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

FORM 10-Q

(Mark One)

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

FOR THE QUARTERLY PERIOD ENDED June 30, 2021

or

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

FOR THE TRANSITION PERIOD FROM _____ TO _____

Commission file number: 001-36287

Flexion Therapeutics, Inc.

(Exact name of registrant as specified in its charter)

Delaware	**26-1388364**
(State or Other Jurisdiction of Incorporation or Organization)	**(I.R.S. Employer Identification No.)**
10 Mall Road, Suite 301 Burlington, Massachusetts	**01803**
(Address of Principal Executive Offices)	**(Zip Code)**

(781) 305-7777
(Registrant's Telephone Number, Including Area Code)

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

Title of each class	Trading symbol(s)	Name of each exchange on which registered
Common stock, $0.001 par value per share	FLXN	Nasdaq Global Market

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes ☒ No ☐

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

Large accelerated filer	☐	Accelerated filer	☐
Non-accelerated filer	☒	Smaller reporting company	☒
Emerging growth company	☐		

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act ☐

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

As of August 1, 2021, the registrant had 50,292,110 shares of Common Stock ($0.001 par value) outstanding.

FLEXION THERAPEUTICS, INC.
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PART I. FINANCIAL INFORMATION

Item 1. Financial Statements

Flexion Therapeutics, Inc.
Condensed Consolidated Balance Sheets
(Unaudited in thousands, except share and per share amounts)

	June 30, 2021	December 31, 2020
Assets		
Current assets		
Cash and cash equivalents	$ 107,629	$ 107,704
Marketable securities	23,620	67,576
Accounts receivable, net	35,097	30,025
Inventories	12,301	15,394
Prepaid expenses and other current assets	5,474	5,112
Total current assets	184,121	225,811
Property and equipment, net	19,783	19,538
Right-of-use assets	6,143	6,577
Total assets	$ 210,047	$ 251,926
Liabilities and Stockholders' Deficit		
Current liabilities		
Accounts payable	$ 5,474	$ 6,928
Accrued expenses and other current liabilities	21,352	20,008
Deferred revenue	10,000	10,000
Operating lease liabilities	1,577	1,526
Current portion of long-term debt	1,528	16,806
Total current liabilities	39,931	55,268
Long-term operating lease liability, net	5,777	6,123
Long-term debt, net	52,207	44,114
2024 convertible notes, net	167,814	162,786
Other long-term liabilities	489	295
Total liabilities	266,218	268,586
Commitments and contingencies		
Preferred stock, $0.001 par value; 10,000,000 shares authorized at June 30, 2021 and December 31, 2020 and 0 shares issued and outstanding at June 30, 2021 and December 31, 2020	—	—
Stockholders' deficit		
Common stock, $0.001 par value; 100,000,000 shares authorized; 50,105,620 and 49,403,034 shares issued and outstanding, at June 30, 2021 and December 31, 2020, respectively	50	49
Additional paid-in capital	776,850	765,607
Accumulated other comprehensive loss	(2)	(11)
Accumulated deficit	(833,069)	(782,305)
Total stockholders' deficit	(56,171)	(16,660)
Total liabilities and stockholders' deficit	$ 210,047	$ 251,926

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

Flexion Therapeutics, Inc.
Condensed Consolidated Statements of Operations and Comprehensive Loss
(Unaudited in thousands, except per share amounts)

	Three Months Ended June 30,		Six Months Ended June 30,	
	2021	2020	2021	2020
Revenues				
Product revenue, net	$ 28,175	$ 15,451	$ 52,764	$ 35,578
Operating expenses				
Cost of sales	4,979	5,481	11,064	7,757
Research and development	12,669	12,507	26,716	33,641
Selling, general and administrative	27,409	24,730	55,007	54,029
Total operating expenses	45,057	42,718	92,787	95,427
Loss from operations	(16,882)	(27,267)	(40,023)	(59,849)
Other (expense) income				
Interest income	177	95	477	522
Interest expense	(5,180)	(5,002)	(10,369)	(9,723)
Other expense	(323)	(197)	(849)	(123)
Total other (expense) income	(5,326)	(5,104)	(10,741)	(9,324)
Loss before income taxes	(22,208)	(32,371)	(50,764)	(69,173)
Income tax expense	—	248	—	248
Net loss	$ (22,208)	$ (32,619)	(50,764)	(69,421)
Net loss per common share, basic and diluted	$ (0.44)	$ (0.76)	$ (1.02)	$ (1.71)
Weighted average common shares outstanding, basic and diluted	49,968	42,776	49,905	40,664
Other comprehensive income (loss):				
Unrealized gains (losses) from available-for-sale securities, net of tax of $0	8	(3)	9	(59)
Total other comprehensive income (loss)	8	(3)	9	(59)
Comprehensive loss	$ (22,200)	$ (32,622)	$ (50,755)	$ (69,480)

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

Flexion Therapeutics, Inc.
Condensed Consolidated Statements of Changes in Stockholders' Deficit
(Unaudited in thousands)

	Common Stock		Additional Paid-in-Capital	Accumulated Other Comprehensive (Loss) Income	Accumulated Deficit	Total Stockholders' Deficit
	Shares	Par Value				
Balance at December 31, 2020	49,403	$ 49	$ 765,607	$ (11)	$ (782,305)	$ (16,660)
Issuance of common stock, net of issuance costs	134		1,700			1,700
Issuance of common stock for equity awards, net of shares withheld for taxes	405	1	7			8
Stock-based compensation expense			4,640			4,640
Net loss					(28,556)	(28,556)
Other comprehensive income				1		1
Balance at March 31, 2021	49,942	$ 50	$ 771,954	$ (10)	$ (810,861)	$ (38,867)
Issuance of common stock for equity awards, net of shares withheld for taxes	46		—			—
Employee stock purchase plan	118		921			921
Stock-based compensation expense			3,975			3,975
Net loss					(22,208)	(22,208)
Other comprehensive income				8		8
Balance at June 30, 2021	50,106	$ 50	$ 776,850	$ (2)	$ (833,069)	$ (56,171)

	Common Stock		Additional Paid-in-Capital	Accumulated Other Comprehensive Income (Loss)	Accumulated Deficit	Total Stockholders' (Deficit) Equity
	Shares	Par Value				
Balance at December 31, 2019	38,361	$ 38	$ 648,391	$ 62	$ (668,599)	$ (20,108)
Issuance of common stock for equity awards, net of shares withheld for taxes	201	1	8			9
Stock-based compensation expense			4,651			4,651
Net loss					(36,802)	(36,802)
Other comprehensive loss				(56)		(56)
Balance at March 31, 2020	38,562	$ 39	$ 653,050	$ 6	$ (705,401)	$ (52,306)
Issuance of common stock, net of issuance costs	10,615	$ 10	$ 96,754			96,764
Issuance of common stock for equity awards	11	—	1			1
Employee stock purchase plan	82		891			891
Stock-based compensation expense			3,787			3,787
Net loss					(32,619)	(32,619)
Other comprehensive loss				(3)		(3)
Balance at June 30, 2020	49,270	$ 49	$ 754,483	$ 3	$ (738,020)	$ 16,515

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

Flexion Therapeutics, Inc.
Condensed Consolidated Statements of Cash Flows
(Unaudited in thousands)

	Six Months Ended June 30,	
	2021	**2020**
Cash flows from operating activities		
Net loss	$ (50,764)	$ (69,421)
Adjustments to reconcile net loss to cash used in operating activities		
Depreciation	1,046	751
Amortization of right-of-use assets	867	809
Stock-based compensation expense	8,615	8,438
Provision for inventory	560	—
Non cash interest expense	454	292
Amortization (accretion) of premium (discount) on marketable securities	401	(52)
Loss on disposal of fixed assets	—	262
Amortization of debt discount and debt issuance costs	5,028	4,577
Premium paid on securities purchased	3	(17)
Changes in operating assets and liabilities:		
Accounts receivable	(5,072)	15,591
Inventory	2,533	(2,502)
Prepaid expenses and other current assets	(362)	328
Accounts payable	(1,286)	(7,540)
Accrued expenses and other current liabilities	1,469	(4,375)
Deferred revenue	—	5,000
Lease liabilities	(728)	(748)
Net cash used in operating activities	(37,236)	(48,607)
Cash flows from investing activities		
Purchases of property and equipment	(1,265)	(5,538)
Purchases of marketable securities	(2,000)	(12,490)
Sale and redemption of marketable securities	45,561	49,398
Net cash provided by investing activities	42,296	31,370
Cash flows from financing activities		
Proceeds from borrowings under term loan	—	15,000
Proceeds from revolving line of credit	—	20,000
Repayments of revolving line of credit	—	(15,000)
Proceeds from the offering of common stock	—	97,289
Proceeds from issuance of common stock (net of issuance costs)	1,700	—
Payments of public offering costs	(125)	(107)
Payments on notes payable	(7,639)	—
Proceeds from the exercise of stock options (net of shares withheld for taxes)	8	10
Proceeds from employee stock purchase plan	921	891
Net cash (used in) provided by financing activities	(5,135)	118,083
Net (decrease) increase in cash and cash equivalents	(75)	100,846
Cash and cash equivalents at beginning of period	107,704	82,253
Cash and cash equivalents at end of period	$ 107,629	$ 183,099
Non-cash operating, investing and financing activities		
Right-of-use asset obtained in exchange for operating lease obligation	433	—
Purchases of property and equipment in accounts payable and accrued expenses	264	2,126
Public offering costs in accounts payable and accrued expenses	—	418
Supplemental disclosures of cash flow information		
Cash paid for interest	5,259	5,048

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

1. Overview and Nature of the Business

Flexion Therapeutics, Inc. ("Flexion" or the "Company") was incorporated under the laws of the state of Delaware on November 5, 2007. Flexion is a biopharmaceutical company focused on the discovery, development, and commercialization of novel, local therapies for the treatment of patients with musculoskeletal conditions, beginning with osteoarthritis, or OA, the most common form of arthritis. The Company has an approved product, ZILRETTA®, which it markets in the United States. ZILRETTA is the first and only extended-release, intra-articular, or IA (meaning in the joint), injection indicated for the management of OA knee pain. ZILRETTA is a non-opioid therapy that employs Flexion's proprietary microsphere technology to provide pain relief. The pivotal Phase 3 trial, on which the approval of ZILRETTA was based, showed that ZILRETTA met the primary endpoint of pain reduction at Week 12, with statistically significant pain relief extending through Week 16. The Company also has two pipeline programs focused on the local treatment of musculoskeletal conditions: FX201, an investigational IA gene therapy product candidate in clinical development for the treatment of OA, and FX301, a locally administered peripheral nerve block product candidate in clinical development for the control of post-operative pain.

The Company is subject to risks and uncertainties common to companies in the biopharmaceutical industry, including, but not limited to, new technological innovations, dependence on key personnel, protection of proprietary technology, compliance with government regulations, and the ability to secure additional capital to fund operations. Successfully commercializing ZILRETTA requires significant sales and marketing efforts and the Company's pipeline programs will require significant additional research and development efforts, including extensive preclinical and clinical testing. These activities will in turn require significant amounts of capital, qualified personnel, and adequate infrastructure. There can be no assurance as to when, if ever, the Company will generate sales of ZILRETTA that are significant enough to achieve profitability or if the development efforts supporting the Company's pipeline, including future clinical trials, will be successful.

The accompanying condensed consolidated financial statements have been prepared on a basis that assumes that the Company will continue as a going concern and that contemplates the realization of assets and satisfaction of liabilities and commitments in the normal course of business. The Company has incurred recurring losses and negative cash flows from operations. As of June 30, 2021, the Company had cash, cash equivalents, and marketable securities of approximately $131.2 million.

Management believes that current cash, cash equivalents, and marketable securities on hand at June 30, 2021 will be sufficient to fund operations and debt obligations for at least the next 12 months from the issuance date of these financial statements. The Company currently expects to be able to maintain the liquidity threshold in the amended and restated credit agreement described in Note 9 for at least 12 months following the issuance of these financial statements. As a result, the revenue covenant under the amended and restated credit and security agreement is not expected to be applicable through 12 months from the issuance of the financial statements. As of June 30, 2021, the Company was in compliance with all financial covenants under the amended and restated credit and security agreement.

The Company's operations have been and continue to be affected by the ongoing global pandemic of a novel strain of coronavirus ("COVID-19"). In March 2020, the World Health Organization declared COVID-19 a pandemic and recommended containment and mitigation measures worldwide. The COVID-19 pandemic has caused significant volatility and uncertainty, which could result in a prolonged economic downturn that has disrupted and is expected to continue to disrupt the Company's business. While there have been no material asset impairments recorded to date, any prolonged material future disruptions to the work of the Company's employees, suppliers, contract manufacturers, or vendors, or to the operations of physicians that administer ZILRETTA could negatively impact the Company's operations, availability of supplies, carrying value of assets, operating results, or cash flows.

The future viability of the Company is dependent on its ability to fund its operations through sales of ZILRETTA, and/or raising additional capital, such as through debt or equity offerings, as needed. If the Company is unable to grow sales of ZILRETTA in future periods, it is possible that the Company may not maintain compliance with the revenue covenant, in the event it applies, in future periods. As a result, the Company could be required to repay its outstanding borrowings under the term loan and revolving credit facility and would seek additional financing. The Company may not be able to obtain financing on acceptable terms, or at all. In particular, as a result of the COVID-19 pandemic and actions taken to slow its spread, the global credit and financial markets have experienced extreme volatility and disruptions, including declines in consumer confidence, declines in economic growth, increases in unemployment rates, and uncertainty about economic stability. If the equity and credit markets deteriorate, it may make any additional debt or equity financing more difficult, more costly, and more dilutive. If the Company is unable to obtain funding on a timely basis, the Company may need to curtail its operations, including the commercialization of ZILRETTA, and/or reduce the scope of, or delay certain research and development activities, including the FX201 or FX301 programs, which could adversely affect its prospects.

2. Summary of Significant Accounting Policies

Basis of Presentation

The accompanying condensed consolidated financial statements as of June 30, 2021, and for the three and six months ended June 30, 2021 and 2020, have been prepared in accordance with the rules and regulations of the Securities and Exchange Commission (the "SEC") and Generally Accepted Accounting Principles ("GAAP") for consolidated financial information including the accounts of the Company and its wholly owned subsidiary after elimination of all significant intercompany accounts and transactions. Accordingly, they do not include all of the information and footnotes required by GAAP for complete financial statements. In the opinion of management, these condensed consolidated financial statements reflect all adjustments that are necessary for a fair statement of the Company's financial position and results of its operations, as of and for the periods presented. These condensed consolidated financial statements should be read in conjunction with the consolidated financial statements and notes thereto contained in the Company's Annual Report on Form 10-K filed with the SEC on March 10, 2021.

The information presented in the condensed consolidated financial statements and related notes as of June 30, 2021, and December 31, 2020, and for the three and six months ended June 30, 2021 and 2020, is unaudited. The December 31, 2020, condensed consolidated balance sheet included herein was derived from the audited financial statements as of that date, but does not include all disclosures, including notes, required by GAAP for complete financial statements.

Interim results for the three and six months ended June 30, 2021, are not necessarily indicative of the results that may be expected for the fiscal year ending December 31, 2021, or any future period.

Recent Accounting Pronouncements

Accounting Standards Recently Issued

In August 2020, the FASB issued ASU No. 2020-06, ("ASU 2020-06"). The new standard simplifies the accounting for certain financial instruments with characteristics of liabilities and equity. The new guidance reduced the number of accounting models for convertible debt and convertible preferred stock instruments and made certain disclosure amendments intended to improve the information provided to users. The guidance also amended the derivative guidance for the "own stock" scope exception, which exempts qualifying instruments from being accounted for as derivatives if certain criteria are met. Finally, the standard changed the way certain convertible instruments are treated when calculating earnings per share. The standard is effective for the Company for fiscal years, and the interim periods within those years, beginning after December 15, 2021, and early adoption is permitted. The Company is currently evaluating the impact of ASU 2020-06 on the Company's condensed consolidated financial statements.

Consolidation

The accompanying condensed consolidated financial statements include the Company and its wholly owned subsidiary, Flexion Therapeutics Securities Corporation. The Company has eliminated all intercompany transactions for the three and six months ended June 30, 2021, and the year ended December 31, 2020.

Revenue Recognition

On October 6, 2017, the U.S. Food and Drug Administration ("FDA") approved ZILRETTA. The Company entered into a limited number of arrangements with specialty distributors and a specialty pharmacy in the U.S. to distribute ZILRETTA. The Company recognizes revenue in accordance with Accounting Standards Codification ("ASC") Topic 606 - *Revenue from Contracts with Customers* ("Topic 606"). Under Topic 606, an entity recognizes revenue when its customer obtains control of promised goods or services, in an amount that reflects the consideration that the entity expects to be entitled to in exchange for those goods or services.

To determine revenue recognition for arrangements that an entity determines are within the scope of Topic 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. The Company only applies the five-step model to arrangements that meet the definition of a contract with a customer under Topic 606, including when it is probable that the entity will collect the consideration it is entitled to in exchange for the goods or services it transfers to the customer. At contract inception, once the contract is determined to be within the scope of Topic 606, the Company assesses the goods or services promised within each contract, 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.

Product Revenue, Net

The Company primarily sells ZILRETTA to specialty distributors and a specialty pharmacy, who then subsequently resell ZILRETTA to physicians, clinics, and certain medical centers or hospitals. The Company also contracts directly with healthcare providers and intermediaries such as Group Purchasing Organizations ("GPOs"). In addition, the Company enters into arrangements with government payers that provide for government mandated rebates and chargebacks with respect to the purchase of ZILRETTA.

The Company recognizes revenue on product sales when the customer obtains control of the Company's product, which occurs at a point in time (upon delivery to the customer). The Company has determined that the delivery of ZILRETTA to its customers constitutes a single performance obligation. There are no other promises to deliver goods or services beyond what is specified in each accepted customer order. The Company has assessed the existence of a significant financing component in the agreements with its customers. The trade payment terms with customers do not exceed one year, and therefore the Company has elected to apply the practical expedient and no amount of consideration has been allocated as a financing component. Product revenues are recorded net of applicable reserves for variable consideration, including discounts and allowances.

Transaction Price, including Variable Consideration

Revenues from product sales are recorded at the net sales price (transaction price), which includes estimates of variable consideration for which reserves are established. Components of variable consideration include trade discounts and allowances, product returns, government chargebacks, discounts and rebates, and other incentives, such as voluntary patient assistance, and other fee-for-service amounts that are detailed within contracts between the Company and its customers relating to the Company's sale of its products. These reserves, as detailed below, are based on the amounts earned, or to be claimed on the related sales, and are classified as reductions of accounts receivable (if the amount is payable to the customer) or a current liability (if the amount is payable to a party other than a customer). These estimates take into consideration a range of possible outcomes that are probability-weighted in accordance with the expected value method in Topic 606 for relevant factors such as current contractual and statutory requirements, specific known market events and trends, industry data, and forecasted customer buying and payment patterns. Overall, these reserves reflect the Company's best estimates of the amount of consideration to which it is entitled based on the terms of the respective underlying contracts.

The amount of variable consideration that is included in the transaction price may be constrained and is included in the net sales price only to the extent that it is probable that a significant reversal in the amount of the cumulative revenue recognized under the contract will not occur in a future period. Actual amounts of consideration ultimately received may differ from the Company's estimates. If actual results in the future vary from the Company's original estimates, the Company will adjust these estimates, which would affect net product revenue and earnings in the period such variances become known.

Service Fees and Allowances

The Company compensates its customers and GPOs for sales order management, data, and distribution services. However, the Company has determined such services received to date are not distinct from the Company's sale of products to the customer and, therefore, these payments have been recorded as a reduction of revenue within the statement of operations and comprehensive loss through June 30, 2021, as well as a reduction to trade receivables, net on the condensed consolidated balance sheets.

Product Returns

Consistent with industry practice, the Company generally offers customers a limited right of return for product that has been purchased from the Company based on the product's expiration date. The Company estimates the amount of its product sales that may be returned by its customers and records this estimate as a reduction of revenue in the period the related product revenue is recognized, as well as within accrued expenses and other current liabilities, net, on the condensed consolidated balance sheets. The Company currently estimates product return liabilities using available industry data and its own sales information, including its visibility into the inventory remaining in the distribution channel. The Company has received an immaterial amount of returns to date and believes that future returns of ZILRETTA will be minimal.

Chargebacks

Chargebacks for fees and discounts to qualified government healthcare providers represent the estimated obligations resulting from contractual commitments to sell products to qualified VA hospitals and 340b entities at prices lower than the list prices charged to customers who directly purchase the product from the Company. The 340b Drug Discount Program is a U.S. federal government program created in 1992 that requires drug manufacturers to provide outpatient drugs to eligible health care organizations and covered entities at significantly reduced prices. Customers charge the Company for the difference between what they pay for the product and the statutory selling price to the qualified government entity. These reserves are established in the same period that the related revenue is recognized, resulting in a reduction of product revenue and trade receivables, net. Chargeback amounts are generally determined at the time of resale to the qualified government healthcare provider by customers, and the Company generally issues credits for such amounts within a few weeks of the customer's notification to the Company of the resale. Reserves for chargebacks consist of credits that the Company expects to issue for units that remain in the distribution channel inventories at each reporting period-end that the Company expects will be sold to qualified healthcare providers, and chargebacks that customers have claimed, but for which the Company has not yet issued a credit.

