, or DS. Pursuant to the agreement, we granted DS exclusive development and commercialization rights to bempedoic acid and the bempedoic acid / ezetimibe combination tablet in South Korea, Taiwan, Hong Kong, Thailand, Vietnam, Brazil, Macao, Cambodia and Myanmar, or the DS Territory. The 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. We

received an upfront cash payment of $30.0 million in May 2021 and are eligible to receive up to an additional $175.0 million in sales milestones. We will also receive tiered royalties ranging from 5 percent to 20 percent on net sales in the DS Territory.

On April 26, 2021, we entered into Amendment No. 2, or the RIPA Amendment, to the Revenue Interest Purchase Agreement, or RIPA, with Eiger III SA LLC, or Oberland, an affiliate of Oberland Capital LLC, as agent for the purchaser parties thereto dated as of June 26, 2019 (as amended by the Amendment No. 1 dated as of November 9, 2020). Pursuant to the RIPA Amendment, 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 us under the terms of the RIPA. The Company and Oberland also agreed to amend additional terms of the RIPA and the related Security Agreement, which are discussed further in Note 8 "Liability Related to the Revenue Interest Purchase Agreement" in our condensed financial statements included in this Form 10-Q for the quarter ended June 30, 2021.

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 bempedoic acid and the bempedoic acid / ezetimibe combination tablets. 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. 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, the incurrence of indebtedness, through collaborations with third parties and revenue interest purchase agreements, and we have incurred losses in each year since our inception.

During the three and six months ended June 30, 2021, our net losses were $43.7 million and $134.6 million, respectively. In the three and six months ended June 30, 2020, we recorded net income of $124.6 million and $46.4 million, respectively, which was primarily due to revenue generated from our collaboration agreements with Daiichi Sankyo Europe GmbH, or DSE, and Otsuka Pharmaceutical Co., Ltd., or Otsuka. We expect to incur significant expenses and operating losses for the foreseeable future. In response to our history of operating losses and the uncertainty around the ongoing impact of COVID-19 we have initiated certain cost optimization measures and will implement additional cost reduction measures as needed if additional collaboration or capital funding is not available. Despite such cost savings initiatives we expect to continue to incur significant expenses and operating losses for the foreseeable future in connection with our ongoing activities, including, among others:

- commercializing NEXLETOL and NEXLIZET tablets in the U.S.; and
- completing the clinical development activities for the CLEAR global cardiovascular outcomes trial, or CVOT.

Accordingly, we may need additional financing to support our continuing operations and further the development of our products. We may seek to fund our operations and further development activities through collaborations with third parties, strategic alliances, licensing arrangements, permitted debt financings, permitted royalty-based financings, permitted 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 by reducing cholesterol biosynthesis and up-regulating the LDL receptors. Completed Phase 3 studies conducted in more than 3,000 patients, with over 2,000 patients treated with NEXLETOL, demonstrated an average 18 percent placebo corrected LDL-C lowering when used in patients on moderate or high-intensity statins. NEXLETOL was approved by the FDA in February 2020 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.

NEXLIZET 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. Phase 3 data demonstrated NEXLIZET lowered LDL-C by a mean of 38 percent compared to placebo when added on to maximally tolerated statins. NEXLIZET was approved by the FDA in February 2020 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.

NILEMDO is a first-in-class ACL inhibitor that lowers LDL-C by reducing cholesterol biosynthesis and up-regulating the LDL receptors. NILEMDO 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 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.

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.

During the six months ended June 30, 2021, we incurred $32.0 million in expenses related to our CLEAR Outcomes CVOT and other ongoing clinical studies.

During the six months ended June 30, 2020, we incurred $33.6 million in expenses related to our CLEAR Outcomes CVOT and other ongoing clinical studies.

Ongoing Clinical Studies

Global Cardiovascular Outcomes Trial—CLEAR Outcomes

CLEAR Outcomes is a Phase 3, event driven, randomized, multicenter, double-blind, placebo-controlled clinical study designed to evaluate whether treatment of bempedoic acid reduces the risk of cardiovascular events in patients with statin intolerance who have cardiovascular disease or are at high risk for cardiovascular disease. The primary endpoint of the study is the effect of bempedoic acid on major adverse cardiovascular events (cardiovascular death, non-fatal myocardial infarction, non-fatal stroke, or coronary revascularization; also referred to as "four-component MACE"). CLEAR Outcomes is designed to provide 90 percent power to detect an approximately 15 percent relative risk reduction in the primary endpoint in the bempedoic acid treatment group as compared to the placebo group and is expected to complete with a minimum of 1,620 patients experiencing the primary endpoint.

The study over-enrolled with over 14,000 patients with hypercholesterolemia and high cardiovascular disease risk at over 1,200 sites in 32 countries. Eligible patients at high risk (LDL-C >100 mg/dL in primary prevention) for cardiovascular disease or with cardiovascular disease (LDL-C between 100 mg/dL to 190 mg/dL in secondary prevention) and who are only able to tolerate less than the lowest approved daily starting dose of a statin and considered statin averse, were randomized to receive bempedoic acid 180 mg once-daily or placebo. The expected average baseline LDL-C level in all patients is between 135 mg/dL and 140 mg/dL.

CLEAR Outcomes will conclude once the predetermined number of MACE endpoints occur. We initiated CLEAR Outcomes in December 2016 and completed enrollment in August 2019. The expected average treatment duration will be 3.75 years with a minimum treatment duration of approximately 2.25 years. Based on estimated cardiovascular event rates, we expect to meet the target number of events in the second half of 2022. The study is intended to support our submissions for a CV risk reduction indication in the U.S., Europe and other territories. During the third quarter of 2020, we accumulated 50% of the primary 4-component MACE endpoints

The COVID-19 Pandemic

The full extent to which the COVID-19 pandemic, or the future outbreak of any other highly infectious or contagious diseases, may impact our business, including our CVOT and commercialization efforts will depend on continuously changing circumstances, which are highly uncertain and cannot be predicted at this time, such as the duration of such pandemic including future waves of infection, the emergence and prevalence of more contagious variants, or the global availability of effective vaccines, the actions taken to contain the pandemic or mitigate its impact, and the direct and indirect economic effects of the pandemic and containment measures, among others. The ongoing fluidity of this situation precludes any prediction as to the full impact of the COVID-19 pandemic but it could have a material adverse effect on our business, financial condition, and results of operations. The evolving COVID-19 pandemic may also have the effect of heightening the risks to which we are subject, including potential impacts on the progress and time to completion of our ongoing CVOT, the reliance on third parties in our supply chain for materials and manufacturing and delivery of our drugs and drug candidates, our ability to effectively promote and market our approved products, disruptions in health regulatory agencies' operations globally, the volatility of our common

stock, our ability to access capital markets, and our ability to successfully commercialize and generate revenue from our approved drugs.

We are continuing to assess the long-term impact of COVID-19 on our business operations in an effort to mitigate interruption to our commercialization of our approved drugs and other business activities and to ensure the safety and well being of our employees, as well as the physicians and patients participating in our CVOT. Because COVID-19 infections have been reported throughout the U.S. and worldwide, and as new strains continue to be identified, certain national, state, and local governmental authorities have issued orders, proclamations, and/or directives aimed at minimizing the spread of COVID-19. Although some of these restrictions were eased or lifted, in response to local surges and new waves of infection, some countries, states, and local governments have reinstituted these restrictions, and additional, more restrictive orders, proclamations, and/or directives may be issued in the future. In response to the COVID-19 pandemic, we have implemented precautionary measures to protect the health and safety of our employees, partners, and patients, including encouraging all employees to work-from-home if able to perform their duties remotely, and requiring adherence to onsite occupancy limits and appropriate safety measures designed to comply with federal, state, and local guidelines.

We believe our ability to successfully launch, commercialize, and generate revenue from NEXLETOL, NEXLIZET, NILEMDO and NUSTENDI has been and may continue to be adversely affected by the economic impact of the COVID-19 pandemic. Physicians' offices and other medical institutions continue to have limited access for non-patients, which includes our sales personnel. In addition, social distancing requirements and precautionary measures due to COVID-19 have impacted the ability of our sales personnel to interact in-person with customers. As a result, in many circumstances we have needed to limit our interactions with physicians and payors and adapt our launch strategies and tactics to a virtual model, including developing and deploying various technology-enabled platforms for virtual engagement such as remote detailing, digital and non-personal marketing channels, and social media. These circumstances have affected and may continue to adversely affect the ability of our sales professionals to effectively market our approved drugs to physicians and the rates of uptakes for our approved drugs, which may have a negative impact on our sales and our market penetration. In addition, patient visits with physicians have decreased as a result of COVID-19, due to travel restrictions, social distancing requirements, prioritization of healthcare resources to address the pandemic, and/or fear of exposure to the virus, which we believe has adversely affected and could continue to have a material adverse impact on new patient starts and overall patient treatment volume. Market disruption and unemployment caused by the COVID-19 pandemic may lead to delays in obtaining insurance coverage and reimbursement of newly approved products.

We have had to optimize our cost structure in response to the evolving COVID-19 pandemic and its impact on the conventional healthcare model associated with normal health management practices, such as regular physician office visits, lab tests, and prescription fills. As a result of the impact COVID-19 has had on our business and demand, we adjusted our budgeted production plans accordingly. We also adjusted our original commercialization marketing budget and prioritized initiatives we believe have a high return on investment. We have made adjustments to our workforce for near-term growth potential and modified our sales geographies to adapt for COVID-19 hotspots and shelter-on-place orders. While it is not possible at this time to estimate the entirety of the impact that the COVID-19 pandemic will have on our business or operations, the continued spread or future waves of COVID-19, measures taken by governments, actions taken to protect employees, and the broad impact of the pandemic on all business activities may materially and adversely affect our preclinical activities, clinical development progress, data and timelines, commercialization efforts including any revenue from sales, supply chain continuity, and general business operations, and our business, prospects, financial condition, and results of operations could be materially harmed as a result.

To date, we have not experienced any interruption of our supply of drug products needed to support our ongoing clinical study and product sales. However, such interruptions may occur due to supply chain issues related to COVID-19, such as the demand for vaccines and potential for manufacturing facilities and materials to be commandeered under the Defense Production Act of 1950, or equivalent foreign legislation, which may make it more difficult to obtain materials or manufacturing capacity at our third-party manufacturers to the products needed for our clinical trials and commercial product, which could lead to delays in our ongoing trial and/or issues with our commercial supply. We remain focused on maintaining a strong balance sheet, liquidity and financial flexibility and continue to monitor developments as we deal with the disruptions and uncertainties from a business and financial perspective relating to COVID-19. We will continue to work diligently with our partners and stakeholders to continue supporting patient access to our approved medicines, advancing our product under regulatory review as well as in our clinical studies to the extent safe to do so for patients, caregivers and healthcare practitioners, and ensuring the continuity of our manufacturing and supply chain. For additional information related to the potential impact of COVID-19 on our business, please read Part I-Item 1A, "Risk Factors" of our Annual Report on Form 10-K for the fiscal year ended December 31, 2020.

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 DS. Collaboration revenue in the three and six months ended June 30, 2021 was primarily related to the initial recognition of the upfront payment from our license and collaboration agreement with DS, sales of bulk tablets under supply agreements, and royalty revenue received from collaboration partners. Collaboration revenue in the three and six months ended June 30, 2020, was primarily related to the $150.0 million milestone from the MAA transfer to DSE and the $60.0 million from the upfront payment with Otsuka. 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. Prior to the FDA approval of NEXLETOL and NEXLIZET in February 2020, expenses associated with the manufacturing of our products were recorded as research and development expense.

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 tablets, 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 tablets. 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 in the foreseeable future as they relate to our ongoing CLEAR Outcomes CVOT and any other development programs or additional indications we choose to pursue. 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 tablets. The duration, costs and timing associated with the development of bempedoic acid and the bempedoic acid / ezetimibe combination tablets 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 tablets, 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 tablets.

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 anticipate that our selling, general and administrative expenses will increase in the future in connection with the commercialization of NEXLETOL and NEXLIZET, increases in our headcount, expansion of our information technology infrastructure, and increased expenses associated with being a public company and complying with exchange listing and Securities and Exchange Commission, or SEC, requirements. These increases will likely include higher legal, compliance, accounting and investor and public relations expenses.

Interest Expense

Interest expense is related to our Revenue Interest Purchase Agreement, or RIPA, with Eiger III SA LLC, or Oberland, an affiliate of Oberland Capital and Convertible Notes for the three and six months ended June 30, 2021. Interest expense during the three and six months ended June 30, 2020 related solely to the RIPA.

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.

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 of America. 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. 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.

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, 2020.

Results of Operations

Comparison of the Three Months Ended June 30, 2021 and 2020

	Three Months Ended June 30,		
	2021	2020	Change
	(unaudited, in thousands)		
Revenue:			
Product sales, net	$ 10,610	$ 609	$ 10,001
Collaboration revenue	30,049	211,627	(181,578)
Operating Expenses:			
Cost of goods sold	1,800	398	1,402
Research and development	25,074	34,987	(9,913)
Selling, general and administrative	46,318	47,681	(1,363)
(Loss) income from operations	(32,533)	129,170	(161,703)
Interest expense	(11,144)	(4,640)	(6,504)
Other income, net	9	81	(72)
Net (loss) income	$ (43,668)	$ 124,611	$ (168,279)

Product sales, net

Product sales, net for the three months ended June 30, 2021 was $10.6 million compared to $0.6 million for the three months ended June 30, 2020, an increase of $10.0 million. The increase is primarily due to sequential prescription growth of NEXLETOL and NEXLIZET during the entire second quarter of 2021. NEXLETOL and NEXLIZET became commercially available in the U.S. on March 30, 2020 and June 4, 2020, respectively.

Collaboration revenue

Collaboration revenue recognized for the three months ended June 30, 2021 was $30.0 million compared to $211.6 million for the three months ended June 30, 2020, a decrease of $181.6 million. Collaboration revenue for the three months ended June 30, 2021 was primarily related to the initial recognition of the upfront payment from our license and collaboration agreement with DS, product sales to collaboration partners under our supply agreements and royalty revenue from our collaboration agreement with DSE. Collaboration revenue for the three months ended June 30, 2020 was primarily related to the $60.0 million upfront payment from the collaboration with Otsuka and $150.0 million of collaboration revenue from DSE related to the MAA transfer milestone.

Cost of goods sold

Cost of goods sold for the three months ended June 30, 2021 was $1.8 million compared to $0.4 million for the three months ended June 30, 2020, an increase of $1.4 million. The increase is primarily related to increased product sales to our collaboration partners from our supply agreements and increased net product sales of NEXLETOL and NEXLIZET. NEXLETOL and NEXLIZET became commercially available in the U.S. on March 30, 2020 and June 4, 2020, respectively.

Research and development expenses

Research and development expenses for the three months ended June 30, 2021, were $25.1 million, compared to $35.0 million for the three months ended June 30, 2020, a decrease of $9.9 million. The decrease in research and development expenses was primarily attributable to an overall reduction in ongoing clinical research activities, including compensation costs.

Selling, general and administrative expenses

Selling, general and administrative expenses for the three months ended June 30, 2021, were $46.3 million, compared to $47.7 million for the three months ended June 30, 2020, a decrease of $1.4 million. The decrease in selling, general and administrative expenses was primarily attributable to a decrease in advertising and costs to support the initial launch of NEXLETOL and NEXLIZET in the U.S. in 2020.

Interest expense

Interest expense for the three months ended June 30, 2021, was $11.1 million, compared to $4.6 million for the three months ended June 30, 2020, an increase of $6.5 million. The increase in interest expense was primarily due to additional interest expense attributable to the second and third installment payments from our RIPA with Oberland and the Convertible Notes entered in November 2020.

Other income, net

Other income, net for the three months ended June 30, 2021, was less than $0.1 million, compared to $0.1 million for the three months ended June 30, 2020, a decrease of $0.1 million. The decrease is related to lower interest income on our investments due to lower interest rates.

Comparison of the Six Months Ended June 30, 2021 and 2020

	Six Months Ended June 30,		
	2021	2020	Change
	(unaudited, in thousands)		
Revenue:			
Product sales, net	$ 16,960	$ 1,467	$ 15,493
Collaboration revenue	31,677	212,609	(180,932
Operating Expenses:			
Cost of goods sold	3,584	429	3,155
Research and development	53,028	69,689	(16,661
Selling, general and administrative	107,382	89,234	18,148
(Loss) income from operations	(115,357)	54,724	(170,081
Interest expense	(19,269)	(8,811)	(10,458
Other income, net	23	449	(426
Net (loss) income	$ (134,603)	$ 46,362	$ (180,965

Product sales, net

Product sales, net for the six months ended June 30, 2021 was $17.0 million compared to $1.5 million for the six months ended June 30, 2020, an increase of $15.5 million. The increase is primarily due to sequential prescription growth of NEXLETOL and NEXLIZET during the entire six months ended June 30, 2021. NEXLETOL and NEXLIZET became commercially available in the U.S. on March 30, 2020 and June 4, 2020, respectively.

Collaboration revenue

Collaboration revenue recognized for the six months ended June 30, 2021 was $31.7 million compared to $212.6 million for the six months ended June 30, 2020, a decrease of $180.9 million. Collaboration revenue for the six months ended June 30, 2021 was primarily related to the initial recognition of the upfront payment from our license and collaboration agreement with DS, product sales to collaboration partners under our supply agreements and royalty revenue from our collaboration agreement with DSE. Collaboration revenue for the six months ended June 30, 2020 was primarily related to the $60.0 million upfront payment from the collaboration with Otsuka and $150.0 million of collaboration revenue from DSE related to the MAA transfer milestone.

Cost of goods sold

Cost of goods sold for the six months ended June 30, 2021 was $3.6 million compared to $0.4 million for the six months ended June 30, 2020, an increase of $3.2 million. The increase is primarily related to increased product sales to our

collaboration partners from our supply agreements and increased net product sales of NEXLETOL and NEXLIZET. NEXLETOL and NEXLIZET became commercially available in the U.S. on March 30, 2020 and June 4, 2020, respectively.

Research and development expenses

Research and development expenses for the six months ended June 30, 2021, were $53.0 million, compared to $69.7 million for the six months ended June 30, 2020, a decrease of $16.7 million. The decrease in research and development expenses was primarily attributable to a decline in manufacturing costs which were classified as research and development expense prior to FDA approval of NEXLETOL and NEXLIZET on February 21, 2020 and February 26, 2020, respectively, as well as an overall reduction in ongoing clinical research activities, including compensation costs.

Selling, general and administrative expenses

Selling, general and administrative expenses for the six months ended June 30, 2021, were $107.4 million, compared to $89.2 million for the six months ended June 30, 2020, an increase of approximately $18.2 million. The increase in selling, general and administrative expenses was primarily attributable to a $13.3 million one-time charge associated with a legal settlement as well as increases in salaries and benefits, including stock-based compensation, from the build out of our customer-facing team and other costs to support the commercialization of NEXLETOL and NEXLIZET in the U.S.

Interest expense

Interest expense for the six months ended June 30, 2021, was $19.3 million, compared to $8.8 million for the six months ended June 30, 2020, an increase of approximately $10.5 million. The increase in interest expense was primarily due to additional interest expense attributable to the second and third installment payments from our RIPA with Oberland and the Convertible Notes entered in November 2020.

Other income, net

Other income, net for the six months ended June 30, 2021, was less than $0.1 million, compared to $0.4 million for the six months ended June 30, 2020, a decrease of $0.4 million. The decrease is related to lower interest income on our investments due to lower interest rates.

Liquidity and Capital Resources

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, the incurrence of indebtedness, milestone payments from collaboration agreements and revenue interest purchase agreement. Pursuant to the license and collaboration agreements with DSE and Otsuka, we are eligible for substantial additional sales and regulatory milestone payments and royalties. Pursuant to the license and collaboration agreements with DS, we received an upfront cash payment of $30.0 million in May 2021 and are eligible for substantial additional sales milestone payments and royalties. Pursuant to the amended RIPA with Oberland, we received an additional $50.0 million in May 2021 following the completion of the DS Agreement. The amended RIPA increases the revenue interest we will pay Oberland based on the net sales of our products as outlined in Note 8 "Liability Related to the Revenue Interest Purchase Agreement" in our condensed financial statements included in this Form 10-Q for the quarter ended June 30, 2021. We anticipate that we will incur losses for the foreseeable future.

As of June 30, 2021, our primary sources of liquidity were our cash and cash equivalents which totaled $219.2 million. We invest our cash equivalents and investments in highly liquid, interest-bearing investment-grade 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,	
	2021	2020
	(in thousands)	
Net cash (used in) provided by operating activities	$ (136,934)	$ 70,044
Net cash provided by investing activities	—	31,699
Net cash provided by financing activities	51,158	29,688
Net (decrease) increase in cash and cash equivalents	$ (85,776)	$ 131,431

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 tablets.

Net cash used in operating activities totaled $136.9 million for the six months ended June 30, 2021, consisting of net product sales of NEXLETOL and NEXLIZET and $30.0 million in upfront fees from DS 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 tablets, 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.

Net cash provided by operating activities totaled $70.0 million for the six months ended June 30, 2020, consisting of the $150.0 million milestone for the MAA transfer from our collaboration agreement with DSE, $60.0 million from the Otsuka collaboration agreement and net product sales of NEXLETOL and NEXLIZET 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 tablets, 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

We did not have cash provided by or used in investing activities for the six months ended June 30, 2021. Net cash provided by investing activities of $31.7 million for the six months ended June 30, 2020, consisted primarily of proceeds from the sale and maturities of highly liquid, interest-bearing investment-grade and government securities.

Financing Activities

Net cash provided by financing activities of $51.2 million for the six months ended June 30, 2021 related primarily to $50 million in cash from our RIPA with Oberland and proceeds from exercise of our common stock, offset by payments on our revenue interest liability. Net cash provided by financing activities of $29.7 million for the six months ended June 30, 2020 related primarily to the $25.0 million in cash received from the RIPA with Oberland upon regulatory approval of NEXLETOL.

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 ongoing CLEAR Outcomes CVOT and commercial launch activities associated with NEXLETOL and NEXLIZET in the U.S. Pursuant to the license and collaboration agreement with DSE and Otsuka, we are eligible for substantial additional sales and regulatory milestone payments and royalties. Pursuant to the license and collaboration agreements with DS, we received an upfront cash payment of $30.0 million in May 2021 and are eligible for substantial additional sales milestone payments and royalties. Pursuant to the amended RIPA with Oberland, we received $50.0 million in May 2021. In return, Oberland will have a right to receive revenue interest payments from us based on net product sales of certain of our products. In addition, if the quarterly net revenue from sales of NEXLETOL and NEXLIZET and certain other products in the United States starting with the quarter ending September 30, 2021 does not exceed $15.0 million, we are required to deposit $50.0 million in a deposit account with Oberland. Oberland shall have sole dominion and control over all funds deposited in the deposit account and such funds may be withdrawn only with the consent of Oberland. We will implement certain additional cost reduction initiatives or attempt to secure additional cash resources as needed to continue to fund the commercialization and further development of bempedoic acid and the bempedoic acid / ezetimibe combination tablets. Because of the numerous risks and uncertainties associated with the development and ongoing commercialization of bempedoic acid and the bempedoic acid / ezetimibe combination tablets 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 tablets, 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 tablets. 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 costs, timing and outcomes of our CLEAR Outcomes CVOT and other ongoing clinical studies of bempedoic acid and the bempedoic acid / ezetimibe combination tablets;

- the time and cost necessary to obtain regulatory approvals for bempedoic acid and the bempedoic acid / ezetimibe combination tablets outside the U.S. and Europe;
- 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;
- the costs of preparing, filing and prosecuting patent applications, maintaining and enforcing our intellectual property rights and defending intellectual property-related claims;
- the implementation of operational and financial information technology; and
- our ability to successfully implement certain cost reduction initiates, as needed.

Until such time, if ever, as we can generate U.S. substantial product revenues, we expect to finance our cash needs through a combination of collaborations with third parties, strategic alliances, licensing arrangements, permitted debt financings, permitted 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 and permitted under the terms of our RIPA, 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 arrangements with DSE, Otsuka and DS and the RIPA with Oberland, 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. For instance, as part of the RIPA with Oberland, Oberland has the right to receive certain revenue interests from us based on the net sales of certain products, and we have granted Oberland a senior security interest in certain of our assets. If our cash flows and capital resources are insufficient to allow us to make required payments, we may have to reduce or delay capital expenditures, sell assets or seek additional capital. 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 permitted debt financings or through collaborations, strategic alliances or licensing arrangements or permitted 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 tablets that we would otherwise prefer to develop and market ourselves.

Contractual Obligations and Commitments

There have been no other material changes to our contractual obligations and commitments outside the ordinary course of business from those previously disclosed in our Annual Report on Form 10-K for the fiscal year ended December 31, 2020 and in Note 5 “Commitments and Contingencies,” and Note 8 "Liability Related to the Revenue Interest Purchase Agreement" in our condensed financial statements included in this Form 10-Q for the quarter ended June 30, 2021.

Off-Balance Sheet Arrangements

We do not currently have, nor did we have during the periods presented, any off-balance sheet arrangements as defined by Securities and Exchange Commission 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, 2020.

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 Securities and Exchange Act of 1934 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, 2021, 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 Securities and Exchange Act of 1934). 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, 2021, 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 report 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 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

For a discussion of our potential risks and uncertainties, see the information under the heading “Risk Factors” in our Annual Report on Form 10-K for the fiscal year ended December 31, 2020, or Annual Report. There have been no significant changes from the risk factors previously disclosed in our Annual Report, except as set forth below.

Our payment obligations under the Revenue Interest Purchase Agreement with Oberland may adversely affect our financial position or results of operations and our ability to raise additional capital which in turn may increase our vulnerability to adverse regulatory developments or economic or business downturns.

On June 26, 2019, we entered into the RIPA with Oberland and the Purchasers named therein. Pursuant to the RIPA, Oberland paid us $125.0 million on closing, less certain transaction expenses, and, Oberland paid us an additional $25.0 million in March 2020 upon receiving regulatory approval of NEXLETOL. Pursuant to the RIPA Amendment, we received the final $50.0 million. As consideration for the payments, Oberland has the right to receive certain revenue interests from us based on the net sales of certain products, once approved, which will be tiered payments initially ranging from 3.33% to 10% of our net sales in the covered territory. See in Note 8 "Liability Related to the Revenue Interest Purchase Agreement" in our condensed financial statements included in this Form 10-Q for the quarter ended June 30, 2021.

