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

FORM 10-Q

(Mark One)

[X] QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the quarterly period ended September 30, 2019

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: 001-38738

ETON PHARMACEUTICALS, INC.
(Exact name of registrant as specified in its charter)

Delaware	**37-1858472**
(State of incorporation)	**(I.R.S. Employer Identification Number)**

21925 W. Field Parkway, Suite 235
Deer Park, Illinois 60010-7208
(Address of principal executive offices) (Zip code)

Registrant's telephone number, including area code: (847) 787-7361

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol	Name of exchange on which registered
Common stock, $0.001 par value per share	ETON	Nasdaq Global Market

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 [ ]

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter time that the registrant was required to submit and post such files). Yes [X] No [ ]

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

Large accelerated filer	[ ]	Accelerated filer	[ ]
Non-accelerated filer	[ ]	Smaller reporting company	[X]
		Emerging growth company	[X]

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. [X]

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 October 31, 2019, Eton Pharmaceuticals, Inc. had outstanding 17,807,167 shares of common stock, $0.001 par value.

Eton Pharmaceuticals, Inc.

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PART I - FINANCIAL INFORMATION

Item 1. Financial Statements

Eton Pharmaceuticals, Inc.
Condensed Balance Sheets
(in thousands, except share and per share amounts)

	September 30, 2019 (Unaudited)	December 31, 2018
Assets		
Current assets:		
Cash and cash equivalents	$ 11,777	$ 26,735
Prepaid expenses and other current assets	330	767
Total current assets	**12,107**	**27,502**
Property and equipment, net	1,169	773
Operating lease right-of-use assets, net	191	—
Other long-term assets, net	40	52
Total assets	**$ 13,507**	**$ 28,327**
Liabilities and stockholders' equity		
Current liabilities:		
Accounts payable	$ 549	$ 1,421
Accrued liabilities	558	603
Total current liabilities	**1,107**	**2,024**
Operating lease liabilities, net of current portion	52	—
Total liabilities	**1,159**	**2,024**
Commitments and contingencies (Note 13)		
Stockholders' equity		
Common stock, $0.001 par value; 50,000,000 shares authorized as of September 30, 2019 and December 31, 2018; 17,807,167 and 17,607,928 shares issued and outstanding at September 30, 2019 and December 31, 2018, respectively	18	18
Additional paid-in capital	73,822	72,153
Accumulated deficit	(61,492)	(45,868)
Total stockholders' equity	**12,348**	**26,303**
Total liabilities and stockholders' equity	**$ 13,507**	**$ 28,327**

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

Eton Pharmaceuticals, Inc.
Condensed Statements of Operations
(In thousands, except per share amounts)
(Unaudited)

	For the three months ended		For the nine months ended	
	September 30, 2019	**September 30, 2018**	**September 30, 2019**	**September 30, 2018**
Revenue	**$ —**	$ —	**$ 500**	**$ —**
Operating expenses:				
Research and development	3,418	1,544	11,322	4,525
General and administrative	1,624	830	5,123	3,510
Total operating expenses	**5,042**	**2,374**	**16,445**	**8,035**
Loss from operations	**(5,042)**	**(2,374)**	**(15,945)**	**(8,035)**
Other income (expense):				
Interest and other income, net	77	25	321	82
Change in fair value of warrant liability	—	(561)	—	(1,057)
Loss before income tax expense	**(4,965)**	**(2,910)**	**(15,624)**	**(9,010)**
Income tax expense	—	—	—	—
Net loss	**(4,965)**	**(2,910)**	**(15,624)**	**(9,010)**
Accrued dividends on redeemable convertible preferred stock	—	(300)	—	(900)
Deemed dividends for accretion of redeemable convertible preferred stock issuance costs	—	(429)	—	(1,257)
Net loss attributable to common stockholders	**$ (4,965)**	**$ (3,639)**	**$ (15,624)**	**$ (11,167)**
Net loss per share attributable to common stockholders, basic and diluted	**$ (0.28)**	**$ (0.65)**	**$ (0.88)**	**$ (2.40)**
Weighted average number of common shares outstanding, basic and diluted	17,878	5,615	17,706	4,658

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

Eton Pharmaceuticals, Inc.
Condensed Statements of Redeemable Convertible Preferred Stock and Stockholders' Equity (Deficit)
For the three months ended September 30, 2019 and 2018
(in thousands, except share amounts)
(Unaudited)

	Redeemable Convertible Preferred Stock		Common Stock		Additional Paid-in	Accumulated	Total Stockholders'
	Shares	Amount	Shares	Amount	Capital	Deficit	Equity
Balances at June 30, 2019	—	$ —	17,763,045	$ 18	$ 73,208	$ (56,527)	$ 16,699
Stock-based compensation	—	—	—	—	537	—	537
Stock option exercises	—	—	44,122	—	77	—	77
Net loss	—	—	—	—	—	(4,965)	(4,965)
Balances at September 30, 2019	—	$ —	17,807,167	$ 18	$ 73,822	$ (61,492)	$ 12,348

	Redeemable Convertible Preferred Stock		Common Stock		Additional Paid-in	Accumulated	Total Stockholders'
	Shares	Amount	Shares	Amount	Capital	Deficit	Deficit
Balances at June 30, 2018	6,685,082	$ 20,432	6,218,980	$ 6	$ 3,225	$ (16,167)	$ (12,936)
Stock-based compensation	—	—	—	—	165	—	165
Accrued dividends on redeemable convertible preferred stock	—	300	—	—	—	(300)	(300)
Deemed dividends for accretion of redeemable convertible preferred stock issuance costs	—	429	—	—	—	(429)	(429)
Net loss	—	—	—	—	—	(2,910)	(2,910)
Balances at September 30, 2018	6,685,082	$ 21,161	6,218,980	$ 6	$ 3,390	$ (19,806)	$ (16,410)

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

Eton Pharmaceuticals, Inc.
Condensed Statements of Redeemable Convertible Preferred Stock and Stockholders' Equity (Deficit)
For the nine months ended September 30, 2019 and 2018
(in thousands, except share amounts)
(Unaudited)

	Redeemable Convertible Preferred Stock		Common Stock		Additional Paid-in	Accumulated	Total Stockholders'
	Shares	Amount	Shares	Amount	Capital	Deficit	Equity
Balances at December 31, 2018	—	$ —	17,607,928	$ 18	$ 72,153	$ (45,868)	$ 26,303
Stock-based compensation	—	—	—	—	1,387	—	1,387
Stock option exercises	—	—	134,122	—	154	—	154
Employee stock purchase plan	—	—	23,083	—	128	—	128
Stock warrant exercises	—	—	42,034	—	—	—	—
Net loss	—	—	—	—	—	(15,624)	(15,624)
Balances at September 30, 2019	—	$ —	17,807,167	$ 18	$ 73,822	$ (61,492)	$ 12,348

	Redeemable Convertible Preferred Stock		Common Stock		Additional Paid-in	Accumulated	Total Stockholders'
	Shares	Amount	Shares	Amount	Capital	Deficit	Deficit
Balances at December 31, 2017	6,685,082	$ 19,004	6,000,000	$ 6	$ 1,759	$ (8,639)	$ (6,874)
Stock-based compensation	—	—	218,980	—	1,631	—	1,631
Accrued dividends on redeemable convertible preferred stock	—	900	—	—	—	(900)	(900)
Deemed dividends for accretion of redeemable convertible preferred stock issuance costs	—	1,257	—	—	—	(1,257)	(1,257)
Net loss	—	—	—	—	—	(9,010)	(9,010)
Balances at September 30, 2018	6,685,082	$ 21,161	6,218,980	$ 6	$ 3,390	$ (19,806)	$ (16,410)

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

Eton Pharmaceuticals, Inc.
Condensed Statements of Cash Flows
(In thousands)
(Unaudited)

	Nine months ended September 30, 2019	Nine months ended September 30, 2018
Cash flows from operating activities		
Net loss	$ (15,624)	$ (9,010)
Adjustments to reconcile net loss to net cash used in operating activities:		
Stock-based compensation	1,387	1,631
Depreciation and amortization	299	40
Change in fair value of warrant liability	—	1,057
Changes in operating assets and liabilities:		
Prepaid expenses and other assets	426	(493)
Accounts payable	(403)	254
Accrued liabilities	(263)	150
Net cash used in operating activities	**(14,178)**	**(6,371)**
Cash used in investing activities		
Purchases of property and equipment	**(1,062)**	**(182)**
Cash flows from financing activities		
Proceeds from employee stock purchase plan and stock option exercises	282	—
Net cash provided by financing activities	**282**	—
Change in cash and cash equivalents	**(14,958)**	**(6,553)**
Cash and cash equivalents at beginning of period	26,735	13,156
Cash and cash equivalents at end of period	$ 11,777	$ 6,603
Supplemental disclosures of cash flow information		
Cash paid for interest	$ —	$ —
Cash paid for income taxes	$ —	$ —
Supplemental disclosures of non-cash investing and financing activities:		
Accrued dividends on redeemable convertible preferred stock	$ —	$ 900
Deemed dividends for accretion of redeemable convertible preferred stock issuance costs	$ —	$ 1,257

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

Eton Pharmaceuticals, Inc.
Notes to Condensed Financial Statements
(in thousands, except share and per share amounts)
(Unaudited)

Note 1 — Company Overview

Eton Pharmaceuticals, Inc. ("Eton" or the "Company") was incorporated as a Delaware corporation on April 27, 2017 and was initially set up as a wholly owned subsidiary of Harrow Health, Inc. or "Harrow" (fka Imprimis Pharmaceuticals, Inc.)

Eton raised $20,055 in start-up capital through the sale of its Series A redeemable convertible preferred stock ("Series A Preferred") in June 2017, and a separate management team was then established for Eton with its corporate offices located in Deer Park, Illinois. Eton is a specialty pharmaceutical company focused on developing and commercializing prescription drug products utilizing the U.S. Food and Drug Administration's (the "FDA") 505(b)(2) regulatory pathway. The Company's business model is to develop proprietary innovative product candidates that offer commercial and/or functional advantages to currently available alternatives.

In November 2018, the Company completed an initial public offering (the "IPO"), selling 4,140,000 shares of its common stock at an offering price of $6.00 per share, including the underwriter's exercise in full of its option to purchase additional shares. The Company received net proceeds of $21,960, after deducting underwriting discounts and commissions and offering-related expenses.

Note 2 — Liquidity Considerations

As of September 30, 2019, the Company had an accumulated deficit of $61,492 and for the nine months ended September 30, 2019, the Company had net cash used in operating activities of $14,178.

To date, the Company has generated limited revenues and has incurred negative cash flows from operating activities since its inception in 2017. The Company received its first product approval from the FDA, Biorphen®, in October 2019, and currently believes its future revenues and its existing cash and cash equivalents of $11,777 will be sufficient to fund its operating expenses and capital expenditure requirements for at least the next twelve months from the date of issuance of these financial statements. This estimate is based on the Company's current assumptions, including expected sales for Biorphen and its ability to manage its spending. The Company could use its available capital resources sooner than currently expected. Accordingly, the Company could seek to obtain additional capital through equity financings, the sale of debt or other arrangements. However, there can be no assurance that the Company will be able to raise additional capital if needed or under acceptable terms, if at all. The sale of additional equity may dilute existing stockholders and newly issued shares may contain senior rights and preferences compared to currently outstanding common shares. Issued debt securities may contain covenants and limit the Company's ability to pay dividends or make other distributions to stockholders. If the Company is delayed in completing its product development and obtaining regulatory approval for its product candidates and is unable to obtain such additional financing, operations would need to be scaled back or discontinued.

Note 3 — Summary of Significant Accounting Policies

Basis of Presentation

The Company has prepared the accompanying financial statements in accordance with accounting principles generally accepted in the United States of America ("GAAP").

Unaudited Interim Financial Information

The accompanying interim condensed financial statements are unaudited and have been prepared on the same basis as the audited financial statements and, in the opinion of management, reflect all adjustments necessary for the fair presentation of the Company's financial position as of September 30, 2019 and the results of its operations and its cash flows for the periods ended September 30, 2019 and 2018. The financial data and other information disclosed in these notes related to the three and nine-month periods ended September 30, 2019 and 2018 are also unaudited. The results for the nine-month period ended September 30, 2019 are not necessarily indicative of results to be expected for the year ending December 31, 2019, any other interim periods or any future year or period.

Note 3 — Summary of Significant Accounting Policies (continued)

Use of Estimates

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities at the date of the condensed financial statements and the reported amounts of revenue and expenses during the reporting periods. Significant estimates and assumptions reflected in these condensed financial statements include, but are not limited to, the accrual of research and development expenses and the valuation of common stock, stock options, warrants and derivative instruments. Estimates are periodically reviewed in light of changes in circumstances, facts and experience. Changes in estimates are recorded in the period in which they become known. Actual results could differ from those estimates or assumptions.

Segment Information

The Company operates the business on the basis of a single reportable segment, which is the business of developing and commercializing prescription drug products. The Company's chief operating decision-maker is the Chief Executive Officer ("CEO"), who evaluates the Company as a single operating segment.

Cash and Cash Equivalents

The Company considers all highly liquid investments with an original maturity of three months or less to be cash equivalents. All cash and cash equivalents are held in U.S. financial institutions. Cash equivalents consist of an interest-bearing checking account. From time to time, amounts deposited exceed federally insured limits. The Company believes the associated credit risk to be minimal.

Property and Equipment

Property and equipment are stated at cost. Depreciation of property and equipment is computed utilizing the straight-line method based on the following estimated useful lives. Computer software and hardware is depreciated over three years. Equipment, furniture and fixtures is depreciated over five years. Leasehold improvements are amortized over their estimated useful lives or the remaining lease term, whichever is shorter. Construction in progress is capitalized but not depreciated until it is placed into service.

Maintenance and repairs are charged to expense as incurred, while renewals and improvements are capitalized.

Impairment of Long-Lived Assets

Long-lived assets are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. Recoverability of assets to be held and used is measured by a comparison of the carrying amount of an asset to estimated undiscounted future cash flows expected to be generated by the asset. If the carrying amount of an asset exceeds its estimated future cash flows, an impairment charge is recognized in the Company's statements of operations for the amount by which the carrying amount of the asset exceeds the fair value of the asset. No impairment has been recognized since the Company's inception in 2017.

Classification and Accretion of Redeemable Convertible Preferred Stock

Prior to the Company's IPO in November 2018, the Company had classified the Series A Preferred outside of stockholders' equity (deficit) because the shares contained certain redemption features that were not solely within the control of the Company. The carrying value of the Series A Preferred was accreted to its redemption value from the date of issuance through November 15, 2018, the date of the IPO. In conjunction with the IPO, the Series A Preferred, including accrued and unpaid dividends, automatically converted to shares of the Company's common stock (see Note 6).

Note 3 — Summary of Significant Accounting Policies (continued)

Revenue Recognition for Contracts with Customers

The Company intends to generate its future revenues from direct sales of its products, many of which are in development. In addition, the Company anticipates it will receive revenues from product licensing agreements where it has contracted for milestone payments and royalties from products it has developed or for which it has acquired the rights to a product developed by a third party.

The Company accounts for contracts with its customers in accordance with Accounting Standards Codification ("ASC") 606 — Revenue from Contracts with Customers. ASC 606 applies to all contracts with customers, except for contracts that are within the scope of other standards. Under ASC 606, an entity recognizes revenue when its customer obtains control of promised goods or services, in an amount that reflects the consideration which the entity expects to receive in exchange for those goods or services. To determine revenue recognition for arrangements that an entity determines are within the scope of ASC 606, the entity performs the following five steps: (i) identify the contract(s) with a customer; (ii) identify the performance obligations in the contract; (iii) determine the transaction price; (iv) allocate the transaction price to the performance obligations in the contract; and (v) recognize revenue when (or as) the entity satisfies a performance obligation.

At contract inception, once the contract is determined to be within the scope of ASC 606, the Company assesses the goods or services promised within each contract and determines those that are performance obligations and assesses whether each promised good or service is distinct. The Company then recognizes as revenue the amount of the transaction price that is allocated to the respective performance obligation when (or as) the performance obligation is satisfied. Arrangements that include rights to additional goods or services that are exercisable at a customer's discretion are generally considered options. The Company assesses whether these options provide a material right to the customer and, if so, they are considered performance obligations. The exercise of a material right is accounted for as a contract modification for accounting purposes.