Government Rebates

The Company is subject to discount obligations under state Medicaid programs and Medicare. These reserves are recorded in the same period the related revenue is recognized, resulting in a reduction of product revenue and the establishment of a current liability that is included in accrued expenses and other current liabilities on the condensed consolidated balance sheets. For Medicare, the Company also estimates the number of patients in the prescription drug coverage gap for whom the Company will owe an additional liability

under the Medicare Part D program. The Company estimates its exposure to utilization from the Medicare Part D coverage gap discount program to be immaterial. For Medicaid programs, the Company estimates the portion of sales attributed to Medicaid patients and records a liability for the rebates to be paid to the respective state Medicaid programs. The Company's liability for these rebates consists of invoices received for claims from prior quarters that have not been paid or for which an invoice has not yet been received, estimates of claims for the current quarter, and estimated future claims that will be made for product that has been recognized as revenue, but that remains in the distribution channel inventories at the end of each reporting period.

Purchaser/Provider Discounts and Rebates

The Company offers rebates to eligible purchasers and healthcare providers that are variable based on volume of product purchased. Rebates are based on actual purchase levels during the rebate purchase period. The Company estimates these rebates and records such estimates in the same period the related revenue is recognized, resulting in a reduction of product revenue and the establishment of a current liability that is included in accrued expenses and other current liabilities on the condensed consolidated balance sheets.

Other Incentives

Other incentives that the Company offers include voluntary patient assistance programs, such as the co-pay assistance program, which are intended to provide financial assistance to qualified commercially insured patients with prescription drug co-payments required by payers. The calculation of the accrual for co-pay assistance is based on an estimate of claims and the cost per claim that the Company expects to receive associated with product that has been recognized as revenue, but remains in the distribution channel inventories at the end of each reporting period. The adjustments are recorded in the same period the related revenue is recognized, resulting in a reduction of product revenue and the establishment of a current liability that is included as a component of accrued expenses and other current liabilities on the condensed consolidated balance sheets.

To date, the Company's only source of product revenue has been from the U.S. sales of ZILRETTA, which it began shipping to customers in October 2017.

The following table summarizes activity in each of the product revenue allowance and reserve categories for the six months ended June 30, 2021 and 2020:

(In thousands)	Service Fees, Allowances and Chargebacks	Government Rebates and Other Incentives	Product Returns	Purchaser/ Provider Discounts and Rebates	Total
Balance as of December 31, 2020	$ 1,733	$ 530	$ 628	$ 1,832	$ 4,723
Provision related to sales in the current quarter	2,188	383	151	2,703	5,425
Credits and payments made	(1,969)	(266)	(9)	(1,832)	(4,076)
Adjustments related to prior period sales	—	—	(111)	—	(111)
Balance as of March 31, 2021	1,952	647	659	2,703	5,961
Provision related to sales in the current quarter	2,682	424	179	3,100	6,385
Credits and payments made	(2,527)	(311)	(86)	(2,711)	(5,635)
Adjustments related to prior period sales	(10)	—	—	—	(10)
Balance as of June 30, 2021	$ 2,097	$ 760	$ 752	$ 3,092	$ 6,701
Balance as of December 31, 2019	$ 1,847	$ 248	$ 402	$ 1,656	$ 4,153
Provision related to sales in the current quarter	1,590	254	114	526	2,484
Credits and payments made	(1,852)	(199)	(10)	(1,656)	(3,717)
Adjustments related to prior period sales	—	95	—	—	95
Balance as of March 31, 2020	1,585	398	506	526	3,015
Provision related to sales in the current quarter	1,417	133	98	892	2,540
Credits and payments made	(1,172)	(262)	(1)	(528)	(1,963)
Adjustments related to prior period sales	—	90		2	92
Balance as of June 30, 2020	$ 1,830	$ 359	$ 603	$ 892	$ 3,684

License Agreement – On March 30, 2020, the Company entered into an exclusive license agreement with Hong Kong Tainuo Pharma Ltd. ("HK Tainuo") and Jiangsu Tainuo Pharmaceutical Co. Ltd. ("Jiangsu Tainuo"), a subsidiary of China Shijiazhuang Pharmaceutical Co, Ltd., for the development and commercialization (other than manufacturing) of ZILRETTA in Greater China (consisting of mainland China, Hong Kong and Macau, and Taiwan). Under the terms of the agreement, HK Tainuo paid the Company an upfront payment of $10.0 million, of which $5.0 million was received as of June 30, 2020, and the remaining $5.0 million was received as of September 30, 2020. The Company is also eligible to receive up to $32.5 million in aggregate development, regulatory, and commercial sales milestone payments. All payments received from HK Tainuo are subject to applicable Hong Kong withholding taxes. HK Tainuo is responsible for the clinical development, product registration, and commercialization of ZILRETTA in Greater China, and Jiangsu Tainuo serves as the guarantor of HK Tainuo's obligations and responsibilities under the agreement. The Company is solely responsible for the manufacture and supply of ZILRETTA to HK Tainuo for all clinical and commercial activities. The terms related to product manufacturing and supply, including pricing and minimum purchase requirements agreed to in the license

agreement, will be covered by a separate supply agreement, which has not yet been finalized. All amounts owed to the Company are nonrefundable and non-creditable once paid. Unless terminated earlier in accordance with its terms, the license agreement continues in effect in perpetuity or as long as HK Tainuo or Jiangsu Tainuo continue to sell ZILRETTA in Greater China. Either party may terminate the agreement prior to expiration in the event of a material breach if not cured within 60 days from the date of notice of such breach (30 days in the case of payment obligations), or either party files for bankruptcy. The Company also has the right to terminate the agreement if HK Tainuo, Jiangsu Tainuo, or any affiliate of each commences any action or proceeding that challenges the validity, enforceability, or scope of any Company patent in Greater China. Upon any such termination, the license granted to HK Tainuo will terminate and all know-how and patents will revert back to the Company. The Company concluded that the license and supply obligations were not distinct performance obligations, and therefore the transaction price will be recognized as revenue as the Company's supply obligation is fulfilled over the term of the supply agreement, which has not yet commenced. No revenue was recognized associated with this contract as of June 30, 2021. The proceeds associated with the upfront payment have been recorded in short-term deferred revenue on the Company's condensed consolidated balance sheet as of June 30, 2021, as there is uncertainty around the timing of when the revenue will be recognized. The Company will re-evaluate the classification of deferred revenue when the supply agreement is finalized.

Use of Estimates

The preparation of financial statements in conformity with GAAP requires management to make estimates and judgments that may affect the reported amounts of assets and liabilities, revenue and expenses, and related disclosures. The Company bases estimates and judgments on historical experience and on various other factors that it believes to be reasonable under the circumstances. The most significant estimates in these condensed consolidated financial statements include estimates related to revenue recognition and accrued expenses related to preclinical and clinical development costs. The Company's actual results may differ from these estimates under different assumptions or conditions. The Company evaluates its estimates on an ongoing basis. Changes in estimates are reflected in reported results in the period in which they become known by the Company's management.

The full extent to which the COVID-19 pandemic will directly or indirectly impact the Company's business, results of operations, and financial condition, including sales, expenses, reserves and allowances, clinical trials, research and development expenses, and employee-related amounts, will depend on future developments that are highly uncertain, including as a result of new information that may emerge concerning COVID-19 and the actions taken to contain or treat it, as well as the economic impact on local, regional, national, and international customers and markets. The Company has made estimates of the impact of COVID-19 within its financial statements, and there may be changes to those estimates in future periods.

Property and Equipment

Property and equipment are stated at cost less accumulated depreciation. Depreciation and amortization expense is recognized using the straight-line method over the following estimated useful lives:

	Estimated Useful Life (Years)
Computers, office equipment, and minor computer software	3
Computer software	7
Manufacturing equipment	7-10
Furniture and fixtures	5

Leasehold improvements are amortized over the shorter of the lease term or the estimated useful life of the related asset. Costs of major additions and improvements are capitalized and depreciated on a straight-line basis over their useful lives. Repairs and maintenance costs are expensed as incurred. Upon retirement or sale, the cost of assets disposed of and the related accumulated depreciation are removed from the accounts and any resulting gain or loss is credited or charged to income. Property and equipment includes construction-in-progress that is not yet in service.

Foreign Currencies

The Company maintains a bank account denominated in British Pounds. All foreign currency payables and cash balances are measured at the applicable exchange rate at the end of the reporting period. All associated gains and losses from foreign currency transactions are reflected in the consolidated statements of operations.

Leases

The Company determines if an arrangement is a lease at contract inception. Operating lease assets represent a right to use an underlying asset for the lease term and operating lease liabilities represent an obligation to make lease payments arising from the lease. Operating lease liabilities with a term greater than one year and their corresponding right-of-use assets are recognized on the balance sheet at the commencement date of the lease based on the present value of lease payments over the expected lease term. Certain adjustments to the right-of-use asset may be required for items such as initial direct costs paid or incentives received. The

Company made an accounting policy election to expense leases with a term of one year or less on a straight-line basis over the lease term. To date, the Company has not identified any material short-term leases, either individually or in the aggregate.

As the Company's leases do not provide an implicit rate, the Company utilized the appropriate incremental borrowing rate, which is the rate incurred to borrow on a collateralized basis over a similar term an amount equal to the lease payments in a similar economic environment. The Company estimated the incremental borrowing rate based on a yield curve analysis of companies with a similar credit rating to its own, which was calculated using a number of financial ratios and qualitative considerations of the Company's business. The yields on the Company's currently outstanding debt (the convertible senior notes and term loan described below) were also used as inputs to the analysis to calculate a spread, adjusted for factors that reflect the profile of secured borrowing over the expected term of the lease.

The components of a lease should be split into three categories: lease components (*e.g.*, land, building, etc.), non-lease components (*e.g.*, common area maintenance, utilities, performance of manufacturing services, purchase of inventory, etc.), and non-components (*e.g.*, property taxes, insurance, etc.). Then the fixed contract consideration (including any related to non-components) must be allocated based on fair values to the lease components and non-lease components. Although separation of lease and non-lease components is required, certain practical expedients are available to entities. Entities electing the practical expedient would not separate lease and non-lease components. Rather, they would account for each lease component and the related non-lease component together as a single component. The Company has elected to use this practical expedient for its real estate leases and account for each lease component and related non-lease component as one single component. In contrast, the Company has elected not to apply the practical expedient for its lease of manufacturing space at Patheon and has instead allocated consideration between the lease and non-lease components of the contract. The Company calculated the fair value of the lease component using publicly available information to identify comparable rentals in the same geographic area. The remainder of the consideration was allocated to the non-lease components.

3. Fair Value of Financial Assets and Liabilities

The following tables present information about the Company's assets that are measured at fair value on a recurring basis as of June 30, 2021 and December 31, 2020, and indicate the level of the fair value hierarchy utilized to determine such fair value:

	Fair Value Measurements as of June 30, 2021 Using:			
(In thousands)	**Level 1**	**Level 2**	**Level 3**	**Total**
Assets:				
Cash equivalents	$ 90,169	$ —	$ —	$ 90,169
Marketable securities	—	23,620	—	23,620
	$ 90,169	$ 23,620	$ —	$ 113,789

	Fair Value Measurements as of December 31, 2020 Using:			
(In thousands)	**Level 1**	**Level 2**	**Level 3**	**Total**
Assets:				
Cash equivalents	$ 79,148	$ 6,832	$ —	$ 85,980
Marketable securities	—	67,576	—	67,576
	$ 79,148	$ 74,408	$ —	$ 153,556

As of June 30, 2021 and December 31, 2020, the Company's cash equivalents that are invested in money market funds are valued using Level 1 inputs based on quoted prices for identical securities in active markets. The Company's marketable securities are valued using Level 2 inputs and primarily rely on quoted prices in active markets for similar marketable securities. Amortization and accretion of discounts and premiums are recorded in other income.

As of June 30, 2021, the Company has a term loan outstanding under its 2019 credit facility with Silicon Valley Bank as agent, MidCap Financial Trust, and Flexpoint MCLS Holdings, LLC (the "2019 term loan"), as well as a revolving credit facility. The amount outstanding on the 2019 term loan is reported at its carrying value in the accompanying balance sheet as of June 30, 2021. The Company determined the fair value of the 2019 term loan using an income approach that utilizes a discounted cash flow analysis based on current market interest rates for debt issuances with similar remaining years to maturity, adjusted for credit risk. The 2019 term loan was valued using Level 2 inputs as of June 30, 2021. The result of the calculation yielded a fair value that approximates its carrying value. The Company also concluded that the carrying value of the revolving credit facility approximates fair value because of the short-term maturity of this debt instrument.

On May 2, 2017, the Company issued 3.375% convertible senior notes due 2024 (the "2024 Convertible Notes") with embedded conversion features. The Company estimated the fair value of the 2024 Convertible Notes using a discounted cash flow approach to derive the value of a debt instrument using the expected cash flows and the estimated yield related to the convertible notes. The significant assumptions used in estimating the expected cash flows were: the estimated market yield based on an implied yield and credit quality analysis of a term loan with similar attributes and the average implied volatility of the Company's traded and quoted options available as of May 2, 2017. The Company recorded approximately $136.7 million as the fair value of the liability on May 2, 2017, with a corresponding amount recorded as a discount on the initial issuance of the 2024 Convertible Notes of approximately

$64.5 million. The debt discount was recorded to equity and is being amortized to the debt liability over the life of the 2024 Convertible Notes using the effective interest method.

The fair value of the 2024 Convertible Notes, which differs from their carrying value, is influenced by interest rates, stock price, and stock price volatility and is determined by prices for the 2024 Convertible Notes observed in market trading. The market for trading of the 2024 Convertible Notes is not considered to be an active market, and therefore the estimate of fair value is based on Level 2 inputs. The estimated fair value of the 2024 Convertible Notes, face value of $201.3 million, was $183.9 million at June 30, 2021.

4. Marketable Securities

As of June 30, 2021 and December 31, 2020, the fair value of available-for-sale marketable securities by type of security was as follows:

	June 30, 2021			
(In thousands)	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Fair Value
Commercial paper	$ 6,397	$ —	$ —	$ 6,397
Corporate bonds	17,225	—	(2)	$ 17,223
	$ 23,622	$ —	$ (2)	$ 23,620

	December 31, 2020			
(In thousands)	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Fair Value
Commercial paper	$ 6,890	$ —	$ —	$ 6,890
U.S. government obligations	9,997	1	—	9,998
Corporate bonds	50,700	2	(14)	50,688
	$ 67,587	$ 3	$ (14)	$ 67,576

As of June 30, 2021 and December 31, 2020, marketable securities consisted of $23.6 million and $67.6 million, respectively, of investments that mature within 12 months. There were no investments with maturities greater than 12 months as of June 30, 2021, and December 31, 2020. The Company assesses its available-for-sale marketable securities for impairment on a quarterly basis in accordance with ASU No. 2016-13, *Financial Instruments - Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments*. There were no material impairments of the Company's available-for-sale marketable securities measured and carried at fair value during the three and six months ended June 30, 2021.

5. Prepaid Expenses and Other Current Assets

Prepaid expenses and other current assets consisted of the following as of June 30, 2021, and December 31, 2020:

(In thousands)	June 30, 2021	December 31, 2020
Prepaid expenses	$ 4,756	$ 4,346
Deposits	176	112
Interest receivable on marketable securities	134	246
Other	408	408
Total prepaid expenses and other current assets	$ 5,474	$ 5,112

6. Inventory

Inventory consisted of the following as of June 30, 2021, and December 31, 2020:

(In thousands)	June 30, 2021	December 31, 2020
Raw materials	$ 3,573	$ 4,287
Work in process	4,992	4,666
Finished goods	3,736	6,441
Total inventories	$ 12,301	$ 15,394

Finished goods manufactured by the Company have a shelf life of approximately 24 months from the date of manufacture.

The Company reduces its inventory to net realizable value for potentially excess, dated, or obsolete inventory based on an analysis of forecasted demand compared to quantities on hand and any firm purchase orders, as well as product shelf life. During the three and six months ended June 30, 2021, the Company expensed $2.1 million and $5.2 million, respectively, to cost of sales for unabsorbed manufacturing and overhead costs related to the operation of the United Kingdom facility at Patheon UK Limited. In addition, cost of sales for the three and six months ended June 30, 2021, included a charge of $0.1 million and $0.6 million, respectively, resulting from the write-down of short-dated ZILRETTA inventory that is not expected to be sold prior to expiry.

7. Property and Equipment, Net

Property and equipment, net, as of June 30, 2021, and December 31, 2020, consisted of the following:

(In thousands)	June 30, 2021	December 31, 2020
Computer and office equipment	$ 1,215	$ 1,203
Manufacturing equipment	12,524	12,297
Furniture and fixtures	609	609
Software	495	495
Leasehold improvements	1,177	1,157
Construction in progress	14,956	13,924
	30,976	29,685
Less: Accumulated depreciation	(11,193)	(10,147)
Total property and equipment, net	$ 19,783	$ 19,538

Depreciation for the three and six months ended June 30, 2021, was approximately $0.5 million and $1.0 million, respectively, compared to $0.6 and $0.8 million, respectively, for the same periods in the prior year. No property and equipment was disposed of during the six months ended June 30, 2021. The Company disposed of one piece of equipment during the three months ended March 31, 2020, and recorded a loss on the disposal of $0.3 million. As of June 30, 2021, construction in progress consisted primarily of equipment purchases related to the expansion of the Company's manufacturing capabilities at its contract manufacturer, Patheon U.K. Limited.

8. Accrued Expenses and Other Current Liabilities

Accrued expenses and other current liabilities consisted of the following as of June 30, 2021, and December 31, 2020:

(In thousands)	June 30, 2021	December 31, 2020
Research and development	$ 2,267	$ 1,856
Payroll and other employee-related expenses	9,192	10,674
Professional services fees	2,873	2,094
Accrued interest	1,411	1,464
Product revenue reserves	4,604	2,990
Other	1,005	930
Total accrued expenses and other current liabilities	$ 21,352	$ 20,008

9. Debt

Amended and Restated Credit and Security Agreement

Term Loan

On August 4, 2015, the Company entered into a credit and security agreement with MidCap Financial Trust, as agent, and MidCap Financial Funding XIII Trust and Silicon Valley Bank, as lenders, to borrow up to $30.0 million in term loans (the "2015 term loan"). On August 2, 2019, the Company terminated the credit and security agreement and concurrently entered into an amended and restated credit and security agreement (the "amended and restated credit and security agreement") with Silicon Valley Bank as agent, MidCap Financial Trust, Flexpoint MCLS Holdings, LLC, and the other lenders from time to time party thereto (collectively, the "Lenders"), providing for a term loan of $40.0 million and a revolving credit facility of up to $20.0 million, both of which mature on January 1, 2024 (the "Maturity Date"). The Company concurrently borrowed the $40.0 million term loan and used $7.7 million of the proceeds to repay the remaining amount owed on the 2015 term loan.

The Company granted the Lenders a security interest in substantially all of its personal property, rights, and assets, other than intellectual property, to secure the payment of all amounts owed under the amended and restated credit and security agreement. The Company agreed not to encumber any of its intellectual property without the Lenders' prior written consent.

The amended and restated credit and security agreement contains certain representations, warranties, and covenants of the Company, including a minimum revenue covenant that will be in effect at any time the Company's liquidity (defined as cash, cash equivalents, and marketable securities held with Silicon Valley Bank and certain accounts receivable as deemed eligible under the amended and restated credit and security agreement) is below $80.0 million. Additionally, if the Company's liquidity is below $80.0 million, all amounts received from customer collections will be applied immediately to reduce the revolving credit facility. Beginning in May 2021, the minimum revenue covenant, if it applies, will be the greatest of (i) a conservative percentage of the year's approved forecast, (ii) modest growth over the trailing twelve months of actual revenues, and (iii) 100% of the minimum revenue covenant amount for the preceding month.

On May 18, 2020, the Company borrowed $15.0 million under a new term loan advance and immediately used the proceeds to repay an equal amount under the revolving credit facility, and the maximum principal amount of the revolving credit facility was reduced from $20.0 million to $5.0 million. The new term loan is subject to substantially the same terms, including interest rate, amortization, and maturity date, as the existing term loan under the credit facility.

The amended and restated credit and security agreement also has a material adverse event clause. If the minimum revenue covenant becomes applicable and the Company fails to comply with it, or a material adverse change as defined in the agreement occurs, the amounts due under the amended and restated credit and security agreement could be declared immediately due and payable. As of June 30, 2021, the Company was compliant with all financial covenants.

Term loan borrowings under the credit facility accrue interest monthly at a floating interest rate equal to the greater of the prime rate plus 1.5% or 6.5% per annum. Following an interest-only period of 18 months, principal is due in 36 equal monthly installments commencing February 1, 2021, and ending on the Maturity Date. Upon the Maturity Date, the Company will be obligated to pay a final payment equal to 6.75% of the total principal amounts borrowed under the facility. The final payment amount is being accreted to the carrying value of the debt using the straight-line method, which approximates the effective interest method. As of June 30, 2021, the carrying value of the 2019 term loan was approximately $48.7 million, of which $1.5 million is due within 12 months and $47.2 million is due in greater than 12 months. Due to the July 30, 2021, refinancing discussed in Note 13, the carrying value of the 2019 term loan, less payments made subsequent to the balance sheet date and prior to the refinancing, has been presented as long-term debt in the Company's condensed consolidated balance sheet as of June 30, 2021.

The Company may prepay the 2019 term loan at any time by paying the outstanding principal balance, a final payment equal to 6.75% of the term loan amount, all accrued interest, and a prepayment fee of 3% of the outstanding term loan amount if repaid in the first year, 2% of the outstanding term loan amount if repaid in the second year, and 1% of the outstanding term loan amount if repaid in the third year of the loan; no prepayment fee is required thereafter.