The RIPA and the revenue interest stream payable to Oberland could have important negative consequences to the holders of our securities. For example, a portion of our cash flow from operations will be needed to pay certain revenue interests to Oberland and will not be available to fund future operations. Further, if we fail to achieve the Specified Net Revenue thresholds, we will be obligated to deposit $50 million into the Blocked Account, which would reduce our unrestricted cash and could have a material adverse effect. Additionally, we may have increased vulnerability to adverse general economic and industry conditions.

Payment requirements under the RIPA will increase our cash outflows. Our future operating performance is subject to market conditions and business factors that are beyond our control. If our cash inflows and capital resources are insufficient to allow us to make required payments, we may have to reduce or delay capital expenditures, sell assets or seek additional capital. If we raise funds by selling additional equity, such sale would result in dilution to our stockholders. There is no assurance that if we are required to secure funding we can do so on terms acceptable to us, or at all. Failure to pay certain amounts to Oberland when due would result in a default under the RIPA and result in foreclosure on certain of our assets which would have a material adverse effect.

The RIPA contains customary affirmative and negative non-financial covenants and events of default, including, covenants and restrictions that among other things, grant a senior security interest in our assets and restrict our ability to incur liens, incur additional indebtedness, make loans and investments, engage in mergers and acquisitions, and engage in asset sales. Additionally, the Purchasers under the RIPA have an option (the “Put Option”) to terminate the RIPA and to require the Company to repurchase future Revenue Interests upon enumerated events such as a bankruptcy event, an uncured material breach, a material adverse effect (which can include adverse developments related to the regulatory approval of our product candidates) or a change of control. The triggering of the Put Option, including by our failure to comply with these covenants, could permit the Purchasers to declare certain amounts to be immediately due and payable. If we default under the terms of the RIPA, including by failure to make such accelerated payments, the Purchasers take control of our pledged assets. Further, if we are liquidated, the Purchasers’ right to repayment would be senior to the rights of the holders of our common stock. Any triggering of the Put Option or other declaration by the Purchasers of an event of default under the RIPA could significantly harm our financial condition, business and prospects and could cause the price of our common stock to decline.

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds

None.

Item 5. Other Information

Second Amended and Restated Bylaws

On April 29, 2021, the board of directors approved an amendment and restatement of our amended and restated bylaws to designate the federal district courts of the United States of America as the exclusive forum for any action asserting a claim arising under the Securities Act of 1933, as amended, unless we consent in writing to the selection of an alternative forum.

The foregoing description is not complete and is qualified in its entirety by reference to the full text of the bylaws, which is included as a part of Exhibit 3.1 filed with the Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2021 and incorporated herein by reference.

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	Second Amended and Restated Bylaws of Esperion Therapeutics, Inc. dated April 29, 2021				
10.1*#	License and Collaboration Agreement, by and between the Registrant and Daiichi Sankyo Company, Limited dated April 26, 2021				
10.2*	Amended and Restated Employment Agreement by and between the Registrant and Sheldon Koenig dated May 14, 2021				
10.3	Amendment No. 2 to the Revenue Interest Purchase Agreement, by and among the Registrant and the parties thereto dated April 26, 2021	8-K	10.1	April 26, 2021	001-35986
10.4	CEO Departure Agreement by and between the Registrant and Tim M. Mayleben dated May 15, 2021	8-K	10.1	May 17, 2021	001-35986
10.5	Employment Agreement by and between the Registrant and JoAnne Foody dated June 28, 2021	8-K	10.1	June 28, 2021	001-35986
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.

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 3, 2021 By: /s/ Sheldon L. Koenig
Sheldon L. Koenig
President and Chief Executive Officer
(Principal Executive Officer)

August 3, 2021 By: /s/ Richard B. Bartram
Richard B. Bartram
Chief Financial Officer
(Principal Financial Officer and Principal Accounting Officer)

AGREEMENT

by and between

Daiichi Sankyo Company, Limited

and

ESPERION THERAPEUTICS, INC.

April 26, 2021

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SCHEDULES

LICENSE AND COLLABORATION AGREEMENT

This LICENSE AND COLLABORATION AGREEMENT (this "**Agreement**"), entered into as of April 26, 2021 (the "**Effective Date**"), is entered into by and between Daiichi Sankyo Company, Limited, a company organized and existing under the laws of Japan ("**DS**") and Esperion Therapeutics, Inc., a corporation organized and existing under the laws of the state of Delaware ("**Esperion**").

RECITALS

WHEREAS, Esperion owns or otherwise controls certain technology and information relating to Bempedoic Acid and the Licensed Products;

WHEREAS, DS is a pharmaceutical company that conducts research, development, manufacturing and commercialization of pharmaceutical products; and

WHEREAS, Esperion desires to grant to DS exclusive rights to Develop, Manufacture and Commercialize Licensed Products in the Field in the DS Territory, and DS desires to undertake such Development, Manufacturing and Commercialization activities, each in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual promises, covenants and conditions contained in this Agreement, the Parties hereby agree as follows:

1. DEFINITIONS

Unless specifically set forth to the contrary herein, the following terms, whether used in the singular or plural, shall have the respective meanings set forth below:

1.1 "**Acquired Business**" has the meaning set forth in Section 14.14.3 (Acquired Programs).

1.2 "**Acquirer**" has the meaning set forth in Section 14.14.2 (Future Acquisition of a Party or its Business).

1.3 "**Action**" has the meaning set forth in Section 14.3 (Jurisdiction).

1.4 "**Affiliate**" means, with respect to a Person, any other Person which controls, is controlled by, or is under common control with the applicable Person. For purposes of this definition, "control" shall mean: (a) in the case of corporate entities, direct or indirect ownership of at least fifty percent (50%) of the stock or shares entitled to vote for the election of directors, or otherwise having the power to control or direct the affairs of such Person; and (b) in the case of non-corporate entities, direct or indirect ownership of at least fifty percent (50%) of the equity interest or the power to direct the management and policies of such non-corporate entities.

1.5 "**Agreed Development Plan**" has the meaning set forth in Section 2.1.2 (Development in South Korea and Taiwan).

1.6 "**Agreement**" has the meaning set forth in the Preamble.

1.7 "**Alliance Manager**" has the meaning set forth in Section 6.1.4(a) (Alliance Managers; Appointment).

1.8 "**API**(s)" means the active pharmaceutical ingredient Bempedoic Acid.

1.9 "**Bankrupt Party**" has the meaning set forth in Section 8.6 (Bankruptcy and Section 365(n)).

1.10 "**Bankruptcy Code**" has the meaning set forth in Section 8.6 (Bankruptcy and Section 365(n)).

1.11 "**Bempedoic Acid**" means 8-Hydroxy-2,2,14,14-tetramethylpentadecanedioic acid.

1.12 "**Bulk Tablets**" means the Licensed Product in bulk tablet form packaged in drums.

1.13 "**Calendar Quarter**" means the respective periods of three (3) consecutive calendar months ending on March 31, June 30, September 30 and December 31 of each calendar year, provided that (a) the first Calendar Quarter of the Term shall begin on the Effective Date and end on the first to occur of March 31, June 30, September 30 or December 31 thereafter and the last Calendar Quarter of the Term shall end on the last day of the Term and (b) the first Calendar Quarter of a Royalty Term for a Licensed Product in a country shall begin on the First Commercial Sale of a Licensed Product in such country and end on the first to occur of March 31, June 30, September 30 or December 31 thereafter and the last Calendar Quarter of a Royalty Term shall end on the last day of such Royalty Term.

1.14 "**Calendar Year**" means each successive period of twelve (12) months commencing on January 1 and ending on December 31, provided that (a) the first Calendar Year of the Term shall begin on the Effective Date and end on the first December 31 thereafter and the last Calendar Year of the Term shall end on the last day of the Term and (b) the first Calendar Year of a Royalty Term for a Licensed Product in a country shall begin on the First Commercial Sale of a Licensed Product in such country and end on the first December 31 thereafter and the last Calendar Year of the Term shall end on the last day of such Royalty Term.

1.15 "**Change of Control**" means any of the following events: (a) any Person becomes the "beneficial owner" (as such term is used in Section 13(d) of the Securities Exchange Act of 1934, as amended, and Rule 13d-3 thereunder (or, in each case, any successor thereto), it being understood that a Person shall not be deemed to have "beneficial ownership" of (x) any securities tendered pursuant to a tender or exchange offer made by or on behalf of such Person or any of its Affiliates until such tendered securities are accepted for purchase or exchange thereunder, or (y) any securities if beneficial ownership in respect thereof (i) arises solely as a result of a revocable proxy delivered in response to a proxy or consent solicitation made pursuant to the applicable rules and regulations under the Exchange Act, and (ii) is not also then reportable on Schedule 13D or Schedule 13G (or any successor schedule) under the Exchange Act, directly or indirectly, of a majority of the total voting power represented by all classes of capital stock then outstanding of Esperion normally entitled to vote in elections of directors; (b) (i) Esperion reorganizes, consolidates or comes under common control with, or merges into another corporation or entity, or (ii) any corporation or entity reorganizes, consolidates or comes under common control with, or merges into Esperion, in either event of the foregoing clauses (i) or (ii), where stockholders of Esperion immediately prior to the consummation of such transaction hold less than fifty percent (50%) of the securities outstanding of the surviving entity normally entitled to vote in elections of directors immediately following consummation of such transaction; or (c) Esperion conveys, transfers or leases all or substantially all of its assets to any Person other than a directly or indirectly wholly owned Affiliate of Esperion.

1.16 **"cGMP**" or "**current Good Manufacturing Practices**" means the then-current standards for good manufacturing practices for biological or therapeutic products, as appropriate, as set forth in the FD&C Act, or applicable regulations promulgated thereunder, as amended from time to time, and such standards of good manufacturing practice as are required by other Governmental Authorities in countries in which Licensed Products are intended to be manufactured or sold.

1.17 "**Clinical Study**" or "**Clinical Studies**" means a human clinical study conducted on human subjects, including any Phase 1 Clinical Study, Phase 2 Clinical Study or Phase 3 Clinical Study that involves a test product, drug or device and that either is subject to requirements for prior submission to a Regulatory Authority or is not subject to requirements for prior submission to a Regulatory Authority but

the results of which are intended to be submitted later to, or held for inspection by, a Regulatory Authority as part of an application for a research permit or Regulatory Approval, and includes studies relating to the safety, tolerability, pharmacological activity, pharmacokinetics, dose ranging or efficacy of the product, drug or device.

1.18 "**CMO**" has the meaning set forth in Section 5.2.4 (CMO Step-In Rights).

1.19 "**Co-Chairpersons**" has the meaning set forth in Section 6.1.3 (JCC Co-Chairpersons).

1.20 "**Commercialization**" or "**Commercialize**" means any and all activities directed to marketing, promoting, distributing, importing, exporting, using, offering to sell, selling or having sold a product, but excluding for the avoidance of doubt, Developing and Manufacturing and including, for avoidance of doubt, the establishment and maintenance of patient registries or similar patient advocacy activities and programs.

1.21 "**Commercially Reasonable Efforts**" means, with respect to a Party's obligations that relate to the achievement of an objective related to a Licensed Product, at any given time as the case may be, efforts reasonably used by a similarly situated entity in the pharmaceutical industry of similar resources and expertise as such Party, for such similar entity's own products (including internally developed, acquired and in-licensed products) of a similar modality with similar commercial potential at a similar stage in their lifecycle (assuming continuing development of such product), taking into consideration all Relevant Factors.

1.22 "**Competing Infringement**" has the meaning set forth in Section 12.3.1 (Notice of Infringement).

1.23 "**Competing Program**" has the meaning set forth in Section 14.14.3(a) (Acquired Programs).

1.24 "**Confidential Information**" means any and all confidential or proprietary information and data, including Esperion Technology and Joint Technology, and all other scientific, pre-clinical, clinical, regulatory, manufacturing, marketing, financial and commercial information or data, whether communicated in writing or orally or by any other method, which is provided by one Party to the other Party in connection with this Agreement. Esperion Technology is the Confidential Information of Esperion. Joint Technology and the terms of this Agreement are the Confidential Information of both Parties.

1.25 "**Control**", "**Controls**" or "**Controlled by**" means, with respect to any intellectual property right (including any Patent Right or Know-How), the possession of (whether by ownership or license, other than pursuant to this Agreement) the ability of a Person or its Affiliates to assign, transfer, or grant access to, or to grant a license or sublicense of, such right as provided for herein without violating the terms of any agreement or other arrangement with any Third Party existing at the time such Person would be required hereunder to assign, transfer or grant another Person such access or license or sublicense. Notwithstanding the foregoing, with respect to any Patent Right, Know-How or other intellectual property right acquired or in-licensed for which a Party would be required to make payments to any Third Party in connection with the license or access granted to the other Party under this Agreement, such intellectual property will be treated as "Controlled" by the licensing Party to the extent that, and only to the extent that and for so long as, the other Party agrees and does promptly pay to the licensing Party all such applicable payments to such Third Party arising out of the grant and exercise of the license to the other Party hereunder.

1.26 "**Cover**", **"Covers" or "Covered"** means, with respect to a particular subject matter at issue and the relevant Patent Right, that, but for a license granted to a Party or a Third Party under a claim included in such Patent Right, the manufacture, use, sale, offer for sale, or importation by such Party of the subject matter at issue would infringe such claim or, in the case of a Patent Right that is a patent application, would infringe a claim in such patent application if it were to issue as a patent in a particular country or countries.

1.27 "**CSR**" means Clinical Study report.

1.28 "**Development**," "**Developing**" or "**Develop**" means under this Agreement, with respect to Licensed Products, the development activities conducted before or after obtaining Regulatory Approval that are reasonably related to or leading to the development, preparation and submission of data and information to a Regulatory Authority for the purpose of obtaining, supporting or expanding a Regulatory Approval, including but not limited to all activities related to pharmacokinetic profiling, design and conduct of pre-clinical development, non-clinical development, pre-clinical studies, in vitro studies, Clinical Studies, other studies and scientific activities ordinarily conducted in the pharmaceutical industry in the DS Territory as a prerequisite to or in connection with a Clinical Study, regulatory affairs, statistical analysis, report writing and regulatory filing creation and submission, including Post-Approval Studies, but excluding, for the avoidance of doubt, Commercialization and Manufacturing.

1.29 "**Development Plan**" has the meaning set forth in Section 2.1.3 (Development Plans).

1.30 "**DMF**" has the meaning set forth in Section 3.1 (Responsibility for Regulatory Matters).

1.31 "**DS Domain Names**" means any unbranded domain name(s) (but not including domain name(s) containing INNs) mutually agreed to by the Parties in writing to be used or to be protected in connection with the Commercialization of the License Products in the DS Territory.

1.32 "**DSE Territory**" means Andorra, Austria, Belgium, Bulgaria, Croatia, Republic of Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy (incl. Vatican City), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Monaco, Netherlands, Norway, Poland, Portugal, Romania, San Marino, Slovenia, Slovakia, Spain, Sweden, Switzerland, Turkey and United Kingdom.

1.33 "**DS Indemnitees**" has the meaning set forth in Section 11.2 (General Indemnification by Esperion).

1.34 "**DS Know-How**" means Know-How Controlled by DS or any of its Affiliates during the Term that arises out of the performance of obligations or exercise of rights hereunder, and that is necessary or useful to the Development, Manufacture or Commercialization of the Licensed Products in the Field, but excluding Joint Know-How.

1.35 "**DS Patent Rights**" means any Patent Rights Controlled by DS or its Affiliates on the Effective Date or during the Term, that Cover inventions that arise out of the performance of obligations or exercise of rights hereunder, and that are reasonably necessary or useful to the Development, Manufacture or Commercialization of the Licensed Products in the Field, but excluding Joint Patent Rights.

1.36 "**DS Territory**" means South Korea, Taiwan, Hong Kong, Thailand, Vietnam, Brazil, Macao, Cambodia and Myanmar.

1.37 "**DS Territory Commercialization Plan**" has the meaning set forth in Section 4.2.1 (DS Territory Commercialization Plan).

1.38 "**DS Territory Promotional Materials**" has the meaning set forth in Section 4.3.2 (DS Advertising and Promotion).

1.39 "**DS Technology**" means DS Know-How and DS Patent Rights.

1.40 "**Effective Date**" has the meaning set forth in the Preamble.

1.41 "**Escrow Agent**" has the meaning set forth in Section 5.2.2 (Escrow).

1.42 "**Escrow Agreement**" has the meaning set forth in Section 5.2.2 (Escrow).

1.43 "**Escrowed Materials**" has the meaning set forth in Section 5.2.2 (Escrow).

1.44 "**Esperion**" has the meaning set forth in the Preamble.

1.45 "**Esperion Domain Names**" means any branded domain name(s) and any domain name(s) containing INNs, in each case mutually agreed to by the Parties in writing to be used or to be protected in connection with the Commercialization of the License Products in the DS Territory.

1.46 "**Esperion Indemnitees**" has the meaning set forth in Section 11.1 (General Indemnification by DS).

1.47 "**Esperion Know-How**" means Know-How Controlled by Esperion or its Affiliates on the Effective Date or during the Term that is reasonably necessary or useful to the Development, Manufacture or Commercialization of the Licensed Products in the Field in the DS Territory, but excluding Joint Know-How.

1.48 "**Esperion Manufacturing Know-How"** means Know-How Controlled by Esperion or its Affiliates on the Effective Date or during the Term that is reasonably necessary or useful to the Manufacture of the Licensed Products, including all relevant technical information, supplier lists, bills of material and related information, but excluding Joint Know-How.

1.49 "**Esperion Patent Rights**" means any Patent Right Controlled by Esperion or its Affiliates on the Effective Date or during the Term that is reasonably necessary or useful to the Development, Manufacture or Commercialization of the Licensed Products in the Field and in the DS Territory, but excluding Joint Patent Rights. The Esperion Patent Rights existing as of the Effective Date are those Patent Rights identified on **Schedule 10.2.4** (Existing Esperion Patent Rights). **Schedule 10.2.4** (Existing Esperion Patent Rights) shall be amended from time to time at the initiative of Esperion or the reasonable request of DS to reflect the then-current status of the Esperion Patent Rights including by adding or deleting Patent Rights as required for accuracy and completeness

1.50 "**Esperion Technology**" means Esperion Know-How and Esperion Patent Rights.

1.51 "**Esperion Territory**" means worldwide, excluding the DSE Territory and the DS Territory.

1.52 "**Esperion Third Party Agreements**" means such agreements between Esperion and a Third Party pursuant to which Esperion Controls Know-How or Patent Rights reasonably necessary or useful to Develop, Manufacture or Commercialize Licensed Products, as set forth in **Schedule 1.52**.

1.53 "**Esperion Trademarks**" means any and all Trademarks pertaining to the Licensed Products that are owned by Esperion in the DS Territory and set forth in **Schedule 1.53** (Esperion Trademarks), excluding any Esperion house marks and the name "Esperion.

1.54 "**FD&C Act**" means the United States Federal Food, Drug and Cosmetic Act, as amended.

1.55 "**Field**" means the use of Licensed Product in humans for the treatment of hyperlipidemia.

1.56 "**First Commercial Sale**" means, with respect to a country, the first sale for end use or consumption of Licensed Product in such country, except for named patient sales, compassionate use or other patient access programs, after all Regulatory Approvals legally required for such sale have been granted by the Regulatory Authority of such country.

1.57 "**Fiscal Quarter**" means the respective periods of three (3) consecutive calendar months ending on June 30, September 30, December 31 and March 31, of each calendar year.

1.58 "**Fiscal Year**" means each successive period of twelve (12) months commencing on April 1 and ending on March 31, provided that the first Fiscal Year of the Term shall begin on the Effective

Date and end on the first March 31 thereafter and the last Fiscal Year of the Term shall end on the last day of the Term.

1.59 "**GCP**" or "**Good Clinical Practices**" means all applicable good clinical practice standards for the design, conduct, performance, monitoring, auditing, recording, analyses and reporting of clinical trials, including, as applicable, (a) as set forth in the European Commission Directive 2001/20/EC of April 4, 2001 relating to the implementation of good clinical practice in the conduct of clinical trials on medicinal products for human use, and brought into law by the European Commission Directive 2005/28/EC of April 8, 2005 laying down the principles and detailed guidelines for good clinical practice for investigational medicinal products; (b) the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use ("**ICH**"), Harmonised Tripartite Guideline for Good Clinical Practice (CPMP/ICH/135/95) and any other guidelines for good clinical practice for clinical trials on medicinal products in the European Union; (c) the Declaration of Helsinki (1964) as last amended at the 59th World Medical Association (WMA) General Assembly in October 2008 and any further amendments or clarifications thereto; (d) the United States Code of Federal Regulations, Title 21, Parts 50 ("Protection of Human Subjects"), 56 ("Institutional Review Boards") and 312 ("Investigational New Drug Application"), as may be amended from time to time; and (e) the equivalent applicable Laws in any relevant country or jurisdiction, each as may be amended and applicable from time to time and in each case, that provide for, among other things, assurance that the clinical data and reports results are credible and accurate and protect the rights, integrity, and confidentiality of trial subjects.

1.60 "**Generic Product**" means, with respect to Licensed Product in a country, a pharmaceutical product that is approved for use in such country by a Regulatory Authority through a regulatory pathway referencing or relying on clinical data, or any findings of safety or efficacy, that are first submitted by DS or its Affiliates or Sublicensees for obtaining Regulatory Approval for such Licensed Product, in each case other than any Licensed Product that has been Developed, Manufactured or Commercialized under this Agreement by DS or any of its Related Parties in such country.

1.61 "**Global Branding Strategy**" has the meaning set forth in Section 4.3.1 (Global Branding).

1.62 "**Governmental Authority**" means any applicable government authority, court, tribunal, arbitrator, agency, department, legislative body, commission or other instrumentality of (a) any government of any country or territory, (b) any nation, state, province, county, city or other political subdivision thereof or (c) any supranational body.

1.63 "**ICH**" has the meaning set forth in Section 1.59 (Definition of "**GCP**" or "**Good Clinical Practices**").

1.64 "**IFRS**" means International Financial Reporting Standards, consistently applied.

1.65 "**IND**" means an Investigational New Drug Application, as defined in the FD&C Act, together with any rules and regulations promulgated thereunder, or similar application or submission that is required to be filed with any Regulatory Authority anywhere in the world before beginning clinical testing of an investigational drug or biological product in human subjects.

1.66 "**Indemnitee**" has the meaning set forth in Section 11.3 (Indemnification Procedure).

1.67 "**Infringement Action**" has the meaning set forth in Section 12.3.2 (Right to Enforce).

1.68 "**INNs**" means International Non-Proprietary Names.

1.69 "**Invent**" means the act of invention by inventors, as determined in accordance with the applicable patent laws.

1.70 "**Joint Collaboration Committee**" or "**JCC**" means the joint committee as more fully described in Section 6.1 (Joint Collaboration Committee).

1.71 "**Joint Know-How**" means any Know-How that is discovered, made or developed jointly in connection with the activities undertaken under this Agreement by one or more employees of Esperion or its Affiliates (or a Third Party acting on any of their behalf) and one or more employees of DS or its Affiliates (or a Third Party acting on any of their behalf).

1.72 "**Joint Patent Rights**" means any Patent Right that is Invented jointly in connection with the activities undertaken under this Agreement by one or more employees of Esperion or its Affiliates (or a Third Party acting on any of their behalf) together with one or more employees of DS or its Affiliates (or a Third Party acting on any of their behalf).

1.73 "**Joint Technology**" means Joint Know-How and Joint Patent Rights.

1.74 "**Know-How**" means all chemical or biological materials and other tangible materials, inventions, improvements, practices, discoveries, developments, data, information, technology, methods, protocols, formulas, knowledge, know-how, trade secrets, processes, assays, skills, experience, techniques and results of experimentation and testing, including pharmacological, toxicological and pre-clinical and clinical data and analytical and quality control data, in all cases, whether or not proprietary or patentable, in written, electronic or any other form now known or hereafter developed, including any physical embodiments of any of the foregoing; but excluding in any event any Patent Right and Trademarks.

1.75 "**Laws**" means all applicable laws, statutes, rules, regulations, orders, judgments, injunctions, ordinances or other pronouncements having the binding effect of law of any Governmental Authority, including if either Party is or becomes subject to a legal obligation to a Regulatory Authority or other Governmental Authority (such as a corporate integrity agreement or settlement agreement with a Governmental Authority) .

1.76 "**Latin American Option**" has the meaning set forth in Section 8.3 (Option to Expand the DS Territory).

1.77 "**Latin American Option Exercise Date**" has the meaning set forth in Section 8.3 (Option to Expand the DS Territory).

1.78 "**Latin American Option Territory**" means Colombia and other Latin American countries to be mutually agreed to by the Parties in the Latin American Sublicense.

1.79 "**Latin American Sublicense**" has the meaning set forth in Section 8.3 (Option to Expand the DS Territory).

1.80 "**Licensed Patents**" means Esperion Patent Rights and Joint Patent Rights.

1.81 "**Licensed Product**" means any pharmaceutical agent which includes Bempedoic Acid in any formulation, in any presentation and in any strength, including but not limited to the Licensed Product described in **Schedule 1.81**.

1.82 "**Losses**" has the meaning set forth in Section 11.1 (General Indemnification by DS).

1.83 "**Manufacturing**" or "**Manufacture**" means, as applicable, all activities associated with the production, manufacture, process of formulating, processing, purifying, filling, finishing, packaging, labeling, shipping, importing and storage of Licensed Products, including process development, process validation, stability testing, manufacturing scale-up, pre-clinical, clinical and commercial manufacture and analytical development, product characterization, quality assurance and quality control development, testing and release.

1.84 "**Material Communications**" means written, telephonic or in-person communications from or with any Regulatory Authority concerning any of the following: key product quality attributes (e.g., purity) of Licensed Products, safety findings affecting a Licensed Product (e.g., Serious Adverse Events, emerging safety signals), clinical or non-clinical findings affecting patient safety, lack of efficacy, receipt

or denial of Regulatory Approval, the design of Clinical Studies or the need for additional non-clinical studies (e.g., additional toxicology or carcinogenicity studies).