The Company recognizes as revenue the amount of the transaction price that is allocated to the respective performance obligation when (or as) each performance obligation is satisfied at a point in time or over time, and if over time this is based on the use of an output or input method. Any amounts received prior to revenue recognition will be recorded as deferred revenue. Amounts expected to be recognized as revenue within the twelve months following the balance sheet date will be classified as current portion of deferred revenue in the Company's balance sheets. Amounts not expected to be recognized as revenue within the twelve months following the balance sheet date are classified as long-term deferred revenue, net of current portion.

Milestone Payments – If a commercial contract arrangement includes development and regulatory milestone payments, the Company will evaluate whether the milestone conditions have been achieved and if it is probable that a significant revenue reversal would not occur before recognizing the associated revenue. Milestone payments that are not within the Company's control or the licensee's control, such as regulatory approvals, are generally not considered probable of being achieved until those approvals are received.

Royalties – For arrangements that include sales-based royalties, including milestone payments based on a level of sales, which are the result of a customer-vendor relationship and for which the license is deemed to be the predominant item to which the royalties relate, the Company will recognize revenue at the later of (i) when the related sales occur, or (ii) when the performance obligation to which some or all of the royalty has been allocated has been satisfied or partially satisfied. To date, the Company has not recognized any royalty revenue resulting from any of its licensing arrangements.

Significant Financing Component – In determining the transaction price, the Company will adjust consideration for the effects of the time value of money if the expected period between payment by the licensees and the transfer of the promised goods or services to the licensees will be more than one year.

Note 3 — Summary of Significant Accounting Policies (continued)

Research and Development Expenses

Research and development ("R&D") expenses include both internal R&D activities and external contracted services. Internal R&D activity expenses include salaries, benefits and stock-based compensation and other costs to support the Company's R&D operations. External contracted services include product development efforts including certain product licensor milestone payments, clinical trial activities, manufacturing and control-related activities and regulatory costs. R&D expenses are charged to operations as incurred. The Company reviews and accrues R&D expenses based on services performed and relies upon estimates of those costs applicable to the stage of completion of each project. Significant judgments and estimates are made in determining the accrued balances at the end of any reporting period. Actual results could differ from the Company's estimates.

Upfront payments and milestone payments made for the licensing of technology on products which are not yet approved by the FDA are expensed as R&D in the period in which they are incurred. Milestone payments for FDA-approved products are capitalized and amortized over the expected economic life of the product. Nonrefundable advance payments for goods or services to be received in the future for use in R&D activities are recorded as prepaid expenses and are expensed as the related goods are delivered or the services are performed.

Earnings (Loss) Per Share

Basic net loss per common share is computed by dividing net loss attributable to common stockholders for the period by the weighted average number of common shares outstanding during the period. Diluted net loss per share is computed by dividing the net loss attributable to common stockholders for the period by the weighted average number of common and common equivalent shares, such as Series A Preferred, unvested restricted stock, stock options and warrants, outstanding during the period. Common stock equivalents are excluded from the computation where their inclusion would be anti-dilutive. No such adjustments were made for the three-month or nine-month periods ended September 30, 2019 or 2018 as the Company reported a net loss for these periods and including the effects of common stock equivalents in the diluted EPS calculation would have been antidilutive (see Note 10).

Stock-Based Compensation

The Company accounts for stock-based compensation under the provisions of ASC 718 Compensation — Stock Compensation. The guidance under ASC 718 requires companies to estimate the fair value of the stock-based compensation awards on the date of grant and record expense over the related service periods, which are generally the vesting period of the equity awards. The Company estimates the fair value of stock-based option awards using the Black-Scholes-Merton option-pricing model ("BSM"). The BSM requires the input of subjective assumptions, including the expected stock price volatility, the calculation of expected term, forfeitures and the fair value of the underlying common stock on the date of grant, among other inputs. The risk-free interest rate was determined from the implied yields for zero-coupon U.S. government issues with a remaining term approximating the expected life of the options or warrants. Dividends on common stock are assumed to be zero for the BSM valuation of the stock options. The expected term of stock options granted is based on vesting periods and the contractual life of the options. Expected volatilities are based on comparable companies' historical volatility along with a limited weighting included for the Company's own volatility subsequent to its IPO, which management believes represents the most accurate basis for estimating expected future volatility under the current conditions. The Company accounts for forfeitures as they occur.

Prior to the IPO, the fair value of the shares of the Company's common stock underlying its stock-based awards was determined by its board of directors, with input from management. Because there had been no public market for the Company's common stock prior to the IPO, the board of directors had determined the fair value of the common stock on the grant-date of the stock-based award by considering a number of objective and subjective factors, including enterprise valuations of its common stock performed by an unrelated third-party specialist, valuations of comparable companies, sales of its Series A Preferred to unrelated third parties, operating and financial performance, the lack of liquidity of the capital stock, and general and industry-specific economic outlook. Since the IPO in November 2018, the Company has used the closing common stock price on the date of grant for the fair value of the common stock.

Note 3 — Summary of Significant Accounting Policies (continued)

Fair Value Measurements

We measure certain of our assets and liabilities at fair value. Fair value represents 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 accounting requires characterization of the inputs used to measure fair value into a three-level fair value hierarchy as follows:

Level 1 — Inputs based on quoted prices in active markets for identical assets or liabilities. An active market is a market in which transactions occur with sufficient frequency and volume to provide pricing information on an ongoing basis.

Level 2 — Observable inputs that reflect the assumptions market participants would use in pricing the asset or liability developed based on market data obtained from sources independent from the entity.

Level 3 — Unobservable inputs that reflect the entity's own assumptions about the assumptions market participants would use in pricing the asset or liability developed based on the best information available.

Fair value measurements are classified based on the lowest level of input that is significant to the measurement. The Company's assessment of the significance of a particular input to the fair value measurement requires judgment, which may affect the valuation of the assets and liabilities and their placement within the fair value hierarchy levels. The determination of the fair values stated below takes into account the market for the Company's financials, assets and liabilities, the associated credit risk and other factors as required. The Company considers active markets as those in which transactions for the assets or liabilities occur in sufficient frequency and volume to provide pricing information on an ongoing basis.

The carrying amounts of cash and cash equivalents, accounts payable and accrued liabilities approximate their fair values due to the short-term maturities of these instruments.

The fair values of the Company's warrant liability at inception and for subsequent mark-to-market fair value measurements were based on management's valuation model and expectations with respect to the method and timing of settlement. The Company had determined that the warrant liability fair values were classified as Level 3 measurements within the fair value hierarchy. At the date of the Company's IPO in November 2018, the fair value was reclassified to additional paid-in-capital as the final number of shares for the warrants previously reflected as a liability became fixed.

Impact of New Accounting Pronouncements

In February 2016, the FASB issued ASU 2016-02 (Topic 842) – Leases ("ASC 842"), which requires the lease rights and obligations arising from lease contracts, including existing and new arrangements for substantially all leases with terms more than twelve months to be recognized as assets and liabilities on the balance sheet. Recognition, measurement and presentation of expenses depends upon classification as a finance or operating lease. The Company adopted ASC 842 effective January 1, 2019 utilizing the modified retrospective approach such that prior year financial statements were not recast under the new standard. The adoption of ASU 2016-02 did not have a material effect on the Company's financial condition from the recognition of the lease rights and obligations as assets and liabilities or its results of operations and cash flows. See Note 12 for additional information regarding the new standard and its impact on the Company's financial statements.

(in thousands, except share and per share amounts)

Note 4 — Revenues

Prior to 2019, the Company did not have any revenues. The Company's revenues of $500 for the nine months ended September 30, 2019 resulted from the sale of its EM-100 product rights to Bausch Health Ireland Limited ("Bausch") per an Asset Purchase Agreement dated February 18, 2019 (the "Asset Purchase Agreement"). Pursuant to the Asset Purchase Agreement, Bausch paid the Company an upfront payment of $500 and Bausch is required to pay the Company a milestone payment of $1,500 upon the first commercial sale of the EM-100 product. In addition, Bausch is required to pay the Company a royalty on net sales for a period of ten years from the date of the first commercial sale of the EM-100 product in the United States.

Note 5 – Property and Equipment

Property and equipment consist of the following:

	September 30, 2019	December 31, 2018
Computer hardware and software	$ 170	$ 93
Furniture and fixtures	115	98
Equipment	993	99
Leasehold improvements	147	53
Construction in progress	3	492
	1,428	835
Less: accumulated depreciation	(259)	(62)
Property and equipment, net	$ 1,169	$ 773

Depreciation expense for the nine-month periods ended September 30, 2019 and 2018 was $197 and $33, respectively.

Note 6 — Redeemable Convertible Preferred Stock — Series A

The Company has 10,000,000 authorized shares of $0.001 par value preferred stock as per its Amended and Restated Certificate of Incorporation. In June 2017, the Company issued 6,685,082 shares of Series A Preferred at a price of $3.00 per share, and all shares remained outstanding until the Company's IPO in November 2018. The gross proceeds were $20,055 from the Series A Preferred stock offering. The Series A Preferred shares, including accrued and unpaid dividends, automatically converted to the Company's common shares at the date of the IPO.

As a result of the Series A Preferred having a possible cash redemption feature in the event that an IPO or alternate financing was not completed by December 31, 2018, the Series A Preferred was classified as temporary equity and not included as part of Company's stockholders' equity (deficit) prior to the November 2018 IPO. In accordance with that classification, $2,534 of issuance costs associated with the Series A Preferred offering were being ratably accreted as a deemed dividend using the effective interest method through the expected redemption date.

The Series A Preferred automatically converted to common stock upon completion of the IPO in November 2018. The conversion share calculation was based on the $3.00 initial issue price for the Series A Preferred plus accrued and unpaid dividends, and automatically converted into shares of the Company's common stock using a stated divisor conversion price equal to 50% of the IPO price to the public which was $6.00 per share. In accordance with relevant accounting literature, since the terms of the conversion option did not permit the Company to compute the additional number of shares that it would need to issue upon conversion of the Series A Preferred when the contingent event occurred, the Company recorded the beneficial conversion amount of $21,747 as a deemed dividend at the date of the IPO in November 2018.

Note 7 — Common Stock

The Company has 50,000,000 authorized shares of $0.001 par value common stock as per its Amended and Restated Certificate of Incorporation. During the nine months ended September 30, 2019, the Company issued 134,122 shares of its common stock for stock option exercises, 23,083 shares for awards under its Employee Stock Purchase Plan (see Note 9) and 42,034 shares for the exercise of stock warrants.

(in thousands, except share and per share amounts)

Note 8 — Common Stock Warrants

In May 2017, the Company issued a warrant to purchase 600,000 shares of its common stock to consultants for business strategy and intellectual property advisory services. The warrant vested at issuance in May 2017, has a $0.01 exercise price per warrant share and expires five years from the date of issuance.

In conjunction with the closing of the Series A Preferred offering in June 2017 (see Note 6), the Company issued a warrant to purchase 649,409 shares of its common stock to the placement agent at an exercise price of $3.00 per share, provided, however, upon the conversion of the Series A Preferred to common stock, the warrant adjusted to entitle the holder to purchase shares of common stock equal to 10.0% of the shares of common stock issuable upon conversion of the Series A Preferred (excluding 191,000 shares of Series A Preferred that were purchased by insiders) and the exercise price would adjust to the conversion price of the Series A Preferred. This warrant vested at issuance in June 2017. The Company used the BSM to value the warrant and the fair value at the date of issuance was $479. The fair value assumptions included an expected term of five years, expected volatility of 85%, a risk-free interest rate of 2.9% and estimate of the conversion rate.

These warrants were classified as warrant liability on the Company's balance sheets prior to the IPO in November 2018 as the number of shares of common stock issuable upon the exercise of this warrant was not fixed as it could vary by a factor of 1.000 to 1.333 shares of common stock per warrant share in accordance with the IPO price, and the Company had considered the warrant to be a derivative instrument. The $479 amount was recorded as a component of the issuance costs for the Series A Preferred in June 2017, and subsequent changes in the fair value of this warrant were recorded as a component of other income and expense. As of September 30, 2018, the fair value of the warrant was $1,577 and the $1,057 increase in fair value during the nine months ended September 30, 2018 was recorded as a component of other income and expense. For the three months ended September 30, 2018, the $561 increase in fair value for the warrants was recorded as a component of other income and expense.

In connection with the IPO, the number of shares of common stock issuable upon the exercise of these warrants became fixed at 704,184 shares which eliminated the fair value adjustment after that date. At the IPO date, the warrant liability was reclassified to additional paid-in-capital. In June 2019, 67,737 of these warrant shares were exercised on a cashless basis which resulted in the Company issuing 42,034 shares of its common stock.

During November 2018, in connection with the IPO, the Company issued warrants for 414,000 shares of its common stock to the placement agent at an exercise price of $7.50 per share.

The outstanding warrants are summarized in the table below.

Description of Warrants	No. of Shares		Exercise Price
Business Advisory Warrants	600,000	$	0.01
Placement Agent Warrants - Series A Preferred	636,447	$	3.00
Placement Agent Warrants - IPO	414,000	$	7.50
Total	**1,650,447**	**$**	**3.04 (Avg)**

The holders of these warrants or their permitted transferees, are entitled to rights with respect to the registration under the Securities Act of 1933, as amended (the "Securities Act") for their shares that are converted to common stock, including demand registration rights and piggyback registration rights. These rights are provided under the terms of a registration rights agreement between the Company and the investors.

Note 9 — Share-Based Payment Awards

The Company's board of directors and stockholders approved the Eton Pharmaceuticals, Inc. 2017 Equity Incentive Plan in May 2017 (the "2017 Plan"), which authorized the issuance of up to 5,000,000 shares of the Company's common stock. In conjunction with the Company's IPO in November 2018, the Company's stockholders and board of directors approved the 2018 Equity Incentive Plan (the "2018 Plan") which succeeded the 2017 Plan. The Company has granted restricted stock awards ("RSAs"), stock options and restricted stock units ("RSUs") for its common stock under the 2017 Plan and 2018 Plan as detailed in the tables below. There were 872,837 shares available for future issuance under the 2018 Plan as of September 30, 2019.

Shares that are expired, terminated, surrendered or canceled without having been fully exercised will be available for future awards under the 2018 Plan. In addition, the 2018 Plan provides that commencing January 1, 2019 and through January 1, 2028, the share reserve will be increased by 4% of the total number of shares of common stock outstanding as of the preceding December 31, subject to a reduction at the discretion of the Company's board of directors. On January 1, 2019, the share reserve was increased by 704,317 shares based on the 17,607,928 shares of common stock outstanding at December 31, 2018. The exercise price for stock options granted is not less than the fair value of common stock as determined by the board of directors as of the date of grant. Prior to the IPO, the Company's board of directors valued the Company's common stock, taking into consideration its most recently available valuation of common stock performed by third parties as well as additional factors which might have changed since the date of the most recent contemporaneous valuation through the date of grant. Following the IPO, the Company has used the closing stock price on the date of grant as the exercise price.

On January 1, 2018, the Company issued 54,745 restricted shares of its common stock to each of its four outside directors (218,980 total shares). The restricted shares issued to the outside directors vested 25% at each quarter-end in 2018 and were 100% vested at December 31, 2018.

During the third quarter of 2017, the Company issued 25,000 RSU's to each of its four outside directors (100,000 total share units). The RSU's issued to the outside directors vested 25% at each subsequent quarter-end in 2017 and 2018 and were 100% vested at June 30, 2018. The associated 100,000 shares of the Company's common stock will not be issued until the individual director retires from service from the Company's board of directors. The Company has not issued any additional RSU's.

To date, all stock options issued have been non-qualified stock options, and the exercise prices were set at the fair value for the shares at the dates of grant. Options typically have a ten-year life, except for options to purchase 50,000 shares of the Company's common stock granted to product consultants that expire within five years if the Company is not able to file certain product submissions to the FDA prior to the five-year expiration date. Furthermore, these option awards to the Company's product consultants do not vest unless certain product submissions are made to the FDA, and accordingly, the Company has not recorded any expense for these contingently vesting option awards to its product consultants.

For the three months ended September 30, 2019 and 2018, the Company's total stock-based compensation expense was $537 and $165, respectively. Of these amounts, $460 and $147 was recorded in general and administrative expenses, respectively, and $77 and $18 was recorded in research and development expenses, respectively.

For the nine months ended September 30, 2019 and 2018, the Company's total stock-based compensation expense was $1,387 and $1,631, respectively. Of these amounts, $1,150 and $1,581 was recorded in general and administrative expenses, respectively, and $237 and $50 was recorded in research and development expenses, respectively.