As of June 30, 2021, annual principal and interest payments due under the term loan were as follows:

Year	Aggregate Minimum Payments *(in thousands)*
2021	10,605
2022	20,296
2023	19,088
2024	5,249
Thereafter	—
Total	$ 55,238
Less interest	(4,164)
Less unamortized portion of final payment	(2,339)
Total	$ 48,735

Revolving Credit Facility

Borrowings under the revolving credit facility accrue interest monthly at a floating interest rate equal to the greater of the prime rate or 5.50% per annum. In addition to paying interest on any amounts borrowed under the revolving credit facility, the Company owes an unused revolving line facility fee equal to 0.25% per annum of the average unused portion of the revolving line, multiplied by the difference between the total amount available to be borrowed (the "Revolving Commitment Amount") and the greater of the average outstanding revolver balance and 25% of the Revolving Commitment Amount. The revolving credit facility and any related fees or interest payments became available to the Company beginning January 1, 2020, and, in February 2020, the Company drew down the $20.0 million available. On May 18, 2020, the Company repaid $15.0 million of the outstanding principal balance, and the maximum principal amount of the revolving credit facility was reduced from $20.0 million to $5.0 million.

Beginning on January 1, 2020, if the interest payment on the revolving credit facility is less than the amount of interest that would have been payable had the Company borrowed 25% of the Revolving Commitment Amount, then the Company will be required to pay the difference.

The Company may retire the revolving credit facility early, at any time, by paying the outstanding principal balance, all accrued interest, and a termination fee equal to 2% of the Revolving Commitment Amount if repaid in the first year, and 1% of the Revolving Commitment Amount if repaid in the second year; with no termination fee thereafter.

2024 Convertible Notes

On May 2, 2017, the Company issued an aggregate of $201.3 million principal amount of the 2024 Convertible Notes. The 2024 Convertible Notes have a maturity date of May 1, 2024, are unsecured, and accrue interest at a rate of 3.375% per annum, payable semi-annually on May 1 and November 1 of each year, beginning November 1, 2017. The Company received $194.8 million for the sale of the 2024 Convertible Notes, after deducting fees and expenses of $6.5 million.

Upon conversion of the 2024 Convertible Notes, at the election of each holder of a 2024 Convertible Note (the "Holder"), the note will be convertible into cash, shares of the Company's common stock, or a combination thereof, at the Company's election (subject to certain limitations in the 2015 term loan), at a conversion rate of approximately 37.3413 shares of common stock per $1,000 principal amount of the 2024 Convertible Notes, which corresponds to an initial conversion price of approximately $26.78 per share of the Company's common stock.

The conversion rate is subject to adjustment from time to time upon the occurrence of certain events, including, but not limited to, fundamental change events and certain corporate events that occur prior to the maturity date of the notes. In addition, if the Company delivers a notice of redemption, the Company will increase, in certain circumstances, the conversion rate for a Holder who elects to convert its notes in connection with such a corporate event or notice of redemption, as the case may be. At any time prior to the close of business on the business day immediately preceding February 1, 2024, Holders may convert all, or any portion, of the 2024 Convertible Notes at their option only under the following circumstances:

(1) during any calendar quarter commencing after the calendar quarter ending on June 30, 2017 (and only during such calendar quarter), if the last reported sale price of the common stock for at least 20 trading days (whether or not consecutive) during a period of 30 consecutive trading days ending on the last trading day of the immediately preceding calendar quarter is greater than or equal to 130% of the conversion price on each applicable trading day;

(2) during the five-business-day period after any ten-consecutive-trading-day period (the "measurement period") in which the trading price per $1,000 principal amount of notes for each trading day of the measurement period was less than 98% of the product of the last reported sale price of the Company's common stock and the conversion rate on each such trading day;

(3) if the Company calls any or all of the notes for redemption, at any time prior to the close of business on the business day immediately preceding the redemption date; and

(4) upon the occurrence of specified corporate events.

On or after February 1, 2024, until the close of business on the business day immediately preceding the maturity date, Holders may convert their notes at any time, regardless of the foregoing circumstances. The Company may redeem, for cash, all or any portion of the 2024 Convertible Notes, at its option, on or after May 6, 2020, if the last reported sale price of the Company's common stock has been at least 130% of the conversion price for at least 20 trading days during any 30 consecutive day trading period, at a redemption price equal to 100% of the principal amount of the 2024 Convertible Notes to be redeemed, plus accrued and unpaid interest, subject to the Holders' right to convert as described above.

The 2024 Convertible Notes are considered convertible debt with a cash conversion feature. Per ASC 470-20, *Debt with Conversion and Other Options*, the Company has separated the convertible debt into liability and equity components based on the fair value of a similar debt instrument excluding the embedded conversion option. The carrying amount of the liability component was calculated by measuring the fair value of a similar liability that does not have an associated convertible feature. The allocation was performed in a manner that reflected our non-convertible debt borrowing rate for similar debt. The equity component of the 2024 Convertible Notes was recognized as a debt discount and represents the difference between the proceeds from the issuance of the 2024 Convertible Notes and the fair value of the liability of the 2024 Convertible Notes on their respective dates of issuance. The excess of the principal amount of the liability component over its carrying amount ("debt discount") is amortized to interest expense using the effective interest method over seven years. The equity component is not re-measured as long as it continues to meet the conditions for equity classification. The liability component of $136.7 million was recorded as long-term debt at May 2, 2017, with the remaining equity component of $64.5 million recorded as additional paid-in capital.

In connection with the issuance of the 2024 Convertible Notes, the Company incurred approximately $6.5 million of debt issuance costs, which primarily consisted of underwriting, legal, and other professional fees, and allocated these costs to the liability and equity components based on the allocation of the proceeds. Of the total debt issuance costs, $4.4 million was allocated to the liability component and are recorded as a reduction of the 2024 Convertible Notes in our consolidated balance sheets. The remaining $2.1 million was allocated to the equity component and is recorded as a reduction to additional paid-in capital.

Debt discount and issuance costs of $68.9 million are being amortized to interest expense over the life of the 2024 Convertible Notes using the effective interest rate method. As of June 30, 2021, the stated interest rate was 3.375%, and the effective interest rate was 9.71%. Interest expense related to the 2024 Convertible Notes for the three and six months ended June 30, 2021, was $4.1 million and $8.1 million, including $2.4 million and $4.7 million, related to amortization of the debt discount.

The table below summarizes the carrying value of the 2024 Convertible Notes as of June 30, 2021:

	(*in thousands*)
Gross proceeds	$ 201,250
Portion of proceeds allocated to equity component (additional paid-in capital)	(64,541)
Debt issuance costs	(6,470)
Portion of issuance costs allocated to equity component (additional paid-in capital)	2,075
Amortization of debt discount and debt issuance costs	35,500
Carrying value 2024 Convertible Notes	$ 167,814

10. Stock-Based Compensation

Stock Option Valuation

The fair value of each of the Company's stock option grants is estimated on the date of grant using the Black-Scholes option-pricing model. Expected volatility is based on historical volatility of the Company's common stock. The expected term of the Company's stock options has been determined utilizing the "simplified" method for awards that qualify as "plain vanilla" options. The expected term of stock options granted to non-employees is equal to the contractual term of the option award. The risk-free interest rate is determined by reference to the U.S. Treasury yield curve in effect at the time of grant of the award for time periods approximately equal to the expected term of the award. Expected dividend yield is based on the fact that the Company has never paid cash dividends and does not expect to pay any cash dividends in the foreseeable future. The relevant data used to determine the value of the stock option grants for the three and six months ended June 30, 2021 and 2020, were as follows:

	Three months ended June 30,		Six months ended June 30,	
	2021	2020	2021	2020
Risk-free interest rates	1.26 - 1.28%	0.51 - 0.56%	1.12 - 1.28%	0.51 - 1.79%
Expected dividend yield	0.00%	0.00%	0.00%	0.00%
Expected term (in years)	6.0	6.0	6.0	6.0
Expected volatility	71.9 - 72.2%	70.3 - 72.3%	71.9 - 72.4%	65.4 - 72.3%

The following table summarizes stock option activity for the six months ended June 30, 2021:

(In thousands, except per share amounts)	Shares Issuable Under Options	Weighted Average Exercise Price Per Share
Outstanding as of December 31, 2020	4,592	$ 17.77
Granted	350	9.55
Exercised	(43)	3.40
Cancelled	(522)	18.42
Outstanding as of June 30, 2021	4,377	$ 17.18
Options vested and expected to vest at June 30, 2021	4,377	$ 17.18
Options exercisable at June 30, 2021	3,480	$ 18.12

The aggregate intrinsic value of options is calculated as the difference between the exercise price of the options and the fair value of the Company's common stock for those options that had exercise prices lower than the fair value of the Company's common stock. Options to purchase a total of 42,682 shares of the Company's common stock, with an aggregate intrinsic value of approximately $386,138, were exercised during the six months ended June 30, 2021.

At June 30, 2021 and 2020, there were options for the purchase of 4,376,841 and 4,926,718 shares of the Company's common stock outstanding, respectively, with a weighted average remaining contractual term of 5.9 years and 6.7 years, respectively, and with a weighted average exercise price of $17.18 and $17.75 per share, respectively.

The weighted average grant date fair value of options granted during the six months ended June 30, 2021 and 2020, was $6.09 and $8.94 per share, respectively.

Restricted Stock Units

During the six months ended June 30, 2021, the Company awarded 1,097,555 restricted stock units ("RSUs") to employees at a weighted average grant date fair value of $9.73 per share. The majority of the RSUs vest in four substantially equal installments on each of the first four anniversaries of the vesting commencement date, subject to the employee's continued employment with, or services to, the Company on each vesting date. Compensation expense is recognized on a straight-line basis.

Included in the 2021 RSU awards was a grant of 106,100 RSUs to the Company's chief executive officer. These RSUs have two performance conditions relating to achieving a certain revenue threshold for the year ending December 31, 2021, as well as progressing at least one of the Company's current pipeline assets. The number of shares ultimately eligible for vesting under the RSU award will depend upon the degree to which the performance conditions are achieved. The maximum number of shares that are eligible for vesting under the award is 159,150, which would be earned based on 150% achievement of the performance conditions. The portion of the RSUs eligible for vesting will vest in four substantially equal installments starting in 2022 upon confirmation of such performance metrics being achieved and thereafter on January 1 of the subsequent three years so that all of such shares will have vested on January 1, 2025, subject to the employee's continued employment with, or services to, the Company on each vesting date. As of June 30, 2021, the Company concluded that it was not probable that either performance condition would be met. Therefore, no expense has been recognized for these awards during the three and six months ended June 30, 2021.

The following table summarizes the RSU activity for the six months ended June 30, 2021:

(In thousands, except per share amounts)	Number of Shares	Weighted Average Grant Date Fair Value Per Share
Nonvested balance as of December 31, 2020	2,193	$ 14.15
Granted	1,098	9.73
Vested/Released	(419)	15.22
Cancelled	(434)	13.44
Nonvested Balance as of June 30, 2021	2,438	$ 12.10

Stock-based Compensation

The Company recorded stock-based compensation expense related to stock options and RSUs and shares purchased under the Employee Stock Purchase Plan for the three and six months ended June 30, 2021 and 2020, as follows:

	For the three months ended June 30,		For the six months ended June 30,	
(In thousands)	2021	2020	2021	2020
Research and development	$ 1,024	$ 1,087	$ 2,303	$ 3,289
Selling, general and administrative	2,951	2,700	6,312	5,149
Total	$ 3,975	$ 3,787	$ 8,615	$ 8,438

As of June 30, 2021, unrecognized stock-based compensation expense for stock options outstanding was approximately $7.2 million, which is expected to be recognized over a weighted average period of 2.3 years. As of June 30, 2021, unrecognized stock-based compensation expense for RSUs outstanding was $23.3 million, which is expected to be recognized over a weighted average period of 2.4 years.

11. Net Loss per Share

Basic and diluted net loss per share attributable to common stockholders was calculated as follows for the three and six months ended June 30, 2021 and 2020:

	For the three months ended June 30,		For the six months ended June 30,	
(In thousands, except per share amounts)	2021	2020	2021	2020
Numerator:				
Net loss	$ (22,208)	$ (32,619)	$ (50,764)	$ (69,421)
Net loss:	$ (22,208)	$ (32,619)	$ (50,764)	$ (69,421)
Denominator:				
Weighted average common shares outstanding, basic and diluted	49,968	42,776	49,905	40,664
Net loss per share, basic and diluted	$ (0.44)	$ (0.76)	$ (1.02)	$ (1.71)

The following common stock equivalents were excluded from the calculation of diluted net loss per share for the periods indicated as including them would have an anti-dilutive effect:

	For the three months ended June 30,		For the six months ended June 30,	
(In thousands)	**2021**	**2020**	**2021**	**2020**
Shares issuable upon conversion of the 2024 Convertible Notes	7,515	7,515	7,515	7,515
Stock options	4,401	4,987	4,530	4,925
Restricted stock units	2,618	1,479	2,376	1,196
Total	14,534	13,981	14,421	13,636

12. Commitments and Contingencies

Operating Leases

Burlington Lease

In May 2013, the Company entered into a lease for office space in Burlington, Massachusetts (the "Lease"), for an initial term of 42 months. In June 2019, the Company amended the Lease to add additional square feet of office space and extend the term of the Lease through April 30, 2025 (the "Amended Lease"). As a result of the Amended Lease, the total rentable floor area is 41,873 square feet. Starting in August 2019, the Company's minimum monthly lease payment is approximately $108,000, which increases over the term of the Amended Lease. In addition to the base rent for the office space, the Company is responsible for its share of operating expenses and real estate taxes.

The straight-line lease cost for the Amended Lease (including the expense relating to the original Lease) for the three and six months ended June 30, 2021, amounted to $0.5 million and $0.9 million, respectively, compared to $0.4 million and $0.9 million, respectively, for the same periods in the prior year, and was included in operating expenses. As of June 30, 2021, the remaining lease term on the Amended Lease was 3.8 years, which includes the 18-month extension resulting from the amendment signed in June 2019.

Woburn Lease

In February 2017, the Company entered into a five-year lease for laboratory space located in Woburn, Massachusetts, with a monthly lease payment of approximately $15,000, which increases over the term of the lease, plus a share of operating expenses. The straight-line lease cost for the Woburn lease amounted to $46,000 and $92,000 for each of the three and six months ended June 30, 2021 and 2020, respectively, and was included in operating expenses.

In June 2021, the Company amended the Woburn lease to extend the term of the lease through February 29, 2024. Starting in March 2022, the Company's minimum monthly lease payment will be approximately $20,400, which increases over the term of the amended lease. The Company accounted for the amended lease as a modification that is not a separate contract from the original lease, as the amended lease does not contain any additional rights, and recorded an incremental right-of-use asset and lease liability of $0.4 million, which represents the present value of the lease payments over the remaining lease term of 2.7 years, discounted at 8.4%. As of June 30, 2021, the remaining lease term on the Woburn lease, as amended, was 2.7 years.

Manufacturing and Supply Agreement with Patheon UK Limited

In July 2015, the Company and Patheon UK Limited ("Patheon") entered into a Manufacturing and Supply Agreement (the "Manufacturing Agreement") and a Technical Transfer and Service Agreement (the "Technical Transfer Agreement") for the manufacture of ZILRETTA.

Patheon agreed in the Technical Transfer Agreement to undertake certain transfer activities and construction services needed to prepare Patheon's United Kingdom facility for the commercial manufacture of ZILRETTA in dedicated manufacturing suites. The Company provided Patheon with certain equipment and materials necessary to manufacture ZILRETTA and pays Patheon a monthly fee for such activities and reimburses Patheon for certain material, equipment, and miscellaneous expenses and additional services.

The initial term of the Manufacturing Agreement is 10 years from approval by the FDA of the Patheon manufacturing suites for ZILRETTA, or until October 6, 2027. The Company pays a monthly base fee to Patheon for the operation of the manufacturing suites and a per product fee for each vial based upon a forecast of commercial demand. The Company also reimburses Patheon for purchases of materials and equipment made on its behalf, certain nominal expenses, and additional services. The Manufacturing Agreement will remain in full effect unless and until it expires or is terminated. Upon termination of the Manufacturing Agreement (other than termination by Flexion in the event that Patheon does not meet the construction and manufacturing milestones or for a breach by Patheon), Flexion will be obligated to pay for the costs incurred by Patheon associated with the removal of Flexion's manufacturing equipment and for Patheon's termination costs up to a capped amount.

The Manufacturing Agreement with Patheon contains an operating lease for the use of dedicated manufacturing suites. With the adoption of ASU 2016-02, the Company recorded a right-of-use asset and corresponding lease liability for the operating lease.

In June 2019, the Company and Patheon amended the Manufacturing Agreement and the Technical Transfer Agreement. The amendment primarily modifies the compensation structure, which is comprised of base fees and per product fees the Company pays to Patheon and does not result in any additional rights of use. The Company accounted for the amendment as a lease modification that is not a separate contract from the original lease. As part of the modification, the Company reassessed whether the contract is or contains a lease and determined that there is an operating lease component for the use of dedicated manufacturing suites. The remainder of the consideration is allocated to the service component. The Company also reassessed the lease liability by calculating the present value of the remaining lease payments as of the modification date, discounted at 6.1%. The modification resulted in an increase to each of the lease liability and right of use asset of $0.5 million.

In April 2020, the Company entered into a side letter amending the Manufacturing Agreement with Patheon pursuant to which the parties agreed that the Company would continue to pay the monthly base fee for maintaining the manufacturing suites, but minimum purchase obligations would be cancelled for 2020 as the Company temporarily suspended manufacturing activities for ZILRETTA due to COVID-19. The amendment did not change the amount of fixed consideration owed to Patheon over the life of the contract, nor did it grant the Company any additional rights of use. As such, there was no change in the accounting for the embedded lease as a result of this amendment. The Company restarted manufacturing activities at Patheon in the fourth quarter of 2020.

As of June 30, 2021, the remaining lease term on the Patheon lease was 6.3 years. The straight-line lease cost for the three and six months ended June 30, 2021, amounted to $62,000 and $124,000, respectively, compared to $55,000 and $113,000, respectively, for the same periods in the prior year, and is included in inventory as part of manufacturing overhead.

The components of lease expense and related cash flows were as follows:

(In thousands)	For the three months ended June 30,		For the six months ended June 30,	
Operating lease cost	**2021**	**2020**	**2021**	**2020**
Operating lease cost included in operating expenses	$ 514	$ 514	$ 1,027	$ 1,027
Operating lease cost included in inventory	62	55	124	113
Total operating lease cost	576	569	1,151	1,140
Operating cash flows from operating leases	809	739	1,595	1,557

Maturities of lease liability due under these lease agreements as of June 30, 2021, were as follows:

Year	**Operating Lease Obligations** *(In thousands)*
2021	1,027
2022	2,093
2023	2,148
2024	1,981
2025	816
Thereafter	433
Present value of imputed interest	(2,211)
Total	$ 6,287

Other Commitments and Contingencies

Evonik Supply Agreement

In November 2016, the Company entered into a Supply Agreement with Evonik Corporation (“Evonik”) for the purchase of PLGA, which is used in the manufacturing of clinical and commercial supply of ZILRETTA. Pursuant to the Supply Agreement, Flexion is obligated to submit rolling monthly forecasts to Evonik for PLGA supply, a portion of which will constitute binding orders. In addition, Flexion agreed to certain minimum purchase requirements, which do not apply (i) during periods in which Evonik is in material breach of the Supply Agreement or is unable to perform its obligations due to a force majeure event, (ii) with respect to orders that Evonik is unable to supply in excess of binding orders, (iii) for orders Evonik is unable to timely deliver or does not deliver conforming product and provides a credit for such order, or (iv) during an uncured material quality failure by Evonik. Flexion agreed to purchase PLGA batches at a specified price per gram in U.S. dollars, subject to adjustment from time to time, including due to changes in price indices and in the event the initial term of the Supply Agreement was extended. The initial term of the agreement was five years, commencing in July 2016. In May 2021, the Company entered into an amendment to the Supply Agreement that became effective on June 30, 2021. The total term of the Supply Agreement, as amended, is eight years. Upon termination of the Supply Agreement (other than termination due to the bankruptcy of either Evonik or Flexion), Flexion is obligated to pay the costs associated with the binding supply forecast provided to Evonik.

FX201-Related Agreements

In December 2017, the Company entered into a definitive agreement with GeneQuine Biotherapeutics GmbH ("GeneQuine") to acquire the global rights to FX201. As part of the asset purchase transaction, the Company made an upfront payment to GeneQuine of $2.0 million. The upfront fee was attributed to the intellectual property acquired and recognized as research and development expense in December 2017 as the FX201 rights had not been commercially approved and had no alternative future use. In 2018, the Company paid GeneQuine $750,000 for initiating a GLP toxicology study of FX201. In addition, the Company paid GeneQuine $750,000 in November 2019 following the FDA acceptance of the Investigational New Drug ("IND") application for FX201. The next milestone of $2.5 million was achieved in March 2020, when the first patient was treated in the Phase 1 clinical trial. The Company may also be required to make additional milestone payments during the development of FX201, including up to $4.5 million for the initiation of a Phase 2 proof of concept ("PoC") clinical trial and, following successful PoC, up to an additional $51.5 million in development and global regulatory approval milestone payments. The transaction was accounted for as an asset acquisition, as it did not qualify as a business combination. Milestone payments earned prior to regulatory approval of FX201 are recognized as research and development expense in the period when the milestone events become probable of being achieved. Future milestones earned upon regulatory approval would be recognized as an intangible asset and amortized to expense over its estimated life. As of June 30, 2021, no other milestones under the arrangement were probable of being achieved. As part of the transaction, the Company became the direct licensee of certain underlying Baylor College of Medicine ("Baylor") patents and other proprietary rights related to FX201 for human applications. The Baylor license agreement grants the Company an exclusive, royalty-bearing, world-wide right and license (with a right to sublicense) for human applications under its patent and other proprietary rights directly related to FX201, with a similar non-exclusive license to certain Baylor intellectual property rights that are not specific to FX201. The license agreement with Baylor includes a low single-digit royalty on net sales of FX201 and requires the Company to use reasonable efforts to develop FX201 according to timelines set out in the license agreement. In December 2017, the Company also entered into a Master Production Services Agreement with SAFC Carlsbad, Inc., a part of MilliporeSigma, for the manufacturing of preclinical and initial clinical supplies of FX201. In addition, in February 2020 the Company entered into a manufacturing agreement with another vendor for clinical trial supply of FX201 through Phase 3 clinical trials.