1.85 "**Middle East Option**" has the meaning set forth in Section 8.3 (Option to Expand the DS Territory).

1.86 "**Middle East Option Exercise Date**" has the meaning set forth in Section 8.3 (Option to Expand the DS Territory).

1.87 "**Middle East Option Territory**" means Saudi Arabia, Kuwait, Oman, United Arab Emirates, Qatar, Bahrain and Yemen.

1.88 "**Middle East Sublicense**" has the meaning set forth in Section 8.3 (Option to Expand the DS Territory).

1.89 "**Net Sales**" means, with respect to a Licensed Product, the aggregate gross invoiced sales prices from sales of all units of such Licensed Product sold by DS and its Related Parties to independent Third Parties in accordance with IFRS after deducting, if not previously deducted, from the amount invoiced or received:

a. [***];

b. [***];

c. [***];

d. [***];

e. [***];

f. [***];

g. [***];

h. [***]; and

i. [***].

In the case of any sale or other disposal for value, such as barter or counter-trade, of a Licensed Product, or part thereof, other than in an arm's length transaction exclusively for cash, Net Sales shall be calculated [***].

Notwithstanding the foregoing, the following will not be included in Net Sales for a Party: [***].

1.90 "**Non-Bankrupt Party**" has the meaning set forth in Section 8.6 (Bankruptcy and Section 365(n)).

1.91 "**Option Period**" means the period commencing on the Effective Date and ending [***] months thereafter.

1.92 "**Out-of-Pocket Costs**" means, with respect to certain activities hereunder, direct expenses paid or payable by either Party or its Affiliates to Third Parties and specifically identifiable and incurred (and invoiced) to conduct such activities for Licensed Product, as applicable, including payments to contract personnel; provided, however, that [***] will not be considered Out-of-Pocket Costs.

1.93 "**Party**" means DS or Esperion.

1.94 "**Patent Challenge**" has the meaning set forth in Section 13.2.3 (Challenges of Patent Rights).

1.95 "**Patent Rights**" means (a) all issued patents (including any extensions, restorations by any existing or future extension or registration mechanism (including patent term adjustments, patent term extensions, supplemental protection certificates or the equivalent thereof), substitutions, confirmations, re-registrations, re-examinations, reissues, patents and patent claims maintained after post grant examination (including *inter partes* review, post grant review or opposition proceeding) and patents of addition); (b) patent applications (including all provisional applications, substitutions, requests for continuation, continuations, continuations-in-part, divisionals and renewals); (c) inventor's certificates; and (d) all equivalents of the foregoing in any country of the world.

1.96 "**Person**" means any natural person, corporation, unincorporated organization, partnership, association, sole proprietorship, joint stock company, joint venture, limited liability company, trust or government, or Governmental Authority, or any other similar entity.

1.97 "**Pre-Approval Clinical Studies**" has the meaning set forth in Section 2.1.1 (Development in South Korea and Taiwan).

1.98 "**Post-Approval Study**" means all studies required as a condition to the grant of Regulatory Approval for the Licensed Product, such as confirmatory trials or PASS (post approval safety study).

1.99 "**Pricing and Reimbursement Approval**" means, with respect to a Licensed Product, the receipt by DS or a Related Party of DS of authorization for reimbursement or funding of such Licensed Product in the national health service or insurance from the national-level Governmental Authority responsible for authorizing reimbursement for or determining pricing for, pharmaceutical products in such country, national or supranational, as the case may be, regulatory jurisdiction.

1.100 "**Quality Agreement**" has the meaning set forth in Section 5.4 (Quality Agreement).

1.101 "**Recipient**" has the meaning set forth in Section 9.8 (Taxes).

1.102 "**Registration Dossier**" means the registration dossier of technical data and information compiled by or on behalf of DS with respect to a Licensed Product submitted to a Regulatory Authority to obtaining Regulatory Approval of a Licensed Product in the Field in the DS Territory.

1.103 "**Regulatory Approval**" means any and all approvals, licenses, registrations or authorizations of any Regulatory Authority that are necessary for the marketing and sale of a product in a country or group of countries, including a Registration Dossier filed with a Regulatory Authority in any country in the DS Territory, including all additions, amendments, supplements, extensions and modifications thereto, but excluding Pricing and Reimbursement Approvals.

1.104 "**Regulatory Authority**" means any Governmental Authority involved in granting approvals for the Development, Manufacturing, Commercialization, reimbursement or pricing of Licensed Products.

1.105 "**Regulatory Documentation**" means all applications, registrations, licenses, authorizations and approvals, all correspondence submitted to or received from Regulatory Authorities within the DS Territory (including Registration Dossiers, minutes and official contact reports relating to any communications with any Regulatory Authority) and all supporting documents, relating to the Licensed Product, and all data contained in any of the foregoing, including all clinical trial applications, Regulatory Approvals and applications therefor, regulatory drug lists, advertising and promotion documents, adverse event files and complaint files.

1.106 "**Regulatory Exclusivity**" means, with respect to a Licensed Product in a country, any exclusive marketing right, data exclusivity right or other status conferred by any Governmental Authority with respect to such Licensed Product in such country, other than a Patent Right, that limits or prohibits a Person from (i) relying on pivotal safety or efficacy data generated by or for the Parties with respect to a

Licensed Product in an application for Regulatory Approval of a Generic Product or (ii) Commercializing a Licensed Product or a Generic Product.

1.107 "**Related Party**" means a Party's Affiliates and permitted Sublicensees.

1.108 "**Relevant Factors**" means all relevant factors that may affect the Development or Commercialization of a Licensed Product, including (as applicable), [***].

1.109 "**Remitter**" has the meaning set forth in Section 9.8 (Taxes).

1.110 "**Responsible Party**" has the meaning set forth in Section 12.3.3 (Control; Cooperation).

1.111 "**Royalty Term**" has the meaning set forth in Section 9.3.2 (Royalty Term).

1.112 **Safety Data Exchange Agreement**" has the meaning set forth in Section 3.9 (Pharmacovigilance).

1.113 "**Serious Adverse Event**" means an adverse drug experience or circumstance that results in any of the following outcomes (a) death, (b) life-threatening event, (c) inpatient hospitalization or prolongation of existing hospitalization, (d) persistent or significant disability or incapacity or substantial disruption of the ability to conduct normal life functions, (e) a congenital anomaly/birth defect, (f) significant intervention required to prevent permanent impairment or damage or (g) a medical event that may not result in death, be life-threatening or require hospitalization but, based on appropriate medical judgment, that may jeopardize the patient or subject and may require medical or surgical intervention to prevent one of the outcomes described in clauses (a) through (e).

1.114 "**Sublicensee**" means a Third Party to whom a Party grants a direct or indirect sublicense under any Esperion Technology, DS Technology or Joint Technology, as the case may be, to Develop, Manufacture or Commercialize a Licensed Product in the Field pursuant to Section 8.1.2 (DS Sublicense Rights) or Section 8.2.2 (Esperion Sublicense Rights) or the last sentence of Section 12.1.2 (Ownership).

1.115 "**Sued Party**" has the meaning set forth in Section 12.4 (Third Party Infringement Suit).

1.116 "**Supply Agreement**" has the meaning set forth in Section 5.1 (Licensed Products).

1.117 "**Supply Failure**" has the meaning set forth in Section 5.2.1 (Supply Failure).

1.118 "**Term**" has the meaning set forth in Section 13.1 (Term).

1.119 "**Terminated Country**" has the meaning set forth in Section 13.3.1 (Consequences of Termination or Expiration of this Agreement).

1.120 "**Territory**" means (a) the Esperion Territory, (b) the DSE Territory or (c) the DS Territory, singly or collectively, as applicable.

1.121 "**Third Party**" means a Person other than a Party and its Affiliates.

1.122 "**Trademark**" means any trademark, trade name, service mark, service name, brand, trade dress, logo, slogan or other indicia of origin or ownership, including the goodwill and activities associated with each of the foregoing, but not including domain names.

1.123 "**Transition Activities**" has the meaning set forth in Section 13.4.6(a) (Transition Activities).

1.124 "**United States**" means the United States of America and its territories, possessions and commonwealths.

1.125 "**U.S. Bankruptcy Code**" has the meaning set forth in Section 8.5 (Bankruptcy and Section 365(n)).

1.126 "**Valid Claim**" means any claim of a Licensed Patent that (a) has been granted by a patent granting authority, that is in force, and that has not been surrendered, abandoned, revoked or held invalid or unenforceable by a decision taken by an administrative or civil court in a jurisdiction, or (b) a pending claim in a Licensed Patent application, with the provision that any claim that has been pending for more than [***] years following the first substantive response from the patent office in a country, shall cease to be a Valid Claim in that country unless and until it becomes a granted claim fulfilling the requirements under (a) above.

2. DEVELOPMENT

2.1.1 **Overview**. Subject to the terms and conditions of this Agreement, except with respect to the Pre-Approval Clinical Studies, for each Licensed Product, DS shall be solely responsible for conducting, [***], the Development activities set forth in the applicable Development Plan for such Licensed Product in the Field in the DS Territory, subject to oversight by the JCC. DS shall use Commercially Reasonable Efforts to: (a) Develop each Licensed Product in the Field in the DS Territory in accordance with the applicable Development Plan; and (b) pursue Regulatory Approval of each Licensed Product in the DS Territory.

2.1.2 **Development in South Korea and Taiwan.** Notwithstanding the above Section 2.1.1 (Overview) and Section 8.1 (License Grants to DS), Esperion shall be responsible for conducting, [***], the Clinical Studies set forth in the Development Plan, attached hereto as **Schedule 2.1.2** (the **"Agreed Development Plan"**), as amended from time to time in accordance with Section 6.1.6(a) (JCC Responsibilities) of this Agreement, in support of seeking Regulatory Approval of the Licensed Product in the Field in South Korea and Taiwan (collectively, the "**Pre-Approval Clinical Studies**"). Esperion shall use Commercially Reasonable Efforts to conduct the Development activities set forth in the Agreed Development Plan in accordance with the timeline set forth therein. If Esperion contracts with a Third Party to provide any services related to the Pre-Approval Clinical Studies (as provided for in Section 2.2), Esperion shall use Commercially Reasonable Efforts to: (1) [***]; and (2) provide a copy of the executed contract with such Third Party to DS [***] days of execution.DS shall be solely responsible for Post-Approval Studies in the DS Territory in accordance with the applicable Development Plan [***].

2.1.3 **Development Plans**. For each Licensed Product, the Development activities to be undertaken by DS or Esperion (in the case of Esperion, the Pre-Approval Clinical Studies in South Korea and Taiwan to be conducted in accordance with Section 2.1.2 (Development in South Korea and Taiwan)) for such Licensed Product to obtain or maintain Regulatory Approval in the Field in the DS Territory shall be set forth in a development plan (in the case of Esperion, in the Agreed Development Plan) (each such plan, as amended from time to time in accordance with this Agreement, a "**Development Plan**"). Development activities set forth in each Development Plan shall at all times be designed to be in compliance with all applicable Laws and in accordance with professional and ethical standards customary in the pharmaceutical industry. The initial Development Plan (other than for South Korea and Taiwan) setting forth the Development activities to be undertaken by DS for the Licensed Product to obtain Regulatory Approval in the Field in the DS Territory shall be provided by DS to Esperion [***] months after the Effective Date. The initial Development Plan for South Korea and Taiwan setting forth the Pre-Approval Clinical Studies to be undertaken by Esperion shall be set forth in the Agreed Development Plan in accordance with Section 2.1.2 (Development in South Korea and Taiwan).

2.1.4 **Performance**. DS and Esperion (in the case of Esperion, with respect to the Pre-Approval Clinical Studies in South Korea and Taiwan to be conducted in accordance with Section 2.1.2 (Development in South Korea and Taiwan)) shall conduct all Development activities in a sound scientific manner and in compliance with applicable Law and the applicable Development Plan, as such Development

Plan may be amended from time to time in accordance with this Agreement. Notwithstanding anything to the contrary in this Agreement, the Parties shall not be obligated to undertake or continue any activity under a Development Plan if: (a) the Party reasonably determines that performance of such activity would violate applicable Law; or (b) with respect to any Clinical Study, (i) a Regulatory Authority or independent safety data review board for such Clinical Study has required or recommended termination or suspension of such Clinical Study or (ii) the Party believes in good faith that termination or suspension of such Clinical Study is warranted because of safety or tolerability risks or the lack of suitable risk benefit ratio to the study subjects. In the event that a Party determines not to undertake or continue any activity under a Development Plan in accordance with the immediately preceding sentence, such Party shall promptly notify the other Party of such determination, and shall use all reasonable efforts to notify and consult with the other Party prior to making such determination.

2.1.5 **Development Costs**. DS shall be responsible [***] in connection with the Development of the Licensed Products in the Field in the DS Territory, except for [***].

2.1.6 **Records, Reports and Information Sharing**.

a. **Records**.

i. DS shall maintain complete and accurate records of all Development and other scientific activities conducted by or on behalf of it in connection with each Licensed Product, including all data and other information resulting from such activities (which records shall include, as applicable, books, records, reports, research notes, charts, graphs, comments, computations, analyses, recordings, photographs, computer programs and documentation thereof (e.g., samples of materials and other graphic or written data generated in connection with such Development and scientific activities)), in sufficient detail and in sound scientific manner appropriate for patent and regulatory purposes, which shall fully and properly reflect all work done and results achieved in the performance of the Development activities and Clinical Studies with respect to each Licensed Product by DS.

ii. Esperion shall maintain complete and accurate records of the Pre-Approval Clinical Studies and other scientific activities conducted by or on behalf of it in connection with such Pre-Approval Clinical Studies, including all data and other information resulting from such activities (which records shall include, as applicable, books, records, reports, research notes, charts, graphs, comments, computations, analyses, recordings, photographs, computer programs and documentation thereof (e.g., samples of materials and other graphic or written data generated in connection with such Development and scientific activities)), in sufficient detail and in sound scientific manner appropriate for patent and regulatory purposes, which shall fully and properly reflect all work done and results achieved in the performance of the Pre-Approval Clinical Studies by Esperion.

b. **Development Activities Reports**. DS shall provide to Esperion, [***]basis through the JCC, a confidential written progress report that summarizes for each Licensed Product [***]t. In addition, DS shall translate, [***], CSRs and top-line data derived from Clinical Studies of Licensed Products as soon as practically possible into English and shall share such translated CSRs and top-line data with Esperion promptly after completion of such translation into English. Esperion shall provide to DS, [***] basis through the JCC, an update on the progress of the Pre-Approval Clinical Studies and the preparation for the Registration Dossiers in South Korea and Taiwan.

c. **Access to Records**. At any time during the Term, Esperion shall have the right to review all records relating to such Development undertaken by DS with respect to each Licensed Product, at reasonable times, and upon prior written request.

2.2 **Third Parties**. DS shall be entitled to utilize the services of Third Parties to perform Development activities and Esperion shall be entitled to utilize the services of Third Parties to perform the Pre-Approval Clinical Studies in South Korea and Taiwan, provided that (a) the applicable Party shall require such Third Parties to operate in a manner consistent with this Agreement, [***]; and (b) the applicable Party shall remain at all times fully liable for its respective responsibilities and the acts and omissions of such Third Parties engaged by it under this Agreement. The applicable Party shall require that any Third Party agreement entered into pursuant to this Section 2.2 (Third Parties) include [***] The applicable Party shall be solely responsible for the direction of and communications with such Third Parties.

3. REGULATORY MATTERS

3.1 **Responsibility for Regulatory Matters**.

3.1.1 Subject to the terms and conditions of this Agreement, including oversight by the JCC, except as set forth herein, DS shall be solely responsible, [***], for all regulatory matters relating to each Licensed Product in the DS Territory, including (a) overseeing, monitoring and coordinating all regulatory actions, communications and filings with, and submissions to, the applicable Regulatory Authority with respect to Licensed Products; (b) interfacing, corresponding and meeting with the applicable Regulatory Authority with respect to Licensed Products; (c) seeking and maintaining all Regulatory Approvals with respect to Licensed Products, including any amendments, supplements or modifications to Regulatory Approvals; and (d) maintaining and submitting all records required to be maintained or required to be submitted to the applicable Regulatory Authority with respect to Licensed Products, in each case in the DS Territory. Notwithstanding anything to the contrary in this Agreement, Esperion shall be responsible, [***], for (i) preparing and maintaining the drug master file(s) for the API(s) containing data and information related to the Manufacture of the API(s) for the Licensed Products (the "**DMF**"), including any amendments (ii) providing the DMF directly to the applicable Regulatory Authority in the DS Territory, and (iii) communicating with Regulatory Authorities in the DS Territory regarding the DMF. DS shall be entitled to reference the DMF in Regulatory Documentation, including in applications for Regulatory Approval, for the Licensed Product in the DS Territory. Esperion shall provide all assistance reasonably requested by DS in connection with such preparation and filing of Regulatory Documentation and communications with Regulatory Authorities, including but not limited to responding to any queries related to the Licensed Products received from such Regulatory Authority; provided, however, that Esperion shall not be required to [***] in connections therewith unless [***], and, at the request of DS and at [***], Esperion shall send representative(s) of Esperion to attend in-person meetings with Regulatory Authorities in the DS Territory relating to the Manufacture of API(s) or Bulk Tablets.[***]

4.1.1 Notwithstanding the above, Esperion shall prepare the Registration Dossiers for the Licensed Product for submission by DS to the applicable Regulatory Authorities in South Korea and Taiwan to obtain Regulatory Approval of such Licensed Product in the Field in South Korea and Taiwan, including but not limited to any translation of such Registration Dossiers into the appropriate language for submission to the applicable Regulatory Authorities in South Korea and Taiwan, [***] and shall transfer such Registration Dossiers to DS or DS's Affiliate in order for DS or DS's Affiliate to submit, [***], such Registration Dossiers to the applicable Regulatory Authorities to obtain Regulatory Approval of the Licensed Product in the Field in South Korea and Taiwan. Upon such transfer, DS shall be responsible, [***], for all regulatory matters, including post-approval submissions such as amendments, supplements or modifications, relating to the applicable Licensed Product as set forth in Section 3.1.1 (Responsibility for Regulatory Matters); provided, however, that if the Regulatory Authority in South Korea and/or Taiwan requests additional data or information arising from the Pre-Approval Clinical Studies which is not included in the Registration Dossiers, Esperion shall prepare and provide to DS or DS's Affiliate in a timely manner, such additional data and information, including but not limited any analysis of data arising from the Pre-Approval Clinical Studies in South Korea and Taiwan, [***].

3.2 **Communications with Regulatory Authorities**. Except as set forth in this Section 3.2 (Communications with Regulatory Authorities) with respect to the Pre-Approval Clinical Studies to be conducted by Esperion in South Korea and Taiwan in accordance with Section 2.1.2 (Development in South Korea and Taiwan), DS shall be responsible for all communications with the applicable Regulatory Authority relating to the Licens

ed Products in the DS Territory. Prior to the date of transfer of the applicable Registration Dossier to DS as set forth in Section 3.1 (Responsibility for Regulatory Matters), Esperion shall be responsible for all communications with the applicable Regulatory Authority in South Korea and Taiwan relating to the Licensed Products. On or following the date of transfer of the applicable Registration Dossier to DS as set forth in Section 3.1 (Responsibility for Regulatory Matters), DS shall be responsible for all communications with the applicable Regulatory Authority in South Korea and Taiwan relating to the Licensed Products. Within [***] business days after receipt of any Material Communication from such Regulatory Authority with respect to a Licensed Product, the Party responsible for communication with the Regulatory Authority (as described above), shall provide the other Party with a brief written description, in English, of the principal issues raised in such Material Communication with such Regulatory Authority. Upon Esperion's reasonable request after receiving a notice from DS in accordance with the immediately preceding sentence, DS shall, at its sole cost and expense, translate such Material Communication as soon as practically possible and shall provide to Esperion such translated Material Communication promptly after completion of such translation into English. DS will allow Esperion a reasonable opportunity to review and comment on DS's proposed response to any Material Communications with such Regulatory Authority with respect to such Licensed Product. Esperion shall send comments on such Material Communication to DS in a timely manner and DS will reasonably consider all comments timely provided by Esperion in connection therewith; provided, however, DS shall not be required to comply with the foregoing if to do so would cause DS to fail to meet any deadline requested or required by any Regulatory Authority in the DS Territory.

3.3 **Meetings with Regulatory Authorities**. Except with respect to communications with Regulatory Authorities for which Esperion is responsible for in accordance with Section 3.2 (Communications with Regulatory Authorities), DS shall provide Esperion with reasonable advance notice of all formal meetings and teleconferences with the applicable Regulatory Authority pertaining to any Licensed Product in the DS Territory, or with as much advance notice as practicable under the circumstances. DS shall use reasonable efforts, to the extent reasonably practicable and not restricted or prohibited by applicable Laws or the Regulatory Authority, to permit Esperion to have, at Esperion's expense, mutually acceptable representatives of Esperion attend, as observers, such formal meetings and teleconferences with such Regulatory Authority pertaining to such Licensed Product in the DS Territory; provided, however, that DS shall not be obligated to change or re-schedule any such meeting in order to accommodate the schedule of Esperion's representatives. If Esperion requires an interpreter for its representatives attending any such Regulatory Authority meeting, Esperion shall retain, [***], an interpreter who can provide simultaneous interpretation. Notwithstanding the foregoing, prior to the date of transfer of the applicable Registration Dossier to DS as set forth in Section 3.1 (Responsibility for Regulatory Matters) with respect to communications with Regulatory Authorities for which Esperion is responsible for in accordance with Section 3.2 (Communications with Regulatory Authorities), Esperion shall provide DS with reasonable advance notice of all formal meetings and teleconferences with the applicable Regulatory Authority pertaining to any Licensed Product in South Korea and/or Taiwan, or with as much advance notice as practicable under the circumstances. Esperion shall use reasonable efforts, to the extent reasonably practicable and not restricted or prohibited by applicable Laws or the Regulatory Authority, to permit DS or DS's Affiliate to have, at DS's expense, a mutually acceptable representative of DS or DS's Affiliate attend, as observers, such formal meetings and teleconferences with such Regulatory Authority pertaining to such Licensed Product in South Korea and/or Taiwan; provided, however, that Esperion shall not be obligated to change or re-schedule any such meeting in order to accommodate the schedule of DS's representative. If DS requires an interpreter for its representative attending any such Regulatory Authority meeting, DS shall retain, [***], an interpreter who can provide simultaneous interpretation.

3.4 **Pricing and Reimbursement Approvals**. Subject to the terms and conditions of this Agreement, DS shall have the sole right, [***], and shall use Commercially Reasonable Efforts to timely prepare and submit or have prepared or submitted by subcontractors, as the case may be, all necessary applications and documentation to seek to acquire, hold and maintain all Pricing and Reimbursement Approvals necessary or useful to Commercialize each Licensed Product throughout the DS Territory as well as to conduct all correspondence and communications with Governmental Authorities regarding all such matters. Esperion shall reasonably cooperate with DS in connection therewith, including executing such documents as well as providing access to all necessary data in Esperion's Control and not previously made available to DS, such as patient-level data, all Regulatory Documentation, publication plan and manuscripts under preparation, support with the necessary data-analyses (bio-

statistical analyses), as may be necessary to confirm DS's rights to prepare, submit, and obtain such Pricing Approvals for the Licensed Product in the DS Territory.

3.5 **Submissions**. With respect to each Licensed Product, DS shall allow Esperion a reasonable opportunity to review and comment on all filings, including Registration Dossiers, and other submissions to Regulatory Authorities or other Governmental Authorities in the DS Territory related to such Licensed Product and for that purpose DS shall provide English versions of filings and submissions (excluding those materials provided by Esperion) to Esperion in advance of submission of any such filing. DS shall consider all comments timely provided by Esperion in connection therewith and accept such comments if reasonable, provided, however, DS shall not be required to comply with the foregoing or delay submission of such filings, including Registration Dossiers, and other submissions to Regulatory Authorities or other Governmental Authorities if to do so would cause DS to fail to meet the filing target date set forth in the Development Plan or any deadline requested by any Regulatory Authority in the DS Territory.

3.6 **Regulatory Documentation**. Within [***] days after the Effective Date and thereafter, upon DS's reasonable request (with respect to Regulatory Documentation, data and information not previously provided), Esperion shall provide DS with all Regulatory Documentation, data and information (but not including the DMF) owned or Controlled by Esperion that relates to the Licensed Products to the extent necessary or useful to obtain or maintain Regulatory Approval of the Licensed Products in the Field in the DS Territory, including but not limited to the cleaning validation protocol related to the equipment used in connection with the Manufacture of the Licensed Products at Esperion's Manufacturing sites. Notwithstanding the foregoing, within [***] days after the Effective Date, with respect to the eCTD, Esperion shall provide to DS a copy of the eCTD (but for clarity not including portions included within the DMF) existing as of the Effective Date and thereafter Esperion shall provide a copy of the updated eCTD following submission of the global cardiovascular outcomes trial (CVOT) data to the European Medicines Agency.

3.7 **Technology Transfer**. Within [***] days after the Effective Date, Esperion shall commence the transfer to DS or DS's Affiliate at Esperion's cost the analytical method transfer for the Brazilian Facility (as such term will be defined in the Supply Agreement) and the packaging blister specifications for Bulk Tablets of the Licensed Products.

3.8 **Supply of Stability Study Samples.** At DS's request, Esperion shall provide DS with Bulk Tablets for use by DS to conduct stability testing of Bulk Tablets as required for the DS Territory at the supply price agreed in the Section 5.2.5 (Supply Price) and in accordance with the delivery terms set forth in Section 5.3 (Delivery Terms); provided that DS notifies Esperion of the requested quantity of Bulk Tablets and date of delivery of such Bulk Tablets at least [***] before the requested date of delivery.