(in thousands, except share and per share amounts)

Note 9 — Share-Based Payment Awards (continued)

A summary of stock option activity is as follows:

	Shares	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term (Yrs)	Aggregate Intrinsic Value
Options outstanding as of December 31, 2018	**1,295,000**	$ 1.78	**8.3**	**$ 5,627**
Issued	717,500	7.44		
Exercised	(134,122)	1.15		
Forfeited/Cancelled	—	—		
Options outstanding as of September 30, 2019	**1,878,378**	$ 3.99	**8.4**	**$ 5,188**
Options exercisable at September 30, 2019	643,431	$ 2.65	7.6	$ 2,505
Options vested and expected to vest at September 30, 2019	1,828,378	$ 4.06	8.4	$ 4,941

The aggregate intrinsic value of stock options is calculated as the difference between the exercise price of the stock options and the fair value of the Company's common stock for those stock options that had strike prices lower than the fair value of the Company's common stock.

The assumptions used to calculate the fair value of options granted during the nine months ended September 30, 2019 under the BSM were as follows:

	September 30, 2019
Expected dividends	—%
Expected volatility	90%
Risk-free interest rate	1.9-2.5%
Expected term	5.3 – 6.3 years
Weighted average fair value	$ 5.54

Expected Term — The Company has opted to use the "simplified method" for estimating the expected term of options granted to employees and directors, whereby the expected term equals the arithmetic average of the vesting term and the original contractual term of the option (generally ten years). The expected term of options granted to non-employees equals the contractual life of the options.

Expected Volatility — Due to the Company's limited operating history and a lack of Company-specific historical and implied volatility data, the Company had based its estimate of expected volatility on the historical volatility of a group of similar companies that are publicly traded. During 2019, the Company has continued this methodology plus given some limited weighting to its own volatility in the periods subsequent to its November 2018 IPO. The historical volatility data was computed using the daily closing prices for the selected companies' shares during the equivalent period of the calculated expected term of the stock-based awards.

Risk-Free Interest Rate — The risk-free rate assumption is based on the U.S. Treasury instruments with maturities similar to the expected term of the Company's stock options.

Expected Dividend — The Company has not issued any dividends in its history and does not expect to issue dividends over the life of the options and therefore has estimated the dividend yield to be zero.

(in thousands, except share and per share amounts)

Note 9 — Share-Based Payment Awards (continued)

Fair Value of Common Stock — Prior to the Company's IPO in November 2018, the fair value of the shares of common stock underlying the stock-based awards was determined by the board of directors, with input from management. Because there was no public market for the Company's common stock, the board of directors determined the fair value of the common stock on the grant-date of the stock-based award by considering a number of objective and subjective factors, including enterprise valuations of the Company's common stock performed by an unrelated third-party specialist, valuations of comparable companies, sales of the Company's Series A Preferred to unrelated third parties, operating and financial performance, the lack of liquidity of the Company's capital stock, and general and industry-specific economic outlook. The board of directors intended all options granted to be exercisable at a price per share not less than the estimated per share fair value of common stock underlying those options on the date of grant. Following the IPO, the Company has used the closing stock price on the date of grant for the fair value of the common stock.

A summary of activity for the RSAs is as follows:

Restricted Stock Awards	Number of shares
Unvested as of December 31, 2018	**312,500**
Issued	—
Vested	(312,500)
Forfeited/Cancelled	—
Unvested as of September 30, 2019	—

There were no RSAs issued during the nine months ended September 30, 2019. The fair value of the RSAs vested during the nine months ended September 30, 2019 was $66.

As of September 30, 2019, there was a total of $4,017, $0 and $0 of unrecognized compensation costs related to non-vested stock option awards, RSAs and RSUs, respectively. In the nine-month period ended September 30, 2019, stock option exercises totaled 134,122 shares at a weighted average exercise price of $1.15 per share with an intrinsic value of $786. There were no exercises of stock options during the nine months ended September 30, 2018.

In December 2018, the Company's board of directors adopted an initial offering of the Company's common stock under the Company's 2018 Employee Stock Purchase Plan (the "ESPP"). The Company's ESPP provides for an initial reserve of 150,000 shares and this reserve is automatically increased on January 1 of each year by the lesser of 1% of the outstanding common shares at December 31 of the preceding year or 150,000 shares, subject to reduction at the discretion of the Company's board of directors.

The initial offering of the ESPP began on December 17, 2018 and will end on December 10, 2019, unless terminated earlier pursuant to the ESPP. The initial offering consists of two purchase periods, with the first purchase period ending on June 10, 2019 and the second purchase period ending on December 10, 2019. The terms of the ESPP permit employees of the Company to use payroll deductions to purchase stock at a price per share that is at least the lesser of (1) 85% of the fair market value of a share of common stock on the first date of an offering or (2) 85% of the fair market value of a share of common stock on the date of purchase. After the initial offering ends, subsequent twelve-month offering periods will automatically commence over the term of the ESPP on the day that immediately follows the conclusion of the preceding offering, each consisting of two purchase periods approximately six months in duration ending on or around June 10 and December 10 each year.

The weighted average grant date fair value of share awards under the ESPP in the first nine months of 2019 was $2.57 per share. Employees contributed $199 via payroll deductions during the nine months ended September 30, 2019 and the Company recorded an expense of $93 in the nine-month period ended September 30, 2019 related to the ESPP offering period that commenced on December 17, 2018. In June 2019, 23,083 shares of the Company's common stock were issued under the ESPP at $5.53 per share (85% of the Company's $6.50 per share closing price of its common stock on December 17, 2018). The Company collected $128 in proceeds from the issuance of these shares. As of September 30, 2019, the accompanying condensed balance sheet includes $79 in accrued liabilities for remaining employee contributions.

(in thousands, except share and per share amounts)

Note 10 — Basic and Diluted Net Loss per Common Share

Basic and diluted net loss per share is computed using the weighted average number of shares of common stock outstanding during the period. Common stock equivalents (using the treasury stock and "if converted" method) from stock options, unvested RSAs and RSUs, warrants and convertible preferred stock at September 30, 2019 and 2018 were 3,573,885 and 9,039,088, respectively, and are excluded from the calculation of diluted net loss per share because the effect is anti-dilutive. The decline in common stock equivalents was primarily due to the automatic conversion of the Company's Series A Preferred at the IPO in November 2018. Included in the basic and diluted net loss per share calculation are RSUs awarded to directors that have vested, but the issuance and delivery of the common shares are deferred until the director retires from service as a director.

The following table shows the computation of basic and diluted net loss per common share:

	Three months ended September 30, 2019 (unaudited)	Three months ended September 30, 2018 (unaudited)
Net loss	$ (4,965)	$ (2,910)
Series A Preferred – dividends (accrued and deemed)	—	(729)
Net loss attributable to common stockholders	**$ (4,965)**	**$ (3,639)**
Weighted average common shares outstanding basic and diluted)	17,878,114	5,614,892
Net loss per common share (basic and diluted)	**$ (0.28)**	**$ (0.65)**

	Nine months ended September 30, 2019 (unaudited)	Nine months ended September 30, 2018 (unaudited)
Net loss	$ (15,624)	$ (9,010)
Series A Preferred – dividends (accrued and deemed)	—	(2,157)
Net loss attributable to common stockholders	**$ (15,624)**	**$ (11,167)**
Weighted average common shares outstanding basic and diluted)	17,705,852	4,657,900
Net loss per common share (basic and diluted)	**$ (0.88)**	**$ (2.40)**

Note 11 — Related Party Transactions

Harrow

Harrow was issued 3,500,000 shares of the Company's common stock at the formation of the Company at the $0.001 par value per share price as the paid-in-capital contribution from Harrow. The Company and Harrow signed licensing agreements for two products developed by Harrow whereby Harrow assigned the product rights to the Company. The Company was obligated to pay Harrow a $50 milestone payment upon patent approval for each product and a royalty fee at a rate of six percent on the net sales of those two products. On December 26, 2017, one of the products had its patent approved and a $50 milestone fee was recognized as R&D expense by the Company in 2017 and paid to Harrow in January 2018. In July 2018, the Company determined the patent-approved product was not viable for its portfolio of product opportunities and Harrow paid the Company $50 to cancel the licensing agreement for the one product and retain the product rights at Harrow.

On May 6, 2019, the Company entered into an Asset Purchase Agreement (the "CT-100 Asset Purchase Agreement") with Harrow. Pursuant to the CT-100 Asset Purchase Agreement, the Company sold all of its right, title and interest in CT-100 to Harrow, including any such product that incorporates or utilizes its intellectual property rights (a "Product" or, collectively, "Products"). Pursuant to the CT-100 Asset Purchase Agreement, Harrow will make certain payments to the Company upon the achievement of certain development and commercial milestones. In addition, Harrow is required to pay the Company a royalty in the low-single digit percentage range worldwide on a country-by-country basis on net sales for a period of the longer of 15 years from the date of the first commercial sale of a product in a particular country or the time that a valid intellectual property claim on such Product remains in force in the applicable country. The CT-100 Asset Purchase Agreement also contains customary representations, warranties, covenants and indemnities by the parties.

As part of the early start-up for the Company's pharmaceutical business, key executives at Harrow received 1,500,000 shares of restricted common stock in the Company for consulting services, and certain Harrow managers also received options to purchase 130,000 shares of common stock from the Company (20,000 of these options were forfeited in 2018). The restricted stock and stock options vested 100% after one year on April 30, 2018. The Company recorded stock-based compensation expense of $0 and $970 for the Harrow restricted common stock and $0 and $51 for Harrow stock options, respectively, for the nine-month periods ended September 30, 2019 and 2018 as a component of its general and administrative expenses.

Additionally, the Chief Executive Officer of Harrow is a member of the Company's board of directors.

Chief Executive Officer

The Company's CEO has a partial interest in several companies that the Company is working with for product development and potential marketing if the products are approved by the FDA as detailed below.

The Company acquired the exclusive rights to sell the EM-100 product in the United States pursuant to a sales and marketing agreement (the "Eyemax Agreement") dated August 11, 2017 between the Company and Eyemax LLC ("Eyemax"), an entity affiliated with the Company's CEO. The Company also held a right of first refusal to obtain the exclusive license rights for geographic areas outside of the United States. Pursuant to the Eyemax Agreement, the Company is responsible for all costs of testing and FDA approval of the product, other than the FDA filing fee which will be paid by Eyemax. The Company was also responsible for commercializing the product in the United States at its expense. The Company paid Eyemax $250 upon execution of the Eyemax Agreement, which was recorded as a component of R&D expense. Under the terms of the original agreement, the Company would pay Eyemax $250 upon FDA approval and $500 upon the first commercial sale of the product and pay Eyemax a royalty of 10% on the net sales of all products. The Eyemax Agreement was for an initial term of 10 years from the date of the Eyemax Agreement, subject to successive two-year renewals unless the Company elected to terminate the Eyemax Agreement. There were no amounts due under the terms of the Eyemax Agreement as of September 30, 2019 or December 31, 2018.

Note 11 — Related Party Transactions (continued)

On February 18, 2019, The Company entered into an Amended and Restated Agreement with Eyemax amending the Sales Agreement (the "Amended Agreement"). Pursuant to the Amended Agreement, Eyemax sold the Company all of its right, title and interest in EM-100, including any such product that incorporates or utilizes Eyemax's intellectual property rights. Under the Amended Agreement, the Company assumed certain liabilities of Eyemax under its Exclusive Development & Supply Agreement with Excelvision SAS dated as of July 11, 2013, as amended (the "Excelvision Agreement"), with respect to certain territories and arising during certain time periods. Pursuant to the Amended Agreement, the Company remains obligated to pay Eyemax two milestones payments: (i) one milestone payment for $250 upon regulatory approval in the territory by the FDA of the first single agent product and (ii) one milestone payment for $500 following the first commercial sale of the first single agent product in the territory. Following payment of the milestones, the Company is entitled to retain all of the non-royalty transaction revenues and royalties up to $2,000 (the "Recovery Amount"). After the Company has retained the full Recovery Amount, it is entitled to retain half of all royalty and non-royalty transaction revenue. The Amended Agreement also contains customary representations, warranties, covenants and indemnities by the parties. The EM-100 asset and its associated product rights were sold to Bausch on February 18, 2019 and future potential royalties on Bausch sales of EM-100, pending an FDA approval for EM-100, will be split between Eyemax and the Company. There were no amounts due under the terms of the Amended Agreement as of September 30, 2019 or December 31, 2018.

The Company acquired the exclusive rights to sell the DS-100 product in the United States pursuant to an exclusive development and supply agreement (the "Andersen Agreement") dated July 9, 2017 between the Company and Andersen Pharma, LLC ("Andersen"), an entity affiliated with the Company's CEO. The Company also holds an option to purchase the DS-100 product and all related intellectual property and government approvals at a price of one dollar. Pursuant to the Andersen Agreement, Andersen is responsible for obtaining FDA approval at its expense and manufacturing the product for sale to the Company at its cost. The Company is responsible for commercializing the product in the United States at its expense. The Company paid Andersen $750 upon execution of the Andersen Agreement, which was recorded as a component of R&D expense and will pay Andersen $750 upon successful completion of three registration batches of product, $750 upon submission of a New Drug Application ("NDA") and $750 upon FDA approval. The Company will also pay Andersen 50% of the net profit from the sale of the product. The Andersen Agreement is for an initial term of five years from the first commercial sale of the product, subject to successive two-year renewals unless either party elects to terminate the Andersen Agreement. There were no amounts due under the terms of the Andersen Agreement as of September 30, 2019 or December 31, 2018. The aforementioned option to purchase the product and all related intellectual property and government approvals was considered to represent variable interest in the affiliated entity. The affiliated entity was not considered to be a variable interest entity.

The Company acquired the DS-200 product and all related intellectual property and government approvals pursuant to an asset purchase agreement (the "Selenix Agreement") dated June 23, 2017 between the Company and Selenix LLC ("Selenix"), an entity affiliated with the Company's CEO. Pursuant to the Selenix Agreement, the Company paid Selenix $1,500 at signing, which was recorded as a component of R&D expense and paid $1,500 in April 2019 upon submission of an NDA on March 13, 2019 which was reflected as a component of R&D expense for the nine-month period ended September 30, 2019. The Company will pay $1,000 upon FDA approval of the DS-200 product. The Company has also agreed to pay Selenix 50% of the net profit from the sale of the product for the first 10 years following the date of the Selenix Agreement. There were no amounts due under the terms of the Selenix Agreement as of September 30, 2019 or December 31, 2018.

Note 12 — Leases

Effective January 1, 2019, the Company adopted ASC 842, which requires an entity to recognize a right-of-use ("ROU") asset and a lease liability on the balance sheet for substantially all leases, including operating leases, using the modified retrospective approach. The Company elected to use the package of practicable expedients which allows companies to not reassess the following: (1) the lease classification for any expired or existing leases, (2) the treatment of initial direct costs as they related to existing leases, and (3) whether expired or existing contracts are or contain leases. The Company did not elect the use of the hindsight practical expedient, but did elect to separate lease components from non-lease components related to its office space lease.

Upon adoption of ASC 842, the Company had non-cancellable operating leases for its office and laboratory space subject to recognition as ROU assets. Accordingly, on January 1, 2019 the Company recorded $281 in ROU assets and $272 in operating lease liabilities (the difference of $9 related to existing prepaid rent as of December 31, 2018). The Company has not entered into any other lease arrangements through September 30, 2019.

Note 12 — Leases (continued)

The Company does not have any lease contracts that contain: (1) an option to extend that the Company is reasonably certain to exercise, (2) an option to terminate that the Company is reasonably certain not to exercise, or (3) an option to extend (or not to terminate) in which exercise of the option is controlled by the lessor. Additionally, the Company does not have any leases with residual value guarantees or material restrictive covenants. For leases already commenced, the lease term was determined to be the remaining months in the lease term as of January 1, 2019, the date of adoption. Lease liabilities and their corresponding right-of-use assets have been recorded based on the present value of the future lease payments over the expected lease term. One of the Company's lease agreements contains provisions for escalating rent payments over the term of the lease.

The Company's leases do not contain readily determinable implicit discount rates, and therefore, the Company was required to use its incremental borrowing rate of 7.8% to discount the future lease payments based on information available at lease commencement. The incremental borrowing rate was estimated by determining the rate of interest that the Company would have to pay to borrow on a collateralized basis over a similar term an amount equal to the lease payments in a similar economic environment.

