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 March 31, 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

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 April 30, 2019, Eton Pharmaceuticals, Inc. had outstanding 17,627,928 shares of common stock, $0.001 par value.

Eton Pharmaceuticals, Inc.

TABLE OF CONTENTS

Part No	Item No	Description	Page No.
I		FINANCIAL INFORMATION	1
	1	Financial Statements	1
		Condensed Balance Sheets as of March 31, 2019 (unaudited) and December 31, 2018	1
		Unaudited Condensed Statements of Operations for the three months ended March 31, 2019 and 2018	2
		Unaudited Condensed Statements of Redeemable Convertible Preferred Stock and Stockholders' Equity (Deficit) for the three months ended March 31, 2019 and 2018	3
		Unaudited Condensed Statements of Cash Flows for the three months ended March 31, 2019 and 2018	4
		Notes to Condensed Financial Statements	5
	2	Management's Discussion and Analysis of Financial Condition and Results of Operations	20
	3	Quantitative and Qualitative Disclosures About Market Risk	24
	4	Controls and Procedures	24
II		OTHER INFORMATION	25
	1	Legal Proceedings	25
	1A	Risk Factors	25
	2	Unregistered Sales of Equity Securities and Use of Proceeds	25
	3	Defaults Upon Senior Securities	25
	4	Mine Safety Disclosures	25
	5	Other Information	25
	6	Exhibits	25
		Index to Exhibits	26
		Signatures	27

PART I - FINANCIAL INFORMATION

Item 1. Financial Statements

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

	March 31, 2019	December 31, 2018
	(unaudited)	
Assets		
Current assets:		
Cash and cash equivalents	$ 19,584	$ 26,735
Prepaid expenses and other current assets	1,943	767
Total current assets	**21,527**	**27,502**
Property and equipment, net	1,190	773
Operating lease right-of-use assets, net	252	—
Other long-term assets, net	48	52
Total assets	**$ 23,017**	**$ 28,327**
Liabilities and stockholders' equity		
Current liabilities:		
Accounts payable	$ 3,208	$ 1,421
Accrued liabilities	448	603
Total current liabilities	**3,656**	**2,024**
Operating lease liabilities, net of current portion	119	—
Total liabilities	**3,775**	**2,024**
Commitments and contingencies (Note 13)		
Stockholders' equity		
Common stock, $0.001 par value; 50,000,000 shares authorized; 17,627,928 and 17,607,928 shares issued and outstanding at March 31, 2019 and December 31, 2018, respectively	18	18
Additional paid-in capital	72,502	72,153
Accumulated deficit	(53,278)	(45,868)
Total stockholders' equity	**19,242**	**26,303**
Total liabilities and stockholders' equity	**$ 23,017**	**$ 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 March 31, 2019	For the three months ended March 31, 2018
Revenues	**$ 500**	**$ —**
Operating expenses:		
Research and development	6,465	1,274
General and administrative	1,589	1,690
Total operating expenses	**8,054**	**2,964**
Loss from operations	**(7,554)**	**(2,964)**
Other income (expense):		
Interest and other income, net	144	29
Change in fair value of warrant liability	—	(83)
Loss before income tax expense	**(7,410)**	**(3,018)**
Income tax expense	—	—
Net loss	**(7,410)**	**(3,018)**
Accrued dividends on redeemable convertible preferred stock	—	(296)
Deemed dividends for accretion of redeemable convertible preferred stock issuance costs	—	(410)
Net loss attributable to common stockholders	**$ (7,410)**	**$ (3,724)**
Net loss per share attributable to common stockholders, basic and diluted	**$ (0.42)**	**$ (1.05)**
Weighted average number of common shares outstanding, basic and diluted	17,502	3,551

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)
(in thousands, except share amounts)
(unaudited)

	Redeemable Convertible Preferred Stock		Common Stock		Additional Paid-in Capital	Accumulated Deficit	Total Stockholders' Equity
	Shares	Amount	Shares	Amount			
Balances at December 31, 2018	—	$ —	17,607,928	$ 18	$ 72,153	$ (45,868)	$ 26,303
Stock-based compensation	—	—	—	—	345	—	345
Stock option exercises	—	—	20,000	—	4	—	4
Net loss	—	—	—	—	—	(7,410)	(7,410)
Balances at March 31, 2019	—	$ —	17,627,928	$ 18	$ 72,502	$ (53,278)	$ 19,242

	Redeemable Convertible Preferred Stock		Common Stock		Additional Paid-in Capital	Accumulated Deficit	Total Stockholders' Deficit
	Shares	Amount	Shares	Amount			
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	—	1,050	—	1,050
Accrued dividends on redeemable convertible preferred stock	—	296	—	—	—	(296)	(296)
Deemed dividends for accretion of redeemable convertible preferred stock issuance costs	—	410	—	—	—	(410)	(410)
Net loss	—	—	—	—	—	(3,018)	(3,018)
Balances at March 31, 2018	6,685,082	$ 19,710	6,218,980	$ 6	$ 2,809	$ (12,363)	$ (9,548)

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

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

	Three months ended March 31, 2019	Three months ended March 31, 2018
Cash flows from operating activities		
Net loss	$ (7,410)	$ (3,018)
Adjustments to reconcile net loss to net cash used in operating activities:		
Stock-based compensation	345	1,050
Depreciation and amortization	55	10
Change in fair value of warrant liability	—	83
Changes in operating assets and liabilities:		
Prepaid expenses and other assets	(1,187)	(129)
Accounts payable	1,736	262
Accrued liabilities	(306)	(108)
Net cash used in operating activities	**(6,767)**	**(1,850)**
Cash used in investing activities		
Purchases of property and equipment	**(388)**	**(91)**
Cash flows from financing activities		
Proceeds from stock option exercises	4	—
Net cash provided by financing activities	**4**	—
Change in cash and cash equivalents	**(7,151)**	**(1,941)**
Cash and cash equivalents at beginning of period	26,735	13,156
Cash and cash equivalents at end of period	$ 19,584	$ 11,215
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	$ —	$ 296
Deemed dividends for accretion of redeemable convertible preferred stock issuance costs	$ —	$ 410
Purchases of equipment included in accounts payable	$ 51	$ —

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 "C" 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 ("IPO"), selling 4,140,000 shares of 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 March 31, 2019, the Company had an accumulated deficit of $53,278 and for the three months ended March 31, 2019, the Company had net cash used in operating activities of $6,767.

To date, the Company has generated limited revenues and does not anticipate generating significant revenues unless and until it successfully completes development and obtains regulatory approval for one or more of its product candidates. The Company has incurred negative cash flows from operating activities since its inception in 2017. The Company currently believes its existing cash and cash equivalents of $19,584 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 assumptions relating to 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 ("GAAP").

Unaudited Interim Financial Information

The accompanying condensed balance sheet as of March 31, 2019, the condensed statements of operations and cash flows for the periods ended March 31, 2019 and 2018, and the statements of redeemable convertible preferred stock and stockholders' equity (deficit) for the three months ended March 31, 2019 and 2018 are unaudited. The unaudited interim financial statements 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 March 31, 2019 and the results of its operations and its cash flows for the periods ended March 31, 2019 and 2018. The financial data and other information disclosed in these notes related to the periods ended March 31, 2019 and 2018 are also unaudited. The results for the period ended March 31, 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 Company's 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 in development which will require advance review and approval by the FDA. Additionally, 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 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.

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 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 are expensed as R&D in the period in which they are incurred. 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 periods ending March 31, 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, 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 convertible preferred stock to unrelated third parties, operating and financial performance, the lack of liquidity of the capital stock, and general and industry-specific economic outlook. Following the IPO in November 2018, the Company uses the closing 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 12 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 June 2018, the FASB issued ASU 2018-07, Compensation — Stock Compensation (Topic 718): Improvements to Nonemployee Share-Based Payment Accounting, which simplifies the accounting for nonemployee share-based payment transactions. The amendments specify that Topic 718 applies to all share-based payment transactions in which a grantor acquires goods or services to be used or consumed in a grantor's own operations by issuing share-based payment awards. ASU 2018-07 is effective for financial statements issued for fiscal years beginning after December 15, 2018, and interim periods within those fiscal years with early adoption permitted (but no sooner than the adoption of Topic 606). The Company evaluated the impact of ASU 2018-07 and determined it did not have a material effect 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 three months ended March 31, 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 commercial milestone payments of up to $2,500 upon the first commercial sale of the EM-100 product. In addition, Bausch is required to pay the Company a royalty in the low-double digit percentage range on net sales for a period of 10 years from the date of the first commercial sale of the first single agent EM-100 product in the United States. In the event that any product with the same sole active ingredient as EM-100 is launched in the United States by any person other than Bausch (or its affiliates) during the term of Bausch's royalty commitment, then the royalty rate will be reduced to a lower specified percentage. In the event that EM-100's market share in the territory falls below a certain percentage of the target market during the term of Bausch's royalty commitment, then the royalty rate will be further reduced to a lower specified percentage. The Asset Purchase Agreement also contains customary representations, warranties, covenants and indemnities by the parties.

Note 5 – Property and Equipment

Property and equipment consist of the following:

	March 31, 2019	December 31, 2018
Computer hardware and software	$ 130	$ 93
Furniture and fixtures	101	98
Equipment	99	99
Leasehold improvements	71	53
Construction in progress	873	492
	1,274	835
Less: accumulated depreciation	(84)	(62)
Property and equipment, net	$ 1,190	$ 773

Depreciation expense for the periods ended March 31, 2019 and 2018 was $22 and $7, 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 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 shares 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.

(in thousands, except share and per share amounts)

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. In January 2019, the Company issued 20,000 shares of its common stock resulting from a stock option exercise.

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 and 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, 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 common shares issuable upon the exercise of this warrant was not fixed as it could vary by a factor of 1.000 to 1.333 common shares 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 March 31, 2018, the fair value of the warrant was $603 and the $83 increase in fair value during the first three months of 2018 was recorded as a component of other income and expense.

In connection with the Company's IPO, the number of shares 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.

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 weighted average exercise price of the outstanding warrants for the consultant and placement agent as of March 31, 2019 and December 31, 2018 was $3.04 as 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	704,184	$ 3.00
Placement Agent Warrants - IPO	414,000	$ 7.50
Total	**1,718,184**	**$ 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 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.

(in thousands, except share and per share amounts)

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 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 972,837 shares available for future issuance under the 2018 Plan as of March 31, 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 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 common shares outstanding at December 31, 2018. The exercise price for stock options granted is not less than the fair value of common shares 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 uses 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 March 31, 2019 and 2018, the Company's total stock-based compensation expense was $345 and $1,050, respectively. Of these amounts, $269 and $1,034 was recorded in general and administrative expenses, respectively, and $76 and $16 was recorded in research and development expenses, respectively.

A summary of stock option activity is as follows:

	Shares	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term	Aggregate Intrinsic Value
Options outstanding as of December 31, 2018	**1,295,000**	$ 1.78	**8.3**	**$ 5,627**
Issued	617,500	7.33		
Exercised	(20,000)	0.21		
Forfeited/Cancelled	—	—		
Options outstanding as of March 31, 2019	**1,892,500**	$ 3.61	**8.7**	**$ 8,315**
Options exercisable at March 31, 2019	442,813	$ 1.25	7.2	$ 2,988
Options vested and expected to vest at March 31, 2019	1,842,500	$ 3.67	8.7	$ 7,984

(in thousands, except share and per share amounts)

Note 9 — Share-Based Payment Awards (continued)

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 three months ended March 31, 2019 under the BSM were as follows:

	March 31, 2019
Expected dividends	—%
Expected volatility	85%
Risk-free interest rate	2.3-2.5%
Expected term	5.8 years
Weighted average fair value	$ 5.25

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 10 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 has based its estimate of expected volatility on the historical volatility of a group of similar companies that are publicly traded. 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.

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 convertible preferred stock 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 uses 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	(187,500)
Forfeited/Cancelled	—
Unvested as of March 31, 2019	**125,000**

There were no RSAs issued during the three months ended March 31, 2019. The fair value of the RSAs vested during the three months ended March 31, 2019 was $39.

(in thousands, except share and per share amounts)

Note 9 — Share-Based Payment Awards (continued)

As of March 31, 2019, there was a total of $4,258, $20 and $0 of unrecognized compensation costs related to non-vested stock option awards, RSAs and RSUs, respectively. In the three-month period ended March 31, 2019, there was one stock option exercise for 20,000 shares at an exercise price of $0.21 per share. There were no exercises of stock options during the three months ended March 31, 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 began on December 17, 2018 and will end on December 10, 2019, unless terminated earlier pursuant to the ESPP. The initial offering will consist 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 in 2019 was $2.59 per share. Employees contributed $88 during the three months ended March 31, 2019, which is included in accrued liabilities in the accompanying balance sheet, and the Company recorded an expense of $42 in the three-month period ended March 31, 2019 related to the ESPP offering period that commenced on December 17, 2018.

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 March 31, 2019 and 2018 were 3,310,631 and 9,173,935, 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 stock 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 March 31, 2019 (unaudited)	Three months ended March 31, 2018 (unaudited)
Net loss	$ (7,410)	$ (3,018)
Series A Preferred – dividends (accrued and deemed)	—	(706)
Net loss attributable to common stockholders	**$ (7,410)**	**$ (3,724)**
Weighted average common shares outstanding, basic and diluted	17,501,984	3,550,886
Net loss per common share (basic and diluted)	**$ (0.42)**	**$ (1.05)**

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 would 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 "Asset Purchase Agreement") with Harrow. Pursuant to the 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 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 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 $775 for the Harrow restricted common stock and $0 and $65 for Harrow stock options, respectively, for the periods ended March 31, 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 March 31, 2019 or December 31, 2018.

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: (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.

Note 11 — Related Party Transactions (continued)

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 March 31, 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 accrued and reflected as a component of R&D expense for the three-month period ended March 31, 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. The $1,500 milestone fee related to the March 2019 NDA submission is included in accounts payable in the Company's balance sheet at March 31, 2019. There were no amounts due under the terms of the Selenix Agreement as of 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 March 31, 2019.

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 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 & Development" and "General and Administrative" captions in the condensed statement of operations was approximately $14 and $23, respectively, for three months ended March 31, 2019. Cash paid for amounts included in the measurement of operating lease liabilities was $33 for the three months ended March 31, 2019. The ROU asset amortization for the three months ended March 31, 2019 was $29 and is reflected within depreciation and amortization on the Company's condensed statement of cash flows. As of March 31, 2019, the weighted-average remaining lease term was 2.0 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 March 31, 2019 (in thousands).

Assets	**Classification**	
Operating lease right-of-use assets	Operating lease right-of-use assets, net	$ 252
Total leased assets		$ 252
Liabilities		
Operating lease liabilities, current	Accrued liabilities	$ 123
Operating lease liabilities, noncurrent	Operating lease liabilities, net of current portion	119
Total operating lease liabilities		$ 242

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

	Total	**2019**	**2020**	**2021**	**Thereafter**
Undiscounted lease payments	**$ 262**	**103**	**140**	**19**	—
Less: Imputed interest	**(20)**				
Total lease liabilities	**$ 242**				

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, an unaffiliated entity. Pursuant to the agreement, the Company will be responsible for, and shall 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 Liqmeds Worldwide Limited ("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 will pay the licensor $350 upon successful bioequivalence study results, $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 ET-202, an injectable product candidate for use in the hospital setting that has been submitted to the FDA for review. Pursuant to the terms of the ET-202 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 $2,000 upon execution of the ET-202 License Agreement and will pay $750 upon FDA approval of the product candidate. Upon approval, Sintetica will supply ET-202 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-202 License Agreement has a ten-year term from first commercial sale of product.

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 of the product candidate. Upon approval, Sintetica will supply ET-202 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.

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 March 31, 2019 or December 31, 2018.

Note 14 — Subsequent Events

The Company has performed an evaluation of events occurring subsequent to March 31, 2019 through the filing date of this Quarterly Report. Based on its evaluation, nothing other than the events described below need to be disclosed.

The Company previously entered into an Asset Purchase and License Agreement with Harrow on May 9, 2017. Pursuant to that agreement, the Company obtained a non-exclusive license to certain know-how and trade secrets related, but not specific, to its CT-100 product. In addition, the Company licensed back to Harrow a non-exclusive, perpetual, non-transferable and royalty free license to use, manufacture and sell any product incorporating the intellectual property acquired from Harrow, other than products incorporating the synthetic corticotropin. The agreement required the Company to pay Harrow a $50 milestone fee upon a patent issuance for the product and a six percent royalty fee on net sales of the product distributed and marketed by the Company or its licensees at such times as the product is covered by an issued patent, and a three percent royalty at all other times. The agreement also contained customary representations, warranties, covenants and indemnities by the parties.

On May 6, 2019, the Company entered into an Asset Purchase Agreement (the "Asset Purchase Agreement") with Harrow. Pursuant to the 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 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 Asset Purchase Agreement also contains customary representations, warranties, covenants and indemnities by the parties.

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 utilizing the FDA's 505(b)(2) regulatory pathway. Our business model is to develop proprietary innovative products that fulfill an unmet patient need. Since our formation, we have focused our efforts on the development and testing of our initial product candidates, the submission of NDA's for our product candidates and preliminary discussions with the FDA concerning the regulatory pathway for certain additional product candidates. To date, we have had limited revenue-producing operations and, under our current plan of business, do not expect to have significant revenues until we have received marketing approval from the FDA for one or more of our product candidates.

We have established a diversified pipeline of product candidates in various stages of development, four of which have been submitted to the FDA and are under review. We intend to focus on product candidates that are liquid in formulation, including injectables, oral liquids and ophthalmics, and qualify under the FDA's 505(b)(2) regulatory pathway.

Our corporate strategy is to 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. We intend to pursue product candidates that require a single small Phase 3 trial, a bio-equivalence trial, or literature-based filings. Prior to initiating significant development activities on a product candidate, we typically meet with the FDA to establish a defined clinical and regulatory path to approval.

We believe our product candidates can address situations where patient needs are not being met by current FDA-approved pharmaceutical products. This may include products that are being supplied on an unapproved basis, products that are currently being compounded, and products that are approved and widely used internationally but not approved in the United States. For certain product opportunities competitors may gain approval of competing products in advance of our approval. For example, in April 2019, a competitor received approval of an injectable formulation of DS-300's active ingredient for our proposed indication. We believe the market opportunities we are pursuing are large enough for multiple competitors to compete profitably.

Results of Operations

We were formed on April 27, 2017. To date, we have generated only limited revenues and do not anticipate generating significant revenues unless and until we successfully complete development and obtain regulatory approval for one or more of our product candidates.

For the three-month periods ended March 31, 2019 and 2018, we incurred $6,465 and $1,274 of research and development expenses ("R&D"), respectively, and $1,589 and $1,690 of general and administrative expenses ("G&A"), respectively. The comparative three-month detail of our R&D expense is listed in the table below. The reduction in administrative expenses was mainly due to lower stock-based compensation expenses partially offset by increased headcount/personnel expenses and public company expenses in the 2019 period. We incurred a net loss of $7,410 and $3,018 for the three-month periods ended March 31, 2019 and 2018, respectively.

General and Administrative Expenses

General and administrative expenses consist primarily of employee compensation expenses, stock-based consulting service fees, legal and professional fees, travel expenses and general office expenses. We anticipate that our G&A expenses will significantly increase to support our business growth and the additional costs associated with being a public company.

Research and Development Expenses

Set forth below is our research and development spending for our current product candidates. 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 (amounts are in thousands).

Product candidate	**Three months ended March 31, 2019**	**Three months ended March 31, 2018**
DS-200	$ 1,656	$ 190
DS-300	559	65
EM-100	96	605
ET-202	2,000	—
ET-203	1,000	—
ET-104	350	—
ET-102	9	65
Other products	158	93
Indirect expenses	637	256
TOTAL	**$ 6,465**	**$ 1,274**

Cash Flows

The following table sets forth a summary of our cash flows for the periods ended March 31, 2019 and 2018:

	Three months ended March 31, 2019	**Three months ended March 31, 2018**
Net cash used in operating activities	$ (6,767)	$ (1,850)
Cash used in investing activities	(388)	(91)
Cash flows from financing activities	4	—
Change in cash and cash equivalents	**$ (7,151)**	**$ (1,941)**

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 combined with the expansion of our overall business operations including additional personnel. Investing activities consists primarily of capital expenditures for setting up our headquarters office and the initial set-up for our laboratory facility. The financing activity was the result of a stock option exercise in January 2019.

Critical Accounting Policies

Our condensed financial statements are prepared in accordance with accounting principles generally accepted in the United States. 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 three months ended March 31, 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"). Pursuant to the Asset Purchase Agreement, Bausch paid us an upfront payment of $500 and Bausch is required to pay us commercial milestone payments of up to $2,500 upon the first commercial sale of the EM-100 product. In addition, Bausch is required to pay the us a royalty in the low-double digit percentage range on net sales for a period of 10 years from the date of the first commercial sale of the first single agent EM-100 product in the United States. In the event that any product with the same sole active ingredient as EM-100 is launched in the United States by any person other than Bausch (or its affiliates) during the term of Bausch's royalty commitment, then the royalty rate will be reduced to a lower specified percentage. In the event that EM-100's market share in the territory falls below a certain percentage of the target market during the term of Bausch's royalty commitment, then the royalty rate will be further reduced to a lower specified percentage. The Asset Purchase Agreement also contains customary representations, warranties, covenants and indemnities by the parties.

We expect to generate future revenues from direct sales of our products in development which will 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, 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

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 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 are expensed as R&D in the period in which they are incurred. 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 March 31, 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 quarter ended March 31, 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 March 31, 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	Agreement between Eton Pharmaceuticals, Inc. and Bausch Health Ireland Limited ("BIRL"), dated as of February 18, 2019
10.2	Agreement between Eton Pharmaceuticals, Inc. and Sintetica SA, dated as of February 8, 2019
10.3	Agreement between Eton Pharmaceuticals, Inc. and Liqmeds Worldwide Limited, dated as of January 23, 2019
10.4	Agreement between Eton Pharmaceuticals, Inc. and Sintetica SA, dated as of February 8, 2019
10.5	Agreement between Eton Pharmaceuticals, Inc. and Harrow Health Inc., dated as of May 6, 2019
10.6	Agreement between Eton Pharmaceuticals, Inc. and Eyemax LLC, dated as of February 18, 2019
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 March 31, 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.

May 7, 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.

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this "Purchase Agreement") is entered into and effective as of February 18, 2019 (the "Effective Date"), between Eton Pharmaceuticals, Inc., a Delaware corporation ("Eton"), with a place of business at 21925 Field Pkwy, Suite 235, Deer Park, Illinois 60010 and Bausch Health Ireland Limited, a limited liability company ("BIRL") registered in Ireland (registered company number 513130) whose registered office is at 3013 Lake Drive, Citywest Business Campus, Dublin 24, Ireland (Eton and BIRL are collectively referred to herein as the "parties"). The parties hereby agree as follows:

RECITALS

WHEREAS, Eyemax LLC, a Massachusetts limited liability company ("Eyemax") granted Eton an exclusive right and license to develop, manufacture and commercialize products in the Territory (as such terms are defined herein) pursuant to that certain Exclusive Sales and Marketing Agreement, dated August 11, 2017 (the "2017 Agreement") by and between Eton and Eyemax;

WHEREAS, the 2017 Agreement was amended, restated and superseded by that certain Amended and Restated Agreement (the "2019 Amended and Restated Agreement"), dated February 18, 2019, by and between Eton and Eyemax, and pursuant to which Eyemax sold, conveyed, transferred, assigned and delivered to Eton, all of Eyemax's right, title and interest in and to certain assets, as further described in the 2019 Amended and Restated Agreement; and

WHEREAS, BIRL and Eton desire to enter into a transaction, pursuant to which BIRL will purchase and acquire from Eton, and Eton will sell, convey, transfer, assign and deliver to BIRL, all of Eton's right, title and interest in and to all of the Purchased Assets as defined in Section 2.1 herein (the "Acquisition").

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Eton and BIRL hereby agree as follows:

1. Definitions. For the purposes of this Purchase Agreement, the following terms shall have the respective meanings set forth below, and grammatical variations of such terms shall have corresponding meanings:

1.1 "2017 Agreement" shall have the meaning provided in the recitals above.

1.2 "2019 Amended and Restated Agreement" shall have the meaning provided in the recitals above.

1.3 “Accounting Standards” means U.S. GAAP (United States Generally Accepted Accounting Principles).

1.4 “Acquisition” shall have the meaning provided in the recitals above.

1.5 “Acquisition Transaction” shall have the meaning provided in Section 9.5.

1.6 “Actual Combination Product Net Sales” shall have the meaning provided in Section 5.4.

1.7 “Affiliate” shall mean, with respect to any Person, any other Person which directly or indirectly controls, is controlled by, or is under common control with, such Person. A Person shall be regarded as in control of another Person if it owns, or directly or indirectly controls, more than fifty percent (50%) of the voting stock or other ownership interest of the other Person, or if it directly or indirectly possesses the power to direct or cause the direction of the management and policies of the other Person by any means whatsoever.

1.8 “Allocation Schedule” shall have the meaning provided in Section 5.8.

1.9 “Ancillary Agreements” shall mean the Bill of Sale and the General Assignment and Assumption Agreement.

1.10 “Assigned Technology” shall have the meaning provided in Section 2.1.1.

1.11 “Assumed Liabilities” shall have the meaning provided in Section 2.2.

1.12 “Bankruptcy Exception” shall have the meaning provided in Section 4.1.2.

1.13 “BIRL” shall have the meaning provided in the introductory paragraph above.

1.14 “BIRL Fundamental Representations” shall have the meaning provided in Section 6.1.2.

1.15 “BIRL Indemnitees” shall have the meaning provided in Section 6.2.

1.16 “Bill of Sale” shall have the meaning provided in Section 2.5(a).

1.17 “Calendar Quarter” means a calendar quarter ending on the last day of March, June, September, or December.

1.18 “Cap” shall have the meaning provided in Section 6.6.2.

1.19 “Change of Control Transaction” shall have the meaning provided in Section 1.84.

1.20 “Closing” shall have the meaning provided in Section 2.3.

1.21 “Closing Date” shall have the meaning provided in Section 2.3.

1.22 "Combination Product" shall mean a product comprising: a Single Agent Product and one or more products containing one or more Other Actives as the sole active pharmaceutical ingredient(s) (each, an "Other Product"), as separate products in a co-packaged form sold for a single price.

1.23 "Competing Business" shall have the meaning provided in Section 9.5.

1.24 "Confidential Information" shall have the meaning provided in Section 8.1.1.

1.25 "Disclosure Schedule" shall have the meaning provided in Section 4.1.

1.26 "Distribution Target" shall have the meaning provided in Section 3.3.

1.27 "Distribution Target Shortfall Payment" shall have the meaning provided in Schedule 3.3.

1.28 "Effective Date" shall have the meaning set forth in the introductory paragraph above.

1.29 "Eton" shall have the meaning provided in the introductory paragraph above.

1.30 "Eton Fundamental Representations" shall have the meaning set forth in Section 6.1.1.

1.31 "Eton Indemnitees" shall have the meaning set forth in Section 6.3.

1.32 "Eton IP Rights" shall mean, collectively, the Eton Know-How Rights, Eton Patent Rights and Eton Registrations.

1.33 "Eton Know-How Rights" shall mean all trade secrets, clinical data and other know-how rights in which Eton or its Affiliates heretofore has an ownership or (sub)licensable interest, in and to the Technology.

1.34 "Eton Patent Rights" shall mean (a) all patents that claim or cover the Technology in which Eton or its Affiliates heretofore or hereafter has an ownership or (sub)licensable interest, (b) all divisions, continuations, continuations-in-part, that claim priority to, or common priority with, the patent applications described in clause (a) above or the patent applications that resulted in the patents described in clause (a) above, and (c) all patents that have issued or in the future issue from any of the foregoing patent applications, including utility models, design patents and certificates of invention, together with any reissues, reexaminations, renewals, extensions or additions thereto.

1.35 "Eton Registrations" shall mean all Regulatory Filings and Regulatory Approvals (and applications therefor) regarding Products in which Eton or its Affiliates heretofore or hereafter has an ownership or (sub)licensable interest, including ANDA No. 208158.

1.36 **[* * *]**

1.37 "**[* * *]** Consent" shall have the meaning provided in Section 2.5(c).

1.38 **"[* * *]** Agreement" shall mean **[* * *].**

1.39 "Excluded Liabilities" shall have the meaning provided in Section 2.2.

1.40 "Eyemax" shall have the meaning provided in the recitals above.

1.41 "FDA" shall mean the Food and Drug Administration of the United States or any successor thereto.

1.42 "First Commercial Sale" shall mean, with respect to any Product, the first sale of such Product, for commercial purposes, to a Third Party after receipt of all necessary Regulatory Approvals for such Product.

1.43 "Force Majeure Event" means an event, act, occurrence, condition, or state of facts, in each case outside the reasonable control of a party, including acts of God; acts of any government; any rules, regulations, or orders issued by any Governmental Authority or by any officer, department, agency or instrumentality thereof; fire; storm; flood; earthquake; accident; war; rebellion; insurrection; riot; terrorism, and invasion, that interfere with the normal business operations of such party.

1.44 "General Assignment and Assumption Agreement" shall have the meaning provided in Section 2.5(b).

1.45 "Governmental Authorities" shall mean all agencies, authorities, bodies, boards, commissions, courts, instrumentalities, legislatures and offices of any nature whatsoever of any government or political subdivision, whether foreign, federal, state, county, district, municipality, city or otherwise.

1.46 "Indemnifying Party" shall have the meaning provided in Section 6.4.

1.47 "Indemnitee" shall have the meaning provided in Section 6.4.

1.48 "Laws" shall mean any federal, state, foreign or local statute, law, ordinance, regulation, rule, code, Order, other requirement or rule of law.

1.49 "Liability" shall mean any direct or indirect indebtedness, liability, assessment, expense, claim, loss, damage, deficiency, obligation or responsibility, known or unknown, disputed or undisputed, joint or several, vested or unvested, executory or not, fixed or unfixed, choate or inchoate, liquidated or unliquidated, secured or unsecured, determinable or undeterminable, accrued or unaccrued, absolute or not, actual or potential, contingent or otherwise (including any liability under any guarantees, letters of credit, performance credits or with respect to insurance loss accruals).

1.50 "**[* * *]**" shall have the meaning provided in Section 5.6.1.

1.51 "License" shall mean a license or sublicense under the Eton IP Rights or any portion thereof to sell a Single Agent Product in the Territory.

1.52 “Licensee” shall mean any Third Party to which BIRL or its Affiliate or any Licensee grants a License.

1.53 “Lien” shall mean any mortgage, pledge, lien, conditional sale agreement, security title, encumbrance, easement, right of way, charge or other title retention agreement of any kind or nature.

1.54 “Losses” shall have the meaning provided in Section 6.2.

1.55 “Market Share Threshold” shall have the meaning provided in Section 5.3.3.

1.56 “Net Sales” means**[* * *].**

1.57 “Order” shall mean any order, judgment, preliminary or permanent injunction, temporary restraining order, award, citation, decree, consent decree or writ of any Governmental Authority.

1.58 “Other Active” shall mean any active pharmaceutical ingredient other than **[* * *]**.

1.59 “Other Product” shall have the meaning provided in Section 1.22.

1.60 “parties” shall have the meaning provided in the introductory paragraph above.

1.61 “Permitted Liens” shall mean each of the following as are immaterial, individually or in the aggregate, in amount and would not impair the ownership or use of the Purchased Assets: (a) liens for current Taxes not yet due and payable or that are being contested in good faith by appropriate proceedings; (b) deposits or pledges made in connection with, or to secure payment of, workers’ compensation, unemployment insurance or similar programs mandated by applicable Law or governmental regulations; and (c) statutory or common Law liens in favor of carriers, warehousemen, mechanics and materialmen, to secure claims for labor, materials or supplies, and other like liens.

1.62 “Person” shall mean any individual, partnership, firm, corporation, association, trust, unincorporated organization or other entity, as well as any syndicate or group of any of the foregoing.

1.63 “Pre-Closing Tax Period” shall have the meaning provided in Section 7.2.

1.64 “Product” shall mean **[* * *]**.

1.65 “Pro Forma Net Sales” shall have the meaning provided in Schedule 3.3.

1.66 “Program” shall mean all activities related to Products, including all research, development, regulatory, manufacturing and other related activities, conducted by or on behalf of Eton or its Affiliates.

1.67 “Purchase Agreement” shall have the meaning provided in the introductory paragraph above.

1.68 "Purchase Price" shall have the meaning provided in Section 2.3.

1.69 "Purchased Assets" shall have the meaning provided in Section 2.1.

1.70 "Purchaser FDA Letter" shall mean the letter from BIRL to the FDA, in the form attached as Exhibit E, to be filed with the FDA on the Closing Date in accordance with Section 3.1.

1.71 "Records" shall mean (a) all documentation comprising the Eton Registrations, including all submissions, reports and correspondence relating thereto, (b) all tangible documentation comprising the other Eton IP Rights, and (c) any other books and records relating exclusively to Products or the Program, or any other Purchased Assets, to the extent owned by or maintained by or on behalf of Eton or any of its Affiliates.

1.72 "Regulatory Approval" means, with respect to a Product in the Territory, any approval, registration, license, or authorization from the FDA or any other Regulatory Authority in the Territory that is necessary to market and sell such Product in the Territory.

1.73 "Regulatory Authority" shall mean any regulatory agency, ministry, department or other governmental body having authority in any country or region to control the development, manufacture, marketing, and sale of pharmaceutical products, including the FDA.

1.74 "Regulatory Filing" shall mean any New Drug Application or Abbreviated New Drug Application, or any other application, notification or submission made to or with the FDA for Regulatory Approval of a product, together with all amendments and supplements to any of the foregoing.

1.75 "Royalty Term" shall have the meaning provided in Section 5.3.1.

1.76 "Seller FDA Letter" shall mean the letter from Eyemax to the FDA, in the form attached as Exhibit D, to be filed with the FDA on the Closing Date in accordance with Section 3.1.

1.77 "Selling Party" shall have the meaning provided in Section 1.56.

1.78 "Single Agent Product" shall mean a Product containing **[* * *]** as its sole active pharmaceutical ingredient, the Regulatory Approval of which does or did not require any additional clinical studies to be conducted (being in addition to those already conducted by or on behalf of Eton as of the Effective Date), and expressly excludes any Product containing both **[* * *]** and an Other Active.

1.79 "Tax Returns" means any and all reports, returns (including information returns), declarations, or statements relating to Taxes, including any schedule or attachment thereto and any related or supporting workpapers or information with respect to any of the foregoing, including any amendment thereof filed with or submitted to any Governmental Entity in connection with the determination, assessment, collection or payment of Taxes or in connection with the administration, implementation or enforcement of or compliance with any legal requirement relating to any Tax.

1.80 "Taxes" means any and all taxes, charges, fees, duties, contributions, levies or other similar assessments or liabilities, including, without limitation, income, gross receipts, corporation, ad valorem, premium, value-added, net worth, capital stock, capital gains, documentary, recapture, alternative or add-on minimum, disability, registration, recording, excise, real property, personal property, sales, use, license, lease, service, service use, transfer, withholding, employment, unemployment, insurance, social security, national insurance, business license, business organization, environmental, workers compensation, payroll, profits, severance, stamp, occupation, escheat, windfall profits, customs duties, franchise, estimated and other taxes of any kind whatsoever imposed by the United States of America or any state, local or other government, or any agency or political subdivision thereof, and any interest, fines, penalties, assessments or additions to tax imposed with respect to such items or any contest or dispute thereof.

1.81 "Technology" shall mean, collectively, all forms and formulations comprising **[* * *]**, all methods of manufacture or use thereof, and all data, information, compositions, formulae, procedures, protocols, techniques and results of experimentation and testing and other technology relating to or reasonably necessary or useful to make, use, sell, offer for sale, import, develop, seek regulatory approval, market, commercialize or otherwise exploit the foregoing.

1.82 "Territory" shall mean collectively the United States of America and all of its territories and possessions.

1.83 "Third Party" shall mean any Person other than BIRL, Eton or their respective Affiliates.

1.84 "Third Party Acquiror" means a third party which acquires Eton or BIRL, as the case may be, whether by merger, sale of stock, sale of assets or otherwise (a "Change of Control Transaction"), which Third Party (a) is not the surviving entity following a merger of Eton or BIRL, as the case may be, and (b) was not an Affiliate of Eton or BIRL, as applicable, or an officer, director, employee or consultant of Eton or any of its subsidiaries or BIRL or any of its subsidiaries, as applicable, nor a stockholder of Eton or any of its subsidiaries or, as applicable, of BIRL or any of its subsidiaries, prior to the closing of such Change of Control Transaction.

1.85 "Transfer Taxes" shall have the meaning provided in Section 7.3.

2. Purchase and Sale of Purchased Assets.

2.1 Purchased Assets. Subject to the terms and conditions of this Purchase Agreement, as of the Closing Date, Eton hereby sells, conveys, transfers, assigns and delivers to BIRL, and BIRL hereby purchases and acquires from Eton all of Eton's right, title and interest in and to all of the following, free and clear of any and all Liens (collectively, the "Purchased Assets"):

2.1.1 the Eton IP Rights and the Technology, in each case, in the Territory, and all rights to sue for or assert claims against and remedies against past, present or future infringements of any or all of the Assigned Technology and rights of priority and protection of interests therein and to retain any and all amounts therefrom (collectively, the "Assigned Technology");

2.1.2 the **[* * *]** Agreement and all rights of Eton thereto as of the Closing Date;

2.1.3 the Records; and

2.1.4 all goodwill related to the Assigned Technology.

Subject to the representations and warranties in this Purchase Agreement, the Purchased Assets shall be sold to BIRL on an "as-is" basis as of the Closing Date. BIRL agrees that the Purchased Assets shall be delivered without any Eton warranties of whatever kind except for the representations and warranties provided in Section 4.1 of this Purchase Agreement. All assets of Eton and its Affiliates not specifically described in Section 2.1 shall not be part of the sale and purchase contemplated hereunder and shall remain the property of Eton after the Closing Date.

2.2 Assumed Liabilities. Except for the Assumed Liabilities (as defined below), BIRL shall not, by virtue of its purchase of the Purchased Assets, assume or become responsible for any Liabilities of Eton or any other Person in connection with this Purchase Agreement. Upon and subject to the terms, conditions, representations and warranties of Eton contained herein, on the Closing Date, BIRL shall assume and agree to pay, perform, and discharge in a timely manner when due any and all Liabilities of Eton arising under the **[* * *]** Agreement, and, subject to the effectiveness of the transfers of the Eton Registrations in accordance with Section 3.1, the Eton Registrations, in each case, solely relating to the Territory and arising during, and relating to, the period on or after the Closing Date, including any Liabilities imposed by applicable Law with respect to obligations under the **[* * *]** Agreement or the Eton Registrations, in each case, solely relating to the Territory and arising during, and relating to, the period on or after the Closing Date (collectively, with the Liabilities of BIRL and its Affiliates under Section 7, the "Assumed Liabilities"); *provided*, *however,* that the Assumed Liabilities shall exclude any and all Liabilities resulting from any breach of or non-compliance with the **[* * *]** Agreement or Eton Registrations by Eton or any of its Affiliates on or prior to the later of the Closing Date or the date of transfer of such Purchased Assets. All Liabilities of Eton or any of its Affiliates not specifically described in this Section 2.2 (collectively, with the Liabilities of Eton and its Affiliates under Section 7, the "Excluded Liabilities") shall not be assumed by BIRL and shall remain the sole obligation and responsibility of Eton and its Affiliates after the Closing.

2.3 Purchase Price; Payment of Purchase Price; Closing. The aggregate consideration for the sale of the Purchased Assets shall be (i) the assumption by BIRL of the Assumed Liabilities and (iii) all payments that become due pursuant to Section 5 (collectively, the "Purchase Price"). The closing of the sale and purchase of the Purchased Assets and the assumption of the Assumed Liabilities (the "Closing") shall take place on the same day as, subject to and immediately following, the closing of the transactions contemplated by the 2019 Amended and Restated Agreement, at the offices of Cooley LLP, located at 4401 Eastgate Mall, San Diego, California 92121, unless another place is agreed to in writing by the parties hereto or the parties hereto elect to effect the Closing by exchange of electronic documents in PDF format in lieu of an in-person Closing. The date on which the Closing occurs is hereinafter referred to as the "Closing Date."

2.4 Transfer of Certain Purchased Assets. Eton shall transfer and deliver all Records (or true and complete copies thereof) to BIRL on the Closing Date to the extent possible or, to the extent not possible to transfer and deliver such items on the Closing Date, within **[* * *]** days following the Closing Date, at BIRL's expense for shipping and handling costs, to the locations, and in accordance with the instructions, specified by BIRL. In the event that any of the abovementioned items reside in digital or electronic format on any equipment that is not included in the Purchased Assets, then the hard drive or other medium shall be imaged and provided to BIRL in a reasonably accessible format. Eton will, to the extent any Records exist in a form suitable for electronic transfer, make such transfer electronically.

2.5 Eton Closing Deliverables. At the Closing, Eton shall deliver or cause to be delivered to BIRL (unless previously delivered) the following:

(a) a duly executed counterpart of a bill of sale, substantially in the form of Exhibit A hereto, respecting the sale and transfer of the applicable Purchased Assets from Eton to BIRL to be effective on the Closing (the "Bill of Sale");

(b) a duly executed counterpart of an assignment and assumption agreement, substantially in the form of Exhibit B hereto, respecting the assignment and assumption of the **[* * *]** Agreement and the Assumed Liabilities to be effective on the Closing (the "General Assignment and Assumption Agreement");

(c) a true and complete copy of an assignment and consent agreement substantially in the form of Exhibit C hereto with respect to the **[* * *]** Agreement, duly executed by Eyemax and **[* * *]** respecting the assignment of the **[* * *]** Agreement by Eton to BIRL, to be effective on the Closing (the "**[* * *]** Consent");

(d) [***reserved***];

(e) a copy of the duly executed Seller FDA Letter; and

(f) a certificate of a duly authorized officer of Eton, executed as of the Closing Date, certifying to the effect that the conditions set forth in Section 9.1 shall have been satisfied.