3.9 **Right of Reference**. Each Party hereby grants to the other Party (as well as to the other Party's Related Parties, when and if designated by the other Party from time to time) a non-exclusive, non-transferable right to rely upon, access, and reference all information and data (including all CMC information as well as data made, collected or otherwise generated in the conduct of any Clinical Studies or early access/named patient programs for the Licensed Products) included in or used in support of any regulatory filing, Regulatory Approval, drug master file or other Regulatory Documentation, in each case, that is owned or Controlled by such Party, that relates to any Licensed Product, as necessary or useful to obtain or maintain Regulatory Approval of Licensed Products in the DS Territory or the Esperion Territory, as the case may be. Such Party shall, if requested by the other Party, provide a signed statement that the other Party may rely upon, and the Regulatory Authority may access, in support of the other Party's application for such Regulatory Approval in its Territory, any underlying raw data or information submitted by such Party to the Regulatory Authority with respect to any regulatory filing, Regulatory Approval, drug master file or other Regulatory Documentation (including orphan drug applications and designations) owned or controlled by such Party or its Related Parties that relates to any Licensed Product. In addition, upon request of either Party (on behalf of itself or a Sublicensee), the other Party shall obtain and provide to the requesting Party certificates or other formal or official attestations concerning the regulatory status of the Licensed Products in the DS Territory or the Esperion Territory, as applicable (e.g., Certificates of Free Sale, Certificates for Export, Certificates to Foreign Governments).

3.10 **Pharmacovigilance**. Within [***] after the Effective Date, the Parties shall enter into a Safety Data Exchange Agreement, or amend the existing Safety Data Exchange Agreement between Esperion and Daiichi Sankyo Europe GMBH for the DSE Territory, entered into on April 30, 2019, defining the pharmacovigilance responsibilities of the Parties, including safety data exchange procedures, with respect to the DS Territory, in substantially the form attached hereto as **Schedule 3.9** (the "**Safety Data Exchange Agreement**"). Esperion will own and maintain the global safety database for the Licensed Products.

3.11 **Inspection.** If any Governmental Authority or Regulatory Authority requests to inspect Esperion or Esperion's Manufacturing facilities, Esperion shall make reasonable efforts to support and allow such inspection. [***] for the inspection [***] at Esperion or Esperion's Manufacturing site shall [***] and [***] for such inspection shall be [***] [***].

4. COMMERCIALIZATION

4.1 **Responsibility, Cost and Diligence**.

4.1.1 **Esperion Territory**. Esperion shall be solely responsible, [***], for all Commercialization activities relating to the Licensed Products in the Esperion Territory.

5.1.1 **DS Territory**. Subject to the terms and conditions of this Agreement, DS shall be solely responsible, [***], for all Commercialization activities relating to Licensed Products in the DS Territory.

6.1.1 **DS Commercial Diligence**. DS will use Commercially Reasonable Efforts to Commercialize Licensed Products in the Field in the DS Territory. DS shall conduct all Commercialization activities for each Licensed Product in accordance with the applicable DS Territory Commercialization Plan and in compliance with applicable Laws and this Agreement.

4.2 **Initial DS Territory Commercialization Plan**.

4.2.1 **Initial Commercialization Plan**. No later than within [***] months of the date of filing of the applicable application for Regulatory Approval for a Licensed Product in the Field in the applicable country in the DS Territory, DS shall deliver to the JCC an initial written plan setting forth a summary of the anticipated activities to be undertaken by DS in connection with the Commercialization of such Licensed Product in the applicable country in the DS Territory (each an "**DS Territory Commercialization Plan**"), [***] Each DS Territory Commercialization Plan shall provide an outline of the Commercialization activities for the Licensed Product in the DS Territory, including (a) the positioning of the Licensed Product, (b) a summary of the branding and communication strategy with respect thereto, (c) a summary of the number of sales representatives and other personnel to be assigned on a country-by-country basis to sell the Licensed Product in the DS Territory, (d) a summary of the medical conferences and other presentations at which the Licensed Product will be promoted, and (e) annual sales projections. Commercialization activities set forth in each DS Territory Commercialization Plan shall at all times be designed to be in compliance with all applicable Laws and in accordance with professional and ethical standards customary in the pharmaceutical industry.

4.2.2 **Amendments to DS Territory Commercialization Plan**. The DS Territory Commercialization Plan for a Licensed Product shall be updated and modified by DS, from time to time at its discretion but no less frequently than [***], based upon, among other things, DS's Commercialization activities with respect to such Licensed Product in the DS Territory, and including any changes required to take into account ongoing Development activities, a copy of which updated plan will be provided to the JCC.

4.3 **Advertising and Promotional Materials**.

4.3.1 **Global Branding**. Esperion shall, from time to time during the Term, develop (and thereafter modify and update) a suggested global branding strategy (including global positioning, promotional messages, colors and other visual branding elements) for each Licensed Product for suggested use throughout the world (the "**Global Branding Strategy**"), which will be shared in the JCC. Esperion will submit the Global

Branding Strategy for the Licensed Products to the JCC at least [***]. Esperion shall consider in good faith any comments provided by DS with respect to the Global Branding Strategy. The Global Branding Strategy is not binding upon DS or its Commercialization of the Licensed Products in the DS Territory. DS shall, following review of the Global Branding Strategy, reasonably consider implementing the Global Branding Strategy but has no obligation to do so.

4.3.2 **DS Advertising & Promotion**. DS will be responsible for the creation, preparation, production, reproduction and filing with the applicable Regulatory Authorities, of relevant written sales, promotion and advertising materials relating to each Licensed Product for use in the DS Territory ("**DS Territory Promotional Materials**"). All such DS Territory Promotional Materials will be compliant with applicable Law and in DS's discretion, may (but shall not be required to) adopt aspects of the Global Branding Strategy for such Licensed Product in the DS Territory. DS will submit representative samples, machine translated into the English language, of its DS Territory Promotional Materials developed by it for use in the DS Territory to the JCC for information purposes [***]. DS shall consider in good faith any timely comments Esperion may have with respect to such samples of DS Territory Promotional Materials.

4.3.3 **Esperion Advertising & Promotional Materials**. From time to time, and in any event upon the reasonable request of DS, Esperion shall provide to DS copies of Licensed Product promotional materials which have been used in countries where Esperion commercializes the Licensed Product, including the United States, in order for DS to align its promotional materials with the Global Branding Strategy.

4.3.4 **Product Trademarks**. DS may propose and the Parties will discuss at the JCC Trademarks to be used in the Commercialization of Licensed Products in the DS Territory. Any such Trademarks that are approved by the JCC in accordance with Section 6.1.7 (JCC Decision-Making) shall be an Esperion Trademark.

4.4 **Reporting Obligations**. Within [***] following the first Regulatory Approval of any Licensed Product in the Field in the DS Territory, DS shall provide Esperion with a written report summarizing DS's Commercialization activities for such Licensed Product performed to date (or updating such report for activities performed since the last such report was given hereunder, as applicable). In addition, DS shall provide Esperion with written notice of the First Commercial Sale of each Licensed Product in the DS Territory within [***] days after such event; provided, however, that in all circumstances, DS shall inform Esperion of such event prior to public disclosure of such event by DS. DS shall provide such other information to the JCC as Esperion may reasonably request with respect to Commercialization of such Licensed Product.

4.5 **Sales and Distribution**. Each Party and its Related Parties shall be responsible for booking sales in its respective Territory. The Parties will use their good faith efforts to coordinate the timing of any public disclosure of Net Sales of the Licensed Products in the DS Territory prior to such disclosure. Each Party and its Related Parties may warehouse Licensed Products both inside and outside of such Party's Territory, provided that any sales with respect to such Licensed Products are booked in such Party's Territory. Each Party and its Related Parties shall be solely responsible for handling all returns of any Licensed Product sold in its Territory, as well as all aspects of Licensed Product order processing, invoicing and collection, distribution, inventory and receivables of Licensed Products sold in its Territory.

4.6 **Ex-Territory Sales; Export Monitoring**.

4.6.1 **Ex-Territory Sales**. Subject to applicable Law, neither Party shall engage in any advertising or promotional activities relating to any Licensed Product directed primarily to customers or other buyers or users of such Licensed Product located outside its Territory or accept orders for Licensed Products from or sell Licensed Products into such other Party's Territory for its own account, and if a Party receives any order for any Licensed Product in the other Party's Territory, it shall refer such orders to the other Party. [***].

4.6.2 **Export Monitoring**. Each Party and its Related Parties will use Commercially Reasonable Efforts to monitor and prevent exports of Licensed Products from its own Territory for Commercialization in the other Party's Territory using methods permitted under applicable Law that are commonly used in the industry for such purpose (if any), and shall promptly inform the other Party of any such exports of

Licensed Products from its Territory, and any actions taken to prevent such exports. Notwithstanding the agreement of the Parties in Section 4.6.1 (Ex-Territory Sales), each Party agrees to take reasonable actions requested in writing by the other Party that are consistent with Law [***].

4.7 **Recalls, Market Withdrawals or Corrective Actions**.

4.7.1 **Notification and Determination**. In the event that any Regulatory Authority threatens or initiates any action to remove a Licensed Product from the market, the Party receiving notice thereof shall notify the other Party of such communication immediately (but in no event later than [***] hours after receipt thereof).

4.7.2 **Responsibility of the Parties**. During the Term, DS shall at all times be responsible for and shall determine whether to initiate any recall, withdrawal or market notification of a Licensed Product in the Field in the DS Territory and Esperion shall at all times be responsible for and shall determine whether to initiate any recall, withdrawal or market notification of a Licensed Product in the Field in the Esperion Territory, including the scope of such recall or withdrawal (e.g., a full or partial recall, or temporary or permanent recall or market notification); provided, however, that before such responsible Party initiates a recall, withdrawal or market notification in its respective Territory, the Parties shall promptly meet in-person or by means of teleconference, videoconference or other similar communications equipment and discuss in good faith the reasons therefor; provided further, that such discussions shall not delay any action that such responsible Party believes has to be taken in relation to any recall, withdrawal or market notification.

5. MANUFACTURE AND SUPPLY

5.1 **Licensed Products**. Esperion shall have the sole right and responsibility to Manufacture the Licensed Products for the DS Territory, subject to the terms of this Agreement (including DS's right and responsibility to conduct primary and secondary packaging of the Bulk Tablets as set forth below), the Supply Agreement and the Quality Agreement; provided, however, that Esperion's responsibility to Manufacture the Licensed Products for the DS Territory shall be limited to Manufacturing such Licensed Products in Bulk Tablet form. DS shall have the sole right and responsibility, [***], for the primary and secondary packaging of the Bulk Tablets supplied by Esperion for commercial use in the DS Territory. Promptly following the Effective Date, the Parties shall negotiate in good faith and shall enter into a supply agreement (the "**Supply Agreement**") pursuant to which Esperion shall supply the Bulk Tablets to DS for Commercialization in the DS Territory.

5.2 **Back-Up Manufacturing Right.**

5.2.1 **Supply Failure.** A "**Supply Failure**" shall mean a failure, in any [***] consecutive [***], beginning at least [***]) months after DS's First Commercial Sale of a Licensed Product, to supply DS with at least [***] percent ([***]%) of the aggregate quantity of Bulk Tablet ordered by DS as detailed in the Supply Agreement. A Supply Failure shall be considered a material breach of this Agreement; provided that if DS, by written notice to Esperion, exercises its right to Manufacture or have Manufactured the Bulk Tablets, as described in Section 5.2.3 (Manufacturing Rights) or Section 5.2.4 (CMO Step-In Rights).

5.2.2 **Escrow.** The Parties will enter into an escrow agreement (the "**Escrow Agreement**") within [***]) days of the execution of this Agreement. Esperion agrees to deposit in a technology escrow account with a Third Party escrow agent (the "**Escrow Agent**") under the Escrow Agreement [***] (the "**Escrowed Materials**"). Esperion shall keep the Escrowed Materials current and shall deposit each new or modified item of Esperion Manufacturing Know-How as it is created, obtained or identified. The Escrowed Materials shall be released to DS upon DS's written demand in the event of a Supply Failure. The Parties shall [***] all charges pursuant to the Escrow Agreement; provided, however, that Esperion will pay all charges pursuant to the Escrow Agreement during each Calendar Year and submit an invoice to DS for [***] ([***]%) of such charges promptly following the end of each Calendar Year.

5.2.3 **Manufacturing Rights.** Upon the occurrence of a Supply Failure, at DS's option, such option to be exercised, if at all, by written notice to Esperion within [***]) days after the occurrence of such Supply Failure (or such longer period as the Parties may agree in writing), DS may Manufacture or have Manufactured, the Bulk Tablets solely for Development and Commercialization in the DS Territory.

5.2.4 **CMO Step-In Rights.** Esperion shall use Commercially Reasonable Efforts to include in each Manufacturing or supply agreement with any Third Party contract manufacturing organization that provides API and Bulk Tablet Manufacturing services (each, a "**CMO**") engaged by Esperion to Manufacture the Licensed Product for clinical or commercial distribution in the DS Territory a provision that permits DS to, at DS's option, such option to be exercised, if at all, by written mutual agreement of the Parties within [***] days after the occurrence of such Supply Failure (or such longer period as the Parties may agree in writing), to engage such CMO directly under Esperion's agreement with such CMO or enter into its own agreement with such CMO on substantially the same terms as Esperion in the case of a Supply Failure.

5.2.5 **Supply Price**. DS will purchase the Licensed Product at [***] U.S. Dollars cent [***]) per tablet for all SKUs in accordance with the terms and conditions set forth in the Supply Agreement, subject to increases or decreases to such price in connection with newly adopted tariffs or taxes, if any, imposed by competent authorities in the DS Territory on such purchases.

5.3 **Delivery Terms**. Notwithstanding anything in the Supply Agreement, Esperion shall deliver the Bulk Tablets to [***] the German Facility (as such term will be defined in the Supply Agreement) and [***] Piramal Facility in the UK or India. Esperion shall ensure that the Bulk Tablets supplied by Esperion to DS shall have at least [***]) percent of its shelf life remaining at the time of delivery at the German Facility and the Piramal Facility in the UK or India.

5.4 **Quality Agreement.** Prior to delivery of any Licensed Product by Esperion to DS pursuant to the Supply Agreement, the Parties shall enter into a Quality Agreement, in substantially the form attached hereto as **Schedule 5.4**, which shall govern issues related to the quality of Licensed Product supplied by Esperion under the Supply Agreement (the "**Quality Agreement**"). If there are contradictions, conflicts, or inconsistencies related to the quality assurance between the terms of this Agreement and any terms of the Quality Agreement in relation to the quality of the Bulk Tablet, the terms of the Quality Agreement shall control unless otherwise agreed to in writing between the Parties. Should Esperion wish to modify, amend or supplement the specifications of the Bulk Tablet for any reason, it shall so notify DS well in advance, before the change of specification of the Bulk Tablet, and DS shall make a reasonable effort to obtain an authorization from the Regulatory Authority with respect to such change in each country of DS Territory. If DS cannot obtain approval from a Regulatory Authority in any country of DS Territory Esperion shall continue to provide Bulk Tablet under the approved specification in that country.

6. COLLABORATION MANAGEMENT

6.1 **Joint Collaboration Committee**.

6.1.1 **Overview**. The Parties shall establish a joint collaboration committee (the "**Joint Collaboration Committee**" or the "**JCC**") within [***] days after the Effective Date to oversee the Development and Commercialization activities relating to the Licensed Products in the Field in the DS Territory, including reviewing and guiding implementation of the Development in the DS Territory. The JCC shall also be responsible for the enumerated responsibilities set forth in Section 6.1.6 (JCC Responsibilities).

6.1.2 **Composition**. The JCC shall be comprised of [***] members, with each Party contributing [***] representatives who are employees of such Party. Each Party shall appoint its respective representatives to the JCC as of the Effective Date and may substitute one or more of its representatives, in its sole discretion, effective upon notice to the other Party of such change. Each Party shall have at least [***] JCC representative who is an executive level employee (vice president or above), and all JCC representatives shall have appropriate expertise, seniority, decision-making authority and ongoing familiarity with the Parties' activities hereunder. Additional representatives or consultants may from time to time, by mutual consent of the Parties, be invited to attend JCC meetings, subject to such representatives and consultants (or the representative's or consultant's employer) undertaking confidentiality obligations, whether in a written agreement or by operation of law, no less stringent than the requirements of Section 7.1 (Nondisclosure Obligation).

6.1.3 **JCC Co-Chairpersons**. The JCC shall be co-chaired by a representative of each of DS and Esperion (the "**Co-Chairpersons**"), the name of such representative of each Party to be communicated to the other Party prior to the first scheduled meeting of the JCC. The Co-Chairpersons' JCC responsibilities shall include setting the agenda for meetings, conducting meetings, including, when feasible, ensuring that objectives for each meeting are set and achieved and ensuring the objectives and results of each meeting are communicated to the senior management of each Party, in each case in close consultation with the Alliance Managers. A Co-Chairperson can be an Alliance Manager at the same time.

6.1.4 **Alliance Managers**.

a. **Appointment**. Within [***]) days following the Effective Date, each Party will appoint (and notify the other Party of the identity of) an employee of such Party having a general understanding in matters related to pharmaceutical development, commercialization, and promotion, to act as its alliance manager under this Agreement (each, an "**Alliance Manager**"). The Alliance Managers shall be a participant or member, as applicable, of the JCC and will serve as a primary point of contact for the other Party and will undertake such other tasks as are detailed in this Agreement or as may be assigned by the JCC. Each Alliance Manager shall attend each scheduled meeting of the JCC. Each Party may change its Alliance Manager at any time in its sole discretion with written notice to the other Party.

b. **General Responsibilities**. Each Alliance Manager will be responsible to ensure a collaborative work environment between the Parties to ensure that the alliance is run smoothly, professionally and productively. Each Alliance Manager shall act in his or her discretion to facilitate the execution of the collaboration throughout their organization and will oversee and support implementation plans; promote effectiveness of the governance model and implementation of contractual provisions and lead any changes to enhance the alliance between both Parties; and facilitate the JCC (and other bodies) for effective decision making in a timely manner.

c. **Specific Responsibilities**. The Alliance Managers shall be responsible for (i) scheduling meetings of the JCC, (ii) setting agendas for meetings with solicited input from other members and (iii) for acting as secretary at each meeting and preparing the draft minutes of such meeting, which shall provide a description in reasonable detail of the discussions held at the meeting and a list of any actions, decisions or determinations approved by the JCC. Within [***] days after each meeting, the drafting Alliance Manager shall provide the draft minutes to the other Alliance Manager for review and comment. The drafting Alliance Manager shall reasonably consider all comments from the other Alliance Manager that are provided within [***] days. The drafting Alliance Manager shall prepare and submit revised final draft minutes for approval within [***] days after receipt of such comments or upon the expiration of such [***] day comment period. Beginning with DS's Alliance Manager, such responsibilities shall alternate between the Alliance Managers on a meeting-by-meeting basis after each meeting of the applicable committee.

6.1.5 **Meetings**. The JCC shall meet, unless mutually agreed to by the Parties, no less frequently than each [***] during the Term; provided, however, that the frequency of JCC meetings can be adjusted upon the consent of both Parties. Meetings can be conducted in person or by means of teleconference, videoconference or other similar communications equipment. All meetings and proceedings for the JCC shall take place in English. Each Party shall bear its own expenses relating to attendance at such meetings by its representatives.

6.1.6 **JCC Responsibilities**. The JCC shall have the following responsibilities with respect to the Development, Manufacturing and Commercialization of Licensed Products pursuant to this Agreement:

a. discussing, reviewing and approving the Development Plans and amendments or modifications to the Development Plans;

b. discussing, reviewing and approving the Development of new formulations of Licensed Products;

c. discussing and reviewing the implementation of the Development Plans, and reviewing the status and results of such Development Plans;

d. discussing, reviewing and approving Clinical Studies, including post-marketing studies proposed to be sponsored or supported (through supply of Licensed Products) by DS or Esperion (in respect of the Development Pre-Approval Clinical Studies in South Korea and Taiwan), as detailed in Section 2.1.2 (Development in South Korea and Taiwan)), of Licensed Products in the DS Territory, including the approval of the relevant study design or summary of the relevant protocol and related documentation;

e. discussing and reviewing the status of Licensed Products, including material Development and Manufacturing matters in the Esperion Territory and the DS Territory;

f. discussing and reviewing the Global Branding Strategy;

g. discussing, reviewing and approving the DS Territory Commercialization Plans and amendment or modifications to the DS Territory Commercialization Plans;

h. discussing and reviewing the implementation of such DS Territory Commercialization Plans, and reviewing the status and results of such DS Territory Commercialization Plans;

i. reviewing representative samples of DS Territory Promotional Materials developed for use in the DS Territory as provided in Section 4.3.2 (DS Advertising & Promotional Materials);

j. discussing, reviewing and approving Trademarks for the DS Territory pursuant to Section 4.3.4 (Product Trademarks);

k. reviewing a publication strategy pursuant to which the Parties may publish certain key results achieved in connection with this Agreement as provided in Section 7.2.1 (Publication);

l. overseeing the JCC's subcommittees and ensuring effective participation in each such committee's operations by any of its members;

m. addressing any other matters regarding the Development, and Manufacturing of Licensed Products referred to the JCC by the terms of this Agreement; and

n. performing such other activities as the Parties agree in writing shall be the responsibility of the JCC.

6.1.7 **JCC Decision-Making**.

a. **Voting**. With respect to decisions of the JCC, the representatives of each Party shall have collectively one (1) vote on behalf of such Party. For each meeting of the JCC, the attendance of at least [***] representatives of each Party shall constitute a quorum. Action on any matter may be taken at a meeting, by teleconference, by videoconference or by written agreement.

b. **Escalation**. The JCC shall attempt to resolve any and all decisions and disputes before it by consensus. If the JCC is unable to reach consensus with respect to a decision or dispute regarding any matter within the JCC's responsibilities for a period in excess of [***] days, then the dispute shall be submitted to the Chief Executive Officers of Esperion and DS or his or her designee for resolution. If such dispute cannot be resolved for a period in excess of [***]) days following escalation (or such other period as the Parties may agree), then Section 6.1.7(c) (Tie-Breaking) shall apply.

c. **Tie-Breaking**. If a dispute cannot be resolved under Section 6.1.7(b) (Escalation), then:

i. The Chief Executive Officer of DS or his or her designee shall have the deciding vote if the dispute relates to [***].

ii. The Chief Executive Officer of Esperion shall have the deciding vote if the dispute relates to:

a. [***];

b. [***]; and

c. [***].[***].

iii. [***].

For the avoidance of doubt, all matters relating to the Development, Manufacturing and Commercialization of the Licensed Products in the Esperion Territory shall be decided by Esperion and shall not be subject to decision-making by the JCC.

d. **Limitation of Power of JCC**. Neither the JCC nor any subcommittee of the JCC shall have decision-making authority regarding any of the following matters, and neither Party shall be permitted to exercise its tie-breaking authority under Section 6.1.7(c) (Tie-Breaking), such that the resulting decision would have any of the following results:

i. the imposition of any requirements on the other Party to undertake obligations beyond those for which it is responsible, or forgo any rights, under this Agreement;

ii. the imposition of any requirements that the other Party take or decline to take any action that would result in a violation of any Law or any agreement with any Third Party or the infringement of intellectual property rights of Third Parties;

iii. any matters that would excuse such Party from any of its obligations specifically enumerated under this Agreement; or

iv. modifying the terms of this Agreement or taking any action to expand or narrow the responsibilities of the JCC (but excluding amendments and modifications to any schedules or exhibits to this Agreement that are expressly permitted under this Agreement).

6.1.8 **Subcommittees**. The Parties or the JCC shall have the right to create such subcommittees of the JCC as they or it may deem appropriate or necessary (such as a finance subcommittee, or other appropriate subcommittees). Each such subcommittee shall report to the JCC, which shall have authority to approve or reject recommendations or actions proposed thereby, subject to the terms of this Agreement.

6.2 **Collaboration Principles**. In performing its obligations and exercising its rights hereunder (including acting through its executives, representatives on any of the committees and its Alliance Managers), each Party [***] to undertake and perform its obligations in a timely and efficient manner [***].

6.3 **Confidentiality**. All information disclosed by either Party or its representatives to the other Party or its representatives under this Section 6 (Collaboration Management) shall be deemed to be Confidential Information of the disclosing Party and maintained in accordance with Section 7 (Confidentiality and Publication).

6.4 **Modifications**. The Parties may meet from time to time to discuss whether any changes to the governance structure for the Parties' activities hereunder are necessary or advisable.

7. CONFIDENTIALITY AND PUBLICATION

7.1 **Nondisclosure Obligation**.

7.1.1 All Confidential Information disclosed by one Party to the other Party under this Agreement shall be maintained in confidence by the receiving Party and shall not be disclosed to a Third Party or used for any purpose except as set forth herein without the prior written consent of the disclosing Party, except to the extent that such Confidential Information:

a. is known by the receiving Party at the time of its receipt, and not through a prior disclosure by the disclosing Party, as documented by the receiving Party's business records;

b. is known to the public before its receipt from the disclosing Party, or thereafter becomes known to the public through no breach of this Agreement by the receiving Party;

c. is subsequently disclosed to the receiving Party by a Third Party who is not known by the receiving Party to be under an obligation of confidentiality to the disclosing Party; or

d. is developed by the receiving Party independently of Confidential Information received from the disclosing Party, as documented by the receiving Party's business records.

7.1.2 Notwithstanding the obligations of confidentiality and non-use set forth above and in Section 7.1.3 (Nondisclosure Obligation) below, a receiving Party may provide Confidential Information disclosed to it, and disclose the existence and terms of this Agreement as may be reasonably required in order to perform its obligations and to exploit its rights under this Agreement, and specifically to (i) Related Parties, and their employees, directors, agents, consultants, advisors or other Third Parties for the performance of its obligations hereunder in accordance with this Agreement in each case who are under an obligation of confidentiality with respect to such information that is no less stringent than the terms of this Section 7.1 (Nondisclosure Obligation); (ii) Governmental Authorities or other Regulatory Authorities, Statutory Accountants or tax and legal advisors in order to obtain patents, comply with statutory tax and legal requirements in any country or perform its obligations or exploit its rights under this Agreement, provided that such Confidential Information shall be disclosed only to the extent reasonably necessary to do so; (iii) the extent required by Law, including by the rules or regulations of the United States Securities and Exchange Commission or similar regulatory agency in a country other than the United States or of any stock exchange or listing entity; and (iv) (a) any bona fide actual or prospective underwriters, investors, lenders or acquirers of a Party or substantially all of its assets and to consultants and advisors of such Third Party, and (b) any bona fide actual or prospective collaborators or strategic partners and to consultants and advisors of such Third Party, in each case of (a) and (b) during bona fide business discussions provided that the receiving party of such information is under an obligation of confidentiality of reasonable scope and duration with respect to such information. If a Party is required by Law to disclose Confidential Information that is subject to the non-disclosure provisions of this Section 7.1 (Nondisclosure Obligation), such Party shall promptly inform the other Party of the disclosure that is being sought in order to provide the other Party an opportunity to challenge or limit the disclosure. Notwithstanding Section 7.1.1 (Nondisclosure Obligation), Confidential Information that is required to be disclosed by Law shall remain otherwise subject to the confidentiality and non-use provisions of this Section 7.1 (Nondisclosure Obligation). If either Party concludes that a copy of any of this Agreement must be filed with the United States Securities and Exchange Commission or similar regulatory agency in a country other than the United States, such Party shall provide the other Party with a copy of such agreement showing any provisions hereof as to which the Party proposes to request confidential treatment, shall provide the other Party with an opportunity to comment on any such proposed redactions and to suggest additional redactions, and shall take such Party's comments into consideration before filing such agreement.