The Company's operating lease cost as presented in the "Research and Development" and "General and Administrative" captions in the condensed statements of operations was $13 and $21, respectively, for the three months ended September 30, 2019 and $41 and $64, respectively, for nine months ended September 30, 2019. Cash paid for amounts included in the measurement of operating lease liabilities was $90 for the nine months ended September 30, 2019. The ROU asset amortization for the three month and nine-month periods ended September 30, 2019 was $31 and $90, respectively, and is reflected within depreciation and amortization on the Company's condensed statements of cash flows. As of September 30, 2019, the weighted-average remaining lease term was 1.5 years, and the weighted-average incremental borrowing rate was 7.8%.

The table below presents the lease-related assets and liabilities recorded on the balance sheet as of September 30, 2019 (in thousands).

Assets	**Classification**	
Operating lease right-of-use assets	Operating lease right-of-use assets, net	$ 191
Total leased assets		$ 191
Liabilities		
Operating lease liabilities, current	Accrued liabilities	$ 130
Operating lease liabilities, noncurrent	Operating lease liabilities, net of current portion	52
Total operating lease liabilities		$ 182

The Company's future lease commitments for its administrative offices in Deer Park, Illinois and its laboratory facility in Lake Zurich, Illinois as of September 30, 2019 are as indicated below:

	Total	**2019**	**2020**	**2021**	**Thereafter**
Undiscounted lease payments	**$ 193**	**34**	**140**	**19**	—
Less: Imputed interest	**(11)**				
Total lease liabilities	**$ 182**				

The Company's future operating lease payments as of December 31, 2018 were as follows:

Total	**2019**	**2020**	**2021**	**Thereafter**
$ 308	$ 137	$ 140	$ 31	$ —

Note 13 — Commitments and Contingencies

Legal

The Company is subject to legal proceedings and claims that may arise in the ordinary course of business. The Company is not aware of any pending or threatened litigation matters at this time that may have a material impact on the operations of the Company.

License and product development agreements

The Company has entered into various agreements in addition to those discussed above which are described below.

The Company acquired the exclusive rights to sell the DS-300 product in the United States pursuant to a sales and marketing agreement dated November 17, 2017 with an unaffiliated third party (the "Sales Agreement"). Pursuant to the Sales Agreement, the licensor is responsible for obtaining FDA approval, at its expense, and the Company is responsible for commercializing the product in the United States at its expense. The Company will pay the third party 50% of the net profit from the sale of the product. The initial term is for the first 10 years following the first commercial sale of the product.

The Company acquired the exclusive license to develop, manufacture and sell ET-103 in the United States pursuant to an Exclusive License and Supply Agreement dated August 3, 2018 between the Company and Liqmeds Worldwide Limited ("LMW"), an unaffiliated entity. Pursuant to the agreement, the Company will be responsible for, and will own, all regulatory filings and approvals at its expense, provided that it shall have the right to recoup 35% of any regulatory filing fees from the initial profits from the sale of ET-103 and, provided further, the licensor shall be responsible for any bioequivalence study and shall be responsible for 60% of the costs of such study. An affiliate of the licensor shall manufacture the ET-103 and sell it to the Company at its cost. The Company paid the licensor $350 upon execution of the agreement and will pay the licensor $1,500 upon the FDA's acceptance of an NDA for review, $1,000 upon FDA approval, $1,500 upon issuance of patent covering ET-103 listed in the FDA's Orange Book and $500 in the event of product sales in excess of $10,000 in any calendar year. In addition, the Company is required to pay the licensor 35% of the net profit from product sales. The license agreement is for an initial term of 10 years from the date of the first commercial sale of the product, subject to two-year renewals unless either party elects to terminate no less than 12 months prior to the then current term. The agreement also contains customary representations, warranties, covenants and indemnities by the parties.

On January 23, 2019 the Company entered into a Licensing and Supply Agreement (the "Agreement") with LMW for ET-104 oral liquid, a development stage product candidate ("ET-104"). Pursuant to the terms of the Agreement, the Company will be responsible for regulatory and marketing activities. LMW will be responsible for development and manufacturing of ET-104. The Company paid the licensor $350 upon execution of the Agreement and an additional $350 after receiving successful bioequivalence study results, and will pay $325 upon the FDA's acceptance of an NDA for review, $325 upon FDA approval of the NDA, $650 upon issuance of patent covering ET-104 listed in the FDA's Orange Book and $500 in the event that product sales in excess of $10,000 are achieved within a calendar year. In addition, the Company is required to pay the licensor 35% of the net profit from product sales. The Agreement is for an initial term of 10 years from the date of the first commercial sale of the product. The Company will retain sole ownership of the NDA after expiration of the Agreement

On February 8, 2019, the Company entered into an Exclusive Licensing and Supply Agreement (the "ET-202 License Agreement") with Sintetica SA ("Sintetica") for marketing rights in the United States to Biorphen® which is used for the treatment of clinically important hypotension resulting primarily from vasodilation in the setting of anesthesia. The product was submitted to the FDA for review and subsequently received FDA approval on October 21, 2019. Pursuant to the terms of the ET-202 License Agreement, the Company will be responsible for marketing activities and Sintetica is responsible for development, manufacturing, and regulatory activities related to obtaining regulatory approval. The Company paid Sintetica a licensing payment of $2,000 upon execution of the ET-202 License Agreement and will pay $750 upon the commencement of commercial product shipments. Sintetica will supply Biorphen to the Company at its direct costs and the Company will retain 5% of net sales as a marketing fee. Sintetica is entitled to receive the first $500 of product profits. All additional profit will be split 50% to the Company and 50% to Sintetica. The ET-202 License Agreement has a ten-year term from the first commercial sale of Biorphen.

Note 13 — Commitments and Contingencies (continued)

On February 8, 2019, the Company also entered into an Exclusive Licensing and Supply Agreement (the "ET-203 License Agreement") with Sintetica for marketing rights in the United States to ET-203, an injectable product candidate for use in the hospital setting. Pursuant to the terms of the ET-203 License Agreement, the Company will be responsible for marketing activities and Sintetica will be responsible for development, manufacturing, and regulatory activities related to obtaining regulatory approval. The Company paid Sintetica a licensing payment of $1,000 upon execution of the ET-203 License Agreement and will pay $750 upon FDA approval and the commercial sale of the product candidate. Upon approval, Sintetica will supply ET-203 to the Company at its direct costs. The Company will retain 5% of net sales as a marketing fee. Sintetica will be entitled to receive the first $500 of product profits. All additional profit will be split 50% to the Company and 50% to Sintetica. The ET-203 License Agreement has a ten-year term from first commercial sale of product.

On June 12, 2019, the Company entered into an Exclusive Licensing and Supply Agreement (the "ET-105 License Agreement") with Aucta Pharmaceuticals, Inc. ("Aucta") for marketing rights in the United States to ET-105, a product candidate for use as an adjunct therapy for partial seizures, primary generalized tonic-clonic seizures, and generalized seizures of Lennox-Gastaut syndrome in patients two years of age and older. Pursuant to the terms of the ET-105 License Agreement, the Company will be responsible for marketing activities and Aucta will be responsible for development, manufacturing, and regulatory activities related to obtaining regulatory approval. The Company paid Aucta a licensing payment of $2,000 in August 2019 upon receiving an acceptance for review letter from the FDA and will pay $2,000 upon FDA approval and commercial sales of the product candidate and another $1,000 upon issuance of an Orange-book listed patent. Aucta will receive a low double-digit royalty on net sales and will be entitled to receive milestone payments of up to $18,000 based on commercial success of the product, including:

- $1,000 when net sales exceed $10 million in a calendar year
- $2,000 when net sales exceed $20 million in a calendar year
- $5,000 when net sales exceed $50 million in a calendar year
- $10,000 when net sales exceed $100 million in a calendar year

Indemnifications

As permitted under Delaware law and in accordance with the Company's Amended and Restated Bylaws, the Company is required to indemnify its officers and directors for certain events or occurrences while the officer or director is or was serving in such capacity. The Company is also party to indemnification agreements with its directors and officers. The Company believes the fair value of the indemnification rights and agreements is minimal. Accordingly, the Company has not recorded any liabilities for these indemnification rights and agreements as of September 30, 2019 or December 31, 2018.

Note 14 — Subsequent Events

On November 13, 2019, the Company entered into a credit agreement (the "Credit Agreement") with SWK Holdings Corporation ("SWK") which provides for up to $10,000 in financing. The Company received proceeds of $5,000 at closing and may borrow an additional $5,000 upon the FDA approval of a second product developed by the Company, excluding EM-100. Alternatively, the Company can borrow $2,000 upon FDA approval of the EM-100 product candidate and then an additional $3,000 upon FDA approval of another one of its product candidates. The term of the Credit Agreement is five years and borrowings bear interest at a rate of LIBOR 3-month plus 10.0%, subject to a stated LIBOR floor rate of 2.0%. In connection with the Credit Agreement, the Company will issue warrants to SWK to purchase common stock of the Company in an amount equal to 6.0% of the principal amounts drawn under the Credit Agreement, utilizing the prior ten-day average closing price of the Company's common stock as a divisor to calculate the number shares issuable under the warrant. A 2.0% unused credit limit fee is assessed during the first twelve months after the date of the Credit Agreement and loan fees include a 5.0% exit fee based on the principal amounts drawn which is payable at the end of the term of the Credit Agreement. The Company is required to maintain a minimum cash balance of $3,000 and will pay 4.0% of the loan principal balance after each quarter-end. Borrowings under the Credit Agreement are secured by the Company's assets. The Credit Agreement contains customary default provisions and covenants which include limits on additional indebtedness. SWK and the Company will negotiate covenant targets for EBITDA and revenue within 180 days of the date of the Credit Agreement.

Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

You should read the following discussion and analysis of our financial condition and results of operations in conjunction with (i) our unaudited interim condensed financial statements and the related notes thereto included elsewhere in this Quarterly Report on Form 10-Q and (ii) our audited financial statements and notes thereto and management's discussion and analysis of financial condition and results of operations Included in our Annual Report on Form 10-K for the year ended December 31, 2018 filed with the Securities and Exchange Commission (the "SEC") on March 25, 2019 (the "2018 10-K").

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 (the "Exchange Act"), including, without limitation, statements regarding our expectations, beliefs, intentions or future strategies that are signified by the words "expect," "anticipate," "intend," "believe," "may," "plan", "seek" or similar language. All forward-looking statements included in this document are based on information available to us on the date hereof, and we assume no obligation to update any such forward-looking statements. Our business and financial performance are subject to substantial risks and uncertainties. Actual results could differ materially from those projected in the forward-looking statements. In evaluating our business, you should carefully consider other matters set forth in our SEC filings including the Risk Factors set forth in Part I, Item 1A of our 2018 10-K.

Overview

We were formed in April 2017 as a specialty pharmaceutical company focused on developing and commercializing innovative pharmaceutical products. We seek to improve the formula, delivery system, or safety of existing molecules in order to address unmet patient needs. We pursue what we perceive to be low-risk candidates where existing published literature, historical clinical trials, or physician usage has established safety and/or efficacy of the molecule, thereby reducing the incremental clinical burden required for us to bring the product to patients.

In October 2019, we received FDA approval for Biorphen® which we will market in the United States. Biorphen (phenylephrine HCl injection) is an alpha-1 adrenergic receptor agonist indicated for the treatment of clinically important hypotension resulting primarily from vasodilation in the setting of anesthesia. We acquired U.S marketing rights to Biorphen in February 2019.

We have established a diversified pipeline of product candidates in various stages of development, including multiple candidates that have been submitted to the FDA for review. Our product candidates are primarily focused on two core areas: hospital-based products and pediatric oral liquid products. We believe these candidates can address situations where patient needs are not being met by current FDA-approved products.

Results of Operations

We were formed on April 27, 2017. Through September 2019 we have generated only limited revenues, however we received FDA approval in October 2019 for our Biorphen® product and expect to commence significant revenue-generating activities in late 2019 and beyond. (Note: Dollar amounts are listed in thousands below).

Research and Development Expenses

For the three-month periods ended September 30, 2019 and 2018, we incurred $3,418 and $1,544 of research and development expenses ("R&D"), respectively. The comparative three-month detail of our R&D expense is listed in the table below with milestone spending for ET-105 and higher indirect expenses for new personnel and operating costs associated with our new laboratory facility and additional product development staff being only partially offset by lower testing expenses for DS-200 and lower clinical study expenses for EM-100 and other product candidates.

For the nine-month periods ended September 30, 2019 and 2018, we incurred $11,322 and $4,525 of R&D, respectively. The comparative nine-month detail of our R&D expense is listed in the table below with licensing fees and milestone payments for DS-200, ET-202, ET-203 and ET-104 being only partially offset by lower clinical study expenses for EM-100. In addition, the indirect expenses for 2019 were $1,248 higher due to new personnel and operating costs associated with our new laboratory facility and additional product development staff.

Set forth in the table below is our research and development spending for our current product candidates for the three and nine-month periods ended September 30, 2019 and 2018. We currently have eleven employees that support our overall product development and we also have facility and operating costs for a laboratory that will support product development. We do not track internal costs by product for our employees and laboratory expenses and they are listed as indirect expenses in the table below.

	Three months ended September 30, 2019	Three months ended September 30, 2018	Nine months ended September 30, 2019	Nine months ended September 30, 2018
DS-200	$ 29	$ 202	$ 1,853	$ 597
DS-300	139	148	907	1,032
EM-100	22	264	122	1,242
ET-202	—	—	2,000	—
ET-203	—	—	1,000	—
ET-104	367	—	762	—
ET-105	2,060	—	2,060	—
Other products	160	648	573	857
Indirect expenses	641	282	2,045	797
TOTAL	**$ 3,418**	**$ 1,544**	**$ 11,322**	**$ 4,525**

General and Administrative Expenses

General and administrative expenses ("G&A") consist primarily of employee compensation expenses, stock-based consulting service fees, legal and professional fees, product marketing expenses, distribution set-up expenses, business insurance, travel expenses and general office expenses.

For the three-month periods ended September 30, 2019 and 2018, we incurred $1,624 and $830, respectively, of G&A. The increase in G&A was mainly due to increased headcount/personnel expenses and public company expenses as well as initial product marketing expenses along with set-up expenses for product distribution incurred in the 2019 period.

For the nine-month periods ended September 30, 2019 and 2018, we incurred $5,123 and $3,510, respectively, of G&A. The increase in G&A was mainly due to increased headcount/personnel expenses and public company expenses as well as initial product marketing expenses along with set-up expenses for product distribution incurred in the 2019 period which were only partially offset by lower stock-based consulting service fees. We anticipate that our G&A expenses will increase to support our sales/marketing efforts, general business growth and the additional costs associated with being a public company.

The three-month and nine-month periods ended September 30, 2018 also included charges of $561 and $1,057, respectively, in other expense to recognize the increase in the fair value of warrants issued that were associated with our initial June 2017 Series A Preferred financing.

We incurred a net loss of $4,965 and $2,910 for the three-month periods ended September 30, 2019 and 2018, respectively. We incurred a net loss of $15,624 and $9,010 for the nine-month periods ended September 30, 2019 and 2018, respectively.

Cash Flows

The following table sets forth a summary of our cash flows for the nine-month periods ended September 30, 2019 and 2018:

	Nine months ended September 30, 2019	Nine months ended September 30, 2018
Net cash used in operating activities	$ (14,178)	$ (6,371)
Cash used in investing activities	(1,062)	(182)
Cash flows from financing activities	282	—
Change in cash and cash equivalents	**$ (14,958)**	**$ (6,553)**

The increase in cash used in operating activities is primarily a result of higher operating losses due to increased product candidate licensing and development activity along with higher personnel and operating expenses for our new laboratory combined with the expansion of our overall business operations including additional administrative personnel to support our initial marketing/sales development activities. Investing activities consist primarily of capital expenditures for setting up our new laboratory facility. The financing activity was the result of ESPP stock purchases and stock option exercises in 2019.

Critical Accounting Policies

Our condensed financial statements are prepared in accordance with accounting principles generally accepted in the United States of America ("GAAP"). The preparation of our condensed financial statements and related disclosures requires us to make estimates and judgments that affect the reported amounts of assets, liabilities, costs and expenses in our condensed financial statements. We base our estimates on historical experience, known trends and events and various other factors that we believe are 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. We evaluate our estimates and assumptions on an ongoing basis. Our actual results may differ from these estimates under different assumptions or conditions.