2.6 BIRL Closing Deliverables. At the Closing, BIRL shall deliver or cause to be delivered (unless previously delivered) to Eton the following:

(a) a duly executed counterpart of the Bill of Sale;

(b) a duly executed counterpart of the General Assignment and Assumption Agreement;

(c) [***reserved***];

(d) a copy of the duly executed Purchaser FDA Letter; and

(e) a certificate of a duly authorized officer of BIRL, executed as of the Closing Date, certifying to the effect that the conditions set forth in Section 9.2 shall have been satisfied.

2.7 Further Assurances. Eton hereby agrees, without further consideration, to execute and deliver such other instruments of transfer and take such other action as BIRL or its counsel may reasonably request in order to put BIRL in possession of the Purchased Assets in accordance with this Purchase Agreement.

2.8 License Grant. On the Closing Date, Eton hereby grants to BIRL a non-exclusive, sublicensable, transferable, fully paid-up, royalty-free, perpetual license to any assets and rights owned, used or held for use by Eton, or to which Eton has rights (other than the Purchased Assets), that are related to, but not primarily related to, the Products or the Program in the Territory that are necessary or useful for the development, manufacturing, commercialization or other exploitation of the Products in the Territory.

3. Regulatory Matters; Commercialization Matters.

3.1 Transfer of Eton Registrations; Interim Responsibility.

3.1.1 On the Closing Date, Eton shall assign to BIRL any and all Eton Registrations in and for the Territory, in accordance with this Section 3.1. On the Closing Date, Eton will forward to BIRL complete copies of the Eton Registrations and copies of all correspondence with, and periodic and other reports (including adverse event reports and the underlying data) to, Regulatory Authorities with respect to the Products or Eton Registrations. Promptly following the Closing Date, (i) Eton shall submit (or shall cause to be submitted) the Seller FDA Letter with the FDA and (ii) BIRL shall subsequently submit the Purchaser FDA Letter with the FDA.

3.1.2 The parties will cooperate to ensure a smooth transition from Eton to BIRL of all of the activities required to be undertaken by the holder of the Eton Registrations. Eton will cooperate with BIRL to ensure a smooth transition of the Program and the transfer of adverse experience reporting obligations from Eton to BIRL. At the reasonable request of BIRL, Eton shall use commercially reasonable efforts to assist BIRL, at BIRL's cost, with matters relating to the approval of the Eton Registrations by the FDA, including reviewing and providing comments on correspondence to and from the FDA with respect to such Eton Registrations and otherwise advising BIRL on matters relating to such Eton Registrations and their approval.

3.1.3 In addition to the obligations set out in Section 3.1.2, Eton shall be responsible, at its costs, for preparing a response **[* * *]** and for conducting any technical activities in connection with such response. Eton shall complete such response in a timely manner, using appropriate resources and skills. BIRL shall have the right to review and provide comments on such response, which comments shall be incorporated by Eton in such response. **[* * *]**.

3.2 Communication With Agencies. After the transfer of the Eton Registrations to BIRL has been completed, BIRL shall have responsibility for all such communications, and, until such time as the FDA approves the first Product, BIRL shall use commercially reasonable efforts to obtain approval by the FDA of a Product, including responding in a timely manner to any communications or requests from the FDA, provided that the application by BIRL (or its Affiliate) for any labelling changes to or for such Product, and any delays caused thereby, shall not constitute a failure by BIRL to use such commercially reasonable efforts. Until such time as the FDA approves the first Product, BIRL shall (i) promptly provide Eton with copies of any communications BIRL receives from the FDA concerning the Products, (ii) provide Eton with draft copies of all proposed communications from BIRL to the FDA with respect to the Products and (iii) permit Eton with a reasonable period of time (not to exceed **[* * *]**) to review and comment on such communications.

3.3 Commercialization Matters. BIRL agrees that, upon receipt of all requisite Regulatory Approvals in the Territory by the FDA of the first Single Agent Product, the First Commercial Sale of such Single Agent Product shall occur within **[* * *]** of such approval date, provided, however, if such First Commercial Sale is delayed as a result of a Force Majeure Event or multiple Force Majeure Events (including delays in obtaining supply of Product caused by or relating to **[* * *]** or such other Third Party contract manufacturer), such **[* * *]** period shall be extended for the duration of such Force Majeure Event(s). BIRL agrees that, following receipt of the Regulatory Approvals for the first Single Agent Product, the first Product to be launched in the Territory will be such Single Agent Product. In addition, VIRL agrees that, on **[* * *]**, VIRL shall achieve the distribution target described in Schedule 3.3 hereto (the "Distribution Target"), provided that, if BIRL fails to achieve such Distribution Target, then the sole remedy for such failure by BIRL shall be the payment by BIRL to Eton of an amount equal to the Distribution Target Shortfall Payment within **[* * *]** of **[* * *]**.

4. Representations and Warranties.

4.1 Representations and Warranties of Eton. Except as set forth in the disclosure schedule (with specific references to the section of this Agreement to which the information stated in such disclosure relates) delivered by Eton to BIRL (the "Disclosure Schedule"), Eton hereby represents and warrants to BIRL as of the Effective Date as follows:

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

4.1.2 Eton has the requisite power and authority and the legal right to execute and deliver this Purchase Agreement, to perform its obligations hereunder and thereunder, and to consummate the Acquisition. The execution, delivery and performance of this Purchase Agreement by Eton and the consummation by Eton of the Acquisition have been duly and validly authorized by all necessary action of Eton, and no other action on the part of Eton is necessary to authorize this Purchase Agreement or to consummate the Acquisition. This Purchase Agreement has been duly executed and delivered by Eton and, assuming the due authorization, execution and delivery by BIRL, this Purchase Agreement constitutes a legal, valid and binding obligation of Eton, enforceable against Eton in accordance with its terms, subject to the effect of any applicable bankruptcy, moratorium, insolvency, reorganization or other similar law affecting the enforceability of creditors' rights generally and to the effect of general principles of equity which may limit the availability of remedies, whether in a proceeding at law or in equity (collectively, the "Bankruptcy Exception").

4.1.3 All necessary consents, approvals and authorizations of all Governmental Authorities and other Persons required to be obtained by Eton in connection with this Purchase Agreement and the consummation of the Acquisition have been obtained, including, without limitation, the written consent of **[* * *]** to the assignment to BIRL of all of Eton's rights and obligations under the **[* * *]** Agreement and any necessary consents from Eyemax. Neither the execution or delivery of this Purchase Agreement by Eton does, nor the performance by Eton of its obligations hereunder or thereunder or the consummation of the Acquisition will: (i) conflict with or violate any provision of the organizational documents of Eton or any resolutions adopted by the board of directors of Eton, (ii) conflict with, or constitute a default under, any contractual obligation by which it is bound, including the 2019 Amended and Restated Agreement, or (iii) conflict with or violate any Law or Order applicable to Eton or by which any of the Purchased Assets or Eton is bound or affected. Neither the execution or delivery of this Purchase Agreement, nor the performance by Eton of its obligations hereunder or thereunder or the consummation by Eton of the Acquisition will: (a) result in the creation or imposition of any Lien on any of the Purchased Assets; or (b) violate or conflict with, or result in a breach of, any provision of, or constitute a default under (or, with notice or lapse of time or both, would constitute a default under) or give rise to any right of any Person other than Eton of termination, cancellation or modification, or acceleration of any obligation of Eton or a loss of any rights or benefits to which Eton is entitled, in each case under any of the terms, conditions or provisions of the **[* * *]** Agreement. There are no consents, approvals, permits, authorizations, waivers or other actions by, or filings with or notifications to, any Governmental Authority that are required to be obtained or made by Eton in connection with the execution, delivery and performance by Eton of this Purchase Agreement or the performance of Eton's obligations hereunder and thereunder.

4.1.4 There is no claim, hearing, enforcement, audit, investigation, agency proceeding, charge, lawsuit, action or other legal proceeding pending or, to the knowledge of Eton, currently threatened against Eton that questions the validity of this Purchase Agreement or the right of Eton to enter into this Purchase Agreement, or to consummate the transactions contemplated hereby. Eton is not subject to any Order that would reasonably be expected to impair or delay its ability to perform its obligations under this Purchase Agreement.

4.1.5 There is no claim, hearing, enforcement, audit, investigation, agency proceeding, charge, lawsuit, action or other legal proceeding pending or, to the knowledge of Eton, currently threatened with respect to the Products, the Program, the Eton IP Rights, the other Purchased Assets or the Assumed Liabilities. There are no judgments or settlements against or amounts with respect thereto owed by Eton or any of its Affiliates relating to Products, the Program, the Eton IP Rights or the other Purchased Assets. There is no order, writ, judgment, decision, ruling, subpoena, verdict, injunction, decree, consent decree, stipulation, determination or award entered, issued, made or rendered by any Governmental Authority that is outstanding against Eton or any of its Affiliates and that relates to or is reasonably likely to affect the Products, the Program or the Purchased Assets.

4.1.6 Neither Eton, its (sub)contractors, nor any of its or their officers, directors, employees or consultants, have been debarred by the FDA or other applicable governing health authority (or authorities), under any existing or prior Law.

4.1.7 Following the closing of the transactions contemplated by the 2019 Amended and Restated Agreement Date, other than Permitted Liens, Eton shall have good, valid and marketable title to all Purchased Assets. The Purchased Assets include all data and information generated by or on behalf of, or acquired by, Eton with respect to Products in the Territory. Following the closing of the transactions contemplated by the 2019 Amended and Restated Agreement Date, all of the Purchased Assets shall be owned by Eton free and clear of all Liens, other than Permitted Liens, and upon the consummation of the Acquisition, BIRL will acquire ownership of all of the Purchased Assets, free and clear of all Liens other than Permitted Liens.

4.1.8 No Eton Patents exist, and neither Eton nor any of its Affiliates owns or controls any potentially patentable invention directed to any Product, including, without limitation, the formulation of, or any method of making or using, any Product, with respect to which any patent application could be filed in the United States of America.

4.1.9 All material data, information, results of experimentation and testing provided by Eton to the FDA or BIRL in relation to Products or the Program are accurate and complete in all respects. No Eton Registrations made or other materials submitted by Eton to the FDA or other Governmental Authority in the Territory contained an untrue statement of material fact when submitted, or omitted to state a material fact within the knowledge of Eton when submitted which was required to be stated therein or necessary in order to make the statements contained therein, in light of the circumstances under which they were made, not misleading.

4.1.10 To Eton's knowledge (for purposes of clarity, without performing a freedom to operate analysis), since **[* * *]**, neither the Products nor any use thereof infringes, misappropriates or otherwise violates the intellectual property rights of any Third Party. To the knowledge of Eton, since **[* * *]**, no Third Party is engaging in any activity that infringes, misappropriates or otherwise violates the Eton IP Rights.

4.1.11 Neither Eton nor any of its Affiliates is a party to any license, sublicense or other agreement pursuant to which any Third Party is granted (i) any right to make, have made, use, sell, have sold, offer for sale, import or otherwise distribute any Product or to otherwise exploit any Assigned Technology, (ii) any covenant not to assert/sue or other immunity from suit under or any other rights to, any Assigned Technology, (iii) any ownership right or title, whether actual or contingent, to any Assigned Technology, or (iv) an option or right of first refusal relating to any Assigned Technology.

4.1.12 Other than the [* * *] Agreement, neither Eton nor any of its Affiliates is a party to any agreement for development, manufacturing or other services with respect to the Products in the Territory or that is primarily related to the Products, the Program or the Purchased Assets. Eton has provided BIRL with access to all material preclinical and clinical data in the possession or control of Eton related to any Products. Eton has provided to BIRL or made available current, true and complete copies of all Eton Registrations.

4.1.13 Eton has delivered to or made available to BIRL a true and complete copy of the [* * *] Agreement. The [* * *] Agreement is, as to Eton (and, as to the other party thereto, to the knowledge of Eton), a legal, valid and binding agreement in full force and effect and enforceable in accordance with its terms, subject to the effect of any Bankruptcy Exception. Eton is not in material breach or default, and no event has occurred that with notice or lapse of time would constitute a material breach or default by Eton under the [* * *] Agreement. To the knowledge of Eton, no other party to the [* * *] Agreement is in material breach or default under, or has repudiated any material provision of, the [* * *] Agreement. Eton has not received any notice from a counterparty to the [* * *] Agreement that such counterparty intends to terminate, cancel or amend (other than in a de minimis respect) such [* * *] Agreement and there are no pending or unresolved notices from a counterparty to the [* * *] Agreement that such counterparty intends to terminate, cancel or amend (other than in a de minimis respect) such [* * *] Agreement. As of the Effective Date, all fees and other amounts owing to or otherwise payable to [* * *] under **[* * *]** of the [* * *] Agreement have been paid and no additional fees or other payments will become payable under such **[* * *]** of the [* * *] Agreement.

4.1.14 Neither Eton nor any of its Affiliates has received any written notice from the FDA or any other Regulatory Authority alleging any existing material non-compliance with any Laws applicable to the registration of any Product or the conduct of the Program.

4.1.15 No employee of Eton or any of its Affiliates has been excluded from participating in the Medicare program or any other program of a Governmental Authority.

4.1.16 Neither Eton nor any of its Affiliates has received notice that the FDA or any other Regulatory Authority has taken, is taking or intends to take action to limit, suspend, modify or revoke any of the Eton Registrations.

4.1.17 With respect to the Products, the Program and the Purchased Assets, in each case solely with respect to the Territory, each of Eton and its Affiliates is and has been in compliance in all material respects with all applicable Laws in the Territory.

4.1.18 No agent, broker, investment banker or other Person is or will be entitled to any broker's or finder's fee or any other commission or similar fee from Eton or its Affiliates in connection with the Acquisition or any of the other transactions contemplated by this Purchase Agreement.

4.1.19 The Purchased Assets constitute all assets and rights owned by Eton, or to which Eton has rights, that are primarily related to the Products or the Program in the Territory.

4.2 Representations and Warranties of BIRL. BIRL hereby represents and warrants to Eton as of the Effective Date as follows:

4.2.1 BIRL is a limited liability company, validly existing and in good standing under the laws of the Republic of Ireland.

4.2.2 BIRL has the requisite power and authority and the legal right to execute and deliver this Purchase Agreement, to perform its obligations hereunder and thereunder, and to consummate the Acquisition. The execution, delivery and performance of this Purchase Agreement by BIRL and the consummation by BIRL of the Acquisition have been duly and validly authorized by all necessary action of BIRL, and no other action on the part of BIRL is necessary to authorize this Purchase Agreement or to consummate the Acquisition. This Purchase Agreement has been duly executed and delivered by BIRL and, assuming the due authorization, execution and delivery by BIRL, this Purchase Agreement constitutes a legal, valid and binding obligation of BIRL, enforceable against BIRL in accordance with its terms, subject to the effect of any Bankruptcy Exception.

4.2.3 All necessary consents, approvals and authorizations of all Governmental Authorities and other Persons required to be obtained by BIRL in connection with this Purchase Agreement and the consummation of the Acquisition have been obtained. Neither the execution or delivery of this Purchase Agreement by BIRL does, nor the performance by BIRL of its obligations hereunder or thereunder or the consummation of the Acquisition will: (i) conflict with or violate any provision of the organizational documents of BIRL or any resolutions adopted by the board of directors of BIRL, (ii) conflict with, or constitute a default under, any contractual obligation by which it is bound, or (iii) conflict with or violate any Law or Order applicable to BIRL.

4.2.4 There is no claim, hearing, enforcement, audit, investigation, agency proceeding, charge, lawsuit, action or other legal proceeding pending or, to the knowledge of BIRL, currently threatened against BIRL that questions the validity of this Purchase Agreement or the right of BIRL to enter into this Purchase Agreement, or to consummate the transactions contemplated hereby.

4.2.5 Neither BIRL, its (sub)contractors, nor any of its or their officers, directors, employees or consultants, have been debarred by the FDA or other applicable governing health authority (or authorities), under any existing or prior law or regulation.

4.2.6 No agent, broker, investment banker or other Person is or will be entitled to any broker's or finder's fee or any other commission or similar fee from BIRL or its Affiliates in connection with the Acquisition or any of the other transactions contemplated by this Purchase Agreement.

5. Financial Terms

5.1 Upfront Fee. Within **[* * *]** of the Closing Date, BIRL shall pay to Eton an upfront fee of **[* * *]** by wire transfer of immediately available funds to an account designated in writing by Eton prior to the Closing Date.

5.2 Milestone Payment. Within **[* * *]** following the first achievement of the following milestone event, BIRL shall pay to Eton, by wire transfer of immediately available funds to an account designated in writing by Eton the following milestone payment:

Milestone Event	Milestone Payment
[* * *]	**[* * *]**

Notwithstanding the foregoing, if **[* * *]**, then the milestone payment to be paid in connection with the milestone event described in this Section 5.3 shall be reduced by **[* * *],** namely **[* * *]**. In addition, if **[* * *]** has not occurred within **[* * *]** (as such **[* * *]** period may be extended in accordance with Section 3.3), then BIRL shall pay to Eton the milestone payment owing pursuant to this Section 5.2, such milestone payment being due within **[* * *]** of such date.

5.3 Royalties.

5.3.1 For a period of **[* * *]** from **[* * *]** (the "Royalty Term"), subject to the terms and conditions of this Agreement, BIRL shall pay to Eton royalties equal to **[* * *]**.

5.3.2 Notwithstanding Section 5.3.1, if, at any point during the Royalty Term, any product, **[* * *]** is launched in the Territory, by any Person (other than BIRL or its Affiliates or Licensees), then the royalties shall be reduced to **[* * *]** of Net Sales beginning on the launch date of such other product. **[* * *]**.

5.3.3 In addition, notwithstanding Sections 5.3.1 or 5.3.2, if at any point during the Royalty Term the Single Agent Product's market share in the Territory falls below **[* * *]** of the aggregate **[* * *]** market (based on dollar value and as measured on a quarterly basis using IRI data (or other nationally syndicated data obtained from an independent source)) (the "Market Share Threshold") **[* * *]** of Net Sales beginning in (and including) the second consecutive Calendar Quarter during which BIRL's market share first falls below the Market Share Threshold. **[* * *]**.

5.4 Combination/Bundled Products. In the event that a Single Agent Product is sold by BIRL, its Affiliates or Licensees as a Combination Product, then Net Sales for purposes of calculating royalties payable under Section 5.3 shall be calculated as follows:

In the event that both (x) Single Agent Product is sold separately in finished form in the Territory during such Calendar Quarter and (y) the Other Product(s) in such Combination Product are sold separately in finished form in the Territory during such Calendar Quarter, then Net Sales of such Single Agent Product shall be determined by multiplying the actual Net Sales of the Combination Product calculated in accordance with the provisions of Section 1.36 ("Actual Combination Product Net Sales") during such Calendar Quarter by the fraction A / (A+B), where A is the weighted average sale price of such Single Agent Product when sold separately in finished form in the Territory during such Calendar Quarter, and B is the weighted average sale price of the Other Product(s) in the Combination Product when sold separately in finished form in the Territory during such Calendar Quarter.

In the event that Single Agent Product is sold separately in finished form in the Territory during such Calendar Quarter, but the Other Product(s) in such Combination Product are not sold separately in finished form in the Territory during such Calendar Quarter, then Net Sales of such Single Agent Product shall be calculated by multiplying the Actual Combination Product Net Sales of the Combination Product in the Territory during such Calendar Quarter by the fraction A / C where A is the weighted average sale price of such Single Agent Product when sold separately in finished form in the Territory during such Calendar Quarter and C is the weighted average sale price of the Combination Product in the Territory during such Calendar Quarter.

In the event that no Single-Agent Product is sold separately in finished form in the Territory during such Calendar Quarter, but the Other Active(s) or Other Product(s) in such Combination Product are sold separately in finished form in the Territory during such Calendar Quarter, Net Sales of such Single Agent Product shall be calculated by multiplying the Actual Combination Product Net Sales of the Combination Product by the fraction (C-B) / C, where B is the weighted average sale price of the Other Active(s) or Other Product(s) in the Combination Product when sold separately in finished form in the Territory during such Calendar Quarter, and C is the weighted average sale price of the Combination Product in the Territory during such Calendar Quarter.

In the event that neither Single-Agent Product is sold separately in finished form in the Territory during such Calendar Quarter, nor the Other Active(s) or Other Product(s) in such Combination Product are sold separately in finished form in the Territory during such Calendar Quarter, then Net Sales of such Single Agent Product in the Territory during such Calendar Quarter shall be equal to **[* * *]** of the Actual Combination Product Net Sales of the Combination Product in the Territory during such Calendar Quarter.

5.5 Royalty Reports and Payments. Within **[* * *]** after the end of each Calendar Quarter during the Royalty Term, BIRL shall deliver to Eton a written report showing in reasonably specific detail the calculation of the royalties owing to Eton with respect to such Calendar Quarter, including the amount of gross sales of the Single Agent Products, the amount of the Net Sales of the Single Agent Product and the calculation of such Net Sales, including with reasonable detail with respect to deductions permitted under the definition of "Net Sales" and adjustments in respect of any accrued deductions. BIRL shall remit the total payments due during such Calendar Quarter at the time such report is made. Payment in whole or in part may be made in advance of such due date. For purposes of clarity, no such reports or payments shall be due for any Single Agent Product before the First Commercial Sale of such Single Agent Product.

5.6 Interest; Withholding Taxes.

5.6.1 Any milestone payment or royalty payment not paid when due shall bear interest from the due date until the date of payment thereof at the rate of **[* * *]** as quoted in **[* * *]** (or if it no longer exists, a similarly authoritative source); provided, that interest shall not accrue at a rate that exceeds the maximum rate permitted by applicable Law. The payment of such interest shall not limit Eton from exercising any other rights it may have as a consequence of the lateness of any payment.

5.6.2 BIRL shall be entitled to deduct the amount of any Taxes that are required to by paid with respect to such amounts payable by BIRL or its Affiliates, or any Taxes required to be withheld by BIRL or its Affiliates from such amounts, to the extent BIRL or its Affiliates pay to the appropriate Governmental Authority on behalf of Eton such Taxes. BIRL shall cooperate with Eton in any lawful way reasonably requested by Eton to obtain available reductions, credits or refunds of such Taxes. BIRL promptly shall deliver to Eton proof of payment of all such Taxes, together with copies of all communications from or with any Governmental Authority with respect thereto.

5.7 Audits.

5.7.1 During the Royalty Term and for **[* * *]** thereafter, upon the written request of Eton and not more than once in each calendar year, BIRL shall permit an independent certified public accounting firm of nationally recognized standing selected by Eton and reasonably acceptable to BIRL, at Eton' s expense, to have access during normal business hours to such of the financial records of BIRL as may be reasonably necessary to verify the accuracy of the reports hereunder for the **[* * *]** immediately prior to the date of such request (other than records for which Eton has already conducted an audit under this Section).

5.7.2 If such accounting firm concludes that additional amounts were owed during the audited period, BIRL shall pay such additional amounts within **[* * *]** after the date Eton delivers to BIRL such accounting firm's written report so concluding. The fees charged by such accounting firm shall be paid by Eton; *provided, however,* that to the extent the auditor determines an underpayment discrepancy greater than **[* * *],** BIRL shall pay the reasonable fees and expenses charged by such accounting firm.

5.7.3 Eton shall cause its accounting firm to retain all financial information subject to review under this Section 5.7 in strict confidence; *provided, however,* that BIRL shall have the right to require that such accounting firm, prior to conducting such audit, enter into an appropriate and reasonable non-disclosure agreement with BIRL regarding such financial information. The accounting firm shall disclose to Eton only whether the reports are correct or not and the amount of any discrepancy. No other information shall be shared. Eton shall treat all such financial information as BIRL's confidential information, and shall not disclose such financial information to any Third Party or use it for any purpose other than as specified in this Section 5.7, except that, notwithstanding anything to the contrary in this Agreement, Eton shall be permitted to disclose that portion of such information to Eyemax in connection with the performance of Eton's obligations under the 2019 Amended and Restated Agreement, *provided, however,* that BIRL shall have the right to require that Eyemax, prior to such disclosure, enter into an appropriate and reasonable non-disclosure agreement with BIRL regarding such financial information.

5.8 Allocation of Purchase Price. BIRL and Eton shall use diligent efforts to agree upon a schedule (the "Allocation Schedule") setting forth the respective values of the Purchased Assets consistent with Section 1060 of the Code (and any similar provisions of state, local or foreign Law, as appropriate), which shall be used for Tax purposes for the allocation of the Purchase Price and any additional consideration among the Purchased Assets. Within **[* * *]** after the Closing, BIRL shall provide to Eton a proposed Allocation Schedule. Eton shall have the right to review and raise any objections in writing to the Allocation Schedule during the **[* * *]** period after its receipt thereof. If BIRL disagrees with respect to any material item in the Allocation Schedule, the parties shall negotiate in good faith to resolve the dispute. BIRL and Eton covenant and agree to report for Tax purposes the allocation of such Purchase Price and additional consideration among the Purchased Assets in a manner entirely consistent with the Allocation Schedule and agree to act in accordance with such Allocation Schedule in filing all Tax returns (including filing Form 8594 with their respective federal income Tax returns for the Taxable year that includes the Closing Date) and in the course of any Tax audit, Tax review or Tax litigation relating thereto. BIRL and Eton hereby agree, unless otherwise required pursuant to a "determination" within the meaning of Section 1313(a) of the Code, to be bound by the Allocation Schedule, to file all Tax returns (including IRS Form 8594 and any supplemental or amended IRS Form 8594) in accordance with the Allocation Schedule, and not to take any position inconsistent with the Allocation Schedule in the course of any tax audit, review, examination or other administrative or judicial proceeding. The Allocation Schedule shall be adjusted in accordance with the procedure set forth in Section 5.8 to account for any adjustments to the Purchase Price pursuant to Section 5, Section 6.7 or as otherwise contemplated by this Agreement.

5.9 Third Party Licenses. If, during the Royalty Term, BIRL or its Affiliates or Licensees is obligated to pay a Third Party royalties or other payments in consideration for intellectual property rights owned or controlled by such Third Party, that, without a license, BIRL reasonably believes such Third Party intellectual property rights would be infringed in the manufacture, use, import, offer for sale, or sale of a Single Agent Product, then BIRL will have the right, upon BIRL's (or its Affiliate's or Licensee's) execution of a license with such Third Party for such Third Party intellectual property rights, to credit **[* * *]** of any payments made to such Third Party in consideration for such Third Party intellectual property rights, against the royalty due to Eton under this Purchase Agreement, provided that, in no event shall royalties due to Eton under this Purchase Agreement in any Calendar Quarter be so reduced to less than **[* * *]** of the amount that would otherwise be due to Eton hereunder.

6. Indemnification.

6.1 Survival.

6.1.1 Except in the case of Eton's common law fraud, Eton's obligations to indemnify and hold harmless a BIRL Indemnitee pursuant to Section 6.2(i): (x) other than with respect to the representations and warranties set forth in **[* * *]** (the "Eton Fundamental Representations"), shall terminate on the date that is **[* * *]** from the Closing Date, and (y) with respect to the Eton Fundamental Representations shall survive indefinitely; provided, however, that such obligations to indemnify and hold harmless shall not terminate with respect to any item as to which a BIRL Indemnitee shall have, before the expiration of such applicable period, previously made a claim by delivering a notice of such claim in accordance with this Purchase Agreement to Eton, which obligations shall survive until all such claims have been resolved.

6.1.2 Except in the case of BIRL's common law fraud, BIRL's obligations to indemnify and hold harmless an Eton Indemnitee to Section 6.3(i): (x) other than with respect to the representations and warranties set forth in Sections **[* * *]** (the "BIRL Fundamental Representations"), shall terminate on the date that is **[* * *]** from the date of this Purchase Agreement and (y) with respect to the BIRL Fundamental Representations shall indefinitely; provided, however, that such obligations to indemnify and hold harmless shall not terminate with respect to any item as to which an Eton Indemnitee shall have, before the expiration of such applicable period, previously made a claim by delivering a notice of such claim in accordance with this Purchase Agreement to Eton, which obligations shall survive until all such claims have been resolved.

6.1.3 All of the covenants and agreements contained in this Agreement that by their nature are required to be performed after the Closing shall survive the Closing until fully performed or fulfilled.

6.2 Indemnification by Eton. Eton shall indemnify, defend and hold harmless BIRL, its Affiliates, and their respective officers, directors, shareholders, employees, agents and representatives (collectively "BIRL Indemnitees") from any and all losses, liabilities, damages and expenses, including reasonable attorneys' fees and costs (collectively, "Losses") arising from, in connection with or otherwise with respect to (i) any inaccuracy in, or breach of, any representation or warranty of Eton contained in Section 4.1 of this Purchase Agreement or in any Ancillary Agreement, (ii) any failure by Eton to perform, fulfill or comply with any covenant, agreement, obligation or undertaking of Eton contained in this Purchase Agreement or in any Ancillary Agreement and (iii) the Excluded Liabilities.

6.3 Indemnification by BIRL. BIRL shall indemnify, defend and hold harmless Eton, its Affiliates, and its and their respective officers, directors, shareholders, employees, agents and representatives (collectively "Eton Indemnitees") from any and all Losses arising from, in connection with or otherwise with respect to (i) any inaccuracy in, or breach of, any representation or warranty of BIRL contained in Section 4.2 of this Agreement or in any Ancillary Agreement, (ii) any failure by BIRL to perform, fulfill or comply with any covenant, agreement, obligation or undertaking of BIRL contained in this Purchase Agreement or in any Ancillary Agreement and (iii) the Assumed Liabilities.

6.4 Third Party Claim Procedures. A party seeking indemnification (the "Indemnitee") shall promptly notify the other party (the "Indemnifying Party") in writing of a claim, demand, action or proceeding; provided that an Indemnitee's failure to give such notice or delay in giving such notice shall not affect such Indemnitee's right to indemnification under this Section 6 except to the extent that the Indemnifying Party has been prejudiced by such failure or delay. The Indemnifying Party shall have the right to control the defense of all indemnification claims hereunder. The Indemnitee shall have the right to participate at its own expense in the claim, action or proceeding with counsel of its own choosing. The Indemnifying Party shall consult with the Indemnitee in good faith with respect to all non-privileged aspects of the defense strategy. The Indemnitee shall cooperate with the Indemnifying Party as reasonably requested, at the Indemnitee's sole cost and expense. The Indemnifying Party shall not settle any claim, demand, action or proceeding with respect to which without the Indemnitee's prior written consent, which consent shall not be unreasonably withheld.

6.5 Direct Claim Procedures. In the event any Indemnitee should have a claim against an Indemnifying Party under Section 6.2 or Section 6.3, as applicable, that does not involve a Third Party claim being asserted against or sought to be collected from such Indemnitee, the Indemnitee shall deliver notice of such claim to the Indemnifying Party. The failure by any Indemnitee so to notify the Indemnifying Party shall not relieve the Indemnifying Party from any liability that it may have to such Indemnitee under Section 6.2 or Section 6.3, as applicable, except to the extent (and only to the extent) that the Indemnifying Party shall have been actually and materially prejudiced as a result of such failure. If the Indemnifying Party does not notify the Indemnitee within **[* * *]** following its receipt of such notice that the Indemnifying Party disputes Indemnifying Party's liability to the Indemnitee under Section 6.2 or Section 6.3, as applicable, such claim specified by the Indemnitee in such notice shall be conclusively deemed a Loss of the Indemnifying Party under Section 6.2 or Section 6.3, as applicable, and Indemnifying Party shall pay the amount of such Loss to the Indemnitee on demand or, in the case of any notice in which the amount of the claim (or any portion thereof) is estimated, on such later date when the amount of such claim (or such portion thereof) becomes finally determined.

6.6 Exclusive Monetary Remedy; Limitations.

6.6.1 Except in the case of common law fraud, the right to indemnification under this Section 6 shall constitute the sole and exclusive monetary remedy of the BIRL Indemnitees and the Eton Indemnitees for Losses or otherwise arising from, in connection with this Purchase Agreement, including pursuant to Section 6.1.1, Section 6.1.2, Section 6.1.3, Section 6.2, Section 6.3, the Ancillary Agreements, or otherwise with respect to any of the transactions contemplated hereby or thereby.

6.6.2 Except in the case of Eton's common law fraud, (x) except for a breach of the Eton Fundamental Representations, Eton's aggregate liability to BIRL Indemnitees pursuant to Section 6.2(i) shall not exceed **[* * *]** (the "Cap"), and (y) other than (A) with respect to Section 6.2(iii) (with respect to which Eton's liability shall not be limited), (B) Section 6.2(ii) with respect to Sections **[* * *]** (with respect to which Eton's liability shall not be limited) and (C) Eton Fundamental Representations (with respect to which Eton's liability shall not be limited), Eton's aggregate liability under Section 6.2 shall not exceed the greater of (1) **[* * *]** and (2) **[* * *]**. No BIRL Indemnitee shall be entitled to recover any Losses under Section 6.2(i) unless and until the aggregate Losses for which they would otherwise be entitled to indemnification under Section 6.2(i) exceed **[* * *]**, at which point the BIRL Indemnitees shall become entitled to be indemnified for such Losses **[* * *]**.

6.6.3 Except in the case of BIRL's common law fraud, (x) except for a breach of the BIRL Fundamental Representations, BIRL's aggregate liability to Eton Indemnitees pursuant to Section 6.3(i) shall not exceed the Cap, and (y) other than (A) with respect to Section 6.3(iii) (with respect to which BIRL's liability shall not be limited), (B) Section 6.3(ii) with respect to Sections **[* * *]** (with respect to which BIRL's liability shall not be limited) and (C) BIRL Fundamental Representations (with respect to which BIRL's liability shall not be limited), BIRL's aggregate liability under Section 6.3 shall not exceed the greater of (1) **[* * *]** and (2) **[* * *]**. No Eton Indemnitee shall be entitled to recover any Losses under Section 6.3(i) unless and until the aggregate Losses for which they would otherwise be entitled to indemnification under Section 6.3(i) exceed **[* * *]**, at which point the Eton Indemnitees shall become entitled to be indemnified for such Losses **[* * *]**.

6.7 Tax Treatment of Indemnification Payments. All indemnity payments made by an Indemnifying Party to an Indemnitee pursuant to this Purchase Agreement shall be treated for all Tax purposes as adjustments to the Purchase Price.

6.8 Right of Set-Off. Notwithstanding any provision of this Purchase Agreement to the contrary, the parties acknowledge and agree that, in addition to any other right hereunder: (i) subject to the limitations set forth in Section 6.6, BIRL shall have the right, but not the obligation, from time to time to set off any Losses for which the BIRL Indemnitees are entitled to indemnification hereunder against any payment under Section 5.2 or Section 5.3 and (ii) if at any time any payment pursuant to Section 5.2 or Section 5.3 is due and payable the amount of Losses with respect to which shall not have been finally determined, then the amount of such payment shall be reduced by the amount of Losses BIRL reasonably estimates to be subject to such indemnification claim and that is set forth in the claim notice. If the final amount of Losses for such indemnification claim is less than the amount by which such payment was reduced for such claim, then BIRL shall promptly deliver the difference to Eton, together with accrued interest calculated in accordance with Section 5.6.1.

6.9 Specific Performance. In the event of any breach or threatened breach by either party of any covenant, obligation or other provision set forth in this Purchase Agreement, the other party shall be entitled (in addition to any other remedy that may be available to it) to (i) a decree or order of specific performance or mandamus to enforce the observance and performance of such covenant, obligation or other provision, and (ii) an injunction restraining such breach or threatened breach; and (b) such party shall not be required to provide any bond or other security in connection with any such decree, order or injunction or in connection with any related action or proceeding.

6.10 No Implied Representations. The parties acknowledge and agree that, except as expressly provided in Section 4.1 and Section 4.2, neither of the parties hereto has made or is making any representations or warranties whatsoever, implied or otherwise.

6.11 LIMITATION OF LIABILITY. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, EXCEPT FOR THE OBLIGATIONS TO INDEMNIFY, DEFEND AND HOLD HARMLESS PURSUANT TO THIS SECTION 6 FOR THIRD PARTY CLAIMS OR IN THE CASE OF FRAUD OR BREACH OF THE CONFIDENTIALITY OBLIGATIONS PURSUANT TO SECTION 8, NEITHER PARTY SHALL BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, WHETHER FORESEEABLE OR NOT, ARISING OUT OF THIS PURCHASE AGREEMENT OR THE EXERCISE OF ITS RIGHTS HEREUNDER, REGARDLESS OF ANY NOTICE OF SUCH DAMAGES.

6.12 Litigation Support. Following the Closing, the parties shall reasonably cooperate with each other in the defense or settlement of any claims or lawsuits brought by, Third Parties that involve the Purchased Assets, the Product, this Purchase Agreement or the transactions contemplated hereby by providing the other party and such other party's legal counsel reasonable access to employees, records, documents, data, equipment, facilities, products, and other information relating primarily to the Products, the Program and the Purchased Assets as such other party may reasonably request, to the extent maintained or under the possession or control of the requested party; provided, however, that such access shall not unreasonably interfere with the parties' respective businesses; and provided, further, that either party may restrict the foregoing access to the extent that (a) such restriction is required by applicable Law, (b) such access or provision of information would result in a violation of confidentiality obligations to a Third Party or (c) disclosure of any such information would result in the loss or waiver of the attorney-client privilege.

7. Tax Matters.

7.1 Eton shall be responsible for and shall pay all Taxes of Eton for all periods and all Taxes that relate to the Purchased Assets that were incurred in or are attributable to any taxable period (or portion thereof) ending on or before the Closing Date. Eton shall prepare and file its Tax Returns for all periods and all Tax Returns that relate to the Purchased Assets for any Taxable periods ending on or before the Closing Date. Such returns will be prepared and filed in accordance with applicable Law and in a manner consistent with past practices.

7.2 Any real property, personal property or similar Taxes applicable to the Purchased Assets for a taxable period that includes but does not end on the Closing Date shall be paid by BIRL or Eton, as applicable, and such Taxes shall be apportioned between BIRL and Eton based on the number of days in the portion of the taxable period that ends on the Closing Date (the "Pre-Closing Tax Period") and the number of days in the entire taxable period. Eton shall pay BIRL an amount equal to any such Taxes payable by BIRL which are attributable to the Pre-Closing Tax Period, and BIRL shall pay Eton an amount equal to any such Taxes payable by Eton which are not attributable to the Pre-Closing Tax Period. Such payments shall be made on or prior to the Closing Date or, if later, on the date such Taxes are due (or thereafter, promptly after request by BIRL or Eton if such Taxes are not identified by BIRL or Eton on or prior to the Closing Date).

7.3 All transfer, value added taxes, withholding, sales, and use taxes, deed excise stamps and similar charges ("Transfer Taxes") related to the sale of the Purchased Assets contemplated by this Purchase Agreement shall be paid by Eton. The party required under applicable Law will file any necessary Tax Returns and other documentation with respect to all such Taxes and, if BIRL is required by applicable Law to file such Tax Returns, Eton shall pay over to BIRL any such Transfer Taxes payable with respect to such Tax Return.

7.4 After the Closing, upon reasonable written notice, BIRL and Eton shall furnish or cause to be furnished to each other, as promptly as practicable, such information and assistance (to the extent within the control of such party) relating to the Purchased Assets and Assumed Liabilities (including, access to books and records) as is reasonably necessary for the filing of all Tax Returns, the making of any election related to Taxes, the preparation of any available Tax clearance certificate, the preparation for any audit by any Governmental Entity, and the prosecution or defense of any claim, suit or proceeding related to any Tax Return. Eton and BIRL shall cooperate with each other in the conduct of any audit or other proceeding relating to Taxes involving the Purchased Assets and Assumed Liabilities. Eton shall not after the Closing take any position in any Tax Return, or reach any settlement or agreement on audit, which is in any manner inconsistent with any position taken by Eton in any filing, settlement or agreement made by Eton prior to the Closing if such inconsistent position (i) requires the payment by BIRL of more Tax than would have been required to be paid had such position not been taken or such settlement or agreement not been reached, (ii) affects the determination of useful life, basis or method of depreciation, amortization or accounting of any of the Purchased Assets or any of the properties, assets or rights of BIRL or (iii) accelerates the time at which any Tax must be paid by BIRL; unless BIRL has previously consented to such position in a writing to Eton.

8. Confidentiality.

8.1 Confidential Information.

8.1.1 Except as otherwise provided herein, from and after the Closing, Eton shall treat as confidential, and shall not, except as provided herein, disclose to any other Person, all information included in or solely related to the Purchased Assets or the Assumed Liabilities ("Confidential Information"); *provided, however,* that the foregoing obligations shall not apply to (a) any information which was or comes into the public domain through no breach of this Purchase Agreement by Eton, (b) is or was communicated by BIRL to an unaffiliated Third Party free of any obligation of confidence, (c) any information that is independently developed or discovered by any Third Party Acquiror of Eton prior to a Change of Control Transaction, other than as a result of disclosure by or on behalf of Eton or any of its subsidiaries, (d) any information that is independently developed or discovered by any Third Party Acquiror without reference to any information included in the Purchased Assets other than information described in clause (a), (b), (c) or (e), or (e) is rightfully communicated to any Third Party Acquiror by another third party (other than Eton or any of its subsidiaries), free and clear of any obligation of confidence and not acquired in any manner from Eton or any of its subsidiaries. For the avoidance of doubt, Eton shall be permitted to provide to Eyemax copies of any royalty reports received by Eton pursuant to Section 5.5 and the results of any audit received by Eton pursuant to Section 5.7.3, provided that, prior to providing copies of any such reports to Eyemax, BIRL (or its Affiliate) and Eyemax shall have executed a confidentiality and non-disclosure agreement relating to such reports, in a form acceptable to BIRL (acting reasonably). In addition, Eton shall not be prohibited from disclosing any portion of the Confidential Information that Eton is required to disclose by judicial or administrative process or, in the opinion of legal counsel, by other requirements of Law; provided that Eton shall provide BIRL with prompt notice and may disclose only that portion of the Confidential Information that it is compelled to disclose and, as may be reasonably requested by BIRL, reasonably cooperate with BIRL, at BIRL's expense, in any attempt to obtain an appropriate protective order or other reliable assurance of confidential treatment.