7.1.3 Each Party recognizes that the value to the other Party of the transactions under this Agreement depend, in part, on each Party protecting the secrecy of its Know-How. Therefore, without limiting any Party's right to license its Know-How, subject to the terms of this Agreement, in any way it chooses, each Party shall use Commercially Reasonable Efforts to protect the confidentiality of its Know-How as determined in such Party's reasonable business judgment.

7.2 **Publication and Publicity**.

7.2.1 **Publication**. The JCC shall develop a publication strategy pursuant to which the Parties may publish certain key results achieved in connection with this Agreement, including in connection with

Development of the Licensed Products. All publications of such key results shall also be subject to this Section 7.2.1 (Publication). Except for disclosures permitted pursuant to Section 7.1 (Nondisclosure Obligation) and Section 7.2.2 (Publicity), either Party wishing to make a publication or public presentation regarding any such key results, or that contains the Confidential Information of the other Party, shall deliver to the other Party a copy of the proposed written publication or presentation at least [***] days prior to submission for publication or presentation. The reviewing Party shall have the right (i) to require modifications to the publication or presentation for patent reasons, trade secret reasons or business reasons, and the publishing Party shall remove all Confidential Information of the other Party if requested by the reviewing Party, or (ii) to request a reasonable delay in publication or presentation in order to protect patentable information. If the reviewing Party requests a delay, the publishing Party shall delay submission or presentation for a period of one hundred and [***] days to enable the non-publishing Party to file patent applications protecting such Party's rights in such information.

7.2.2 **Publicity**. Except as set forth in Section 7.1 (Nondisclosure Obligation) and Section 7.2.1 (Publication) above and Section 7.3 (Press Release) below, the terms of any of this Agreement may not be disclosed by either Party. Neither Party shall use the name, Trademark or trade name or logo of the other Party or its employees in any publicity, news release or disclosure relating to any of this Agreement, its subject matter, or the activities of the Parties hereunder without the prior express written permission of the other Party, except as may be required by Law, including by the rules or regulations of the United States Securities and Exchange Commission or similar regulatory agency in any country other than the United States or of any stock exchange or listing entity, or except as expressly permitted by the terms hereof.

7.3 **Press Release.** Following the execution of this Agreement, the Parties may each issue a press release in substantially the form set forth in **Schedule 7.3** (Press Releases) or such other forms mutually agreed by the Parties. After such initial press releases, neither Party shall issue a press release or public announcement relating to the Parties' respective rights and obligations under this Agreement without the prior written approval of the other Party, not to be unreasonably withheld, conditioned or delayed, except that the Parties may (i) once a press release or other public statement is approved in writing by both Parties, make subsequent public disclosure of the information contained in such press release or other written statement without the further approval of the other Party, and (ii) issue a press release or public announcement as required, in the reasonable judgment of such Party, by Law, including by the rules or regulations of the United States Securities and Exchange Commission, or similar regulatory agency in a country other than the United States or of any stock exchange or listing entity on which such Party desires to list or does list its securities.

7.4 **Survival**. The provisions in this Section 7 (Confidentiality and Publication) shall survive the expiration or the termination of this Agreement for a period of [***] years thereafter, except that with respect to trade secrets, such provisions and obligations shall survive for as long as the trade secrets remain secret.

8. LICENSES

8.1 **License Grants to DS**.

8.1.1 **Exclusive License Grant**. Subject to the terms and conditions of this Agreement, Esperion hereby grants to DS a non-transferable (except as provided in Section 14.1 (Assignment)), sublicensable (subject to Section 8.1.2 (DS Sublicense Rights)), exclusive (even as to Esperion and its Affiliates, except as provided in Section 2.1.2 (Development in South Korea and Taiwan)) license under the Esperion Technology, Esperion's interest in the Joint Technology, and the Esperion Trademarks to Develop (but solely to the extent necessary for DS to conduct the Development activities set forth in the applicable Development Plan in accordance with Section 2.1.3 (Development Plans), have Developed (but solely to the extent necessary for DS to conduct the Development activities set forth in the applicable Development Plan in accordance with Section 2.1.3 (Development Plans)), Manufacture (but solely in accordance with Section 5.1 (Licensed Products) and Section 5.2 **(**Back-Up Manufacturing Rights), have Manufactured (but solely in accordance with Section 5.1 (Licensed Products) and Section 5.2 **(**Back-Up Manufacturing Rights)) and Commercialize Licensed Products in the Field in the DS Territory. The license granted hereunder shall be royalty-bearing for the Royalty Term applicable to each Licensed Product in the DS Territory, and, after the Royalty Term applicable to such Licensed Product, shall convert to a fully-paid, royalty-free perpetual license.

8.1.2 **DS Sublicense Rights**. DS shall have the right to sublicense any of its rights under Section 8.1.1 (Exclusive License Grant) to any of its Affiliates or to any Third Party without the prior consent of Esperion, subject to the requirements of this Section 8.1.2 (DS Sublicense Rights). Each sublicense granted by DS pursuant to this Section 8.1.2 (DS Sublicense Rights) shall be subject and subordinate to the terms of this Agreement and shall contain provisions consistent with those in this Agreement. DS shall promptly provide Esperion with a copy of the fully executed sublicense agreement covering any sublicense granted hereunder to a Third Party (which copy may be redacted to remove provisions which are not necessary to monitor compliance with this Section 8.1.2 (DS Sublicense Rights)), and each such sublicense agreement shall contain the following provisions: (i) a requirement that the Sublicensee comply with the confidentiality and non-use provisions of Section 7 (Confidentiality and Publication) with respect to Esperion's Confidential Information and (ii) a requirement that the Sublicensee submit applicable sales or other reports to DS to the extent necessary or relevant to the reports required to be made or records required to be maintained under this Agreement. Notwithstanding any sublicense, DS shall remain primarily liable to Esperion for the performance of all of DS's obligations under, and DS's compliance with all provisions of, this Agreement.

8.1.3 **No Implied Licenses**. Except as specifically set forth in this Agreement, neither Party shall acquire any license or other right or interest, by implication or otherwise, in any intellectual property rights of the other Party or any of its Affiliates.

8.2 **License Grants to Esperion**.

8.2.1 **License Grant for Esperion Territory**. Subject to the terms and conditions of this Agreement, DS hereby grants Esperion a non-transferable (except as provided in Section 14.1 (Assignment)), sublicensable (subject to Section 8.2.2 (Esperion Sublicense Rights)), non-exclusive, royalty-free license under the DS Technology for all uses in connection with any Licensed Product in the Esperion Territory.

8.2.2 **Esperion Sublicense Rights**. Esperion shall have the right to sublicense any of its rights under Section 8.2.1 (License Grant for Esperion Territory) to any of its Affiliates or to any Third Party without the prior consent of DS, subject to the requirements of this Section 8.2.2 (Esperion Sublicense Rights). Each sublicense granted by Esperion pursuant to this Section 8.2.2 (Esperion Sublicense Rights) shall be subject and subordinate to this Agreement and shall contain provisions consistent with those in this Agreement. Esperion shall promptly provide DS with a copy of the fully executed sublicense agreement covering any sublicense granted hereunder (which copy may be redacted to remove provisions which are not necessary to monitor compliance with this Section 8.2.2 (Esperion Sublicense Rights)), and each such sublicense agreement shall contain a requirement that the Sublicensee comply with the confidentiality and non-use provisions of Section 7 (Confidentiality and Publication) of this Agreement with respect to DS's Confidential Information. Notwithstanding any sublicense, Esperion shall remain primarily liable to DS for the performance of all of Esperion's obligations under, and Esperion's compliance with all provisions of, this Agreement.

8.3 **Option to Expand the DS Territory**.

a. Subject to the terms and conditions of this Agreement, Esperion hereby grants to DS an exclusive option to expand the DS Territory to include the Middle East Option Territory (the "**Middle East Option**"). DS may exercise the Middle East Option during the Option Period by providing written notice to Esperion during the Option Period that it elects to exercise the Middle East Option; provided, however, that DS may not exercise the Middle East Option unless and until it has entered into a sublicense agreement with a Third Party, on terms that are approved by Esperion, pursuant to which DS grants such Third Party a sublicense to Develop, Manufacture (but solely to the extent necessary to conduct primary and secondary packaging of the Bulk Tablets) and Commercialize the Licensed Products in the Middle East Option Territory (the "**Middle East Sublicense**"). From and after the date on which DS exercises the Middle East Option (the "**Middle East Option Exercise Date**"), and continuing until the expiration or earlier termination of the Middle East Sublicense, the DS Territory shall include the Middle East Option Territory; provided, however, that Section 9.2 (Commercial Milestones) will not apply to the Middle East Option Territory; and provided further, that DS shall pay to Esperion fifty percent (50%) of upfront payments and royalty received by DS under the

Middle East Sublicense in accordance with Sections 9.5 (Audits), 9.6 (Payment), 9.7 (Late Payment), 9.8 (Taxes) and 9.9 (Payment of Back Royalties).

b. Subject to the terms and conditions of this Agreement, Esperion hereby grants to DS an exclusive option to expand the DS Territory to include the Latin American Option Territory (the "**Latin American Option**"). DS may exercise the Latin American Option during the Option Period by providing written notice to Esperion during the Option Period that it elects to exercise the Latin American Option; provided, however, that DS may not exercise the Latin American Option unless and until it has entered into a sublicense agreement with a Third Party to be mutually agreed to by the Parties, on terms that are approved by Esperion, pursuant to which DS grants to such Third Party an exclusive sublicense to Develop, Manufacture (but solely to the extent necessary to conduct primary and secondary packaging of the Bulk Tablets) and Commercialize the Licensed Products in the Latin American Option Territory (the "**Latin American Sublicense**"). From and after the date on which DS exercises the Latin American Option (the "**Latin American Option Exercise Date**"), and continuing until the expiration or earlier termination of the Latin American Sublicense, the DS Territory shall include the Latin American Option Territory; provided, however, that Section 9.2. (Commercial Milestones) will not apply to the Latin American Option Territory. The specific terms for the Latin American Sublicense between Esperion and DS shall be discussed and agreed during the Option Period, however Sections 9.5 (Audits), 9.6 (Payment), 9.7 (Late Payment), 9.8 (Taxes) and 9.9 (Payment of Back Royalties) of this Agreement shall apply.

8.4 **Retained Rights**. For the avoidance of doubt, notwithstanding the provisions of Section 8.1 (License Grants to DS) or any other provision of this Agreement, Esperion shall retain rights under the Esperion Patent Rights, Esperion Know-How, Regulatory Documentation, Esperion Trademarks and Esperion house marks to (a) perform its responsibilities under this Agreement or any ancillary agreement; and (b) Develop and Manufacture the Licensed Product in the Territory for purposes of the Development of the Licensed Product worldwide and Commercialization of the Licensed Product outside the DS Territory and the DSE Territory.

8.5 **No Implied Licenses**. Except as specifically set forth in this Agreement, neither Party shall acquire any license or other right or interest, by implication or otherwise, in any intellectual property rights of the other Party or any of its Affiliates.

8.6 **Bankruptcy and Section 365(n)**. All rights and licenses granted under or pursuant to this Agreement by a Party to the other, including those set forth in Section 8 (Licenses) and Section 3.9 (Right of Reference), are and shall otherwise be deemed to be, for purposes of Section 365(n) of Title 11 of the United States Code (the "**U.S. Bankruptcy Code**"), or the equivalent of the foregoing in any foreign counterpart thereto, as applicable, (collectively, the "**Bankruptcy Code**"), licenses of right to "intellectual property" as defined under Bankruptcy Code. The Parties agree that the Parties and their respective Sublicensees, as Sublicensees of such rights under this Agreement, shall retain and may fully exercise all of their rights and elections under the Bankruptcy Code. The Parties further agree that upon commencement of a proceeding by or against a Party (the **"Bankrupt Party**") under the Bankruptcy Code, the other Party (the "**Non-Bankrupt Party**") will be entitled to a complete duplicate of, or complete access to (as the Non-Bankrupt Party deems appropriate), all such intellectual property and all embodiments of such intellectual property. Such intellectual property and all embodiments of such intellectual property will be promptly delivered to the Non-Bankrupt Party (a) upon any such commencement of a proceeding and upon written request by the Non-Bankrupt Party, unless the Bankrupt Party elects to continue to perform all of its obligations under this Agreement, or (b) if not delivered under (a) above, upon the rejection of this Agreement by or on behalf of the Bankrupt Party and upon written request by the Non-Bankrupt Party. All rights, powers and remedies of a Non-Bankrupt Party hereunder are in addition to and not in substitution for any and all other rights, powers and remedies now or hereafter existing at Law in the event of the commencement of a proceeding under a Bankruptcy Code with respect to the Bankrupt Party. The Parties agree that, in addition to the foregoing rights, they intend for the right to contract directly with any Third Party to perform any obligations of the Bankrupted Party hereunder and complete such contracted work to apply to the maximum extent permitted by law and to be enforceable under the Bankruptcy Code. All written agreements entered into or in connection with the Parties' performance hereunder from time to time are considered agreements "supplementary" to this Agreement for purposes of section 365(n).

8.7 **No Other Rights**. Except as otherwise expressly provided in this Agreement, under no circumstances shall a Party, as a result of this Agreement, obtain any ownership interest or other right in any Know-How, Patent Rights or other intellectual property rights of the other Party, including items owned, controlled or developed by the other Party, or provided by the other Party to the receiving Party at any time pursuant to this Agreement.

9. FINANCIAL TERMS; ROYALTY REPORTS; PAYMENTS AND AUDITS

9.1 **Upfront Payment**. As partial consideration for the licenses and rights granted to DS hereunder, DS shall, within [***]) business days after the Effective Date and upon receiving an invoice from Esperion, pay Esperion a one-time, non-creditable, non-refundable (other than as described later in this Section), non-reimbursable upfront fee of Thirty Million United States dollars ($30,000,000). In accordance with Section 9.8 (Taxes), the payment date of the upfront payment can be extended by Esperion at its own discretion for a period of [***]) days without any obligation of DS to pay interest according to Section 9.7 (Late Payments).

9.2 **Commercial Milestones**. DS shall provide Esperion with written notice of the achievement by DS or any of its Related Parties of any commercial milestone event set forth below in this Section 9.2 (Commercial Milestones) within [***][***] days after the end of the Fiscal Quarter in which such event has occurred. Esperion shall invoice DS within [***]) days of receipt of such written notice by DS, and DS shall remit the associated milestone payment within [***] days of the receipt of such invoice. The Parties acknowledge that more than one commercial milestone payment may become due and payable in any given Fiscal Year. Each commercial milestone payment set forth below shall be payable only once, regardless of the number of times a commercial milestone event is achieved.

Commercial Milestone Event	Commercial Milestone Payment (USD)
[***]	[***]
[***]	[***]
[***]	[***]
[***]	[***]
[***]	[***]

9.3 **Royalties Payable to Esperion**.

9.3.1 **Royalty Rates**. Subject to the terms and conditions of this Agreement, DS shall pay to Esperion royalties on Net Sales for a Fiscal Year by DS and its Related Parties of Licensed Products during the Royalty Term, as follows:

Net Sales for a Fiscal Year	Royalty (as a percentage of Net Sales)
Portion less than or equal to [***]	5%
Portion greater than [***] and less than or equal to [***]	[***]
Portion greater than [***] and less than or equal to [***]	[***]
Portion greater than [***]	20%

9.3.2 **Royalty Term**. The period during which the royalties set forth in Section 9.3.1 (Royalty Rates) and the sales milestones set forth in Section 9.2 (Commercial Milestones) shall be payable, on a Licensed Product-by-Licensed Product and country-by-country basis, shall commence with the First Commercial Sale of a Licensed Product in a country and continue until the latest of (a) the date of expiration of the last Valid Claim of the Esperion Patent Rights that covers such Licensed Product in such country, (b) the expiration of Regulatory Exclusivity for such Licensed Product in such country, and (c) the [***] anniversary of the First Commercial Sale of such Licensed Product in such country (the "**Royalty Term**").

9.3.3 **Market Entry of Generic Licensed Product**. On a Licensed Product-by-Licensed Product, country-by-country and [***] basis:

a. if one or more Generic Products have, in the aggregate, obtained a market share in such country in the DS Territory with respect to such Licensed Product during such [***] equals or exceeds [***] percent [***]%) but is less than [***] percent ([***]%) of the combined number of units of such Licensed Product and Generic Product sold, as such Generic Product sales are evidenced by creditable independent market data or other evidence of similar credibility, then DS shall pay to Esperion a reduced royalty rate on Net Sales of such Licensed Product in such country during such [***] equal to [***] percent ([***]%) of the royalty rate applicable under Section 9.3.1 (Royalty Rates).

b. If one or more Generic Products have, in the aggregate, obtained a market share in such country in the DS Territory with respect to such Licensed Product during such [***] equals or exceeds [***] percent ([***]%) of the combined number of units of such Licensed Product and Generic Product sold, as such Generic Product sales are evidenced by creditable independent market data or other evidence of similar credibility, then DS shall pay to Esperion a reduced royalty rate on Net Sales of such Licensed Product in such country during such [***] equal to [***] percent ([***]%) of the royalty rate applicable under Section 9.3.1 (Royalty Rates).

9.4 **Reports; Payment of Royalty**. DS shall provide Esperion with a written report within [***] days after the end of each [***] showing, on a Licensed Product-by-Licensed Product basis, the Net Sales of each Licensed Product in the DS Territory, the number of units of Licensed Product sold during such [***] in the DS Territory and the royalties payable under this Agreement with respect to each such Licensed Product. Royalties shown to have accrued by each royalty report shall be due and payable within [***]) days after the end of the applicable Fiscal Quarter.

9.5 **Audits**.

9.5.1 Upon the written request of either Party, and not more than [***] in each Calendar Year, the other Party and its Affiliates shall permit an independent certified public accounting firm of internationally-recognized standing selected by the requesting Party and reasonably acceptable to the other Party, at the requesting Party's expense except as set forth below, to have access during normal business hours to such of the records of the other Party as may be reasonably necessary to verify the accuracy of the royalty and other amounts payable or reports under this Agreement for any year ending not more than [***]) years prior to the date of such request for the sole purpose of verifying the basis and accuracy of payments made and compliance with the financial terms of this Agreement. Notwithstanding the foregoing, a Party may not make more than [***] such request in a Calendar Year.

9.5.2 If such accounting firm identifies a discrepancy made during such period, the appropriate Party shall pay the other Party the amount of the discrepancy, within [***]) days after the date the requesting Party delivers to the other Party such accounting firm's written report so concluding, or as otherwise agreed by the Parties in writing. The fees charged by such accounting firm shall be paid by the requesting Party, unless such discrepancy represents an underpayment by the other Party of at least [***] percent ([***]%) of the payments due in the audited period, in which case such fees shall be paid by the other Party.

9.5.3 Unless an audit for such year has been commenced prior to and is ongoing upon the [***] anniversary of the end of such year, the calculation of royalties, expense reimbursement and other payments payable with respect to such year shall be binding and conclusive upon both Parties, and each Party and its Related Parties shall be released from any further liability or accountability with respect to such royalties or expense reimbursement for such year.

9.5.4 Each Party shall treat all financial information subject to review under this Section 9.5 (Audits) or under any sublicense agreement in accordance with the confidentiality and non-use provisions of Section 7 (Confidentiality and Publication), and shall cause its accounting firm to enter into a confidentiality agreement with the other Party or its Related Parties obligating it to retain all such information in confidence pursuant to such

confidentiality agreement, which terms shall be no less stringent than the provisions of Section 7 (Confidentiality and Publication).

9.6 **Payment; Exchange Rate**. All payments to be made under this Agreement shall be made in United States Dollars (legal tender of the United States of America). In the case of Net Sales made by DS and its Related Parties in currencies other than United States dollars during a Calendar Quarter, the rate of exchange to be used in computing the amount of United States dollars due shall be DS's then current standard exchange rate methodology as applied in its external reporting for the conversion of foreign currency sales into United States dollars.

9.7 **Late Payments**. If a Party does not receive payment of any sum due to it on or before the due date therefor, simple interest shall thereafter accrue on the sum due to such Party from the due date until the date of payment at a per-annum rate of [***] percent [***]%), or the maximum rate allowable by Applicable Law, whichever is less.

9.8 **Taxes**. Each Party shall use reasonable efforts to minimize tax withholding on payments made to the other Party. Notwithstanding such efforts, if the Party who pays and remits the amount ("**Remitter**") concludes that tax withholdings under the Laws of any country are required with respect to payments to the other Party (the Party who receive the amount ("**Recipient**")), the Remitter shall first notify the Recipient and provide the Recipient with [***] days to determine whether there are actions the Recipient can undertake to avoid such withholding. During this notice period, the Remitter shall refrain from making such payment in accordance with what is stated under Section 9.1 (Upfront Payment) above until the Recipient instructs the Remitter that (a) the Recipient intends to take actions (satisfactory to both Parties) that shall obviate the need for such withholding, in which case the Remitter shall make such payment only after it is instructed to do so by the Recipient (but in no event greater than [***] days after the date the payment was originally due) and without any obligation to pay interest under Section 9.7 (Late Payments), or (b) the Remitter should make such payment and withhold the required amount and pay it to the appropriate Governmental Authority in accordance with the timelines defined by applicable tax law and the Remitter shall provide the Recipient in a reasonable time period with copies of receipts or other evidence reasonably required and sufficient to allow the Recipient to document such tax withholdings adequately for purposes of claiming foreign tax credits and similar benefits, the Parties shall cooperate reasonably in completing and filing documents required under the provisions of any applicable tax laws or under any other applicable Law, in connection with the making of any required tax payment or withholding payment, or in connection with any claim to a refund of or credit for any such payment, and the Parties shall cooperate to minimize such taxes in accordance with applicable Laws, including using reasonable efforts to access the benefits of any applicable treaties.

9.9 **Payment of Back Royalties**. If DS would owe a royalty payment to Esperion under this Section 9 (Financial Terms; Royalty Reports; Payments and Audits) but for a decision by a court or other governmental agency of competent jurisdiction holding a patent claim unenforceable, unpatentable or invalid and if such decision is later vacated or reversed by a final non-appealable decision by a court or other governmental agency of competent jurisdiction, Esperion may invoice DS for such unpaid royalty payments after such decision is vacated or reversed and DS shall make any such unpaid royalty payments to Esperion within [***] days after receipt of such invoice but without any obligation to pay interest under Section 9.7 (Late Payments).

9.10 **Payment**. All payments to be made under this Agreement shall be paid by bank wire transfer in immediately available funds to Esperion's following designated bank account:

Bank Name: [***]

Bank Address: [***]

ABA #: [***]

Swift: [***]

Beneficiary: [***]

Beneficiary Address: [***]

Beneficiary Account #: [***]

FFC Account Name: [***]

FFC Account Number: [***]

Esperion may from time to time designate formally in writing another bank account in the United States to which DS shall thereafter make all payments hereunder.

10. REPRESENTATIONS, WARRANTIES AND COVENANTS

10.1 **Mutual Representations and Warranties as of the Effective Date**. Each Party represents and warrants to the other Party that, as of the Effective Date:

10.1.1 Such Party is a corporation duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation or formation.

10.1.2 Such Party has all requisite corporate power and corporate authority to enter into this Agreement and to carry out its obligations under this Agreement.

10.1.3 All requisite corporate action on the part of such Party, its directors and stockholders required by applicable Law for the authorization, execution and delivery by such Party of this Agreement, and the performance of all obligations of such Party under this Agreement, has been taken.

10.1.4 The execution, delivery and performance of this Agreement, and compliance with the provisions of this Agreement, by such Party do not and shall not: (a) violate any provision of applicable Law or any ruling, writ, injunction, order, permit, judgment or decree of any Governmental Authority, (b) constitute a breach of, or default under (or an event which, with notice or lapse of time or both, would become a default under) or conflict with, or give rise to any right of termination, cancellation or acceleration of, any agreement, arrangement or instrument, whether written or oral, by which such Party or any of its assets are bound, or (c) violate or conflict with any of the provisions of such Party's organizational documents (including any articles or memoranda of organization or association, charter, bylaws or similar documents).

10.1.5 No consent, approval, authorization or other order of, or filing with, or notice to, any Governmental Authority or other Third Party is required to be obtained or made by such Party in connection with the authorization, execution and delivery by the Parties of this Agreement.

10.2 **Additional Representations, Warranties and Covenants of Esperion**. Except as provided in **Schedule 10.2**, Esperion represents, warrants and covenants to DS that, as of the Effective Date:

10.2.1 Esperion has sufficient legal or beneficial title and ownership of, or sufficient license rights under, the Esperion Technology to grant the licenses under such Esperion Technology to DS pursuant to this Agreement, free and clear of all liens, claims, security interests or other encumbrances of any kind (including prior license grants) that would interfere, or the exercise of which would interfere, with DS's exercise of the licenses or rights granted hereunder.

10.2.2 the Esperion Third Party Agreements constitute all agreements pursuant to which Esperion has granted licensed rights to DS with respect to the Esperion Technology hereunder, and Esperion has provided DS with a complete, true and correct copy of each Esperion Third Party Agreement existing as of the Effective Date, and (i) each such agreement is, and shall remain during the Term, in full force and effect, (ii) Esperion is, and shall remain during the Term, in compliance with the terms of each such agreement, and (iii) Esperion has not received any written notice that it is not in such compliance.