FX301-Related Agreements

In September 2019, the Company entered into a definitive agreement with Xenon Pharmaceuticals, Inc. ("Xenon") that provides the Company with the global rights to develop and commercialize XEN402, Xenon's NaV1.7 inhibitor known as funapide, formulated for extended release with a novel, Flexion proprietary thermosensitive hydrogel under the Company's preclinical program known as FX301. The transaction was accounted for as an asset acquisition, as it did not qualify as a business combination. As part of the asset purchase transaction, the Company made an upfront payment to Xenon of $3.0 million. The upfront fee was attributed to the intellectual property acquired and was recognized as research and development expense in September 2019 as the FX301 product candidate had not been commercially approved and had no alternative future use. The next milestone of $0.5 million was achieved following the commencement of the GLP toxicology study. This milestone was recognized as research and development expense in the first quarter of 2020. The Company also paid $1.0 million when the IND was cleared by FDA in February 2021 and $2.0 million upon the initiation of the Phase 1b clinical trial in March 2021. These milestones were recognized as research and development expenses in the first quarter of 2021. The Company may also be required to make additional milestone payments during the development of FX301, including up to $5.0 million through initiation of a Phase 2 PoC clinical trial and, following successful PoC, up to $40.8 million in development and global regulatory approval milestone payments and up to an additional $75.0 million in sales-related milestone payments. Future milestone payments earned prior to regulatory approval of FX301 would be recognized as research and development expense in the period when the milestone events become probable of being achieved. Future milestones earned subsequent to regulatory approval would be recognized as an intangible asset and amortized to expense over the estimated life of FX301. As of June 30, 2021, no other milestones under the arrangement were probable of being achieved. As part of the transaction, the Company became the direct licensee of certain underlying Xenon patents and other proprietary rights related to XEN402 for human applications. The Xenon agreement grants the Company an exclusive, royalty-bearing, world-wide right and license (with a right to sublicense) for human applications under its patents directly related to XEN402, with a similar royalty-free license to other Xenon proprietary rights directly related to XEN402. The agreement with Xenon includes a tiered royalty ranging from mid-single digits to low double digits that is based on aggregate annual net sales of FX301 and requires the Company to use reasonable efforts to develop FX301 according to timelines set out in the agreement.

13. Subsequent Events

On July 30, 2021, the Company entered into a second amendment (the "2021 Amended Credit Agreement") to its amended and restated credit and security agreement (the "Existing Credit Agreement") with Silicon Valley Bank, as agent and lender, MidCap Financial Trust, MidCap Funding XIII Trust, and the other lenders from time to time party thereto (collectively, the "Lenders"), providing for a term loan facility of up to $75.0 million, with $55.0 million available at closing and an additional $20.0 million (the "second tranche") available upon positive Phase 1 clinical trial data in either of the Company's two pipeline programs, FX201 and FX301, sufficient to initiate a Phase 2 clinical study, and a revolving credit facility of up to $25.0 million, both of which mature on February 1, 2024, which may be extended to July 1, 2026, upon satisfaction of certain specified conditions set forth in the 2021 Amended Credit Agreement (the "Maturity Date"). The Company concurrently borrowed the $55.0 million term loan (the "2021 term

loan"), simultaneously used $48.1 million of the proceeds to repay the outstanding term loan under the Existing Credit Agreement, and drew down $20.0 million from the revolving credit facility, bringing the total revolver balance to $25.0 million.

The 2021 Amended Credit Agreement contains certain representations, warranties, and covenants, including a minimum revenue covenant that will be in effect at any time the Company's liquidity (defined as cash, cash equivalents and marketable securities held with Silicon Valley Bank and certain accounts receivable as deemed eligible under the 2021 Amended Credit Agreement) is below $100.0 million (if the second tranche is undrawn) or $120.0 million (if the second tranche is drawn). Additionally, if the Company's liquidity is below $100.0 million, all amounts received from customer collections will be applied immediately to reduce the revolving credit facility. The minimum revenue covenant, if it applies in the future, is applied to the trailing six-months of net revenue and is determined based on the Company's approved forecast, as determined by the Lenders.

The applicable interest rate under the 2021 Amended Credit Agreement is (a) with respect to the term loan, the greater of (i) the prime rate published by the Wall Street Journal ("Prime Rate") plus 2.75% or (ii) 6.00%, and (b) with respect to the revolving loan is the greater of (i) the Prime Rate plus 1.75% or (ii) 5.00%. Under the term loan credit facility, following an interest-only period ending on August 1, 2023 (if the second tranche is undrawn), or August 1, 2024 (if the second tranche is drawn), principal is due in equal monthly installments through the Maturity Date. The Company may prepay the term loan at any time by paying the outstanding principal balance, a final payment equal to 4.75% of the term loan amount, all accrued interest, and a prepayment fee of 3% of the outstanding term loan amount if repaid in the first year, 2% of the outstanding term loan amount if repaid in the second year, and 1% of the outstanding term loan amount if repaid in the third year of the loan; no prepayment fee is required thereafter.

The Company granted the Lenders a security interest in substantially all of its personal property, rights, and assets, other than intellectual property, to secure the payment of all amounts owed under the 2021 Amended Credit Agreement. The Company also agreed not to encumber any of its intellectual property without the Lenders' prior written consent.

ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following discussion and analysis should be read in conjunction with our financial statements and accompanying notes included in this Quarterly Report on Form 10-Q and the financial statements and accompanying notes thereto for the fiscal year ended December 31, 2020, and the related Management's Discussion and Analysis of Financial Condition and Results of Operations, both of which are contained in our Annual Report on Form 10-K filed by us with the Securities and Exchange Commission, or SEC, on March 10, 2021.

Forward-Looking Statements

This discussion and analysis contains "forward-looking statements" that is statements related to future, not past, events – as defined in Section 21E of the Securities Exchange Act of 1934, as amended, or the Exchange Act that reflect our current expectations regarding future development activities, results of operations, financial condition, cash flow, performance and business prospects, and opportunities, as well as assumptions made by and information currently available to our management. Forward-looking statements, include any statement that does not directly relate to a current historical fact. We have tried to identify forward-looking statements by using words such as "may," "will," "expect," "anticipate," "estimate," "intend," "plan," "predict," "potential," "believe," "should" and similar expressions. Although we believe the expectations reflected in these forward-looking statements are reasonable, we cannot guarantee future results, events, levels of activity, performance or achievement. We undertake no obligation to update these forward-looking statements to reflect events or circumstances after the date of this report or to reflect actual outcomes.

Overview

We are a biopharmaceutical company focused on the discovery, development, and commercialization of novel, local therapies for the treatment of patients with musculoskeletal conditions, beginning with osteoarthritis, the most common form of arthritis, referred to as OA.

On October 6, 2017, the U.S. Food and Drug Administration ("FDA"), approved our product, ZILRETTA, for marketing in the United States. ZILRETTA is the first and only extended-release, intra-articular, or IA (meaning in the joint), injection indicated for the management of OA related knee pain. ZILRETTA is a non-opioid therapy that employs our proprietary microsphere technology to provide pain relief. The pivotal Phase 3 trial, on which the approval of ZILRETTA was based, showed that ZILRETTA met the primary endpoint of pain reduction at Week 12, with statistically significant pain relief extending through Week 16.

We also have two pipeline programs focused on the local treatment of musculoskeletal conditions: FX201, which is an investigational IA gene therapy product candidate in clinical development for the treatment of OA, and FX301, an investigational NaV1.7 inhibitor product candidate in clinical development as a locally administered peripheral analgesic nerve block for control of post-operative pain.

We were incorporated in Delaware in November 2007, and, to date, we have devoted substantially all of our resources to developing our product candidates, including conducting clinical trials with our product candidates, preparing for and undertaking the commercialization of ZILRETTA, providing general and administrative support for these operations, and protecting our intellectual property. From our inception through June 30, 2021, we have funded our operations primarily through the sale of our common stock, convertible preferred stock, and convertible debt, as well as debt financing. Until such time, if ever, as we can generate substantial

product revenue, we expect to finance our cash needs through a combination of equity offerings, debt financings, government or third-party funding, and licensing or collaboration arrangements.

Financing Transaction

On November 4, 2020, we entered into an Equity Distribution Agreement (the "Distribution Agreement") with Goldman Sachs & Co. LLC and Credit Suisse Securities (USA) LLC (collectively, the "Managers") relating to the issuance and sale from time to time of up to $100,000,000 of shares of our common stock. Under the terms of the Distribution Agreement, we will pay the Managers a commission of up to 3% of the gross sales price of any shares sold. As of June 30, 2021, 134,048 shares have been sold under the Distribution Agreement, for total net proceeds of $1.7 million.

Impact of the Coronavirus Global Pandemic ("COVID-19")

In December 2019, a novel strain of coronavirus, which causes the COVID-19 disease, was first reported in Wuhan, China and has since become a global pandemic. COVID-19 has presented a substantial public health and economic challenge around the world and has affected our employees, patients, communities, and business operations, as well as the U.S. economy and financial markets. We believe the impact of COVID-19 on healthcare providers is lessening, and, based on recent surveys, orthopedic practices report that patient flows have returned to approximately 90% of their pre-COVID levels.

While we are encouraged by the growth of ZILRETTA purchases by healthcare providers in the second quarter of 2021, the future impact of COVID-19, including the Delta variant of the virus, on our business remains uncertain and unpredictable.

Q2 2021 Commercial Metrics

Historically, we have provided commercial metrics presenting a cumulative view of ZILRETTA utilization spanning back to the product launch in late 2017. In May 2021, we introduced updated metrics to provide more relevant insights and visibility into the commercial performance of ZILRETTA on a quarterly basis. Net sales in the second quarter were $28.2 million, representing growth of 15% over the first quarter net sales of $24.6 million. Total demand for ZILRETTA by healthcare providers in the second quarter (56,798 units) grew by 7% over the first quarter of 2021 (53,089 units). In the second quarter, 2,105 accounts purchased ZILRETTA as compared to 2,044 accounts in Q1 2021. Of the accounts that purchased ZILRETTA in Q2 2021, 90% purchased product in a prior quarter and approximately 42% of ZILRETTA purchases came from accounts purchasing more than 100 units.

Pipeline Updates

ZILRETTA/FX006 (triamcinolone acetonide extended-release injectable suspension) - IA treatment for OA

ZILRETTA is the first and only extended-release IA therapy for patients confronting OA-related knee pain, and we believe that ZILRETTA's extended-release profile may also provide effective treatment for OA pain in other large joints, including the shoulder. We intend to initiate a registration trial investigating ZILRETTA in shoulder OA in 2021.

FX201 (humantakinogene hadenovec) – Locally Administered Gene Therapy for the Treatment of OA

FX201 is our novel, clinical stage, investigational IA gene therapy product candidate, which is designed to induce the production of interleukin-1 receptor antagonist ("IL-1Ra"), an anti-inflammatory protein. Preclinical data suggest that, following injection of FX201, its genetic material is incorporated into local cells and IL-1Ra is expressed in response to inflammation in the joint tissues. Inflammation is a known cause of pain, and chronic inflammation is thought to play a major role in the progression of OA. By persistently suppressing inflammation, we believe that FX201 has the potential to both reduce pain and possibly modify disease progression. We acquired the rights to FX201 via a definitive agreement with GeneQuine Biotherapeutics GmbH, or GeneQuine, and have an exclusive license to the underlying intellectual property rights for human use of FX201 from Baylor College of Medicine in Houston, Texas. In May 2019, the U.S. Patent and Trademark Office issued patent number 10,301,647, which covers the composition of matter and method of use of FX201 in the treatment of OA with a term through January 2033.

In March 2020, we initiated a Phase 1 single ascending dose ("SAD") study to evaluate the safety and tolerability of FX201 in patients with painful OA of the knee. The multicenter, open-label study is evaluating three doses (low, mid and high dose) of FX201 in cohorts of five to eight patients. In addition, in the first quarter of 2021, we expanded the trial to include up to 20 additional patients in both the low and mid dose treatment groups.

In June 2021, the SAD phase of the study was fully enrolled, and, as of August 1, 40 patients had been treated across all cohorts including the expansion groups. The most commonly observed treatment-related adverse events ("AEs") observed in the trial have been pain, swelling, and effusion, and, in the second quarter, we made the strategic decision to investigate pretreatment with an intra-articularly administered immediate-release steroid prior to FX201 administration as a means to mitigate potential AEs. We expect to treat up to 38 patients with a pretreatment regimen. Additional data readouts are anticipated by the end of 2021, including the interrogation of synovial fluid from patients to assess biological activity of FX201 locally in the joint and potential correlation with clinical endpoints over time.

FX301 (funapide in a proprietary thermosensitive hydrogel) – Locally Administered NaV1.7 Inhibitor for the Treatment of Post-Operative Pain

In September 2019, we entered into a definitive agreement with Xenon Pharmaceuticals that provides us with the global rights to develop and commercialize XEN402, a NaV1.7 inhibitor, for control of post-operative pain. Our investigational product candidate, known as FX301, consists of funapide formulated for extended release from a Flexion proprietary thermosensitive hydrogel for administration as a peripheral nerve block for control of post-operative pain. Within minutes following injection, the thermosensitive formulation has been shown to transition from a liquid to a gel, an effect that we believe can provide local delivery of funapide near target nerves for up to a week. Unlike typical local anesthetics, the selective pharmacology of funapide has the potential to provide effective pain relief while preserving motor function. As such, we believe FX301 could enable ambulation, rapid discharge, and early rehabilitation following musculoskeletal surgery.

In a validated post-operative pain model in pigs, a single injection of FX301 provided both greater analgesic effect from 12 through 72 hours and a longer duration of effect through 72 hours compared to liposomal bupivacaine or placebo. In addition, treatment with FX301 did not significantly affect total walking distance in animals at 2 and 24 hours post-injection, whereas animals treated with liposomal bupivacaine experienced a significant reduction in total walking distance compared with baseline at 2 and 24 hours post-injection.

These data formed the basis of our IND application for FX301, which the FDA cleared in February 2021. In March 2021, we announced the treatment of the first patient in a Phase 1b proof-of-concept trial evaluating the safety and tolerability of FX301 administered as a single-dose, popliteal fossa block (a commonly used nerve block in foot and ankle-related surgeries) in patients undergoing bunionectomy. The Phase 1b randomized, double-blind, placebo-controlled study will be conducted in two parts beginning with a SAD portion, which will investigate FX301 at low and high doses of funapide administered at two volumes in four cohorts of patients undergoing bunionectomy. A total of 48 patients (12 patients per cohort), were randomized to receive either FX301 or placebo. A Safety Monitoring Committee will review data from each dose cohort before the study escalates into higher doses. In July 2021, we fully enrolled the SAD portion of the trial. The data from the SAD portion of the trial will be reviewed, and a decision made regarding expanding a selected dose and volume cohort by another 36 patients. This would support broader understanding of the safety and efficacy in that cohort. Results from this trial could potentially be available in late 2021.

Financial Overview

Revenue

Product Revenue

Net product sales consist of sales of ZILRETTA, which was approved by the FDA on October 6, 2017, and launched in the United States in October 2017. We had not generated any revenue prior to the launch of ZILRETTA.

License Revenue

On March 30, 2020, we entered into an exclusive license agreement with HK Tainuo and Jiangsu Tainuo, a subsidiary of China Shijiazhuang Pharmaceutical Co, Ltd., for the development and commercialization of ZILRETTA in Greater China (consisting of mainland China, Hong Kong and Macau, and Taiwan). Under the terms of the agreement, HK Tainuo paid us an upfront payment of $10.0 million, of which $5.0 million was received as of June 30, 2020, and the remaining $5.0 million was received as of September 30, 2020. We are also eligible to receive up to $32.5 million in aggregate development, regulatory, and commercial sales milestone payments. All payments received from HK Tainuo are subject to applicable Hong Kong withholding taxes. HK Tainuo is responsible for the clinical development, product registration, and commercialization of ZILRETTA in Greater China, and Jiangsu Tainuo serves as the guarantor of HK Tainuo's obligations and responsibilities under the agreement. We are solely responsible for the manufacture and supply of ZILRETTA to HK Tainuo for all clinical and commercial activities. The terms related to product manufacturing and supply, including pricing and minimum purchase requirements agreed to in the license agreement, will be covered by a separate supply agreement. All amounts owed to us are nonrefundable and non-creditable once paid. We concluded that the license and supply obligations were not distinct performance obligations, and therefore the transaction price will be recognized as revenue as our supply obligation is fulfilled over the term of the supply agreement, which has not yet commenced. No revenue was recognized associated with this contract as of June 30, 2021.

Cost of Sales

Cost of sales consists of third-party manufacturing costs, freight, and indirect overhead costs associated with sales of ZILRETTA. Cost of sales also includes period costs related to certain inventory manufacturing services, inventory adjustment charges, and unabsorbed manufacturing and overhead costs, as well as any write-offs of inventory that fails to meet specifications or is otherwise no longer suitable for commercial manufacture.

Research and Development Expenses

Our research and development activities include: preclinical studies, clinical trials, and chemistry, manufacturing, and controls, or CMC, activities. Our research and development expenses consist primarily of:

- expenses incurred under agreements with consultants, contract research organizations ("CROs"), and investigative sites that conduct our preclinical studies and clinical trials;
- costs of acquiring, developing, and manufacturing clinical trial materials;
- personnel costs, including salaries, benefits, stock-based compensation, and travel expenses for employees engaged in scientific research and development functions;
- costs related to compliance with certain regulatory requirements;
- expenses related to the in-license of certain technologies; and
- allocated expenses for rent and maintenance of facilities, insurance, and other general overhead.

We expense research and development expenses as incurred. Our direct research and development expenses consist primarily of external-based costs, such as fees paid to investigators, consultants, investigative sites, CROs, and companies that manufacture our clinical trial materials and potential future commercial supplies and are tracked on a program-by-program basis. We do not allocate personnel costs, facilities, or other indirect expenses to specific research and development programs. These indirect expenses are included within the amounts designated as "Personnel and other costs" in the Results of Operations section below. Inventory acquired prior to receipt of the marketing approval of a product candidate is recorded as research and development expense as incurred.

Our research and development expenses are expected to increase relative to the prior year and for the foreseeable future. Due to the expense reduction measures taken in 2020 in response to the COVID-19 pandemic, in particular a deferral of spending related to clinical trials, research and development expenses were lower than pre-pandemic levels. While the duration of COVID-19 and its impact on our ability to conduct clinical development are highly uncertain, we expect that a return to normal operations will likely result in an increase in future research and development expenses. Specifically, our costs will increase as we conduct additional clinical trials for ZILRETTA, including our planned registration trial in shoulder OA, and conduct further development activities for our pipeline programs, including our on-going clinical trials of FX2021 and FX301.

We cannot determine with certainty the duration of and completion costs associated with ongoing and future clinical trials or the associated regulatory approval process, post-marketing development of ZILRETTA, or development of any product candidates in our pipeline. The duration, costs, and timing associated with the further development of ZILRETTA or the development of other product candidates will depend on a variety of factors, including uncertainties associated with the results of our clinical trials. As a result of these uncertainties, we are currently unable to estimate with any precision our future research and development expenses for expanded indications for ZILRETTA or the product candidates in our pipeline.

Selling, General and Administrative Expenses

Selling, general and administrative expenses consist primarily of personnel costs, including salaries, sales commissions, related benefits, travel expenses, and stock-based compensation of our executive, finance, business development, commercial, information technology, legal, and human resources functions. Other selling, general and administrative expenses include an allocation of facility-related costs, patent filing expenses, and professional fees for legal, consulting, auditing, and tax services.

We anticipate that selling, general, and administrative expenses will increase as compared to the prior year, including external marketing expenses and the operation of our field sales force. We are currently pursuing a sales force optimization effort, which we expect to complete in the second half of 2021, which may impact the extent of selling expenses in the foreseeable future.

Other Income (Expense)

Interest income

Interest income consists of interest earned on our cash and cash equivalents balances and our marketable securities. The primary objective of our investment policy is capital preservation.

Interest expense

Interest expense consists of contractual interest on our 2024 Convertible Notes, which accrue interest at a rate of 3.375% per annum, payable semi-annually, our term loan facility, which, prior to July 30, 2021, accrued interest at a floating interest rate equal to the greater of the prime rate as reported in the Wall Street Journal ("Prime Rate") plus 1.50% or 6.50% per annum, and our revolving credit facility, which, prior to July 30, 2021, accrued interest at a floating interest rate equal to the greater of the Prime Rate or 5.50% per annum. Also included in interest expense is the amortization of the final payment on the term loan and the debt discount related to the convertible notes, which is being amortized to interest expense using the effective interest method over the expected life of the debt.

Other income (expense)

Other income (expense) consists of the amortization of premiums or accretion of discounts related to our marketable securities, realized gains (losses) on redemptions of our marketable securities, gains (losses) from foreign currency transactions, and the amortization of debt issuance costs on the 2024 Convertible Notes, which are being amortized over the term of the loan.

Provision for income taxes

The provision for income taxes consists of foreign withholding taxes related to our license agreement with HK Tainuo.

Critical Accounting Policies and Significant Judgments and Estimates

Our management's discussion and analysis of our financial condition and results of operations is based on our financial statements, which we have prepared in accordance with generally accepted accounting principles in the United States, or GAAP. The preparation of our financial statements requires us to make estimates and assumptions that affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the date of our financial statements and the reported revenue and expenses during the reported periods. We evaluate these estimates and judgments, including those described below, on an ongoing basis. We base our estimates on historical experience, known trends and events, contractual milestones, 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 value of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions.