8.1.2 Except as otherwise provided herein, from and after the Closing, BIRL shall treat as confidential, and shall not, except as provided herein, disclose to any other Person, any information included in or solely related to the Excluded Liabilities, *provided*, *however*, that the foregoing obligations shall not apply to (a) any information which was or comes into the public domain through no breach of this Purchase Agreement by BIRL, (b) is or was communicated by Eton to an unaffiliated Third Party free of any obligation of confidence, (c) any information that is independently developed or discovered by any Third Party Acquiror of BIRL prior to a Change of Control Transaction, other than as a result of disclosure by or on behalf of BIRL or any of its subsidiaries, (d) any information that is independently developed or discovered by any Third Party Acquiror without reference to any information included in the Purchased Assets other than information described in clause (a), (b), (c) or (e), or (e) is rightfully communicated to any Third Party Acquiror by another third party (other than BIRL or any of its subsidiaries), free and clear of any obligation of confidence and not acquired in any manner from BIRL or any of its subsidiaries.

8.2 Public Disclosure. Except to the extent required by Law, the rules and regulations of any stock exchange or quotation services on which such party's stock is traded or quoted and except as permitted by Section 8.1, no news release or other public announcement pertaining to the transactions contemplated by this Purchase Agreement (including the filing of this Purchase Agreement in accordance with applicable securities laws) will be made by or on behalf of either party or its Affiliates without the prior written approval of the other party not to be unreasonably withheld. If in the judgment of either Party such a news release or public announcement is required by Law or the rules or regulations of any stock exchange on which such party's stock is traded, the party intending to make such release or announcement (including the filing of this Purchase Agreement in accordance with applicable securities laws) shall to the extent permitted by Law provide prior written notice to the other party of the contents of such release or announcement (or redacted form of the Purchase Agreement) and allow the other party reasonable time to comment on such release or announcement (or redacted form of the Purchase Agreement) in advance of such issuance or filing.

9. Conditions to Closing; Covenants; Termination.

9.1 Conditions to Obligations of BIRL. The obligation of BIRL to effect the Closing is subject to the satisfaction (or waiver) prior to the Closing of the following conditions:

9.1.1 The representations and warranties of Eton, as specified in Section 4.1 shall be true and correct on and as of the Effective Date and as of the Closing, as though made on and as of the Closing (except to the extent expressly made as of an earlier date, in which case as of the earlier date).

9.1.2 Eton shall have performed and complied with all of its covenants in this Purchase Agreement (disregarding any failure to perform or comply that was inadvertent or unintentional) at or before the Closing (to the extent that such covenants require performance by Eton at or before the Closing).

9.1.3 The transactions contemplated by the 2019 Amended and Restated Agreement shall have occurred.

9.1.4 The [* * *] Consent shall have been obtained and shall be in full force and effect.

9.1.5 Eton shall have furnished to BIRL all deliverables set forth in Section 2.5.

9.1.6 No temporary restraining Order, preliminary or permanent injunction or other Order preventing the consummation of the transactions contemplated by this Purchase Agreement shall have been issued by any court of competent jurisdiction and remain in effect.

9.2 Conditions to Obligations of Eton. The obligation of Eton to effect the Closing is subject to the satisfaction (or waiver) prior to the Closing of the following conditions:

9.2.1 The representations and warranties of BIRL, as specified in Section 4.2 shall be true and correct on and as of the Effective Date and as of the Closing, as though made on and as of the Closing (except to the extent expressly made as of an earlier date, in which case as of the earlier date).

9.2.2 BIRL shall have performed and complied with all of its covenants contained in this Purchase Agreement (disregarding any failure to perform or comply that was inadvertent or unintentional) at or before the Closing (to the extent that such covenants require performance by BIRL at or before the Closing).

9.2.3 The transactions contemplated by the 2019 Amended and Restated Agreement shall have occurred.

9.2.4 BIRL shall have furnished to Eton all deliverables set forth in Section 2.6.

9.2.5 No temporary restraining Order, preliminary or permanent injunction or other Order preventing the consummation of the transactions contemplated by this Purchase Agreement shall have been issued by any court of competent jurisdiction and remain in effect.

9.3 Consummation of Eyemax Transaction. Eton shall use commercially reasonable efforts to consummate the transactions contemplated by the 2019 Amended and Restated Agreement as promptly as possible following the Effective Date.

9.4 Termination.

9.4.1 Termination. This Purchase Agreement may be terminated prior to the Closing:

(i) by the mutual written consent of the parties; or

(ii) by BIRL, by written notice to Eton, if BIRL is not then in material breach of any provision of this Purchase Agreement and there has been a breach, inaccuracy in or failure to perform any representation, warranty, covenant or agreement made by Eton pursuant to this Purchase Agreement that would give rise to the failure of any of the conditions specified in Section 9.1.1 or 9.1.2 and such breach, inaccuracy or failure has not been cured by Eton within **[* * *]** of Eton's receipt of written notice of such breach from BIRL; or

(iii) by Eton, by written notice to BIRL, if Eton is not then in material breach of any provision of this Purchase Agreement and there has been a breach, inaccuracy in or failure to perform any representation, warranty, covenant or agreement made by BIRL pursuant to this Purchase Agreement that would give rise to the failure of any of the conditions specified in Section 9.2.1 or 9.2.2 and such breach, inaccuracy or failure has not been cured by BIRL within **[* * *]** of BIRL's receipt of written notice of such breach from Eton; or

(iv) by Eton or BIRL in the event that a court of competent jurisdiction shall have issued a final and nonappealable Order having the effect of permanently restraining, enjoining or otherwise prohibiting the transactions contemplated hereby; *provided*, *however*, that a party shall not be permitted to terminate this Purchase Agreement pursuant to this Section 9.4.1(iv) if such party did not use commercially reasonable best efforts to have such Order vacated prior to its becoming final and nonappealable; or

(v) by VIRL if the transactions contemplated by the 2019 Amended and Restated Agreement have not been consummated within **[* * *]** of the Effective Date.

9.4.2 Upon termination of this Purchase Agreement, the transactions contemplated hereby shall be abandoned without further action by any of the parties and this Purchase Agreement shall become void and have no effect, and neither party hereto shall have any liability to the other party hereto or their respective Affiliates, or their respective directors, officers or employees, except that nothing herein shall relieve any party from liability for any breach of this Agreement. Termination of this Agreement shall terminate all outstanding obligations and liabilities (other than liability for any breach of this Agreement) between the parties arising from this Purchase Agreement except those described in this Section 9.4, and Section 8.

9.5 Non-Competition. During the **[* * *]** following the Closing, Eton shall not, and shall cause its Affiliates not to, **[* * *]** (collectively, the "Competing Business"); provided, however, the restriction contained in this Section 9.5 shall not prohibit Eton or its Affiliates from owning less than **[* * *]** of the outstanding stock of any class of securities registered under the Securities Exchange Act of 1934, as amended; provided, further, that if, during such **[* * *]** period, any Competing Business is conducted in the Territory at the time of consummation of an Acquisition Transaction (as defined below) by any business (or any portion thereof), Person or group of Persons, all or a majority interest of which is, or a bundle of assets of which are, acquired by Eton or any of its Affiliates through an equity or asset purchase, merger, consolidation or other transaction, in each case, whether in a single transaction or a series of related transactions (an "Acquisition Transaction"), then Eton or its Affiliates may continue to conduct such Competing Business until the earlier of (i) such time as Eton or its Affiliates divest such Competing Business and (ii) **[* * *]** after the closing date of such Acquisition Transaction; provided, however, that no Acquisition Transaction can be entered into by Eton or any of its Affiliates if the Competing Business is all or substantially all of the business that would be purchased pursuant to the Acquisition Transaction **[* * *]** Eton acknowledges that the agreements in this Section 9.5 impose a reasonable restraint in light of the activities and business of Eton and its Affiliates on the Effective Date and the current business of BIRL, Eton and their respective Affiliates.

10. Miscellaneous.

10.1 Relationship of Parties. The relationship between Eton and BIRL, with respect to this Purchase Agreement, is only that of independent contractors notwithstanding any activities set forth in this Purchase Agreement. Neither party is the agent or legal representative of the other party, and neither party has the right or authority to bind the other party in any way. This Purchase Agreement creates no relationship as partners or a joint venture, and creates no pooling arrangement.

10.2 Governing Law and Resolution of Disputes.

10.2.1 This Purchase Agreement shall be governed by and construed in accordance with the laws of the State of New York without reference to its conflict of laws principles.

10.2.2 Any and all disputes or claims arising from or out of this Purchase Agreement shall be litigated exclusively before a court of the State of New York or, if subject matter jurisdiction exists, the United States District Court for the Southern District of New York. Each party hereto hereby irrevocably and unconditionally consents to the exclusive personal jurisdiction and service of, and venue of, any such court, and further irrevocably and unconditionally waives and agrees not to plead or claim that any action, lawsuit or proceeding brought in any such court has been brought in an inconvenient forum. Any judgment issued by such a court may be enforced in any court having jurisdiction.

10.3 Assignment. Neither party shall assign its rights or obligations under this Purchase Agreement without the prior written consent of the other party, which shall not be unreasonably withheld or delayed; *provided*, *however*, that a party may, without such consent, assign this Purchase Agreement and its rights and obligations hereunder (a) to any Affiliate, or (b) in connection with the transfer or sale of all or substantially all of its business to which this Purchase Agreement relates, or in the event of its merger, consolidation, change in control or similar transaction. Any permitted assignee shall assume all obligations of its assignor under this Purchase Agreement. Any purported assignment in violation of this Section 10.3 shall be void.

10.4 Counterparts. This Purchase Agreement may be executed in several counterparts that together shall be originals and constitute one and the same instrument.

10.5 Waiver. The failure of any party to enforce any of its rights hereunder or at law shall not be deemed a waiver of any of its rights or remedies against another party, unless such waiver is in writing and signed by the party to be charged. No such waiver shall be deemed a waiver of any subsequent breach or default of the same or similar nature or any other breach or default by such other party. All rights and remedies conferred herein shall be cumulative and in addition to all of the rights and remedies available to each party at law, equity or otherwise.

10.6 Severability. If any provision of this Purchase Agreement, or part thereof, is declared by a court of competent jurisdiction to be invalid, void or unenforceable, each and every other provision, or part thereof, shall nevertheless continue in full force and effect.

10.7 Notices. Any consent, notice or report required or permitted to be given or made under this Purchase Agreement by a party to the other party shall be in writing, delivered by any lawful means to such other party at its address indicated below, or to such other address as the addressee shall have last furnished in writing to the addressor and (except as otherwise provided in this Purchase Agreement) shall be effective upon receipt by the addressee.

If to Eton:
Eton Pharmaceuticals, Inc.
21925 Field Pkwy, Suite 235
Deer Park, Illinois 60010
Attention: Chief Executive Officer

If to BIRL:
Bausch Health Ireland Limited
3013 Lake Drive
Citywest Business Campus
Dublin 24, Ireland
Attention: General Manager

With a copy to:
Bausch Health US, LLC
400 Somerset Corporate Blvd
Bridgewater, NJ 08807
Attention: General Counsel

10.8 Further Assurances. The parties agree to execute such additional documents and perform such acts as are reasonably necessary to effectuate the intent of this Purchase Agreement.

10.9 Entire Agreement. Effective as of the Effective Date, this Purchase Agreement constitutes the entire agreement between the parties regarding the subject matter hereof, and supersedes all prior or contemporaneous understandings or agreements regarding the subject matter hereof, whether oral or written. This Purchase Agreement shall be modified or amended only by a writing specifically referring to this Purchase Agreement signed by both BIRL and Eton.

10.10 Force Majeure. Neither party shall be liable for delays in its performance caused by Force Majeure Events, provided the affected party gives the other party written notice of such event within three (3) business days of its occurrence. Such notice shall state the estimated duration of such event and the cause thereof and the affected party shall use commercially reasonable efforts to work around such event beyond its control.

10.11 Headings and Construction. No rule of construction shall be applied to the disadvantage of a party because that party was responsible for the preparation of this Purchase Agreement or any part of this Purchase Agreement. The Article and Section headings in this Purchase Agreement are for convenient reference only and shall be given no substantive or interpretive effect. With respect to all terms used in this Purchase Agreement, words used in the singular include the plural and words used in the plural include the singular. The word 'including' means including without limitation, and the words ' herein' , 'hereby' , 'hereto ' and 'hereunder' refer to this Purchase Agreement as a whole. Unless the context otherwise requires, references found in this Purchase Agreement: (i) to Articles and Sections mean the Articles and Sections of this Purchase Agreement, as amended, supplemented and modified from time to time; (ii) to an agreement, instrument or other document means such agreement; (iii) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time, to the extent provided by the provisions thereof and by this Purchase Agreement; and (iv) to a statute or a regulation mean such statute or regulation as amended from time to time.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, each party has caused a duly authorized representative to execute this Purchase Agreement as of the Effective Date.

Eton Pharmaceuticals, Inc.

By: _____
Name:
Title:

Bausch Health Ireland Limited

By: _____
Name:
Title:

Exhibit 10.2

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 SUPPLY AGREEMENT

THIS EXCLUSIVE LICENSE AND SUPPLY AGREEMENT (this "***Agreement***") is entered into as of February 8, 2019 (the "***Effective 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 **SINTETICA SA,** a company number CHE-105.272.121 with offices at Penate 5, CH-6850 Mendrisio, Switzerland ("***Sintetica***").

RECITALS

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

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

WHEREAS, Sintetica desires to manufacture and supply the Products exclusively to ETON for Marketing (later defined) in the Territory (later defined), and ETON is willing to purchase exclusively from Sintetica the Products under the terms and conditions set forth herein;

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

WHEREAS, ETON and Sintetica will share in the Net Profits (later defined) obtained by the sale of Products in the Territory under the terms and conditions set forth herein;

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 Sintetica, 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 "***Accepted***" shall have the meaning ascribed to the term in Section 4.8 of this Agreement.

1.2 "***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.

1.3 "***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 MAs.

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

1.5 "***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.

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

1.7 "***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.

1.8 "***COGS***" means for each applicable Product the total of all actual, direct manufacturing costs (including cost of raw materials and packaging materials) directly incurred by Sintetica and directly allocable to the manufacture and supply of the applicable Product as of the Effective Date or as adjusted pursuant to Section 6.2.1 of this Agreement. For clarity, such costs shall not include (a) any allocation or absorption of unused, excess or idle capacity, (b) any costs attributable to shipment of the Product to the relevant facility, (c) any Taxes or Transfer Taxes, or (d) any depreciation expense (including but not limited to any depreciation of any machinery or equipment).

1.9 "***Confidential Information***" shall have the meaning ascribed to the term in Section 10.2 of this Agreement.

1.10 "***Confirmed Purchase Order***" shall have the meaning ascribed to the term in Section 5.5.1 of this Agreement.

1.11 "***Customer Penalties***" shall have the meaning ascribed to the term in Section 4.11.3 of this Agreement.

1.12 "***Deducted Customer Penalties***" shall have the meaning ascribed to the term in Section 5.11.4 of this Agreement.

1.13 "***Delivery Date***" shall have the meaning ascribed to the term in Section 4.5.1 of this Agreement.

1.14 "***ETON Indemnified Parties***" shall have the meaning ascribed to the term in Section 14.1 of this Agreement.

1.15 "***Excessive Amount***" shall have the meaning ascribed to the term in Section 4.5.2 of this Agreement.

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

1.17 "***Firm Period***" shall have the meaning ascribed to such term in Section 4.4 of this Agreement.

1.18 "***Force Majeure Events***" shall have the meaning ascribed to such term in Section 16.2 of this Agreement.

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

1.20 "***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.

1.21 "***Gross Sales***" shall have the meaning ascribed to the term in Section 1.36.

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

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

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

1.25 ***"Intellectual Rights Legal Expenses"*** shall have the meaning ascribed to the term in Section 7.6.1 of this Agreement.

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

1.27 "***Latent Defect***" shall have the meaning ascribed to the term in Section 4.10 of this Agreement.

1.28 "***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.

1.29 "***MAs***" 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.

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

1.31 "***Material Delivery Delay***" shall have the meaning ascribed to the term in Section 4.11.3 of this Agreement.

1.32 "***MAQ***" shall have the meaning ascribed to the term in Section 4.5.5 of this Agreement.

1.33 "***MOQ***" shall have the meaning ascribed to the term in Section 4.5.4 of this Agreement.

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

1.35 "***Net Profits***" means with respect to a given Product sold by ETON in the Territory, (a) the Net Sales of the Product less (b) the sum of (i) the Transfer Price or transfer price paid by ETON if manufactured by a Third Party, if applicable, (ii) Sintetica's share of the Regulatory Fees, (iii) the SG&A Fee.

1.36 "***Net Sales***" means, with respect to each Product sold in the Territory, the aggregate gross sales amount invoiced by wholesalers, distributors or ETON on an arms-length basis to Third Parties in the Territory ("***Gross Sales***"), less the following deductions per NDC number: (a) all trade discounts including a percentage off Gross Sales to cover cash discounts given by ETON; (b) ETON's adjustments on account of price adjustments, billing adjustments, bid defaults, shelf stock adjustments, promotional payments or similar allowances; (c) ETON's chargebacks, rebates, administrative fee arrangements, reimbursements, and similar payments to wholesalers and other distributors, buying groups, health insurance carriers, managed care groups, pharmacy benefit management companies, health maintenance organizations, other institutions or health care organizations or customers; (d) ETON's amounts due to third parties on account of rebate payments, including Medicaid 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;; (f) any government-mandated manufacturing Tax 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; (g) any costs incurred in connection with or arising out of compliance with any Risk Evaluation and Mitigation Strategies, the Prescription Drug User Fee Act and (h) other specifically identifiable amounts that have been credited against or deducted from ETON's Gross Sales and are substantially similar to those credits and deductions listed above.

1.37 "***Operating Expenses***" shall mean with respect to a given Product in the Territory, the shipping, handling, freight, import Tax, insurance cost for transportation of the Products (or any Third Party logistics' warehouses) incurred by ETON.

1.38 "***Party***" or "***Parties***" means ETON or Sintetica, as applicable.

1.39 "***Payment Period***" shall have the meaning ascribed to the term in Section 6.3.3 of this Agreement.

1.40 "***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.

1.41 "***Pharmacovigilance Agreement"*** shall have the meaning ascribed to the term in Section 4.4 of this Agreement.

1.42 "***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 an MA) and manufactured and supplied by Sintetica (or a Third Party as permitted by this Agreement) to ETON in fully packaged and labeled form and ready for commercialization by ETON.

1.43 "***Product Labelling and Packaging***" shall have the meaning ascribed to the term in Section 5.1.1 of this Agreement.

1.44 "***Quality Agreement***" shall have the meaning ascribed to that term in Section 4.2.10 of this Agreement.

1.45 ***"Quality Assurance Liaison"*** shall have the meaning ascribed to that term in Section 5.3.4 of this Agreement.

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

1.47 "***Recovery Plan***" shall have the meaning ascribed to that term in Section 4.11.3 of this Agreement.

1.48 "***Regulatory Fees***" shall have the meaning ascribed to that term in Section 3.2 of this Agreement.

1.49 "***Rolling Forecast***" shall have the meaning ascribed to that term in Section 4.4 of this Agreement.

1.50 "***Selling, General, and Administrative Fee***" or "***SG&A Fee***" shall have the meaning ascribed to that term in Section 6.3.2 of this Agreement.

1.51 ***"Sintectica 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, and other information owned, licensed to or controlled by Sinetica relating to the Products, including but not limited to use, manufacture, and packaging thereof.

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

1.53 "***Sintetica Net Profit Share***" shall have the meaning ascribed to the term in Section 6.3.1 of this Agreement.

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

1.55 "***Supply Failure***" has the meaning ascribed to that term in Section 4.11.2 of this Agreement.

1.56 "***Supply Term***" shall mean, on a Product by Product basis, an initial period of ten (10) years from the date of first commercial sale of the applicable Product by ETON in the Territory, and any renewals or extensions thereof.

1.57 "***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.

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

1.59 "***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.

1.60 "***Territory of Manufacture***" means the country of Switzerland.

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

1.62 "***Transfer Price***" has the meaning ascribed to that term in Section 6.2.1 of this Agreement.

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

2. GRANT OF RIGHTS

2.1 Sintetica, 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 Sintetica) right and license, including the right to sublicense, to the Products, MAs, and all current and future Sinetica Background Intellectual Property that are owned or controlled by Sintetica or its Affiliates for ETON to develop, manufacture, import, use, promote, distribute, market, advertise, offer for sale or sell (collectively, "***Market***") the Products in the Territory. For avoidance of doubt, Sinetica and its Affiliates shall remain the owner of the Product dossiers and Sinetica Background Intellectual Property.

2.2 ETON, for itself and its Affiliates, hereby grants to Sintetica 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 Sintetica 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.

2.3 Except as otherwise expressly provided in this Agreement, Sintetica and its Affiliates, during the Term, shall manufacture and supply exclusively to ETON and its Affiliates all of their requirements for the Products for Marketing in the Territory. For avoidance of doubt, Sintetica and its Affiliates shall not manufacture and supply, during the Term, the Products or any pharmaceutically equivalent products for themselves or any Third Party (not consented by ETON) for Marketing in and for the Territory.

2.4 Except as otherwise expressly provided in this Agreement, ETON and its Affiliates shall exclusively purchase all of their requirements for the Products from Sintetica for Marketing in the Territory.

3. PRODUCT DEVELOPMENT AND REGISTRATION

3.1 Development and Registration Responsibilities.

3.1.1 At its sole cost and expense, Sinetica shall be responsible and liable for developing the Products and filing and obtaining approval of the MAs with the FDA. Within seven (7) days after receiving notice of approval of the MA(s) for the Product(s), Sintetica shall file the necessary documentation to transfer the approved MA(s) to ETON's name.

3.1.2 If ETON's customer research shows demand that there is commercial demand for the Product in a container system that Sintetica is unable to produce, then ETON shall have the right to secure additional suppliers to develop, file for registration, and obtain approval with the FDA for the Product in that container system, and Sinetica shall grant ETON all the rights and licenses necessary to develop, register, obtain approval, and Market the Product with that container system in the Territory. Any additional Products would be subject to this agreement

3.2 Registration Maintenance and Regulatory Responsibilities. After the approved MAs are transferred to ETON's name, ETON shall be responsible for the maintenance of the approved MAs. In such an event, ETON will take all actions with the FDA, including paying all fees accrued after time of transfer and conducting all communications with FDA or other Governmental Entities as required by Applicable Law in respect of the MAs, including without limitation initial 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. The Parties shall share equally in all maintenance and regulatory fees under this Section 4.2 ("***Regulatory Fees***"). Sintetica shall use its best efforts to provide support, including providing any required information and documents, to ETON in the maintenance of the approved MAs. Sintetica's share of Regulatory Fees shall be deducted prior to Sintetica receiving its profit share.

3.3 ETON's NDC Numbers. Sintetica 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. After the approved MAs are transferred to ETON's name, ETON shall assume all responsibility for responding to any medical inquiries or complaints about any Products as set forth in the Pharmacovigilance Agreement attached hereto as Exhibit C (the "***Pharmacovigilance Agreement***") and to be entered into by the Parties as soon as practicable. Sintetica will notify ETON immediately of any circumstances that may result in a potential recall, market withdrawal, inventory retrieval, or similar action ("***Recall Event***") that may affect the products or services under this proposal. ETON will administer the Recall Event, but Sintetica shall reimburse ETON for any costs associated with the Recall Event, including but not limited to shipping charges, legal fees, and any action necessary to effectuate a recall, to the extent the Recall Event is attributable to Sintetica's performance of its obligations under this Agreement, including but not limited to sanitation of Sintetica's equipment, negligence in manufacturing, or poor quality standards. If the Recall Event is related to ETON's commercialization activities, then ETON will administer the Recall Event and be solely responsible for costs and expenses associated with that Recall Event.

3.5 Competitive Products. During the Term of this Agreement, and for a period of five (5) years thereafter, Sintetica nor ETON shall not research, develop, manufacture, file, sell, market, or distribute any competitive product, including a product containing [* * *] as as the sole active ingredient that is marketed and sold in the Territory in the injectable route of administration; nor will Sintetica nor ETON directly or indirectly assist any other Person or entity in carrying or any such activities for eventual marketing or sale in the Territory.

4. MANUFACTURE AND SUPPLY

4.1 Product Labeling and Packaging.

4.1.1 The packaging artworks will be prepared by Sintetica, at its sole cost and expense, with the proprietary trademark and design artwork. Sintetica shall design the packaging, the containers, the labels, the user instructions, warning notices, master shipper, pattlet layout, including the artwork necessary or beneficial for the distribution in the Territory ***("Product Labelling and Packaging***"). Sintetica shall also be solely responsible for, at its cost and expense, the requirements to serialize the Products under Applicable Law. Prior to commencing into production, Sintetica shall submit the Product Labelling and Packaging to ETON for its review for accuracy. Only upon ETON's approval shall Sintetica proceed to print the Product Labelling and Packaging. Sintetica shall be responsible and liable for the final content of the Product Labelling and Packaging and their compliance with Applicable Law in the Territory and Territory of Manufacture.

4.1.2 After ETON approves the Product Labelling and Packaging in Section 5.1.1, Sintetica shall supply ETON the Products in finished dosage form and fully packaged and ready for Marketing by ETON in the Territory.

4.1.3 ETON shall distribute the Products exclusively with the Product Labelling and Packaging in which they are supplied to it by Sintetica. For avoidance of doubt, ETON shall not modify the Product Labelling and Packaging in any way when distributing the Products in the Territory.

4.1.4 Any modification of the Product Labelling and Packaging shall require prior written approval by both Parties and must comply with all Applicable Laws in the Territory.

4.2 Manufacture and Supply of Products.

4.2.1 Sintetica shall exclusively manufacture and supply the Products to ETON, and ETON shall exclusively purchase from Sintetica the Products and Market the Products in the Territory, except as otherwise expressly provided in this Agreement.

4.2.2 Sintetica shall use commercially reasonable efforts to supply on a timely basis one hundred percent (100%) of ETON's requirement for each Product for commercialization in the Territory.

4.2.3 Sintetica shall use commercially reasonable efforts to provide ETON with Product with expiration date that is at least seventy five percent (75%) of the shelf-life for the applicable Product, but in no event less than eighteen (18) months from the date such Product is delivered to ETON.

4.2.4 Sintetica shall ensure that it has an adequate supply of active and other ingredients required to manufacture the Products in order to meet at least one hundred twenty-five percent (125%) of ETON's forecasted requirements for the Products in the Territory. In the event that for any reason Sintetica may have insufficient supply of active or other ingredients required to meet its obligations under this Section 4.2.2, Sintetica, upon ETON's approval, shall obtain a Third-Party source for such active and other ingredients agreed to by ETON.

4.2.5 Sintetica shall manufacture each Product at its own manufacturing site. In the event Sintetica desires to transfer the manufacture of any Product to another site other than those designated in the relevant MA, Sintetica shall require ETON's written approval.

4.2.6 Sintetica shall, during the Term, maintain its relevant manufacturing site, all property, equipment, machinery and systems therein in the ordinary course of business and in compliance with GMP and Applicable Law (including Drug Security and Supply Chain Act) and free of material defects except for those attributable to wear and tear consistent with age and usage of such assets and except for such defects as do not and will not in the aggregate impair the ability to use such assets in connection with this Agreement.

4.2.7 Sintetica will properly maintain a sample from each batch of Product as required by applicable regulatory standards in the Territory, Territory of Manufacture, Applicable Law or as otherwise agreed in writing by the Parties.

4.2.8 Sintetica will validate all processes, methods, equipment, facilities and utilities used in the manufacture, storage, testing and release of each Product in conformity with all Applicable Laws. ETON shall have the right to review the validation reports upon written request.

4.2.9 Sintetica shall provide ETON with timely notification of all deviations that could materially impact the quality of any Product as well as all reports or audits of any applicable regulatory authority or other applicable governmental agency regarding testing, manufacture, storage, labeling, handling or packaging of any Product.

4.2.10 Notwithstanding anything to the contrary in this Agreement, all Product manufactured by Sintetica and sold to ETON under this Agreement, when delivered by Sintetica to ETON, shall meet the specifications and the requirements as set forth in a Quality Agreement, attached hereto as Exhibit B, to be entered into by the Parties as soon as practicable (the "***Quality Agreement***").

4.3 Manufacturing and Quality Records and Audits.

4.3.1 Sintetica shall supply the Products to ETON in accordance with the terms and conditions of this Agreement, the Quality Agreement, the relevant MAs and Applicable Law. Sintetica shall deliver to ETON, together with each delivery of each batch of Product, the corresponding certificate of analysis relating to such batch and certification that all Product in such batch were manufactured in accordance with GMP, the Quality Agreement and any Applicable Law. The certificate of analysis shall include the actual result of the testing performed by Sintetica on such batch. Sintetica agrees that it shall not make any changes in the formulation, manufacture, production, packaging, labeling or storage of any Product or any component thereof without consent of ETON unless Sintetica is expressly required to do so by Applicable Law or a relevant regulatory authority, in which case Sintetica shall notify ETON in writing promptly of such change and the reason therefor.

4.3.2 Sintetica shall prepare and maintain complete and accurate records relating to each Product and the manufacture, quality operation, packaging, labeling, storage, handling and testing of each batch therefor as required by Applicable Law and GMP and Sintetica shall make copies thereof available for review by ETON upon request. These records shall be subject to audit and inspection under this Agreement. Records that include information relating to the manufacturing, finished product packaging, and quality operation for each batch of each Product will be prepared by Sintetica at the time such operations occur. Sintetica will prepare such records in accordance with GMP, this Agreement, the Specifications and Applicable Law.

4.3.3 On an annual basis, upon ETON's prior written notice of at least thirty (30) days and at its expense, Sintetica shall permit representatives of or selected on behalf of ETON to inspect Sintetica's facilities relevant to the manufacture, testing, packaging, labeling, quality control, storage and transport of any Product. Notwithstanding the foregoing, ETON may inspect at any time without cost to ETON if the inspection is for cause, provided that the scope of such inspection is limited to the cause for such inspection.

4.3.4 ETON and Sintetica shall each designate one (1) individual to whom all of the other Party's communications may be addressed with respect to the manufacturing of Product (the "***Quality Assurance Liaison***"). Each Party shall give prompt notice to the other Party of any material adverse change or event that relates to a quality issue or related matter with respect to the manufacturing site for a Product or the Product itself.

4.4 Forecasts. No later than sixty (60) days prior to ETON's projected desired initial delivery of commercial batches of each Product, ETON shall provide to Sintetica a forecast which shall indicate ETON's reasonable estimate of its expected requirements for each Product from Sintetica for the twelve (12) month period commencing on the desired initial Delivery Date for such Product. Commencing on the fifth (5th) Business Day after the initial Delivery Date for a given Product and not later than the third (3rd) Business Day of each third (3rd) calendar month thereafter, ETON shall submit a forecast of its requirements from Sintetica for each Product which shall indicate ETON's reasonable estimate of its expected requirements of Product from Sintetica for the twelve (12) month period commencing on the first (1st) day of the fourth (4th) full calendar month after the date of each such update (each a "***Rolling Forecast***"). The first three (3) calendar months of each Rolling Forecast shall be considered binding forecasts for Product (the "***Firm Period***"). Except as expressly provided in the foregoing sentence, such Rolling Forecasts constitute non-binding, good-faith estimates provided solely to assist Sintetica in production planning and subject to the terms and conditions hereof the Rolling Forecast for any period may be revised by ETON by written notice to Sintetica.

4.5 Purchase Orders and Minimum Order Requirements.

4.5.1 The purchase of each Product under this Agreement shall be implemented by ETON's issuance of individual purchase orders to Sintetica for specific quantities of each Product which purchase orders shall reflect the Firm Period, if applicable, and shall specify the delivery date for each Product (the "***Delivery Date***"). The first order shall be placed no earlier than fifteen (15) days from ETON receiving written confirmation from Sintetica of the approval of the MA for the Product by FDA in the Territory. Subsequent orders shall be placed one hundred twenty (120) days prior to ETON's requested Delivery Date. Within seven (7) Business Days of its receipt of a purchase order, Sintetica shall accept in writing such purchase order submitted in accordance with this Section 4.5.1 by delivering a confirmation of the Delivery Date set forth in each purchase order (a "***Confirmed Purchase Order***").

4.5.2 If a purchase order requests quantities of such Product in excess of one hundred twenty five percent (125%) of ETON's most recent forecast for such month, then Sintetica shall within seven (7) Business Days of its receipt of such a purchase order, notify ETON whether and to what amount Sintetica can supply such excess. No purchase order shall be rejected provided that the purchase order complies with the terms of this Agreement. For any given calendar month, Sintetica may be required to accept purchase orders for quantities of Product up to one hundred twenty-five percent (125%) of ETON's most recent forecast for such month and shall use commercially reasonable efforts to supply quantities of Product in excess of one hundred twenty-five percent (125%) of the forecasted amounts (the "***Excessive Amount***"). In the event Sintetica cannot supply the Excessive Amount, then ETON shall be free to source and procure such Excessive Amount from a Third-Party alternative source at its own cost. In such an event, Sintetica shall not receive its profit share for the Excessive Amount.

4.5.3 ETON shall assign a purchase order number to each order placed with Sintetica and notify such order numbers to Sintetica. Each Party shall use the relevant purchase order number in all subsequent correspondence relating to the order.

4.5.4 [* * *]

4.5.5 [* * *]

4.5.6 [* * *]

4.6 Delayed Delivery. In the event of any changes in the Territory that could adversely affect sales of a given Product, ETON shall have the right to delay delivery of Product ordered by ETON from Sintetica pursuant to a purchase order for a period of up to six (6) months after the Delivery Date of the applicable shipment of the applicable Product. In the event ETON wishes to delay any such shipments it will notify Sintetica in writing at least sixty (60) days in advance of the applicable Delivery Date. ETON shall also have the right to cancel any purchase order, however, in the event of such cancellation ETON shall pay for (a) all such applicable Product already manufactured by Sintetica that cannot be sold to ETON hereunder in a future shipment of such Product without violating the terms of this Agreement; (b) all of the materials and components ordered by Sintetica specifically for the manufacture of the affected Product that cannot be otherwise used or returned to the applicable supplier; (c) any reasonable, documented costs and expenses for work-in-progress of the affected Product completed under the purchase order prior to cancellation; and (d) the cost of destruction of the applicable Product, if any.

4.7 Shipment.

4.7.1 Products shall be invoiced and delivered Ex-Works Sintetica, Mendrsio, CH, in Sintetica's standard packaging and delivery units applicable from time to time.

4.7.2 Sintetica will not ship any Product that it reasonably believes will not conform to the relevant Specifications, MAs, this Agreement or with Applicable Law. If Sintetica reasonably believes any such Product would not conform as such, then Sintetica shall, at no cost to ETON, manufacture and supply replacement Product to replace the non-conforming Product as promptly as possible. Sintetica shall be responsible for all costs and expenses, including expedited shipping and Customer Penalties related to such replacement.

4.7.3 Risk of loss shall pass in accordance with the applicable Incoterms, and at such time Sintetica shall pass to ETON good and marketable title to each Product, free and clear of all liens, claims, security interests, pledges, charges, mortgages, deeds of trusts, options, or other encumbrances of any kind.

4.8 Acceptance. Within thirty (30) days of receipt of each shipment of Product by Sintetica at ETON or its designated facility, ETON shall perform or cause to be performed any inspections ETON deems necessary for each shipment of the Product and notify Sintetica in writing within such thirty (30) day period if ETON believes that the Product fails to conform to the Specifications, MAs, this Agreement, or Applicable Law, or if any defect, shortage, or other nonconformance exists. If ETON does not provide such notice within the thirty (30) day period, the shipment shall be deemed to be accepted ("***Accepted***"), except as otherwise provided by Section 5.10.

4.9 Non-Conformity; Shortage; Defectiveness. If ETON believes that (a) any Product has not been manufactured in accordance with the requirements of the Specifications, MAs, this Agreement or Applicable Law; (b) any defect exists in any Product delivered, or (c) there is a shortage of Product delivered; then in each case ETON will, within thirty (30) days of the receipt of such Product by ETON, notify Sintetica in writing setting forth in reasonable detail the alleged nonconformity, defect or shortage. Upon any such notification, Sintetica shall have the right to inspect the applicable Product itself or appoint, at its expense, a mutually acceptable Third Party to perform such inspection. Sintetica or such Third Party will have fourteen (14) days to inspect the affected Product to make an assessment of the alleged nonconformity, defect or shortage. If the Parties agree there is a nonconformity, defect or shortage or if Sintetica fails to inspect or have inspected the applicable shipment of Product within such fourteen (14) day period, then Sintetica at its sole cost and expense shall promptly replace any nonconforming or defective Product or make up the shortage, to be shipped at Sintetica's cost. Nonconforming or defective Product will be returned to Sintetica at Sintetica's cost. Sintetica shall, during any such inspection periods outlined in this Section 5.9, continue to supply Product to ETON pursuant to the terms and conditions of this Agreement. Any dispute between the Parties concerning rejection of all or any part of a shipment of Product which the Parties are unable to resolve within thirty (30) days of the aforementioned fourteen (14) day period will be submitted to an agreed-upon, qualified, independent laboratory for testing using the test methods set forth in the applicable MA or other mutually agreed upon methods. Sintetica shall replace promptly any shipment or portion of a shipment of Product under dispute until the dispute is resolved. Such replacement Product and the cost of the laboratory will be at Sintetica's expense if the laboratory finds that the lot in question is non-conforming or otherwise defective. The costs of the laboratory shall be ETON's expense if the lot in question is found to be conforming or otherwise non-defective. The findings of the laboratory shall be final and binding upon the Parties and not subject to appeal or review by any Third Party. In the event the laboratory finds that the lot in question is nonconforming, then Sintetica shall pay for the destruction of such nonconforming lot.

4.10 Latent Defects. The Parties acknowledge it is possible for Product to have manufacturing defects that are not discoverable upon reasonable physical inspection or testing (such a "***Latent Defect*** or "***Latent Defects***"). Latent Defects may include, by way of example and not definition or limitation, loss of stability, separation, discoloration, defects not present in pre-shipment samples or other manufacturing defects. Sintetica is responsible for all Latent Defects that are attributable to the manufacture, labeling, packaging, shipping, handling or storage of Product by Sintetica or failure of such Product to otherwise comply with the provisions of this Agreement. As soon as ETON becomes aware of any Latent Defect, it will immediately notify Sintetica of the lot(s) involved and Sintetica shall replace such Product in the manner described in Section 4.9.

4.11 Failure to Supply.

4.11.1 In the event that Sintetica is unable to supply any quantity of Product ordered through a Confirmed Purchase Order for any reason, then Sintetica shall promptly notify ETON of such inability to supply and if possible, will notify ETON of the date on which such inability is expected to end. In such event, Sintetica and ETON will for a period up to thirty (30) days discuss in good faith a resolution to such inability to supply. Sintetica shall also immediately prioritize its available production capacity, materials and components to the manufacture of the affected Product to minimize the impact of the failure to supply.

4.11.2 Notwithstanding the foregoing, in the event Sintetica is unable to (i) supply Product to ETON as ordered by ETON per purchase order, and in the amount of product equal to at least that specified in Section 5.2.2 of this Agreement for a period within thirty (30) days of the Delivery Date or (ii) deliver Product in the amount of product equal to at least that specified in Section 4.2.2 of this Agreement to ETON by the Delivery Date on two (2) or more occasions over a period of three (3) months (a "***Supply Failure***"), then ETON shall, in addition to its other rights and remedies available hereunder, have the right to cancel the purchase order(s) for Product(s) without penalty or liability and to purchase such Product from an alternate source, including a Third Party. For purposes of this Agreement, delivery within thirty (30) days before or after the Delivery Date shall be deemed as meeting the Delivery Date.

4.11.3 In the event that Sintetica shall have reason to believe it will be unable to supply Product to ETON for a period of at least three (3) months beyond the Delivery Date (a "***Material Delivery Delay***"), Sintetica shall promptly notify ETON thereof. Following ETON's receipt of such notice the Parties shall promptly meet to discuss in good faith and establish a plan that shall contain all necessary activities to be implemented to avoid or eliminate interruption in supply, including but not limited to permitting ETON to purchase the Products from a Third Party if necessary (the "***Recovery Plan***"). Sintetica shall be obligated to perform the activities in accordance with the Recovery Plan. If, despite undertaking the measures set forth in the preceding sentence, ETON purchases substitute product or incurs Customer Penalties as a result of any Supply Failure or Material Delivery Delay, ETON will provide to Sintetica proof thereof which shall only include identity of the customer, amount of the customer penalty and a reference to either a credit number or invoice number associated with the customer penalty and Sintetica shall reimburse ETON for (A) the difference, if any, between (x) the purchase price ETON pays for product from an alternate source and (y) the Transfer Price and (B) Customer Penalties, including the difference between (i) the purchase price paid by ETON's customer to source product from an alternative source and (ii) ETON's price to the customer for the Product if such difference is charged by the customer to ETON (each of (A) and (B) "***Customer Penalties***").

4.11.4 In the event ETON incurs and pays for any Customer Penalties, except due to a Force Majeure Event (which Customer Penalties shall be deducted from Net Profits), ETON will, as a first remedy, deduct for a period up to two (2) consecutive Calendar Quarters, from its future payment of the Sintetica Net Profit Share an amount not to exceed the Customer Penalties (the "***Deducted Customer Penalties***") until the first to occur of: (a) the Deducted Customer Penalties equals the Customer Penalties or (b) ETON does not owe to Sintetica any such Sintetica Net Profit Share. If, after such deductions or upon reaching the end of the two (2) calendar quarter period, the Customer Penalties exceed the Deducted Customer Penalties, ETON will invoice Sintetica for such difference and Sintetica will pay such invoice in full within sixty (60) days of receipt thereof. ETON will have the right to withhold any future payments owed to Sintetica until all such invoices are paid in full.