While our significant accounting policies are described in more detail in Note 2 to our financial statements included herein, we believe that the following accounting policies are those most critical to the judgments and estimates used in the preparation of our financial statements.

Revenue Recognition

Prior to 2019, we did not have any revenues. Our revenues of $500 for the nine months ended September 30, 2019 resulted from the sale of our EM-100 product rights to Bausch Health Ireland Limited ("Bausch") per an Asset Purchase Agreement dated February 18, 2019 (the "Asset Purchase Agreement"). We expect to generate future revenues from direct sales of our FDA-approved Biorphen® product as well as products we have in development which will typically require advance review and approval by the FDA. Additionally, we anticipate we will receive revenues from product licensing agreements where we have contracted for milestone payments and royalties from products we have developed or for which we have acquired the rights to a product developed by a third party.

We account for contracts with our customers in accordance with Accounting Standards Codification ("ASC") 606 — Revenue from Contracts with Customers. ASC 606 applies to all contracts with customers, except for contracts that are within the scope of other standards. Under ASC 606, an entity recognizes revenue when its customer obtains control of promised goods or services, in an amount that reflects the consideration which the entity expects to receive in exchange for those goods or services. To determine revenue recognition for arrangements that an entity determines are within the scope of ASC 606, the entity performs the following five steps: (i) identify the contract(s) with a customer; (ii) identify the performance obligations in the contract; (iii) determine the transaction price; (iv) allocate the transaction price to the performance obligations in the contract; and (v) recognize revenue when (or as) the entity satisfies a performance obligation.

At contract inception, once the contract is determined to be within the scope of ASC 606, we assess the goods or services promised within each contract and determine those that are performance obligations and assesses whether each promised good or service is distinct. We then recognize as revenue the amount of the transaction price that is allocated to the respective performance obligation when (or as) the performance obligation is satisfied. Arrangements that include rights to additional goods or services that are exercisable at a customer's discretion are generally considered options. We assess if these options provide a material right to the customer and, if so, they are considered performance obligations. The exercise of a material right is accounted for as a contract modification for accounting purposes.

We recognize as revenue the amount of the transaction price that is allocated to the respective performance obligation when (or as) each performance obligation is satisfied at a point in time or over time, and if over time this is based on the use of an output or input method. Any amounts received prior to revenue recognition will recorded as deferred revenue. Amounts expected to be recognized as revenue within the twelve months following the balance sheet date will be classified as current portion of deferred revenue in the Company's consolidated balance sheets. Amounts not expected to be recognized as revenue within the twelve months following the balance sheet date are classified as long-term deferred revenue, net of current portion.

Milestone Payments – If a commercial contract arrangement includes development and regulatory milestone payments, we will evaluate whether the milestone conditions have been achieved and if it is probable that a significant revenue reversal would not occur before recognizing the associated revenue. Milestone payments that are not within our control or the licensee's control, such as regulatory approvals, are generally not considered probable of being achieved until those approvals are received.

Royalties – For arrangements that include sales-based royalties, including milestone payments based on a level of sales, which are the result of a customer-vendor relationship and for which the license is deemed to be the predominant item to which the royalties relate, we will recognize revenue at the later of (i) when the related sales occur, or (ii) when the performance obligation to which some or all of the royalty has been allocated has been satisfied or partially satisfied. To date, we have not recognized any royalty revenue resulting from any of our licensing arrangements.

Significant Financing Component – In determining the transaction price, we will adjust consideration for the effects of the time value of money if the expected period between payment by the licensees and the transfer of the promised goods or services to the licensees will be more than one year.

Stock-Based Compensation

We account for stock-based compensation under the provisions of ASC 718 Compensation – Stock Compensation. The guidance under ASC 718 requires companies to estimate the fair value of the stock-based compensation awards on the date of grant and record expense over the related service periods, which are generally the vesting period of the equity awards.

We estimate the fair value of stock-based option awards to our employees and directors using the Black-Scholes-Merton option-pricing model ("BSM"). The BSM requires the input of subjective assumptions, including the expected stock price volatility, the calculation of expected term, forfeitures and the fair value of the underlying common stock on the date of grant, among other inputs. The risk-free interest rate was determined from the implied yields for zero-coupon U.S. government issues with a remaining term approximating the expected life of the options or warrants. Dividends on common stock are assumed to be zero for the BSM valuation of the stock options. The expected term of stock options granted is based on vesting periods and the contractual life of the options. Expected volatilities are based on comparable companies' historical volatility along with limited weighting for our volatility experience from the date of our IPO in November 2018, which management believes represents the most accurate basis for estimating expected future volatility under the current conditions. We account for forfeitures as they occur.

Research and Development Expenses

R&D expenses include both internal R&D activities and external contracted services. Internal R&D activity expenses include salaries, benefits and stock-based compensation, laboratory operating costs and other expenses to support our R&D operations. External contracted services include product development efforts including certain product licensor milestone payments, clinical trial activities, manufacturing and control-related activities and regulatory costs. R&D expenses are charged to operations as incurred. We review and accrue R&D expenses based on services performed and rely upon estimates of those costs applicable to the stage of completion of each project. Significant judgments and estimates are made in determining the accrued balances at the end of any reporting period. Actual results could differ from our estimates.

Upfront payments and milestone payments made for the licensing of technology on products which are not yet approved by the FDA are expensed as R&D in the period in which they are incurred. Milestone payments for FDA-approved products are capitalized and amortized over the expected economic life of the product. Nonrefundable advance payments for goods or services to be received in the future for use in R&D activities are recorded as prepaid expenses and are expensed as the related goods are delivered or the services are performed.

Off Balance Sheet Transactions

We do not have any off-balance sheet transactions.

JOBS Act Transition Period

In April 2012, the Jumpstart Our Business Startups Act of 2012 (the "JOBS Act"), was enacted. Section 107 of the JOBS Act provides that an "emerging growth company" can take advantage of the extended transition period provided in Section 7(a)(2)(B) of the Securities Act for complying with new or revised accounting standards. Thus, an emerging growth company can delay the adoption of certain accounting standards until those standards would otherwise apply to private companies. We have irrevocably elected not to avail ourselves of this extended transition period and, as a result, we will adopt new or revised accounting standards on the relevant dates on which adoption of such standards is required for other public companies.

We are in the process of evaluating the benefits of relying on other exemptions and reduced reporting requirements under the JOBS Act. Subject to certain conditions, as an emerging growth company, we may rely on certain of these exemptions, including without limitation, (i) providing an auditor's attestation report on our system of internal controls over financial reporting pursuant to Section 404(b) of the Sarbanes-Oxley Act and (ii) complying with any requirement that may be adopted by the Public Company Accounting Oversight Board regarding mandatory audit firm rotation or a supplement to the auditor's report providing additional information about the audit and the financial statements, known as the auditor discussion and analysis. We will remain an emerging growth company until the earlier to occur of (1) the last day of the fiscal year (a) December 31, 2023, which is the end of the fiscal year following the fifth anniversary of the completion of our IPO, (b) in which we have total annual gross revenues of at least $1.07 billion or (c) in which we are deemed to be a "large accelerated filer" under the rules of the SEC, which means the market value of our common stock that is held by non-affiliates exceeds $700 million as of the prior June 30th, and (2) the date on which we have issued more than $1.0 billion in non-convertible debt during the prior three-year period.

Item 3. Quantitative and Qualitative Disclosures About Market Risk

The primary objective of our investment activities is to preserve capital. We do not utilize hedging contracts or similar instruments. We are exposed to certain market risks relating primarily to interest rate risk on our cash and cash equivalents and risks relating to the financial viability of the institutions which hold our capital and through which we have invested our funds. We manage such risks by investing in short-term, liquid, highly-rated instruments. As of September 30, 2019, our cash equivalents and investments are invested exclusively in money market funds. We do not believe we have any material exposure to interest rate risk due to the extremely low interest rate environment and the short duration of the invested funds we hold. Declines in interest rates would reduce our investment income but would not have a material effect on our financial condition or results of operations. We do not currently have exposure to foreign currency risk.

Item 4. Controls and Procedures

Disclosure Controls and Procedures

We maintain "disclosure controls and procedures," as such term is defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act, that are designed to ensure that information required to be disclosed by us in reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in SEC rules and forms, and that such information is accumulated and communicated to our management, including our Chief Executive Officer and our Chief Financial Officer, to allow timely decisions regarding required disclosure.

The design of any disclosure controls and procedures also is based in part upon certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions.

With respect to the nine-month period ended September 30, 2019, under the supervision and with the participation of our management, we conducted an evaluation of the effectiveness of the design and operations of our disclosure controls and procedures. Based upon this evaluation, the Company's Chief Executive Officer and Chief Financial Officer have concluded that the Company's disclosure controls and procedures are effective.

Management does not expect that our internal control over financial reporting will prevent or detect all errors and all fraud. A control system, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the control systems are met. Further, the design of a control system must reflect the fact that there are resource constraints, and the benefits of controls must be considered relative to their costs. Because of the inherent limitations in a cost-effective control system, no evaluation of internal control over financial reporting can provide absolute assurance that misstatements due to error or fraud will not occur or that all control issues and instances of fraud, if any, have been or will be detected.

Changes in Internal Control over Financial Reporting

There has not been any change in our internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) that occurred during the period ended September 30, 2019 that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

PART II. OTHER INFORMATION

Item 1. Legal Proceedings

None

Item 1A. Risk Factors

You should carefully consider the factors discussed in Part I, Item 1A. “Risk Factors” in our 2018 10-K, which could materially affect our business, financial condition, cash flows or future results. There have been no material changes in the risk factors included in our 2018 10-K. The risk factors described in our 2018 10-K are not the only risks facing our company. Additional risks and uncertainties not currently known to us or that we currently deem to be immaterial also may materially adversely affect our business, financial condition or future results.

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

None.

Item 3. Defaults Upon Senior Securities

Not applicable.

Item 4. Mine Safety Disclosures

Not applicable.

Item 5. Other Information

Not applicable.

Item 6. Exhibits

The exhibits listed on the Exhibit Index are either filed or furnished with this report or incorporated herein by reference.

EXHIBIT INDEX

Exhibit No.	Description
10.1	Exclusive License and Product Development Agreement between Eton Pharmaceuticals, Inc. and Aucta Pharmaceuticals, Inc., effective as of July 30, 2019 (but executed as of June 12, 2019). (Note: Portions of this exhibit have been omitted in accordance with the SEC's Rules on omission of confidential information)
31.1	Certification of President and Chief Executive Officer (Principal Executive Officer), pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.2	Certification of Chief Financial Officer (Principal Financial Officer), pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32.1*	Certifications of President and Chief Executive Officer (Principal Executive Officer) and Chief Financial Officer (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	The following financial information from the Company's Quarterly Report on Form 10-Q for the period ended September 30, 2019, formatted in Extensible Business Reporting Language (XBRL): (i) the Condensed Balance Sheets, (ii) the Condensed Statements of Operations, (iii) the Condensed Statements of Redeemable Convertible Preferred Stock and Stockholders' Equity (Deficit), (iv) the Condensed Statements of Cash Flows and (v) Notes to Condensed Financial Statements.

* These certifications are being furnished solely to accompany this quarterly report pursuant to 18 U.S.C. Section 1350, and are not being filed for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, and are not to be incorporated by reference into any filing of the registrant, whether made before or after the date hereof, regardless of any general incorporation language in such filing.

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.

ETON PHARMACEUTICALS, INC.

November 14, 2019

By: */s/ Sean E. Brynjelsen*
Sean E. Brynjelsen
President and Chief Executive Officer
(Principal Executive Officer)

By: */s/ W. Wilson Troutman*
W. Wilson Troutman
Chief Financial Officer
(Principal Financial Officer)

Exhibit 10.1

Certain information identified by bracketed asterisks ([* * *]) has been omitted from this exhibit because it is both not material and would be competitively harmful if publicly disclosed.

EXCLUSIVE LICENSE AND PRODUCT DEVELOPMENT AGREEMENT

THIS EXCLUSIVE LICENSE AND PRODUCT DEVELOPMENT AGREEMENT (this "***Agreement***") is entered into as of June 12, 2019 (the "***Execution Date***") by and between **Eton Pharmaceuticals, Inc.,** a Delaware corporation with offices at 21925 W. Field Pkwy, Suite 235, Deer Park, Illinois, USA ("***ETON***"), and **Aucta Pharmaceuticals, Inc.,** a Delaware corporation with offices at 71 Suttons Lane, Piscataway, NJ 08854 ("***Aucta***") .

RECITALS

WHEREAS, ETON is engaged in the business of licensing, developing, marketing, distributing and selling pharmaceutical drug products;

WHEREAS, Aucta is engaged in the business of developing pharmaceutical drug products, including the Products (later defined);

WHEREAS, ETON desires to obtain an exclusive license to the Products, the Dossiers (later defined), and Aucta Background Intellectual Property (later defined) for Marketing the Products in the Territory, and Aucta is willing to grant such an exclusive license to ETON under the terms and conditions set forth herein;

WHEREAS, ETON will pay Aucta certain milestone, royalty and licensing payments based on the sale of Products in the Territory under the terms and conditions set forth herein; and

WHEREAS, the parties hereto agree that, unless otherwise stated, the terms herein shall not be effective unless and until the Effective Date (later defined) occurs.

NOW, THEREFORE, in consideration of the foregoing premises and the representations, warranties, covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, ETON and Aucta, intending to be legally bound, hereby agree as follows:

1. DEFINITIONS.

For the purposes of this Agreement, the following terms whether used in singular or plural form shall have the meanings as defined below:

1.1 "***Affiliates***" means, with respect to a Party or any Third Party, any corporation, firm, partnership or other entity that controls, is controlled by or is under common control with such entity. For the purposes of this definition, "control" means the ownership of at least 50% of the voting share capital of an entity or any other comparable equity or ownership interest.

1.2 "***ANDA Litigation***" shall have the meaning ascribed to the term in Section 7.5.2 of this Agreement.

1.3 "***Applicable Law***" means the applicable laws, rules, regulations, guidelines and requirements of any Governmental Entity related to the development, registration, manufacture, importation, commercialization of the Products in the Territory, the manufacture in and export from the Territory of Manufacture, or any obligation under, or related to, this Agreement, including those obligations applicable to the Dossiers.

1.4 "***Aucta Background Intellectual Property***" means any and all patents and trademarks, patent and trademark applications or other patent and trademark rights, copyrights, inventions, know-how, trade secrets, proprietary knowledge, data, formulations, product specifications and other information owned, licensed to or controlled by Aucta relating to the Products, including but not limited to use, manufacture, and packaging thereof.

1.5 "***Aucta Indemnified Parties***" shall have the meaning ascribed to the term in Section 13.2 of this Agreement.

1.6 "***Breaching Party***" shall have the meaning ascribed to the term in Section 11.2 of this Agreement.

1.7 "***Business Day***" means any day, other than Saturday, Sunday or other day on which commercial banks are authorized or required to close in New York, New York or Rome, Italy.

1.8 "***Calendar Quarter***" means a three (3) consecutive month period ending on March 31, June 30, September 30 or December 31.

1.9 "***Claim***" includes a claim, notice, demand, action, proceeding, litigation, prosecution, arbitration, investigation, judgment, award, damage, loss, cost, expense or liability however arising, whether present, unascertained, immediate, future or contingent, whether based in contract, tort or statute and whether involving a Third Party or a Party or otherwise.

1.10 "***Confidential Information***" shall have the meaning ascribed to the term in Section 9.2 of this Agreement.

1.11 "***Dossiers***" means the New Drug Applications pursuant to 21 U.S.C. §355(b)(1)-(2), and all amendments and supplements thereof, for the Products as set forth in Exhibit A.

1.12 "***Effective Date***" shall have the meaning ascribed to the term in Section 11.1 of this Agreement.

1.13 "***ETON Indemnified Parties***" shall have the meaning ascribed to the term in Section 13.1 of this Agreement.

1.14 "***FDA***" means the United States Food and Drug Administration and all divisions under its direct control or any successor organizations.

1.15 "***Force Majeure Events***" shall have the meaning ascribed to such term in Section 15.2 of this Agreement.

1.16 "***GMP***" means current good manufacturing practices as defined by the FDA.

1.17 "***Governmental Entity***" means any arbitrator, court, judicial, legislative, administrative, or regulatory agency, commission, department, board, or bureau or body or other government authority or instrumentality or any Person or entity exercising executive, legislative, judicial, regulatory, or administrative functions of or pertaining to government, whether foreign or domestic, whether federal, state, provincial, municipal, or other.