We believe that the estimates, assumptions, and judgments involved in the accounting policies described in Management's Discussion and Analysis of Financial Condition and Results of Operations in Item 7 of our Annual Report on Form 10-K for the year ended December 31, 2020, have the greatest potential impact on our financial statements, so we consider them to be our critical accounting policies and estimates. There were no material changes to our critical accounting policies and estimates during the six months ended June 30, 2021.

RESULTS OF OPERATIONS

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

The following tables summarize our results of operations for the three and six months ended June 30, 2021:

	Three Months Ended June 30,			
(In thousands)	2021	2020	Change	% Increase/ (Decrease)
Revenues:				
Product revenue, net	$ 28,175	$ 15,451	$ 12,724	82.4 %
Operating expenses:				
Cost of sales	4,979	5,481	(502)	(9.2)%
Research and development	12,669	12,507	162	1.3 %
Selling, general and administrative	27,409	24,730	2,679	10.8 %
Total operating expenses	45,057	42,718	2,339	5.5 %
Loss from operations	(16,882)	(27,267)	10,385	(38.1)%
Other (expense) income:				
Interest income	177	95	82	86.3 %
Interest expense	(5,180)	(5,002)	(178)	3.6 %
Other expense	(323)	(197)	(126)	64.0 %
Total other (expense) income	(5,326)	(5,104)	(222)	4.3 %
Loss before income taxes	(22,208)	(32,371)	10,163	(31.4)%
Income tax expense	—	248	(248)	NM
Net loss	$ (22,208)	$ (32,619)	10,411	(31.9)%

(In thousands)	Six Months Ended June 30, 2021	2020	Change	% Increase/ (Decrease)
Revenues:				
Product revenue, net	$ 52,764	$ 35,578	$ 17,186	48.3 %
Operating expenses:				
Cost of sales	11,064	7,757	3,307	42.6 %
Research and development	26,716	33,641	(6,925)	(20.6)%
Selling, general and administrative	55,007	54,029	978	1.8 %
Total operating expenses	92,787	95,427	(2,640)	(2.8)%
Loss from operations	(40,023)	(59,849)	19,826	(33.1)%
Other (expense) income:				
Interest income	477	522	(45)	(8.6)%
Interest expense	(10,369)	(9,723)	(646)	6.6 %
Other expense	(849)	(123)	(726)	590.2 %
Total other (expense) income	(10,741)	(9,324)	(1,417)	15.2 %
Loss before income taxes	(50,764)	(69,173)	18,409	(26.6)%
Income tax expense	—	248	(248)	NM
Net loss	$ (50,764)	$ (69,421)	18,657	(26.9)%

Product Revenue

The following table presents the adjustments deducted from gross product revenue to arrive at net product revenue for sales of ZILRETTA during the three and six months ended June 30, 2021 and 2020:

(In thousands, except for % of sales)	Three Months Ended June 30, 2021	% of Sales	2020	% of Sales	Six Months Ended June 30, 2021	% of Sales	2020	% of Sales
Product revenue, gross	$ 34,552	100.0%	$ 18,079	100.0%	$ 64,458	100.0%	$ 40,794	100.0%
Adjustments to product revenue, gross								
Provider discounts and rebates	(3,100)	(9.0)%	(893)	(4.9)%	(5,803)	(9.0)%	(1,428)	(3.5)%
All other	(3,277)	(9.5)%	(1,735)	(9.6)%	(5,891)	(9.1)%	(3,788)	(9.3)%
Product revenue, net	$ 28,175	81.5%	$ 15,451	85.5%	$ 52,764	81.9%	$ 35,578	87.2%

Net product revenue for the three months ended June 30, 2021 and 2020, was $28.2 million and $15.5 million, respectively. The period-over-period increase was due to an increase in the number of ZILRETTA units sold, which resulted in an increase in net revenue of $13.4 million, offset by a decrease of $0.7 million, which was attributable to a decrease in the net price per unit primarily due to provider rebate offerings and other discounts. Net revenue for the three months ended June 30, 2020, included the adverse impact of COVID-19 on the operations of healthcare providers, which resulted in a material decline in net revenue as compared to our prior expectations.

Net product revenue for the six months ended June 30, 2021 and 2020, was $52.8 million and $35.6 million, respectively. The period-over-period increase was due to an increase in the number of ZILRETTA units sold, which resulted in an increase in net revenue of $19.4 million, offset by a decrease of $2.2 million, which was attributable to a decrease in the net price per unit primarily due to provider rebate offerings and other discounts.

For further discussion regarding our revenue recognition policy, see Note 2, “Summary of Significant Accounting Policies,” in the Notes to Condensed Consolidated Financial Statements included in Part I, Item I of this Quarterly Report on Form 10-Q.

Cost of Sales

Cost of sales was $5.0 million and $5.5 million for the three months ended June 30, 2021 and 2020, respectively. For the three months ended June 30, 2021, cost of sales was comprised of $2.8 million related to the actual cost of units sold, $2.1 million of unabsorbed manufacturing and overhead costs related to the operation of the facility at Patheon, and $0.1 million related to the write-down of short-dated inventory that is not expected to be sold prior to expiry. For the three months ended June 30, 2020, cost of sales was comprised of $1.6 million related to the actual cost of units sold, $3.4 million of unabsorbed overhead associated with the voluntary, temporary suspension of manufacturing activities at Patheon due to COVID-19 impacts on sales of ZILRETTA, and $0.5 million of period costs and other adjustments.

Cost of sales was $11.1 and $7.8 million for the six months ended June 30, 2021 and 2020, respectively. For the six months ended June 30, 2021, costs of sales consisted of $5.3 million related to the actual cost of units sold, $5.2 million of unabsorbed manufacturing and overhead costs related to the operation of the facility at Patheon, and $0.6 million related to the write-down of short-dated inventory that is not expected to be sold prior to expiry. For the six months ended June 30, 2020, cost of sales consisted of

$3.6 million related to the actual cost of units sold, $3.4 million of unabsorbed manufacturing overhead, and $0.8 million of period costs and adjustments.

Research and Development Expenses

	Three Months Ended June 30,			
(In thousands)	2021	2020	Change	% Increase/ (Decrease)
Direct research and development expenses by program:				
ZILRETTA	$ 1,459	$ 2,319	$ (860)	(37.1)%
FX201	1,889	1,243	646	52.0%
FX301	1,896	1,480	416	28.1%
Portfolio expansion	290	31	259	835.5%
Other	503	258	245	95.0%
Total direct research and development expenses	6,037	5,331	706	13.2%
Personnel and other costs	6,632	7,176	(544)	(7.6)%
Total research and development expenses	$ 12,669	$ 12,507	$ 162	1.3%

	Six Months Ended June 30,			
(In thousands)	2021	2020	Change	% Increase/ (Decrease)
Direct research and development expenses by program:				
ZILRETTA	$ 2,644	$ 7,145	$ (4,501)	(63.0)%
FX201	3,357	4,958	$ (1,601)	(32.3)%
FX301	6,039	3,202	$ 2,837	88.6%
Portfolio expansion	465	207	258	124.6%
Other	962	899	63	7.0%
Total direct research and development expenses	13,467	16,411	(2,944)	(17.9)%
Personnel and other costs	13,249	17,230	(3,981)	(23.1)%
Total research and development expenses	$ 26,716	$ 33,641	$ (6,925)	(20.6)%

Research and development expenses were $12.7 million and $12.5 million for the three months ended June 30, 2021 and 2020, respectively. For the three months ended June 30, 2021, development expenses for ZILRETTA decreased by $0.9 million due to a reduction in ZILRETTA life cycle management activities. Salary and other employee-related costs and stock-based compensation expense also decreased by $0.5 million as a result of lower headcount. These decreases were partially offset by increases of $0.6 million and $0.4 million, respectively, related to the FX201 and FX301 pipeline programs due to increased clinical trial activity.

Research and development expenses were $26.7 million and $33.6 million for the six months ended June 30, 2021 and 2020, respectively. The decrease in research and development expense of $6.9 million was primarily due to a decrease of $4.5 million in development expense for ZILRETTA due to a reduction in ZILRETTA life cycle management activities, a decrease of $1.6 million related to FX201, which is largely due to the $2.5 million milestone payment related to dosing the first human patient in the Phase 1 clinical trial that occurred in the first quarter of 2020, partially offset by increased clinical trial activity in 2021, and a decrease of $4.0 million in salary and other employee-related costs and stock-based compensation expense related to lower headcount. Decreases were partially offset by an increase of $2.8 million related to FX301, which is attributed to the achievement of certain development milestones, including the clearing of the IND by FDA and the initiation of the Phase 1b clinical trial, both of which occurred in the first quarter of 2021, and a $0.3 million increase in costs related to our portfolio expansion.

Selling, General and Administrative Expenses

Selling, general and administrative expenses were $27.4 million and $24.7 million for the three months ended June 30, 2021 and 2020, respectively. Selling expenses were $18.9 million and $16.8 million for the three months ended June 30, 2021 and 2020, respectively. The year-over-year increase in selling expenses of $2.1 million was primarily due to the partial resumption of industry conferences and physician speaker programs and increases in business travel during the quarter. General and administrative expenses were $8.5 million and $7.9 million for the three months ended June 30, 2021 and 2020, respectively, which represents an increase of $0.6 million.

Selling, general and administrative expenses were $55.0 million and $54.0 million for the six months ended June 30, 2021 and 2020, respectively. Selling expenses were $37.9 million and $37.3 million for the six months ended June 30, 2021 and 2020, respectively. The year-over-year increase in selling expenses of $0.6 million was primarily due to the partial resumption of industry conferences and physician speaker programs and increases in business travel. General and administrative expenses were $17.1 million and $16.7 million for the six months ended June 30, 2021 and 2020, respectively, which represents an increase of $0.4 million.

Other Income (Expense)

Interest income was $0.2 million and $0.1 million for the three months ended June 30, 2021 and 2020, respectively. The increase in interest income was primarily due to an increase in the average investment balance as well as an increase in interest rates over the period. Interest income was $0.5 million and $0.5 million for the six months ended June 30, 2021 and 2020.

Interest expense was $5.2 million and $5.0 million for the three months ended June 30, 2021 and 2020, respectively. Interest expense was $10.4 million and $9.7 million for the six months ended June 30, 2021 and 2020, respectively. The increase in interest expense was attributed to the restructuring of our 2019 term loan in May 2020, which resulted in interest being paid on a higher principal amount, as well as an increase in the amortization of the debt discount on the 2024 Convertible Notes.

We recorded other expense of $0.3 million for the three months ended June 30, 2021, compared to $0.2 million for the three months ended June 30, 2020. The increase in other expense was primarily due to changes in the price of debt securities, resulting in increased amortization of premiums. Other expense was $0.8 million and $0.1 million for the six months ended June 30, 2021 and 2020.

Liquidity and Capital Resources

For the six months ended June 30, 2021, we generated $52.8 million in net product revenue. We have incurred significant net losses in each year since our inception, including net losses of $113.7 million, $149.8 million, and $169.7 million, for fiscal years 2020, 2019, and 2018, respectively, and $50.8 million for the six months ended June 30, 2021. As of June 30, 2021, we had an accumulated deficit of $833.1 million. We anticipate that we will continue to incur losses over the next few years.

Since our inception through June 30, 2021, we have funded our operations primarily through the sale of our common stock and convertible preferred stock and convertible debt, and through venture debt financing, including amounts from our initial and follow-on public offerings during 2014, 2016, 2017, and most recently in May 2020, as well as our term loan facility entered into in 2015 and 2019 and our 2024 Convertible Notes issuance in 2017. This funding is necessary to support the commercialization of ZILRETTA and to perform the research and development activities required to develop our other product candidates in order to generate potential future revenue streams. We may not be able to obtain financing on acceptable terms, or at all. In particular, as a result of the COVID-19 pandemic and actions taken to slow its spread, the global credit and financial markets have experienced extreme volatility and disruptions, including diminished liquidity and credit availability, declines in consumer confidence, declines in economic growth, increases in unemployment rates, and uncertainty about economic stability. If the equity and credit markets deteriorate, it may make any additional debt or equity financing more difficult, more costly, and more dilutive.

We expect that our research and development expenses will increase in 2021 and beyond and, as a result, we may need additional capital to fund our operations, which we may seek to obtain through one or more equity offerings, debt and convertible debt financings, government or other third-party funding, and licensing or collaboration arrangements.

As of June 30, 2021, we had cash, cash equivalents, and marketable securities of $131.2 million. Based on our current operating plan we anticipate that our existing cash, cash equivalents, and marketable securities will fund our operations for at least the next 12 months from the issuance date of the financial statements included in this report. Cash in excess of immediate requirements is invested in accordance with our investment policy, primarily with an objective of capital preservation.

On July 30, 2021, we entered into a second amendment (the “2021 Amended Credit Agreement”) to our Amended and Restated Credit and Security Agreement (the “Existing Credit Agreement”) with Silicon Valley Bank, as agent and lender, MidCap Financial Trust, MidCap Funding XIII Trust, and the other lenders from time to time party thereto (collectively, the “Lenders”), providing for a term loan facility of up to $75.0 million, with $55.0 million available at closing and an additional $20.0 million (the “second tranche”) available upon positive Phase 1 clinical trial data in either of our two pipeline programs, FX201 and FX301, sufficient to initiate a Phase 2 clinical study, and a revolving credit facility of up to $25.0 million, both of which mature on February 1, 2024, which may be extended to July 1, 2026, upon satisfaction of certain specified conditions set forth in the 2021 Amended Credit Agreement (the “Maturity Date”). We concurrently borrowed the $55.0 million term loan (the “2021 term loan”), simultaneously used $48.1 million of the proceeds to repay the outstanding term loan under the Existing Credit Agreement, and drew down $20.0 million from the revolving credit facility, bringing the total revolver balance to $25.0 million.

The 2021 Amended Credit Agreement contains certain representations, warranties, and covenants, including a minimum revenue covenant that will be in effect at any time our liquidity (defined as cash, cash equivalents and marketable securities held with Silicon Valley Bank and certain accounts receivable as deemed eligible under the 2021 Amended Credit Agreement) is below $100.0 million (if the second tranche is undrawn) or $120.0 million (if the second tranche is drawn). Additionally, if our liquidity is below $100.0 million, all amounts received from customer collections will be applied immediately to reduce the revolving credit facility. The minimum revenue covenant, if it applies in the future, is applied to the trailing six-months of net revenue and is determined based on our approved forecast, as determined by the Lenders. If the revenue covenant becomes applicable and we fail to comply with it, the amounts due under the 2021 Amended Credit Agreement could be declared immediately due and payable.

Term loan borrowings under the 2021 Amended Credit Agreement accrue interest monthly at a floating interest rate equal to the greater of (i) the Prime Rate plus 2.75% or (ii) 6.00% per annum. Under the term loan credit facility, following an interest-only period ending on August 1, 2023 (if the second tranche is undrawn) or August 1, 2024 (if the second tranche is drawn), principal is due in equal monthly installments through the Maturity Date. We may prepay the term loan at any time by paying the outstanding principal

balance, a final payment equal to 4.75% of the term loan amount, all accrued interest, and a prepayment fee of 3% of the outstanding term loan amount if repaid in the first year, 2% of the outstanding term loan amount if repaid in the second year, and 1% of the outstanding term loan amount if repaid in the third year of the loan; no prepayment fee is required thereafter.

Revolving borrowings under the 2021 Amended Credit Agreement accrue interest monthly at a floating interest rate equal to the greater of (i) the Prime Rate plus 1.75% or (ii) 5.00% per annum. The revolving credit facility is co-terminus with the term loan credit facility. If the interest payment on the revolving credit facility is less than the amount of interest that would have been payable had we borrowed 25% of the total commitments under the revolving credit facility, or the Revolving Commitment Amount, then we will be required to pay the difference. We are also required to pay a facility fee in respect of the revolving credit facility equal to 0.5% of the Revolving Commitment Amount payable at closing and 0.5% of the Revolving Commitment Amount payable on the first anniversary of closing. We may retire the revolving credit facility early, at any time, by paying the outstanding principal balance, all accrued interest, and a termination fee equal to 2% of the Revolving Commitment Amount if repaid in the first year, and 1% of the Revolving Commitment Amount if repaid in the second year; with no termination fee thereafter. To the extent any portion of the Revolving Commitment Amount is undrawn, we will be required to pay an “unused line fee” equal to 0.25% per annum of the average unused portion of the Revolving Commitment Amount, calculated on a calendar year basis as an amount equal to the difference between (i) the Revolving Commitment Amount and (ii) the greater of (A) 25.0% of the Revolving Commitment Amount, and (B) the average for the period of the daily closing balance of the Revolving Commitment Amount outstanding.

On November 4, 2020, we entered into the Distribution Agreement with Goldman Sachs & Co. LLC and Credit Suisse Securities (USA) LLC (collectively, the “Managers”) relating to the issuance and sale from time to time of up to $100,000,000 of shares of our common stock. Under the terms of the Distribution Agreement, we will pay the Managers a commission of up to 3% of the gross sales price of any shares sold. As of June 30, 2021, 134,048 shares had been sold under the Distribution Agreement, for total net proceeds of $1.7 million.

The following table shows a summary of our cash flows for the six months ended June 30, 2021 and 2020:

	Six Months Ended June 30,	
(In thousands)	**2021**	**2020**
Cash flows used in operating activities	$ (37,236)	$ (48,607)
Cash flows provided by investing activities	42,296	31,370
Cash flows (used in) provided by financing activities	(5,135)	118,083
Net (decrease) increase in cash and cash equivalents	$ (75)	$ 100,846

Net Cash Used in Operating Activities

Operating activities used $37.2 million of cash in the six months ended June 30, 2021. Cash used in operating activities resulted primarily from our net loss for the period of $50.8 million plus changes in our operating assets and liabilities of $3.4 million, partially offset by non-cash charges of $17.0 million. Changes in our operating assets and liabilities consisted primarily of a $5.1 million increase in accounts receivable, a $0.4 million increase in prepaid expenses and other current assets, and a $0.7 million decrease in lease liabilities primarily due to principal lease payments, partially offset by a $2.5 million decrease in inventory, and an increase of $0.2 million in accounts payable and accrued expenses. Our non-cash charges consisted primarily of $8.6 million of stock-based compensation expense, $5.0 million related to the amortization of the debt discount and debt issuance costs related to the 2024 Convertible Notes, $0.9 million related to the amortization of right-of-use assets, $1.0 million of depreciation, $0.5 million of non-cash interest expense related to amortization of the final payment due on the 2019 term loan, $0.4 million of amortization of premiums paid for the purchase of marketable securities, and $0.6 million related to provision for inventory from the write-down of short-dated ZILRETTA inventory that is not expected to be sold prior to expiry.

Operating activities used $48.6 million of cash in the six months ended June 30, 2020. The cash flow used in operating activities resulted primarily from our net loss for the period of $69.4 million, partially offset by changes in our operating assets and liabilities of $5.8 million and non-cash charges of $15.1 million. Changes in our operating assets and liabilities consisted primarily of a $15.6 million decrease in accounts receivable, a $0.3 million decrease in prepaid expenses and other current assets, and a $5.0 million increase in deferred revenue related to the license agreement with HK Tainuo, partially offset by a $2.5 million increase in inventory, a decrease of $11.9 million in accounts payable and accrued expenses, and a $0.7 million decrease in lease liabilities and other long-term liabilities primarily due to principal lease payments. Our non-cash charges consisted primarily of $8.4 million of stock-based compensation expense, $4.6 million related to the amortization of the debt discount and debt issuance costs related to the 2024 Convertible Notes, $0.8 million related to the amortization of right-of-use assets, $0.8 million of depreciation, $0.3 million of non-cash interest expense related to amortization of the final payment due on the 2019 term loan, and $0.3 million related to the loss on disposal of fixed assets, partially offset by $0.1 million of net accretion of discounts related to our investments.

Net Cash Provided by Investing Activities

Net cash provided by investing activities was $42.3 million in the six months ended June 30, 2021. Net cash provided by investing activities consisted primarily of cash received for the redemption and sale of marketable securities of $45.6 million, partially offset by cash used to purchase marketable securities of $2.0 million and capital expenditures of $1.3 million, primarily relating to the purchase of equipment associated with the expansion of our manufacturing facilities at Patheon.

Net cash provided by investing activities was $31.4 million in the six months ended June 30, 2020. Net cash provided by investing activities consisted primarily of cash received for the redemption and sale of marketable securities of $49.4 million, partially offset by cash used to purchase marketable securities of $12.5 million and $5.5 million used for capital expenditures, primarily relating to the purchase of equipment associated with the expansion of our manufacturing facilities at Patheon.

Net Cash (Used in) Provided by Financing Activities

Net cash used in financing activities was $5.1 million for the six months ended June 30, 2021, which consisted of $7.6 million related the payment of principal on our 2019 term loan and public offering costs paid during the period of $0.1 million, partially offset by $0.9 million related to employee stock purchases through our employee stock purchase plan and $1.7 million related to the net proceeds received from the sale of common stock under our Distribution Agreement.

Net cash provided by financing activities was $118.1 million for the six months ended June 30, 2020, of which $97.2 million related to the net proceeds received from the offering of our common stock, offset by public offering costs paid during the period of $0.1 million, $0.9 million relating to employee stock purchases through our employee stock purchase plan, as well as $20.0 million borrowed under the revolving credit facility associated with our 2019 term loan.

Contractual Obligations

For a discussion of our contractual obligations, see “Item 7. Management’s Discussion and Analysis of Financial Condition and Results of Operations” in our 2020 Annual Report on Form 10-K. There have not been any material changes to such contractual obligations or potential milestone payments since December 31, 2020, other than as described in Notes 9, 12, and 13 to our unaudited consolidated financial statements included elsewhere in this report.