4.11.5 Notwithstanding anything to the contrary in this Agreement, in the event of Supply Failure by Sintetica, ETON shall have the right to use a Third-Party manufacturer to supply the Product for the Territory. In such an event, Sintetica (a) shall use commercially reasonable efforts to effectuate such technology transfer to the Third-Party manufacturer, and (b) pay for the technology transfer to the Third-Party manufacturer. Under this Section 4.11.5, ETON shall be fully released from its purchase orders and any Firm Period section of a Rolling Forecast and shall be permitted to purchase such Products from a Third Party.

4.12 The rights and remedies provided in this Section 5 shall be cumulative and in addition to any other rights and remedies that may be available to ETON.

4.13 Inventory: ETON shall keep an amount of inventory at all times greater than six (6) months of forecasted average unit sales for all Products

5. SALES AND MARKETING

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.

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.

6. MILESTONES AND PROFIT SHARE; PAYMENTS

6.1 Milestones. ETON will pay to Sintetica a total sum of one million seven hundred fifty thousand dollars ($1,750,000) after the achievement of the following milestones:

(a) An amount of one million dollars ($1,000,000) within thirty (30) days after the execution of this Agreement. If the MAs for the Products are not accepted to file or review by the FDA, then the one million dollar ($1,000,000) payment shall be returned to ETON within five (5) Business Days after Sintetica's receipt of the FDA's notice of non-acceptance to file or review of the MAs.

(b) An amount of seven hundred fifty thousand dollars ($750,000) within thirty (30) of the first commercial sale of [* * *]. If Sintetica is able to supply Product to Eton and Eton has not achieved first commercial sale within ninety (90) days, the payment shall become due.

6.2 Transfer Price.

6.2.1 **[* * *]**.

6.2.2 Sintetica shall use commercially reasonable efforts in accordance with its standard manufacturing practices to reduce its COGS for Products. The Parties will meet on annual basis to discuss plans to reduce the Transfer Price. Sintetica shall use commercially reasonable efforts to implement such plans and reduce the Transfer Price.

6.2.3 Sintetica will invoice ETON when Product has been released by Sintetica, at a price per unit that is equal to the Transfer Price for such Product. Except as otherwise provided for in this Agreement, ETON shall pay to Sintetica the Transfer Price for such Product within thirty (30) days after the date of receipt of an invoice from Sintetica.

6.2.4 If ETON fails to cure any non-payment of an invoice within sixty (60) days after receipt of the invoice other than for reasons outside of its control, then Sintetica may call for immediate payment of all outstanding invoices. Sintetica may also make further deliveries subject to prepayment.

6.3 Net Profit Share.

6.3.1 ETON shall pay to Sintetica the first five hundred y thousand ($500,000) of Net Profits from sales by ETON of the Products in the Territory. After five hundred thousand ($500,000) is paid to Sintetica, ETON and Sintetica will share the Net Profits from sales by ETON of the Products in the Territory, if any, as follows: (a) ETON's share is fifty percent (50%) of Net Profits, and (b) Sintetica's share is fifty percent (50%) of Net Profits (the "***Sintetica Net Profit Share***").

6.3.2 ETON will have the right to withhold the following amounts on a Product-by-Product basis from the commercialization of such Products by ETON in the Territory: five (5%) percent of Net Sales (the "***Selling, General and Administrative Fee***" or "***SG&A Fee***").

6.3.3 Within sixty (60) days following the end of each Calendar Quarter following first commercial sale 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 Sintetica in a mutually acceptable format the Net Sales, Net Profits and Sintetica Net Profit Share for each Product sold in the Territory during the Payment Period, and (b) pay to Sintetica within thirty (30) days of the delivery of the report, the aggregate Sintetica Net Profit Share for all Products for that Payment Period as reflected in the report. For the first commercial year, if aggregate Net Profit for all Products for any Payment Period equals a negative amount, then Sintetica shall not be entitled to receive any Sintetica Net Profit Share for such Payment Period and ETON shall be permitted to carry over such negative amount to apply against aggregate positive Net Profit amounts in subsequent Calendar Quarters until such negative amount is reduced to zero.

6.4 **Interim and Final True-Ups.** During the Supply 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 Sintetica 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 plus an estimate for any remaining liabilities incurred related to the specified Product, 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 or Supply Term and on a Product-by-Product basis, ETON shall perform a final "true-up" reconciliation and shall provide Sintetica 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.

6.5 **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 Sintetica. Any Tax, duty or other levy paid or required to be withheld by ETON on account of any payments payable to Sintetica under this Agreement shall be deducted from the amount of payments due to Sintetica. ETON shall secure and promptly send to Sintetica proof of such Taxes, duties or other levies withheld and paid by ETON for the benefit of Sintetica. 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.

6.6 **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 (including the Transfer Price and Net Profit Share) 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.

6.7 **Accounting.** ETON and Sintetica shall calculate and record calculations under this Section 7 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 Supply Term plus an additional three (3) years thereafter.

7. INTELLECTUAL PROPERTY AND OTHER RIGHTS

7.1 At its sole cost and expense, Sintetica shall be solely responsible and liable for any litigation in connection with the Product's development, manufacturing, and the Sintetica Background Intellectual Property.

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

7.3 **Patents and Other Intellectual Property.** 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 provided that the Sintetica Background Intellectual Property is covered by a patent or patent application, Sintetica, at its sole cost and expense, shall maintain and protect the Sintetica Background Intellectual Property and continue to prosecute and maintain its patents covering the Sintetica Background Intellectual Property and shall keep ETON advised of material actions relative to the same. Should Sintetica contemplate to abandon or otherwise forfeit any patent/patent applications or patent rights in the Sintetica Background Intellectual Property, Sintetica shall notify ETON in advance of such contemplation. In such an event, ETON may pursue filing and prosecuting such patent applications relating to the Products, at its own cost and expense, and shall obtain from Sintetica rights and licenses to those patents and patent applications with the same scope as that in Section 2.1. Sintetica shall maintain the confidentiality of any trade secrets covering the Sintetica 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 hereto 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 fourteen (14) 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 **Provision of Information.** Sintetica shall promptly provide ETON with reasonable access to information and data about, and personnel knowledgeable of, the Product, its formulation, use and process of manufacture, to enable ETON to: (a) ascertain whether the manufacture or marketing of the Product would infringe any Third Party intellectual property rights; and (b) determine its conduct in relation to any proceedings alleging infringement of the Third Party intellectual property rights.

7.6 **Intellectual Rights Suit.**

7.6.1 At its sole cost and expense, Sintetica shall 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 Sintetica shall keep ETON apprised of material developments. ETON shall fully cooperate with Sintetica 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 Sintetica in connection with the settlement of any such Intellectual Rights Suit. Except as otherwise set forth in this Agreement, Sintetica shall be responsible for all reasonable attorneys' fees and costs, settlement amounts and/or awarded damages incurred by either Party or their respective Affiliates in connection with the defense of any Intellectual Rights Suit provided such is directly related to this Agreement ("***Intellectual Rights Legal Expenses***").

7.6.2 Sintetica agrees that it will not, whether in the context of litigation or otherwise related thereto, without the prior written consent of ETON 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 ETON under this Agreement in respect of the Product.

7.7 **Third Party Infringement.** In the event either Party believes that a Third Party is infringing or otherwise violating a Party's intellectual property rights in the Territory or Manufacturing Territory, which infringement involves the Product, Sintetica and ETON shall consult with each other and their respective counsel in order to develop a strategy for addressing the Third-Party infringement. Unless the Parties agree differently, the owner of the infringed intellectual property (the owning Party) shall have the right at its sole discretion to bring action against the Third Party infringer, select counsel for, control, and bear the costs of such action, shall indemnify and hold the non-owning Party harmless, and shall be entitled to any award or settlement in respect thereof. In the event that the owning Party does not bring any action against the Third-Party infringer within the earlier of ninety (90) days from the Infringement Notification Date or the relevant statute of limitations, the non-owning Party shall be free to bring the action in its own name, at its own expense, and retain any award or settlement in its entirety. If necessary, the non-participating Party shall join, or be joined as a Party to the suit, but shall be under no obligation to participate, except to the extent that such participation is required as the result of being a named Party to the suit. The non-participating Party shall offer reasonable assistance in connection therewith, at no charge to the participating Party, except for reimbursement of reasonable out-of-pocket expenses.

7.8 Sections 7.1, 7.2 and 7.6 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 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.

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 the Swiss government in connection with the transaction contemplated hereby will be borne by Sintetica.

11. TERM & TERMINATION

11.1 **Term.** The term of this Agreement shall begin on the Effective Date and shall end upon the termination or expiration of every Supply Term, unless earlier terminated as set forth in Sections 11.2, 11.3 and 11.4 of this Agreement (the "***Term***"). The Supply Term shall begin on the Effective Date and shall end ten (10) years after the first commercial sale of each Product, and automatically be extended for successive three (3) year increments unless ETON or Sintetica provides each other with written notice of its intention not to extend the particular Supply Term for a given Product at least six (6) months before the expiration of the applicable initial Supply Term or any extension thereof.

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 sixty (60) days after the sending of such written notice unless the Breaching Party has cured any such material breach or material default prior to the expiration of the sixty (60) day period or if 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 one hundred eighty (180) 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 By ETON.** ETON shall have the right to terminate the Agreement or any Supply Term in whole or in part upon thirty (30) days prior written notice to Sintetica (a) in the event ETON determines in its sole discretion that a given Product is no longer commercially viable in the Territory; (b) if Sintetica sells an MA for a Product or otherwise does not support maintaining approval of the MA; (c) if Sintetica stops producing the Product; (d) if a Sintetica facility (i) fails to obtain or maintain any necessary license, ; (e) if Eton determines in its sole discretion that the Product filings are unlikely to be approved by the FDA and (f) any Product infringes upon any Third Party patents, trademarks, or other intellectual property rights in the Territory or Territory of Manufacture.

11.5 **Termination By Sintetica.** Sintetica shall have the right to terminate the Agreement or any Supply Term in whole or in part upon thirty (30) days prior written notice to ETON (a) if ETON develops competing product; and (b) if Government action forces the cessation of ETON's selling and marketing activities of all pharmaceutical products..

11.6 **Effect of Termination.**

11.6.1 If this Agreement is terminated by ETON under Sections 11.2, 11.3, and 11.4 (b,c,d,f) in addition to any remedies that ETON is entitled to (a) Sintetica shall, at its cost, provide reasonable assistance in technology transfer to an alternative supplier of ETON's choice and make best efforts in reducing or avoiding any adverse impact to ETON, (b) ETON shall have the right to purchase such Products from a Third Party and shall have a perpetual, fully-paid up, royalty-free, sublicensable, and exclusive right and license (including as to and against Sintetica) to make and have made the Product inside and outside the Territory and Market the Products in the Territory, at its option, and (c) Sintetica shall execute any documents or agreements reasonably necessary to effectuate the foregoing (including but not limited to any amendment to this Agreement), as determined by ETON.

11.6.2 If this Agreement is terminated by Sintetica under Sections 11.2 and 11.3, then (a) ETON shall have the right to, and Sintetica shall hereby grant ETON a license to, Market or otherwise dispose of any existing inventory of any Products then in ETON's possession, (b) Sinetica may keep all the licensing payments paid by ETON up to the point of termination and is free to commercialize or relicense the Product with no further obligations owed to ETON, (c) ETON shall refrain from holding itself out as Sintetica's distributor, in particular, eliminate any reference to the Product and Sintetica from its business, trade style and promotional material, (d) ETON will promptly transfer the MAs to Sintetica's name, and (e) ETON shall transfer all rights, licenses, and approvals to the Product to Sintetica or another company indicated by Sintetica within thirty (30) days of termination. This Section 11.5 shall survive termination or expiration of this Agreement.

11.6.3 If this Agreement is terminated by ETON under Section 11.4(a) all milestones will become immediately due to Sintetica . All rights to Products will immediately return to Sintetica.

11.6.4 If this Agreement is terminated by ETON under Section 11.4(e) prior to two years having elapsed since filing for the MA with the FDA; all milestones will become immediately due to Sintetica, and a one time payment for lost Gross Profit of one million dollars ($1,000,000) will also become due. All rights to Products will immediately return to Sintetica.

12. REPRESENTATIONS AND WARRANTIES

12.1 **ETON Representations and Warranties.** ETON represents and warrants to Sintetica 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 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 **Sintetica Representation and Warranties.** Sintetica 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 Sintetica, 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 Sintetica 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 MA 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 the MAs and Products and the right, power and authority to grant a license to ETON hereunder;

12.2.10 it has and will maintain until the end of the Term the capacity to manufacture the Products in quantities ordered by ETON;

12.2.11 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;

12.2.12 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;

12.2.13 its manufacturing facilities applicable to Products conform, and shall conform throughout the Term, in all respects to all Applicable Laws governing such facilities and it shall maintain all records as are necessary and appropriate to demonstrate compliance in the manufacture of each Product with GMP, the Specifications, the applicable MA, the Quality Agreement and all Applicable Laws;

12.2.14 all Product supplied to ETON 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 MA, 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;

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

12.2.16 The FDA has not requested or demanded in writing that Sintetica discontinue any MAs for reasons related to safety or efficacy;

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

12.2.18 Sintetica 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 MAs or the use, manufacture, import, distribution, sale or offer for sale of any Product.

12.3 **Survival of Representations and Warranties**. All representations and warranties of ETON and Sintetica 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 **Sintetica's Indemnification Obligations**. Sintetica 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) Sintetica's material breach of any of its representations, warranties or covenants set forth in this Agreement, or any of its obligations hereunder; (ii) Sintetica'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) Sintetica'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 Sintetica and its officers, directors, agents, Affiliates, and employees (collectively, "***Sintetica 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 Sintetica 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 Sintetica'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 Sintetica'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 Switzerland. To the extent that it may otherwise be 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 Sintetica 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, 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 Supply Term if the Force Majeure Event still exists following such sixty (60) day notice period. Notwithstanding anything to the contrary in this Agreement, any Customer Penalties attributable to such Force Majeure Event shall be deducted from Net Profits.

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 Sintetica, to:

Sintetica S.A.
Via Penate 5,
6850 Mendrisio, Switzerland
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.

ETON PHARMACEUTICALS, INC.

By: _____
Name: _____
Title: _____

SINTETICA S.A.

By: _____
Name: _____
Title: _____

EXHIBIT A: PRODUCTS AND TRANSFER PRICES

Products:
[* * *]

Transfer Price:
[* * *]

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 SUPPLY AGREEMENT

This Exclusive License and Supply Agreement ("Agreement") is made and entered into as of January 23, 2019 ("Effective Date"), between ETON PHARMACEUTICALS, INC., a Delaware corporation ("ETON"), with a place of business at 21925 Field Parkway, Suite 235, Deer Park, IL 60010, LIQMEDS WORLDWIDE LIMITED, a private company limited by shares, registered in England and Wales ("LMW"), with a place of business at 65 Delamere Road, Hayes, Middlesex, United Kingdom, UB4 0NN, and LM MANUFACTURING, LTD. ("LM"), each a "Party" and collectively the "Parties").

RECITALS

WHEREAS, LMW has developed a proprietary solution designated as [* * *] (the "Product");

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

WHEREAS, LM is engaged in the business of manufacturing the Product;

WHEREAS, the Parties desire to enter into a license and supply agreement for the development, manufacture and marketing of the Product within the Territory (as defined below) subject to the terms set out in this Agreement.

NOW, THEREFORE, in consideration of the respective covenants, agreements, representations, warranties and indemnities herein contained and for other good and valuable consideration (the receipt and sufficiency of which are acknowledged by each Party), the Parties agree to the following terms and conditions:

AGREEMENT

1. Definitions.

"Accounting Standards" shall mean, with respect to a Person, the current applicable Generally Accepted Accounting Principles (GAAP) in the United States of America consistently applied by such a Person.

"Affiliate" means with respect to any Party, any party controlling, controlled by or under common control with any such Party. For purposes hereof, "control" and its derivatives means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Party, whether through the ownership of voting securities or voting interests, by contract or otherwise.

"ANDA" means an Abbreviated New Drug Application, or similar application for marketing approval of a Product submitted to the FDA.

"API" means the active pharmaceutical ingredient in unfinished form.

"Applicable Law" means as to any person or entity, any treaty, constitution, statute, ordinance, law, rule or regulation, guidance issued by a governmental or regulatory authority, or order or other determination of an arbitrator or a court or other governmental or regulatory authority, in each case applicable to or binding upon such person or entity or any of its property or to which such person or entity or any of its property is subject (including, without limitation, the U.S. Act and cGMPs).

"Calendar Quarter" means the three-month period beginning on January 1, April 1, July 1, and October 1 of each calendar year.

"cGMP" generally means current Good Manufacturing Practices in the Territory. With respect specifically to the Registration (NDA or ANDA), cGMP means the current Good Manufacturing Practices as established by FDA as the same may be amended from time to time.

"CMO" means the acronym, Contract Manufacturing Organization, a third-party contract manufacturer. The initial CMO is LM Manufacturing, Ltd. ("LM").

"Commercial Launch" means the first shipment of the Product in commercial quantities for commercial sale to a third party in the Territory after receipt of all applicable regulatory approvals therefor.

"Components" means raw materials for use in manufacturing of the API and/or the Product.

"FDA" means the United States Food and Drug Administration and its successors.

"NDA" shall mean a New Drug Application, or similar application for marketing approval of a Product submitted to the FDA.

"Insignia" means trademarks, trade names, logos, symbols, badges, labels, decorative designs, packaging designs or similar trade dress.

"LMW/LM Background Intellectual Property" shall mean 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, and other information owned, licensed to or controlled by LMW or LM relating to the Product, including but not limited to use, manufacture, and packaging thereof.

"Net Profit" shall mean Net Sales less (i) ETON's Transfer Price paid for the Product, (ii) the cost of any customs duties, tariffs, freight, recall fees, patient assistance/copay programs and insurance for shipment of the Product, (iii) supply marketing and management fee ("SMM Fee") in connection therewith billed to a Third Party by ETON or any of its Affiliates or sublicensees and before income taxes, (iv) LMW's share of the Regulatory Fees for the Product, and (v) any customer penalties due to a Force Majeure event. Net Profits shall be calculated in accordance with U.S. generally accepted accounting principles.

"Net Sales" shall mean, with respect to any Calendar Quarter, the actual total gross sales of the Product (number of units times the invoice price per unit) by ETON or its Affiliates in the Territory to Third Party customers (including hospital sales, mail orders, retail sales, and sales to governmental entities, wholesalers, and medical institutions) less the following deductions: (i) cash or prompt payment discounts, credits or allowances actually granted upon claims, damaged goods, rejections or returns of the Product; (ii) services fees, distribution fees or commissions payable to Third Party customers; (iii) Freight, postage shipping and insurance charges for the delivery of the Product to Third Party customers if separately stated on the invoice; (iv) taxes (excluding income taxes) or duties levied on, absorbed or otherwise imposed on the sale of the Product; (v) adjustments on account of price adjustments or one-time per customer stocking allowances; (vi) chargebacks resulting from resales by wholesalers and distributors to other Third Parties; (vii) rebates, promotional allowances, administrative fee agreements and similar buying groups, health care insurance carriers, pharmacy benefit management companies, health maintenance organizations, Medicaid or Medicare or similar type programs, professional allowances, trade spend and payments to public or private third party payers; and (viii) other programs of monetary value usual or customary in the pharmaceutical industry in the Territory provided to customers and (ix) any invoiced amounts which are not collectable by ETON or its Affiliates (including bad debts), the entire set of aforementioned deductions (i through ix inclusive) as solely in connection with the sale of the Product and as determined in accordance with U.S. generally accepted accounting principles.

"Person" shall mean an individual, a corporation, a company, a firm, a joint venture, a partnership, an association, a trust or other business entity or organization, including a government or agency or political subdivision thereof.

"Product" means [* * *].

"Regulatory Fees" shall have the meaning ascribed to that term in Section 3.b. of this Agreement.

"Territory" means collectively all the territories and possessions of the United States of America and Canada.

"US Regulatory Agent" means, the party responsible for all communications with the FDA for the NDA or ANDA, including but not limited to compiling and submission of Annual Reports, any necessary Pharmacovigilance, and AE reporting.

2. License Grants and Financial Terms.

a. License Grants. Subject to the terms of this Agreement, LMW and LM hereby grant to ETON an exclusive license, including the right to sublicense, to the Product and all current and future LMW/LM Background Intellectual Property related to the Product for the development, manufacture, importation, use, sale and offer for sale of the Product in and for the Territory.

b. Milestone Payments. Within thirty (30) days following the first achievement of each of the following milestone events, ETON shall pay to LMW the corresponding non-reimbursable milestone payments, not to exceed two million five hundred thousand dollars ($2,500,000.00 US), as follows:

Milestone Event	**Milestone Payment**
Upon execution of this exclusive license and supply agreement ("Agreement")	Three hundred fifty thousand dollars ($350,000.00 US)
[* * *]	[* * *]
[* * *]	[* * *]
[* * *]	[* * *]
[* * *]	[* * *]
[* * *]	[* * *]

c. Profit Sharing. Subject to the terms of this Agreement, ETON shall pay to LMW thirty-five (35%) of the Net Profit, payable on a quarterly calendar basis; provided however, that if during any Calendar Quarter the Net Profits are negative (less than zero) then a negative balance will accrue and will be offset by future milestone or profit share payments owed to LMW. Profit sharing payments, accompanied by a statement reasonably setting forth the basis for the calculation, shall be tendered by ETON to LMW within forty-five (45) days following the end of the Calendar Quarter. Deductions under Net Profits, if any, shall be summarized in reasonable detail with corresponding supporting documentation.

3. Product NDA/ANDA.

a. NDA/ANDA. Subject to the terms and conditions of this Agreement, LMW hereby grants to ETON the exclusive and sublicensable right to develop, obtain regulatory approval for, make, have made, use, sell, offer to sell, import and otherwise commercialize Product in the Territory. ETON will be the owner of the NDA/ANDA and shall take all reasonably necessary steps to obtain an NDA/ANDA for the Product in the Territory by performing such development and obtaining such data and information as reasonably necessary therefor.

b. NDA/ ANDA Submission Fees. ETON shall be responsible for the filing and any ongoing fees in connection with the submission and maintenance of the NDA/ANDA for the Product ("Regulatory Fees"). ETON shall have the right to recoup thirty-five (35%) of any Regulatory Fees from initial profits prior to any profit sharing with LMW. Both Parties shall cooperate in the performance of the regulatory obligations and shall provide each other, in a timely manner (for the Annual Report this is defined as 40 days after the anniversary date for approval of the NDA or ANDA) with such information, assistance, documents and reports reasonably required to perform such obligations.

c. Pre-IND Meeting. Within forty-five (45) days after the Effective Date, ETON will request a Pre-IND meeting with the FDA. LMW agrees to cooperate with ETON's requests for information required in preparation for the meeting and preparation of the briefing package.

d. Bioequivalence Study. LMW shall be solely responsible for the coordination and management of the bioequivalence study, subject to ETON's written approval of the study design, protocols, clinical research organizations prior to initiation of the study. LMW shall be solely responsible for the cost of the bioequivalence study, except that ETON shall reimburse LMW for forty (40%) of the costs actually incurred by LMW in the performance of the study. [* * *].

e. Quality Agreement. As soon as practicable following the Effective Date, but not later than ninety (90) days, the Parties shall enter into the Quality Agreement. The Quality Agreement shall be substantially similar to ETON's standard quality agreement and shall contain provisions consistent with the provisions in this Agreement and such other provisions as otherwise required for compliance with cGMP and all other applicable FDA requirements.

f. IP for Further Development. ETON shall solely own any intellectual property obtained in connection with exercising its rights under Section 3.a. to develop, obtain regulatory approval for, make, have made, use, sell, offer to sell, import and otherwise commercialize Product in the Territory.

4. Manufacturing and Supply.

a. Manufacturer. The Product shall be manufactured by LM MANUFACTURING, LTD. ("LM"), exclusively for ETON in conformity with the applicable requirements and specifications (for both the API or the Product, as applicable) as set forth in this Agreement (including, but not limited to, the Specifications and Applicable Law). ETON shall be granted rights of inspection and audit over the manufacturing facility. LM shall be responsible for maintaining applicable governmental licenses and permits, including Finished Dosage Form facility fee, at its own expense. LM shall purchase raw materials and Components through vendors approved for the API and the Product by the FDA pursuant to the NDA or ANDA. LMW shall be responsible for ensuring that LM complies with the terms of this Agreement and delivers Product in conformance with the requirements of (i) all Applicable Law; (ii) cGMP; (iii) the Quality Agreement; and (iv) the Agreement. Any and all manufacturers manufacturing the Product or any component thereof must have received and continue to maintain satisfactory cGMP inspection status. Under no circumstances whatsoever, may the API or any Component of the Product manufactured under this Agreement be manufactured at a facility that fails to maintain the inspection status or requirements of this Agreement.

b. Secondary Supply. If LM does not receive FDA approval by December 31, 2020 or if ETON believes LM will have issues meeting Product demand, ETON shall have the right to transfer manufacturing of the Product to an alternate manufacturer of its sole and exclusive choosing, however LMW will be informed about this within appropriate time. Any costs incurred by ETON for the qualification of a manufacturer pursuant to this section shall be deducted from any profit share or milestone payment owed to LMW pursuant to this Agreement. In such an event, LMW and LW shall provide the appropriate rights and licenses to the Product and any LMW Background Intellectual Property for the manufacture and supply of the Product by the alternate manufacturer to ETON for sale and marketing in the Territory.

c. Purchase Orders. This Agreement applies to all Purchase Orders that ETON, and/or any of its current or future Affiliates, may place with LM for the purchase of Product. The terms and conditions of this Agreement including those presented in all exhibits attached hereto shall apply to any Purchase Order, regardless whether this Agreement or its terms and conditions are expressly referenced in such Purchase Order. Any term or condition set forth in (i) any Purchase Order; or (ii) any acknowledgment or sale document from LM that is inconsistent or not provided in this Agreement shall not be applicable to any orders for the Product placed by ETON during the Term, unless expressly agreed to by the Parties in writing. LM shall be deemed to have accepted a Purchase Order for which LM does not notify ETON in writing within seven (7) business days after its receipt, provided that LM may only reject such Purchase Order to the extent it is inconsistent with the terms of this Agreement. LM shall be deemed to have accepted all Purchase Orders that are consistent with this Agreement. Product will be delivered in the timeframe set forth in the applicable Purchase Order; provided, however, that: (a) if no timeframe is specified in the Purchase Order, Product will be delivered ninety (90) days after the Purchase Order date and (b) unless otherwise agreed by the Parties, any delivery date specified in a Purchase Order will not be earlier than ninety (90) days after the Purchase Order date.

d. No Minimum Orders or Forecasts. ETON shall not be subject to any minimum order requirements. Eton will be required to provide annual forecasts of upcoming Product purchases with six months' firm forecast.

e. Transfer Price. ETON shall pay to LM a transfer price equal to LM's actual direct costs to manufacture the product, including API, material, and direct labor costs (the "Transfer Price"). LM shall provide ETON with an itemized calculation of the Transfer Price [* * *]. LM shall use commercially reasonable efforts in accordance with its standard manufacturing practices to reduce its direct costs to manufacture the Product. The Parties will meet on an annual basis to discuss plans to reduce the Transfer Price, if necessary.

f. Invoices. Except as mutually agreed by the Parties, LM will invoice ETON for the Transfer Price of Product purchased under this Agreement and any applicable freight costs owed for such Product. Payments are due within thirty (30) days after invoice receipt for Product purchased by ETON.

g. **[* * *]**

5. Delivery and Acceptance.

a. Deliveries. Failure to deliver the Product of the quality and quantity in accordance with this Agreement or by the scheduled shipment date stated in the applicable Purchase Order shall, at the option of ETON, relieve it of any obligation to accept and pay for any of the Product which is not of proper quality or quantity (product not delivered or shorted) under such Purchase Order, as well as any undelivered shipments, if any. Any failure by ETON to exercise its option with respect to any shipment of the Product as set forth in this section shall not be deemed to constitute a waiver with respect to subsequent shipments. Customer penalties incurred by ETON due to LM's failure to deliver the Product timely, except in a Force Majeure event, shall be paid by LM; and such invoices to LM from ETON shall be due within thirty (30) days of the receipt of the invoices.

b. Batch Certifications. LM or a duly authorized representative (CMO) shall conduct quality control tests on the API and the Product prior to shipment in accordance with all applicable laws, regulations and requirements set forth in the NDA/ANDA specifications, and all applicable test methods; (ii) at ETON's request, furnish samples of the API or Product to ETON; and (iii) deliver with each shipment of Product, a Certificate of Analysis for each Product lot included in a shipment in accordance with the Specifications.

c. Acceptance of Product.

(i) ETON may examine and test Product as it sees fit and may reject Product provided hereunder by LM if such Product is defective for any reason, adulterated or misbranded in any manner, or otherwise poses a threat of harm to the public (including, without limitation, by failing to meet the requirements of this Agreement, the Quality Agreement, any Applicable Law, the Specifications or the NDA/ANDA's requirements) (collectively, a "Product Defect"); provided, however that ETON shall give written notice to LM of its rejection of any Product hereunder, together with appropriate documentation for its decision (a "Rejection Notice"), within fifteen (15) days after ETON's receipt of shipment of such Product. The Rejection Notice shall specify the grounds for rejection. If such Rejection Notice is not received within fifteen (15) days after ETON's receipt of any Product, such Product shall be deemed to be accepted by ETON. However, any Product Defect that would not be discoverable upon a reasonable inspection of a Product (a "Hidden Defect") will not be deemed accepted by ETON at any time. As soon as possible but not exceeding the shelf life of any Product, if either Party becomes aware of a Hidden Defect in such Product, it will, within five (5) business days of becoming aware of such Hidden Defect, notify the other Party in writing about all Product involved (a "Hidden Defect Rejection Notice"). At ETON's discretion, any Product subject to a Hidden Defect shall be deemed rejected as of the date of any such Hidden Defect Rejection Notice.

(ii) LM may dispute a Rejection Notice or Hidden Defect Rejection Notice by providing written notice to ETON of the dispute within fifteen (15) days after receipt of such Rejection Notice or Hidden Defect Rejection Notice (as applicable), which notice from LM shall specify, in reasonable detail, the grounds for the dispute.

(iii) If a Rejection Notice or Hidden Defect Rejection Notice for any Product is not disputed by LM as set forth in this section or if, in the event of a rejection dispute between the Parties, the contract laboratory referred to below gives a decision in favor of ETON, then:

a. ETON may withhold all payment for the rejected Product;
b. Where payment for the rejected Product has been made, LM will promptly issue a full credit or pay a full refund (as selected by ETON) to ETON for the rejected Product;
c. LM will promptly pay to ETON any and all reasonable out-of- pocket costs and expenses resulting from the Product Defect, Hidden Defect or Product rejection, including but not limited to customer failure- to-supply penalties and destruction costs; and
d. LM will promptly supply ETON with conforming Product in replacement of the rejected Product.

(iv) If there is a dispute between the Parties with respect to the rejection of Product, the Parties will first seek to amicably resolve the dispute among themselves. If, after thirty (30) days, the Parties believe that the dispute cannot be amicably resolved, then the Parties shall mutually agree on a contract laboratory to conduct further testing of rejected Product in or order for the laboratory to determine whether the rejected Product meets the requirements for rejection set forth in this section. The Party whose conclusions are not borne out by the laboratory shall bear the cost of such testing. If the contract laboratory gives a decision in favor of LM, ETON shall promptly pay for the Product subject to the dispute, if such payment had not earlier been made; if the contract laboratory gives a decision in favor of ETON, LM shall immediately perform its obligations pursuant to this section. The decision of the contract laboratory, to the extent dispositive of a Product rejection dispute between the Parties, shall be binding upon the Parties with respect to such rejection dispute.

6. Commercialization, Marketing and Distribution.

a. ETON, its affiliates, or designated third-party marketing partner shall use reasonable commercial efforts consistent with normal business practices to develop and commercialize the Product in the Territory. ETON shall be responsible, in its sole and absolute discretion to direct the sale, marketing and promotional activities of the Product. Pricing, methods of distribution, contracting and any other decisions related to the sales and marketing of the Product shall be solely decided by ETON.

7. Other Intellectual Property.

a. Branding of Product.

(i) LMW shall label and package all Product in accordance with the respective labeling approved by ETON and in accordance with Applicable Laws. Once approved by ETON, LMW will not change in any manner any labeling of any Product manufactured by LM for ETON without the prior written consent of ETON.

(ii) ETON's Insignia shall be affixed to the Product as directed by ETON. All related sales brochures, marketing materials, and packaging shall only bear ETON's Insignia as directed by ETON.

(iii) ETON shall be responsible for submission of all marketing and promotional materials utilized by either Party to FDA as required by Applicable Law.

(iv) LMW grants to ETON during the Term a non-exclusive, indivisible, revocable and terminable license, without the right to sublicense, to use the LMW Insignia in the Territory as specifically directed by ETON in writing, and only to the extent necessary to label and brand the Product and related sales brochures, marketing materials, and packaging pursuant to ETON's specifications, and for no other purposes.

(v) Notwithstanding any of the provisions of this Agreement, LMW shall not at any time do anything or act in any way that would or might adversely affect the value or validity of any ETON Insignia or other Intellectual Property Rights belonging to ETON. LMW shall immediately notify ETON in writing upon becoming aware of any infringement, misappropriation or imitation of any Intellectual Property Rights of ETON or of any facts that LMW believes might constitute infringement, misappropriation or imitation thereof. All uses of ETON's Insignia shall inure exclusively to ETON's sole benefit.

(vi) Intellectual Property Litigation. In the event a Party believes that a third party is infringing or otherwise violating a party's intellectual property rights in the Territory or country of manufacture, which infringement involves the Product, the parties shall consult with each other and their respective counsel in order to develop a strategy for addressing the third-party infringement. Unless the parties agree differently, the owner of the infringed intellectual property (the owning Party) shall have the right at its sole discretion to bring action against the third party infringer, select counsel for, control, and bear the costs of such action, shall indemnify and hold the non-owning Party harmless, and shall be entitled to any award or settlement in respect thereof. In the event that the owning Party does not bring any action against the third-party infringer within the earlier of ninety (90) days from the infringement notification date or the relevant statute of limitations, the non-owning Party shall be free to bring the action in its own name, at its own expense, and retain any award or settlement in its entirety. If necessary, the non-participating Party shall join, or be joined as a Party to the suit, but shall be under no obligation to participate, except to the extent that such participation is required as the result of being a named Party to the suit. The non-participating Party shall offer reasonable assistance in connection therewith, at no charge to the participating Party, except for reimbursement of reasonable out-of-pocket expenses. In such an event, the expense and cost of such a litigation shall be deducted from any profit share.

8. Non-Compete.

    a. During the Term of this Agreement, and for a period of five (5) years thereafter, LMW will not research, develop, manufacture, file, sell, market, or distribute any competitive product, nor will LMW directly or indirectly assist any other person or entity in carrying out any such activities. “Competitive Product” means any product containing the same API as the Product(s) which is marketed and sold for the oral route of administration.

9. Confidentiality.

    a. The Receiving Party shall keep the Disclosing Party’s Confidential Information confidential and shall not directly or indirectly, use, divulge, publish or otherwise disclose or allow to be disclosed any aspect of the Disclosing Party’s Confidential Information, except (i) with the Disclosing Party’s prior written consent, (ii) as permitted by this Agreement or (iii) to the Receiving Party’s Representatives (as defined below) who need to know such Confidential Information for the purposes of this Agreement, provided that prior to such disclosure to such a Representative, the Representative shall be bound by obligations of confidentiality to the Receiving Party at least as restrictive as those of this Agreement and shall be advised of the confidential nature of such information. The Receiving Party will be responsible for any breach of this section resulting from the conduct of its Representatives. “Representative” of a Party means such Party’s Affiliates and its and their officers, directors, employees, agents and advisors. Upon written request by the Disclosing Party, the Receiving Party shall promptly return to the Disclosing Party or, if elected by the Receiving Party, destroy, any Confidential Information of the Disclosing Party in the possession or control of the Receiving Party or its Representatives, provided that the Receiving Party may retain one (1) copy of such information to be used solely for determining the rights of the Parties hereunder or as required by Applicable Law and may retain copies thereof in its information technology systems (all of which retained Confidential Information will remain subject to the terms and conditions of this Agreement). Notwithstanding anything to contrary herein, Confidential Information of the Disclosing Party shall not include any information that falls within any of the following exceptions, provided the Receiving Party produces credible written evidence to establish or otherwise establishes that such information:

        (i) is or becomes part of the public domain without breach of this Agreement by the Receiving Party or any of its Representatives;
        (ii) is independently developed or discovered by or for the Receiving Party without use of or reference to Confidential Information of the Disclosing Party;

(iii) is received from a third party who lawfully acquires such information without an obligation of confidentiality, and without breach of this Agreement by the Receiving Party; or
(iv) was in the Receiving Party's possession without an obligation of confidentiality to the Disclosing Party prior to the disclosure by the Disclosing Party.

b. If the Receiving Party or any of its Representatives becomes required pursuant to Applicable Law, any rule or regulation (including, without limitation, subpoena, civil investigative demand, compulsory process or other legal requirement) to disclose any Confidential Information of the Disclosing Party, then (i) the Receiving Party will promptly notify the Disclosing Party in writing thereof and will cooperate with the Disclosing Party, at the Disclosing Party's expense, in seeking a protective order or confidential treatment and (ii) the Receiving Party and its Representatives may disclose such Confidential Information to the extent so required.

c. The Disclosing Party would be irreparably injured by a breach of this section by the Receiving Party, and such a breach would not be compensable in money damages. Accordingly, in addition to any other rights and remedies of the Disclosing Party pursuant to this Agreement and Applicable Law, the Disclosing Party shall be entitled to seek injunctive and other equitable relief with respect to any breach or threatened breach of this section.

d. The rights and obligations of the Parties pursuant to this section will terminate five (5) years after the termination or expiration of this Agreement.

10. Insurance. Each Party shall obtain, at its expense, the following minimum insurance coverages during the term of this Agreement and for five (5) years thereafter:

a. For ETON, the following insurance coverages:

(i) Worker's compensation insurance as required by applicable law;
(ii) Product liability insurance with respect to the Product with a minimum of Five Million Dollars ($5,000,000) per occurrence and Five Million Dollars ($5,000,000) annual aggregate for bodily injury and property damage;
(iii) Commercial general liability insurance with a minimum of Five Million Dollars ($5,000,000) per occurrence and Five Million Dollars ($5,000,000) annual aggregate; and
(iv) Property insurance (sufficient to fully cover the cost of replacement), through the designated freight carrier or otherwise, on all of the Products at all times until receipt by ETON.

b. LMW shall be liable for any Product defects, to the extent of the maximum value of the defective goods or the aggregate amount payable pursuant to this Agreement, whichever is greater.

c. Limitation of Liability.

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.

11. Indemnification.

a. LMW Indemnification Obligations. LMW shall indemnify, defend and hold harmless ETON, and its Affiliates, and their respective officers, directors, shareholders, employees, agents and representatives (collectively "ETON Indemnitees") for, from and against all third-party claims, damages, liabilities, losses and other expenses, including but not limited to reasonable attorneys' fees and costs (collectively, "Third Party Claims"), whether or not a lawsuit or other proceeding is filed, to the extent arising out of or caused by (i) any dispute or claim that the Product, its design or any of its elements, or any LM manufacturing processes or methods employed or to be employed by or on behalf of LM, infringe, misappropriate or violate any third party's Intellectual Property Rights; (ii) product liability claims, injury to or death of persons or damage to property that may have been caused, or that may be alleged to have been caused, directly or indirectly, by LMW, LM or any the manufacturing, storage or transportation processes or methods employed or to be employed at a manufacturing facility used by or on behalf of, LMW, LM, or any Affiliate thereof, any subcontractor of LMW, LM or any of their Affiliates, or any of their respective employees or agents; (iii) any defect in the Product, its design, manufacture, or other failure of the Product to comply with its respective Specifications, Applicable Law (including, without limitation, cGMPs) or the other requirements of this Agreement, including but not limited to any costs associated with Product recalls; (iv) any negligent act or omission, recklessness, willful misconduct or fraud of LMW, LM, or any of their respective agents, or subcontractors; (v) any breach of any representation, warranty, or covenant of this Agreement by LMW, whether resulting from the conduct of LMW, LM or otherwise; (vi) LMW's or LM's failure to fully conform to all Applicable Laws, ordinances, rules and regulations which affect the Product, its use, or any part thereof or that are otherwise applicable to LMW or LM (including, without limitation, cGMPs), or (vii) any claim of a third party that any right granted to ETON under this Agreement is in conflict with any of the rights granted to such third party or otherwise infringes, conflicts with, breaches or results in a default under any agreement to which such third party is or claims to be entitled; provided, however, that LMW shall have no such obligation to indemnify, defend or hold harmless with respect to any Third Party Claim to the extent such Third Party Claim is caused by the recklessness, willful misconduct or fraud of any ETON Indemnitee, or ETON's breach of this Agreement.

b. ETON Indemnification Obligations. ETON shall indemnify, defend and hold harmless LMW, and its affiliates, and their respective officers, directors, shareholders, employees, agents and representatives (collectively "LMW Indemnitees") for, from and against all Third Party Claims, whether or not a lawsuit or other proceeding is filed, to the extent arising out of or caused by (i) any dispute or claim that any of ETON Insignia or any of their elements infringe or violate any third party's Intellectual Property Rights; (ii) any negligent act or omission, recklessness, willful misconduct or fraud of ETON, its agents, or Affiliates; (iii) any breach of any representation, warranty, or covenant of this Agreement by ETON; or (iv) ETON's failure to fully conform to Applicable Laws which affect the Product, its use, or any part thereof or that are otherwise applicable to ETON; provided, however, that ETON shall have no such obligation to indemnify, defend or hold harmless with respect to any Third Party Claim to the extent such Third Party Claim is caused by the recklessness, willful misconduct or fraud of any LMW Indemnitee, or LMW's breach of this Agreement.