1.18 "***Gross Sales***" shall have the meaning ascribed to the term in Section 1.26.

1.19 "***Indemnitee***" shall have the meaning ascribed to the term in Section 13.3.1 of this Agreement.

1.20 "***Indemnitor***" shall have the meaning ascribed to the term in Section 13.3.1 of this Agreement.

1.21 ***"Infringement Notification Date"*** shall have the meaning ascribed to the term in Section 7.4 of this Agreement.

1.22 ***"Intellectual Rights Suit"*** shall have the meaning ascribed to the term in Section 7.4 of this Agreement.

1.23 "***Losses***" means all losses, costs, damages, judgments, settlements, interest, fees or expenses including, without limitation, all reasonable attorneys' fees, experts' or consultants' fees, expenses and costs.

1.24 "***Market***" or "***Marketing***" shall have the meaning ascribed to the term in Section 2.1 of this Agreement.

1.25 "***NDC***" means a national drug code as issued by the FDA.

1.26 "***Net Sales***" means, with respect to each Product sold in the Territory, the aggregate gross sales amount invoiced by ETON or any sublicensee or other party authorized by ETON to wholesale or distribute the Products on an arms-length basis to Third Parties in the Territory ("***Gross Sales***"), less (as applicable) the following ETON expenses as accrued and adjusted for amounts actually taken, consistent with ETON'S standard accounting practices in accordance with GAAP: (a) amounts refunded or credited for returned, damaged, outdated, short-dated or defective goods, and bad debts, and (b) all of the following: (i) taxes, duties and other governmental charges related to the production, use or sale of the Products (including, including without limitation the brand manufacturer's tax imposed pursuant to the Patient Protection and Affordable Care Act (Pub. L. No. 111-148) as amended or replaced, but not including taxes assessed against the income derived from such sale); (ii) trade, quantity and cash discounts, allowances, retroactive price adjustments, credit incentive payments, chargebacks, patient support programs, and rebates (including governmental rebates or other price reductions provided, based on sales by ETON to any Governmental Entity or regulatory authority in respect of state or federal Medicare, Medicaid, government pricing or similar programs;); and (iii) any costs incurred in connection with or arising out of compliance with any Risk Evaluation and Mitigation Strategies approved by the FDA and (iv) any expenses associated with serialization of the Products. Distribution of Licensed Products for clinical trials or as samples will not be deemed a "Net Sale" under this definition.

1.27 "***Party***" or "***Parties***" means ETON or Aucta, as applicable.

1.28 "***Payment Period***" shall have the meaning ascribed to the term in Section 6.3.7 of this Agreement.

1.29 "***Person***" means any individual, partnership (general or limited), association, corporation, limited liability company, joint venture, trust, estate, limited liability partnership, unincorporated organization, government (or any agency or political subdivision thereof) or other legal person or organization.

1.30 "***Pharmacovigilance Agreement"*** shall have the meaning ascribed to the term in Section 3.4 of this Agreement.

1.31 "***Product***" or "***Products***" means a product or products set forth in Exhibit A for Marketing by or for ETON in the Territory (and covered or intended to be covered by a Dossier) and manufactured and supplied by Aucta (or a Third Party as permitted by this Agreement) to ETON in fully packaged and labeled form and ready for commercialization by ETON.

1.32 "***Recall Event***" shall have the meaning ascribed to that term in Section 3.4 of this Agreement.

1.33 "***Sale Representatives FTE***" shall have the meaning ascribed to the term in Section 5.4 of this Agreement.

1.34 "***Specification***" shall mean, for a particular Product, the specifications, methods and processes of the product, as set forth in the applicable Dossier for that Product.

1.35 "***Taxes***" means taxes, duties, fees, premiums, assessments, imposts, levies and other charges of any kind whatsoever imposed by any Governmental Entity, including all interest, penalties, fines, additions to tax or other additional amounts imposed by any Governmental Entity in respect thereof, and including those levied on, or measured by, or referred to as, income, gross receipts, profits, capital, transfer, land transfer, sales, goods and services, harmonized sales, use, value-added, excise, stamp, withholding, business, franchising, property, development, occupancy, employer health, payroll, employment, health, social services, education and social security taxes, all surtaxes, all customs duties and import and export taxes, countervail and anti-dumping, all license, franchise and registration fees and all employment insurance, health insurance and government pension plan premiums or contributions.

1.36 "***Term***" shall have the meaning ascribed to this term in Section 11.1 of this Agreement.

1.37 "***Territory***" shall mean the fifty states of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the U.S. Virgin Islands and all territories and possessions of the United States of America and United States military bases.

1.38 "***Territory of Manufacture***" means the country where the Products is made.

1.39 "***Third Party***" means any Person other than ETON, Aucta or their respective Affiliates.

1.40 "***Transfer Taxes***" shall have the meaning ascribed to this term in Section 10 of this Agreement.

2. GRANT OF RIGHTS

2.1 Aucta, for itself and its Affiliates, hereby grants to ETON in accordance with the terms and conditions of this Agreement, an exclusive (even as to and against Aucta in the Territory) right and license, including the right to sublicense, to the Products (or any components thereof), Dossiers, and all current and future Aucta Background Intellectual Property that is owned or controlled by Aucta or its Affiliates for ETON to develop, manufacture, import, use, promote, distribute, market, advertise, offer for sale or sell (collectively, "***Market***") the Products in and for the Territory. For avoidance of doubt, Aucta and its Affiliates shall retain all rights to the Products outside the Territory, and Aucta shall remain at all times the owner of all Products, Dossier and Aucta Background Intellectual Property worldwide including the Territory.

2.2 ETON, for itself and its Affiliates, hereby grants to Aucta in accordance with the terms and conditions of this Agreement, a right and license, to its trademark, including to its name and logo, that is owned or controlled by ETON or its Affiliates for Aucta (or its authorized Third Party) to make the packs, labels, and leaflets for the Products for sale in the Territory. For avoidance of doubt, ETON and its Affiliates shall remain the owner of its trademarks.

3. PRODUCT DEVELOPMENT AND REGISTRATION

3.1 Development and Registration Responsibilities.

3.1.1 At its sole cost and expense, Aucta shall be responsible and liable for all development and manufacturing activities required for the filing and approval of the Dossiers for the Products in and for the Territory, including without limitation all costs and management of any required pre-approval and post-approval clinical or other studies.

3.1.2 At its sole cost and expense, Aucta shall be responsible and liable for all regulatory activities required for the filing and approval of the Dossiers for the Products in and for the Territory.

3.1.3 Aucta shall provide to ETON all regulatory and compliance-related documents and correspondence with the FDA within five (5) Business Days after submission or receipt of such documents or correspondence with the FDA relating to the Products or Dossiers for the Products, including without limitation any oral (notes thereof) and written correspondence with FDA relating to the Products or Dossiers and any compliance-related oral (notes thereof) or written correspondence with FDA relating to the Product(s)' manufacturing facility(ies)' status or deficiencies.

3.1.4 ETON will provide commercially reasonable support on regulatory activities, when requested by Aucta and necessary for approval.

3.2 Registration Maintenance and Regulatory Responsibilities.

3.2.1 Aucta shall hold the approved Dossiers in its name and be responsible for their maintenance. Aucta will take all actions with the FDA, including paying all fees and conducting all communications with FDA or other Governmental Entities as required by Applicable Law in respect of the Dossiers, including without limitation payment of fees owed under the Prescription Drug User Fee Act, Annual Branded Prescription Drug Fees assessed under Section 9008 of the Patient Protection and Affordable Care Act (ACA), Public Law 111-148 (124 Stat. 119 (2010)), as amended by Section 1404 of the Health Care and Education Reconciliation Act of 2010 (HCERA), Public Law 111-152 (124 Stat. 1029 (2010)), or any successor laws, and preparing and filing all required reports (including adverse drug experience reports) with the appropriate Governmental Entity.

3.3 ETON's NDC Numbers. Aucta and its Affiliates shall not sell any products under ETON's or its Affiliates' names or NDC numbers.

3.4 Medical Inquires, Product Complaints and Recalls. ETON, Aucta and a designated third-party contract manufacturer shall share in the responsibility for responding to any medical inquiries or complaints about any Products or addressing any circumstances that may result in a potential recall, market withdrawal, inventory retrieval, or similar action ("***Recall Event***") as set forth in the Pharmacovigilance Agreement attached hereto as Exhibit B (the "***Pharmacovigilance Agreement***") and to be entered into by the Parties and the contract manufacturer as soon as practicable.

3.5 Competitive Products. During the Term of this Agreement, and for a period of two (2) years thereafter, Aucta shall not research, develop, manufacture, file, sell, market, or distribute more than two products containing the active ingredient Lamotrigine; nor will Aucta directly or indirectly assist any other Person or entity in carrying or any such activities. [* * *]

4. MANUFACTURE AND SUPPLY

4.1 ETON shall enter into a commercial supply agreement with a contract manufacturing organization and Aucta shall enter into a commercial supply agreement with an active pharmaceutical ingredient supplier within ninety (90) days from the Execution Date unless otherwise agreed to by the parties in writing.

4.2 If the terms of Aucta's commercial supply agreement with the active pharmaceutical ingredient supplier in Section 4.1 is assignable to ETON, ETON may assume the aforementioned agreement by providing written notice to Aucta, and Aucta will have seven (7) days from receipt of the notice to assign the aforementioned agreement to ETON.

5. SALES, MARKETING AND DISTRIBUTION

5.1 ETON shall be solely responsible for the Marketing of the Products and shall have sole and exclusive right to make all Marketing decisions for the Product in the Territory, including without limitation to pricing, contracting, sub-licensing, co-promoting, or any contract promotion activities.

5.2 ETON shall use commercially reasonable efforts to Market the Products in the Territory during the Term of this Agreement.

5.3 ETON shall have the sole and exclusive right to determine all terms and conditions of sale of the Products to its or its prospective consumers.

5.4 [* * *]

6. MILESTONES AND OTHER PAYMENTS

6.1 Licensing Fees. ETON shall pay to Aucta licensing fees of up to an amount of five million dollars ($5,000,000) based on the following payment schedule:

(a) An amount of two million dollars ($2,000,000) within five (5) days of the Effective Date of this Agreement.

(b) An amount of two million dollars ($2,000,000) within thirty (30) days after the first commercial sales of Product. [* * *]

(c) An amount of one million dollars ($1,000,000) within thirty (30) days after the issuance and listing of a patent in the Orange Book for the Product and its Dossier, only if that patent is listed prior to the submission of an ANDA referencing the Product and its Dossier as the reference product.

6.2 Commercial Milestones. ETON shall pay to Aucta a total sum amount of up to eighteen million dollars ($18,000,000) based on Net Sales of a Product (on a Product by Product basis) after the achievement of the following one-time milestones for each Product:

(a) An amount of one million dollars ($1,000,000) upon Net Sales first exceeding an amount of ten million dollars ($10,000,000) in a calendar year to be paid within sixty (60) days after the calendar year end.

(b) An amount of two million dollars ($2,000,000) upon Net Sales first exceeding an amount of twenty million dollars ($20,000,000) in a calendar year to be paid within sixty (60) days after the calendar year end.

(c) An amount of five million dollars ($5,000,000) upon Net Sales first exceeding an amount of fifty million dollars ($50,000,000) in a calendar year to be paid within sixty (60) days after the calendar year end.

(d) An amount of ten million dollars ($10,000,000) upon Net Sales first exceeding an amount of one hundred million dollars ($100,000,000) in a calendar year to be paid within sixty (60) days after the calendar year end.

6.3 Royalty.

6.3.1 ETON shall pay to Aucta a royalty payment of [* * *] of Net Sales of the Products.

6.3.2 [* * *]

6.3.3 If the amount of royalty payment under Section 6.3.1 is less than the amount of royalty payment under Section 6.3.2, then ETON shall pay Aucta the difference between royalty payments in Sections 6.3.1 and 6.3.2 within sixty (60) days of the calendar year end, but in no event shall the difference paid be greater than the minimum amount in Section 6.3.2.

6.3.4 For payments under Section 6.3, ETON shall pay Aucta royalty payments under Section 6.3.1 or 6.3.2 only, but not under both sections concurrently.

6.3.5 If ETON is unable or limited in its ability to sell the Products due to supply chain (e.g., manufacturing, API, etc.) or regulatory issues, that extend for a period of thirty (30) days or more, the minimum royalty payment under Section 6.3.2 shall be adjusted to prorate the annual minimum to account for the period of inability to supply; provided, however, that the minimum royalty payment shall be paid if the inability or limitation of sales by ETON is directly and solely due to ETON's gross negligence or willful misconduct.

6.3.6 [* * *]

6.3.7 Within thirty (30) days following the end of each Calendar Quarter following the first commercial sale of the Product in the Territory, including the first and last payment period which may be of a shorter duration (each, a "***Payment Period***"), ETON shall: (a) compute and report to Aucta in a mutually acceptable format the Net Sales for each Product sold in the Territory during the Payment Period, and (b) pay to Aucta the appropriate royalty payment under Section 6.3 within thirty (30) days of the delivery of the report.

6.4 [* * *]

6.5 Interim and Final True-Ups. During the Term, on an annual basis, following the first (1st) calendar year from launch of Product and on a Product-by-Product basis, ETON shall perform an interim "true-up" reconciliation and shall provide Aucta with a written report of such outlining the deductions specified in the definition of Net Sales. The reconciliation shall be based on actual cash paid or credits issued or accrued in accordance with GAAP and company practices consistently applied, including any amounts irrevocably committed but not yet paid at the end of the preceding calendar year. If the foregoing reconciliation report shows either an underpayment or an overpayment between the Parties, the Party owing payment to the other Party shall pay the amount of the difference to the other Party within thirty (30) days after the date of delivery of such report. In addition, within twenty-five (25) months after the termination or expiration of the Term and on a Product-by-Product basis, ETON shall perform a final "true-up" reconciliation and shall provide Aucta with a written report of such outlining the deductions specified in the definition of Net Sales. If the foregoing reconciliation report shows either an underpayment or an overpayment between the Parties, the Party owing payment to the other Party shall pay the amount of the difference to the other Party within thirty (30) days after the date of delivery of such report.

6.6 Taxes. Each Party shall be responsible for and shall pay all Taxes payable on any income earned or received by it during the Term. Where required by law, ETON shall have the right to withhold applicable Taxes from any payments to be made hereunder by ETON to Aucta. Any Tax, duty or other levy paid or required to be withheld by ETON on account of any payments payable to Aucta under this Agreement shall be deducted from the amount of payments due to Aucta. ETON shall secure and promptly send to Aucta proof of such Taxes, duties or other levies withheld and paid by ETON for the benefit of Aucta. Each Party agrees to cooperate with the other Party in claiming exemptions from such deductions or withholdings under any agreement or treaty from time to time in effect.

6.7 Audits. Each Party shall permit an independent certified public accounting firm selected by the auditing Party and reasonably acceptable to the non-auditing Party, that has agreed to be bound by a confidentiality agreement reasonably acceptable to the Parties, to have access, during normal business hours and upon reasonable prior notice (not more often than once in any calendar year), to those books and records maintained by the non-auditing Party necessary for the auditing Party to verify the accuracy of the non-auditing Party's calculations under this Section 6 and/or cost of Product(s) for any period ending not more than two (2) years prior to the date of such request, subject to any limitations in scope necessary to comply with Applicable Law, Third Party confidentiality restrictions, or maintain legal privilege, including but not limited to Third Party pricing information. All such information shall be retained on a confidential basis by the accounting firm, and such accounting firm's use of such information shall be limited to the aforementioned verification. Unless otherwise agreed to by the Parties in writing, the accounting firm shall not be paid on a contingency or similar basis.

6.8 Accounting. ETON and Aucta shall calculate and record calculations under this Section 6 and with respect to Product(s) cost in accordance with U.S. GAAP, and shall maintain all books and records related thereto in accordance with standard cost accounting policies and practices, in accordance with U.S. GAAP for the Term plus an additional three (3) years thereafter.

7. PATENT PROSECUTION AND LITIGATION

7.1 At its sole cost and expense, Aucta shall be solely responsible and liable for any litigation in connection with the Product's development, and the Aucta Background Intellectual Property other than ANDA Litigation covered below in Section 7.5.

7.2 At its sole cost and expense, ETON shall be solely responsible and liable for any non-patent litigation in connection with its sales and marketing activities.