Off-Balance Sheet Arrangements

During the periods presented, we did not have, nor do we currently have, any off-balance sheet arrangements.

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Our primary exposures to market risk are interest income sensitivity and equity price risk. Interest income is affected by changes in the general level of U.S. interest rates. Due to the short-term duration of a majority of our investment portfolio and the low risk profile of our investments, an immediate 10.0% change in interest rates would not have a material effect on the fair market value of our portfolio. Accordingly, we would not expect our operating results or cash flows to be affected to any significant degree by a sudden change in market interest rates on our investment portfolio.

Investments

We do not believe that our cash, cash equivalents, and marketable securities have significant risk of default or illiquidity. While our cash and investments are invested with the goal of capital preservation, we cannot provide absolute assurance that in the future our investments will not be subject to adverse changes in market value. In addition, we maintain significant amounts of cash and cash equivalents at one or more financial institutions that are in excess of federally insured limits.

Term Loans

We have borrowed $55.0 million in term loans under our 2021 Amended Credit Agreement. Term loan borrowings under the 2021 Amended Credit Agreement accrue interest monthly at a floating interest rate equal to the greater of (i) the Prime Rate plus 2.75% or (ii) 6.0% per annum.

Revolving Credit Facility

We have borrowed $25.0 million under the revolving credit facility. Under the 2021 Amended Credit Agreement, borrowings under the revolving credit facility accrue interest monthly at a floating interest rate equal to the greater of (i) the Prime Rate plus 1.75% or (ii) or 5.0% per annum. In addition to paying interest on any amounts borrowed under the revolving credit facility, we may in the future owe an unused revolving line facility fee equal to 0.25% per annum of the average unused portion of the revolving line, multiplied by the difference between the total amount available to be borrowed (the “Revolving Commitment Amount”) and the greater of the average outstanding revolver balance and 25% of the Revolving Commitment Amount.

Convertible Notes

On May 2, 2017, we issued $201.3 million aggregate principal amount of 2024 Convertible Notes. The 2024 Convertible Notes are senior unsecured obligations and bear interest at a rate of 3.375% per year, payable semi-annually in arrears on May and November 1st of each year. The 2024 Convertible Notes will mature on May 1, 2024, unless repurchased or converted earlier. The 2024 Convertible Notes will be convertible into cash, shares of our common stock, or a combination thereof, at our election (subject to certain limitations in the 2015 term loan), at a conversion rate of approximately 37.3413 shares of common stock per $1,000 principal amount of the 2024 Convertible Notes, which corresponds to a conversion price of approximately $26.78 per share of our common

stock and represents a conversion premium of approximately 35% based on the last reported sale price of our common stock of $19.72 on May 2, 2017, the date the 2024 Convertible Notes offering was priced. As of May 2, 2017, the fair value of the 2024 Convertible Notes was $136.7 million. Our 2024 Convertible Notes include conversion and settlement provisions that are based on the price of our common stock at conversion or at maturity of the 2024 Convertible Notes. The amount of cash we may be required to pay is determined by the price of our common stock. The fair value of our 2024 Convertible Notes are dependent on the price and volatility of our common stock and will generally increase or decrease as the market price of our common stock changes. The estimated fair value of the 2024 Convertible Notes, face value of $201.3 million, was $183.9 million at June 30, 2021.

Foreign Currency Exchange

Most of our transactions are conducted in the U.S. dollar. We do have certain agreements with vendors located outside the United States, which have transactions conducted primarily in British Pounds and Euros. As of June 30, 2021, we had $2.0 million in liabilities denominated in British Pounds. A hypothetical 10% change in foreign exchange rates would result in a $0.2 million change in the value of our liabilities. No other payables to vendors were denominated in currencies other than in U.S. dollars. As of June 30, 2021, we had $4.1 million of cash denominated in British Pounds. A hypothetical 10% change in foreign exchange rates would result in a $0.4 million change in the amount of cash denominated in British Pounds.

ITEM 4. CONTROLS AND PROCEDURES

Disclosure Controls and Procedures

We are responsible for maintaining disclosure controls and procedures, as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act. Disclosure controls and procedures are controls and other procedures designed to ensure that the information required to be disclosed by us in the reports that we file or submit under the Exchange Act is recorded, processed, summarized, and reported within the time periods specified in the SEC’s rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by us in the reports that we file or submit under the Exchange Act is accumulated and communicated to our management, including our principal executive officer and principal financial officer, as appropriate to allow timely decisions regarding required disclosure.

In designing and evaluating our disclosure controls and procedures, our management recognized that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives, and our management necessarily was required to apply its judgment in evaluating the cost-benefit relationship of possible controls and procedures.

Based on our management’s evaluation (with the participation of our principal executive officer and principal financial officer) of our disclosure controls and procedures as required by Rule 13a-15 under the Exchange Act, our principal executive officer and principal financial officer have concluded that our disclosure controls and procedures were effective to achieve their stated purpose as of June 30, 2021, the end of the period covered by this report.

Changes in Internal Control over Financial Reporting

There were no changes in our internal control over financial reporting during the quarter ended June 30, 2021, that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

PART II. OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS

We are not currently a party to any material legal proceedings.

ITEM 1A. RISK FACTORS

As disclosed in “Item 1A. Risk Factors” in our Annual Report on Form 10-K for the year ended December 31, 2020, which was filed on March 10, 2021, there are a number of risks and uncertainties that may have a material effect on our business, financial condition, results of operations, and future growth prospects. There are also additional risks and uncertainties that we are unaware of that may become important factors that affect us. The following risk factors are either new or have changed materially from those set forth in our Annual Report on Form 10-K for the year ended December 31, 2020. You should carefully review the risks described below and in our Annual Report on Form 10-K and in other reports we file with the Securities and Exchange Commission in evaluating our business.

Our existing indebtedness contains restrictions that limit our flexibility in operating our business. In addition, we may be required to make a prepayment or repay our outstanding indebtedness earlier than we expect.

On August 2, 2019, we entered into an Amended and Restated Credit and Security Agreement with Silicon Valley Bank, MidCap Financial Trust, and Flexpoint MCLS Holdings, LLC, or the Credit Agreement, which provides for a term loan of $40.0 million and a revolving credit facility up to $20.0 million. We concurrently drew down the $40.0 million term loan and used $7.7 million of the proceeds to repay the remaining amount owed on our prior credit facility. In February 2020, we drew down $20.0 million from the revolving credit facility. On May 18, 2020, we entered into an amendment to the Credit Agreement pursuant to which we borrowed $15.0 million under a new term loan advance and immediately used the proceeds to repay an equal amount under the revolving credit facility, and the maximum principal amount of the revolving credit facility was reduced from $20.0 million to $5.0 million. On July 30, 2021, we entered into a second amendment, or the 2021 Amended Credit Agreement, to the Credit Agreement, which provides for a term loan of up to $75.0 million, with $55.0 million available at closing and an additional $20.0 million, or the second tranche, available upon positive Phase 1 clinical trial data in either of our two pipeline programs, FX201 and FX301, sufficient to initiate a Phase 2 clinical study, and a revolving credit facility of up to $25.0 million. We concurrently borrowed the $55.0 million term loan, simultaneously used $48.1 million of the proceeds to repay the previously outstanding term loan under the Credit Agreement, and drew down $20.0 million from the revolving credit facility, bringing the total revolver balance to $25.0 million. The 2021 Amended Credit Agreement contains various covenants that limit our ability to engage in specified types of transactions. These covenants limit our ability to, among other things:

- incur or assume certain debt;
- merge or consolidate or acquire all or substantially all of the capital stock or property of another entity;
- enter into any transaction or series of related transactions that would be deemed to result in a change in control of us under the terms of the agreement;
- change the nature of our business;
- change our organizational structure or type;
- amend, modify, or waive any of our organizational documents;
- license, transfer, or dispose of certain assets;
- grant certain types of liens on our assets;
- make certain investments;
- pay cash dividends;
- enter into material transactions with affiliates; and
- amend or waive provisions of material agreements in certain manners.

Under the 2021 Amended Credit Agreement we are subject to a minimum liquidity threshold, such that at any time our liquidity (defined as cash, cash equivalents, and marketable securities held with Silicon Valley Bank and certain accounts receivable as deemed eligible under the 2021 Amended Credit Agreement) is below $100.0 million (if the second tranche is undrawn) or $120.0 million (if the second tranche is drawn), we will become subject to a minimum revenue covenant. The minimum revenue covenant, if it applies in the future, is applied to the trailing six months of net revenue and is determined based on our approved forecast, as determined by the Lenders.

If the revenue covenant becomes applicable to us and we fail to meet it, the commitments under the 2021 Amended Credit Agreement could be terminated and any outstanding borrowings, together with accrued interest, under the 2021 Amended Credit Agreement could be declared immediately due and payable. Additionally, if our liquidity is below $120.0 million, all amounts received from customer collections will be applied immediately to reduce the revolving credit facility. The restrictive covenants in the 2021 Amended Credit Agreement could prevent us from pursuing business opportunities that we or our stockholders may consider beneficial.

A breach of any of these covenants could result in an event of default under the 2021 Amended Credit Agreement. An event of default will also occur if, among other things, a material adverse change in our business, operations, or condition occurs, which could potentially include a material impairment of the prospect of our repayment of any portion of the amounts we owe under the 2021 Amended Credit Agreement. In the case of a continuing event of default under the 2021 Amended Credit Agreement, the lenders could elect to declare all amounts outstanding to be immediately due and payable, proceed against the collateral in which we granted the lenders a security interest under the 2021 Amended Credit Agreement, or otherwise exercise the rights of a secured creditor. Amounts outstanding under the 2021 Amended Credit Agreement are secured by all of our existing and future assets, excluding intellectual property, which is subject to a negative pledge arrangement.

In April 2017, we also issued $201.3 million principal amount of our 3.375% Convertible Senior Notes due 2024, or the 2024 Convertible Notes. The 2024 Convertible Notes will mature on May 1, 2024, unless earlier redeemed, repurchased, or converted in accordance with the terms of the indenture governing the notes. If the 2024 Convertible Notes are not redeemed or repurchased on or before their maturity date of May 1, 2024, we will be required to convert all or a portion of the amounts due under the 2024 Convertible Notes into common stock, which would cause our stockholders to experience additional dilution and could cause our stock price to fall. If specified bankruptcy, insolvency, or reorganization-related events of default occur, or if certain other events of default occur, including a default under the 2021 Amended Credit Agreement resulting in an obligation to repay the indebtedness, and the trustee or certain holders of the 2024 Convertible Notes elect, the principal of, and accrued and unpaid interest on, all of the then-outstanding 2024 Convertible Notes will automatically become due and payable. In addition, if we undergo certain fundamental change transactions specified in the indenture governing the 2024 Convertible Notes, the holders of the notes may require us to repurchase their notes at a price equal to 100% of the principal amount of the notes, plus any accrued and unpaid interest.

We may not have enough available cash or be able to raise additional funds on satisfactory terms, if at all, through equity or debt financings to repay or refinance our indebtedness at the time any such repayment or repurchase is required. In such an event, we may be required to delay, limit, reduce, or terminate our product development or commercialization efforts or grant others rights to develop and market product candidates that we would otherwise prefer to develop and market ourselves. Our business, financial condition, and results of operations could be materially adversely affected as a result.

We may not have enough available cash or be able to raise additional funds on satisfactory terms, if at all, through equity or debt financings to repay or refinance our indebtedness at the time any such repayment or repurchase is required. In such an event, we may be required to delay, limit, reduce, or terminate our product development or commercialization efforts or grant others rights to develop and market product candidates that we would otherwise prefer to develop and market ourselves. Our business, financial condition, and results of operations could be materially adversely affected as a result.

COVID-19 will likely continue to have an adverse impact on our clinical trials and further development of our pipeline.

COVID-19's impact on the healthcare industry is significant and has impacted our on-going clinical trials and may disrupt further development of our pipeline. For example, in April 2020, we temporarily suspended the active Phase 1 clinical trial evaluating the safety and tolerability of FX201. The decision was made in consideration of guidance from the FDA to ensure the safety of trial participants and minimize risk to trial integrity from disruptions caused by COVID-19. In addition, we decided to terminate the Phase 2 trial evaluating the efficacy of ZILRETTA in patients with shoulder OA and adhesive capsulitis, given the small number of patients enrolled in the trial, the uncertainty as to when we would be able to restart the study, and the costs required to maintain it in an inactive status. While we subsequently restarted our Phase 1 clinical trial of FX201 in late May 2020, and we intend to initiate a trial investigating ZILRETTA in patients with shoulder OA in 2021 and have started clinical development of FX301, we cannot guarantee that COVID-19's impact or restrictions implemented by government agencies or healthcare facilities in response to COVID-19 will not force us to delay, suspend, or terminate these trials, and we cannot predict how access to, utilization of, and efficacy of COVID-19 vaccines may influence such impacts and restrictions. These impacts of COVID-19 will increase the costs of completing clinical development and delay our ability to obtain marketing approval for our pipeline product candidates and ZILRETTA for additional indications.

If we are unable to effectively train, equip, and deploy our sales force, our ability to successfully commercialize ZILRETTA will be harmed.

We are required to expend significant time and resources to train our sales force to be credible, persuasive, and compliant with applicable laws in marketing ZILRETTA for its approved indication. In addition, we must train our sales force to ensure that an appropriate and compliant message about ZILRETTA is being delivered. Due to the COVID-19 pandemic, our MBMs have been using a mix of in-person and virtual interactions with physicians to convey key information about ZILRETTA and aid physicians and their staff in prescribing and obtaining reimbursement for ZILRETTA. While we have attempted to maintain the effectiveness of our sales and marketing efforts, it may not be as effective as in the pre-COVID environment, as access to some providers remains limited.

In addition, we are currently pursuing a sales force optimization effort, which we expect to complete in the second half of 2021 and will impact our commercialization efforts and selling expenses. If we are unable to maintain an effectively trained sales force, equip them with compliant and effective materials, including medical and sales literature to help them appropriately inform and educate customers regarding the potential benefits and safety of ZILRETTA and its proper administration, and deploy them in an efficient and productive manner, our efforts to successfully commercialize ZILRETTA could be jeopardized, which would negatively impact our ability to generate product revenues.

Recently enacted and future legislation, including health care reform measures, may increase the difficulty and cost for us to commercialize ZILRETTA and any future products and may affect the prices we may obtain.

The United States and some foreign jurisdictions are considering, or have enacted, a number of legislative and regulatory proposals to change the healthcare system in ways that could affect our ability to sell ZILRETTA and any other products approved for sale profitably. Among policy makers and third-party payers in the United States and elsewhere, there is significant interest in promoting changes in healthcare systems with the stated goals of containing healthcare costs, improving quality, and expanding access. In the United States, the pharmaceutical industry has been a particular focus of these efforts and has been, and may continue to be, significantly affected by major legislative, congressional, and enforcement initiatives. Moreover, in some foreign jurisdictions, pricing of prescription pharmaceuticals is already subject to government control.

For example, the Patient Protection and Affordable Care Act, as amended, or PPACA, was intended to, among other items, broaden access to health insurance, reduce or constrain the growth of healthcare spending, enhance remedies against fraud and abuse, add transparency requirements for the healthcare and health insurance industries, impose taxes and fees on the health industry, and impose additional health policy reforms. Among the PPACA provisions of importance to the pharmaceutical industry are the imposition of additional fees, an increase in required rebates and a change in their method of calculation, discounts to eligible beneficiaries under Medicare Part D, expanded discount eligibility for entities under the Public Health Service pharmaceutical pricing program, expansion of the range of existing manufacturer liabilities, expanded eligibility for Medicaid programs, additional reporting requirements, expansion of and enhanced penalties under fraud and abuse laws, and improved market access for follow-on biologic products. There have been legal and political challenges to PPACA. For example, on June 17, 2021 the U.S. Supreme Court dismissed a challenge on procedural grounds that argued the PPACA is unconstitutional in its entirety because the “individual mandate” was repealed by Congress. Thus, the PPACA will remain in effect in its current form. It is possible that the PPACA will be subject to judicial or Congressional challenges in the future. It is unclear how any such challenges and the healthcare reform efforts of the Biden administration will impact PPACA and our business. We expect that PPACA, as well as other healthcare reform measures that may be adopted in the future, may result in more rigorous coverage criteria and lower reimbursement, as well as additional downward pressure on the price that we receive for any approved product, including ZILRETTA. It is also possible that additional governmental action is taken in response to COVID-19.

The market price of our common stock may be highly volatile, you may not be able to resell your shares at a desired market price, and you could lose all or part of your investment.

The trading price of our common stock is likely to be volatile due to a variety of factors, including the following:

- success or perceived success of the commercialization of ZILRETTA;
- the impact and duration of COVID-19 and actions taken to mitigate its spread;
- inability to obtain approval for additional indications for ZILRETTA;
- failure to successfully develop and commercialize additional product candidates;
- changes in the structure of healthcare payment systems;
- adverse results or delays in clinical trials;
- inability to obtain additional funding;
- changes in laws or regulations applicable to our products or product candidates;
- inability to obtain adequate supply for our products or product candidates, or the inability to do so at acceptable prices;
- adverse regulatory decisions;
- introduction of new products or technologies by our competitors;
- failure to meet or exceed product development or financial projections we provide to the public;
- failure to meet or exceed the estimates and projections of the investment community;
- the perception of the pharmaceutical industry by the public, legislatures, regulators, and the investment community;

- announcements of significant acquisitions, strategic partnerships, joint ventures, or capital commitments by us or our competitors;
- disputes or other developments relating to proprietary rights, including patents, litigation matters, and our ability to obtain patent protection for our technologies;
- additions or departures of key scientific or management personnel;
- significant lawsuits, including patent, product liability, or stockholder litigation;
- changes in the market valuations of similar companies;
- sales of our common stock by us or our stockholders in the future; and
- trading volume of our common stock.

The trading price of our common stock may also be dependent upon the valuations and recommendations of the analysts who cover our company. If our results do not meet these analysts' forecasts, the expectations of our investors, or any financial guidance or expectations we provide to investors, the market price of our common stock could decline. Our ability to meet analysts' forecasts (including revenue and profitability), investors' expectations, and our own guidance or financial expectations is substantially dependent on our ability to increase sales of ZILRETTA and to successfully commercialize ZILRETTA in the United States. Because we have not yet fully commercialized ZILRETTA, we and the analysts who cover our company have limited ability to accurately predict future sales results, and actual results may differ materially from expectations.

In addition, the stock market in general, and the Nasdaq Global Market in particular, has experienced extreme price and volume fluctuations, and we have in the past experienced volatility that we believe has been unrelated or disproportionate to our operating performance. For example, during the first quarter of 2020, the closing price of our common stock ranged from $5.53 to $21.13 per share. Broad market and industry factors may continue to negatively affect the market price of our common stock, regardless of our operating performance. For example, there have been instances of groups of investors buying shares of a company's stock in order to drive up its market price, thereby causing traders who have bet that the stock price would fall and contracted to sell shares of that stock with a plan to buy those shares after the share price has fallen (*i.e.*, those who have "shorted" the stock) to buy in as well to forestall even greater losses; this is known as a "short squeeze." These short squeezes have caused extreme volatility in both the stock prices of the companies involved and in the market and have led to the shares of those companies trading at a significantly inflated price per share that is disconnected from the underlying value of the company. Many investors who have purchased shares in those companies at an inflated share price face the risk of losing a significant portion of their original investment, as in many cases the price per share has declined steadily as interest in those stocks has abated. While we do not believe that our common stock has been the target of a short squeeze, there can be no assurance that our common stock will not be impacted by unusual trading activity in the future or that the price of our common stock will not become significantly disconnected from our underlying value.

Future sales and issuances of our common stock or rights to purchase common stock, including pursuant to our equity incentive plans or the conversion of our debt securities, could result in additional dilution of the percentage ownership of our stockholders and could cause our stock price to fall.

We may need significant additional capital in the future to continue our planned operations. To the extent we raise additional capital by issuing equity securities, our stockholders may experience substantial dilution. We may sell such equity securities in one or more transactions at prices, under terms, and in a manner as we may determine from time to time. These sales may result in material dilution to our existing stockholders, and new investors could gain rights superior to our existing stockholders.

Pursuant to our 2013 equity incentive plan, we are authorized to grant stock options and other equity-based awards to our employees, directors, and consultants. The number of shares available for future grant under this plan automatically increases each year by 4% of all shares of our capital stock outstanding as of December 31 of the prior calendar year, subject to the ability of our board of directors to reduce the size of any such increase. Currently, we plan to register the increased number of shares available for issuance under this plan each year. If our board of directors elects to increase the number of shares available for future grant by a significant amount each year, our stockholders would experience additional dilution, which could cause our stock price to fall.

If the 2024 Convertible Notes are not redeemed or repurchased on or before their maturity date of May 1, 2024, we will be required to convert all or a portion of the amounts due under the 2024 Convertible Notes into common stock, which would cause our stockholders to experience additional dilution and could cause our stock price to fall.

ITEM 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS

Recent sales of Unregistered Securities

None.

ITEM 3. DEFAULTS UPON SENIOR SECURITIES

None.

ITEM 4. MINE SAFETY DISCLOSURES

Not applicable.