12. Representations and Warranties.

a. ETON Representations and Warranties. ETON represents, warrants and covenants: (i) that it has the full power, right and authority to execute and deliver this Agreement and that it shall use commercially reasonable best efforts to perform its obligations hereunder; (ii) that it will assign to its performance of this Agreement professional personnel, qualified to perform the process procedures consistent with the technical requirements of this Agreement; (iii) that none of the ETON personnel to be assigned to this Agreement have or shall have been subject to debarment under the United States Generic Drug Enforcement Act or any other penalty or sanction by FDA; and (iv) ETON will comply (and will cause any agents, subcontractors or other third parties conducting business relating to the ANDA on ETON's behalf to comply) with the requirements of GDUFA that are applicable to ETON.

b. LMW Representations and Warranties. LMW represents, warrants and covenants: (i) that it has the full power, right and authority to execute and deliver this Agreement and that it shall use commercially reasonable best efforts to perform its obligations hereunder; (ii) that it will assign to its performance of this Agreement professional personnel, qualified to perform the process procedures consistent with the technical requirements of this Agreement; (iii) that none of the LMW personnel to be assigned to this Agreement have or shall have been subject to debarment under the United States Generic Drug Enforcement Act or any other penalty or sanction by FDA or under any U.S. Federal or State healthcare program; (iv) that it will manufacture and supply the Product in conformity with, and otherwise perform its obligations hereunder in accordance with, and it will cause the CMO to perform in accordance with, all Applicable Laws (including but not limited to cGMP and all applicable FDA regulatory requirements), the Quality Agreement, this Agreement and generally accepted professional standards; (v) that all rights granted to ETON under this Agreement will not conflict with those granted to any third-parties; (vi) that all data, information, results of experimentation and testing incorporated by LMW into an NDA or ANDA prepared in accordance with this Agreement are accurate and complete in all respects; and (vii) that LMW will comply (and will cause CMO, and any agents, subcontractors or other third parties conducting business relating to the ANDA on LMW's behalf to comply) with the requirements of GDUFA that are applicable to LMW, including, without limitation, all provisions relating to self-identification. LMW will ensure the payment of all applicable GDUFA facility and DMF fees, whether payable by LMW or CMO, its agent(s) or suppliers.

c. Product Warranties. LMW represents, warrants and covenants: (i) that the Product shall be free from defect in workmanship and materials; (ii) that the Product shall meet its Specifications; (iii) that, upon delivery of a Product and during such time as such Product was under LMW's control, the Product will be in conformity with Applicable Law and the Quality Agreement, and shall not be adulterated, misbranded, misused, contaminated, tampered with or otherwise altered, mishandled, or subjected to negligence; and (iv) that title to all Products delivered hereunder shall pass to ETON concurrently with risk of loss, free and clear of all liens, encumbrances and other adverse claims. LMW additionally warrants that the Product supplied hereunder shall only be built using Components purchased from vendors approved by FDA pursuant to the ANDA.

13. Further development of the product;

Both parties may agree to further develop the product for new indications/usage and in such case, both parties will agree on further licensing agreement.

14. Term and Termination.

a. Term. This Agreement shall commence on the Effective Date and shall continue for a period of ten (10) years from the first commercial sale of the Product in the Territory. Agreement shall auto-renew for two years' terms unless either party provides written notification of termination at least 12 months prior to expiration of the then current term.

b. Termination.

Material Breach. In the event of a material breach of this Agreement by either Party, the non- breaching Party may provide written notice of such breach to the breaching Party, including a description of the breach, and indicating the non-breaching Party's intent to terminate this Agreement. The breaching Party will have sixty (60) days from its receipt of such notice to cure the breach, provided the breach is capable of being cured within the sixty (60) day period. If the breaching Party fails to cure the breach within such period, then unless otherwise agreed by the non-breaching Party, this Agreement will terminate on the date that is sixty (60) days following the breaching Party's receipt of the notice of breach from the non- breaching Party. If the breach is not capable of being remedied within sixty (60) days, the Agreement terminates upon the written notice.

Bankruptcy or Insolvency. If either party shall (a) become bankrupt or insolvent, (b) file for a petition thereof, (c) make an assignment for the benefit of creditors, or (d) have a receiver appointed for its assets, which appointment shall not be vacated within sixty (60) days after the filing, then the other party shall be entitled to terminate this Agreement forthwith by written notice to such party.

Applicable Law. If the manufacture, distribution or sale of the Product in the Territory would materially contravene any existing or new applicable law which cannot be brought into compliance with such law within a reasonable period of time following a notice of non-compliance or violation. Or a violation by any party of a trade control law and/or anti-corruption law.

Product Deficiencies. If there is a negative outcome of a facilities cGMP audit where the Product is manufactured for which deficiencies are not cured within three (3) months.

Eton's Option. ETON may, in its sole and absolute discretion, terminate this Agreement at any time for regulatory or commercial reasons.

c. *Effect of Termination*. Termination of this Agreement shall not affect a Party's entitlement to profit sharing or milestone payments that accrue prior to the date of termination or that accrue after termination with respect to Product supplied hereunder prior to the date of termination, provided that the uncured breach, status or actions of the Party causing such termination do not impair its entitlement to such profit sharing or milestone payments. Upon termination of this agreement for any reason, ETON shall retain sole and exclusive ownership of the NDA/ANDA filing and its license under Section 2.a.

15. General Terms.

a. Relationship of Parties. The relationship between LMW, LM and ETON, with respect to this Agreement, is only that of independent contractors notwithstanding any activities set forth in this Agreement. Neither Party is the agent or legal representative of the other Party, and neither Party has the right or authority to bind the other Party in any way. This Agreement creates no relationship as partners or a joint venture, and creates no pooling arrangement.

b. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, U.S.A., without reference to its conflict of laws principles.

c. Resolution of Disputes. Any and all disputes or claims arising or out of this Agreement shall be litigated exclusively before a court of the State of New York, U.S.A. or, if subject matter jurisdiction exists, the United States District Court for the District of New York. Each party hereto hereby irrevocably and unconditionally consents to the exclusive personal jurisdiction and service of, and venue of, any such court, and further irrevocably and unconditionally waives and agrees not to plead or claim that any action, lawsuit or proceeding brought in any such court has been brought in an inconvenient forum. Any judgment issued by such a court may be enforced in any court having jurisdiction.

d. Assignment. Neither party shall assign its rights or obligations under this Agreement without the prior written consent of the other party, which shall not be unreasonably withheld or delayed; provided, however, that a party may, without such consent, assign this Agreement and its rights and obligations hereunder (a) to any Affiliate, or (b) in connection with the transfer or sale of all or substantially all of its business to which this Agreement relates, or in the event of its merger, consolidation, change in control or similar transaction. Any permitted assignee shall assume all obligations of its assignor under this Agreement.

e. Counterparts. This Agreement may be executed in several counterparts that together shall be originals and constitute one and the same instrument.

f. Waiver. The failure of any Party to enforce any of its rights hereunder or at law shall not be deemed a waiver of any of its rights or remedies against another Party, unless such waiver is in writing and signed by the Party to be charged. No such waiver shall be deemed a waiver of any subsequent breach or default of the same or similar nature or any other breach or default by such other Party.

g. Severability. If any provision of this Agreement, or part thereof, is declared by a court of competent jurisdiction to be invalid, void or unenforceable, each and every other provision, or part thereof, shall nevertheless continue in full force and effect.

h. Notices. All notices or communications given pursuant to this Agreement shall be in writing, if to ETON, addressed to the attention of CEO, Eton Pharmaceuticals, Inc., 21925 Field Parkway, Suite 235, Deer Park, IL 60010, and if to LMW to the attention of Mohammed Arsalaan Khan, Liqmeds Worldwide, Ltd., 65 Delamere Road, Hayes, Middlesex, United Kingdom, UB4 0NN, and shall be: (a) hand delivered, (b) sent by prepaid express courier service, or (c) sent by electronic mail (e-mail) or facsimile transmission. A Party may change its address for the receipt of notices and communications hereunder by providing the other Party with written notice thereof given in accordance with this section. All notices and other communications shall be deemed given when received.

i. Further Assurances. The Parties agree to execute such additional documents and perform such acts as are reasonably necessary to effectuate the intent of this Agreement.

j. Compliance With Laws. Each Party agrees to comply with all Applicable Laws, including, without limitation, GDUFA or PDUFA, cGMPs and state licensing laws, in its performance under this Agreement.

k. Entire Agreement. This Agreement, including all exhibits and attachments, constitutes the entire agreement between the Parties regarding the subject matter hereof, and supersedes all prior or contemporaneous understandings or agreements regarding the subject matter hereof, whether oral or written. This Agreement shall be modified or amended only by a writing signed by both ETON and LMW.

l. Authority. The parties executing this Agreement on behalf of ETON and LMW represent and warrant that they have the authority from their respective governing bodies to enter into this Agreement and to bind their respective companies to all the terms and conditions of this Agreement.

m. Force Majeure. Neither Party shall be liable for delays in its performance caused by events beyond its control, such as fires, floods, labor shortages, strikes, epidemics, computer virus, earthquakes, riots, acts of terror, acts of God, storms, acts of civil or military authority or similar occurrences, provided the affected Party gives the other Party written notice of such event within three (3) business days of its occurrence. Such notice shall state the estimated duration of such event and the cause thereof and the affected Party shall use commercially reasonable efforts to work around such event beyond its control.

n. Headings and Construction. No rule of construction will be applied to the disadvantage of a party because that party was responsible for the preparation of this Agreement or any part of this Agreement. The Article and Section headings in this Agreement are for convenient reference only, and will be given no substantive or interpretive effect. With respect to all terms used in this Agreement, words used in the singular include the plural and words used in the plural include the singular. The word ‘including’ means including without limitation, and the words ‘herein’, ‘hereby’, ‘hereto’ and ‘hereunder’ refer to this Agreement as a whole. Unless the context otherwise requires, references found in this Agreement: (i) to Articles and Sections mean the Articles and Sections of this Agreement, as amended, supplemented and modified from time to time; (ii) to an agreement, instrument or other document means such agreement; (iii) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time, to the extent provided by the provisions thereof and by this Agreement; and (iv) to a statute or a regulation mean such statute or regulation as amended from time to time.

o. Drug Supply Chain Security Act. The Parties agree to strictly comply with the Drug Supply Chain Security Act, and all other laws related to the subject matter of this Agreement.

IN WITNESS WHEREOF, the Parties have hereunto set forth their hands and seals as of the Effective Date above.

On behalf of:

ETON PHARMACEUTICALS, INC.

By: Sean Brynjelsen
Its: President

On behalf of:

LIQMEDS WORLDWIDE LTD.

By: Mohammed Arsalaan Khan
Its: Director

On behalf of:

LM MANUFACTURING, LTD.

By:
Its:

Exhibit 10.4

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 SUPPLY AGREEMENT

THIS EXCLUSIVE LICENSE AND SUPPLY AGREEMENT (this "***Agreement***") is entered into as of February 8, 2019 (the "***Effective 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 **SINTETICA SA,** a company number CHE-105.272.121 with offices at Penate 5, CH-6850 Mendrisio, Switzerland ("***Sintetica***").

RECITALS

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

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

WHEREAS, Sintetica desires to manufacture and supply the Products exclusively to ETON for Marketing (later defined) in the Territory (later defined), and ETON is willing to purchase exclusively from Sintetica the Products under the terms and conditions set forth herein;

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

WHEREAS, ETON and Sintetica will share in the Net Profits (later defined) obtained by the sale of Products in the Territory under the terms and conditions set forth herein;

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 Sintetica, 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 "***Accepted***" shall have the meaning ascribed to the term in Section 4.8 of this Agreement.

1.2 "***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.

1.3 "***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 MAs.

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

1.5 "***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.

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

1.7 "***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.

1.8 "***COGS***" means for each applicable Product the total of all actual, direct manufacturing costs (including cost of raw materials and packaging materials) directly incurred by Sintetica and directly allocable to the manufacture and supply of the applicable Product as of the Effective Date or as adjusted pursuant to Section 6.2.1 of this Agreement. For clarity, such costs shall not include (a) any allocation or absorption of unused, excess or idle capacity, (b) any costs attributable to shipment of the Product to the relevant facility, (c) any Taxes or Transfer Taxes, or (d) any depreciation expense (including but not limited to any depreciation of any machinery or equipment).

1.9 "***Confidential Information***" shall have the meaning ascribed to the term in Section 10.2 of this Agreement.

1.10 "***Confirmed Purchase Order***" shall have the meaning ascribed to the term in Section 5.5.1 of this Agreement.

1.11 "***Customer Penalties***" shall have the meaning ascribed to the term in Section 4.11.3 of this Agreement.

1.12 "***Deducted Customer Penalties***" shall have the meaning ascribed to the term in Section 5.11.4 of this Agreement.

1.13 "***Delivery Date***" shall have the meaning ascribed to the term in Section 4.5.1 of this Agreement.

1.14 "***ETON Indemnified Parties***" shall have the meaning ascribed to the term in Section 14.1 of this Agreement.

1.15 "***Excessive Amount***" shall have the meaning ascribed to the term in Section 4.5.2 of this Agreement.

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

1.17 "***Firm Period***" shall have the meaning ascribed to such term in Section 4.4 of this Agreement.

1.18 "***Force Majeure Events***" shall have the meaning ascribed to such term in Section 16.2 of this Agreement.

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

1.20 "***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.

1.21 "***Gross Sales***" shall have the meaning ascribed to the term in Section 1.36.

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

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

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

1.25 ***"Intellectual Rights Legal Expenses"*** shall have the meaning ascribed to the term in Section 7.6.1 of this Agreement.

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

1.27 "***Latent Defect***" shall have the meaning ascribed to the term in Section 4.10 of this Agreement.

1.28 "***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.

1.29 "***MAs***" 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.

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

1.31 "***Material Delivery Delay***" shall have the meaning ascribed to the term in Section 4.11.3 of this Agreement.

1.32 "***MAQ***" shall have the meaning ascribed to the term in Section 4.5.5 of this Agreement.

1.33 "***MOQ***" shall have the meaning ascribed to the term in Section 4.5.4 of this Agreement.

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

1.35 "***Net Profits***" means with respect to a given Product sold by ETON in the Territory, (a) the Net Sales of the Product less (b) the sum of (i) the Transfer Price or transfer price paid by ETON if manufactured by a Third Party, if applicable, (ii) Sintetica's share of the Regulatory Fees, and (iii) the SG&A Fee.

1.36 "***Net Sales***" means, with respect to each Product sold in the Territory, the aggregate gross sales amount invoiced by wholesalers, distributors or ETON on an arms-length basis to Third Parties in the Territory ("***Gross Sales***"), less the following deductions per NDC number: (a) all trade discounts including a percentage off Gross Sales to cover cash discounts given by ETON; (b) ETON's adjustments on account of price adjustments, billing adjustments, bid defaults, shelf stock adjustments, promotional payments or similar allowances; (c) ETON's chargebacks, rebates, administrative fee arrangements, reimbursements, and similar payments to wholesalers and other distributors, buying groups, health insurance carriers, managed care groups, pharmacy benefit management companies, health maintenance organizations, other institutions or health care organizations or customers; (d) ETON's amounts due to third parties on account of rebate payments, including Medicaid 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;(f) any government-mandated manufacturing Tax 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; (g) any costs incurred in connection with or arising out of compliance with any Risk Evaluation and Mitigation Strategies, the Prescription Drug User Fee Act and (h) other specifically identifiable amounts that have been credited against or deducted from ETON's Gross Sales and are substantially similar to those credits and deductions listed above.

1.37 "***Operating Expenses***" shall mean with respect to a given Product in the Territory, the shipping, handling, freight, import Tax, insurance cost for transportation of the Products (or any Third Party logistics' warehouses) incurred by ETON.

1.38 "***Party***" or "***Parties***" means ETON or Sintetica, as applicable.

1.39 "***Payment Period***" shall have the meaning ascribed to the term in Section 6.3.3 of this Agreement.

1.40 "***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.

1.41 "***Pharmacovigilance Agreement"*** shall have the meaning ascribed to the term in Section 4.4 of this Agreement.

1.42 "***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 an MA) and manufactured and supplied by Sintetica (or a Third Party as permitted by this Agreement) to ETON in fully packaged and labeled form and ready for commercialization by ETON.

1.43 "***Product Labelling and Packaging***" shall have the meaning ascribed to the term in Section 5.1.1 of this Agreement.

1.44 "***Quality Agreement***" shall have the meaning ascribed to that term in Section 4.2.10 of this Agreement.

1.45 ***"Quality Assurance Liaison"*** shall have the meaning ascribed to that term in Section 5.3.4 of this Agreement.

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

1.47 "***Recovery Plan***" shall have the meaning ascribed to that term in Section 4.11.3 of this Agreement.

1.48 "***Regulatory Fees***" shall have the meaning ascribed to that term in Section 3.2 of this Agreement.

1.49 "***Rolling Forecast***" shall have the meaning ascribed to that term in Section 4.4 of this Agreement.

1.50 "***Selling, General, and Administrative Fee***" or "***SG&A Fee***" shall have the meaning ascribed to that term in Section 6.3.2 of this Agreement.

1.51 ***"Sintectica 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, and other information owned, licensed to or controlled by Sinetica relating to the Products, including but not limited to use, manufacture, and packaging thereof.

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

1.53 "***Sintetica Net Profit Share***" shall have the meaning ascribed to the term in Section 6.3.1 of this Agreement.

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

1.55 "***Supply Failure***" has the meaning ascribed to that term in Section 4.11.2 of this Agreement.

1.56 "***Supply Term***" shall mean, on a Product by Product basis, an initial period of ten (10) years from the date of first commercial sale of the applicable Product by ETON in the Territory, and any renewals or extensions thereof.

1.57 "***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.

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

1.59 "***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.

1.60 "***Territory of Manufacture***" means the country of Switzerland.

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

1.62 "***Transfer Price***" has the meaning ascribed to that term in Section 6.2.1 of this Agreement.

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

2. GRANT OF RIGHTS

2.1 Sintetica, 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 Sintetica) right and license, including the right to sublicense, to the Products, MAs, and all current and future Sinetica Background Intellectual Property that are owned or controlled by Sintetica or its Affiliates for ETON to develop, manufacture, import, use, promote, distribute, market, advertise, offer for sale or sell (collectively, "***Market***") the Products in the Territory. For avoidance of doubt, Sinetica and its Affiliates shall remain the owner of the Product dossiers and Sinetica Background Intellectual Property.

2.2 ETON, for itself and its Affiliates, hereby grants to Sintetica 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 Sintetica 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.

2.3 Except as otherwise expressly provided in this Agreement, Sintetica and its Affiliates, during the Term, shall manufacture and supply exclusively to ETON and its Affiliates all of their requirements for the Products for Marketing in the Territory. For avoidance of doubt, Sintetica and its Affiliates shall not manufacture and supply, during the Term, the Products or any pharmaceutically equivalent products for themselves or any Third Party (not consented by ETON) for Marketing in and for the Territory.

2.4 Except as otherwise expressly provided in this Agreement, ETON and its Affiliates shall exclusively purchase all of their requirements for the Products from Sintetica for Marketing in the Territory.

3. PRODUCT DEVELOPMENT AND REGISTRATION

3.1 **Development and Registration Responsibilities**.

3.1.1 At its sole cost and expense, Sinetica shall be responsible and liable for developing the Products and filing and obtaining approval of the MAs with the FDA. Within seven (7) days after receiving notice of approval of the MA(s) for the Product(s), Sintetica shall file the necessary documentation to transfer the approved MA(s) to ETON's name.

3.1.2 If ETON's customer research shows demand that there is commercial demand for the Product in a container system that Sintetica is unable to produce, then ETON shall have the right to secure additional suppliers to develop, file for registration, and obtain approval with the FDA for the Product in that container system, and Sinetica shall grant ETON all the rights and licenses necessary to develop, register, obtain approval, and Market the Product with that container system in the Territory. Any additional Products would be subject to this agreement

3.2 **Registration Maintenance and Regulatory Responsibilities**. After the approved MAs are transferred to ETON's name, ETON shall be responsible for the maintenance of the approved MAs. In such an event, ETON will take all actions with the FDA, including paying all fees accrued after time of transfer and conducting all communications with FDA or other Governmental Entities as required by Applicable Law in respect of the MAs, including without limitation initial 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. The Parties shall share equally in all maintenance and regulatory fees under this Section 4.2 ("***Regulatory Fees***"). Sintetica shall use its best efforts to provide support, including providing any required information and documents, to ETON in the maintenance of the approved MAs. Sintetica's share of Regulatory Fees shall be deducted prior to Sintetica receiving its profit share.

3.3 **ETON's NDC Numbers. Sintetica 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**. After the approved MAs are transferred to ETON's name, ETON shall assume all responsibility for responding to any medical inquiries or complaints about any Products as set forth in the Pharmacovigilance Agreement attached hereto as Exhibit C (the "***Pharmacovigilance Agreement***") and to be entered into by the Parties as soon as practicable. Sintetica will notify ETON immediately of any circumstances that may result in a potential recall, market withdrawal, inventory retrieval, or similar action ("***Recall Event***") that may affect the products or services under this proposal. ETON will administer the Recall Event, but Sintetica shall reimburse ETON for any costs associated with the Recall Event, including but not limited to shipping charges, legal fees, and any action necessary to effectuate a recall, to the extent the Recall Event is attributable to Sintetica's performance of its obligations under this Agreement, including but not limited to sanitation of Sintetica's equipment, negligence in manufacturing, or poor quality standards. If the Recall Event is related to ETON's commercialization activities, then ETON will administer the Recall Event and be solely responsible for costs and expenses associated with that Recall Event.

3.5 **Competitive Products**. During the Term of this Agreement, and for a period of five (5) years thereafter, Sintetica nor ETON shall not research, develop, manufacture, file, sell, market, or distribute any competitive product, including a product containing [* * *] as the active ingredient that is marketed and sold in the Territory in the injectable route of administration; nor will Sintetica nor ETON directly or indirectly assist any other Person or entity in carrying or any such activities for eventual marketing or sale in the Territory.

4. MANUFACTURE AND SUPPLY

4.1 **Product Labeling and Packaging**.

4.1.1 The packaging artworks will be prepared by Sintetica, at its sole cost and expense, with the proprietary trademark and design artwork. Sintetica shall design the packaging, the containers, the labels, the user instructions, warning notices, master shipper, pattlet layout, including the artwork necessary or beneficial for the distribution in the Territory ***("Product Labelling and Packaging***"). Sintetica shall also be solely responsible for, at its cost and expense, the requirements to serialize the Products under Applicable Law. Prior to commencing into production, Sintetica shall submit the Product Labelling and Packaging to ETON for its review for accuracy. Only upon ETON's approval shall Sintetica proceed to print the Product Labelling and Packaging. Sintetica shall be responsible and liable for the final content of the Product Labelling and Packaging and their compliance with Applicable Law in the Territory and Territory of Manufacture.

4.1.2 After ETON approves the Product Labelling and Packaging in Section 5.1.1, Sintetica shall supply ETON the Products in finished dosage form and fully packaged and ready for Marketing by ETON in the Territory.

4.1.3 ETON shall distribute the Products exclusively with the Product Labelling and Packaging in which they are supplied to it by Sintetica. For avoidance of doubt, ETON shall not modify the Product Labelling and Packaging in any way when distributing the Products in the Territory.

4.1.4 Any modification of the Product Labelling and Packaging shall require prior written approval by both Parties and must comply with all Applicable Laws in the Territory.

4.2 **Manufacture and Supply of Products**.

4.2.1 Sintetica shall exclusively manufacture and supply the Products to ETON, and ETON shall exclusively purchase from Sintetica the Products and Market the Products in the Territory, except as otherwise expressly provided in this Agreement.

4.2.2 Sintetica shall use commercially reasonable efforts to supply on a timely basis one hundred percent (100%) of ETON's requirement for each Product for commercialization in the Territory.

4.2.3 Sintetica shall use commercially reasonable efforts to provide ETON with Product with expiration date that is at least seventy five percent (75%) of the shelf-life for the applicable Product, but in no event less than eighteen (18) months from the date such Product is delivered to ETON.

4.2.4 Sintetica shall ensure that it has an adequate supply of active and other ingredients required to manufacture the Products in order to meet at least one hundred twenty-five percent (125%) of ETON's forecasted requirements for the Products in the Territory. In the event that for any reason Sintetica may have insufficient supply of active or other ingredients required to meet its obligations under this Section 4.2.2, Sintetica, upon ETON's approval, shall obtain a Third-Party source for such active and other ingredients agreed to by ETON.

4.2.5 Sintetica shall manufacture each Product at its own manufacturing site. In the event Sintetica desires to transfer the manufacture of any Product to another site other than those designated in the relevant MA, Sintetica shall require ETON's written approval.

4.2.6 Sintetica shall, during the Term, maintain its relevant manufacturing site, all property, equipment, machinery and systems therein in the ordinary course of business and in compliance with GMP and Applicable Law (including Drug Security and Supply Chain Act) and free of material defects except for those attributable to wear and tear consistent with age and usage of such assets and except for such defects as do not and will not in the aggregate impair the ability to use such assets in connection with this Agreement.

4.2.7 Sintetica will properly maintain a sample from each batch of Product as required by applicable regulatory standards in the Territory, Territory of Manufacture, Applicable Law or as otherwise agreed in writing by the Parties.

4.2.8 Sintetica will validate all processes, methods, equipment, facilities and utilities used in the manufacture, storage, testing and release of each Product in conformity with all Applicable Laws. ETON shall have the right to review the validation reports upon written request.

4.2.9 Sintetica shall provide ETON with timely notification of all deviations that could materially impact the quality of any Product as well as all reports or audits of any applicable regulatory authority or other applicable governmental agency regarding testing, manufacture, storage, labeling, handling or packaging of any Product.

4.2.10 Notwithstanding anything to the contrary in this Agreement, all Product manufactured by Sintetica and sold to ETON under this Agreement, when delivered by Sintetica to ETON, shall meet the specifications and the requirements as set forth in a Quality Agreement, attached hereto as Exhibit B, to be entered into by the Parties as soon as practicable (the "***Quality Agreement***").

4.3 **Manufacturing and Quality Records and Audits**.

4.3.1 Sintetica shall supply the Products to ETON in accordance with the terms and conditions of this Agreement, the Quality Agreement, the relevant MAs and Applicable Law. Sintetica shall deliver to ETON, together with each delivery of each batch of Product, the corresponding certificate of analysis relating to such batch and certification that all Product in such batch were manufactured in accordance with GMP, the Quality Agreement and any Applicable Law. The certificate of analysis shall include the actual result of the testing performed by Sintetica on such batch. Sintetica agrees that it shall not make any changes in the formulation, manufacture, production, packaging, labeling or storage of any Product or any component thereof without consent of ETON unless Sintetica is expressly required to do so by Applicable Law or a relevant regulatory authority, in which case Sintetica shall notify ETON in writing promptly of such change and the reason therefor.

4.3.2 Sintetica shall prepare and maintain complete and accurate records relating to each Product and the manufacture, quality operation, packaging, labeling, storage, handling and testing of each batch therefor as required by Applicable Law and GMP and Sintetica shall make copies thereof available for review by ETON upon request. These records shall be subject to audit and inspection under this Agreement. Records that include information relating to the manufacturing, finished product packaging, and quality operation for each batch of each Product will be prepared by Sintetica at the time such operations occur. Sintetica will prepare such records in accordance with GMP, this Agreement, the Specifications and Applicable Law.

4.3.3 On an annual basis, upon ETON's prior written notice of at least thirty (30) days and at its expense, Sintetica shall permit representatives of or selected on behalf of ETON to inspect Sintetica's facilities relevant to the manufacture, testing, packaging, labeling, quality control, storage and transport of any Product. Notwithstanding the foregoing, ETON may inspect at any time without cost to ETON if the inspection is for cause, provided that the scope of such inspection is limited to the cause for such inspection.

4.3.4 ETON and Sintetica shall each designate one (1) individual to whom all of the other Party's communications may be addressed with respect to the manufacturing of Product (the "***Quality Assurance Liaison***"). Each Party shall give prompt notice to the other Party of any material adverse change or event that relates to a quality issue or related matter with respect to the manufacturing site for a Product or the Product itself.

4.4 **Forecasts**. No later than sixty (60) days prior to ETON's projected desired initial delivery of commercial batches of each Product, ETON shall provide to Sintetica a forecast which shall indicate ETON's reasonable estimate of its expected requirements for each Product from Sintetica for the twelve (12) month period commencing on the desired initial Delivery Date for such Product. Commencing on the fifth (5th) Business Day after the initial Delivery Date for a given Product and not later than the third (3rd) Business Day of each third (3rd) calendar month thereafter, ETON shall submit a forecast of its requirements from Sintetica for each Product which shall indicate ETON's reasonable estimate of its expected requirements of Product from Sintetica for the twelve (12) month period commencing on the first (1st) day of the fourth (4th) full calendar month after the date of each such update (each a "***Rolling Forecast***"). The first three (3) calendar months of each Rolling Forecast shall be considered binding forecasts for Product (the "***Firm Period***"). Except as expressly provided in the foregoing sentence, such Rolling Forecasts constitute non-binding, good-faith estimates provided solely to assist Sintetica in production planning and subject to the terms and conditions hereof the Rolling Forecast for any period may be revised by ETON by written notice to Sintetica.

4.5 **Purchase Orders and Minimum Order Requirements**.

4.5.1 The purchase of each Product under this Agreement shall be implemented by ETON's issuance of individual purchase orders to Sintetica for specific quantities of each Product which purchase orders shall reflect the Firm Period, if applicable, and shall specify the delivery date for each Product (the "***Delivery Date***"). The first order shall be placed no earlier than fifteen (15) days from ETON receiving written confirmation from Sintetica of the approval of the MA for the Product by FDA in the Territory. Subsequent orders shall be placed one hundred twenty (120) days prior to ETON's requested Delivery Date. Within seven (7) Business Days of its receipt of a purchase order, Sintetica shall accept in writing such purchase order submitted in accordance with this Section 4.5.1 by delivering a confirmation of the Delivery Date set forth in each purchase order (a "***Confirmed Purchase Order***").

4.5.2 If a purchase order requests quantities of such Product in excess of one hundred twenty five percent (125%) of ETON's most recent forecast for such month, then Sintetica shall within seven (7) Business Days of its receipt of such a purchase order, notify ETON whether and to what amount Sintetica can supply such excess. No purchase order shall be rejected provided that the purchase order complies with the terms of this Agreement. For any given calendar month, Sintetica may be required to accept purchase orders for quantities of Product up to one hundred twenty-five percent (125%) of ETON's most recent forecast for such month and shall use commercially reasonable efforts to supply quantities of Product in excess of one hundred twenty-five percent (125%) of the forecasted amounts (the "***Excessive Amount***"). In the event Sintetica cannot supply the Excessive Amount, then ETON shall be free to source and procure such Excessive Amount from a Third-Party alternative source at its own cost. In such an event, Sintetica shall not receive its profit share for the Excessive Amount.

4.5.3 ETON shall assign a purchase order number to each order placed with Sintetica and notify such order numbers to Sintetica. Each Party shall use the relevant purchase order number in all subsequent correspondence relating to the order.

4.5.4 [* * *].

4.5.5 [* * *].

4.5.6 [* * *].

4.6 **Delayed Delivery**. In the event of any changes in the Territory that could adversely affect sales of a given Product, ETON shall have the right to delay delivery of Product ordered by ETON from Sintetica pursuant to a purchase order for a period of up to six (6) months after the Delivery Date of the applicable shipment of the applicable Product. In the event ETON wishes to delay any such shipments it will notify Sintetica in writing at least sixty (60) days in advance of the applicable Delivery Date. ETON shall also have the right to cancel any purchase order, however, in the event of such cancellation ETON shall pay for (a) all such applicable Product already manufactured by Sintetica that cannot be sold to ETON hereunder in a future shipment of such Product without violating the terms of this Agreement; (b) all of the materials and components ordered by Sintetica specifically for the manufacture of the affected Product that cannot be otherwise used or returned to the applicable supplier; (c) any reasonable, documented costs and expenses for work-in-progress of the affected Product completed under the purchase order prior to cancellation; and (d) the cost of destruction of the applicable Product, if any.

4.7 **Shipment**.

4.7.1 Products shall be invoiced and delivered Ex-Works Sintetica, Mendrisio, CH, in Sintetica's standard packaging and delivery units applicable from time to time.

4.7.2 Sintetica will not ship any Product that it reasonably believes will not conform to the relevant Specifications, MAs, this Agreement or with Applicable Law. If Sintetica reasonably believes any such Product would not conform as such, then Sintetica shall, at no cost to ETON, manufacture and supply replacement Product to replace the non-conforming Product as promptly as possible. Sintetica shall be responsible for all costs and expenses, including expedited shipping and Customer Penalties related to such replacement.

4.7.3 Risk of loss shall pass in accordance with the applicable Incoterms, and at such time Sintetica shall pass to ETON good and marketable title to each Product, free and clear of all liens, claims, security interests, pledges, charges, mortgages, deeds of trusts, options, or other encumbrances of any kind.

4.8 **Acceptance**. Within thirty (30) days of receipt of each shipment of Product by Sintetica at ETON or its designated facility, ETON shall perform or cause to be performed any inspections ETON deems necessary for each shipment of the Product and notify Sintetica in writing within such thirty (30) day period if ETON believes that the Product fails to conform to the Specifications, MAs, this Agreement, or Applicable Law, or if any defect, shortage, or other nonconformance exists. If ETON does not provide such notice within the thirty (30) day period, the shipment shall be deemed to be accepted ("***Accepted***"), except as otherwise provided by Section 5.10.

4.9 **Non-Conformity; Shortage; Defectiveness**. If ETON believes that (a) any Product has not been manufactured in accordance with the requirements of the Specifications, MAs, this Agreement or Applicable Law; (b) any defect exists in any Product delivered, or (c) there is a shortage of Product delivered; then in each case ETON will, within thirty (30) days of the receipt of such Product by ETON, notify Sintetica in writing setting forth in reasonable detail the alleged nonconformity, defect or shortage. Upon any such notification, Sintetica shall have the right to inspect the applicable Product itself or appoint, at its expense, a mutually acceptable Third Party to perform such inspection. Sintetica or such Third Party will have fourteen (14) days to inspect the affected Product to make an assessment of the alleged nonconformity, defect or shortage. If the Parties agree there is a nonconformity, defect or shortage or if Sintetica fails to inspect or have inspected the applicable shipment of Product within such fourteen (14) day period, then Sintetica at its sole cost and expense shall promptly replace any nonconforming or defective Product or make up the shortage, to be shipped at Sintetica's cost. Nonconforming or defective Product will be returned to Sintetica at Sintetica's cost. Sintetica shall, during any such inspection periods outlined in this Section 5.9, continue to supply Product to ETON pursuant to the terms and conditions of this Agreement. Any dispute between the Parties concerning rejection of all or any part of a shipment of Product which the Parties are unable to resolve within thirty (30) days of the aforementioned fourteen (14) day period will be submitted to an agreed-upon, qualified, independent laboratory for testing using the test methods set forth in the applicable MA or other mutually agreed upon methods. Sintetica shall replace promptly any shipment or portion of a shipment of Product under dispute until the dispute is resolved. Such replacement Product and the cost of the laboratory will be at Sintetica's expense if the laboratory finds that the lot in question is non-conforming or otherwise defective. The costs of the laboratory shall be ETON's expense if the lot in question is found to be conforming or otherwise non-defective. The findings of the laboratory shall be final and binding upon the Parties and not subject to appeal or review by any Third Party. In the event the laboratory finds that the lot in question is nonconforming, then Sintetica shall pay for the destruction of such nonconforming lot.

4.10 **Latent Defects**. The Parties acknowledge it is possible for Product to have manufacturing defects that are not discoverable upon reasonable physical inspection or testing (such a "***Latent Defect*** or "***Latent Defects***"). Latent Defects may include, by way of example and not definition or limitation, loss of stability, separation, discoloration, defects not present in pre-shipment samples or other manufacturing defects. Sintetica is responsible for all Latent Defects that are attributable to the manufacture, labeling, packaging, shipping, handling or storage of Product by Sintetica or failure of such Product to otherwise comply with the provisions of this Agreement. As soon as ETON becomes aware of any Latent Defect, it will immediately notify Sintetica of the lot(s) involved and Sintetica shall replace such Product in the manner described in Section 4.9.

4.11 **Failure to Supply**.

4.11.1 In the event that Sintetica is unable to supply any quantity of Product ordered through a Confirmed Purchase Order for any reason, then Sintetica shall promptly notify ETON of such inability to supply and if possible, will notify ETON of the date on which such inability is expected to end. In such event, Sintetica and ETON will for a period up to thirty (30) days discuss in good faith a resolution to such inability to supply. Sintetica shall also immediately prioritize its available production capacity, materials and components to the manufacture of the affected Product to minimize the impact of the failure to supply.

4.11.2 Notwithstanding the foregoing, in the event Sintetica is unable to (i) supply Product to ETON as ordered by ETON per purchase order, and in the amount of product equal to at least that specified in Section 5.2.2 of this Agreement for a period within thirty (30) days of the Delivery Date or (ii) deliver Product in the amount of product equal to at least that specified in Section 4.2.2 of this Agreement to ETON by the Delivery Date on two (2) or more occasions over a period of three (3) months (a "***Supply Failure***"), then ETON shall, in addition to its other rights and remedies available hereunder, have the right to cancel the purchase order(s) for Product(s) without penalty or liability and to purchase such Product from an alternate source, including a Third Party. For purposes of this Agreement, delivery within thirty (30) days before or after the Delivery Date shall be deemed as meeting the Delivery Date.

4.11.3 In the event that Sintetica shall have reason to believe it will be unable to supply Product to ETON for a period of at least three (3) months beyond the Delivery Date (a "***Material Delivery Delay***"), Sintetica shall promptly notify ETON thereof. Following ETON's receipt of such notice the Parties shall promptly meet to discuss in good faith and establish a plan that shall contain all necessary activities to be implemented to avoid or eliminate interruption in supply, including but not limited to permitting ETON to purchase the Products from a Third Party if necessary (the "***Recovery Plan***"). Sintetica shall be obligated to perform the activities in accordance with the Recovery Plan. If, despite undertaking the measures set forth in the preceding sentence, ETON purchases substitute product or incurs Customer Penalties as a result of any Supply Failure or Material Delivery Delay, ETON will provide to Sintetica proof thereof which shall only include identity of the customer, amount of the customer penalty and a reference to either a credit number or invoice number associated with the customer penalty and Sintetica shall reimburse ETON for (A) the difference, if any, between (x) the purchase price ETON pays for product from an alternate source and (y) the Transfer Price and (B) Customer Penalties, including the difference between (i) the purchase price paid by ETON's customer to source product from an alternative source and (ii) ETON's price to the customer for the Product if such difference is charged by the customer to ETON (each of (A) and (B) "***Customer Penalties***").

4.11.4 In the event ETON incurs and pays for any Customer Penalties, except due to a Force Majeure Event (which Customer Penalties shall be deducted from Net Profits), ETON will, as a first remedy, deduct for a period up to two (2) consecutive Calendar Quarters, from its future payment of the Sintetica Net Profit Share an amount not to exceed the Customer Penalties (the "***Deducted Customer Penalties***") until the first to occur of: (a) the Deducted Customer Penalties equals the Customer Penalties or (b) ETON does not owe to Sintetica any such Sintetica Net Profit Share. If, after such deductions or upon reaching the end of the two (2) calendar quarter period, the Customer Penalties exceed the Deducted Customer Penalties, ETON will invoice Sintetica for such difference and Sintetica will pay such invoice in full within sixty (60) days of receipt thereof. ETON will have the right to withhold any future payments owed to Sintetica until all such invoices are paid in full.

4.11.5 Notwithstanding anything to the contrary in this Agreement, in the event of Supply Failure by Sintetica, ETON shall have the right to use a Third-Party manufacturer to supply the Product for the Territory. In such an event, Sintetica (a) shall use commercially reasonable efforts to effectuate such technology transfer to the Third-Party manufacturer, and (b) pay for the technology transfer to the Third-Party manufacturer. Under this Section 4.11.5, ETON shall be fully released from its purchase orders and any Firm Period section of a Rolling Forecast and shall be permitted to purchase such Products from a Third Party.

4.12 The rights and remedies provided in this Section 5 shall be cumulative and in addition to any other rights and remedies that may be available to ETON.

4.13 Inventory: ETON shall keep an amount of inventory at all times greater than six (6) months of forecasted sales of product.

5. SALES AND MARKETING

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.

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.

6. MILESTONES AND PROFIT SHARE; PAYMENTS

6.1 **Milestones**. ETON will pay to Sintetica a total sum of two million seven hundred fifty thousant dollars ($2,750,000) after the achievement of the following milestones:

(a) An amount of two million dollars ($2,000,000) within thirty (30) days after the execution of this Agreement. If the MAs for the Products are not accepted to file or review by the FDA, then the two million dollars ($2,000,000) payment shall be returned to ETON within five (5) Business Days after Sintetica's receipt of the FDA's notice of non-acceptance to file or review of the MAs.

(b) An amount of seven hundred fifty thousand ($750,000) within thirty (30) of the first commercial sale of [* * *]. If Sintetica is able to supply Product to Eton and Eton has not achieved first commercial sale within ninety (90) days, the payment shall become due.

6.2 **Transfer Price**.

6.2.1 [* * *].

6.2.2 Sintetica shall use commercially reasonable efforts in accordance with its standard manufacturing practices to reduce its COGS for Products. The Parties will meet on annual basis to discuss plans to reduce the Transfer Price. Sintetica shall use commercially reasonable efforts to implement such plans and reduce the Transfer Price.