10.2.3 Esperion and its Affiliates will not materially breach or be in material default under any contract with any Third Party (i) that is necessary for Esperion and its Affiliates to perform Esperion's obligations under this Agreement; (ii) the termination of which would materially diminish the scope, exclusivity or any other right of DS hereunder; or (iii) that is an Esperion Third Party Agreement. In the event that Esperion receives notice of an alleged material breach by Esperion or its Affiliates under any such Esperion Third Party Agreement, where termination of such Esperion Third Party Agreement or any diminishment of the scope, exclusivity or any other right of DS or obligation of Esperion hereunder is being or could be sought by the counterparty, then Esperion will promptly, but in no event less than [***] days thereafter, provide written notice thereof to DS. Esperion will not amend any such Esperion Third Party Agreements in any manner than materially adversely affects DS's rights hereunder.

10.2.4 **Schedule 10.2.4** (Existing Esperion Patent Rights) sets forth a complete and accurate list of the Esperion Patent Rights owned, either solely or jointly, by Esperion, (b) to Esperion's knowledge, the Esperion Patent Rights are, or, upon issuance, will be, valid and enforceable patents and no Third Party has challenged or threatened to challenge the scope, validity or enforceability of any Esperion Patent Rights (including, by way of example, through opposition or the institution or written threat of institution of interference, nullity or similar invalidity proceedings before the United States Patent and Trademark Office or any analogous foreign Governmental Authority), and (c) Esperion or its Affiliates have timely paid all filing and renewal fees payable with respect to such Esperion Patent Rights for which Esperion controls prosecution and maintenance.

10.2.5 Esperion has not granted, and shall not grant during the Term, any right to any Third Party or Governmental Authority which would conflict with the rights granted to DS hereunder.

10.2.6 Esperion shall not enter into any agreement with any Third Party that would conflict with, limit or restrict the rights granted to DS under this Agreement.

10.2.7 Esperion is not party to or otherwise subject to any agreement or arrangement which limits the ownership or licensed rights of Esperion or its Affiliates with respect to, or limits the ability of Esperion or its Affiliates to grant a license, sublicense or access, or provide or provide access or other rights in, to or under, any intellectual property right or material (including any Patent Right, Know-How or other data or information), in each case, that would, but for such agreement or arrangement, be included in the rights licensed or assigned to Esperion or its Affiliates pursuant to this Agreement.

10.2.8 to Esperion's knowledge, Esperion has complied, or timely cured any noncompliance, with all applicable Laws, including any duties of candor to applicable patent offices, in connection with the filing, prosecution and maintenance of the Esperion Patent Rights.

10.2.9 Esperion has obtained from all inventors of Esperion Technology owned by Esperion valid and enforceable agreements assigning to Esperion each such inventor's entire right, title and interest in and to all such Esperion Technology.

10.2.10 the Development, Manufacture or Commercialization in the DS Territory of any Licensed Product as formulated and manufactured as of the Effective Date does not and will not infringe any patent of any Third Party, whether published as of the Effective Date or issuing at any time thereafter.

10.2.11 notwithstanding anything to the contrary contained in this Agreement, the representations and warranties of Esperion contained in this Agreement, all materials prepared by Esperion and provided by Esperion to DS and all materials prepared by any Third Party and provided by Esperion to DS do not, to Esperion's knowledge, contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading.

10.3 **Warranty Disclaimer**. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, NEITHER PARTY MAKES ANY REPRESENTATION OR EXTENDS ANY WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, TO THE OTHER PARTY WITH RESPECT TO ANY TECHNOLOGY, ESPERION TECHNOLOGY (WITH RESPECT TO ESPERION), PRODUCT, PROGRAM, GOODS, SERVICES, RIGHTS OR OTHER SUBJECT MATTER OF THE AGREEMENT AND HEREBY

DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT WITH RESPECT TO ANY AND ALL OF THE FOREGOING. EACH PARTY HEREBY DISCLAIMS ANY REPRESENTATION OR WARRANTY THAT THE DEVELOPMENT, MANUFACTURE OR COMMERCIALIZATION OF ANY LICENSED PRODUCT PURSUANT TO THIS AGREEMENT SHALL BE SUCCESSFUL OR THAT ANY PARTICULAR SALES LEVEL WITH RESPECT TO ANY LICENSED PRODUCT SHALL BE ACHIEVED.

10.4 **Exclusivity**. For the first [***] years of the Term of this Agreement, neither Party nor their Affiliates shall, either alone or with or through Third Parties, [***]. For the first [***]) years of the Term of this Agreement, neither Party nor their Affiliates shall, either alone or with or through Third Parties, [***]. Notwithstanding the foregoing limitations, nothing in this Section 10.4 (Exclusivity) shall limit, restrict or impair DS's and its Affiliates' right to continue to develop, manufacture, sell, offer for sale, or have sold [***] during the Term of this Agreement.

10.5 **Certain Other Covenants**.

10.5.1 **Compliance.** DS and its Related Parties shall Develop, Manufacture and Commercialize the Licensed Products in material compliance with this Agreement and all applicable Laws, including current governmental regulations concerning GLP, GCP and cGMP.

10.5.2 **Conflicting Agreements**. DS shall not enter into any agreement with any Third Party that would conflict with, limit or restrict DS's ability to comply with its obligations under this Agreement. Esperion shall not enter into any agreement with any Third Party that would conflict with, limit or restrict Esperion's ability to comply with its obligations under this Agreement.

10.5.3 **No Debarment**. Each Party shall use Commercially Reasonable Efforts to not use, in any capacity in connection with this Agreement or the performance of its obligations under this Agreement, any Person that has been debarred pursuant to Section 306 of the FD&C Act, or that is the subject of a conviction described in such section. Each Party agrees to inform the other Party in writing immediately if it or any Person that is performing activities under this Agreement, is debarred or is subject to debarment or is the subject of a conviction described in Section 306, or if any action, suit, claim, investigation or legal or administrative proceeding is pending or, to the best of such Party's knowledge, is threatened, relating to the debarment or conviction of such Party's or any Person or entity used in any capacity by such Party or any Affiliates in connection with performance of its other obligations under this Agreement.

11. INDEMNIFICATION; LIMITATION OF LIABILITY; INSURANCE

11.1 **General Indemnification by DS**. DS shall indemnify, hold harmless and defend Esperion, its Related Parties, and their respective directors, officers, employees and agents ("**Esperion Indemnitees**") from and against any and all Third Party claims, suits, losses, liabilities, damages, costs, fees and expenses (including reasonable attorneys' fees and litigation expenses) (collectively, "**Losses**") arising out of or resulting from, directly or indirectly, (a) any breach of, or inaccuracy in, any representation or warranty made by DS in this Agreement, or any breach or violation of any covenant or agreement of DS in or in the performance of this Agreement, (b) the Development or Commercialization of the Licensed Product by or on behalf of DS or its Related Parties in the DS Territory, or (c) the negligence or willful misconduct by or of DS and its Related Parties, and their respective directors, officers, employees and agents in the performance of DS's obligations under this Agreement. DS shall have no obligation to indemnify the Esperion Indemnitees to the extent that the Losses arise out of or result from, directly or indirectly, any breach of, or inaccuracy in, any representation or warranty made by Esperion in this Agreement, or any breach or violation of any covenant or agreement of Esperion in or in the performance of this Agreement, or the negligence or willful misconduct by or of any of the Esperion Indemnitees, or matters for which Esperion is obligated to indemnify DS Indemnitees under Section 11.2 (General Indemnification by Esperion).

11.2 **General Indemnification by Esperion**. Esperion shall indemnify, hold harmless, and defend DS, its Related Parties and their respective directors, officers, employees and agents ("**DS Indemnitees**") from and against any and all Third Party Losses arising out of or resulting from, directly or indirectly (a) any breach of, or inaccuracy in, any representation or warranty made by Esperion in this Agreement, or any breach or violation of any

covenant or agreement of Esperion in or in the performance of this Agreement, (b) the Development or Commercialization of the Licensed Products by or on behalf of Esperion or any of its Affiliates in the Esperion Territory, or (c) the negligence or willful misconduct by or of Esperion and its Related Parties, and their respective directors, officers, employees and agents in the performance of Esperion's obligations under this Agreement. Esperion shall have no obligation to indemnify the DS Indemnitees to the extent that the Losses arise out of or result from, directly or indirectly, any breach of, or inaccuracy in, any representation or warranty made by DS in this Agreement, or any breach or violation of any covenant or agreement of DS in or in the performance of this Agreement, or the negligence or willful misconduct by or of any of the DS Indemnitees, or matters for which DS is obligated to indemnify Esperion under Section 11.1 (General Indemnification by DS).

11.3 **Indemnification Procedure**. In the event of any such claim against any DS Indemnitee or Esperion Indemnitee (individually, an "**Indemnitee**"), the indemnified Party shall promptly notify the other Party in writing of the claim and the indemnifying Party shall manage and control, at its sole expense, the defense of the claim and its settlement. The Indemnitee shall cooperate with the indemnifying Party and may, at its option and expense, be represented in any such action or proceeding. The indemnifying Party shall not be liable for any settlements, litigation costs or expenses incurred by any Indemnitee without the indemnifying Party's written authorization. Notwithstanding the foregoing, if the indemnifying Party believes that any of the exceptions to its obligation of indemnification of the Indemnitees set forth in Sections 11.1 (General Indemnification by DS), or 11.2 (General Indemnification by Esperion) may apply, the indemnifying Party shall promptly notify the Indemnitees, which shall then have the right to be represented in any such action or proceeding by separate counsel at their expense, provided that the indemnifying Party shall be responsible for payment of such expenses if the Indemnitees are ultimately determined to be entitled to indemnification from the indemnifying Party for the matters to which the indemnifying Party notified the Indemnitees that such exception(s) may apply.

11.4 **Limitation of Liability**. NEITHER PARTY HERETO SHALL BE LIABLE FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES ARISING OUT OF THIS AGREEMENT OR THE EXERCISE OF ITS RIGHTS HEREUNDER, INCLUDING LOST PROFITS ARISING FROM OR RELATING TO ANY BREACH OF THE AGREEMENT, REGARDLESS OF ANY NOTICE OF SUCH DAMAGES, EXCEPT AS A RESULT OF A PARTY'S WILLFUL MISCONDUCT OR A BREACH OF SECTION 7 (CONFIDENTIALITY AND PUBLICATION). NOTHING IN THIS SECTION 11.4 (LIMITATION OF LIABILITY) IS INTENDED TO LIMIT OR RESTRICT THE INDEMNIFICATION RIGHTS OR OBLIGATIONS OF EITHER PARTY.

11.5 **Insurance**. Each Party shall, at its own expense, maintain general commercial liability insurance, including products liability insurance, contractual liability, bodily injury, property damage and personal injury coverage adequate to cover its obligations and liabilities under this Agreement and the Supply Agreement, and which are consistent with normal business practices of comparable companies with respect to similar obligations and liabilities. Such coverage shall be purchased for a minimum limit of [***] U.S. Dollars [***]) for any one (1) claim or all damages combined. The Parties shall maintain such insurance for so long as this Agreement or the Supply Agreement is in effect, and shall from time to time provide copies of certificates of such insurance to each other upon request. If the insurance policy is written on a claims-made basis, then the coverage must be kept in place for at least [***] years after the termination of this Agreement.

12. INTELLECTUAL PROPERTY OWNERSHIP, PROTECTION AND RELATED MATTERS

12.1 **Inventorship; Ownership**.

12.1.1 **Inventorship**. Inventorship for inventions made during the course of the performance of this Agreement shall be determined in accordance with applicable patent Laws for determining inventorship.

12.1.2 **Ownership**. Esperion shall own the entire right, title and interest in and to all inventions it solely Invents (i.e., solely by one or more employees of Esperion or its Affiliates (or a Third Party acting on any of their behalf)) during the Term. DS shall own the entire right, title and interest in and to all inventions it solely Invents (i.e., by one or more employees of DS or its Affiliates that are Sublicensees (or a Third Party acting on any

of their behalf)) during the Term. The Parties shall jointly own the entire right, title and interest in and to all inventions they Invent jointly (i.e., by one or more employees of Esperion or its Affiliates (or a Third Party acting on any of their behalf) and one or more employees of DS or its Affiliates that are Sublicensees (or a Third Party acting on any of their behalf)) during the Term.

12.1.3 **Employee Assignment**. Each Party shall ensure that all of its employees and all of its Affiliates' employees acting under its or its Affiliates' authority in the performance of this Agreement assign to such Party under a binding written agreement all Know-How and Patent Rights discovered, made, conceived by such employee as a result of such employee's employment. In the case of all Third Parties acting in the performance of a Party's obligations under this Agreement, such as consultants, subcontractors, licensees, Sublicensees, outside contractors, clinical investigators, agents, or non-employees working for non-profit academic institutions, the Party that engages such Third Party shall ensure that such Third Party is also so obligated under such an agreement, unless otherwise approved by the Parties.

12.1.4 **Right to Practice Joint Technology**. Subject to the rights and licenses granted to, and the obligations (including royalty obligations) of each Party, either Party is entitled to practice Joint Technology for all purposes on a worldwide basis and license Joint Technology without consent of and without a duty of accounting to the other Party. Each Party will grant and hereby does grant all permissions, consents and waivers with respect to, and all licenses under, the Joint Technology, throughout the world, necessary to provide the other Party with such rights of use and exploitation of the Joint Technology, and will execute documents as necessary to accomplish the foregoing.

12.2 **Prosecution and Maintenance of Patent Rights**.

12.2.1 **Prosecution of Esperion Patent Rights and Joint Patent Rights**.

a. Esperion has the sole responsibility to, at Esperion's discretion, file, prosecute, and maintain (including the defense of any interference or opposition proceedings or *inter partes* review and any equivalent proceedings in the Territory), all Esperion Patent Rights and Joint Patent Rights.

b. Esperion shall furnish to DS, via electronic mail or such other method as mutually agreed by the Parties, copies of documents received from outside counsel in the course of filing, prosecution or maintenance of or copies of documents filed with the relevant national patent offices with respect to the filing, prosecution, and maintenance of all Esperion Patent Rights and Joint Patent Rights in the DS Territory within a reasonable time after the receipt or filing of such documents. Esperion shall provide DS and its patent counsel with a reasonable opportunity to consult with and provide comments to Esperion and its patent counsel regarding the filing and contents of any such application, amendment, submission or response. All timely advice and suggestions of DS and its patent counsel shall be taken into consideration in good faith by Esperion and its patent counsel in connection with such filing.

c. In the event that Esperion elects not to maintain patent protection on any Esperion Patent Rights or Joint Patent Rights in the DS Territory, Esperion shall notify DS at least [***]) days before any such Patent Rights would become abandoned or otherwise forfeited, and Esperion shall assign all of its right, title and interest in and to such Esperion Patent Rights or Joint Patent Rights to DS [***], and such Esperion Patent Rights or Joint Patent Rights shall become patent rights solely owned by DS; provided that, if such assignment is not possible, then DS shall have the right (but not the obligation), [***], to prosecute and maintain in any country patent protection on such Esperion Patent Rights or Joint Patent Right in the name of Esperion.

12.2.2 **Prosecution of DS Patent Rights**.

a. DS has the sole responsibility to, at DS's discretion, file, prosecute, and maintain (including the defense of any interference or opposition proceedings or *inter partes* review and any equivalent proceedings in the Territory), all DS Patent Rights.

b. DS shall furnish to Esperion, via electronic mail or such other method as mutually agreed by the Parties, copies of documents received from outside counsel in the course of filing, prosecution or maintenance of or copies of documents filed with the relevant national patent offices with respect to the filing, prosecution, and maintenance of all DS Patent Rights in the DS Territory within a reasonable time after the receipt or filing of such documents. DS shall provide Esperion and its patent counsel with a reasonable opportunity to consult with and provide comments to DS and its patent counsel regarding the filing and contents of any such application, amendment, submission or response. All timely advice and suggestions of Esperion and its patent counsel shall be taken into consideration in good faith by DS and its patent counsel in connection with such filing.

c. In the event that DS elects not to maintain patent protection on any DS Patent Rights in the DS Territory for other than strategic reasons, DS shall notify Esperion at least [***] days before any such Patent Rights would become abandoned or otherwise forfeited, and DS shall assign all of its right, title and interest in and to such DS Patent Rights to Esperion [***], and such DS Patent Rights shall become patent rights solely owned by Esperion; provided that, if such assignment is not possible, then Esperion shall have the right (but not the obligation), [***], to prosecute and maintain in any country patent protection on such DS Patent Rights in the name of DS.

12.3 **Third Party Infringement**.

12.3.1 **Notice of Infringement**. During the Term, each Party will promptly notify the other Party in writing of any known or suspected infringement or unauthorized use or misappropriation by a Third Party of DS Technology, Esperion Technology, or Joint Technology concerning any product intended for use in preventing, diagnosing or treating any disease or condition in humans (including development, Manufacture, or Commercialization) in the DS Territory (such infringement or unauthorized use or misappropriation, "**Competing Infringement**") of which such Party becomes aware. The notifying Party will provide the other Party with all evidence available to it supporting its belief that there is Competing Infringement.

12.3.2 **Right to Enforce**.

a. Subject to the provisions of any Esperion Third Party Agreement, DS shall have the first right, but not the obligation, to take any reasonable measures it deems appropriate with respect to any Competing Infringement in the DS Territory under any DS Technology, Esperion Technology or Joint Technology. Such measures may include (a) initiating or prosecuting an infringement, misappropriation or other appropriate suit or action (each an "**Infringement Action**") in the DS Territory, or (b) subject to Section 8.1.2 (DS Sublicense Rights), granting adequate rights and licenses to any Third Party necessary to render continued Competing Infringement in the DS Territory non-infringing. Notwithstanding the foregoing, if DS does not inform Esperion that it intends to either initiate such an Infringement Action or grant adequate rights and licenses to such Third Party within [***]) days after DS's receipt of a notice of infringement pursuant to Section 12.3.1 (Notice of Infringement), then Esperion will have the second right, but not the obligation, to initiate such Infringement Action, but solely with respect to any Esperion Technology or Joint Technology.

b. Esperion shall have the first right, but not the obligation, to take any reasonable measures it deems appropriate with respect to any Competing Infringement in the Esperion Territory and South Korea and Taiwan during a period of the Pre-Approval Clinical Studies under any DS Technology, Esperion Technology or Joint Technology. Such measures may include (a) initiating or prosecuting an Infringement Action in the Esperion Territory, or (b) granting adequate rights and licenses to any Third Party necessary to render continued Competing Infringement in the Esperion Territory non-infringing. Notwithstanding the foregoing, if Esperion does not inform DS that it intends to either initiate such an Infringement Action or grant adequate rights and licenses to such Third Party within [***] days after Esperion's receipt of a notice of infringement pursuant to Section 12.3.1 (Notice of Infringement), then DS will have the second right, but not the obligation, to initiate such Infringement Action, but solely with respect to any DS Technology.

12.3.3 **Control; Cooperation**. The Party initiating any Infringement Action (such Party, the "**Responsible Party**") shall have the right to control the initiation and prosecution of any Infringement Action, including the right to select counsel therefor, at its own expense. If requested by the Responsible Party, the other Party shall join as a party to such Infringement Action and will execute and cause its Affiliates to execute all documents necessary for the Responsible Party to initiate, prosecute, maintain or defend such action or proceeding. In addition, at the Responsible Party's request, the other Party shall provide reasonable assistance to the Responsible Party in connection with an Infringement Action at no charge to the Responsible Party except for reimbursement by the Responsible Party of reasonable Out-of-Pocket Costs incurred in rendering such assistance.

12.3.4 **Sharing of Recoveries**. Any amounts recovered by either Party pursuant to this Section 12.3 (Third Party Infringement) will be used first to reimburse the Parties for their reasonable costs and expenses, including attorneys' fees incurred in making such recovery (which amounts will be allocated pro rata if insufficient to cover the totality of such expenses) with any remainder [***].

12.4 **Third Party Claims**. If a Third Party sues a Party (the "**Sued Party**") alleging that the Sued Party's, or the Sued Party's Sublicensee's, Development, Manufacture or Commercialization of the Licensed Product infringes or will infringe said Third Party's intellectual property, then upon the Sued Party's request and in connection with the Sued Party's defense of any such Third Party suit, the other Party will provide reasonable assistance to the Sued Party for such defense. The Sued Party will keep the other Party, if such other Party has not joined in such suit, reasonably informed on a quarterly basis, in person or by telephone, prior to and during the pendency of any such suit.

12.5 **Common Interest**. All information exchanged between the Parties' representatives pursuant to this Section 12 (Intellectual Property Ownership, Protection and Related Matters) regarding the preparation, filing, prosecution, maintenance, or enforcement of Patent Rights will be deemed Confidential Information. In addition, the Parties acknowledge and agree that, with regard to such preparation, filing, prosecution, maintenance, and enforcement of the Esperion Patent Rights and Joint Patent Rights the interests of the Parties as collaborators and licensor and licensee are to obtain the strongest patent protection possible, and as such, are aligned and are legal in nature. The Parties agree and acknowledge that they have not waived, and nothing in this Agreement constitutes a waiver of, any legal privilege concerning such Patent Rights, including privilege under the common interest doctrine and similar or related doctrines.

12.6 **Patent Term Extensions**.

12.6.1 **Esperion Patent Rights**. Subject to the provisions of any Esperion Third Party Agreement, Esperion shall use Commercially Reasonable Efforts to obtain all available extensions of Esperion Patent Rights in the DS Territory, as requested by DS.

12.6.2 **Joint Patent Rights**. Esperion shall have the exclusive right in its sole discretion to obtain all available extensions of any Joint Patent Rights. DS shall provide any reasonably necessary powers of attorney and shall provide any other assistance, [***], that Esperion reasonably requests to enable Esperion to obtain any such extensions.

12.6.3 **DS Patent Rights**. DS shall use Commercially Reasonable Efforts to obtain all available extensions of DS Patent Rights, as requested by Esperion, provided that Esperion shall [***] by DS in connection with seeking and obtaining such extensions.

12.7 **Trademarks**.

a. **Prosecution of Esperion Trademarks; General**. Esperion shall have the sole responsibility to file, prosecute, register and maintain (including the defense of opposition proceedings and any equivalent proceedings) Esperion Trademarks and back-up trademarks (including any logo and local letter associated therewith), which shall not be confusingly similar to any DS mark, on a timely manner [***] in the DS Territory throughout the Term. Notwithstanding anything in the foregoing, Esperion's obligation [***], and DS shall [***] by Esperion in connection with the filing, prosecution, registration and maintenance (including the defense of opposition proceedings and any

equivalent proceedings) of the Esperion Trademarks [***]. Esperion shall invoice DS from time to time [***], and DS shall pay Esperion within thirty (30) days of receipt of such invoice. [***]: (i) Esperion shall file Esperion Trademarks and back-up trademarks not only in Latin, but also in local letter in South Korea, Taiwan, Hong Kong, Macao, and Thailand excluding Middle East Option Territory: (ii) Esperion shall execute trademark searches not only for Latin trademarks, but also the local letter trademarks in the DS Territory before the filling of Esperion Trademarks and back-up trademarks; and (iii) Esperion shall file Esperion Trademarks and back-up trademarks in a few different variations of local letter for each Latin trademark as a trade name in Taiwan, Hong Kong and Macao. Esperion shall consider local letter trademarks in consultation with DS and its Affiliates or request DS and its Affiliate to consider local letter trademarks.

b. Consistent with DS's exclusive right to such Esperion Trademarks under Section 8.1.1 (Exclusive License Grant), DS shall use any Esperion Trademarks in a manner consistent with this Agreement, including the Global Branding Strategy, and for no other purpose. DS shall use any Esperion Trademarks in a manner consistent with trademark usage guidelines provided by Esperion from time-to-time. Subject to the foregoing: (i) DS shall not use any other marks that are confusingly similar to an Esperion Trademark, (ii) all rights in each of the Esperion Trademarks shall remain at all times the sole property of Esperion, and all use of such Esperion Trademarks shall inure to the benefit of Esperion, and (iii) DS agrees not to contest or attack Esperion's ownership of the Esperion Trademarks.

12.7.2 **Third Party Infringement**.

a. **Notice of Infringement**. During the Term, each Party will promptly notify the other Party in writing of any known or suspected infringement or unauthorized use or misappropriation by a Third Party of Esperion Trademarks in the DS Territory (such infringement or unauthorized use or misappropriation, "**Competing Infringement**") of which such Party becomes aware. The notifying Party will provide the other Party with all evidence available to it supporting its belief that there is Competing Infringement.

b. **Right to Enforce**. Esperion shall have the first right, but not the obligation, to take any reasonable measures it deems appropriate with respect to any Competing Infringement in the DS Territory. Such measures may include initiating or prosecuting an infringement, misappropriation or other appropriate suit or action (each an "**Infringement Action**") in the DS Territory. Notwithstanding the foregoing, if Esperion does not inform DS that it intends to initiate such an Infringement Action to such Third Party within [***]) days after Esperion's receipt of a notice of infringement pursuant to Section 12.7.2(a) (Notice of Infringement), then DS will have the second right, but not the obligation, to initiate such Infringement Action

c. **Control; Cooperation**. The Party initiating any Infringement Action (such Party, the "**Responsible Party**") shall have the right to control the initiation and prosecution of any Infringement Action, including the right to select counsel therefor, at its own expense. If requested by the Responsible Party, the other Party shall join as a party to such Infringement Action and will execute and cause its Affiliates to execute all documents necessary for the Responsible Party to initiate, prosecute, maintain or defend such action or proceeding. In addition, at the Responsible Party's request, the other Party shall provide reasonable assistance to the Responsible Party in connection with an Infringement Action at no charge to the Responsible Party except for reimbursement by the Responsible Party of reasonable Out-of-Pocket Costs incurred in rendering such assistance.

d. **Sharing of Recoveries**. Any amounts recovered by either Party pursuant to this Section 12.7.2 (Third Party Infringement) will be used first to reimburse the Parties for their reasonable costs and expenses, including attorneys' fees incurred in making such recovery (which amounts will be allocated pro rata if insufficient to cover the totality of such expenses) with [***].

12.7.3 **Third Party Claims**. Esperion shall warrant Esperion Trademarks do not infringe other intellectual property rights in the DS Territory. If the use of Esperion Trademarks infringes any other intellectual property rights in the DS Territory, Esperion shall hold DS, its Affiliates and its Sublicensees harmless and indemnified against any Losses suffered as a result of such Third Party's Claims.