ITEM 5. OTHER INFORMATION

On July 30, 2021, we entered into a second amendment (the "2021 Amended Credit Agreement") to our Amended and Restated Credit and Security Agreement (the "Existing Credit Agreement") with Silicon Valley Bank, as agent and lender, MidCap Financial Trust, MidCap Funding XIII Trust, and the other lenders from time to time party thereto (collectively, the "Lenders"), providing for a term loan facility of up to $75.0 million, with $55.0 million available at closing and an additional $20.0 million (the "second tranche") available upon positive Phase 1 clinical trial data in either of our two pipeline programs, FX201 and FX301, sufficient to initiate a Phase 2 clinical study, and a revolving credit facility of up to $25.0 million, both of which mature on February 1, 2024, which may be extended to July 1, 2026, upon satisfaction of certain specified conditions set forth in the 2021 Amended Credit Agreement (the "Maturity Date"). We concurrently borrowed the $55.0 million term loan (the "2021 term loan"), simultaneously used $48.1 million of the proceeds to repay the outstanding term loan under the Existing Credit Agreement, and drew down $20.0 million from the revolving credit facility, bringing the total revolver balance to $25.0 million.

The 2021 Amended Credit Agreement contains a minimum revenue covenant that will be in effect at any time our liquidity (defined as cash, cash equivalents and marketable securities held with Silicon Valley Bank and certain accounts receivable as deemed eligible under the 2021 Amended Credit Agreement) is below $100.0 million (if the second tranche is undrawn) or $120.0 million (if the second tranche is drawn). Additionally, if our liquidity is below $100.0 million, all amounts received from customer collections will be applied immediately to reduce the revolving credit facility. The minimum revenue covenant, if it applies in the future, is applied to the trailing six-months of net revenue and is determined based on our approved forecast, as determined by the Lenders. The 2021 Amended Credit Agreement contains substantially the same terms regarding acceleration of amounts due under the credit facility as the Existing Credit Agreement.

The applicable interest rate under the 2021 Amended Credit Agreement is (a) with respect to the term loan, the greater of (i) the prime rate published by the Wall Street Journal ("Prime Rate") plus 2.75% or (ii) 6.00%, and (b) with respect to the revolving loan, is the greater of (i) the Prime Rate plus 1.75% or (ii) 5.00%. Under the term loan facility, following an interest-only period ending on August 1, 2023 (if the second tranche is undrawn), or August 1, 2024 (if the second tranche is drawn), principal is due in equal monthly installments through the Maturity Date. We may prepay the term loans at any time by paying the outstanding principal balance, a final payment equal to 4.75% of the term loan amount, all accrued interest, and a prepayment fee of 3% of the outstanding term loan amount if repaid in the first year, 2% of the outstanding term loan amount if repaid in the second year, and 1% of the outstanding term loan amount if repaid in the third year of the loan; no prepayment fee is required thereafter

We granted the Lenders a security interest in substantially all of our personal property, rights, and assets, other than intellectual property, to secure the payment of all amounts owed under the 2021 Amended Credit Agreement. We also agreed not to encumber any of our intellectual property without the Lenders' prior written consent.

The foregoing description of the second amendment to the Existing Credit Agreement does not purport to be complete and is qualified in its entirety by the second amendment, which is filed herewith as Exhibit 10.4.

ITEM 6. EXHIBITS

Exhibit number	Description of document
3.1	Amended and Restated Certificate of Incorporation of Flexion (Exhibit 3.1, Current Report on Form 8-K, filed with the SEC on February 19, 2014).
3.2	Amended and Restated Bylaws of Flexion (Exhibit 3.2, Current Report on Form 8-K, filed with the SEC on February 19, 2014).
4.1	Form of Common Stock Certificate of Flexion (Exhibit 4.1, Registration Statement on Form S-1 (File No. 333-193233), as amended, filed with the SEC on January 29, 2014).
4.2	Indenture, dated May 2, 2017, by and between Flexion and Wells Fargo Bank, National Association, as trustee (Exhibit 4.1, Current Report on Form 8-K, filed with the SEC on May 2, 2017).
4.3	Form of Note representing Flexion's 3.375% Convertible Senior Notes due 2024 (included as Exhibit A to the Indenture filed as Exhibit 4.1, Current Report on Form 8-K, filed with the SEC on May 2, 2017).
10.1	Separation Agreement between Flexion and Scott Kelley, dated May 3, 2021.
10.2	Offer Letter between Flexion and Frederick Driscoll dated May 12, 2021.
10.3	Offer Letter between Flexion and William Andrews dated May 1, 2021.
10.4	Second Amendment to Amended and Restated Credit and Security Agreement date July 30, 2021.
10.5*	Supply Agreement, dated November 10, 2016, between Flexion and Evonik Corporation.
10.6*	Amendment No. 1 to the July 1, 2016 Supply Agreement by and between Evonik Corporation and Flexion, effective as of June 30, 2021.
31.1	Certification of the Principal Executive Officer pursuant to Rule 13a-14(a) or 15d-14(a) of the Securities Exchange Act of 1934.
31.2	Certification of the Principal Accounting and Financial Officer pursuant to Rule 13a-14(a) or 15d-14(a) of the Securities Exchange Act of 1934.
32.1	Certification of the Principal Executive Officer and Principal Accounting and Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
101.INS	Inline eXtensible Business Reporting Language (XBRL) Instance Document – the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document.
101.SCH	Inline XBRL Taxonomy Extension Schema Document
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document
104	Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101)

* Pursuant to Item 601(b)(10) of Regulation S-K, certain portions of this exhibit have been omitted by means of marking such portions with asterisks because Flexion has determined that the information is not material and would likely cause competitive harm to Flexion if publicly disclosed.

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.

Flexion Therapeutics, Inc.

Date: August 4, 2021

By: /s/ Michael D. Clayman

Michael D. Clayman
Chief Executive Officer
(Principal Executive Officer)

Date: August 4, 2021

By: /s/ Frederick W. Driscoll

Frederick W. Driscoll
Chief Financial Officer
(Principal Accounting and Financial Officer)

Exhibit 10.1

May 3, 2021
Scott Kelley, M.D.
[...***...]

Re: Severance Agreement

Dear Scott:

This letter confirms the terms and provisions of a severance agreement (the "Agreement") between you and Flexion Therapeutics, Inc. (the "Company") related to your termination for "Good Reason," effectuated in accordance with the Letter Agreement between you and the Company dated "as of January 1, 2018" (the "Letter Agreement").

1. Separation. Your last day of work with the Company and your employment termination date will be May 31, 2021 (the "Separation Date").

2. Accrued Salary. The Company will pay you all accrued salary and accrued unused vacation earned through the Separation Date, subject to standard payroll deductions and withholdings. You will receive these payments regardless of whether or not you sign this Agreement.

3. Benefit Plans. If you are currently participating in the Company's group health and dental insurance plans, your participation as an employee will end on the Separation Date. You will receive, under separate cover, information concerning your right to continue your health and dental insurance benefits after that date in accordance with the Consolidated Omnibus Budget Reconciliation Act of 1985 or the state equivalent ("COBRA"). If applicable, your participation in Company-Sponsored Group Life Insurance and Short and Long Term Disability Insurance will cease as of the Separation Date. Deductions for the 401(k) Plan will end with your last regular paycheck (*i.e.*, the paycheck you receive on the Separation Date). You will receive information by mail concerning 401(k) Plan rollover procedures should you be a participant in this program.

4. Severance Benefits. In consideration for timely signing and returning this Agreement to the Company, and in compliance with the promises made herein and in the event you do not revoke your acceptance pursuant to Paragraph 14 below, and you continue to comply with your obligations under the Proprietary Information, Inventions, Non-Solicitation, and Non-Competition Agreement dated August 23, 2017, then the Company will pay or provide to you, as severance:

(a) the equivalent of fifteen (15) months of your base salary in effect on the Separation Date (being $447,744.46), which computes to $559,680.58 in total, subject to standard payroll deductions and withholdings (the “Salary Continuation”). The Salary Continuation will be paid in a series of equal bi-weekly installments of $17,220.94 for 32 pay periods and $8,610.50 for one pay period on the Company’s ordinary payroll schedule from and after the Separation Date over a fifteen (15) month period following the Separation Date (the “Severance Period”); provided, however that no payments will be made prior to June 25, 2021. On June 25, 2021 the Company will pay you in a lump sum the Salary Continuation you would have received on or prior to such date under the original schedule but for the delay while waiting for the June 25, 2021 payout day, with the balance of the Salary Continuation being paid as originally scheduled;

(b) if you are eligible for and timely elect to continue your health and dental insurance coverage under the Company's group health plans under COBRA, the Company will pay the COBRA premiums for you and your eligible dependents until the earlier of (A) the end of the Severance Period, (B) the expiration of your eligibility for the continuation coverage under COBRA, or (C) such time as you become employed by another employer or self-employed through which you are eligible for health insurance (thereafter, you will be responsible for all COBRA premium payments, if any) (such period from your termination date through the earliest of (A) through (C), the “COBRA Payment Period”). You agree to promptly notify the Company if you become employed by another employer or self-employed through which you are eligible for health insurance during the COBRA Payment Period. For purposes of this paragraph, references to COBRA premiums shall not include any amounts payable by you under an Internal Revenue Code Section 125 health care reimbursement plan. Notwithstanding the foregoing, if the Company determines, in its sole discretion, that the Company cannot provide the COBRA premiums without potentially incurring financial costs or penalties under applicable law (including, without limitation, Section 2716 of the Public Health Service Act), the Company shall in lieu thereof pay you a taxable cash amount, which payment shall be made regardless of whether you elect health care continuation coverage (the "Health Care Benefit Payment"). The Health Care Benefit Payment shall be paid in monthly installments on the same schedule that the COBRA premiums would otherwise have been paid to you and shall be equal to the amount that the Company would have otherwise paid for COBRA premiums (which amount shall be calculated based on your COBRA premium for the first month of coverage), and shall be paid until the earlier of (i) expiration of the COBRA Payment Period or (ii) the date you voluntarily enroll in a health insurance plan offered by another employer or entity.

5. Tax Withholding and Section 409A.

a. The Company shall withhold from any compensation and benefits payable under this Agreement all applicable federal, state, local, or other taxes.

b. Although the Company does not guarantee the tax treatment of any payments under the Agreement, the intent of the Company is that the payments and benefits

under this Agreement be exempt from, or comply with, Section 409A of the Internal Revenue Code of 1986, as amended, and all Treasury Regulations and guidance promulgated thereunder ("Code Section 409A") and to the maximum extent permitted the Agreement shall be limited, construed and interpreted in accordance with such intent. It is intended that each payment made under this Agreement shall be treated as a separate payment and the right to a series of payments under this Agreement is to be treated as a right to a series of separate payments and that all such payments satisfy, to the extent possible, the exemptions from the application of Section 409A provided under Treasury Regulations Sections 1.409A-1(b)(9)(iii). For purposes of this Agreement, all references to employment termination and correlative phrases shall be construed to require a "separation from service" as defined in Section 1.409A-1(h). In no event whatsoever shall the Company or its affiliates or their respective officers, directors, employees or agents be liable for any additional tax, interest or penalties that may be imposed on you by Code Section 409A or damages for failing to comply with Code Section 409A.

Notwithstanding any other provision of this Agreement to the contrary, to the extent that any reimbursement of expenses constitutes "deferred compensation" under Code Section 409A, such reimbursement shall be provided no later than December 31 of the year following the year in which the expense was incurred. The amount of expenses reimbursed in one year shall not affect the amount eligible for reimbursement in any subsequent year. The amount of any in-kind benefits provided in one year shall not affect the amount of in-kind benefits provided in any other year. For purposes of Code Section 409A (including, without limitation, for purposes of Treasury Regulation Section 1.409A-2(b)(2)(iii)), the right to receive payments in the form of installment payments shall be treated as a right to receive a series of separate payments and, accordingly, each installment payment shall at all times be considered a separate and distinct payment.

c. Whenever a payment under this Agreement may be paid within a specified period, the actual date of payment within the specified period shall be within the sole discretion of the Company.

d. Notwithstanding any other provision of this Agreement to the contrary, if at the time of your separation from service (as defined in Code Section 409A), you are a "Specified Employee", then the Company will defer the payment or commencement of any nonqualified deferred compensation subject to Code Section 409A payable upon separation from service (without any reduction in such payments or benefits ultimately paid or provided to you) until the date that is six (6) months following separation from service or, if earlier, the earliest other date as is permitted under Code Section 409A (and any amounts that otherwise would have been paid during this deferral period will be paid in a lump sum on the day after the expiration of the six (6) month period or such shorter period, if applicable).

6. Stock Options. You were granted options to purchase shares of the Company's common stock (the "Option") and restricted stock units ("RSUs") pursuant to the Company's 2013 Equity Incentive Plan (the "Plan"). Under the applicable terms of the Plan, your stock option grant notice, your stock option agreement, your restricted stock unit grant notice, and your restricted stock unit award agreement (collectively, the "Equity Documents"), vesting will cease as of the Separation Date. Your rights to exercise the Option as to any vested shares will be as set forth in the Equity Documents and you acknowledge that under the Plan, you must exercise your

right to purchase any vested shares no later than the date that is three (3) months following the Separation Date. Any shares of common stock of the Company that you hold shall not be affected by your termination.

7. Other Compensation or Benefits. You acknowledge that, except as expressly provided in this Agreement, you will not receive any additional compensation, severance or benefits after the Separation Date. You acknowledge that, except as expressly provided in this Agreement, you have not earned and will not receive from the Company any additional compensation (including base salary, bonus, incentive compensation, or equity), severance, or benefits before or after the Separation Date, with the exception of (i) any vested right you may have under the express terms of a written ERISA-qualified benefit plan (e.g., 401(k) account); (ii) monies contributed by you to your HSA account which shall remain yours; and (iii) monies contributed to your FSA account which you may use each in accordance with the respective plan rules and applicable law.

8. Expense Reimbursements. You agree that, within ten (10) days of the Separation Date, you will submit sign-in sheets, receipts and other documentation relating to all business expenses through the Separation Date. The Company will reimburse you for any reasonable out-of-pocket business expenses that you incurred.Receipt of the severance benefits described in Paragraph 4 of this Agreement is expressly conditioned upon submission of Company expenses.

9. Return of Company Property. Within seven (7) days of the Separation Date, you agree to return to the Company all Company documents (and all copies thereof) and other Company property that you have had in your possession at any time, including, but not limited to, Company files, notes, drawings, records, business plans and forecasts, financial information, specifications, computer-recorded information, tangible property (including, but not limited to, computers), credit cards, entry cards, identification badges and keys; and, any materials of any kind that contain or embody any proprietary or confidential information of the Company (and all reproductions thereof). Please coordinate return of Company property with Christina Willwerth**. Receipt of the severance benefits described in Paragraph 4 of this Agreement is expressly conditioned upon the timely return of all Company Property.**

10. Proprietary Information and Post-Termination Obligations. You acknowledge and reaffirm your continuing obligations under the *Proprietary Information, Inventions, Non-Solicitation, and Non-Competition Agreement* dated August 23, 2017 ("Proprietary Information Agreement") between you and the Company, the terms and condition which are incorporated herein by reference and remain in full force and effect for the full stated term therein, including, without limitation, your obligation not to use or disclose any confidential or proprietary information of the Company. A copy of the Proprietary Information Agreement is attached hereto as Exhibit A. If you have any doubts as to the scope of the restrictions in your agreement, you should contact Mark Levine immediately to assess your compliance. As you know, the Company will enforce its contract rights. Please familiarize yourself with the enclosed agreement which you signed. You further agree that you shall abide by any and all common-law and statutory obligations relating to protection and non-disclosure of trade secrets and confidential and proprietary documents and information. You further understand and agree that your obligations under this paragraph are material terms of this Agreement, and that the

Company shall have the right, in addition to any other damages, to seek and obtain the return of the consideration paid hereunder (without affecting the validity or enforceability of the general release contain herein) in the event you breach any of your obligations under this paragraph.

11. Confidentiality and Non-Disparagement. The provisions of this Agreement will be held in strictest confidence by you and you agree not to disclose to anyone either directly or indirectly, any information regarding the existence or substance of this Agreement, except to your immediate family, attorneys, accountants, auditors, tax preparation professionals, and financial advisors, provided that they agree to keep such information strictly confidential. This includes, but is not limited to, present or former employees of the public or other members of the public. You further agree not to make or publish any written or oral disparaging or defamatory statements regarding the Company, and its current and former attorneys, officers, directors, managers, partners, employees, agents and affiliates. You understand and agree that your obligations under this paragraph are material terms of this Agreement, and that the Company shall have the right, in addition to any other damages, to seek and obtain the return of the consideration paid hereunder (without affecting the validity or enforceability of the general release contain herein) in the event you breach any of your obligations under this paragraph. Notwithstanding the foregoing, nothing in this Agreement shall limit your right to voluntarily communicate with the Equal Employment Opportunity Commission, United States Department of Labor, the National Labor Relations Board, other federal government agency or similar state or local agency or to discuss the terms and conditions of your employment with others to the extent expressly permitted by Section 7 of the National Labor Relations Act.

12. Cooperation through and after Termination. You agree to cooperate fully with the Company in all matters relating to the transition of your work and responsibilities on behalf of the Company through your Separation Date, including, but not limited to, any present, prior or subsequent relationships and the orderly transfer of any such work and institutional knowledge to such other persons as may be designated by the Company, by making yourself reasonably available during regular business hours. Prior and subsequent to your Separation Date, you agree to complete the review and approval of all outstanding publications and abstracts that you are a named author. If in the Company's sole and absolute discretion you fail to adequately respond in the time frames set forth in any communication from the Company you agree the Company shall have sole and absolute discretion to remove you as an author from such publication or abstract.

13. General Release. In exchange for the consideration to be made by the Company to you as set forth in Paragraph 4 above, and the promises contained in this Agreement, to which you would not otherwise be entitled in the absence of your execution of this Agreement, you voluntarily and of your own free will, on behalf of yourself and, to the extent permitted by law, on behalf of your spouse, heirs, executors, administrators, assigns, insurers, attorneys and other persons or entities, acting or purporting to act on your behalf (collectively, the "Employee Parties"), hereby generally and completely release, acquit and forever discharge the Company, its parents and subsidiaries, and its and their present or former officers, directors, managers, partners, agents, representatives, employees, attorneys, shareholders, predecessors, successors, assigns, insurers and affiliates (the "Company Parties") of and from any and all claims, liabilities, demands, contentions, actions, causes of action, suits, costs, expenses, attorneys' fees, damages, indemnities, debts, judgments, levies, executions and obligations of every kind and

nature, in law, equity, or otherwise, both known and unknown, suspected and unsuspected, disclosed and undisclosed, arising out of or in any way related to agreements, events, acts or conduct at any time prior to and including the execution date of this Agreement, including but not limited to: all such claims and demands directly or indirectly arising out of or in any way connected with your employment with the Company or the termination of that employment; claims or demands related to salary, bonuses, commissions, stock, stock options, or any other ownership interests in the Company, vacation pay, fringe benefits, expense reimbursements, severance pay, or any other form of compensation; claims pursuant to any federal, state or local law, statute, or cause of action; tort law; or contract law (individually a "Claim" and collectively "Claims"). The Claims you are releasing and waiving in this Agreement include, but are not limited to, any and all Claims that any of the Company Parties:

- has allegedly violated its personnel policies, handbooks, contracts of employment, or covenants of good faith and fair dealing;

- has allegedly violated the Age Discrimination in Employment Act of 1967, as amended ("ADEA"); Title VII of the Civil Rights Act of 1964, as amended; the Civil Rights Act of 1866, 29 U.S.C. § 1981, et seq.; the Rehabilitation Act of 1973, 29 U.S.C. § 701, et seq.; the Civil Rights Act of 1991; Sections 1981 through 1988 of Title 42 of the United States Code, as amended; the Equal Pay Act; the Americans With Disabilities Act of 1990 as amended; the Genetic Information Nondiscrimination Act; the Family and Medical Leave Act; the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001, et seq. ("ERISA") (except for any vested benefits under any tax qualified benefit plan); the Employee Polygraph Protection Act; the Worker Adjustment and Retraining Notification Act; the Older Workers Benefit Protection Act; the anti-retaliation provisions of the Sarbanes-Oxley Act, or any other federal or state law regarding whistleblower retaliation; the Lilly Ledbetter Fair Pay Act; the Uniformed Services Employment and Reemployment Rights Act; the Fair Credit Reporting Act; the National Labor Relations Act; the Immigration Reform Control Act, as amended; the Occupational Safety and Health Act, as amended; the Massachusetts Law Against Discrimination, G.L. c. 151B; the Massachusetts Wage Payment Statute, G.L. c. 149, §§ 148, 148A, 148B, 148C, 149, 150, 150A-150C, 151, 152, 152A, et seq.; the Massachusetts Wage and Hour laws, G.L. c. 151§1A et seq.; the Massachusetts Privacy Statute, G.L. c. 214, § 1B; the Massachusetts Sexual Harassment Statute, G.L. c. 214 § 1C; the Massachusetts Civil Rights Act, G.L. c. 12, § 11H; the Massachusetts Equal Rights Act, G.L. c. 93, § 102; the Massachusetts Parental Leave Law, G.L. c. 149, § 105D; or other federal or state law, regulation, ordinance, or any, public policy, tort or common law (including but not limited to Claims for retaliatory discharge; negligent hiring, retention or supervision; defamation; intentional or negligent infliction of emotional distress and/or mental anguish; intentional interference with contract; negligence; detrimental reliance; loss of consortium to you or any member of your family and/or promissory estoppel); or any allegation for costs, fees, or other expenses including attorneys' fees incurred in these matters.