6.2.3 Sintetica will invoice ETON when Product has been released by Sintetica, at a price per unit that is equal to the Transfer Price for such Product. Except as otherwise provided for in this Agreement, ETON shall pay to Sintetica the Transfer Price for such Product within thirty (30) days after the date of receipt of an invoice from Sintetica.

6.2.4 If ETON fails to cure any non-payment of an invoice within sixty (60) days after receipt of the invoice other than for reasons outside of its control, then Sintetica may call for immediate payment of all outstanding invoices. Sintetica may also make further deliveries subject to prepayment.

6.3 **Net Profit Share**.

6.3.1 ETON shall pay to Sintetica the first five hundred thousand ($500,000) of Net Profits from sales by ETON of the Products in the Territory. After five hundred thousand ($500,000) is paid to Sintetica, ETON and Sintetica will share the Net Profits from sales by ETON of the Products in the Territory, if any, as follows: (a) ETON's share is fifty percent (50%) of Net Profits, and (b) Sintetica's share is fifty percent (50%) of Net Profits (the "***Sintetica Net Profit Share***").

6.3.2 ETON will have the right to withhold the following amounts on a Product-by-Product basis from the commercialization of such Products by ETON in the Territory: five (5%) percent of Net Sales (the "***Selling, General and Administrative Fee***" or "***SG&A Fee***").

6.3.3 Within sixty (60) days following the end of each Calendar Quarter following first commercial sale 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 Sintetica in a mutually acceptable format the Net Sales, Net Profits and Sintetica Net Profit Share for each Product sold in the Territory during the Payment Period, and (b) pay to Sintetica within thirty (30) days of the delivery of the report, the aggregate Sintetica Net Profit Share for all Products for that Payment Period as reflected in the report. For the first year of commercial sale if aggregate Net Profit for all Products for any Payment Period equals a negative amount, then Sintetica shall not be entitled to receive any Sintetica Net Profit Share for such Payment Period and ETON shall be permitted to carry over such negative amount to apply against aggregate positive Net Profit amounts in subsequent Calendar Quarters until such negative amount is reduced to zero.

6.4 **Interim and Final True-Ups**. During the Supply Term, on an annual basis, following the first (1^{st}) calendar year from launch of Product and on a Product-by-Product basis, ETON shall perform an interim "true-up" reconciliation and shall provide Sintetica 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 plus an estimate for any remaining liabilities incurred related to the specified Product, 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 or Supply Term and on a Product-by-Product basis, ETON shall perform a final "true-up" reconciliation and shall provide Sintetica 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.

6.5 **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 Sintetica. Any Tax, duty or other levy paid or required to be withheld by ETON on account of any payments payable to Sintetica under this Agreement shall be deducted from the amount of payments due to Sintetica. ETON shall secure and promptly send to Sintetica proof of such Taxes, duties or other levies withheld and paid by ETON for the benefit of Sintetica. 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.

6.6 **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 (including the Transfer Price and Net Profit Share) 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.

6.7 **Accounting**. ETON and Sintetica shall calculate and record calculations under this Section 7 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 Supply Term plus an additional three (3) years thereafter.

7. INTELLECTUAL PROPERTY AND OTHER RIGHTS

7.1 At its sole cost and expense, Sintetica shall be solely responsible and liable for any litigation in connection with the Product's development, manufacturing, and the Sintetica Background Intellectual Property.

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

7.3 **Patents and Other Intellectual Property**. 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 provided that the Sintetica Background Intellectual Property is covered by a patent or patent application, Sintetica, at its sole cost and expense, shall maintain and protect the Sintetica Background Intellectual Property and continue to prosecute and maintain its patents covering the Sintetica Background Intellectual Property and shall keep ETON advised of material actions relative to the same. Should Sintetica contemplate to abandon or otherwise forfeit any patent/patent applications or patent rights in the Sintetica Background Intellectual Property, Sintetica shall notify ETON in advance of such contemplation. In such an event, ETON may pursue filing and prosecuting such patent applications relating to the Products, at its own cost and expense, and shall obtain from Sintetica rights and licenses to those patents and patent applications with the same scope as that in Section 2.1. Sintetica shall maintain the confidentiality of any trade secrets covering the Sintetica 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 hereto 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 fourteen (14) 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 **Provision of Information**. Sintetica shall promptly provide ETON with reasonable access to information and data about, and personnel knowledgeable of, the Product, its formulation, use and process of manufacture, to enable ETON to: (a) ascertain whether the manufacture or marketing of the Product would infringe any Third Party intellectual property rights; and (b) determine its conduct in relation to any proceedings alleging infringement of the Third Party intellectual property rights.

7.6 **Intellectual Rights Suit**.

7.6.1 At its sole cost and expense, Sintetica shall 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 Sintetica shall keep ETON apprised of material developments. ETON shall fully cooperate with Sintetica 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 Sintetica in connection with the settlement of any such Intellectual Rights Suit. Except as otherwise set forth in this Agreement, Sintetica shall be responsible for all reasonable attorneys' fees and costs, settlement amounts and/or awarded damages incurred by either Party or their respective Affiliates in connection with the defense of any Intellectual Rights Suit provided such is directly related to this Agreement ("***Intellectual Rights Legal Expenses***").

7.6.2 Sintetica agrees that it will not, whether in the context of litigation or otherwise related thereto, without the prior written consent of ETON 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 ETON under this Agreement in respect of the Product.

7.7 **Third Party Infringement**. In the event either Party believes that a Third Party is infringing or otherwise violating a Party's intellectual property rights in the Territory or Manufacturing Territory, which infringement involves the Product, Sintetica and ETON shall consult with each other and their respective counsel in order to develop a strategy for addressing the Third-Party infringement. Unless the Parties agree differently, the owner of the infringed intellectual property (the owning Party) shall have the right at its sole discretion to bring action against the Third Party infringer, select counsel for, control, and bear the costs of such action, shall indemnify and hold the non-owning Party harmless, and shall be entitled to any award or settlement in respect thereof. In the event that the owning Party does not bring any action against the Third-Party infringer within the earlier of ninety (90) days from the Infringement Notification Date or the relevant statute of limitations, the non-owning Party shall be free to bring the action in its own name, at its own expense, and retain any award or settlement in its entirety. If necessary, the non-participating Party shall join, or be joined as a Party to the suit, but shall be under no obligation to participate, except to the extent that such participation is required as the result of being a named Party to the suit. The non-participating Party shall offer reasonable assistance in connection therewith, at no charge to the participating Party, except for reimbursement of reasonable out-of-pocket expenses.

7.8 Sections 7.1, 7.2 and 7.6 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 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.

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 the Swiss government in connection with the transaction contemplated hereby will be borne by Sintetica.

11. TERM & TERMINATION

11.1 **Term**. The term of this Agreement shall begin on the Effective Date and shall end upon the termination or expiration of every Supply Term, unless earlier terminated as set forth in Sections 11.2, 11.3 and 11.4 of this Agreement (the "***Term***"). The Supply Term shall begin on the Effective Date and shall end ten (10) years after the first commercial sale of each Product, and automatically be extended for successive three (3) year increments unless ETON or Sintetica provides each other with written notice of its intention not to extend the particular Supply Term for a given Product at least six (6) months before the expiration of the applicable initial Supply Term or any extension thereof.

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 sixty (60) days after the sending of such written notice unless the Breaching Party has cured any such material breach or material default prior to the expiration of the sixty (60) day period or if 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 one hundred eighty (180) 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 By ETON**. ETON shall have the right to terminate the Agreement or any Supply Term in whole or in part upon thirty (30) days prior written notice to Sintetica (a) in the event ETON determines in its sole discretion that a given Product is no longer commercially viable in the Territory; (b) if Sintetica sells an MA for a Product or otherwise does not support maintaining approval of the MA; (c) if Sintetica stops producing the Product; (d) if a Sintetica facility (i) fails to obtain or maintain any necessary license, ; (e) if Eton determines in its sole discretion that the Product filings are unlikely to be approved by the FDA and (f) any Product infringes upon any Third Party patents, trademarks, or other intellectual property rights in the Territory or Territory of Manufacture.

11.5 **Termination By Sintetica**. Sintetica shall have the right to terminate the Agreement or any Supply Term in whole or in part upon thirty (30) days prior written notice to ETON (a) if ETON develops competing product; and (b) if Government action forces the cessation of ETON's selling and marketing activities of all pharmaceutical products.

11.6 **Effect of Termination**.

11.6.1 If this Agreement is terminated by ETON under Sections 11.2, 11.3, and 11.4(b,c,d,f) in addition to any remedies that ETON is entitled to (a) Sintetica shall, at its cost, provide reasonable assistance in technology transfer to an alternative supplier of ETON's choice and make best efforts in reducing or avoiding any adverse impact to ETON, (b) ETON shall have the right to purchase such Products from a Third Party and shall have a perpetual, fully-paid up, royalty-free, sublicensable, and exclusive right and license (including as to and against Sintetica) to make and have made the Product inside and outside the Territory and Market the Products in the Territory, at its option, and (c) Sintetica shall execute any documents or agreements reasonably necessary to effectuate the foregoing (including but not limited to any amendment to this Agreement), as determined by ETON.

11.6.2 If this Agreement is terminated by Sintetica under Sections 11.2 and 11.3, then (a) ETON shall have the right to, and Sintetica shall hereby grant ETON a license to, Market or otherwise dispose of any existing inventory of any Products then in ETON's possession, (b) Sinetica may keep all the licensing payments paid by ETON up to the point of termination and is free to commercialize or relicense the Product with no further obligations owed to ETON, (c) ETON shall refrain from holding itself out as Sintetica's distributor, in particular, eliminate any reference to the Product and Sintetica from its business, trade style and promotional material, (d) ETON will promptly transfer the MAs to Sintetica's name, and (e) ETON shall transfer all rights, licenses, and approvals to the Product to Sintetica or another company indicated by Sintetica within thirty (30) days of termination. This Section 11.5 shall survive termination or expiration of this Agreement.

11.6.3 If this Agreement is terminated by ETON under Section 11.4(a) all milestones will become immediately due to Sintetica. All rights to Products will immediately return to Sintetica.

11.6.4 If this Agreement is terminated by ETON under Section 11.4(e) prior to two years having elapsed since filing for the MA with the FDA; all milestones will become immediately due to Sintetica, and a one time payment for lost Gross Profit of one million dollars ($1,000,000) will also become due. All rights to Products will immediately return to Sintetica.

12. REPRESENTATIONS AND WARRANTIES

12.1 **ETON Representations and Warranties**. ETON represents and warrants to Sintetica 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 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 **Sintetica Representation and Warranties**. Sintetica 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 Sintetica, 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 Sintetica 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 MA 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 the MAs and Products and the right, power and authority to grant a license to ETON hereunder;

12.2.10 it has and will maintain until the end of the Term the capacity to manufacture the Products in quantities ordered by ETON;

12.2.11 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;

12.2.12 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;

12.2.13 its manufacturing facilities applicable to Products conform, and shall conform throughout the Term, in all respects to all Applicable Laws governing such facilities and it shall maintain all records as are necessary and appropriate to demonstrate compliance in the manufacture of each Product with GMP, the Specifications, the applicable MA, the Quality Agreement and all Applicable Laws;

12.2.14 all Product supplied to ETON 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 MA, 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;

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

12.2.16 The FDA has not requested or demanded in writing that Sintetica discontinue any MAs for reasons related to safety or efficacy;

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

12.2.18 Sintetica 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 MAs or the use, manufacture, import, distribution, sale or offer for sale of any Product.

12.3 **Survival of Representations and Warranties**. All representations and warranties of ETON and Sintetica 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 **Sintetica's Indemnification Obligations**. Sintetica 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) Sintetica's material breach of any of its representations, warranties or covenants set forth in this Agreement, or any of its obligations hereunder; (ii) Sintetica'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) Sintetica'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 Sintetica and its officers, directors, agents, Affiliates and employees (collectively, "***Sintetica 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 Sintetica 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 Sintetica'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 Sintetica'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 Switzerland. 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 Sintetica 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, 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 Supply Term if the Force Majeure Event still exists following such sixty (60) day notice period. Notwithstanding anything to the contrary in this Agreement, any Customer Penalties attributable to such Force Majeure Event shall be deducted from Net Profits.

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 Sintetica, to:

Sintetica S.A.
Via Penate 5,
6850 Mendrisio, Switzerland
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.

ETON PHARMACEUTICALS, INC.

By: _____
Name: _____
Title: _____

SINTETICA S.A.

By: _____
Name: _____
Title: _____

EXHIBIT A: PRODUCTS AND TRANSFER PRICES

Products:
[* * *]

Transfer Price:
[* * *]

Exhibit 10.5

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.

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this "Agreement") dated as of May 6, 2019 (the "Effective Date"), is entered into between ETON PHARMACEUTICALS, INC., a Delaware corporation ("Eton"), with a place of business at 21925 W. Field Parkway, Suite 235, Deer Park, Illinois 60010, and HARROW HEALTH, INC., a Delaware corporation f/k/a Imprimis Pharmaceuticals, Inc. ("Harrow"), with a place of business at 12264 El Camino Real, Suite 350, San Diego, California 92130.

WHEREAS, the parties entered into the Asset Purchase and License Agreement dated as of May 9, 2017, whereby Harrow assigned certain assets related to the Product (as defined below) to Eton (the "Original Agreement"); and

WHEREAS, the parties desire to terminate the Original Agreement and to transfer certain assets related to the Product from Eton to Harrow on the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth below and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. Definitions. For the purposes of this Agreement, the following terms shall have the respective meanings set forth below, and grammatical variations of such terms shall have corresponding meanings:

1.1 "Affiliate" means, with respect to any Person, any other Person which directly or indirectly controls, is controlled by, or is under common control with, such Person. A Person shall be regarded as in control of another Person if it owns, or directly or indirectly controls, more than fifty percent (50%) of the voting stock or other ownership interest of the other Person, or if it directly or indirectly possesses the power to direct or cause the direction of the management and policies of the other Person by any means whatsoever. Notwithstanding the foregoing, for purposes of this Agreement, neither Harrow nor Eton shall be Affiliates of the other or the other's Affiliates.

1.2 "Assets" means, collectively, (a) the Technology; (b) all discoveries, inventions, technology, compositions, formulations, samples, components, processes, standards, methods, procedures and techniques relating thereto; (c) all formulae, data, information, results of experimentation and testing, and other know-how, whether or not patentable or copyrightable, relating thereto; (d) all Regulatory Filings and Regulatory Approvals therefor or relating thereto; and (e) all intellectual property rights and other assets relating thereto (including without limitation the Assigned Patent Rights and Assigned Know-How Rights).

1.3 "Assigned Know-How Rights" means all trade secret and other know-how rights related to the Technology owned by Eton as of the Effective Date.

1.4 "Assigned Patent Rights" means, collectively, (a) all patents and patent applications (including provisional patent applications) in any jurisdiction that claim or cover the Technology, including those listed on Schedule 1 to Exhibit A, together with all divisionals, continuations and continuations-in-part that claim priority to, or common priority with, the foregoing; (b) all patents issuing therefrom (including utility models and design patents and certificates of invention); (c) all reissues, reexaminations, inter partes reviews, renewals, restorations, extensions and supplementary protection certificates of any of the foregoing patent applications or patents; (d) all confirmation patents, registration patents or patents of addition based on any of the foregoing patents; and (e) all foreign counterparts of any of the foregoing, or as applicable portions thereof.

1.5 "Contract" or "Contracts" means any mortgage, indenture, lease, contract, covenant, arrangement, agreement, instrument, commitment, purchase order or license.

1.6 "Encumbrance" or "Encumbrances" means any encumbrance, lien, charge, hypothecation, pledge, mortgage, adverse claim, option, preemptive right, or other security interest of any nature, or any Contract to create any of the foregoing entered into by Eton on or before the Effective Date.

1.7 "FDA" means the Food and Drug Administration of the United States, or any successor thereto.

1.8 "First Commercial Sale" means, with respect to any Product, the first sale of such Product by Harrow, its Licensees, or its or their respective Affiliates after all applicable Regulatory Approvals (if any) have been granted by the applicable Regulatory Authority.

1.9 "Knowledge of Eton" or "Eton's Knowledge" means the actual knowledge of any director, officer, member or employee of Eton and the knowledge such individuals would reasonably be expected to obtain in the course of diligently performing his or her duties for Eton and/or making a reasonable inquiry into the matters contemplated by this Agreement.

1.10 "Licensee" means a Third Party to whom Harrow has granted a license, immunity or other right under the Assigned Patent Rights to offer to sell, sell or otherwise commercialize one or more Products, provided such license has not expired or been terminated.

1.11 "Net Sales" means, with respect to any Product, the gross sales price of such Product invoiced by Harrow, its Licensees, and its and their respective Affiliates to customers who are not Affiliates (or are Affiliates but are the end users of such Product), less (a) credits, allowances, discounts and rebates to, and chargebacks from the account of, such customers; (b) freight and insurance costs in transporting such Product to the extent separately invoiced and included in the gross sales price; (c) cash, quantity and trade discounts, rebates and other price reductions for such Product; (d) sales, use, value-added and other direct taxes for such Product to the extent separately invoiced and included in the gross sales price; (e) customs duties, tariffs, surcharges and other governmental charges incurred in exporting or importing such Product to the extent separately invoiced and included in the gross sales price; and (f) an allowance for uncollectible or bad debts for such Product determined in accordance with generally accepted accounting principles not to exceed 3% of Net Sales of such Product for the applicable quarterly reporting period before giving effect to this subsection (f).

1.12 “Payment Period” means, on a Product-by-Product and country-by-country basis, the period of time equal to the longer of (a) beginning on the date of the First Commercial Sale of such Product in such country and continuing during the term for which a Valid Claim (if such Valid Claim were in an issued patent) in such country remains in effect and would be infringed (if such Valid Claim were in an issued patent not owned by or licensed to Harrow) by the manufacture, use, offer for sale, sale or import of such Product in such country; and (b) fifteen (15) years following the date of the First Commercial Sale of such Product in such country.

1.13 “Person” means any individual, partnership, firm, corporation, association, trust, unincorporated organization or other entity, as well as any syndicate or group of any of the foregoing.

1.14 “Product” means any product, in any form or formulation for injectable administration, comprising synthetic corticotropin.

1.15 “Product Supported Patent Rights” means, collectively, (a) all patent applications filed anywhere in the world after May 9, 2017; (b) all patents that have issued or in the future issue from any of the foregoing patent applications, including without limitation utility models, design patents and certificates of invention; and (c) all divisionals, continuations, continuations-in-part, reissues, renewals, extensions or additions to any such patents and patent applications; in each case that use or are supported by data and information derived from the development, manufacture or use of the Product or otherwise from the exploitation of the Technology; provided, however, that Product Supported Patent Rights shall exclude the Assigned Patent Rights.

1.16 “Regulatory Approval” means, with respect to a particular country or regulatory jurisdiction, any and all approvals, clearances or other authorizations to develop, test, use, make, transport, store or commercialize a particular product or service in such country or regulatory jurisdiction, including all amendments and supplements thereto.

1.17 “Regulatory Authority” means any national, supra national, regional, state or local regulatory authority, department, bureau, commission, council or other governmental authority (including the FDA) that is responsible for overseeing the development, testing, use, making, transport, storage or commercialization of a product or service.

1.18 “Regulatory Filings” means, with respect to a particular country or regulatory jurisdiction, any and all applications for, notifications or other submissions made to or with a Regulatory Authority that is necessary or reasonably desirable to develop, test, use, make, transport, store or commercialize a particular product or service in such country or regulatory jurisdiction, whether made before or after receipt of approval, clearance or other authorization in such country or regulatory jurisdiction, including all amendments and supplements thereto.

1.19 “Tax” or “Taxes” means any and all federal, state, local and foreign taxes, assessments and other governmental charges, duties, impositions and liabilities, including taxes based upon or measured by gross receipts, income, profits, sales, use and occupation, and value added, ad valorem, transfer, franchise, withholding, payroll, recapture, employment, excise and property taxes as well as public imposts, fees and social security charges (including but not limited to health, unemployment and pension insurance), together with all interest, penalties and additions imposed with respect to such amounts and any obligation under any agreement or arrangement with any other Person with respect to such amounts and including any liability for taxes of a predecessor entity.

1.20 "Technology" means the Product together with any and all uses and methods of manufacture thereof.

1.21 "Third Party" means any Person other than Harrow, Eton or their respective Affiliates.

1.22 "Valid Claim" means either (a) a claim of an issued and unexpired patent included within the Assigned Patent Rights, which has not been held permanently revoked, unenforceable or invalid by a decision of a court or other governmental agency of competent jurisdiction, unappealable or unappealed within the time allowed for appeal, and which has not been admitted to be invalid or unenforceable through reissue or disclaimer or otherwise, or (b) a claim of a pending patent application included within the Assigned Patent Rights, which claim was filed in good faith and has not been abandoned or finally disallowed without the possibility of appeal or refiling of such application.

2. Purchase and Sale of the Assets.

2.1 Assets. Subject to the terms and conditions of this Agreement, Harrow hereby agrees to, and hereby does, purchase from Eton, and Eton hereby agrees to, and hereby does, sell, convey, transfer and assign to Harrow, on the Effective Date, all of Eton's right, title and interest in and to the Assets, including without limitation all those assets described on Schedule 1 of the Patent Assignment attached hereto as Exhibit A. Concurrently with the execution of this Agreement, Eton shall deliver all required consents to Material Contracts (as defined below) as set forth on Schedule 4.7 hereof. To the extent necessary to comply with applicable privacy laws, Eton shall have the right to redact patient identifying information from any data or information transferred to Harrow.

2.2 No Assumption of Liabilities. Harrow shall not be obligated to assume or perform and is not assuming or performing any liabilities or obligations of Eton which relate to Eton's ownership of the Assets prior to the Effective Date or otherwise, whether known or unknown, fixed or contingent, certain or uncertain, and regardless of when they are or were asserted, and Eton shall remain responsible for and shall promptly pay such liabilities.

2.3 Transfer Documents. The sale, conveyance, transfer and assignment of the Assets may be further evidenced by the due execution and delivery by the parties of any additional bills of sale, assignment or other title transfer documents and instruments as reasonably requested by Harrow. Without limiting the generality of the foregoing, (a) on the Effective Date, Eton shall duly execute and deliver to Harrow the patent assignment in the form attached as Exhibit A (the "Patent Assignment") evidencing the sale, conveyance, transfer and assignment of the Assigned Patent Rights from Eton to Harrow in accordance with this Agreement, and (b) at such time as reasonably requested by Harrow on or after the Effective Date, Eton shall duly execute and deliver to Harrow such additional bills of sale, assignment or other title transfer documents and instruments as reasonably requested by Harrow evidencing the sale, conveyance, transfer and assignment of the Assets in accordance with this Agreement.

2.4 Consideration. The consideration for the sale to Harrow of the Assets under this Agreement shall consist of the following (collectively, the "Purchase Price"): the Payment Amount (as defined below) and the Milestone Payments (as defined below).

2.5 Allocation of Purchase Price. The Purchase Price shall be allocated, if an allocation is required, by Harrow within sixty (60) days following a determination that such allocation is required. After the Effective Date, Harrow and Eton shall make consistent use of any allocation required under Section 1060 of the Internal Revenue Code for all Tax purposes and in all filings, declarations and reports with the Internal Revenue Service or any other applicable taxing authority in respect thereof. In any and all actions, suits, proceedings, arbitration, or governmental or regulatory investigations or audits related to the determination of any Tax, neither Harrow nor Eton shall contend or represent that such allocation is not a correct allocation.

3. License Grant.

3.1 License to Harrow. Eton hereby grants to Harrow a non-exclusive, irrevocable, perpetual, non-transferable (except in connection with a permitted assignment of this Agreement), worldwide license under the Product Supported Patent Rights for all uses. Harrow shall have the right to grant sublicenses under the Product Supported Patent Rights, through multiple tiers, to Third Parties and Affiliates.

3.2 No Implied Licenses. Only licenses and rights expressly granted herein shall be of legal force and effect. No license or other right shall be created hereunder by implication, estoppel, or otherwise.

4. Representations and Warranties of Eton. Eton hereby represents and warrants to Harrow, except as indicated on the disclosure schedules, if any, attached to this Agreement, as follows:

4.1 Authority and Binding Effect. Eton has the full power and authority to execute and deliver this Agreement, the Patent Assignment and other documents and instruments contemplated hereby. This Agreement, the Patent Assignment and other documents and instruments contemplated hereby, and the consummation by Eton of its obligations contained herein and therein, have been duly authorized by all necessary actions of Eton, and this Agreement, the Patent Assignment and other documents and instruments contemplated hereby have been duly executed and delivered by Eton. This Agreement, the Patent Assignment and other documents and instruments contemplated hereby are valid and binding agreements of Eton, enforceable against Eton in accordance with their respective terms.

4.2 Organization and Standing. Eton is duly organized, validly existing and in good standing under the laws of the State of Delaware. Eton is qualified to do business in each jurisdiction where such qualification is necessary. Eton has the requisite corporate power and authority to conduct its business as now conducted, to own the Assets and to use such Assets in the conduct of its business.

4.3 Intellectual Property.

4.3.1 All Assigned Patent Rights as of the Effective Date are listed in Schedule 1 of the Patent Assignment attached hereto as Exhibit A.

4.3.2 Eton has good and marketable title to each of the Assets, and each of the Assets is held or controlled by Eton free and clear of any Encumbrances (including without limitation any distribution rights and royalty rights). All Assets and will be fully transferable, alienable or licensable by Harrow without restriction and without payment of any kind to any Third Party.

4.3.3 All Assets (including without limitation the Assigned Patent Rights) are currently in compliance with applicable legal requirements (including payment of filing, examination and maintenance fees and proofs of use), and are not subject to any unpaid maintenance fees or taxes or actions falling due within ten (10) days after the Effective Date.

4.3.4 To the extent that any Assets were originally owned or created by or for any Person other than Eton, (a) Eton has obtained or will procure the complete, unencumbered and unrestricted right to effect the transfer of the Assets from Eton to Harrow and confirms that such transfer does not violate any such right to transfer; (b) no Third Parties have retained or otherwise have any rights or licenses with respect to the Assets; and (c) to the Knowledge of Eton, no valid basis exists for any such Person to challenge or object to this Agreement or the transactions contemplated herein.

4.3.5 Eton has not transferred ownership of, or granted any license of or right to use, or authorized the retention of any rights to use, to any Person any Assets.

4.3.6 To Eton's Knowledge, Eton is not required to make or accrue any royalty, milestone or other similar payment to any Third Party in connection with any of the Assets.

4.3.7 To Eton's Knowledge, none of the Assets transferred hereunder infringe upon or misappropriate the intellectual property of any Third Party.

4.4 Conflicts; Consents. The execution and delivery by Eton of this Agreement and the Patent Assignment, and the consummation of the transactions contemplated hereby, will not conflict with (a) any provision of the certificate of incorporation or bylaws of Eton, each as amended to date; (b) Contracts to which Eton or any of its properties or assets (including intangible assets) is subject; or (c) any judgment, order, decree, statute, law, ordinance, rule or regulation applicable to Eton or any of its properties or assets (tangible and intangible). It is not necessary for Eton to take any action or to obtain any approval, consent or release by or from any Third Party, governmental or other, to enable Eton to enter into or perform its obligations under this Agreement and the Patent Assignment.

4.5 Litigation and Proceedings. There is no claim, action, suit, proceeding or investigation (or any counter or cross-claim in an action brought by or on behalf of Eton), whether at law or in equity, or before or by any governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, or before any arbitrator of any kind, that is pending or, to Eton's Knowledge, threatened, against Eton, which (i) could reasonably be expected to adversely affect Eton's ability to perform its obligations under this Agreement or the Patent Assignment or complete any of the transactions contemplated hereby; or (ii) involves the possibility of any judgment or liability, or which may become a claim, against the Assets, Harrow or its business. Eton is not subject to any judgment, order, writ, injunction, decree or award of any court, arbitrator or governmental department, commission, board, bureau, agency or instrumentality having jurisdiction over Eton or any of the Assets that affects, involves or relates to the Assets.

4.6 Compliance with Law/Permits. Eton is in compliance with all, and is not in violation of any, law, ordinance, order, decree, rule or regulation of any governmental agency or authority, the violation of or noncompliance with which could have a material adverse effect on Eton. No unresolved (a) charges of violations of laws or regulations relating to Eton's business have been made or threatened; (b) proceedings or investigations relating to Eton's business are pending or have been threatened; and (c) citations or notices of deficiency have been issued or have been threatened, against Eton relating to or arising out of its business by any governmental authorities.

4.7 Contracts. Schedule 4.7 lists the Contracts to which Eton is a party as of the date hereof which arise out of or relate to the Assets by which any of the Assets are currently bound (the "Material Contracts"). Eton is not in violation of or in default under (nor is there existing conditions which with either the passage of time or giving of notice or both would cause such a violation or default under) any such Material Contract. Each such Material Contract is in full force and effect, and has a legal, valid and binding obligation on Eton, and to Knowledge of Eton, each of the other parties thereto, and is enforceable in accordance with its terms. Eton has not received notice that it is in violation or breach of or in default under any such Material Contract. Except as set forth on Schedule 4.7, no such Material Contract has a provision that would require consent, notice or the payment of money or transfer of property as a result of the transactions contemplated herein.

4.8 Full Disclosure. The representations and warranties made by Eton in this Agreement and the schedules to be delivered pursuant to this Agreement do not contain any untrue statement of material fact or omit to state a material fact necessary to make any of them in the light of the circumstances in which they were made, not misleading.

4.9 No Broker. Eton has not retained or used the services of an agent, finder, or broker in connection with the transactions contemplated by this Agreement

5. Representations and Warranties of Harrow. Harrow represents and warrants to Eton as follows:

5.1 Authority and Binding Effect. Harrow has the full corporate power and authority to execute and deliver this Agreement and the Patent Assignment. This Agreement and the Patent Assignment, and the consummation by Harrow of its obligations contained herein and therein, have been duly authorized by all necessary corporate actions of Harrow, and this Agreement and the Patent Assignment have been duly executed and delivered by Harrow. This Agreement and the Patent Assignment are valid and binding agreements of Harrow, enforceable against Harrow in accordance with their respective terms.

5.2 Organization and Standing. Harrow is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware, and Harrow is qualified to do business in each jurisdiction where such qualification is necessary and where the failure to be so qualified would have a material adverse effect on Harrow. Harrow has the requisite corporate power and authority to conduct its business as now conducted.

5.3 Conflicts; Consents. The execution and delivery by Harrow of this Agreement and the Patent Assignment, and the consummation of the transactions contemplated hereby, will not give rise to a conflict with respect to (a) any provision of the certificate of incorporation or bylaws of Harrow, each as amended to date; (b) Contracts to which Harrow or any of its properties or assets (including intangible assets) is subject; or (c) any judgment, order, decree, statute, law, ordinance, rule or regulation applicable to Harrow or any of its properties or assets (tangible and intangible), except in any such case where it would not have a material adverse effect on Eton's rights under the Assets. It is not necessary for Harrow to take any action or to obtain any approval, consent, or release by or from any Third Party, governmental or other, to enable Harrow to enter into or perform its obligations under this Agreement and the Patent Assignment.

5.4 Compliance with Law/Permits. Harrow is in compliance with all, and is not in violation of any, law, ordinance, order, decree, rule or regulation of any governmental agency or authority, the violation of or noncompliance with which could have a material adverse effect on Harrow. No unresolved (a) charges of violations of laws or regulations relating to Harrow's business have been made or threatened; (b) proceedings or investigations relating to Harrow's business are pending or have been threatened; and (c) citations or notices of deficiency have been issued or have been threatened, against Harrow relating to or arising out of its business by any governmental authorities, which have had or could reasonably be expected to have, individually or in the aggregate, a material adverse effect on Harrow.

5.5 No Broker. Harrow has not retained or used the services of an agent, finder, or broker in connection with the transactions contemplated by this Agreement.

6. Financial Terms.

6.1 Milestone Payments. Within seventy-five (75) days following the first achievement of each milestone event set forth below by Harrow, a Licensee, or one of their respective Affiliates, Harrow shall provide Eton with written notice thereof and shall pay to Eton the corresponding one-time milestone payment (each a "Milestone Payment"):

Milestone Event	**Milestone Payment**
[* * *]	**[* * *]**
[* * *]	**[* * *]**
[* * *]	**[* * *]**

6.2 Net Sales Payment Amounts.

6.2.1 Net Sales Payment Consideration. Subject to the provisions in this Section 6.2, on a Product-by-Product and country-by-country basis, Harrow shall pay to Eton, on a quarterly basis, **[* * *]** of Net Sales of any Product during the applicable Payment Period (the "Payment Amount"); provided, however, if the manufacture, use, offer for sale, sale, or import of such Product in a particular country would not infringe a Valid Claim (if such Valid Claim were in an issued patent and not owned by or licensed to Harrow), then the applicable Payment Amount with respect to such Product in such country shall be reduced by one-half (½).

6.2.2 Combination/Bundled Products. In the event that a Product is sold by Harrow, its Licensees or their respective Affiliates in combination with one or more products which is itself not a Product, then Net Sales shall be calculated by multiplying the sales price of such combination sale by the fraction A/(A+B) where A is the fair market value of the Product(s) and B is the fair market value of the other product(s) in the combination sale, each as reasonably determined by Harrow.

6.3 Reports and Net Sales Payments. Within seventy-five (75) days after the end of each calendar quarter during the applicable Payment Period, Harrow shall deliver to Eton a report setting forth for such calendar quarter (a) the calculation of the applicable Payment Amount; (b) the payments due under this Agreement for the sale of each Product; and (c) the applicable exchange rate as determined below. Harrow shall remit the total payments due for the sale of Products during such calendar quarter at the time such report is made. No such reports or payments shall be due for any Product prior to the First Commercial Sale of such Product. With respect to Net Sales received in United States dollars, all amounts shall be expressed in United States dollars. With respect to Net Sales received in a currency other than United States dollars, all amounts shall be expressed both in the currency in which the amount is invoiced (or received as applicable) and in the United States dollar equivalent. The United States dollar equivalent shall be calculated using the average of the exchange rate (local currency per US$1) published in The Wall Street Journal, Western Edition, under the heading "Currency Trading" on the last business day of each month during the applicable calendar quarter.

6.4 Payment Provisions.

6.4.1 Payment Terms. The Payment Amount shown to have accrued by each report provided for under Section 6.3 shall be due on the date such report is due. Payment of the Payment Amount in whole or in part may be made in advance of such due date.

6.4.2 Exchange Control. If at any time legal restrictions prevent the prompt remittance of part or all Payment Amount with respect to any country in where a Product is sold, Harrow shall have the right, in its sole discretion, to make such payments by depositing the amount thereof in local currency to Eton's account in a bank or other depository institution in such country. If the payment rate specified in this Agreement should exceed the permissible rate established in any country, the payment rate for sales in such country shall be adjusted to the highest legally permissible or government-approved rate.

6.4.3 Withholding Taxes. Harrow shall be entitled to deduct the amount of any withholding taxes, value-added taxes or other taxes, levies or charges with respect to such amounts, other than United States taxes, payable by Harrow, its Licensees or its or their respective Affiliates, or any taxes required to be withheld by Harrow, its Licensees or its or their respective Affiliates, to the extent Harrow, its Licensees or their respective Affiliates pay to the appropriate governmental authority on behalf of Eton such taxes, levies or charges. Harrow shall use reasonable efforts to minimize any such taxes, levies or charges required to be withheld on behalf of Eton by Harrow, its Licensees or its or their respective Affiliates. Harrow promptly shall deliver to Eton proof of payment of all such taxes, levies and other charges, together with copies of all communications from or with such governmental authority with respect thereto.

6.5 Audits. Upon the written request of Eton and not more than once in each calendar year, Harrow shall permit an independent certified public accounting firm of nationally recognized standing selected by Eton and reasonably acceptable to Harrow, at Eton's expense, to have access during normal business hours to such of the financial records of Harrow as may be reasonably necessary to verify the accuracy of the Payment Amount reports hereunder for the eight (8) calendar quarters immediately prior to the date of such request (other than records for which Eton has already conducted an audit under this Section). If such accounting firm concludes that additional amounts were owed during the audited period, Harrow shall pay such additional amounts within thirty (30) days after the date Eton delivers to Harrow such accounting firm's written report so concluding. The fees charged by such accounting firm shall be paid by Eton; provided, however, if the audit discloses that the Payment Amount payable by Harrow for such period are more than one hundred ten percent (110%) of the Payment Amount actually paid for such period, then Harrow shall pay the reasonable fees and expenses charged by such accounting firm. Eton shall cause its accounting firm to retain all financial information subject to review under this Section 6.5 in strict confidence; provided, however, that Harrow shall have the right to require that such accounting firm, prior to conducting such audit, enter into an appropriate non-disclosure agreement with Harrow regarding such financial information. The accounting firm shall disclose to Eton only whether the reports are correct or not and the amount of any discrepancy. No other information shall be shared. Eton shall treat all such financial information as Harrow's confidential information, and shall not disclose such financial information to any Third Party or use it for any purpose other than as specified in this Section 6.5.

6.6 Survival. This Section 6 shall survive the expiration or termination of this Agreement and shall only terminate upon the expiration of the Payment Period and all payment obligations.

7. Post-Effective Date Covenants.

7.1 Harrow Diligence.

7.1.1 Harrow shall use commercially reasonable efforts (whether alone or with or through its Licensees and its or their respective Affiliates) to research, develop and commercialize a Product.

7.1.2 Harrow shall control, at its sole expense, the preparation, filing, prosecution, maintenance and enforcement of the Assigned Patent Rights consistent with prudent business practices and shall consider in good faith the interests of Eton.

7.2 Eton Covenants.

7.2.1 Within thirty (30) days after the Effective Date, Eton shall transfer to Harrow all Assets, including without limitation all items described on Exhibit B.

7.2.2 For a period of twelve (12) months following the Effective Date, Eton shall, and shall cause its Affiliates and its and their respective employees and contractors to, respond to inquiries from Harrow and provide Harrow with such technical assistance as reasonably requested regarding the Technology and other Assets, including without limitation regarding the research, development, manufacture, Regulatory Approval and commercialization of one or more Products, and the preparation, filing, prosecution, maintenance and enforcement of patent and other intellectual property rights relating thereto. Harrow shall pay to Eton its documented reasonable out-of-pocket costs of providing such technical assistance.

7.3 Further Assistance.

7.3.1 Eton shall provide all cooperation reasonably requested by Harrow in connection with any effort by Harrow to establish, perfect, defend, or enforce its rights in or to the Assets (including without limitation the Assigned Patent Rights). Such cooperation shall include, without limitation, (a) executing such further assignments, transfers, licenses, releases and consents, and (b) providing such data and information, consulting with Harrow and executing and delivering all such further documents and instruments, in each case as requested by Harrow regarding the Assets (including without limitation the Assigned Patent Rights).

7.3.2 To the extent Eton cannot transfer and assign any of the Assigned Patent Rights, or any portion thereof, as of the Effective Date, then Eton shall assign and transfer the same at the first opportunity to do so. To the extent further transfer or assignment of any patents rights is required and Eton has not, within fifteen (15) days after the delivery of such assignment to Eton, (a) executed and returned to Harrow the form of assignment reasonably requested by Harrow, or (b) delivered to Harrow a written objection to Harrow's request, then Eton hereby irrevocably appoints Harrow as its attorney-in-fact with the right, authority, and ability to execute and enter into such assignment on behalf of Eton. Eton stipulates and agrees that such appointment is a right coupled with an interest and shall survive the incapacity or unavailability of Eton at any future time. To the extent that any of the Assigned Patent Rights cannot be assigned and transferred by Eton, then Eton hereby grants Harrow an irrevocable, worldwide, fully-paid up, royalty-free, exclusive license, with the right to sublicense through multiple tiers, under the Assigned Patent Rights for all purposes.

7.3.3 Eton shall provide all cooperation reasonably requested by Harrow, and shall provide all technical assistance and to support reasonably requested by Harrow, regarding (a) the exploitation of the Technology (including without limitation the research, development and production of any Product), and (b) applying for, obtaining and maintaining any and all approvals, licenses, registrations or authorizations necessary or desirable to test, market or commercialize the Technology (including without limitation any Product). Such cooperation shall include, without limitation, providing such data and information, consulting with Harrow and executing and delivering all such further documents and instruments, in each case as requested by Harrow regarding the Technology.

7.3.4 Harrow shall own, and Eton hereby assigns to Harrow, all right title and interest in and to all results and other work product resulting from the activities described in this Section 7.3, together with all patent rights and other intellectual property rights therein and thereto.

8. Indemnification.

8.1 Indemnification by Eton. Subject to the provisions of this Section 8, Eton shall indemnify, defend and hold harmless Harrow, its officers, directors, affiliates, agents, stockholders and representatives (collectively, the "Harrow Indemnitees"), from and against any and all losses, liabilities, damages and expenses (including without limitation reasonable expenses of investigation and attorneys' and consultants' fees and expenses in connection with any claim, demand, action or proceeding or settlement of any of any of the foregoing) (collectively, "Losses") incurred or suffered by an Harrow Indemnitee to the extent arising out of:

8.1.1 any breach of the representations and warranties of Eton set forth in this Agreement;

8.1.2 any breach of any covenant or agreement of Eton set forth in this Agreement or in any certificate, instrument, or other document delivered pursuant to this Agreement; and

8.1.3 the ownership or operation of the Assets prior to the Effective Date or any liability or obligation whatsoever of Eton.

8.2 Indemnification by Harrow. Subject to the provisions of this Section 8, Harrow shall indemnify and hold harmless Eton, its officers, directors, affiliates, agents, stockholders and representatives (collectively, the "Eton Indemnitees"), from and against any and all Losses incurred or suffered by a Eton Indemnitee to the extent arising out of:

8.2.1 any breach of the representations and warranties of Harrow set forth in this Agreement;

8.2.2 any breach of any covenant or agreement of Harrow set forth in this Agreement or in any certificate, instrument, or other document delivered pursuant to this Agreement;

8.2.3 the ownership or operation of the Assets after the Effective Date or the manufacture, use, or sale of Product solely by Harrow, its Licensees or their respective Affiliates or use of Product by their customers.