12.8 **Domain Names**.

12.8.1 **Esperion Domain Names**. Esperion or its designee shall register, own and maintain [***], the Esperion Domain Names. Notwithstanding the foregoing, DS or its designee may register, own and maintain such mutually agreed to Esperion Domain Names that Esperion is not able to register due to local regulation restrictions. [***]DS relating to the registration and maintenance of the Esperion Domain Names [***]within thirty (30) days from the receipt of an invoice therefor.

12.8.2 **DS Domain Names**. DS or its designee shall register, own and maintain [***] the DS Domain Names. Notwithstanding the foregoing, Esperion or its designee may register, own and maintain such mutually agreed to DS Domain Names that DS is not able to register due to local regulation restrictions. [***]relating to the registration and maintenance of the DS Domain Names [***]within thirty (30) days from the receipt of an invoice therefor.

13. TERM AND TERMINATION; REMEDIES

13.1 **Term**. This Agreement shall be effective as of the Effective Date and, unless terminated earlier pursuant to Section 13.2 (Termination Rights), this Agreement shall continue in effect until the expiration of the last to expire of the Royalty Terms ("**Term**"). Upon the expiration of the Term without this Agreement being terminated earlier pursuant to Section 13.2 (Termination Rights), DS's rights to the Licensed Products and all license grants to DS hereunder shall continue, shall remain exclusive to DS (even as to Esperion) and shall become fully paid-up, royalty-free, perpetual and irrevocable.

13.2 **Termination Rights**. This Agreement may not be terminated by either Party except as provided in this Section 13.2 (Termination Rights).

13.2.1 **Termination of Agreement for Convenience.** DS shall have the right to terminate this Agreement in its entirety or on a country-by-country basis at any time after the [***] anniversary of the Effective Date on [***] months' prior written notice to Esperion.

13.2.2 **Termination of Agreement in its Entirety for Cause**. This Agreement may be terminated in its entirety at any time during the Term upon written notice by either Party if the other Party is in material breach of its obligations hereunder and has not cured such breach within [***] days in the case of any undisputed payment breach, or within [***]) days in the case of all other breaches, after notice requesting cure of the breach; provided, however, that if any breach other than a payment breach is not reasonably curable within [***] days and if a Party is making a bona fide effort to cure such breach, such termination shall be delayed for a time period to be agreed by both Parties, not to exceed an additional [***] days, in order to permit such Party a reasonable period of time to cure such breach; provided further, that if the alleged material breach relates to non-payment of any amount due under this Agreement (i.e., a payment breach), the cure period shall be tolled pending resolution of any bona fide dispute between the Parties as to whether such payment is due.

13.2.3 **Challenges of Patent Rights**. If, during the Term, DS (a) commences or participates in any action or proceeding (including any patent opposition or re-examination proceeding), or otherwise asserts any claim, challenging or denying the validity or enforceability of any claim of any Esperion Patent Rights that have been specifically identified to DS in writing (including as of the Effective Date, as set forth and identified on **Schedule 10.2.4**) or (b) actively assists any other Person in bringing or prosecuting any action or proceeding (including any patent opposition or re-examination proceeding) challenging or denying the validity or enforceability of any claim of such Esperion Patent Rights (each of (a) and (b), a "**Patent Challenge**"), then, to the extent permitted by the applicable Laws, Esperion shall have the right, exercisable within [***] days following receipt of notice regarding such Patent Challenge, in its sole discretion, to give notice to DS that Esperion may terminate the license(s) granted under such Esperion Patent Right(s) to DS pursuant to this Agreement [***] days following such

notice (or such longer period as Esperion may designate in such notice), and, unless DS withdraws or causes to be withdrawn all such challenge(s) (or in the case of *ex-parte* proceedings, multi-party proceedings, or other Patent Challenges that DS does not have the power to unilaterally withdraw or cause to be withdrawn, DS ceases actively assisting any other party to such Patent Challenge and, to the extent DS is a party to such Patent Challenge, it withdraws from such Patent Challenge) within such [***]-day period, Esperion shall have the right to terminate the license(s) granted under such Esperion Patent Right(s) to DS pursuant to this Agreement by providing written notice thereof to DS.

13.2.4 **Effect of Change of Control**. DS may terminate this Agreement forthwith upon written notice to Esperion in the event that there is a Change of Control of Esperion. Esperion shall give DS written notice of any such Change of Control prior to the effective date thereof.

13.2.5 **Bankruptcy**. In the event that the performance of the respective obligations of this Agreement become untenable as a result of a Party filing a petition of bankruptcy, entering into insolvency or liquidation proceedings either voluntarily or involuntarily, or if a receiver is appointed with respect to the assets of such Party, or any similar action is filed under applicable Laws, and such measure is not dismissed [***] days, to the extent permitted by the applicable Laws of such Party's Territory, the other Party may terminate this Agreement by written notice to such Party. Notwithstanding the foregoing, the Parties acknowledge that a Party to this Agreement may, from time-to-time, make changes in its corporate structure, including inter alia changes in the shareholdings of Affiliates, which would not constitute a case of bankruptcy under this Section 13.2.4 (Bankruptcy).

13.3 **Effect of Termination**.

13.3.1 **Consequences of Termination or Expiration of this Agreement**. If this Agreement expires or is terminated by a Party in its entirety (or by DS with respect to a particular country in the DS Territory (each, a "**Terminated Country**")) prior to its expiration, in each case, at any time and for any reason, then the following terms will apply as specified below:

a. **Licenses**. Upon termination of this Agreement prior to expiration, the licenses granted by Esperion to DS or by DS to Esperion under this Agreement will terminate with respect to the DS Territory or the Terminated Country, as applicable, and DS, its Affiliates and its Sublicensees will cease selling Licensed Products in the DS Territory or the Terminated Country, as applicable.

b. **Return of Information and Materials**. Upon termination (in its entirety or with respect to a Terminated Country, as applicable) or expiration of this Agreement, the Parties will return (or destroy, as directed by the other Party), as applicable, all data, files, records, and other materials containing or comprising the other Party's Confidential Information. Notwithstanding the foregoing, the Parties will be permitted to retain one copy of such data, files, records, and other materials for archival and legal, financial and tax compliance purposes.

c. **Return of Domain Name**. Upon termination (in its entirety or with respect to a Terminated Country, as applicable) or expiration of this Agreement, DS will (and will cause its designee to) assign and hereby assigns to Esperion or its designee any Esperion Domain Name owned by DS or its designee as of the effective date of such termination (with respect to the DS Territory or Terminated Country, as applicable) or expiration of this Agreement, if requested by Esperion and permissible under applicable Laws. Where such assignment of Esperion Domain Name is not permissible under applicable Laws, e.g. due to local regulation restrictions (as the case may be), DS will (and will cause its designee to) immediately cease the use of such Esperion Domain Name. DS will (and will cause its designee to) cooperate with Esperion to effectuate the foregoing assignment, including by promptly executing any documents or providing authorization codes necessary to effectuate such assignment. [***] by DS or its designee in connection with the assignment of the Esperion Domain Name owned by DS or its designee to Esperion [***] by Esperion to DS or its designee within [***] days from receipt of an invoice therefore. Upon termination (in its entirety or with respect to a Terminated Country, as applicable) or expiration of this Agreement, Esperion will assign and hereby assigns to DS or its designee any DS Domain Name owned by Esperion as of the

effective date of such expiration or termination (with respect to the DS Territory or Terminated Country, as applicable), if requested by DS and permissible under applicable Laws. Where such assignment of DS Domain Name is not permissible under applicable Laws, e.g. due to local regulation restrictions (as the case may be), Esperion will immediately cease the use of such DS Domain Name. Esperion will cooperate with DS to effectuate the foregoing assignment, including by promptly executing any documents or providing authorization codes necessary to effectuate such assignment. [***] by Esperion in connection with the assignment of the DS Domain Name owned by Esperion to DS [***] within [***] days from receipt of an invoice therefore.

d. **Accrued Rights**. Termination of this Agreement (in its entirety or with respect to a Terminated Country, as applicable) for any reason will be without prejudice to any rights or financial compensation that will have accrued to the benefit of a Party prior to such termination. Such termination will not relieve a Party from obligations that are expressly indicated to survive the termination of this Agreement.

e. **Survival**. The following provisions of this Agreement will survive the expiration or earlier termination (in its entirety or with respect to a Terminated Country, as applicable) of this Agreement: 9.7 through 9.10 (solely to the extent applicable with respect to a payment obligation that accrued prior to expiration or termination), 10.3 (Warranty Disclaimer), 12.1 (Inventorship; Ownership), 12.2 (Prosecution of Esperion Patent Rights and Joint Patent Rights) (solely with respect to Joint Patent Rights), 12.3 (Third Party Infringement) (solely with respect to Joint Patent Rights), 12.4 (Third Party Claims) (solely with respect to Joint Patent Rights), 12.5 (Common Interest) (solely with respect to Joint Patent Rights); 12.6 (Patent Term Extensions) (solely with respect to Joint Patent Rights), 13.1 (Term), 13.3 (Effect of Termination), 13.4 (Special Consequences of Certain Terminations), 14.1 (Assignment), 14.2 (Governing Law), 14.3 (Jurisdiction), 14.9 (No Implied Waivers; Rights Cumulative), 14.10 (Notices), 14.13 (Independent Parties), and 14.15 (Binding Effect; No Third Party Beneficiaries); and Articles 1 (Definitions) (to the extent the definitions are used in other surviving provisions), 7 (Confidentiality and Publication) (for the time period set forth in Section 7.4 (Survival)), and 11 (Indemnification; Limitation of Liability; Insurance).

13.4 **Special Consequences of Certain Terminations**. If Esperion terminates this Agreement for any reason[***] then, in addition to the terms set forth in Section 13.3.1 (Consequences of Termination or Expiration of this Agreement), the following additional terms will also apply:

13.4.1 **License Grant**. The license granted by DS to Esperion under Section 8.2 (License Grants to Esperion) shall automatically become irrevocable, perpetual and worldwide;

13.4.2 **Disclosure of Certain Commercialization Related Information**. DS will disclose to Esperion for use with respect to the further Commercialization of the Licensed Product, material information pertaining to pricing and market access strategy and health economic study information, in each case for the Licensed Product in the DS Territory or Terminated Country, as applicable, in the possession of DS as of the date of such reversion that relate to such Licensed Products that is necessary for the continued Commercialization of such Licensed Products in the DS Territory or Terminated Country, as applicable;

13.4.3 **Regulatory Materials**. Within [***] days following the date of the termination, DS will assign, and hereby does assign, to Esperion all of DS's right, title and interest in and to all Regulatory Documentation for the Licensed Products, including any Regulatory Approvals and Pricing and Reimbursement Approvals that relate to the applicable Licensed Product with respect to the DS Territory or Terminated Country, as applicable;

13.4.4 **Trademarks**. DS will license to Esperion any trademarks that are specific to Licensed Products solely for use with such Licensed Product in the DS Territory or Terminated Country, as applicable; provided, however, that in no event will DS have any obligation to license to Esperion any trademarks used by DS other than in connection with a Licensed Product or any other trademarks of DS; and

13.4.5 **Stock of Finished Drug Product**. For a period of [***] months after the effective date of termination of this Agreement, with respect to the DS Territory or Terminated Country, as applicable, DS will have the right to continue to sell and otherwise Commercialize in the DS Territory or Terminated Country, as applicable, all of the inventory of finished drug product for such Licensed Product held by DS as of the effective date of termination, and DS shall continue to pay to Esperion any applicable royalties due on any such sales. Notwithstanding Section 13.4.3 (Regulatory Materials), DS or its Sublicensees shall retain the Regulation Approvals and Pricing and Reimbursement Approvals until the time when the inventory of the Licensed Products are sold and consumed.

13.4.6 **Transition Activities**.

a. The Parties wish to provide a mechanism to ensure that, assuming the Licensed Product is available to patients as of the reversion date, patients who were being treated with the Licensed Product prior to such termination or who desire access to the Licensed Product can continue to have access to such Licensed Product while the regulatory and commercial responsibilities for the Licensed Product are transitioned from DS to Esperion. As such, Esperion may request DS to perform transition activities that are necessary or useful to (1) transition DS's Commercialization activities (if any) to Esperion to minimize disruption to sales, (2) provide patients with continued access to the applicable Licensed Products (if applicable), (3) enable Esperion (or Esperion's designee) to assume and execute the responsibilities under all Regulatory Approvals and ongoing Clinical Studies for the applicable Licensed Product, and (4) transition any CMO or similar agreements entered into by DS pursuant to Section 5.2 (Back-Up Manufacturing Right), if applicable and if requested by Esperion (collectively, the "**Transition Activities**"), but no longer than [***] year following the effective date of termination.

b. Esperion may elect to have DS perform the applicable Transition Activities by providing written notice to DS no later than [***] days following the effective date of the termination of this Agreement in its entirety or with respect to a Terminated Country, as applicable. If Esperion requests Transition Activities, the Parties will mutually agree upon a transition plan for DS to perform the applicable Transition Activities including delivery and transition dates. In addition, the Parties will establish a transition committee consisting of at least each Party's Alliance Managers, and up to [***] additional representatives from each Party who are from other relevant functional groups to facilitate a smooth transition. While DS is providing applicable Transition Activities, DS and Esperion will agree on talking points and a communication plan to customers, specialty pharmacies, physicians, regulatory authorities, patient advocacy groups, and clinical study investigators, in each case only if applicable at the time of reversion, and DS will make all such communications to such applicable entities in accordance with the mutually agreed talking points.

c. [***], Esperion will own all revenue derived from the Licensed Product after the termination date and DS will remit all such revenues to Esperion no later than the [***] day following the end of the month in which such revenue was received.

14. MISCELLANEOUS

14.1 **Assignment**. Except as provided in this Section 14.1 (Assignment), this Agreement may not be assigned or otherwise transferred, nor may any right or obligation hereunder be assigned or transferred, by either Party without the prior written consent of the other Party. Notwithstanding the foregoing, either Party may, without the other Party's written consent, assign this Agreement and its rights and obligations hereunder in whole or in part to an Affiliate or to a party that acquires, by or otherwise in connection with, merger, sale of assets or otherwise, all or substantially all of the business of the assigning Party to which the subject matter of this Agreement relates, provided that the assignee assumes all of the assigning Party's obligations under this Agreement, subject to Section 14.14.2 (Future Acquisition of a Party or its Business). The assigning Party shall remain responsible for the performance by its assignee of this Agreement or any obligations hereunder so assigned. Any purported assignment in violation of this Section 14.1 (Assignment) shall be void.

14.2 **Governing Law**. The Agreement shall be construed, and the respective rights of the Parties determined, in accordance with the substantive Laws of the State of New York, notwithstanding any provisions of New York Law or any other Law governing conflicts of laws to the contrary.

14.3 **Jurisdiction**. Each Party by its execution hereof, (a) hereby irrevocably submits to the jurisdiction of the courts sitting in New York City, New York, for the purpose of any dispute arising between the Parties in connection with this Agreement (each, an "**Action**"), except as otherwise expressly provided in this Agreement; (b) hereby waives, to the extent not prohibited by applicable Law, and agrees not to assert, by way of motion, as a defense or otherwise, in any such Action, any claim that (i) it is not subject personally to the jurisdiction of the above-named court, (ii) its property is exempt or immune from attachment or execution, (iii) any such Action brought in the above-named court should be dismissed on grounds of forum non conveniens, should be transferred or removed to any court other than the above-named court, or should be stayed by reason of the pendency of some other proceeding in any other court other than the above-named court, or (iv) this Agreement or the subject matter hereof may not be enforced in or by such court; and (c) hereby agrees not to commence any such Action other than before the above-named court. Notwithstanding the previous sentence a Party may commence any Action in a court other than the above-named court solely for the purpose of enforcing an order or judgment issued by the above-named court.

14.4 **Entire Agreement; Amendments**. This Agreement contains the entire understanding of the Parties with respect to the subject matter hereof, and supersedes all previous arrangements with respect to the subject matter hereof, whether written or oral. This Agreement (other than the Schedules attached hereto) may be amended, or any term hereof modified, only by a written instrument duly-executed by authorized representatives of both Parties hereto. The Schedules attached hereto may be amended, or any term hereof modified, only by a written instrument duly-executed by authorized representatives of both Parties hereto, except to the extent expressly provided in this Agreement.

14.5 **Severability**. If any provision hereof should be held invalid, illegal or unenforceable in any respect by a competent court in any jurisdiction, the invalid, illegal or unenforceable provision(s) shall be severed from this Agreement and shall not affect the validity of this Agreement as a whole.

14.6 **Headings**. The captions to the Sections hereof are not a part of this Agreement but are merely for convenience to assist in locating and reading the several Sections hereof.

14.7 **Waiver of Rule of Construction**. Each Party has had the opportunity to consult with counsel in connection with the review, drafting and negotiation of this Agreement. Accordingly, the rule of construction that any ambiguity in this Agreement shall be construed against the drafting Party shall not apply.

14.8 **Interpretation**. Except where the context expressly requires otherwise, (a) the use of any gender herein shall be deemed to encompass references to either or both genders, and the use of the singular shall be deemed to include the plural (and vice versa); (b) the words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation" and shall not be interpreted to limit the provision to which it relates; (c) the word "will" shall be construed to have the same meaning and effect as the word "shall"; (d) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein); (e) any reference herein to any Person shall be construed to include the Person's successors and permitted assigns; (f) the words "herein", "hereof" and "hereunder", and words of similar import, shall be construed to refer to this Agreement in each of their entirety, as the context requires, and not to any particular provision hereof; (g) all references herein to Sections or Schedules shall be construed to refer to Sections or Schedules of this Agreement, and references to this Agreement include all Schedules hereto; (h) the word "notice" means notice in writing (whether or not specifically stated) and shall include notices, consents, approvals and other written communications contemplated under this Agreement; (i) provisions that require that a Party, the Parties or any committee hereunder "agree," "consent" or "approve" or the like shall require that such agreement, consent or approval be specific and in writing, whether by written agreement, letter, approved minutes or otherwise (but excluding e-mail and instant messaging); (j) references to any specific law, rule or regulation, or article, Section or other division thereof, shall be deemed to include the

then-current amendments thereto or any replacement or successor law, rule or regulation thereof; and (k) the term "or" shall be interpreted in the inclusive sense commonly associated with the term "and/or."

14.9 **No Implied Waivers; Rights Cumulative**. Except as expressly provided in this Agreement, no failure on the part of Esperion or DS to exercise, and no delay in exercising, any right, power, remedy or privilege under this Agreement, or provided by statute or at Law or in equity or otherwise, shall impair, prejudice or constitute a waiver of any such right, power, remedy or privilege or be construed as a waiver of any breach of this Agreement or as an acquiescence therein, nor shall any single or partial exercise of any such right, power, remedy or privilege preclude any other or further exercise thereof or the exercise of any other right, power, remedy or privilege.

14.10 **Notices**. All notices which are required or permitted hereunder shall be in writing and sufficient if delivered personally, sent by nationally-recognized overnight courier or sent by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

If to Esperion, to:	Esperion Therapeutics, Inc. 3891 Ranchero Drive, Suite 150 Ann Arbor, MI 48108 U.S.A. Attention: Chief Executive Officer
With a copy to:	Goodwin Procter LLP 100 Northern Avenue Boston, Massachusetts 02110 U.S.A. Attention: Christopher Denn
If to DS, to:	Daiichi Sankyo Company, Limited. 3-5-1, Nihonbashi-honcho, Chuo-ku, Tokyo 103-8426, Japan Attention: Vice President, Business Planning, ASCA Company
With a copy to:	Daiichi Sankyo Company, Limited. 3-5-1, Nihonbashi-honcho, Chuo-ku, Tokyo 103-8426, Japan Attention: Vice President, Legal Department

or to such other address as the Party to whom notice is to be given may have furnished to the other Party in writing in accordance herewith. In addition, each Party shall deliver a courtesy copy to the other Party's Alliance Manager concurrently with such notice. Any such notice shall be deemed to have been given: (a) when delivered if personally delivered or sent by facsimile on a business day (or if delivered or sent on a non-business day, then on the next business day); (b) on receipt if sent by overnight courier; or (c) on receipt if sent by mail.

14.11 **Compliance with Export Regulations**. Neither Party shall export any technology licensed to it by the other Party under this Agreement except in compliance with U.S. export Laws and other applicable foreign export Laws.

14.12 **Force Majeure**. Neither Party shall be held liable to the other Party nor be deemed to have defaulted under or breached this Agreement for failure or delay in performing any obligation under this Agreement (except liability of money payment obligations), to the extent that such failure or delay is caused by or results from causes which are enforceable and irresistible, potentially including embargoes, war, acts of war (whether war be declared or not), insurrections, riots, civil commotions, strikes, lockouts or other labor disturbances, fire, floods, pandemic, or other acts of God. The affected Party shall notify the other Party of such force majeure circumstances as soon as reasonably practical, and shall promptly undertake all reasonable efforts necessary to cure such force majeure circumstances.

14.13 **Independent Parties**. It is expressly agreed that Esperion and DS shall be independent contractors and that the relationship between Esperion and DS shall not constitute a partnership, joint venture or

agency. Esperion shall not have the authority to make any statements, representations or commitments of any kind, or to take any action, which shall be binding on DS, without the prior written consent of DS, and DS shall not have the authority to make any statements, representations or commitments of any kind, or to take any action, which shall be binding on Esperion without the prior written consent of Esperion.

14.14 **Performance by Affiliates**.

14.14.1 **Use of Affiliates**. Each Party acknowledges and accepts that the other Party may exercise its rights and perform its obligations under this Agreement either directly or through one or more of its Affiliates. A Party's Affiliates will have the benefit of all rights (including all licenses) of such Party under this Agreement. Accordingly, in this Agreement "DS" will be interpreted to mean "DS or its Affiliates" and "Esperion" will be interpreted to mean "Esperion or its Affiliates" where necessary to give each Party's Affiliates the benefit of the rights provided to such Party in this Agreement; provided, however, that in any event each Party will remain responsible for the acts and omissions, including financial liabilities, of its Affiliates.

14.14.2 **Future Acquisition of a Party or its Business**. Notwithstanding Section 14.14.1 (Use of Affiliates) or anything to the contrary in this Agreement, in the event of an acquisition of a Party or its business by a Third Party (an "**Acquirer**") after the Effective Date, whether by merger, asset purchase or otherwise, as to any such Acquirer, the non-acquired Party shall not obtain rights, licenses, options or access to any Patent Rights, Know-How, product candidates or products that are held by the Acquirer or any Affiliate of the Acquirer that becomes an Affiliate of the acquired Party as a result of such acquisition (but excluding the acquired Party), that were not generated through any use or access to the Know-How or Patent Rights of the acquired Party, or that are not used by the acquired Party in connection with a Licensed Product.

14.14.3 **Acquired Programs**.

a. Notwithstanding Section 14.14.1 (Use of Affiliates) or anything to the contrary in this Agreement, but subject to Section 14.1 (Assignment), in the event of either (a) an acquisition of a Party or its business after the Effective Date by an Acquirer whether by merger, asset purchase or otherwise, or (b) an acquisition by a Party after the Effective Date of the business or assets of a Third Party, whether by merger, asset purchase or otherwise, that includes any program(s) of the acquired Third Party that but for this Section 14.14.3 (Acquired Programs), would violate Section 10.4 (Exclusivity) (each such program, a "**Competing Program**," and such acquired business or assets, an "**Acquired Business**"), then, in either case ((a) or (b)), the Acquirer or Acquired Business, and any Affiliate of the Acquirer or Acquired Business that becomes an Affiliate of the acquired or acquiring Party as a result of such acquisition (but excluding the acquired Party), shall not be subject to the restrictions in Section 10.4 (Exclusivity) as to: [***]

b. In addition, notwithstanding Section 14.14.1 (Use of Affiliates) or anything to the contrary in this Agreement, in the event of an acquisition by a Party after the Effective Date of an Acquired Business that includes a Competing Program that is the lead development program (if such Acquired Business has no commercial products) or lead commercial product (i.e. its product with the highest net sales) for such Acquired Business and its Affiliates, the acquiring Party (a) if DS, [***]; or (b) if Esperion, [***].

14.15 **Binding Effect; No Third Party Beneficiaries**. As of the Effective Date, this Agreement shall be binding upon and inure to the benefit of the Parties and their respective permitted successors and permitted assigns. Except as expressly set forth in this Agreement, no Person other than the Parties and their respective Affiliates and permitted assignees hereunder shall be deemed an intended beneficiary hereunder or have any right to enforce any obligation of this Agreement.

14.16 **Counterparts**. The Agreement may be executed in two or more counterparts, including by facsimile or PDF signature pages or other electronic means, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

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IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

Daiichi Sankyo Company, Limited	**ESPERION THERAPEUTICS, INC.**
BY: [***]	BY: [***]
NAME: [***]	NAME: [***]
TITLE: [***]	TITLE: [***]

Schedule 1.52

Third Party Agreements

[***]

Schedule 1.53

Esperion Trademarks*

[***]	**[***]**	**[***]**	**[***]**	**[***]**	**[***]**	**[***]**
[***]	[***]	[***]	[***]	[***]	[***]	[***]
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[***]

Schedule 1.81

Licensed Products

Description of Bempedoic Acid Formulations

[***]

Schedule 2.1.2

Agreed Development Plan

[***]

[***]

Schedule 3.9

Safety Data Exchange Agreement

See attachment

PHARMACOVIGILANCE AGREEMENT

[***]

Schedule 5.4

Quality Agreement

See attachment

Quality Agreement

[***]

Schedule 7.3

Press Releases

Esperion Press Release:

DS Press Release (English Version):

Schedule 10.2

Disclosure Schedule

[***]

Schedule 10.2.4

Existing Esperion Patent Rights

[***]	[***]	[***]	[***]	[***]
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[***]	[***]	[***]	[***]	[***]
[***]	[***]	[***]	[***]	[***]

AMENDED AND RESTATED EMPLOYMENT AGREEMENT

This Amended and Restated Employment Agreement ("Agreement") is made by and between Esperion Therapeutics, Inc., a Delaware corporation (the "Company"), and Sheldon Koenig (the "Executive"). Except with respect to the Equity Documents (as defined below), this Agreement supersedes, amends and restates in all respects all prior agreements between the Executive and the Company regarding the subject matter herein, including without limitation the Employment Agreement between the Executive and the Company dated December 14, 2020 (the "Former Employment Agreement").