7.3 Patent Prosecution. Each Party shall be responsible, at its own expense, for filing and prosecuting such patent applications, as it deems appropriate, and for paying maintenance fees on any patents issuing therefrom, for the Term, with respect to intellectual property owned by it that relate to or are used in connection with the manufacture, sale or use of the Product. Notwithstanding anything herein to the contrary, and in the event that that the Aucta Background Intellectual Property includes patent(s) and or patent application(s), Aucta, at its sole cost and expense, shall maintain and protect the Aucta Background Intellectual Property and continue to prosecute and maintain its patents included in the Aucta Background Intellectual Property and shall keep ETON advised of material actions relative to the same. Should Aucta contemplate abandoning or otherwise forfeiting any patent/patent applications or patent rights in the Aucta Background Intellectual Property, Aucta shall notify ETON in advance of such contemplation. In such an event, ETON may pursue maintaining such patent(s) or filing and prosecuting such patent applications relating to the Products, at its own cost and expense, and shall obtain from Aucta rights and licenses to those patents and patent applications with the same scope as that in Section 2.1. Aucta shall maintain the confidentiality of any trade secrets included in the Aucta Background Intellectual Property. Each Party shall promptly render all necessary assistance reasonably requested by the other Party, at the requesting Party's expense, in applying for and prosecuting patent applications based on intellectual property owned by such other Party pursuant to this Agreement.

7.4 Notice of Infringement. If either Party shall learn of (a) any claim or assertion that the manufacture, use or marketing of the Product under this Agreement, or any other action taken by either party in performance of its obligations hereunder infringes, misappropriates or otherwise violates the intellectual property rights of any Third Party, or (b) the actual or threatened infringement, misappropriation or other violation by any Third Party of the intellectual property rights of any party that are the subject of this Agreement ("***Intellectual Rights Suits***"), then the Party becoming so informed shall as soon as reasonably practicable, but in all events within three (3) Business Days thereafter (the "***Infringement Notification Date***"), notify the other Party of such claim or assertion, or actual or threatened infringement, misappropriation or other violation.

7.5 Intellectual Rights Suit.

7.5.1 Other than an ANDA Litigation covered below in Section 7.5.2, Aucta shall at its sole cost and expense be solely responsible and liable for and assume the direction and control of any Intellectual Rights Suit and the defense of claims arising therefrom, including, without limitation, the selection of legal counsel; provided, however, that Aucta shall keep ETON apprised of material developments. ETON shall fully cooperate with Aucta in the defense of any such Intellectual Rights Suit (regardless of which Party is a named party to such suit), including joining as a party to the suit, and shall be consulted by Aucta in connection with the settlement of any such Intellectual Rights Suit. Except as otherwise set forth in this Agreement, Aucta shall be responsible for all reasonable attorneys' fees and costs, settlement amounts and/or awarded damages incurred by Aucta or by ETON at the request of Aucta or with Aucta's approval in connection with the defense of Intellectual Rights Suit covered by this Section 7.5.1 provided such is directly related to this Agreement.

7.5.2 If the Intellectual Rights Suit relates to the submission to the FDA of an Abbreviated New Drug Application with a Paragraph IV certification to a patent or patents listed in the Orange Book in connection with the Product's Dossier ("***ANDA Litigation***"), then Aucta in consultation and coordination with ETON shall jointly control the ANDA Litigation(s) and the defense of claims arising therefrom, including, without limitation, the selection of legal counsel; provided, however, that in the event of a disagreement about the conduct of the litigation or selection of counsel that is not resolved through good faith negotiation, Aucta shall have the right to make any final decisions. Aucta and ETON shall share equally the costs of litigating any ANDA Litigation and each party shall fully cooperate with the other in any such ANDA Litigation (regardless of which Party is a named party to such suit), including joining as a party to the suit, if necessary. No settlement shall be made of an ANDA Litigation without the consent of both Parties, such consent not to be unreasonably withheld.

7.5.3 The Parties agree that they will not, whether in the context of the Intellectual Rights Suit, ANDA Litigation or otherwise related thereto, without the prior written consent of the other Party enter into any agreement or arrangement with any Third Party which in any way compromises, relinquishes, waives, or otherwise affects, in whole or in part, the rights of the other Party under this Agreement or in respect of the Product, including, without limitation, any patent rights related to the Product.

7.6 Sections 7.1, 7.2 and 7.5 shall survive termination or expiration of this Agreement.

8. INSURANCE

At all times from the first commercial sale of any Product(s) or after the Effective Date through the date which is five (5) years after the final sale of such Product(s), the Parties will maintain general liability insurance in amounts that are reasonable and customary in the pharmaceutical industry, provided in no event shall the general liability insurance amounts be less than five million dollars ($5,000,000) per occurrence and ten million dollars ($10,000,000) in the aggregate limit of liability per year. The Parties shall provide written proof of such insurance to each other upon request.

9. CONFIDENTIAL INFORMATION; PUBLICITY

9.1 Confidential Information. Each Party agrees that it shall not, without the prior written consent of the other Party, (i) disclose to any Person such other Party's Confidential Information (as defined below), except to those of its and its Affiliates' employees or representatives who need to know such information for the purpose of exploiting its rights or fulfilling its obligations under this Agreement (and then only to the extent that such persons are under an obligation to maintain the confidentiality of the Confidential Information), or (ii) use any of such other Party's Confidential Information for any reason other than as contemplated by this Agreement. If a Party has been advised by legal counsel that disclosure of Confidential Information of the other Party is required to be made under Applicable Law (including to the FDA or pursuant to the requirements of a national securities exchange or another similar regulatory body on which it's or any of its Affiliates stock trades) or pursuant to documents subpoena, civil investigative demand, interrogatories, requests for information, or other similar process, the Party required to disclose the Confidential Information shall (to the extent legally permitted) provide the other Party with prompt written notice of such request or demands or other similar process so that such other Party may seek an appropriate protective order or waive the disclosing Party's compliance with the provisions of this Section. In the absence of a protective order or waiver or other remedy, the Party required to disclose the other Party's Confidential Information may disclose only that portion of the Confidential Information that its legal counsel advises it is legally required to disclose, provided that it exercises its commercially reasonable efforts to preserve the confidentiality of such other Party's Confidential Information, at such other Party's expense, including by cooperating with such other Party to obtain an appropriate protective order or other reliable assurance that confidential treatment will be accorded the Confidential Information. Confidential Information shall remain the sole property of the disclosing Party and all Confidential Information furnished in written form (and all copies thereof) shall be promptly returned to the disclosing Party or destroyed by the receiving Party at the disclosing Party's request; provided, however, that the receiving Party may retain copies of such Confidential Information as necessary for its compliance obligations under Applicable Laws and any archival purposes, subject to the ongoing obligation to maintain the confidentiality of such information. This Section 9.1 shall survive termination or expiration of this Agreement and continue in effect thereafter for a period of five (5) years.

9.2 Definition of Confidential Information. The term "***Confidential Information***" as used in this Agreement means all confidential information relating to the Parties' business and operation, this Agreement's term sheet, this Agreement and its terms, or other technical, business or financial information provided by the Parties as contemplated by this Agreement. The term "Confidential Information" does not include information that (A) becomes generally available to the public other than as a result of disclosure by the receiving Party, (B) becomes available to the receiving Party on a non-confidential basis from a source other than the disclosing Party, *provided* that such source is not known by the receiving Party to be bound by a confidentiality agreement with the disclosing Party, (C) was previously known by the receiving Party as evidenced by the receiving Party's written records, or (D) was independently developed by the receiving Party without use of or reliance on the Confidential Information.

9.3 Public Announcement. Neither ETON, Aucta nor any of their respective Affiliates shall issue any press release or make any public announcement with respect to this Agreement and the transactions contemplated hereby without obtaining the prior written consent of the other Party, except as may be required by Applicable Law or stock exchange rules on which a Party or its Affiliates stock trades.

10. TRANSFER TAXES

All transfer, sales, value added, stamp duty and similar Taxes ("***Transfer Taxes***") payable to the U.S. government in connection with the transaction contemplated hereby will be borne by ETON and all Transfer Taxes payable to an ex-U.S. government in connection with the transaction contemplated hereby will be borne by Aucta.

11. TERM AND TERMINATION

11.1 Term. The term of this Agreement shall automatically become effective upon the occurrence of (i) ETON executing a commercial supply agreement with a contract manufacturing organization within forty-five (45) days of the Execution Date, provided that ETON has exercised best efforts to execute such agreement and the failure to execute is solely caused by the refusal or inability of the proposed manufacturing organization to sign a reasonable agreement; and (ii) acceptance for review of the Dossier or marketing application for [* * *] by the FDA no later than September 2, 2019 (such date, the "***Effective Date***") and shall end upon the termination or expiration of the Agreement as set forth in Section 11 (the "***Term***"). For avoidance of doubt, all rights conferred to ETON under this Agreement for the purpose of allowing ETON to Market the Product in the Territory shall continue until a Party terminates this Agreement. Aucta should continue to receive 15% of Net Sales Royalty for as long as ETON is selling the Product(s) in the Territory, unless otherwise agreed to under this Agreement. The obligations of ETON to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or ETON's waiver of the occurrence of the Effective Date.

11.2 Termination for Breach. The Agreement may be terminated by either Party by written notice to the other at any time if the other Party (the "***Breaching Party***") is in material breach or default of any of its obligations hereunder or any of its representations or warranties as follows: (i) the terminating Party shall send a written notice of the material breach or material default to the Breaching Party and (ii) the termination shall become effective a) thirty (30) days after sending notice of the breach if the breach is non-payment of amounts due hereunder, such as milestone, minimum royalty or royalties amounts and b) sixty (60) days after sending notice of the breach for all other breaches unless the Breaching Party has cured any such material breach or material default prior to the expiration of the thirty (30) or sixty (60) day period as the case may be; or if for non-payment breaches such material default or material breach is not capable of being cured within such sixty (60) day period and the Breaching Party has commenced activities reasonably expected to cure such material breach or material default within such sixty (60) day period and thereafter uses diligent efforts to complete the cure as soon as practicable, but in no event shall such period exceed ninety (90) days.

11.3 Termination for Bankruptcy. Either Party may immediately terminate the Agreement in whole or in part if the other Party: (a) makes an assignment for the benefit of creditors, admits in writing its inability to pay debts as they mature, or ceases operating in the normal course of business; (b) has a receiver or trustee appointed by a court over the Party or any substantial part of the Party's assets; (c) becomes insolvent or is unable to pay its debts as they become due; (d) authorizes, applies for or consents to the appointment of a trustee or liquidator of all or a substantial part of its assets or has proceedings seeking such an appointment commenced against it which are not terminated within ninety (90) days of such commencement; (e) has any substantial part of its property subjected to any levy, seizure, assignment or sale for, or by any creditor or governmental agency without said levy, seizure, assignment or sale being lifted, released, reversed or satisfied within ten (10) days; (f) files a voluntary petition under any chapters of the United States Bankruptcy Code or any other insolvency law or an involuntary proceeding has been commenced by any Party against the Party under any one of the chapters of the United States Bankruptcy Code or any other insolvency law and (A) the proceeding has been pending for at least sixty (60) days; or (B) the Party has consented, either expressly or by operation of law, to the entry of an order for relief; or (C) the Party has been decreed or adjudged a debtor or equivalent.

11.4 Termination Other than for Breach or Insolvency.

(a) ETON has the right to terminate this Agreement at any time at its sole discretion if the Dossier or marketing application for the Product is not approved by December 31, 2020 or at a later time if agreed to in writing by the Parties.

(b) ETON has the right to terminate this Agreement after approval of the Dossier or marketing application for the Product (or added new product), at its sole discretion, upon providing one hundred eighty (180) days' written notice to Aucta.

(c) If Aucta terminates under Section 11.2 or 11.3, or if ETON terminates under Section 11.4(b), ETON shall continue to market the Products as before notice of termination, receive revenue and pay associated costs for selling the Product(s) during any notice period. After termination is effective and Aucta assumes control of the Product, ETON will provide, to the extent practicable, transition services to Aucta to include assistance with Product distribution, processing of rebates, drug safety, etc. at Aucta's cost for such services, for a reasonable period of time as mutually determined by the Parties but not to exceed one hundred eighty (180) days following termination so that Aucta can get its own such services in place. The Parties shall determine the rate for such additional transition services as may be required. The objective of this clause is to provide reasonable assurance that a termination does not disrupt the supply of Product)s) to the market if possible and both parties shall work in good faith to try and avoid any disruption in the marketing or supply of Products during termination and transfer of Products sales back to Aucta.

11.5 Effect of Termination or Expiration: Surviving Obligations.

11.5.1 If this Agreement is terminated by ETON (i) under Section 11.3, in addition to any remedies that ETON is entitled to, then (a) Aucta shall transfer ownership of the Dossiers to an Aucta shareholder-controlled entity to enable ETON to continue to commercialize the Products in the Territory; or (ii) under Section 11.4(a) and (b), in addition to any remedies that ETON is entitled to, then (a) Aucta may keep all the payments under Section 6 paid by ETON up to the point of termination, (b) all rights of Aucta granted to ETON shall revert to Aucta, and (c) ETON shall request consent from the contract manufacturing organization (if necessary) that the commercial supply agreement with the contract manufacturing organization be assigned to Aucta.

11.5.2 If this Agreement is terminated by Aucta under Section 11.2 or 11.3, then (a) ETON shall have the right to, and Aucta shall hereby grant ETON a license to, Market or otherwise dispose of any existing inventory of any Products then in ETON's possession subject to paying all Royalties and other amounts due hereunder for such sales, (b) Aucta may keep all the payments under Section 6 paid by ETON up to the point of termination and for ETON's disposal of remaining inventory and Aucta is free to commercialize or relicense the Product with no further obligations owed to ETON, (c) ETON shall refrain from holding itself out as Aucta's distributor, in particular, eliminate any reference to the Product and Aucta from its business, trade style and promotional material, and (d) ETON shall transfer all rights, licenses within thirty (30) days of termination.

11.5.3 This Section 11.5 shall survive termination or expiration of this Agreement.

12. REPRESENTATIONS AND WARRANTIES

12.1 ETON Representations and Warranties. ETON represents and warrants to Aucta that:

12.1.1 it has the corporate power and authority to enter into this Agreement and to consummate the transactions contemplated hereby;

12.1.2 neither the execution and delivery of this Agreement by it, nor its performance hereunder, conflicts with or will result in any violation or breach of, or constitutes (with or without due notice or lapse of time or both) a default under any of the terms or conditions of any note, indenture, license, agreement or other instrument or obligation to which it is a party or by which it or any of its properties or assets may be bound; or to its best knowledge, violates any Applicable Law;

12.1.3 this Agreement is a legal, valid and binding agreement of ETON, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent transfer and other similar laws affecting creditors' rights generally from time to time in effect and to general principles of equity (including concepts of materiality, reasonableness, good faith and fair dealing), regardless of whether considered in a proceeding in equity or at law; and

12.1.4 it has not been debarred, is not subject to debarment, and will not use, in any capacity in connection with the obligations to be performed under this Agreement, any person who has been debarred pursuant to Section 306 of the United States Food, Drug and Cosmetic Act;

12.1.5 there is no Claim, suit, investigation, action or proceeding pending or threatened against ETON before any court, governmental agency, or arbitration panel which may in any way materially adversely affect the performance of its obligations hereunder or transaction contemplated by this Agreement;

12.1.6 it has not and will not enter into any contract or any other transaction with any Third Party or Affiliate that conflicts with or derogates from its undertakings hereunder;

12.1.7 it has and will at all times during Term have requisite expertise, experience, personnel, equipment and skill to perform its obligations hereunder; and

12.1.8 it has obtained or will maintain to the extent necessary for its performance of activities with respect to the Products under this Agreement all required licenses, authorizations, and approvals required by federal, state, or local governmental authorities, including the FDA and any other applicable regulatory agency to the extent it is selling, supplying, manufacture, export and supply each Product for the Territory and in accordance with this Agreement

12.1.9 it will not make nor will it promise to make any payment in violation of the U. S. Foreign Corrupt Practices Act or similar applicable local, federal or national law.