8.3 Offset. Harrow may offset against the Payment Amount or any other amounts due Eton from Harrow, any amounts owed to Harrow for indemnification under Section 8.1. The exercise of such offset by Harrow in good faith, whether or not ultimately determined to be justified, shall not constitute an event of default hereunder. Neither the exercise nor the failure to exercise, any such right of offset shall constitute an election of remedies or limit Harrow in any manner in the enforcement of any other remedies that may be available to it.

8.4 Procedure. A party seeking indemnification (the "Indemnitee") shall promptly notify the other party (the "Indemnifying Party") in writing of a claim or suit; provided that an Indemnitee's failure to give such notice or delay in giving such notice shall not affect such Indemnitee's right to indemnification under this Section 8 except to the extent that the Indemnifying Party has been prejudiced by such failure or delay. Harrow shall have the right to control the defense of all indemnification claims hereunder. Eton shall have the right to participate at its own expense in the claim or suit with counsel of its own choosing. Harrow shall consult with the Indemnitee in good faith with respect to all non-privileged aspects of the defense strategy. Eton shall cooperate with Harrow as reasonably requested, at Eton's sole cost and expense. Harrow shall not settle any claim or suit with respect to which Eton is the Indemnifying Party without Eton's prior written consent, which consent shall not be unreasonably withheld.

9. Confidentiality.

9.1 Confidential Information. During the term of this Agreement, and for a period of five (5) years following the expiration or earlier termination hereof, except as otherwise provided in this Section 9, Eton shall maintain in confidence all data and information comprising the Assets (the "Confidential Information"), and shall not use, disclose or grant the use of the Confidential Information except on a need-to-know basis to those directors, officers, employees and contractors, to the extent such disclosure is reasonably necessary in connection with performing its obligations or exercising its rights under this Agreement. To the extent that disclosure is authorized by this Agreement, prior to disclosure, Eton shall obtain agreement of any such Person to hold in confidence and not make use of the Confidential Information for any purpose other than those permitted by this Agreement. Eton shall notify the other promptly upon discovery of any unauthorized use or disclosure of the Confidential Information.

9.2 Terms of this Agreement. Except as otherwise provided in this Section 9, neither party shall disclose any terms or conditions of this Agreement to any Third Party without the prior consent of the other party; provided, however, that a party may disclose the terms or conditions of this Agreement, (a) on a need-to-know basis to its legal and financial advisors to the extent such disclosure is reasonably necessary, and (b) to a Third Party in connection with (i) an equity investment in such party, (ii) a merger, consolidation or similar transaction by such party, (iii) a permitted (sub)license under this Agreement, or (iv) the sale of all or substantially all of the assets of such party. Notwithstanding the foregoing, prior to execution of this Agreement, the parties have agreed upon the substance of information that can be used to describe the terms of this transaction, and each party may disclose such information, as modified by mutual agreement from time to time, without the other party's consent.

9.3 Permitted Disclosures. The confidentiality obligations contained in this Section 9 shall not apply to the extent that (a) a party is required (i) in the reasonable opinion of such party's legal counsel, to disclose information by applicable law, regulation, rule (including rule of a stock exchange or automated quotation system), order of a governmental agency or a court of competent jurisdiction or legal process, including tax authorities, or (ii) to disclose information to any governmental agency for purposes of obtaining approval to test or market a product, provided in either case that, to the extent practicable, such party shall provide written notice thereof to the other party and sufficient opportunity to object to any such disclosure or to request confidential treatment thereof; or (b) a party can demonstrate that (i) the information was or became public knowledge, other than as a result of actions of such party in violation hereof; or (ii) the information was disclosed to the recipient on an unrestricted basis from a source unrelated to any party to this Agreement and not under a duty of confidentiality to the other party. Notwithstanding anything to the contrary herein, Harrow may disclose the terms and conditions of this Agreement to any Person with whom Harrow has, or is proposing to enter into, a business relationship, as long as such Person has entered into a confidentiality agreement with Harrow.

9.4 Injunctive Relief. Each party acknowledges that it will be impossible to measure in money the damage to the other party if such party fails to comply with the obligations imposed by this Section 9, and that, in the event of any such failure, the other party may not have an adequate remedy at law or in damages. Accordingly, each party agrees that injunctive relief or other equitable remedy, in addition to remedies at law or damages, is an appropriate remedy for any such failure and shall not oppose the granting of such relief on the basis that the disclosing party has an adequate remedy at law. Each party agrees that it shall not seek, and agrees to waive any requirement for, the securing or posting of a bond in connection with the other party seeking or obtaining such equitable relief.

10. Term. The term of this Agreement shall continue until expiration of all payment obligations hereunder.

11. Miscellaneous.

11.1 Termination of Original Agreement. The parties hereby terminate the Original Agreement in its entirety (including without limitation Section 9.2, which shall not apply), provided, however, that Section 5.4 shall remain in full force and effect.

11.2 Assignment. Neither party shall assign its rights or obligations under this Agreement without the prior written consent of the other party; provided, however, that a party may, without such consent, assign this Agreement and its rights and obligations hereunder (a) to any Affiliate, or (b) in connection with the transfer or sale of all or substantially all of its business to which this Agreement relates, or in the event of its merger, consolidation, change in control or similar transaction. Any permitted assignee shall assume all obligations of its assignor under this Agreement. Any purported assignment in violation of this Section 11.2 shall be void.

11.3 Severability. Any provision of this Agreement which is illegal, invalid or unenforceable shall be ineffective to the extent of such illegality, invalidity or unenforceability, without affecting in any way the remaining provisions hereof.

11.4 Governing Law; Exclusive Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the State of California, without regard to the conflicts of law principles thereof. Each of the parties hereto irrevocably consents to the exclusive jurisdiction and venue of any federal court located in the Southern District of the State of California or state court in San Diego, California having jurisdiction, in connection with any matter based upon or arising out of this Agreement or the matters contemplated herein, agrees that process may be served upon them in any manner authorized by laws of the State of California for such persons and waives and covenants not to assert or plead any objection which they might otherwise have to such jurisdiction, venue and such process.

11.5 Entire Agreement; Amendment. This Agreement, together with the Exhibits hereto, and each additional document, instrument or other agreement to be executed and delivered pursuant hereto constitute all of the agreements of the parties with respect to, and supersede all prior agreements and understandings relating to the subject matter of, this Agreement or the transactions contemplated by this Agreement. This Agreement may not be modified or amended except by a written instrument specifically referring to this Agreement signed by the parties hereto.

11.6 Waiver. No waiver by one party of the other party's obligations, or of any breach or default hereunder by any other party, shall be valid or effective, unless such waiver is set forth in writing and is 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 or any other breach or default by such other party.

11.7 Notices. Any consent, notice or report required or permitted to be given or made under this Agreement by a party to the other party shall be in writing, delivered by any lawful means to such other party at its address indicated below, or to such other address as the addressee shall have last furnished in writing to the addressor and (except as otherwise provided in this Agreement) shall be effective upon receipt by the addressee.

If to Eton:
Eton Pharmaceuticals, Inc.
21925 W. Field Pkwy, Suite 235
Deer Park, Illinois 60010
Attention: Chief Executive Officer

If to Harrow:
Harrow Health, Inc.
12264 El Camino Real, Suite 350
San Diego, California 92130
Attention: Chief Executive Officer

11.8 Counterparts. This Agreement may be executed in separate counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

[SIGNATURE PAGE FOLLOWS.]

IN WITNESS WHEREOF, each party has caused a duly authorized representative to execute and deliver this Asset Purchase Agreement as of the Effective Date.

ETON PHARMACEUTICALS, INC.

By: _____
Name: _____
Title: _____

HARROW HEALTH, INC.

By: _____
Name: _____
Title: _____

[Signature Page to Asset Purchase Agreement]

EXHIBIT A

PATENT ASSIGNMENT

WHEREAS, Eton Pharmaceuticals, Inc., a Delaware corporation ("Assignor"), with a place of business at 21925 W. Field Parkway, Suite 235, Deer Park, Illinois 60010 is the owner of all rights, title, and interests in and to the patent applications and patents shown on the attached Schedule 1 (the "Assigned Patent Rights"); and

WHEREAS, HARROW HEALTH, INC., a Delaware corporation ("Assignee"), with a place of business at 12264 El Camino Real, Suite 350, San Diego, California 92130, desires to acquire the entire right, title, and interest in and to the Assigned Patent Rights and all the inventions and discoveries disclosed and/or claimed in the Assigned Patent Rights (the "Inventions");

NOW THEREFORE, be it known that effective as of _____, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor hereby sells, assigns, transfers, and sets over unto Assignee (1) the entire right, title, and interest in all countries throughout the world in and to said Assigned Patent Rights and Inventions, including any renewals, revivals, reissues, reexaminations, extensions, continuations, continuations-in-part, and divisions of said Assigned Patent Rights and any substitute applications therefor; (2) the entire right to file patent applications ("New Applications") in the name of Assignee or its designee on the aforesaid Inventions in all countries of the world; (3) the entire right, title, and interest in and to any patent which issued and may issue on the Inventions in any country, and any renewals, revivals, reissues, reexaminations, and extensions thereof, and any patents of confirmation, registration, and importation of the same; (4) the right to sue and recover for, and the right to profits or damages due or accrued in connection with, any and all past, present, or future infringements of the Assigned Patent Rights and Inventions; and (5) the entire right, title, and interest in all convention and treaty rights of all kinds, including without limitation all rights of priority in any country of the world, in and to the above Assigned Patent Rights and Inventions.

AND for the same consideration, said Assignor hereby covenants and agrees to and with said Assignee its successors, legal representatives and assigns, that, at the time of execution and delivery of these presents, said Assignor is the sole and lawful owner of the entire right, title and interest in and to said Inventions and Assigned Patent Rights, and that the same are unencumbered and that said Assignor has good and full right and lawful authority to sell and convey the same in the manner herein set forth.

AND for the same consideration, said Assignor hereby covenants and agrees to and with said Assignee, its successors, legal representatives and assigns, that said Assignor will, whenever counsel of said Assignee, or the counsel of its successors, legal representatives and assigns, shall advise that any proceeding in connection with said Inventions and Assigned Patent Rights in any country, including interference proceedings, is lawful and desirable, or that any application for letters patent, or that any division, continuation or continuation-in-part of any application for letters patent or any reissue or extension of any letters patent, to be obtained thereon, is lawful and desirable, sign all papers and documents, take all lawful oaths, and do all acts necessary or required to be done for the procurement, maintenance, enforcement and defense of said Inventions and Assigned Patent Rights, without charge to said Assignee, its successors, legal representatives and assigns, but at the cost and expense of said Assignee, its successors, legal representatives and assigns.

AND, Assignor hereby authorizes and requests the competent authorities to grant and to issue any and all patents on the Inventions throughout the world to Assignee, its successors, or assigns, whose rights, title, and interests in such patents are the same as would have been held and enjoyed by Assignor had this assignment, sale, and transfer not been made.

IN WITNESS WHEREOF, the Assignor has caused this Patent Assignment to be duly executed by its officer thereunto duly authorized as of the _____ day of _____, 2019.

ETON PHARMACEUTICALS, INC.

By: _____
Name: _____
Title: _____

STATE OF)

)

COUNTY OF _____)

On _____, before me, _____, a Notary Public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of _____ that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

Acknowledgement of Assignee:

HARROW HEALTH, INC.

By: _____
Name: _____
Title: _____

EXHIBIT A: SCHEDULE 1

ASSIGNED PATENT RIGHTS

[* * *]

EXHIBIT B

CERTAIN ASSETS TO BE TRANSFERRED

Copies of the following with respect to any Product (in each case, excluding any individually identifiable health information):

- Product stability reports and records, including stability testing results
- Compounding and packaging protocols and formulation documentation
- Acceptance criteria for analytical methods and specifications of end-product
- Records related to in-process control documentation, process validation and cleaning validation
- Quality control policies
- Documentation related to the source API and excipients, including Material Safety Data Sheets
- Records relating to pre-clinical studies
- FDA correspondences and meeting minutes

Exhibit 10.6

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.

AMENDED AND RESTATED AGREEMENT

THIS AMENDED AND RESTATED AGREEMENT (this "Restated Agreement") is entered into as of February 18, 2019 (the "Restatement Date"), between **EYEMAX LLC,** a Massachusetts limited liability company ("Eyemax"), with a place of business at 74 Chestnut Street, Weston, Massachusetts 02493, and **ETON PHARMACEUTICALS, INC.,** a Delaware corporation ("Eton"), with a place of business at 21925 Field Pkwy, Suite 235, Deer Park, Illinois 60010.

RECITALS

ARTICLE I —WHEREAS, EYEMAX AND ETON ARE PARTIES TO THAT CERTAIN EXCLUSIVE SALES AND MARKETING AGREEMENT DATED AUGUST 11, 2017 (THE "2017 AGREEMENT"), PURSUANT TO WHICH, AMONG OTHER THINGS, EYEMAX GRANTED ETON AN EXCLUSIVE RIGHT AND LICENSE TO DEVELOP, MANUFACTURE AND COMMERCIALIZE PRODUCTS IN THE TERRITORY (AS SUCH TERMS ARE DEFINED HEREIN);

ARTICLE II —

WHEREAS, Eton proposes to enter into a transaction with a Third Party pursuant to which Eton would convey (whether by license, sale of assets, or a combination thereof) to such Third Party substantially all of Eton's rights to develop, manufacture and commercialize Products in the Territory (as more fully defined herein, the "Product Transaction");

WHEREAS, in order to facilitate such transaction, Eyemax desires to sell, convey, transfer, assign and deliver to Eton, and Eton desires to purchase and acquire from Eyemax; all of Eyemax's right, title and interest in and to all of the Purchased Assets (the "Acquisition"); in each case, on the terms and subject to the conditions set forth herein; and

WHEREAS, the effectiveness of the Acquisition shall be conditioned upon the consummation of the Product Transaction.

AGREEMENT

ARTICLE III —NOW, THEREFORE, IN CONSIDERATION OF THE FOREGOING PREMISES AND THE MUTUAL COVENANTS CONTAINED HEREIN AND OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, EYEMAX AND ETON HEREBY AGREE AS FOLLOWS:

ARTICLE IV —

1. Definitions. For the purposes of this Restated Agreement, the following terms shall have the respective meanings set forth below, and grammatical variations of such terms shall have corresponding meanings:

1.1 "Acquisition" shall have the meaning provided in the Recitals to this Restated Agreement.

1.2 "Acquisition Transaction" shall have the meaning provided in Section 5.8.

1.3 "Affiliate" shall mean, with respect to any Person, any other Person which directly or indirectly controls, is controlled by, or is under common control with, such Person. A Person shall be regarded as in control of another Person if it owns, or directly or indirectly controls, more than fifty percent (50%) of the voting stock or other ownership interest of the other Person, or if it directly or indirectly possesses the power to direct or cause the direction of the management and policies of the other Person by any means whatsoever.

1.4 "Ancillary Agreements" shall mean the Bill of Sale, the General Assignment and Assumption Agreement and the IP Assignment Agreement.

1.5 "Assumed Liabilities" shall have the meaning provided in Section 2.2.

1.6 "Bill of Sale" shall have the meaning provided in Section 2.6.1(i).

1.7 "Calendar Quarter" means a calendar quarter ending on the last day of March, June, September, or December.

1.8 "Cap" shall have the meaning provided in Section 8.6.2.

1.9 "Closing" shall have the meaning provided in Section 2.3.

1.10 "Closing Date" shall have the meaning provided in Section 2.3.

1.11 "Competing Business" shall have the meaning provided in Section 5.8.

1.12 "Confidential Information" shall have the meaning provided in Section 5.2.1.

1.13 "Eton Fundamental Representations" shall have the meaning provided in Section 8.1.2.

1.14 "Eton Indemnitees" shall have the meaning provided in Section 8.2.

1.15 "[* * *]" shall mean [* * *], a company organized under the laws of France.

1.16 "[* * *] Agreement" shall mean that certain **[* * *]** Agreement between Eyemax and [* * *] dated **[* * *]**, as amended to date.

1.17 "[* * *] Consent" shall have the meaning provided in Section 2.6.1(iv).

1.18 "Excluded Liabilities" shall have the meaning provided in Section 2.2.

1.19 "Excluded Transaction" shall mean, with respect to Eton:

1.19.1 completion of a merger, reorganization, amalgamation, arrangement, share exchange, consolidation, tender or exchange offer, private purchase, business combination, recapitalization or other transaction involving Eton, as a result of which either (a) the stockholders of Eton immediately preceding such transaction hold less than 50% of the outstanding shares, or less than 50% of the outstanding voting power, respectively, of the ultimate company or entity resulting from such transaction immediately after consummation thereof (including a company or entity which as a result of such transaction owns the then outstanding securities of Eton or all or substantially all of Eton' s assets, including, without limitation, Eton's assets related to Products, either directly or through one or more subsidiaries), or (b) any single Third Party Person or group (within the meaning of the U.S. Securities Exchange Act of 1934 and the rules of the SEC thereunder as in effect, referred to as a "Group") holds 50% or more of the outstanding shares or voting power of the ultimate company or entity resulting from such transaction immediately after the consummation thereof (including a company or entity which as a result of such transaction owns the then outstanding securities of Eton or all or substantially all of Eton's assets either directly or through one or more subsidiaries);

1.19.2 the direct or indirect acquisition (including by means of a tender offer or an exchange offer) by any Third Party Person or Group of beneficial ownership (within the meaning of the U.S. Securities Exchange Act of 1934 and the rules of the SEC thereunder as in effect), or the right to acquire beneficial ownership, or formation of any Third Party Group which beneficially owns or has the right to acquire beneficial ownership, of 50% or more of either the outstanding securities of Eton power or the then outstanding voting power of Eton, in each case on a fully diluted basis;

1.19.3 the sale or disposition to a Third Party of assets or businesses that constitute 50% or more of the total revenue or assets of Eton (determined on a consolidated basis), including Eton's assets or business related to Products; or

1.19.4 the sale of debt or equity securities of Eton in a bona fide financing transaction (in one or more closings) to one or more arm's-length financial investors.

1.20 "Eyemax Fundamental Representations" shall have the meaning provided in Section 8.1.1.

1.21 "Eyemax Indemnitees" shall have the meaning provided in Section 8.3.

1.22 "Eyemax IP Rights" shall mean, collectively, the Eyemax Patent Rights, the Eyemax Know-How Rights and the Eyemax Registrations.

1.23 "Eyemax Know-How Rights" shall mean all trade secrets, clinical data and other knowhow rights in which Eyemax or its Affiliates heretofore or hereafter has an ownership or (sub)licensable interest, in and to the Technology.

1.24 "Eyemax Patent Rights" shall mean (a) all patents that claim or cover the Technology in which Eyemax or its Affiliates heretofore or hereafter has an ownership or (sub)licensable interest, (b) all divisions, continuations, continuations-in-part, that claim priority to, or common priority with, the patent applications described in clause (a) above or the patent applications that resulted in the patents described in clause (a) above, and (c) all patents that have issued or in the future issue from any of the foregoing patent applications, including utility models, design patents and certificates of invention, together with any reissues, reexaminations, renewals, extensions or additions thereto.

1.25 "Eyemax Registrations" shall mean all Regulatory Filings and Regulatory Approvals (and applications therefor) regarding Products in which Eyemax or its Affiliates heretofore or hereafter has an ownership or (sub)licensable interest, including ANDA No. 208158.

1.26 "FDA" shall mean the Food and Drug Administration of the United States or any successor thereto.

1.27 "First Commercial Sale" shall mean, with respect to any Product, the first sale of such Product, for commercial purposes, to a Third Party after receipt of all necessary Regulatory Approvals for such Product.

1.28 "First Commercial Sale Milestone Payment" shall have the meaning provided in Section 4.3.2.

1.29 "Force Majeure Event" shall mean an event, act, occurrence, condition, or state of facts, in each case outside the reasonable control of a party, including acts of God; acts of any government; any rules, regulations, or orders issued by any Governmental Authority or by any officer, department, agency or instrumentality thereof; fire; storm; flood; earthquake; accident; war; rebellion; insurrection; riot; terrorism, and invasion, that interfere with the normal business operations of such party.

1.30 "General Assignment and Assumption Agreement" shall have the meaning provided in Section 2.6.1(ii).

1.31 "Governmental Authorities" shall mean all agencies, authorities, bodies, boards, commissions, courts, instrumentalities, legislatures and offices of any nature whatsoever of any government or political subdivision, whether foreign, federal, state, county, district, municipality, city or otherwise.

1.32 "Indemnifying Party" shall have the meaning provided in Section 8.4.

1.33 "Indemnitee" shall have the meaning provided in Section 8.4.

1.34 "Laws" shall mean any federal, state, foreign or local statute, law, ordinance, regulation, rule, code, Order, other requirement or rule of law.

1.35 "Liability" shall mean any direct or indirect indebtedness, liability, assessment, expense, claim, loss, damage, deficiency, obligation or responsibility, known or unknown, disputed or undisputed, joint or several, vested or unvested, executory or not, fixed or unfixed, choate or inchoate, liquidated or unliquidated, secured or unsecured, determinable or undeterminable, accrued or unaccrued, absolute or not, actual or potential, contingent or otherwise (including any liability under any guarantees, letters of credit, performance credits or with respect to insurance loss accruals).

1.36 "**[* * *]**" shall have the meaning provided in Section 4.6.1.

1.37 "Lien" shall mean any mortgage, pledge, lien, conditional sale agreement, security title, encumbrance, easement, right of way, charge or other title retention agreement of any kind or nature.

1.38 "Losses" shall have the meaning provided in Section 6.2.

1.39 "Non-Royalty Transaction Revenues" shall mean **[* * *]**.

1.40 "Order" shall mean any order, judgment, preliminary or permanent injunction, temporary restraining order, award, citation, decree, consent decree or writ of any Governmental Authority.

1.41 "Other Active" shall have the meaning given to such term in the **[* * *]** Agreement.

1.42 "Person" shall mean any individual, partnership, firm, corporation, association, trust, unincorporated organization or other entity, as well as any syndicate or group of any of the foregoing.

1.43 "Product" shall mean **[* * *]**.

1.44 "Product Acguiror" shall mean the Third Party counterparty to a Product Transaction consummated by Eton after the Restatement Date.

1.45 "Product Transaction" shall mean a transaction between Eton and a Third Party consummated after the Restatement Date pursuant to which Eton conveys (whether by license, sale of assets, or a combination thereof) to such Third Party substantially all of Eton's rights to develop, manufacture and commercialize Products in the Territory; but, in each case, specifically excluding any Excluded Transaction.

1.46 "Product Transaction Agreement" shall mean the definitive agreement(s) between Eton and the Product Acquiror for the Product Transaction.

1.47 "Program" shall mean all activities related to Products, including all research, development, regulatory, manufacturing and other related activities, conducted by or on behalf of Eyemax or its Affiliates.

1.48 "Purchased Assets" shall have the meaning provided in Section 2.1.

1.49 "Records" shall mean (a) all documentation comprising the Eyemax Registrations, including all submissions, reports and correspondence relating thereto, (b) all tangible documentation comprising the Eyemax IP Rights and (b) any other books and records relating exclusively to Product or the Program, or any other Purchased Assets, to the extent owned by or maintained by or on behalf of Eyemax or any of its Affiliates.

1.50 "Recovery Amount" shall mean **[* * *]**.

1.51 "Regulatory Approval Milestone Payment" shall have the meaning provided in Section 4.3.1.

1.52 "Regulatory Authority" shall mean any regulatory agency, ministry, department or other governmental body having authority in any country or region to control the development, manufacture, marketing, and sale of pharmaceutical products, including the FDA.

1.53 "Regulatory Approval" means, with respect to a Product in the Territory, any approval, registration, license, or authorization from the FDA or any other Regulatory Authority in the Territory that is necessary to market and sell such Product in the Territory.

1.54 "Regulatory Filing" shall mean any New Drug Application or Abbreviated New Drug Application, or any other application, notification or submission made to or with the FDA for Regulatory Approval of a product, together with all amendments and supplements to any of the foregoing.

1.55 "Restatement Date" shall have the meaning set forth in the recitals above.

1.56 "Royalties" shall mean all royalty payments actually received by Eton or any of its Affiliates from the Product Acquiror with respect to Net Sales of Single Agent Products in the Territory by the Product Acquiror, its Affiliates, and the Product Acquiror's and its Affiliates' respective licensees and sublicensees. For purposes of the preceding sentence, "Net Sales" shall have the meaning set forth in the Product Transaction Agreement.

1.57 "Single Agent Product" shall have the meaning set forth in the **[* * *]** Agreement.

1.58 "Tax Returns" means any and all reports, returns (including information returns), declarations, or statements relating to Taxes, including any schedule or attachment thereto and any related or supporting workpapers or information with respect to any of the foregoing, including any amendment thereof filed with or submitted to any Governmental Entity in connection with the determination, assessment, collection or payment of Taxes or in connection with the administration, implementation or enforcement of or compliance with any legal requirement relating to any Tax.

1.59 "Taxes" means any and all taxes, charges, fees, duties, contributions, levies or other similar assessments or liabilities, including, without limitation, income, gross receipts, corporation, ad valorem, premium, value-added, net worth, capital stock, capital gains, documentary, recapture, alternative or add-on minimum, disability, registration, recording, excise, real property, personal property, sales, use, license, lease, service, service use, transfer, withholding, employment, unemployment, insurance, social security, national insurance, business license, business organization, environmental, workers compensation, payroll, profits, severance, stamp, occupation, escheat, windfall profits, customs duties, franchise, estimated and other taxes of any kind whatsoever imposed by the United States of America or any state, local or other government, or any agency or political subdivision thereof, and any interest, fines, penalties, assessments or additions to tax imposed with respect to such items or any contest or dispute thereof.

1.60 "Technology" shall mean, collectively, all forms and formulations comprising [* * *], all methods of manufacture or use thereof, and all data, information, compositions, formulae, procedures, protocols, techniques and results of experimentation and testing and other technology relating to or reasonably necessary or useful to make, use, sell, offer for sale, import, develop, seek regulatory approval, market, commercialize or otherwise exploit the foregoing.

1.61 "Territory" shall mean collectively the United States of America and all of its territories and possessions.

1.62 "Third Party" shall mean any Person other than Eton, Eyemax or their respective Affiliates.

2. Purchase and Sale of Purchased Assets.

2.1 Purchased Assets. Subject to the terms and conditions of this Restated Agreement, at the Closing, Eyemax shall sell, convey, transfer, assign and deliver to Eton or its designee, and Eton shall purchase and acquire from Eyemax, all of Eyemax's right, title and interest as of the Closing in and to all of the following, free and clear of any and all Liens (collectively, the "Purchased Assets"):

2.1.1 the Eyemax IP Rights and the Technology, in each case, in the Territory, and all rights to sue for or assert claims against and remedies against past, present or future infringements of any or all of the Assigned Technology and rights of priority and protection of interests therein and to retain any and all amounts therefrom (collectively, the "Assigned Technology");

2.1.2 the Eyemax Registrations;

2.1.3 the [* * *] Agreement and all rights of Eyemax thereto as of the Closing Date;

2.1.4 the Records;

2.1.5 all claims, refund claims, causes of action, lawsuits or demands that Eyemax or any of its Affiliates may have against any Person, whether arising by way of counterclaim or otherwise, and any judgments or recoveries in favor of or for the benefit of Eyemax or any of its Affiliates; in each case, to the extent exclusively relating to the Program; and

2.1.6 all goodwill related to the Assigned Technology.

Eton agrees that the Purchased Assets shall be delivered without any Eyemax warranties of whatever kind except for the representations and warranties provided in Section 3.1 of this Restated Agreement. All assets of Eyemax and its Affiliates not specifically described in Section 2.1 shall not be part of the sale and purchase contemplated hereunder and shall remain the property of Eyemax after the Closing.

2.2 Assumed Liabilities. Except for the Assumed Liabilities, Eton shall not, by virtue of its purchase of the Purchased Assets, assume or become responsible for any Liabilities of Eyemax or any other Person in connection with this Restated Agreement. As previously agreed by the parties, as of the Closing, Eton shall assume and pay, perform, and discharge any and all Liabilities of Eyemax under the [* * *] Agreement arising prior to, during, and relating to, the period on or after the Closing, including any Liabilities imposed by applicable Law with respect to obligations under the [* * *] Agreement (the "[* * *] Liabilities"). Further, Eton shall assume and pay, perform, and discharge any and all Liabilities of Eyemax under the Eyemax Registrations, solely relating to the Territory arising prior to, during, and relating to, the period on or after the Closing (collectively, with the [* * *] Liabilities and Liabilities of Eton under Section 5.1, the "Assumed Liabilities"); *provided*, *however*, that the Assumed Liabilities shall exclude any and all Liabilities resulting from any breach of or non-compliance with the [* * *] Agreement or Eyemax Registrations by Eyemax or any of its Affiliates on or prior to the later of the Closing Date or the date of transfer of such Purchased Assets. All Liabilities of Eyemax or any of its Affiliates not specifically described in this Section 2.2 (collectively, with the Liabilities of Eyemax under Section 5.1, the "Excluded Liabilities") shall not be assumed by Eton and shall remain the sole obligation and responsibility of Eyemax and its Affiliates after the Closing.

2.3 Purchase Price; Payment of Purchase Price. The aggregate consideration for the sale of the Purchased Assets shall be (i) the assumption by Eton of the Assumed Liabilities and (ii) all payments that become due pursuant to Sections 4.3 and 4.4 (collectively, the "Purchase Price").

2.4 Closing. Unless this Restated Agreement has been terminated pursuant to its terms or unless another time or date is agreed to in writing by the parties hereto, the closing of the sale and purchase of the Purchased Assets and the assumption of the Assumed Liabilities (the "Closing") shall take place on the same day as, and immediately prior to but contingent upon, the Product Transaction at the offices of Cooley LLP, located at 4401 Eastgate Mall, San Diego, California 92121, unless another place is agreed to in writing by the parties hereto or the parties hereto elect to effect the Closing by exchange of electronic documents in PDF format in lieu of an in-person Closing. The date on which the Closing occurs is hereinafter referred to as the "Closing Date."

2.5 Transfer of Certain Purchased Assets. Eyemax shall transfer and deliver all Records (or true and complete copies thereof) to Eton on the Closing Date to the extent possible or, to the extent not possible to transfer and deliver such items on the Closing Date, within **[* * *]** days following the Closing Date, at Etan's expense for shipping and handling costs, to the locations, and in accordance with the instructions, specified by Eton or its designee. In the event that any of the abovementioned items reside in digital or electronic format on any equipment that is not included in the Purchased Assets, then the hard drive or other medium shall be imaged and provided to Eton or its designee in a reasonably accessible format. Eyemax will, to the extent any Records exist in a form suitable for electronic transfer, make such transfer electronically.

2.6 Closing Deliverables.

2.6.1 At the earlier of the Closing and the Product Transaction, Eyemax shall deliver or cause to be delivered to Eton (unless previously delivered) the following:

(i) a duly executed counterpart of a bill of sale in substantially the form of Exhibit A hereto with respect to the Purchased Assets (other than the Eyemax IP Rights and the [* * *] Agreement), to be effective on the earlier of the Closing and the Product Transaction (the "Bill of Sale");

(ii) a duly executed counterpart of an assignment and assumption agreement in substantially the form of Exhibit B hereto with respect to the [* * *] Agreement and the Assumed Liabilities, to be effective on the earlier of the Closing and the Product Transaction (the "General Assignment and Assumption Agreement");

(iii) [*reserved*];

(iv) a true and complete copy of an assignment and consent agreement substantially in the form of Exhibit C hereto with respect to the [* * *] Agreement duly executed by Eyemax and [* * *], to be effective on the earlier of the Closing and the Product Transaction (the "[* * *] Consent");

(v) a true and complete copy of a duly executed letter (in form and substance satisfactory to Eton) to the FDA indicating that the Eyemax Registrations are transferred to Eton or its designee and that Eton or its designee is the new owner of the Eyemax Registrations as of the Closing Date;

(vi) a certificate of a duly authorized officer of Eyemax, executed as of the Closing Date, certifying to the effect that the conditions set forth in Section 6.1 shall have been satisfied; and

(vii) such other good and sufficient instruments of conveyance, transfer and assignment as shall be necessary to vest in Eton or its designee good and valid title to the other Purchased Assets, free and clear of all Liens, to be effective on the earlier of the Closing and the Product Transaction.

2.6.2 At the earlier of the Closing and the Product Transaction, Eton shall deliver or cause to be delivered to Eyemax (unless previously delivered) the following:

(i) a counterpart of the Bill of Sale, duly executed by Eton;

(ii) a counterpart of the General Assignment and Assumption Agreement, duly executed by Eton;

(iii) [*reserved*]; and

(iv) a certificate of a duly authorized officer of Eton, executed as of the Closing Date, certifying to the effect that the conditions set forth in Section 6.2 shall have been satisfied.

2.7 License Grant. On the Closing Date, Eyemax hereby grants to Eton a non-exclusive, sublicensable, transferable, fully paid-up, royalty-free, perpetual license to any_assets and rights owned, used or held for use by Eyemax, or to which Eyemax has rights, that are related to, but not primarily related to, the Products or the Program in the Territory that are necessary or useful for the development, manufacturing, commercialization or other exploitation of the Products in the Territory.

3. Representations and Warranties.

3.1 Representations and Warranties of Eyemax. Eyemax hereby represents and warrants to Eton that, except as set forth on the Disclosure Schedule attached hereto as Exhibit D (the "Disclosure Schedule"), which exceptions shall be deemed to be part of the representations and warranties made hereunder, the representations under this Section 3.1 are true and complete as of the Restatement Date and as of the Closing as follows:

3.1.1 Eyemax is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Massachusetts. Eyemax is duly qualified to do business and is in good standing as a foreign corporation in all jurisdictions in which the nature of its activities and of its properties (both owned and leased) makes such qualification necessary, except for those jurisdictions in which failure to do so would not have a material adverse effect on Eyemax or its business.

3.1.2 Eyemax has the requisite power and authority and the legal right to execute and deliver this Restated Agreement, to perform its obligations hereunder and thereunder, and to consummate the Acquisition. The execution, delivery and performance of this Restated Agreement by Eyemax and the consummation by Eyemax of the Acquisition have been duly and validly authorized by all necessary action of Eyemax, and no other action on the part of Eyemax is necessary to authorize this Restated Agreement or to consummate the Acquisition. This Restated Agreement has been duly executed and delivered by Eyemax and, assuming the due authorization, execution and delivery by Eton, this Restated Agreement constitutes a legal, valid and binding obligation of Eyemax, enforceable against Eyemax in accordance with its terms, subject to the effect of any applicable bankruptcy, moratorium, insolvency, reorganization or other similar law affecting the enforceability of creditors' rights generally and to the effect of general principles of equity which may limit the availability of remedies, whether in a proceeding at law or in equity (collectively, the "Bankruptcy Exception").

3.1.3 All necessary consents, approvals and authorizations of all Governmental Authorities and other Persons required to be obtained by Eyemax in connection with this Restated Agreement and the consummation of the Acquisition have been obtained, including, without limitation, the written consent of [* * *] to the assignment to Eton of all of Eyemax's rights and obligations under the [* * *] Agreement. Neither the execution or delivery of this Restated Agreement by Eyemax does, nor the performance by Eyemax of its obligations hereunder or thereunder or the consummation of the Acquisition will: (i) conflict with or violate any provision of the organizational documents of Eyemax or any resolutions adopted by the Managers of Eyemax, (ii) conflict with, or constitute a default under, any contractual obligation by which it is bound, or (iii) conflict with or violate any Law or Order applicable to Eyemax or by which any of the Purchased Assets or Eyemax is bound or affected. Neither the execution or delivery of this Restated Agreement, nor the performance by Eyemax of its obligations hereunder or thereunder or the consummation by Eyemax of the Acquisition will: (a) result in the creation or imposition of any Lien on any of the Purchased Assets; or (b) violate or conflict with, or result in a breach of, any provision of, or constitute a default under (or, with notice or lapse of time or both, would constitute a default under) or give rise to any right of any Person other than Eyemax of termination, cancellation or modification, or acceleration of any obligation of Eyemax or a loss of any rights or benefits to which Eyemax is entitled, in each case under any of the terms, conditions or provisions of the [* * *] Agreement. There are no consents, approvals, permits, authorizations, waivers or other actions by, or filings with or notifications to, any Governmental Authority that are required to be obtained or made by Eyemax in connection with the execution, delivery and performance by Eyemax of this Restated Agreement or the performance of Eyemax's obligations hereunder and thereunder.

3.1.4 There is no claim, hearing, enforcement, audit, investigation, agency proceeding, charge, lawsuit, action or other legal proceeding pending or, to the knowledge of Eyemax, currently threatened with respect to the Products, the Program, the Eton IP Rights, the other Purchased Assets or the Assumed Liabilities, or that questions the validity of this Restated Agreement or the right of Eyemax to enter into this Restated Agreement, or to consummate the transactions contemplated hereby. Eyemax is not subject to any Order that would reasonably be expected to impair or delay its ability to perform its obligations under this Restated Agreement. There is no order, writ, judgment, decision, ruling, subpoena, verdict, injunction, decree, consent decree, stipulation, determination or award entered, issued, made or rendered by any Governmental Authority that is outstanding against Eyemax or any of its Affiliates and that relates to or is reasonably likely to affect the Products, the Program or the Purchased Assets.

3.1.5 Neither Eyemax, its (sub)contractors, nor any of its or their officers, directors, employees or consultants, have been debarred by the FDA or other applicable governing health authority (or authorities), under any existing or prior Law.

3.1.6 Eyemax has good, valid and marketable title to all Purchased Assets. The Purchased Assets include all data and information generated by or on behalf of, or acquired by, Eyemax with respect to Products in the Territory. All of the Purchased Assets are owned by Eyemax free and clear of all Liens, and upon the consummation of the Acquisition, Eton will acquire ownership of all of the Purchased Assets, free and clear of all Liens.

3.1.7 No Eyemax Patents exist, and neither Eyemax nor any of its Affiliates owns or controls any potentially patentable invention directed to any Product, including, without limitation, the formulation of, or any method of making or using, any Product, with respect to which any patent application could be filed in the United States of America.

3.1.8 All material data, information, results of experimentation and testing provided by Eyemax to the FDA or Eton in relation to Products or the Program are accurate and complete in all respects. No Eyemax Registrations made or other materials submitted by Eyemax to the FDA or other Governmental Authority in the Territory contained an untrue statement of material fact when submitted, or omitted to state a material fact within the knowledge of Eyemax when submitted which was required to be stated therein or necessary in order to make the statements contained therein, in light of the circumstances under which they were made, not misleading.

3.1.9 To the best of Eyemax's knowledge after due inquiry but without performing a freedom to operate analysis, neither the Products nor any use thereof infringes, misappropriates or otherwise violates the intellectual property rights of any Third Party. To the knowledge of Eyemax, no Third Party is engaging in any activity that infringes, misappropriates or otherwise violates the Eyemax IP Rights or the Eyemax Registrations.

3.1.10 Other than the 2017 Agreement and the [* * *] Agreement, neither Eyemax nor any of its Affiliates is a party to any license, sublicense or other agreement pursuant to which any Third Party is granted.(i) any right to make, have made, use, sell, have sold, offer for sale, import or otherwise distribute any Product or to otherwise exploit any Assigned Technology, (ii) any covenant not to assert/sue or other immunity from suit under or any other rights to, any Assigned Technology, (iii) any ownership right or title, whether actual or contingent, to any Assigned Technology, or (iv) an option or right of first refusal relating to any Assigned Technology.

3.1.11 Other than the 2017 Agreement and the [* * *] Agreement, neither Eyemax nor any of its Affiliates is a party to any agreement for development, manufacturing or other services with respect to any Product or that is primarily related to the Products, the Program or the Purchased Assets. Eyemax has provided Eton with access to all material preclinical and clinical data in the possession or control of Eyemax related to any Product. Eyemax has provided to Eton or made available current, true and complete copies of all Eyemax Registrations.

3.1.12 Neither Eyemax nor any of its Affiliates has received any written notice from the FDA or any other Regulatory Authority alleging any existing material non-compliance with any Laws applicable to the registration of any Product or the conduct of the Program.

3.1.13 No employee of Eyemax or any of its Affiliates has been excluded from participating in the Medicare program or any other program of a Governmental Authority.

3.1.14 Neither Eyemax nor any of its Affiliates has received notice that the FDA or any other Regulatory Authority has taken, is taking or intends to take action to limit, suspend, modify or revoke any of the Eyemax Registrations

3.1.15 With respect to the Products, the Program and the Purchased Assets, in each case solely with respect to the Territory, each of Eyemax and its Affiliates and, to the knowledge of Eyemax, each of its and its Affiliates' directors, officers and employees, is and has been in compliance in all material respects with all applicable Laws in the Territory.

3.1.16 No agent, broker, investment banker or other Person is or will be entitled to any broker's or finder's fee or any other commission or similar fee from Eyemax or its Affiliates in connection with the Acquisition or any of the other transactions contemplated by this Restated Agreement.

3.1.17 The Purchased Assets constitute all assets and rights owned by Eyemax, or to which Eyemax has rights, that are primarily related to the Products or the Program in the Territory.

3.1.18 Eyemax has delivered to or made available to Eton a true and complete copy of the [* * *] Agreement. The [* * *] Agreement is, as to Eyemax (and, as to the other party thereto, to the knowledge of Eyemax), a legal, valid and binding agreement in full force and effect and enforceable in accordance with its terms, subject to the effect of any Bankruptcy Exception. Eyemax is not in material breach or default, and no event has occurred that with notice or lapse of time would constitute a material breach or default by Eyemax under the [* * *] Agreement. To the knowledge of Eyemax, no other party to the [* * *] Agreement is in material breach or default under, or has repudiated any material provision of, the [* * *] Agreement. Eyemax has not received any notice from a counterparty to the [* * *] Agreement that such counterparty intends to terminate, cancel or amend (other than in a de minimis respect) such [* * *] Agreement and there are no pending or unresolved notices from a counterparty to the [* * *] Agreement that such counterparty intends to terminate, cancel or amend (other than in a de minimis respect) such [* * *] Agreement.