1. **Employment Term.** The Company and the Executive desire to continue their employment relationship pursuant to this Agreement commencing as of May 18, 2021 (the "Effective Date") and continuing in effect until terminated by either party in accordance with this Agreement (the "Term"). At all times, the Executive's employment with the Company will be "at will," meaning that the Executive's employment may be terminated by the Company or the Executive at any time and for any reason subject to the terms of this Agreement. If the Executive's employment with the Company is terminated for any reason during the Term, the Company shall pay or provide to the Executive (or to his authorized representative or estate) any earned but unpaid base salary, unpaid expense reimbursements, accrued but unused vacation and any vested benefits the Executive may have under any employee benefit plan of the Company (the "Accrued Benefit").

2. **Position; Duties.** During the Term, the Executive will serve as President and Chief Executive Officer ("CEO"), and will have such powers and duties as may from time to time be prescribed by the Board of Directors of the Company (the "Board"). The Executive shall devote his full working time and efforts to the business and affairs of the Company. Notwithstanding the foregoing, the Executive may serve on other boards of directors, with the prior written approval of the Board, and/or engage in religious, charitable or other community activities, as long as such services and activities do not interfere with the Executive's performance of his duties to the Company. The Company shall cause the Executive to be nominated for election to the Board and to be recommended to the stockholders for election to the Board as long as the Executive remains the CEO, provided that the Executive shall be deemed to have resigned from the Board and from any related positions upon ceasing to serve as CEO for any reason.

It is currently anticipated that the Executive's normal place of work will be the Executive's home office in Pennsylvania, provided that the Executive will be required to regularly travel to the Company's office, consistent with business needs and will be required to travel domestically and internationally consistent with business needs.

3. **Compensation and Related Matters**.

    a. Base Salary. During the Term, the Executive's base salary will be paid at the rate of $600,000 per year, subject to redetermination by the Board or the Compensation Committee of the Board (the "Compensation Committee"). The annual base salary in effect at any given time is referred to herein as "Base Salary." The Base Salary will be payable in a manner that is consistent with the Company's usual payroll practices for senior executives.

b. Bonus. During the Term, the Executive will be eligible to be considered for annual cash bonus as determined by the Board or the Compensation Committee from time to time. The annual bonus will be targeted at 50% of the Executive's Base Salary (the "Target Bonus"). The actual bonus is discretionary and will be subject to the Board or the Compensation Committee's assessment of the Executive's performance as well as business conditions of the Company. The Executive's bonus, if any, will be paid by March 15 following the applicable bonus year. To earn a bonus, the Executive must be employed by the Company on the day such bonus is paid.

c. PTO: During the Term, the Executive is eligible to earn up to four (4) weeks of paid time off ("PTO") per calendar year, to be accrued on a pro rata basis and subject to the terms and conditions of the Company's policies and procedures relating to PTO, which may be amended from time to time.

d. Other Benefits. During the Term, the Executive will be entitled to continue to participate in the Company's employee benefit plans, subject to the terms and the conditions of such plans and to the Company's ability to amend and modify such plans.

e. Equity. The Executive's equity compensation shall be governed by the terms and conditions of the Company's Stock Option and Incentive Plan, as may be amended, and the applicable stock option, restricted stock and/or restricted stock unit agreements (collectively "Equity Documents"); provided that, and notwithstanding anything to the contrary in the Equity Documents, Section 5 of this Agreement shall apply in the event of a Sale Event.

f. Reimbursement of Business Expenses. The Company shall reimburse the Executive for travel, entertainment, business development and other expenses reasonably and necessarily incurred by the Executive in connection with the Company's business. Expense reimbursement shall be subject to such policies the Company may adopt from time to time, including policies related to remote working arrangements and associated travel.

4. **Certain Definitions**.

a. Sale Event. A Sale Event shall mean (i) the sale of all or substantially all of the assets of the Company on a consolidated basis to an unrelated person or entity, (ii) a merger, reorganization or consolidation pursuant to which the holders of the Company's outstanding voting power and outstanding stock immediately prior to such transaction do not own a majority of the outstanding voting power and outstanding stock or other equity interests of the resulting or successor entity (or its ultimate parent, if applicable) immediately upon completion of such transaction, (iii) the sale of all of the Stock of the Company to an unrelated person, entity or group thereof acting in concert, or (iv) any other transaction in which the owners of the Company's outstanding voting power immediately prior to such transaction do not own at least a majority of the outstanding voting power of the Company or any successor entity immediately upon completion of the

transaction other than as a result of the acquisition of securities directly from the Company.

b. Terminating Event. A "Terminating Event" shall mean (i) Termination by the Company other than for Cause; or (ii) Termination by the Executive for Good Reason, both as set forth in this Section 4(b):

   i. Termination by the Company Other Than For Cause. Termination by the Company of the Executive's employment for any reason other than for Cause, death or Disability. For purposes of this Agreement, "Cause" shall mean, as determined by the Board:

      A. conviction (including a guilty or no contest plea) on a felony indictment or for any misdemeanor involving moral turpitude that adversely affects the Company;

      B. participation in a fraud or act of dishonesty against the Company;

      C. material breach of Executive's duties to the Company, that has not been cured to the reasonable satisfaction of the Board, within thirty (30) days following written notice to Executive (provided that no such notice and cure period will be required if such a breach is not subject to cure);

      D. intentional and material damage to the Company's property; or

      E. material breach of this Agreement or other written agreement with the Company or written policy of the Company.

   ii. Termination by the Executive for Good Reason. Termination by the Executive of the Executive's employment with the Company for Good Reason. For purposes of this Agreement, "Good Reason" shall mean that the Executive has complied with the "Good Reason Process" (hereinafter defined) following, the occurrence of any of the following events:

      A. a material diminution in the Executive's position, responsibilities, authority or duties;

      B. a material diminution in the Executive's base salary except for across-the-board salary reductions based on the Company's financial performance similarly affecting all or substantially all senior management employees of the Company; or

      C. a material change in the geographic location of the principal office to which the Executive is assigned, such that there is an increase of at least 30 miles of driving distance to such location from the Executive's principal residence as of such change.

"Good Reason Process" shall mean that (i) the Executive reasonably determines in good faith that a "Good Reason" condition has occurred; (ii) the Executive notifies the Company in writing of the first occurrence of the Good Reason condition within 60 days of the first occurrence of such condition; (iii) the Executive cooperates in good faith with the Company's efforts, for a period not less than 30 days following such notice (the "Cure Period"), to remedy the condition; (iv) notwithstanding such efforts, the Good Reason condition continues to exist; and (v) the Executive terminates his employment within 60 days after the end of the Cure Period. If the Company cures the Good Reason condition during the Cure Period, Good Reason shall be deemed not to have occurred.

A Terminating Event shall not be deemed to have occurred pursuant to this Section 4(b) as a result of: (i) the ending of the Executive's employment due to the Executive's death or Disability, (ii) Executive's resignation for any reason, other than for Good Reason, (iii) the Company's termination of the employment relationship for Cause; or (iv) solely as a result of the Executive being or becoming an employee of any direct or indirect successor to the business or assets of the Company rather than continuing as an employee of the Company following a Sale Event. For purposes hereof, the Executive will be considered "Disabled" if, as a result of the Executive's incapacity due to physical or mental illness, the Executive shall have been absent from his duties or be expected to be absent from his duties to the Company on a full-time basis for 180 calendar days in the aggregate in any 12-month period.

5. **Sale Event; Accelerated Vesting; Severance During the Sale Event Period**. In the event of a Sale Event, all stock options and other stock-based awards with time-based vesting held by the Executive shall immediately accelerate and become fully exercisable or nonforfeitable as of the date of the Sale Event. In addition, in the event a Terminating Event occurs within the twelve (12) month period commencing with a Sale Event (the "Sale Event Period"), subject to the Executive signing and complying with a separation agreement in a form and manner satisfactory to the Company containing, among other provisions, a general release of claims in favor of the Company and related persons and entities, confidentiality, return of property and non-disparagement and reaffirmation of the Restrictive Covenants (the "Separation Agreement and Release") and the Separation Agreement and Release becoming irrevocable, all within 60 days after the Date of Termination, the following shall occur:

    a. the Company shall pay to the Executive an amount equal to the sum of (i) 1.5 times the Executive's Base Salary in effect immediately prior to the Terminating Event (or the Executive's Base Salary in effect immediately prior to the Sale Event, if higher), and (ii) the Executive's Target Bonus; and

    b. if the Executive was participating in the Company's group health plan immediately prior to the Date of Termination and elects COBRA health continuation, then the Company shall pay to the Executive a lump sum cash payment in an amount equal to the monthly employer contribution that the Company would have made to provide health insurance to the Executive if the Executive had remained employed by the Company for eighteen (18) months after the Date of Termination.

The amounts payable under Section 5(a) and (b), as applicable, shall be paid out in a lump sum within 60 days after the Date of Termination; provided, however, that if the 60-day period begins in one calendar year and ends in a second calendar year, the amounts shall be paid in the second calendar year no later than the last day of the 60-day period.

6. **Severance Outside the Sale Event Period**. In the event a Terminating Event occurs at any time other than during the Sale Event Period, subject to the Executive signing the Separation Agreement and Release and the Separation Agreement and Release becoming irrevocable, all within 60 days after the Date of Termination, the following shall occur:

    a. the Company shall pay to the Executive an amount equal to twelve (12) months of the Executive's annual Base Salary in effect immediately prior to the Terminating Event;

    b. if the Executive was participating in the Company's group health plan immediately prior to the Date of Termination and elects COBRA health continuation, then the Company shall pay to the Executive a monthly cash payment for twelve (12) months or the Executive's COBRA health continuation period, whichever ends earlier, in an amount equal to the monthly employer contribution that the Company would have made to provide health insurance to the Executive if the Executive had remained employed by the Company.

    c.

The amounts payable under Section 6(a) and (b), as applicable, shall be paid out in substantially equal installments in accordance with the Company's payroll practice over twelve (12) months commencing within 60 days after the Date of Termination; provided, however, that if the 60-day period begins in one calendar year and ends in a second calendar year, the severance shall begin to be paid in the second calendar year by the last day of such 60-day period; provided, further, that the initial payment shall include a catch-up payment to cover amounts retroactive to the day immediately following the Date of Termination. Each payment pursuant to this Agreement is intended to constitute a separate payment for purposes of Treasury Regulation Section 1.409A-2(b)(2).

7. **Restrictive Covenants.** The terms of the Employee Non-Competition, Non-Solicitation, Confidentiality and Assignment Agreement (the "Restrictive Covenants"), appended hereto as Exhibit A, are incorporated by reference as material terms of this Agreement. The Executive hereby agrees to the Restrictive Covenants as material terms of this Agreement.

    a. Third-Party Agreements and Rights. The Executive hereby confirms that the Executive is not bound by the terms of any agreement with any previous employer or other party which restricts in any way the Executive's use or disclosure of information or the Executive's engagement in any business. The Executive represents to the Company that the Executive's execution of this Agreement, the Executive's employment with the Company and the performance of the Executive's proposed duties for the Company will not violate any obligations the Executive may have to any such previous employer or other party. In the Executive's work for the Company, the Executive will not disclose or make use of any information in violation of any agreements with or rights of any such

previous employer or other party, and the Executive will not bring to the premises of the Company any copies or other tangible embodiments of non-public information belonging to or obtained from any such previous employment or other party.

b. Litigation and Regulatory Cooperation. During and after the Executive's employment, the Executive shall cooperate fully with the Company in (i) the defense or prosecution of any claims or actions now in existence or which may be brought in the future against or on behalf of the Company which relate to events or occurrences that transpired while the Executive was employed by the Company, (ii) the investigation, whether internal or external, of any matters about which the Company believes the Executive may have knowledge or information and (iii) occasional transitional duties related to the Executive's position. The Executive's full cooperation in connection with such claims or actions shall include, but not be limited to, being available to meet with counsel to prepare for discovery or trial and to act as a witness on behalf of the Company at mutually convenient times. During and after the Executive's employment, the Executive also shall cooperate fully with the Company in connection with any investigation or review of any federal, state or local regulatory authority as any such investigation or review relates to events or occurrences that transpired while the Executive was employed by the Company. The Company shall reimburse the Executive for any reasonable out-of-pocket expenses incurred in connection with the Executive's performance of obligations pursuant to this Section 7(b).

c. Relief. The Executive agrees that it would be difficult to measure any damages caused to the Company which might result from any breach by the Executive of the promises set forth in this Section 7 or in Exhibit A, and that in any event money damages would be an inadequate remedy for any such breach. Accordingly, the Executive agrees that if the Executive breaches, or proposes to breach, any portion of this Section 7 or Exhibit A, the Company shall be entitled, in addition to all other remedies that it may have, to an injunction or other appropriate equitable relief to restrain any such breach without showing or proving any actual damage to the Company and without the posting of a bond. The Executive further agrees that if he violates this Section 7 or the Restrictive Covenants, in addition to all other remedies available to the Company at law, in equity, and under contract, the Executive shall pay all of the Company's costs of enforcement of this Section 7 or the Restrictive Covenants, including attorneys' fees and expenses. In addition, in the event the Executive breaches the Restrictive Covenants during a period when he is receiving Severance, the Company shall have the right to suspend or terminate the severance payments. Such suspension or termination shall not limit the Company's other options with respect to relief for such breach and shall not relieve the Executive of his duties under this Agreement.

d. Protected Disclosures and Other Protected Actions. Nothing in this Agreement or Exhibit A shall be interpreted or applied to prohibit the Executive from making any good faith report to any governmental agency or other governmental entity (a "Government Agency") concerning any act or omission that the Executive

reasonably believes constitutes a possible violation of federal or state law or making other disclosures that are protected under the anti-retaliation or whistleblower provisions of applicable federal or state law or regulation. In addition, nothing contained in this Agreement or Exhibit A limits the Executive's ability to communicate with any Government Agency or otherwise participate in any investigation or proceeding that may be conducted by any Government Agency. In addition, for the avoidance of doubt, pursuant to the federal Defend Trade Secrets Act of 2016, the Executive shall not be held criminally or civilly liable under any federal or state trade secret law or under this Agreement or Exhibit A for the disclosure of a trade secret that (a) is made (i) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney; and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or (b) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal.

8. **Additional Limitation**.

a. Anything in this Agreement to the contrary notwithstanding, in the event that the amount of any compensation, payment or distribution by the Company to or for the benefit of the Executive, whether paid or payable or distributed or distributable pursuant to the terms of this Agreement or otherwise, calculated in a manner consistent with Section 280G of the Code and the applicable regulations thereunder (the "Severance Payments"), would be subject to the excise tax imposed by Section 4999 of the Code, the following provisions shall apply:

i. If the Severance Payments, reduced by the sum of (A) the Excise Tax and (B) the total of the federal, state, and local income and employment taxes payable by the Executive on the amount of the Severance Payments which are in excess of the Threshold Amount, are greater than or equal to the Threshold Amount, the Executive shall be entitled to the full amount of Severance Payments.

ii. If the Threshold Amount is less than (x) the Severance Payments, but greater than (y) the Severance Payments reduced by the sum of (A) the Excise Tax and (B) the total of the federal, state, and local income and employment taxes on the amount of the Severance Payments which are in excess of the Threshold Amount, then the Severance Payments shall be reduced (but not below zero) to the extent necessary so that the sum of all Severance Payments shall not exceed the Threshold Amount. In such event, the Severance Payments shall be reduced in the following order: (1) cash payments not subject to Section 409A of the Code; (2) cash payments subject to Section 409A of the Code; (3) equity-based payments and acceleration; and (4) non-cash forms of benefits. To the extent any payment is to be made over time (e.g., in installments, etc.), then the payments shall be reduced in reverse chronological order.

b. For the purposes of this Section 8, "Threshold Amount" shall mean three times the Executive's "base amount" within the meaning of Section 280G(b)(3) of the

Code and the regulations promulgated thereunder less one dollar ($1.00); and "Excise Tax" shall mean the excise tax imposed by Section 4999 of the Code, and any interest or penalties incurred by the Executive with respect to such excise tax.

c. The determination as to which of the alternative provisions of Section 8(a) above shall apply to the Executive shall be made by a nationally recognized accounting firm selected by the Company (the "Accounting Firm"), which shall provide detailed supporting calculations both to the Company and the Executive within 15 business days of the Date of Termination, if applicable, or at such earlier time as is reasonably requested by the Company or the Executive. For purposes of determining which of the alternative provisions of Section 8(a) above shall apply, the Executive shall be deemed to pay federal income taxes at the highest marginal rate of federal income taxation applicable to individuals for the calendar year in which the determination is to be made, and state and local income taxes at the highest marginal rates of individual taxation in the state and locality of the Executive's residence on the Date of Termination, net of the maximum reduction in federal income taxes which could be obtained from deduction of such state and local taxes. Any determination by the Accounting Firm shall be binding upon the Company and the Executive.

9. **Section 409A**.

a. Anything in this Agreement to the contrary notwithstanding, if at the time of the Executive's "separation from service" within the meaning of Section 409A of the Code, the Company determines that the Executive is a "specified employee" within the meaning of Section 409A(a)(2)(B)(i) of the Code, then to the extent any payment or benefit that the Executive becomes entitled to under this Agreement on account of the Executive's separation from service would be considered deferred compensation subject to the 20 percent additional tax imposed pursuant to Section 409A(a) of the Code as a result of the application of Section 409A(a)(2)(B)(i) of the Code, such payment shall not be payable and such benefit shall not be provided until the date that is the earlier of (A) six months and one day after the Executive's separation from service, or (B) the Executive's death.

b. The parties intend that this Agreement will be administered in accordance with Section 409A of the Code. To the extent that any provision of this Agreement is ambiguous as to its compliance with Section 409A of the Code, the provision shall be read in such a manner so that all payments hereunder comply with Section 409A of the Code. The parties agree that this Agreement may be amended, as reasonably requested by either party, and as may be necessary to fully comply with Section 409A of the Code and all related rules and regulations in order to preserve the payments and benefits provided hereunder without additional cost to either party.

c. All in-kind benefits provided and expenses eligible for reimbursement under this Agreement shall be provided by the Company or incurred by the Executive during the time periods set forth in this Agreement. All reimbursements shall be paid as

soon as administratively practicable, but in no event shall any reimbursement be paid after the last day of the taxable year following the taxable year in which the expense was incurred. The amount of in-kind benefits provided or reimbursable expenses incurred in one taxable year shall not affect the in-kind benefits to be provided or the expenses eligible for reimbursement in any other taxable year. Such right to reimbursement or in-kind benefits is not subject to liquidation or exchange for another benefit.

d. To the extent that any payment or benefit described in this Agreement constitutes "non-qualified deferred compensation" under Section 409A of the Code, and to the extent that such payment or benefit is payable upon the Executive's termination of employment, then such payments or benefits shall be payable only upon the Executive's "separation from service." The determination of whether and when a separation from service has occurred shall be made in accordance with the presumptions set forth in Treasury Regulation Section 1.409A-1(h).

e. The Company makes no representation or warranty and shall have no liability to the Executive or any other person if any provisions of this Agreement are determined to constitute deferred compensation subject to Section 409A of the Code but do not satisfy an exemption from, or the conditions of, such Section.

10. **Withholding**. All payments made by the Company to the Executive under this Agreement shall be net of any tax or other amounts required to be withheld by the Company under applicable law.

11. **Notice and Date of Termination**.

a. Notice of Termination. The Executive's employment with the Company may be terminated by the Company or the Executive at any time and for any reason. During the Term, any purported termination of the Executive's employment (other than by reason of death) shall be communicated by written Notice of Termination from one party hereto to the other party hereto in accordance with this Section 11. For purposes of this Agreement, a "Notice of Termination" shall mean a notice which shall indicate the specific termination provision in this Agreement relied upon.

b. Date of Termination. "Date of Termination" shall mean: (i) if the Executive's employment is terminated by his death, the date of his death; (ii) if the Executive's employment is terminated on account of Executive's Disability or by the Company for Cause, the date on which Notice of Termination is given; (iii) if the Executive's employment is terminated by the Company without Cause, the date on which a Notice of Termination is given or the date otherwise specified by the Company in the Notice of Termination; (iv) if the Executive's employment is terminated by the Executive for any reason except for Good Reason, 30 days after the date on which a Notice of Termination is given, and (v) if the Executive's employment is terminated by the Executive for Good Reason, the date on which a Notice of Termination is given after the end of the Cure Period. Notwithstanding the foregoing, in the event that the Executive gives a Notice of Termination to the

Company, the Company may unilaterally accelerate the Date of Termination and such acceleration shall not result in a termination by the Company for purposes of this Agreement.

12. **No Mitigation**. The Company agrees that, if the Executive's employment by the Company is terminated during the term of this Agreement, the Executive is not required to seek other employment or to attempt in any way to reduce any amounts payable to the Executive by the Company pursuant to Section 5 or Section 6 hereof. Further, the amount of any payment provided for in this Agreement shall not be reduced by any compensation earned by the Executive as the result of employment by another employer.

13. **Consent to Jurisdiction**. The parties hereby consent to the jurisdiction of the Superior Court of the State of Michigan and the United States District Court in Michigan. Accordingly, with respect to any such court action, the Executive (a) submits to the personal jurisdiction of such courts; (b) consents to service of process; and (c) waives any other requirement (whether imposed by statute, rule of court, or otherwise) with respect to personal jurisdiction or service of process.

14. **Integration**. This Agreement constitutes the entire agreement between the parties with respect to compensation, severance pay, benefits and accelerated vesting and supersedes in all respects all prior agreements between the parties concerning such subject matter, including without limitation the Former Employment Agreement and any offer letter relating to the Executive's employment relationship with the Company. Provided, and notwithstanding the foregoing, any agreement relating to confidentiality, noncompetition, nonsolicitation or assignment of inventions shall not be superseded by this Agreement and the Executive acknowledges and agrees that any such agreement shall remain in full force and effect, provided that, in the event of any conflict between any such agreement and the Restrictive Covenants, the most restrictive provision that is enforceable shall govern.

15. **Successor to the Executive**. This Agreement shall inure to the benefit of and be enforceable by the Executive's personal representatives, executors, administrators, heirs, distributees, devisees and legatees. In the event of the Executive's death after a Terminating Event but prior to the completion by the Company of all payments due him under this Agreement, the Company shall continue such payments to the Executive's beneficiary designated in writing to the Company prior to his death (or to his estate, if the Executive fails to make such designation).

16. **Enforceability**. If any portion or provision of this Agreement (including, without limitation, any portion or provision of any Section of this Agreement) shall to any extent be declared illegal or unenforceable by a court of competent jurisdiction, then the remainder of this Agreement, or the application of such portion or provision in circumstances other than those as to which it is so declared illegal or unenforceable, shall not be affected thereby, and each portion and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

17. **Waiver**. No waiver of any provision hereof shall be effective unless made in writing and signed by the waiving party. The failure of any party to require the performance of any

term or obligation of this Agreement, or the waiver by any party of any breach of this Agreement, shall not prevent any subsequent enforcement of such term or obligation or be deemed a waiver of any subsequent breach.

18. **Notices**. Any notices, requests, demands and other communications provided for by this Agreement shall be sufficient if in writing and delivered in person or sent by a nationally recognized overnight currier service of by registered or certified mail, postage prepaid, return receipt requested, to the Executive at the last address the Executive has filed in writing with the Company, or to the Company at its main office, attention of the Board of Directors. Notice shall also be sufficient if sent and received via email to the Executive's Company email address, or, if to the Company, to the Lead Outside Director's email address.

19. **Amendment**. This Agreement may be amended or modified only by a written instrument signed by the Executive and by a duly authorized representative of the Company.

20. **Effect on Other Plans and Agreements**. An election by the Executive to resign for Good Reason under the provisions of this Agreement shall not be deemed a voluntary termination of employment by the Executive for the purpose of interpreting the provisions of any of the Company's benefit plans, programs or policies. Nothing in this Agreement shall be construed to limit the rights of the Executive under the Company's benefit plans, programs or policies except as otherwise provided in Section 7 hereof, and except that the Executive shall have no rights to any severance benefits under any Company severance pay plan, offer letter or otherwise. In the event that the Executive is party to an agreement with the Company providing for payments or benefits under such agreement and this Agreement, the terms of this Agreement shall govern and Executive may receive payment under this Agreement only and not both. Further, Section 5 and Section 6 of this Agreement are mutually exclusive and in no event shall Executive be entitled to payments or benefits pursuant to Section 5 and Section 6 of this Agreement.

21. **Governing Law**. This is a Michigan contract and shall be construed under and be governed in all respects by the laws of the State of Michigan, without giving effect to the conflict of laws principles.

22. **Successor to Company**. The Company shall require any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business or assets of the Company expressly to assume and agree to perform this Agreement to the same extent that the Company would be required to perform it if no succession had taken place; provided that if the Executive remains employed or becomes employed by the Company, the purchaser or any of their affiliates in connection with any such transaction, then the Executive shall not be entitled to any payments or vesting pursuant to Section 5 or pursuant to Section 6 of this Agreement solely as a result of such transaction. Failure of the Company to obtain an assumption of this Agreement at or prior to the effectiveness of any succession shall be a material breach of this Agreement.

23. **Gender Neutral**. Wherever used herein, a pronoun in the masculine gender shall be considered as including the feminine gender unless the context clearly indicates otherwise.

24. **Counterparts**. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be taken to be an original; but such counterparts shall together constitute one and the same document.

IN WITNESS WHEREOF, the parties have executed this Agreement effective on the Effective Date.

ESPERION THERAPEUTICS, INC.

By: /s/ Nicole Vitullo

Name: Nicole Vitullo
Title: Lead Director

EXECUTIVE:

/s/ Sheldon Koenig
Sheldon Koenig

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, 2021, 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 3, 2021

/s/ Sheldon L. Koenig

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

Exhibit 31.2

Certification

I, Richard B. Bartram, certify that:

1. I have reviewed this quarterly report on Form 10-Q for the period ended June 30, 2021, 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 3, 2021

/s/ Richard B. Bartram

Richard B. Bartram
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, 2021, 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 3, 2021

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

/s/ Richard B. Bartram
Richard B. Bartram
Chief Financial Officer
(Principal Financial Officer and Principal Accounting Officer)