12.2 Aucta Representation and Warranties. Aucta represents and warrants to ETON that:

12.2.1 it has the corporate power and authority to enter into this Agreement and to consummate the transactions contemplated hereby;

12.2.2 neither the execution and delivery of this Agreement by it, nor its performance hereunder, conflicts with or will result in any violation or breach of, or constitutes (with or without due notice or lapse of time or both) a default under any of the terms or conditions of any note, indenture, license, agreement or other instrument or obligation to which it is a Party or by which it or any of its properties or assets may be bound; or to its best knowledge, violates any Applicable Law;

12.2.3 this Agreement is a legal, valid and binding agreement of Aucta, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent transfer and other similar laws affecting creditors' rights generally from time to time in effect and to general principles of equity (including concepts of materiality, reasonableness, good faith and fair dealing), regardless of whether considered in a proceeding in equity or at law;

12.2.4 it has not been debarred, is not subject to debarment, and will not use, in any capacity in connection with the obligations to be performed under this Agreement, any person who has been debarred pursuant to Section 306 of the United States Food, Drug and Cosmetic Act;

12.2.5 there is no Claim, suit, investigation, action or proceeding pending or threatened against Aucta before any court, governmental agency, or arbitration panel which may in any way materially adversely affect the performance of its obligations hereunder or transaction contemplated by this Agreement;

12.2.6 it will not divest, sell, fail to maintain or otherwise dispose of any Dossier related to Products during the Term of this Agreement;

12.2.7 it has not and will not enter into any contract or any other transaction with any Third Party or Affiliate that conflicts with or derogates from its undertakings hereunder;

12.2.8 it has and will at all times during Term have requisite expertise, experience, personnel, equipment and skill to perform its obligations hereunder;

12.2.9 it has the unencumbered right to Products, Dossiers for the Products and Aucta Background Intellectual Property and the right, power and authority to grant a license to ETON hereunder;

12.2.10 it will not make nor will it promise to make any payment in violation of the U. S. Foreign Corrupt Practices Act or similar applicable local, federal or national law;

12.2.11 it has obtained and will maintain all required licenses, authorizations, and approvals required by federal, state, or local governmental authorities, including the FDA and any other applicable regulatory agency to manufacture, export and supply each Product for the Territory and in accordance with this Agreement;

12.2.12 all Product supplied to ETON by Aucta or its contract manufacturer shall: (i) meet the applicable Specifications at the time of shipment; (ii) meet regulatory requirements of any relevant regulatory authority in the Territory and Territory of Manufacture; (iii) be manufactured, packaged, tested, stored and shipped in accordance with applicable GMP, the Dossier, Applicable Law and this Agreement; (iv) not be adulterated or misbranded under the U. S. Food, Drug and Cosmetic Act or any other relevant laws and regulations as amended from time to time; and (v) be produced, packaged, tested and stored in facilities that have been approved by applicable regulatory authorities to the extent required by Applicable Laws;

12.2.13 Aucta has not been informed of any proceeding or similar action pending or threatened in writing seeking the revocation, suspension or amendment of any Dossiers for reasons related to safety or efficacy;

12.2.14 The FDA has not requested or demanded in writing that Aucta discontinue any Dossiers for reasons related to safety or efficacy;

12.2.15 Aucta has not been informed of any pending or threatened in writing product liability claims relating to any Product; and

12.2.16 Aucta has not been informed of any pending or threatened in writing Claims alleging infringement of a Third Party's intellectual property rights relating to any Dossiers or the use, manufacture, import, distribution, sale or offer for sale of any Product.

12.3 Survival of Representations and Warranties. Other than the representations of Sections 12.1.5, 12.2.13, 12.2.14, 12.2.15 and 12.2.16, which are made as of the date of execution of this Agreement, all representations and warranties of ETON and Aucta contained herein or made pursuant hereto shall be ongoing during the Term and for a period of twelve (12) months thereafter. In the event of any breach of the representations and warranties set forth herein, the applicable Party shall immediately notify the other Party of such breach.

13. INDEMNIFICATION

13.1 Aucta's Indemnification Obligations. Aucta shall indemnify, defend and hold ETON and its owners, officers, directors, Affiliates, and employees (collectively, "***ETON Indemnified Parties***") harmless from and against any and all Losses arising out of or resulting from any Third Party Claims made or suits brought against ETON Indemnified Parties which arise or result from (i) Aucta's material breach of any of its representations, warranties or covenants set forth in this Agreement, or any of its obligations hereunder; (ii) Aucta's manufacture, registration, handling, storage, use, transportation of any Product on or after the Effective Date, including, without limitation, any Claim for personal injury or death, to the extent such Third Party Claims arise from the period of time commencing on or after the Effective Date and to the extent such is not attributable to ETON's breach of this Agreement or any Applicable Laws; or (iii) Aucta's negligence or willful misconduct with regard to the Products to the extent such is not attributable to ETON's breach of this Agreement or any Applicable Laws.

13.2 ETON's Indemnification Obligations. ETON shall indemnify, defend and hold Aucta and its officers, directors, and employees (collectively, "***Aucta Indemnified Parties***") harmless from and against any and all Losses arising out of or resulting from any Third Party Claims made or suits brought against Aucta Indemnified Parties which arise or result from (i) ETON's material breach of any of its representations, warranties or covenants set forth in this Agreement, or any of its obligations hereunder; (ii) ETON's marketing, distribution, or sale of any Product on or after the Effective Date, including, without limitation, any Claim for personal injury or death, to the extent such Third Party Claims arise from the period time commencing on or after the Effective Date and to the extent such is not attributable to Aucta's breach of this Agreement or any Applicable Law; or (iii) ETON's negligence or willful misconduct with regard to the Products to the extent such is not attributable to Aucta's breach of this Agreement or any Applicable Laws.

13.3 Indemnification Procedure.

13.3.1 Notice of the matter which may give rise to such Claim shall be given in writing by the indemnitee (the "***Indemnitee***") to the Party against whom indemnification may be sought (the "***Indemnitor***") as soon as reasonably practicable after such Indemnitee becomes aware of such Claim; provided, however, that the failure to notify the Indemnitor shall not relieve it from any liability that it may have to the Indemnitee otherwise unless the Indemnitor demonstrates that the defense of the underlying Claim has been materially prejudiced by such failure to provide timely notice. Such notice shall request indemnification and describe the potential Losses and Claim giving rise to the request for indemnification, and provide, to the extent known and in reasonable detail, relevant details thereof. If the Indemnitor fails to give Indemnitee notice of its intention to defend any such Claim as provided in this Section 13.3.1. the Indemnitee involved shall have the right to assume the defense thereof with counsel of its choice, at the Indemnitor's expense, and defend, settle or otherwise dispose of such Claim with the consent of the Indemnitor, not to be unreasonably withheld or delayed.

13.3.2 In the event the Indemnitor elects to assume the defense of a Claim, the Indemnitee of the Claim in question and any successor thereto shall permit Indemnitor's counsel and independent auditors, to the extent relevant, reasonable access to its books and records and otherwise fully cooperate with the Indemnitor in connection with such Claim; provided, however, that (i) the Indemnitee shall have the right fully to participate in such defense at its own expense; (ii) the Indemnitor's counsel and independent auditors shall not disclose any Confidential Information of the Indemnitee to the Indemnitor without the Indemnitee's consent; (iii) access shall only be given to the books and records that are relevant to the Claim or Losses at issue. The defense by the Indemnitor of any such actions shall not be deemed a waiver by the Indemnitee of its right to assert a Claim with respect to the responsibility of the Indemnitor with respect to the Claim or Losses in question. The Indemnitor shall not have the right to settle or compromise any Claim against the Indemnitee (that the Indemnitor has defended pursuant to this Section 13.3.2) without the consent of the Indemnitee which shall not be unreasonably withheld or delayed. No Indemnitee shall pay or voluntarily permit the determination of any Losses which is subject to any such Claim while the Indemnitor is negotiating the settlement thereof or contesting the matter, except with the prior written consent of the Indemnitor, which consent shall not be unreasonably withheld or delayed.

13.3.3 This Section 13 shall survive termination or expiration of this Agreement.

14. LIMITATION OF LIABILITY

14.1 NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, WHETHER FORESEEABLE OR NOT, THAT ARE IN ANY WAY RELATED TO THIS AGREEMENT.

15. MISCELLANEOUS

15.1 Governing Law; English Language. This Agreement shall be governed, interpreted and construed in accordance with the substantive laws of the Delaware, in the country of the United State of America, without regard to its conflict of laws principles. To the extent that it may otherwise by applicable, the Parties hereby expressly agree to unconditionally waive and exclude from the operation of this Agreement the United Nations Convention on Contracts for the International Sale of Goods, concluded at Vienna, on 11 April 1980, as amended and as may be amended further from time to time. This Agreement has been negotiated and drafted by the Parties in the English language. Any translation into any other language shall not be an official version thereof. In the event any translation of this Agreement is prepared for convenience or for any other purpose, the provisions of the English version shall prevail.

15.2 Force Majeure. Neither Party shall be liable for non-performance or delay in the fulfillment of its obligations when any such non-performance or delay shall be occasioned by any unforeseeable cause beyond the reasonable control of Aucta or ETON, as the case may be, including without limitation, acts of God, fire, flood, earthquakes, explosions, sabotage, strikes or labor disturbances, civil commotion, riots, military invasions, war, terrorism, failure of utilities, failure of carriers, or any acts, restraints, requisitions, tariffs, regulations, or directives issues by a Governmental Entity ("***Force Majeure Events***"). In the event either Party is prevented from discharging its obligations hereunder on account of a Force Majeure Event, such Party shall notify the other forthwith and shall nevertheless make every endeavor in good faith to discharge its said obligations even if in a partial or compromised manner. If either Party is unable to perform its obligations hereunder as a result of a Force Majeure Event for a period of thirty (30) days or greater, then the other Party shall have the right, following sixty (60) days' notice to the other Party to terminate the Agreement if the Force Majeure Event still exists following such sixty (60) day notice period. In the event Force Majeure Event impacts the manufacture or supply of Products, the annual minimums required under 6.3.2 shall be suspended for the period of the Force Majeure and the annual minimum adjusted to prorate the annual minimum to account for the period of Force Majeure suspension (e.g. one month Force Majeure reduces annual minimum by 1/12).

15.3 Notices. All notices and other communications required or permitted to be given or made pursuant to this Agreement shall be in writing signed by the sender and shall be deemed duly given (a) on the date delivered, if personally delivered, (b) on the date sent by telecopier with automatic confirmation by the transmitting machine showing the proper number of pages were transmitted without error, (c) on the Business Day after being sent by Federal Express or another recognized overnight mail service which utilizes a written form of receipt for next day or next Business Day delivery or (d) three (3) Business Days after mailing, if mailed by U.S. postage-prepaid certified or registered mail, return receipt requested, in each case addressed to the applicable Party at the address set forth below; provided that a Party may change its address for receiving notice by the proper giving of notice hereunder:

If to ETON, to:

ETON Pharmaceuticals, Inc.
21925 W. Field Pkwy, Suite 235
Deer Park, Illinois, USA
Attention: CEO

With a copy (which shall not constitute notice) to:

ETON Pharmaceuticals, Inc.
21925 W. Field Pkwy, Suite 235
Deer Park, Illinois, USA
Attention: Legal

if to Aucta, to:

Aucta Pharmaceuticals, Inc.
71 Suttons Lane
Piscataway, NJ 08854
Attention: CEO

15.4 Relationship of Parties. The status of the Parties under this Agreement shall be that of independent contractors, without the authority to act on behalf of or bind each other. Nothing in this Agreement shall be construed as establishing a partnership or joint venture relationship between the Parties hereto. No Party shall have the right to enter into any agreements on behalf of the other Party, nor shall it represent to any person that it has such right or authority. All persons employed by a Party shall be employees of such Party and not of the other Party and all costs and obligations incurred by reason of any such employment shall be for the account and expense of such Party.

15.5 Entire Agreement; Amendment. This Agreement (and all Exhibits attached hereto) supersedes all prior discussions and agreements among the Parties with respect to the subject matter hereof and contains the sole and entire agreement among the Parties hereto with respect to the subject matter hereof. This Agreement may not be amended or modified except in writing executed by the duly authorized representatives of the Parties.

15.6 No Third-Party Beneficiaries. This Agreement is not intended to confer upon any Person other than the Parties hereto any rights or remedies hereunder.

15.7 Severability. Should any part or provision of this Agreement be held unenforceable or in conflict with Applicable Law, the invalid or unenforceable part or provision shall, provided that it does not affect the essence of this Agreement, be replaced with a revision which accomplishes, to the greatest extent possible, the original commercial purpose of such part or provision in a valid and enforceable manner, and the balance of this Agreement shall remain in full force and effect and binding upon the Parties hereto.

15.8 Assignment. The terms and provisions hereof shall inure to the benefit of, and be binding upon the Parties and their respective successors and permitted assigns. The Parties shall not assign, encumber or otherwise transfer this Agreement or any part of it to any Third Party, without the prior written consent of the other Party. Notwithstanding the foregoing, each Party may assign the rights and obligations under this Agreement in whole, without consent of the other Party, to a Third Party or Affiliate in connection with the transfer or sale of all or substantially all of its business or in the event of a merger, consolidation or change in control provided that the assignee assumes in writing and becomes directly obligated to the other Party to perform all of the obligations of assignor under this Agreement.

15.9 Waiver. No waiver of a breach or default hereunder shall be considered valid unless in writing and signed by the Party giving such waiver, and no such waiver shall be deemed a waiver of any subsequent breach or default of the same or similar nature.

15.10 Survival. Any provision which by its terms is intended to survive the termination or expiration of this Agreement will survive the termination or expiration of this Agreement and remain in full force and effect thereafter.

15.11 Counterparts; PDF. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original but all of which, taken together, shall constitute one and the same instrument. PDF and facsimile signatures shall constitute original signatures. The Parties agree that the electronic signatures appearing on this Agreement are the same as handwritten signatures for the purposes of validity, enforceability and admissibility pursuant to the Electronic Signatures in Global and National Commerce (ESIGN) Act of 2000, and Uniform Electronic Transactions Act (UETA) model law, or similar applicable laws.

[*Signature Page Follows*]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first above written, to be effective upon the Effective Date.

ETON PHARMACEUTICALS, INC.

By: _____
Name: _____
Title: _____

AUCTA PHARMACEUTICALS, INC.

By: _____
Name: _____
Title: _____

Exhibit 31.1

CERTIFICATION PURSUANT TO
RULES 13a-14(a) AND 15d-14(a) UNDER THE SECURITIES EXCHANGE ACT OF 1934,
AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Sean E. Brynjelsen, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Eton Pharmaceuticals, 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 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)) 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) 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

   (c) 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 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: November 14, 2019

By: */s/ Sean E. Brynjelsen*
Sean E. Brynjelsen
Principal Executive Officer

Exhibit 31.2

CERTIFICATION PURSUANT TO
RULES 13a-14(a) AND 15d-14(a) UNDER THE SECURITIES EXCHANGE ACT OF 1934,
AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, W. Wilson Troutman, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Eton Pharmaceuticals, 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 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)) 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) 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

   (c) 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 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: November 14, 2019

By: */s/ W. Wilson Troutman*
W. Wilson Troutman
Principal Financial Officer

Exhibit 32.1

ETON PHARMACEUTICALS, INC.
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

Pursuant to the requirement set forth in Rule 13a-14(b) of the Securities Exchange Act of 1934, as amended, (the "Exchange Act"), and Section 1350 of Chapter 63 of Title 18 of the United States Code (18 U.S.C. §1350), Sean E. Brynjelsen, President and Chief Executive Officer of Eton Pharmaceuticals, Inc. (the "Company"), and W. Wilson Troutman, Chief Financial Officer of the Company, each hereby certifies that, to the best of his knowledge:

1. The Company's Quarterly Report on Form 10-Q for the period ended September 30, 2019, to which this Certification is attached as Exhibit 32.1 (the "Periodic Report"), fully complies with the requirements of Section 13(a) or Section 15(d) of the Exchange Act; and

2. The information contained in the Periodic Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

IN WITNESS WHEREOF, the undersigned have set their hands hereto as of the 14th day of November 14, 2019.

/s/ Sean E. Brynjelsen	*/s/ W. Wilson Troutman*
Sean E. Brynjelsen President and Chief Executive Officer (principal executive officer)	W. Wilson Troutman Chief Financial Officer (principal financial officer)

* This certification accompanies the Form 10-Q to which it relates, is not deemed filed with the Securities and Exchange Commission and is not to be incorporated by reference into any filing of the Company under the Securities Act of 1933, as amended, or the Exchange Act (whether made before or after the date of the Form 10-Q), irrespective of any general incorporation language contained in such filing.