3.2 Representations and Warranties of Eton. Eton hereby represents and warrants to Eyemax as of the Restatement Date and as of the Closing as follows:

3.2.1 Eton is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware. Eyemax is duly qualified to do business and is in good standing as a foreign corporation in all jurisdictions in which the nature of its activities and of its properties (both owned and leased) makes such qualification necessary, except for those jurisdictions in which failure to do so would not have a material adverse effect on Eton or its business.

3.2.2 Eton has the requisite power and authority and the legal right to execute and deliver this Restated Agreement, to perform its obligations hereunder and thereunder, and to consummate the Acquisition. The execution, delivery and performance of this Restated Agreement by Eton and the consummation by Eton of the Acquisition have been duly and validly authorized by all necessary action of Eton, and no other action on the part of Eton is necessary to authorize this Restated Agreement or to consummate the Acquisition. This Restated Agreement has been duly executed and delivered by Eton and, assuming the due authorization, execution and delivery by Eton, this Restated Agreement constitutes a legal, valid and binding obligation of Eton, enforceable against Eton in accordance with its terms, subject to the effect of any Bankruptcy Exception.

3.2.3 All necessary consents, approvals and authorizations of all Governmental Authorities and other Persons required to be obtained by Eton in connection with this Restated Agreement and the consummation of the Acquisition have been obtained. Neither the execution or delivery of this Restated Agreement by Eton does, nor the performance by Eton of its obligations hereunder or thereunder or the consummation of the Acquisition will: (i) conflict with or violate any provision of the organizational documents of Eton or any resolutions adopted by the board of directors of Eton, (ii) conflict with, or constitute a default under, any contractual obligation by which it is bound, or (iii) conflict with or violate any Law or Order applicable to Eton.

3.2.4 There is no claim, hearing, enforcement, audit, investigation, agency proceeding, charge, lawsuit, action or other legal proceeding pending or, to the knowledge of Eton, currently threatened against Eton that questions the validity of this Restated Agreement or the right of Eton to enter into this Restated Agreement, or to consummate the transactions contemplated hereby.

3.2.5 Neither Eton, its (sub)contractors, nor any of its or their officers, directors, employees or consultants, have been debarred by the FDA or other applicable governing health authority (or authorities), under any existing or prior law or regulation.

3.2.6 No agent, broker, investment banker or other Person is or will be entitled to any broker's or finder's fee or any other commission or similar fee from Eton or its Affiliates in connection with the Acquisition or any of the other transactions contemplated by this Restated Agreement.

4. Financial Terms

4.1 Upfront Fee. Eyemax acknowledges timely receipt prior to the Restatement Date of payment in full of the upfront fee of **[* * *]** under Section 6.1 of the 2017 Agreement.

4.2 Recovery Amount. The parties acknowledge that, as of the Restatement Date, Eton has not recovered the Recovery Amount and agree that Eton shall be entitled to recover the entire Recovery Amount out of Non-Royalty Transaction Revenues and Royalties received by Eton or its Affiliates in accordance with Sections 4.3.3 and 4.4.

4.3 Milestone Payments; Application of Non-Royalty Transaction Revenues and Royalties to Recovery Amount.

4.3.1 Within [* * *] days following the first achievement of all requisite Regulatory Approvals in the Territory by the FDA of the first Single Agent Product, Eton shall pay to Eyemax a milestone payment of **[* * *]** (the "Regulatory Approval Milestone Payment").

4.3.2 Within [* * *] days following the First Commercial Sale of the first Single Agent Product in the Territory, Eton shall pay to Eyemax a milestone payment of **[* * *]** (the "First Commercial Sale Milestone Payment").

4.3.3 After payment to Eyemax of the Regulatory Approval Milestone Payment and the First Commercial Sale Milestone Payment (or, if applicable, the Required Payment, if the amount of the Required Payment is **[* * *]** as provided in Section 4.3.4), Eton shall be entitled to retain 100% of the first **[* * *]** of Non-Royalty Transaction Revenues and Royalties received by Eton or its Affiliates from the Product Acquiror, which amounts shall be applied in full toward the Recovery Amount.

4.3.4 If the First Commercial Sale of the first Single Agent Product approved in the Territory has not occurred within one (1) year of the Regulatory Approval date of such Single Agent Product (as such one (1) year period may be extended pursuant to Section 5.2 of the Product Acquisition Agreement) such that the First Commercial Sale Milestone Payment has not been paid or become payable under Section 4.3.2, then, in the event that Eton receives a payment from the Product Acquiror pursuant to the last sentence of Section 5.2 of the Product Transaction Agreement, then Eton shall, within **[* * *]** Days of its receipt of such payment, remit to EyeMax, a payment in the amount of (i) **[* * *]**, if the amount of the payment to Eton from the Product Acquiror made pursuant to the last sentence of Section 5.2 of the Product Transaction Agreement is **[* * *]** or (ii) **[* * *]**, if the amount of the payment to Eton from the Product Acquiror made pursuant to the last sentence of Section 5.2 of the Product Transaction Agreement is **[* * *]** (the "Required Payment"). For purposes of clarity, no Required Payment shall be payable in the event the First Commercial Sale Milestone Payment becomes payable or has been paid hereunder.

4.4 Royalties and Non-Royalty Transaction Revenues Upon Satisfaction of Recovery Amount. After an aggregate of **[* * *]** of Non-Royalty Transaction Revenues and Royalties has been applied to the Recovery Amount pursuant to Section 4.3.3 such that the remaining Recovery Amount is zero, Eton shall be entitled to retain 50%, and shall pay to Eyemax 50%, of all Royalties and Non-Royalty Transaction Revenues, if any, actually received by Eton or its Affiliates from the Product Acquiror. For the avoidance of doubt, nothing in this Section 4.4 shall excuse Eton from remitting the Required Payment to Eyemax if such Required Payment is due to Eyemax pursuant to Section 4.3.4.

4.5 Royalty Reports and Payments. All payment amounts hereunder are expressed in, and all payments hereunder shall be payable in, U.S. dollars. Within **[* * *]** following Eton's or its Affiliates' receipt from the Product Acquiror of any Non-Royalty Transaction Revenues and/or Royalties for a Calendar Quarter, Eton shall deliver to Eyemax a report showing the amount of Non-Royalty Transaction Revenues and Royalties received by Eton or its Affiliates from the Product Acquiror in such Calendar Quarter, and a copy of any report received by Eton or its Affiliates from the Product Acquiror in such Calendar Quarter with respect to Net Sales of Single Agent Products in the Territory by the Product Acquiror, its Affiliates, and the Product Acquiror's and its Affiliates' respective licensees and sublicensees, and the calculation of Royalties with respect thereto. Eton shall remit any amounts due by Eton to Eyemax pursuant to Section4.4 with respect to Non-Royalty Transaction Revenues and Royalties received by Eton or its Affiliates in such Calendar Quarter at the time such report is made. Payment in whole or in part may be made in advance of such due date. No such Royalty reports or payments shall be due for any Single Agent Product before the First Commercial Sale of such Single Agent Product. Eyemax agrees that, as a condition to receiving such reports, if requested by the Product Acquiror, Eyemax shall enter into an appropriate and reasonable non-disclosure agreement with the Product Acquiror regarding such reports and any other financial information of the Product Acquiror disclosable to Eyemax under this Restated Agreement, including Section 4.7.

4.6 Interest: Withholding Taxes.

4.6.1 Any payment under Section 4.3 or Section 4.4 not paid when due shall bear interest from the due date until the date of payment thereof at the rate of the **[* * *]** ("[* * *]") as quoted in **[* * *]** (or if it no longer exists, a similarly authoritative source); provided, that interest shall not accrue at a rate that exceeds the maximum rate permitted by applicable law. The payment of such interest shall not limit Eyemax from exercising any other rights it may have as a consequence of the lateness of any payment.

4.6.2 Eton shall be entitled to deduct the amount of any Taxes that are required to by paid with respect to such amounts payable by Eton or its Affiliates, or any Taxes required to be withheld by Eton or its Affiliates from such amounts, to the extent Eton or its Affiliates pay to the appropriate Governmental Authority on behalf of Eyemax such Taxes. Eton shall cooperate with Eyemax in any lawful way reasonably requested by Eyemax to obtain available reductions, credits or refunds of such Taxes. Eton promptly shall deliver to Eyemax proof of payment of all such Taxes, together with copies of all communications from or with any Governmental Authority with respect thereto.

4.7 Audits.

4.7.1 Upon the written request of Eyemax and not more than once in each calendar year, Eton shall permit an independent certified public accounting firm of nationally recognized standing selected by Eyemax and reasonably acceptable to Eton, at Eyemax' s expense, to have access during normal business hours to such of the financial records of Eton as may be reasonably necessary to verify the accuracy of the reports hereunder for the eight (8) Calendar Quarters immediately prior to the date of such request (other than records for which Eyemax has already conducted an audit under this Section).

4.7.2 If such accounting firm concludes that additional amounts were owed during the audited period, Eton shall pay such additional amounts within **[* * *]** after the date Eyemax delivers to Eton such accounting firm's written report so concluding. The fees charged by such accounting firm shall be paid by Eyemax; *provided*, *however*, that to the extent the auditor determines an underpayment discrepancy greater than five percent (5%), Eton shall pay the reasonable fees and expenses charged by such accounting firm.

4.7.3 Eyemax shall cause its accounting firm to retain all financial information subject to review under this Section 4.7 in strict confidence; *provided*, *however*, that Eton shall have the right to require that such accounting firm, prior to conducting such audit, enter into an appropriate and reasonable non-disclosure agreement with Eton regarding such financial information. The accounting firm shall disclose to Eyemax only whether the reports are correct or not and the amount of any discrepancy. No other information shall be shared. Eyemax shall treat all such financial information as Eton's confidential information, and shall not disclose such financial information to any Third Party or use it for any purpose other than as specified in this Section 4.7.

5. Covenants.

5.1 Tax Matters.

5.1.1 Eyemax shall be responsible for and shall pay all Taxes of Eyemax for all periods and all Taxes that relate to the Purchased Assets that were incurred in or are attributable to any taxable period (or portion thereof) ending on or before the Closing Date. Eyemax shall prepare and file its Tax Returns for all periods and all Tax Returns that relate to the Purchased Assets for any Taxable periods ending on or before the Closing Date. Such returns will be prepared and filed in accordance with applicable Law and in a manner consistent with past practices.

5.1.2 Any real property, personal property or similar Taxes applicable to the Purchased Assets for a taxable period that includes but does not end on the Closing Date shall be paid by Eton or Eyemax, as applicable, and such Taxes shall be apportioned between Eton and Eyemax based on the number of days in the portion of the taxable period that ends on the Closing Date (the "Pre-Closing Tax Period") and the number of days in the entire taxable period. Eyemax shall pay Eton an amount equal to any such Taxes payable by Eton which are attributable to the Pre-Closing Tax Period, and Eton shall pay Eyemax an amount equal to any such Taxes payable by Eyemax which are not attributable to the Pre-Closing Tax Period. Such payments shall be made on or prior to the Closing Date or, if later, on the date such Taxes are due (or thereafter, promptly after request by Eton or Eyemax if such Taxes are not identified by Eton or Eyemax on or prior to the Closing Date).

5.1.3 All transfer, value added taxes, withholding, sales, and use taxes, deed excise stamps and similar charges ("Transfer Taxes") related to the sale of the Purchased Assets contemplated by this Restated Agreement shall be paid by Eyemax. The party required under applicable Law will file any necessary Tax Returns and other documentation with respect to all such Taxes and, if Eton is required by applicable Law to file such Tax Returns, Eyemax shall pay over to Eton any such Transfer Taxes payable with respect to such Tax Return.

5.1.4 After the Closing, upon reasonable written notice, Eton and Eyemax shall furnish or cause to be furnished to each other, as promptly as practicable, such information and assistance (to the extent within the control of such party) relating to the Purchased Assets and Assumed Liabilities (including, access to books and records) as is reasonably necessary for the filing of all Tax Returns, the making of any election related to Taxes, the preparation of any available Tax clearance certificate, the preparation for any audit by any Governmental Entity, and the prosecution or defense of any claim, suit or proceeding related to any Tax Return. Eyemax and Eton shall cooperate with each other in the conduct of any audit or other proceeding relating to Taxes involving the Purchased Assets and Assumed Liabilities. Eyemax shall not after the Closing take any position in any Tax Return, or reach any settlement or agreement on audit, which is in any manner inconsistent with any position taken by Eyemax in any filing, settlement or agreement made by Eyemax prior to the Closing if such inconsistent position (i) requires the payment by Eton of more Tax than would have been required to be paid had such position not been taken or such settlement or agreement not been reached, (ii) affects the determination of useful life, basis or method of depreciation, amortization or accounting of any of the Purchased Assets or any of the properties, assets or rights of Eton or (iii) accelerates the time at which any Tax must be paid by Eton; unless Eton has previously consented to such position in a writing to Eyemax.

5.2 Confidentiality.

5.2.1 Except as otherwise provided herein, Eyemax shall treat as confidential and shall safeguard any and all nonpublic, confidential or proprietary information included in the Purchased Assets ("Confidential Information"), in each case by using the same degree of care, but no less than a reasonable standard of care, to prevent the unauthorized use, dissemination or disclosure of such Confidential Information.

5.2.2 Eton and Eyemax acknowledge that the confidentiality obligations set forth herein shall not extend to any information which was in, or comes into, the public domain through no breach of this Restated Agreement or the 2017 Agreement by Eyemax. In addition, Eyemax shall not be prohibited from disclosing any portion of the Confidential Information that Eyemax is required to disclose by judicial or administrative process or, in the opinion of legal counsel, by other requirements of Law.

5.2.3 In the event of a breach of the obligations hereunder by Eyemax, Eton, in addition to all other available remedies, will be entitled to seek injunctive relief to enforce the provisions of this Section 5.2 in any court of competent jurisdiction.

5.3 Assistance in Proceedings. Eyemax will cooperate with Eton and its counsel in the contest or defense of, and make available its personnel and provide any testimony and access to its books and records in connection with, any proceeding involving or relating to (a) any transaction contemplated by this Restated Agreement or (b) any action, activity, circumstance, condition, conduct, event, fact, failure to act, incident, occurrence, plan, practice, situation, status or transaction on or before the Closing Date involving Eyemax or the Purchased Assets.

5.4 Transfer of Eyemax Registrations: Interim Responsibility.

5.4.1 On the Closing Date, Eyemax shall assign to Eton or its designee any and all Eyemax Registrations in accordance with this Section 5.4, except only for only any regulatory filings Eton requests in writing not to be assigned. On the Closing Date, Eyemax will forward to Eton complete copies of the Eyemax Registrations and copies of all correspondence with, and periodic and other reports (including adverse event reports and the underlying data) to, Regulatory Authorities with respect to the Products or Eyemax Registrations.

5.4.2 On the Closing Date, Eyemax shall (i) send letters (in form and substance satisfactory to Eton) to the FDA and other Regulatory Authorities indicating that the Eyemax Registrations are transferred to Eton or its designee and that Eton or its designee is the new owner of the Eyemax Registrations as of the Closing Date, and (ii) provide to Eton a copy of said letters.

5.4.3 The parties will cooperate to ensure a smooth transition from Eyemax to Eton or its designee of all of the activities required to be undertaken by the Eyemax Registrations holder. Eyemax will cooperate with Eton or its designee to ensure a smooth transition of the Program and the transfer of adverse experience reporting obligations from Eyemax to Eton or its designee. At the reasonable request of Eton, Eyemax shall use commercially reasonable efforts to assist Eton, at Eton's cost, with matters relating to the approval of the Eyemax Registrations by the FDA, including reviewing and providing comments on correspondence to and from the FDA with respect to such Eyemax Registrations and otherwise advising Eton on matters relating to such Eyemax Registrations and their approval.

5.4.4 Until the Eyemax Registrations have been transferred to Eton or its designee, Eyemax shall be responsible for maintaining them. After such transfer, Eton or its designee will assume all responsibility for the Eyemax Registrations, at its sole cost and expense. Each party shall cooperate with the other in making and maintaining all regulatory filings that may be necessary in connection with the execution, delivery and performance of this Restated Agreement.

5.4.5 On the Closing Date, Eyemax will transfer to Eton or its designee, at no cost to either of them, any and all documented Eyemax Know-How and Technology in its possession and control, and Eyemax will, to the extent any such Eyemax Know-How or Technology exists in a form suitable for electronic transfer, make any transfer electronically.

5.5 Communication With Agencies. Until the Eyemax Registrations are transferred to Eton or its designee, Eyemax shall have responsibility for all communications with the FDA relating to the Products, and Eyemax will promptly provide Eton or its designee with copies of all communications to or from the FDA with respect to the Products and/or the manufacture thereof. After such transfer has been completed, as between the parties, Eton shall have responsibility for all such communications. Eyemax shall promptly provide Eton with copies of any communications or contacts it sends to or receives from any other Governmental Authority concerning the Products.

5.6 Further Assurances. From time to time after the Closing Date, each party hereto shall, and shall cause its Affiliates, promptly to execute, acknowledge and deliver any other assurances or documents or instruments of transfer reasonably requested by the other party hereto and necessary for the requesting party to satisfy its obligations hereunder or to obtain the benefits of the Acquisition. Without limiting the generality of the foregoing, to the extent that Eton or Eyemax discover following Closing that any asset that was intended to be transferred pursuant to this Restated Agreement was not transferred at Closing, Eyemax shall or shall cause its Affiliates promptly to assign and transfer to Eton or its designee all right, title and interest in such asset, Eyemax shall or shall cause its Affiliates to assist Eton or its designee with respect to the prosecution, maintenance and enforcement of the Assigned Technology by Eton or its designee after the Closing, including submitting on behalf of Eton or its designee any oaths, declarations or affidavits as required or advisable under applicable Law.

5.7 In the event that Eton's recovery of any milestone payment or royalty payment due to Eton under Section 5.2 or Section 5.3 of the Product Transaction Agreement from the Product Acquiror occurs as the result of litigation pursuant to Section 10.2:2 of the Product Transaction Agreement, then Eton shall have the right to set off 50% of its litigation costs and expenses, including attorneys' fees, incurred in connection with such litigation, against any amounts payable to Eyemax pursuant to Sections 4.3.2, 4.3.4 or 4.4.

5.8 During the seven (7) years following the Closing, Eyemax shall not, and shall cause its Affiliates not to, directly or indirectly, manufacture, use, develop, promote, market, sell, offer to sell, distribute or license in the Territory any product that contains [* * *], whether as the sole active ingredient or with Other Actives (collectively, the "Competing Business"); provided, however, the restriction contained in this Section 5.8 shall not prohibit Eyemax or its Affiliates from owning less than five percent (5%) of the outstanding stock of any class of securities registered under the Securities Exchange Act of 1934, as amended; provided, further, that if, during such seven (7)-year period, any Competing Business is conducted in the Territory at the time of consummation of an Acquisition Transaction (as defined below) by any business (or any portion thereof), Person or group of Persons, all or a majority interest of which is, or a bundle of assets of which are, acquired by Eton or any of its Affiliates through an equity or asset purchase, merger, consolidation or other transaction, in each case, whether in a single transaction or a series of related transactions (an "Acquisition Transaction"), then Eyemax or its Affiliates may continue to conduct such Competing Business until the earlier of (i) such time as Eyemax or its Affiliates divest such Competing Business and (ii) four (4) months after the closing date of such Acquisition Transaction; provided, however, that no Acquisition Transaction can be entered into by Eyemax or any of its Affiliates if the Competing Business is all or substantially all of the business that would be purchased pursuant to the Acquisition Transaction. For the avoidance of doubt, nothing in this Section 5.8 shall prohibit Eyemax or its Affiliates from being acquired by any Person or group of Persons (including a Person or group of Persons engaged in a Competing Business prior to the date of such acquisition of Eton) and the restrictions of this Section 5.8 shall not apply with respect to any Competing Business conducted by any such acquirer or its Affiliates (other than Eyemax or Eyemax's subsidiaries) prior to the acquisition of Eyemax, if any. Eyemax acknowledges that the agreements in this Section 5.8 impose a reasonable restraint in light of the activities and business of Eyemax and its Affiliates on the Effective Date and the current business of Eton, Eyemax and their respective Affiliates.

6. Conditions to Closing.

6.1 Conditions to Obligations of Eton. The obligation of Eton to effect the Closing is subject to the satisfaction (or waiver) prior to the Closing of the following conditions:

6.1.1 The representations and warranties of Eyemax, as specified in Section 3.1 shall be true and correct on and as of the Restatement Date and as of the Closing, as though made on and as of the Closing (except to the extent expressly made as of an earlier date, in which case as of the earlier date).

6.1.2 Eyemax shall have performed and complied with all of its covenants contained in Section 5 (disregarding any failure to perform or comply that was inadvertent or unintentional) at or before the Closing (to the extent that such covenants require performance by Eyemax at or before the Closing).

6.1.3 Eton shall have received a certificate, signed by a duly authorized officer of Eyemax and dated the Closing Date, to the effect that the conditions set forth in Sections 6.1.1 and 6.1.2 have been satisfied.

6.1.4 The Product Transaction shall have occurred.

6.1.5 The [* * *] Consent shall have been obtained and shall be in full force and effect.

6.1.6 Eyemax shall have furnished to Eton all deliverables set forth in Section 2.6.1.

6.1.7 No temporary restraining Order, preliminary or permanent injunction or other Order preventing the consummation of the Acquisition oi the Product Transaction shall have been issued by any court of competent jurisdiction and remain in effect.

6.2 Conditions to Obligations of Eyemax. The obligation of Eyemax to effect the Closing is subject to the satisfaction (or waiver) prior to the Closing of the following conditions.

6.2.1 The representations and warranties of Eton, as specified in Section 3.2 shall be true and correct on and as of the Restatement Date and as of the Closing, as though made on and as of the Closing (except to the extent expressly made as of an earlier date, in which case as of the earlier date).

6.2.2 Eton shall have performed and complied with all of its covenants contained in Section 5 (disregarding any failure to perform or comply that was inadvertent or unintentional) at or before the Closing (to the extent that such covenants require performance by Eton at or before the Closing).

6.2.3 Eyemax shall have received a certificate, signed by a duly authorized officer of Eton and dated the Closing Date, to the effect that the conditions set forth in Sections 6.2.1 and 6.2.2 have been satisfied.

6.2.4 The Product Transaction shall have occurred.

6.2.5 Eton shall have furnished to Eyemax all deliverables set forth in Section 2.6.2.

6.2.6 No temporary restraining Order, preliminary or permanent injunction or other Order preventing the consummation of the Acquisition oi the Product Transaction shall have been issued by any court of competent jurisdiction and remain in effect.

7. Termination.

7.1 Termination. This Restated Agreement may be terminated prior to the Closing:

7.1.1 by the mutual written consent of the parties; or

7.1.2 by Eton by written notice to Eyemax if Eton is not then in material breach of any provision of this Restated Agreement and there has been a breach, inaccuracy in or failure to perform any representation, warranty, covenant or agreement made by Eyemax pursuant to this Restated Agreement that would give rise to the failure of any of the conditions specified in Section 6.1.1 or Section 6.1.2 and such breach, inaccuracy or failure has not been cured by Eyemax within **[* * *]** of Eyemax's receipt of written notice of such breach from Eton; or

7.1.3 by Eyemax by written notice to Eton if Eyemax is not then in material breach of any provision of this Restated Agreement and there has been a breach, inaccuracy in or failure to perform any representation, warranty, covenant or agreement made by Eton pursuant to this Restated Agreement that would give rise to the failure of any of the conditions specified in Section 6.2.1 or Section 6.2.2 and such breach, inaccuracy or failure has not been cured by Eton within **[* * *]** days of Eton's receipt of written notice of such breach from Eyemax; or

7.1.4 by either party upon written notice to the other party at any time after March 31, 2019 (the "End Date") if the Closing has not taken place on or before the End Date, unless the failure of the Closing to take place on or before such date is attributable to a breach by such party of any of its obligations set forth in this Restated Agreement; or

7.1.5 by Eton or Eyemax in the event that a court of competent jurisdiction shall have issued a final and nonappealable Order having the effect of permanently restraining, enjoining or otherwise prohibiting the Transaction; *provided, however,* that a party shall not be permitted to terminate this Restated Agreement pursuant to this Section 7.1.5 if such party did not use commercially reasonable best efforts to have such Order vacated prior to its becoming final and nonappealable.

7.2 Effect of Termination. In the event of the termination of this Restated Agreement in accordance with Section 7.1, this Restated Agreement shall become void and have no effect, and neither party hereto shall have any liability to the other party hereto or their respective Affiliates, or their respective directors, officers or employees, except for the obligations of the parties hereto contained in this Section 7.2 and in Section 9 (and any related definitional provisions set forth in Article 1), and except that nothing in this Section 7.2 shall relieve either party from (i) making any payments due to the other party prior to the termination notice date pursuant to the terms of the 2017 Agreement oi (ii) liability for any willful and material breach of this Restated Agreement that arose prior to such termination, for which liability the provisions of Section 8 shall remain in effect in accordance with the provisions and limitations of such Section.

8. Indemnification.

8.1 Survival.

8.1.1 Except in the case of Eyemax's common law fraud, Eyemax's obligations to indemnify and hold harmless an Eton Indemnitee pursuant to Section 8.2(i): (x) other than with respect to the representations and warranties set forth in Sections 3.1.1, 3.1.2, 3.1.3 (clause (i) of the second sentence), 3.1.6 (first and third sentences), 3.116 and 3.1.17 (the "Eyemax Fundamental Representations"), shall terminate on the date that is twenty-four (24) months from the date of this Restated Agreement, and (y) with respect to the Eyemax Fundamental Representations shall survive indefinitely; provided, however, that such obligations to indemnify and hold harmless shall not terminate with respect to any item as to which an Eton Indemnitee shall have, before the expiration of such applicable period, previously made a claim by delivering a notice of such claim in accordance with this Restated Agreement to Eyemax, which obligations shall survive until all such claims have been resolved.

8.1.2 Except with respect to Eton's common law fraud, Eton's obligations to indemnify and hold harmless an Eyemax Indemnitee pursuant to Section 8 3(i): (x) other than with respect to the representations and warranties set forth in Sections 3.2.1, 3.2.2, 3.2.3 (clause (i) of the second sentence) and 3.2.6 (the "Eton Fundamental Representations"), shall terminate on the date that is twenty-four (24) months from the date of this Restated Agreement and (y) with respect to the Eton Fundamental Representations shall survive indefinitely; provided, however, that such obligations to indemnify and hold harmless shall not terminate with respect to any item as to which an Eyemax Indemnitee shall have, before the expiration of such applicable period, previously made a claim by delivering a notice of such claim in accordance with this Restated Agreement to Eton, which obligations shall survive until all such claims have been resolved.

8.1.3 All of the covenants and agreements contained in this Restated Agreement that by their nature are required to be performed after the Closing shall survive the Closing until fully performed or fulfilled.

8.2 Indemnification by Eyemax. Eyemax shall indemnify, defend and hold harmless Eton, its Affiliates, the Product Acquiror, and its and their respective officers, directors, shareholders, employees, agents and representatives (collectively "Eton Indemnitees") from any and all losses, liabilities, damages and expenses, including reasonable attorneys' fees and costs (collectively, "Losses") arising from, in connection with or otherwise with respect to (i) any inaccuracy in, or breach of, any representation or warranty of Eyemax contained in Section 3.1 of this Restated Agreement or in any Ancillary Agreement, (ii) any failure by Eyemax to perform, fulfill or comply with any covenant, agreement, obligation or undertaking of Eyemax contained in this Restated Agreement or in any Ancillary Agreement and (iii) the Excluded Liabilities.

8.3 Indemnification by Eton. Eton shall indemnify, defend and hold harmless Eyemax, its Affiliates, and its and their respective officers, directors, shareholders, employees, agents and representatives (collectively "Eyemax Indemnitees") from any and all Losses arising from, in connection with or otherwise with respect to (i) any inaccuracy in, or breach of, any representation or warranty of Eton contained in Section 3.2 of this Restated Agreement or in any Ancillary Agreement, (ii) any failure by Eton to perform, fulfill or comply with any covenant, agreement, obligation or undertaking of Eton contained in this Restated Agreement or in any Ancillary Agreement and (iii) the Assumed Liabilities.

8.4 Third Party Claim Procedures. A party seeking indemnification (the "Indemnitee") shall promptly notify the other party (the "Indemnifying Party") in writing of a claim, demand, action or proceeding; provided that an Indemnitee's failure to give such notice or delay in giving such notice shall not affect such Indemnitee's right to indemnification under this Section 8 except to the extent that the Indemnifying Party has been prejudiced by such failure or delay. The Indemnifying Party shall have the right to control the defense of all indemnification claims hereunder. The Indemnitee shall have the right to participate at its own expense in the claim, action or proceeding with counsel of its own choosing. The Indemnifying Party shall consult with the Indemnitee in good faith with respect to all non-privileged aspects of the defense strategy. The Indemnitee shall cooperate with the Indemnifying Party as reasonably requested, at the Indemnitee's sole cost and expense. The Indemnifying Party shall not settle any claim, demand, action or proceeding with respect to which without the Indemnitee's prior written consent, which consent shall not be unreasonably withheld.

8.5 Direct Claim Procedures. In the event any Indemnitee should have a claim against an Indemnifying Party under Section 8.2 or Section 8.3, as applicable, that does not involve a Third Party claim being asserted against or sought to be collected from such Indemnitee, the Indemnitee shall deliver notice of such claim to the Indemnifying Party. The failure by any Indemnitee so to notify the Indemnifying Party shall not relieve the Indemnifying Party from any liability that it may have to such Indemnitee under Section 8.2 or Section 8.3, as applicable, except to the extent (and only to the extent) that the Indemnifying Party shall have been actually and materially prejudiced as a result of such failure. If the Indemnifying Party does not notify the Indemnitee within **[* * *]** following its receipt of such notice that the Indemnifying Party disputes Indemnifying Party's liability to the Indemnitee under Section 8.2 or Section 8.3, as applicable, such claim specified by the Indemnitee in such notice shall be conclusively deemed a Loss of the Indemnifying Party under Section 8.2 or Section 8.3, as applicable, and Indemnifying Party shall pay the amount of such Loss to the Indemnitee on demand or, in the case of any notice in which the amount of the claim (or any portion thereof) is estimated, on such later date when the amount of such claim (or such portion thereof) becomes finally determined.

8.6 Exclusive Monetary Remedy; Limitations.

8.6.1 Except in the case of common law fraud, the right to indemnification under this Section 8 shall constitute the sole and exclusive monetary remedy of the Eton Indemnitees and the Eyemax Indemnitees for Losses or otherwise arising from, in connection with this Purchase Agreement, including pursuant to Section 8.1.1, Section 8.1.2, Section 8.1.3, Section 8.2, Section 8.3, the Ancillary Agreements or otherwise with respect to any of the transactions contemplated hereby or thereby.

8.6.2 Except in the case of Eyemax's common law fraud, (x) except for a breach of the Eyemax Fundamental Representations, Eyemax's aggregate liability to Eton Indemnitees pursuant to Section 8.2(i) shall not exceed **[* * *]** plus **[* * *]** of each Non-Royalty Transaction Revenue payment, milestone payment or Royalty payment that is earned by Eyemax under Section 4.3 and Section 4.4 of this Restated Agreement (the "Cap"), and (y) other than (A) with respect to Section 8.2(iii) (with respect to which Eyemax's liability shall not be limited), (B) Section 8.2(ii) with respect to Sections 2.1, 2.5, 2.6.1, 5.1, 5.2, 5.3, 5.4, 5.5, 5.6, 5.8 and 9 (with respect to which Eyemax's liability shall not be limited) and (C) Eyemax Fundamental Representations (with respect to which Eyemax's liability shall not be limited), Eyemax's aggregate liability under Section 8.2 shall not exceed the greater of (i) the sum of the Non-Royalty Transaction Revenues, milestones and Royalties actually paid by Eton to Eyemax under this Restated Agreement and (ii) $**[* * *]**. No Eton Indemnitee shall be entitled to recover any Losses under Section 8.2(i) unless and until the aggregate Losses for which they would otherwise be entitled to indemnification under Section 8.2(i) exceed $**[* * *]**, at which point the Eyemax Indemnitees shall become entitled to be indemnified for such Losses in excess of $**[* * *]**.

8.6.3 Except in the case of Eton's common law fraud, (x) except for a breach of the Eton Fundamental Representations, Eton's aggregate liability to Eyemax Indemnitees pursuant to Section 8.3(i) shall not exceed the Cap, and (y) other than (A) with respect to Section 8.3(iii) (with respect to which Eton's liability shall not be limited) and (B) Section 8.3(ii) with respect to Sections 4.3, 4.4, 4.5 and 9 (with respect to which Eton's liability shall not be limited), Eton's aggregate liability under Section 8.3 shall not exceed the greater of (i) the sum of the Non-Royalty Transaction Revenues, milestones and Royalties actually paid by Eton to Eyemax under this Restated Agreement and (ii) $**[* * *]**. No Eyemax Indemnitee shall be entitled to recover any Losses under Section 8.3(i) unless and until the aggregate Losses for which they would otherwise be entitled to indemnification under Section 8.3(i) exceed $**[* * *]**, at which point the Eton Indemnitees shall become entitled to be indemnified for such Losses in excess of $**[* * *]**.

8.7 Tax Treatment of Indemnification Payments. All indemnity payments made by an Indemnifying Party to an Indemnitee pursuant to this Restated Agreement shall be treated for all Tax purposes as adjustments to the Purchase Price.

8.8 Right of Set-Off. Notwithstanding any provision of this Restated Agreement to the contrary, the parties acknowledge and agree that, in addition to any other right hereunder, subject to the limitations set forth in Section 8.6, Eton shall have the right, but not the obligation, from time to time to set off any Losses for which the Eton Indemnitees are entitled to indemnification hereunder against any payment pursuant to Section 4.3 or Section 4.4.

8.9 Specific Performance. In the event of any breach or threatened breach by either party of any covenant, obligation or other provision set forth in this Restated Agreement, the other party shall be entitled (in addition to any other remedy that may be available to it) to (i) a decree or order of specific performance or mandamus to enforce the observance and performance of such covenant, obligation or other provision, and (ii) an injunction restraining such breach or threatened breach; and (b) such party shall not be required to provide any bond or other security in connection with any such decree, order or injunction or in connection with any related action or proceeding.

8.10 No Implied Representations. The parties acknowledge and agree that, except as expressly provided in Section 3.1 and Section 3.2, neither of the parties hereto has made or is making any representations or warranties whatsoever, implied or otherwise.

8.11 LIMITATION OF LIABILITY. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, EXCEPT FOP THE OBLIGATIONS TO INDEMNIFY, DEFEND AND HOLD HARMLESS PURSUANT TO THIS SECTION 8 FOR THIRD PARTY CLAIMS OR IN THE CASE OF BREACH OF THE CONFIDENTIALITY OBLIGATIONS PURSUANT TO SECTION 5.2, NEITHER PARTY SHALL BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, WHETHER FORESEEABLE OR NOT, ARISING OUT OF THIS RESTATED AGREEMENT OR THE EXERCISE OF ITS RIGHTS HEREUNDER, REGARDLESS OF ANY NOTICE OF SUCH DAMAGES.

8.12 Litigation Support. Following the Closing, the parties shall reasonably cooperate with each other in the defense or settlement of any claims or lawsuits brought by, Third Parties that involve the Purchased Assets, the Product, this Restated Agreement or the transactions contemplated hereby by providing the other party and such other party's legal counsel reasonable access to employees, records, documents, data, equipment, facilities, products, and other information relating primarily to the Products, the Program and the Purchased Assets as such other party may reasonably request, to the extent maintained or under the possession or control of the requested party; provided, however, that such access shall not unreasonably interfere with the parties' respective businesses; and provided, further, that either party may restrict the foregoing access to the extent that (a) such restriction is required by applicable Law, (b) such access or provision of information would result in a violation of confidentiality obligations to a Third Party or (c) disclosure of any such information would result in the loss or waiver of the attorney-client privilege.

9. Miscellaneous.

9.1 Relationship of Parties. The relationship between Eyemax and Eton, with respect to this Restated Agreement, is only that of independent contractors notwithstanding any activities set forth in this Restated Agreement. Neither party is the agent or legal representative of the other party, and neither party has the right or authority to bind the other party in any way. This Restated Agreement creates no relationship as partners or a joint venture, and creates no pooling arrangement.

9.2 Governing Law and Resolution of Disputes.

9.2.1 This Restated Agreement shall be governed by and construed in accordance with the laws of the State of Delaware without reference to its conflict of laws principles.

9.2.2 Any and all disputes or claims arising from or out of this Restated Agreement shall be litigated exclusively before a court of the State of Delaware or, if subject matter jurisdiction exists, the United States District Court for the District of Delaware. Each party hereto hereby irrevocably and unconditionally consents to the exclusive personal jurisdiction and service of, and venue of, any such court, and further irrevocably and unconditionally waives and agrees not to plead or claim that any action, lawsuit or proceeding brought in any such court has been brought m an inconvenient forum. Any judgment issued by such a court may be enforced in any court having jurisdiction.

9.3 Assignment. Neither party shall assign its rights or obligations under this Restated Agreement without the prior written consent of the other party, which shall not be unreasonably withheld or delayed; *provided, however,* that a party may, without such consent, assign this Restated Agreement and its rights and obligations hereunder (a) to any Affiliate, or (b) in connection with the transfer or sale of all or substantially all of its business to which this Restated Agreement relates, or in the event of its merger, consolidation, change in control or similar transaction. Any permitted assignee shall assume all obligations of its assignor under this Restated Agreement Any purported assignment in violation of this Section 9.3 shall be void.

9.4 Counterparts. This Restated Agreement may be executed in several counterparts that together shall be originals and constitute one and the same instrument.

9.5 Waiver. The failure of any party to enforce any of its rights hereunder or at law shall not be deemed a waiver of any of its rights or remedies against another party, unless such waiver is in writing and signed by the party to be charged. No such waiver shall be deemed a waiver of any subsequent breach or default of the same or similar nature or any other breach or default by such other party. All rights and remedies conferred herein shall be cumulative and in addition to all of the rights and remedies available to each party at law, equity or otherwise.

9.6 Severability. If any provision of this Restated Agreement, or part thereof, is declared by a court of competent jurisdiction to be invalid, void or unenforceable, each and every other provision, or part thereof, shall nevertheless continue in full force and effect.

9.7 Notices. Any consent, notice or report required or permitted to be given or made under this Restated Agreement by a party to the other party shall be in writing, delivered by any lawful means to such other party at its address indicated below, or to such other address as the addressee shall have last furnished in writing to the addressor and (except as otherwise provided in this Restated Agreement) shall be effective upon receipt by the addressee.

If to Eyemax:	Eyemax LLC 74 Chestnut Street Weston, Massachusetts 02493 Attention: Di Elias Reichel
If to Eton:	Eton Pharmaceuticals, Inc 21925 Field Pkwy, Suite 235 Deer Park, Illinois 60010 Attention: Chief Executive Officer

9.8 Further Assurances. The parties agree to execute such additional documents and perform such acts as are reasonably necessary to effectuate the intent of this Restated Agreement.

9.9 Entire Agreement. Effective as of the Restatement Date, this Restated Agreement constitutes the entire agreement between the parties regarding the subject matter hereof, and supersedes all prior or contemporaneous understandings oi agreements regarding the subject matter hereof, whether oral or written, including the 2017 Agreement; *provided, however,* that if this Restated Agreement is terminated in accordance with Section 7.1, then the 2017 Agreement shall be deemed to have been continuously in effect after the Restatement Date and shall remain in full force and effect in accordance with its terms. This Restated Agreement shall be modified or amended only by a writing specifically referring to this Restated Agreement signed by both Eton and Eyemax.

9.10 Force Majeure. Neither party shall be liable for delays in its performance caused by Force Majeure Events, provided the affected party gives the other party written notice of such event **[* * *]** days of its occurrence. Such notice shall state the estimated duration of such event and the cause thereof and the affected party shall use commercially reasonable efforts to work around such event beyond its control.

9.11 Headings and Construction. No rule of construction shall be applied to the disadvantage of a party because that party was responsible for the preparation of this Restated Agreement or any part of this Restated Agreement. The Article and Section headings in this Restated Agreement are for convenient reference only and shall be given no substantive or interpretive effect. With respect to all terms used in this Restated Agreement, words used in the singular include the plural and words used in the plural include the singular. The word 'including' means including without limitation, and the words 'herein', 'hereby', 'hereto 'and 'hereunder' refer to this Restated Agreement as a whole. Unless the context otherwise requires, references found in this Restated Agreement: (i) to Articles and Sections mean the Articles and Sections of this Restated Agreement, as amended, supplemented and modified from time to time; (ii) to an agreement, instrument or other document means such agreement; (iii) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time, to the extent provided by the provisions thereof and by this Restated Agreement; and (iv) to a statute or a regulation mean such statute or regulation as amended from time to time.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, each party has caused a duly authorized representative to execute this Restated Agreement as of the Restatement Date.

EYEMAX LLC

By: Elias Reichel
Name: Elias Reichel
Title: President

ETON PHARMACEUTICALS, INC.

By:
Name: Sean Brynjelsen
Title: CEO

IN WITNESS WHEREOF, each party has caused a duly authorized representative to execute this Restated Agreement as of the Restatement Date.

EYEMAX LLC

By:
Name: Elias Reichel
Title: President

ETON PHARMACEUTICALS, INC.

By:
Name: Sean Brynjelsen
Title: CEO

Section 4.1. Exhibit A

[* * *]

Section 4.2. Exhibit B

[* * *]

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: May 7, 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: May 7, 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 March 31, 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 7th day of May, 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.