Notwithstanding the foregoing, other than events expressly contemplated by this Agreement you do not waive or release rights or Claims that may arise from events that occur after the date this Agreement is executed. Also excluded from this Agreement and General Release are any Claims which cannot be waived by law, including, without limitation, any rights you may have under applicable workers' compensation laws and your right, if applicable, to file or participate in an investigative proceeding of any federal, state or local governmental agency. Nothing in this Agreement shall prevent you from filing, communicating and/or cooperating with, or participating in any proceeding or investigation before the Equal Employment Opportunity Commission, United States Department of Labor, the National Labor Relations Board, the Occupational Safety and Health Administration, the Securities and Exchange Commission or any other federal government agency, or similar state or local agency ("Government Agency/ies"), or exercising any rights pursuant to Section 7 of the National Labor Relations Act. You further understand this Agreement does not limit your ability to voluntarily communicate with any Government Agencies or otherwise participate in any investigation or proceeding that may be conducted by any Government Agency, including providing documents or other information, without notice to the Company. Moreover, while this Agreement does not limit your right to receive an award for information provided to the Securities and Exchange Commission, you understand and agree that, you are otherwise waiving, to the fullest extent permitted by law, any and all rights you may have to individual relief based on any Claims that you have released and any rights you have waived by signing this Agreement. If any Claim is not subject to release, to the extent permitted by law, you waive any right or ability to be a class or collective action representative or to otherwise participate in any putative or certified class, collective or multi-party action or proceeding based on such a Claim in which any of the Company Parties is a party. This Agreement does not abrogate your existing rights under any Company benefit plan or any plan or agreement related to equity ownership in the Company; however, it does waive, release and forever discharge Claims existing as of the date you execute this Agreement pursuant to any such plan or agreement. Further, this General Release does not release any claims you may have for the Company's breach of any of the terms and provisions of this Agreement.

14. Your Acknowledgments and Affirmations. You acknowledge that you are knowingly and voluntarily waiving and releasing any and all rights you may have under the ADEA, as amended. You also acknowledge and agree that (i) the consideration given to you in exchange for the waiver and release in this Agreement is in addition to anything of value to which you were already entitled, and (ii) that you have been paid for all time worked, have received all the leave, leaves of absence and leave benefits and protections for which you are eligible, and have not suffered any on-the-job injury for which you have not already filed a Claim. You affirm that all of the decisions of the Company Parties regarding your pay and benefits through the date of your execution of this Agreement were not discriminatory based on age, disability, race, color, sex, religion, national origin or any other classification protected by law. You affirm that you have not filed or caused to be filed, and are not presently a party to, a Claim against any of the Company Parties. You further affirm that you have no known workplace injuries or occupational diseases. You acknowledge and affirm that you have not been retaliated against for reporting any allegation of corporate fraud or other wrongdoing by any of the Company Parties, or for exercising any rights protected by law, including any rights protected by the Fair Labor Standards Act, the Family Medical Leave Act or any related statute or local leave or disability accommodation laws, or any applicable state workers' compensation

law. You further acknowledge and affirm that you have been advised by this writing that: (a) your waiver and release do not apply to any rights or Claims that may arise after the execution date of this Agreement; (b) you have been advised hereby that you have the right to consult with an attorney prior to executing this Agreement; (c) you have been given twenty-one (21) days to consider this Agreement (although you may choose to voluntarily execute this Agreement earlier and if you do you will sign the Consideration Period waiver below); (d) you have seven (7) days following your execution of this Agreement to revoke this Agreement; and (e) this Agreement shall not be effective until the date upon which the revocation period has expired unexercised (the "Effective Date"), which shall be the eighth day after this Agreement is executed by you.

15. Effective Date of Agreement. You will be afforded up to twenty-one (21) days to consider the meaning and effect of this Agreement. You are advised to consult with an attorney and you acknowledge that you have had the opportunity to do so. You agree that any modification, material or otherwise do not restart or affect in any manner the original 21-day consideration period for the severance proposal made to you. If you do not sign and return this Agreement within the dates set forth below, the Company's offer to provide you with the monies and/or other benefits set forth herein will expire. You may revoke this Agreement for a period of seven (7) calendar days following the date you execute this Agreement. Any revocation within this period must be submitted, in writing, to Mark Levine and state, "I hereby revoke my acceptance of the Agreement." The revocation must be personally delivered to Mark Levine, General Counsel, Flexion Therapeutics, Inc., 10 Mall Road, Suite 301, Burlington, MA 01803, or mailed to him first class mail and postmarked within seven (7) calendar days of execution of this Agreement. This Agreement shall not be effective until the date upon which the revocation period has expired unexercised (the "Effective Date"), which shall be the eighth day after this Agreement is executed by you. If the last day of the revocation period is a Saturday, Sunday, or legal holiday in Massachusetts, or the state in which you reside, then the revocation period shall not expire until the next following day which is not a Saturday, Sunday, or legal holiday.

16. No Admission. You agree that neither this Agreement, nor the furnishing of consideration for this Agreement, shall be deemed or construed at any time for any purpose as an admission by the Company of any liability, wrongdoing or unlawful conduct of any kind, including, but not limited to, any violation of any federal, state, or local statute, or common law rights, including those relating to the provisions of any law or statute concerning employment actions, or of any other possible or claimed violation of law or rights.

17. Breach. You agree that upon any breach of this Agreement, you will forfeit all amounts or owing to you under this Agreement. Further, you acknowledge that it may be impossible to assess the damages caused by your violation of the terms of Paragraphs 8, 9, 10 and 11 of this Agreement and further agree that any threatened or actual violation or breach of those Paragraphs of this Agreement will constitute immediate and irreparable injury to the Company. You therefore agree that any such breach of those Paragraphs is a material breach of this Agreement, and, in addition to any and all other damages and remedies available to the Company upon your breach of this Agreement, the Company shall be entitled to an injunction to prevent you from violating or breaching those Paragraphs. You agree that if the Company is successful in whole or part in any legal or equitable action against you under this Agreement, you agree to pay all of the costs, including reasonable attorneys' fees, incurred by the Company in enforcing the terms of this Agreement.

18. Miscellaneous. This Agreement, including Exhibit A, constitutes the complete, final and exclusive embodiment of the entire agreement between you and the Company with regard to this subject matter. It is entered into without reliance on any promise or representation, written or oral, other than those expressly contained herein, and it supersedes any other such promises, warranties or representations. This Agreement may not be modified or amended except in a writing signed by both you and a duly authorized officer of the Company. This Agreement will bind the heirs, personal representatives, successors and assigns of both you and the Company, and inure to the benefit of both you and the Company, their heirs, successors and assigns. If any provision of this Agreement is determined to be invalid or unenforceable, in whole or in part, this determination will not affect any other provision of this Agreement and the provision in question will be modified by the court so as to be rendered enforceable. This Agreement will be deemed to have been entered into and will be construed and enforced in accordance with the laws of Massachusettsas applied to contracts made and to be performed entirely within Massachusetts.

19. Indemnification. The terms of the Indemnity Agreement between you and the Company dated January 1, 2018 shall remain in effect in accordance with its terms and provisions. A copy of the Indemnity Agreement is attached hereto as Exhibit B, the terms and provisions of which are specifically incorporated herein.

I wish you good luck in your future endeavors.

Sincerely,

By: /s/ Christina Willwerth
Christina Willwerth
Chief Strategy Officer
Head of Human Resources

I, Scott Kelley, M.D., have been advised in writing that I have until June 3, 2021 a period of more than 21 days to consider whether to sign this Agreement but that I cannot sign it prior to May 31, 2021, and to consult with an attorney prior to the execution of this Agreement, which I received on May 3, 2021.

Having elected to execute this Agreement, to fulfill the promises set forth herein, and to receive thereby the sums and benefits set forth in Paragraph 4 above, I knowingly, and after due consideration, enter into this Agreement, intending to waive, settle, and release all claims I have or might have against the Company, its subsidiaries, divisions and affiliates, its present or former officers, directors, trustees, employees, agents, insurers, or successors or assigns.

/s/ Scott Kelley, M.D.
Scott Kelley, M.D.

June 3, 2021
Date

Exhibit A - Employee Proprietary Information, Inventions Assignment, Non-Competition and Non-Solicitation Agreement
Exhibit B - Indemnity Agreement

Flexion Therapeutics
10 Mall Road, Suite 301, Burlington MA 01803
www.flexiontherapeutics.com
info@flexiontherapeutics.com
781.305.7777

Exhibit 10.2

May 12, 2021

Frederick Driscoll
[...***...]

Dear Fred:

We are pleased to offer you employment with Flexion Therapeutics, Inc. (the "Company"), initially as Advisor beginning May 17, 2021 (“Start Date”), then as Chief Financial Officer beginning June 1, 2021, reporting to Michael Clayman, Chief Executive Officer.

Compensation: Your compensation package includes the following:

- ***Salary.*** A base salary at the rate of $17.115.39 on a bi-weekly basis (which equates to $445,000 on an annualized basis), less payroll deductions and all required withholdings and payable in accordance with the Company's standard payroll practices as may be modified from time to time. As an exempt salaried employee, you are not eligible for overtime pay. You are eligible for performance reviews on a periodic basis and may be eligible for annual salary increases as long as you remain employed by Flexion.

- ***Bonus.*** Effective with the annual bonus payable in connection with the 2021 calendar year (which will be pro-rated based on your Start Date), a discretionary target annual performance bonus of forty-five percent (45%) of your base salary (which bonus, if any, is calculated annually, and subject to approval by the Board of Directors of the Company (the "Board")). Among other eligibility factors for such discretionary bonus to be determined by the Board, you must be employed in good standing at the time that bonuses are paid out in order to be eligible for such a bonus. The annual bonus is paid on or before March 15th of the calendar year following the applicable “bonus” year.

- ***Equity.*** (1) Subject to Board approval, as an inducement to your commencement of employment you will be granted an option (the “Option”) under the Company’s equity incentive plan in place at the time of grant (the "Plan"), to purchase 168,000 shares of common stock of the Company at an exercise price per share equal to the fair market value per share of the Company's common stock on the date of grant. Subject to your Continuous Service (as defined in the Plan) through each such vesting date, the Option will vest as to 25% of the shares of common stock underlying such Option on the one year anniversary of your Start Date and as to 1/48th of the shares of common stock underlying such Option in equal monthly installments for 36 months thereafter. All other terms, conditions, and limitations of the Option will be set forth in a stock option grant notice, the Company's standard stock option agreement and the Plan (collectively, the “Stock Option Documents,” which shall govern your Option). To the extent there is a conflict between this Agreement and the Stock Option Documents, the Stock Option Documents shall govern.

(2) In addition, subject to Board approval and as an inducement to your commencement of employment, you will be granted under the Plan 28,000 restricted stock units ("RSUs"). Subject to your Continuous Service with the Company through each vesting date, 25% of the shares of common stock subject to the RSUs will vest on each anniversary of your Start Date so that all of the shares subject to the RSU will vest four years from your Start Date. All other terms, conditions, and limitations of the RSUs will be set forth in a Restricted Stock Unit Grant Notice, the Company's Restricted Stock Unit Award Agreement and the Plan (collectively, the "RSU Documents," which shall govern your RSUs). To the extent there is a conflict between this Agreement and the RSU Documents, the RSU Documents shall govern.

- ***Change of Control Severance Benefits.*** You are eligible for benefits under the Company's Change in Control Severance Benefit Plan (the "CIC Plan") and Participation Agreement (the "Participation Agreement"), which is included with this Agreement.

Benefits: You will be eligible to participate on the same basis as similarly situated employees in the Company's benefit plans in effect from time to time during your employment. All matters of eligibility for coverage or employee benefits under any benefit plan shall be determined in accordance with the provisions of such plan. For a more detailed understanding of the Company's benefits and the eligibility requirements, please consult the policies and summary plan descriptions for the programs which will be made available to you. Please note that the Company reserves the right to change, alter, or terminate any benefit plan in its sole discretion.

At-Will Employment; Certain Conditions of Employment: Your employment with the Company is "at will," which means that the Company may modify the terms of employment at any time, and either you or the Company may terminate your employment at any time for any or no reason, with or without prior notice. Along these same lines, please note that nothing in this Agreement is a promise or guarantee of employment for any specific period of time or for continued employment.

In addition to the above, by signing this Agreement you are representing that you have full authority to accept this position and perform the duties of the position without conflict with any other obligations, and that you are not involved in any situation that might create, or appear to create, a conflict of interest with respect to your loyalty to or duties for the Company. You specifically warrant that you are not subject to an employment agreement or restrictive covenant preventing full performance of your duties to the Company.

You further acknowledge that the Company's board of directors has determined that you will be performing significant policy-making functions for the Company and shall therefore be regarded as a Section 16 officer of the Company pursuant to Section 16(a) of the Securities Exchange Act ("Section 16 Officer"). For so long as the Company's board of directors continues to regard you as a Section 16 Officer, you acknowledge your obligation to make certain periodic filings with the SEC, including but not limited to, the "Initial Statement of Beneficial Ownership of Securities" on Form 3 and the "Statement of Changes of Beneficial Ownership of Securities" on SEC Form 4. You represent and warrant that you will timely comply with all obligations relating to your role as a Section 16 Officer.

Severance Eligibility: Subject to the other provisions of this Agreement, upon termination of your employment, the Company shall pay your base salary and accrued and unused vacation benefits earned through the date of termination at the rate in effect at the time of termination, less standard deductions

and withholdings (the “Accrued Obligations”). In addition, you will be eligible for the following severance benefits if your employment is terminated under the circumstances described below.

If the Company terminates your employment without Cause (as defined below) or if you terminate your employment for Good Reason (as defined below) and provided such termination constitutes a “Separation from Service” (as defined under U.S. Treasury Regulation Section 1.409A-1(h), without regard to any alternative definition thereunder) and such termination is not as a result of your death or Disability, then in addition to the Accrued Obligations, you will be eligible to receive the following benefits:

(i) You shall continue to receive your then-current base salary (ignoring any decrease that forms the basis for your termination for Good Reason, if applicable), less standard deductions and withholdings, for fifteen (15) months following the date of termination (the “Severance Period”).

(ii) If you are eligible for and timely elect to continue your health insurance coverage under the Company’s group health plans under the Consolidated Omnibus Budget Reconciliation Act of 1985 or the state equivalent (“COBRA”), the Company will pay the COBRA premiums for you and your eligible dependents until the earlier of (A) the end of the Severance Period, (B) the expiration of your eligibility for the continuation coverage under COBRA, or (C) such time as you become employed by another employer or self-employed through which you are eligible for health insurance (thereafter, you will be responsible for all COBRA premium payments, if any) (such period from your termination date through the earliest of (A) through (C), the “COBRA Payment Period”). For purposes of this Section, references to COBRA premiums shall not include any amounts payable by you under an Internal Revenue Code Section 125 health care reimbursement plan. Notwithstanding the foregoing, if the Company determines, in its sole discretion, that the Company cannot provide the COBRA premiums without potentially incurring financial costs or penalties under applicable law (including, without limitation, Section 2716 of the Public Health Service Act), the Company shall in lieu thereof pay you a taxable cash amount, which payment shall be made regardless of whether you elect health care continuation coverage (the “Health Care Benefit Payment”). The Health Care Benefit Payment shall be paid in monthly installments on the same schedule that the COBRA premiums would otherwise have been paid to you and shall be equal to the amount that the Company would have otherwise paid for COBRA premiums (which amount shall be calculated based on your COBRA premium for the first month of coverage), and shall be paid until the earlier of (i) expiration of the COBRA Payment Period or (ii) the date you voluntarily enroll in a health insurance plan offered by another employer or entity.

(iii) If your termination occurs within one (1) month prior to or twelve (12) months following a Change in Control, you shall be eligible to receive the payments and benefits as described in the Company’s Change in Control Severance Benefit Plan (the “CIC Plan”) and the Participation Agreement thereunder (the “Participation Agreement”) attached thereto. If as a result of your termination or resignation you become entitled to severance benefits under the CIC Plan and you are also entitled to severance benefits described under Sections (i) and (ii) of the “Severance Eligibility” section of this Agreement above, the severance benefits under the CIC Plan shall be provided in lieu of the severance benefits you are entitled to under Sections (i) and (ii) of the “Severance Eligibility” section of this Agreement described above.

Severance benefits under this Agreement are expressly conditioned upon (a) your delivery to the Company of a signed release and waiver of claims in such form as may be specified by the Company (the **“**Release**”**) within the applicable deadline set forth therein, and permitting the Release to become effective in accordance with its terms no later than the Release Deadline (as defined in the Section 409A Section below); and (b) your fully complying with your obligations under your Proprietary Information,-Inventions, Non-Solicitation, and Non-Competition Agreement.

For the avoidance of doubt, you shall not be eligible for severance and continued benefits (other than the Accrued Obligations) if you resign without Good Reason, are terminated by the Company for Cause, or are terminated due to your death or Disability.

Definitions: For purposes of this Agreement, the following terms shall have the following meanings set forth in the CIC Plan: Cause, Good Reason, and Change in Control.

Section 409A: Notwithstanding anything in this Agreement to the contrary, the following provisions apply to the extent severance benefits provided herein are subject to Section 409A of the Internal Revenue Code of 1986, as amended (the "Code") and the regulations and other guidance thereunder and any state law of similar effect (collectively "Section 409A"). Severance benefits shall not commence until you have a Separation from Service. Each installment of severance benefits is a separate "payment" for purposes of Treasury Regulations Section 1.409A-2(b)(2)(i), and the severance benefits are intended to satisfy the exemptions from application of Section 409A provided under Treasury Regulations Sections 1.409A-1(b)(4), 1.409A-1(b)(5) and 1.409A-1(b)(9). However, if such exemptions are not available and you are, upon Separation from Service, a "specified employee" for purposes of Section 409A, then, solely to the extent necessary to avoid adverse personal tax consequences under Section 409A, the timing of the severance benefits payments shall be delayed until the earlier of (i) six (6) months and one day after your Separation from Service, or (ii) your death. You shall receive severance benefits only if you execute and return to the Company the Release within the applicable time period set forth therein and permit such Release to become effective in accordance with its terms, which date may not be later than sixty (60) days following the date of your Separation from Service (such latest permitted date, the "Release Deadline"). If the severance benefits are not covered by one or more exemptions from the application of Section 409A and the Release could become effective in the calendar year following the calendar year in which your Separation from Service occurs, the Release will not be deemed effective any earlier than the Release Deadline. None of the severance benefits will be paid or otherwise delivered prior to the effective date of the Release. Except to the minimum extent that payments must be delayed because you are a "specified employee" or until the effectiveness of the Release, all amounts will be paid as soon as practicable in accordance with the schedule provided herein and in accordance with the Company's normal payroll practices. All in-kind benefits provided and expenses eligible for reimbursement under this Agreement shall be provided by the Company or incurred by you during the time periods described in this Agreement. All reimbursements shall be paid as soon as administratively practicable, but in no event shall any reimbursement be paid after the last day of the taxable year following the taxable year in which the expense was incurred. The amount of in-kind benefits provided or reimbursable expenses incurred in one taxable year shall not affect the in-kind benefits to be provided or the expenses eligible for reimbursement in any other taxable year. Such right to reimbursement or in-kind benefits is not subject to liquidation or exchange for another benefit. The benefits under this Agreement are intended to qualify for an exemption from application of Section 409A or comply with its requirements to the extent necessary to avoid adverse personal tax consequences under Section 409A, and any ambiguities herein shall be interpreted accordingly.

Compliance with Rules, etc.: You will comply at all times with (i) all Company policies, rules and procedures as they may be established, stated and/or modified from time to time at the Company's sole discretion, (ii) the terms of that certain Proprietary Information, Inventions, Non-Solicitation, and Non-Competition Agreement, and (iii) all laws and regulations applicable to the Company's business and your performance of your duties for the Company.

General: By signing this Agreement, you acknowledge that the terms described in this letter, together with the Equity Documents, CIC Plan, Participation Agreement, and Proprietary Information, Inventions, Non-Solicitation, and Non-Competition Agreement attached hereto, set forth the entire offer to you and

understanding between you and the Company and supersedes any prior representations or agreements, whether written or oral pertaining to the subject matter herein. You further acknowledge that there are no terms, conditions, representations, warranties or covenants other than those contained herein. No term or provision of this letter may be amended waived, released, discharged or modified except in writing, signed by you and an authorized officer of the Company, except that the Company may, in its sole discretion, adjust salaries, incentive compensation, stock plans, benefits, job titles, locations, duties, responsibilities, and reporting relationships.

We look forward to you joining the Flexion team.

Sincerely,

/s/ Michael Clayman
Michael Clayman
Chief Executive Officer

ACCEPTED AND AGREED TO:

Name: /s/ Frederick Driscoll Date: May 14, 2021
Frederick Driscoll

Attachments:

Change in Control Severance Benefit Plan Participation Agreement

Proprietary Information, Inventions, Non-Solicitation, and Non-Competition Agreement

Indemnity Agreement

Flexion Therapeutics
10 Mall Road, Suite 301, Burlington MA 01803
www.flexiontherapeutics.com
info@flexiontherapeutics.com
781.305.7777

Exhibit 10.3

May 17, 2021

William T. Andrews, MD, FACP
[...***...]

Dear Will:

We are pleased to offer you employment with Flexion Therapeutics, Inc. (the "Company"), as Chief Medical Officer beginning July 1, 2021 (“Start Date”) reporting to Michael Clayman, Chief Executive Officer.

Compensation: Your compensation package includes the following:

- ***Salary.*** A base salary at the rate of $18,461.54 on a bi-weekly basis (which equates to $480,000 on an annualized basis), less payroll deductions and all required withholdings and payable in accordance with the Company's standard payroll practices as may be modified from time to time. As an exempt salaried employee, you are not eligible for overtime pay. You are eligible for performance reviews on a periodic basis and may be eligible for annual salary increases as long as you remain employed by Flexion.

- ***Bonus.*** Effective with the annual bonus payable in connection with the 2021 calendar year (which will be pro-rated based on your Start Date), a discretionary target annual performance bonus of forty-five percent (45%) of your base salary (which bonus, if any, is calculated annually, and subject to approval by the Board of Directors of the Company (the "Board")). Among other eligibility factors for such discretionary bonus to be determined by the Board, you must be employed in good standing at the time that bonuses are paid out in order to be eligible for such a bonus. The annual bonus is paid on or before March 15th of the calendar year following the applicable “bonus” year.

- ***Equity.*** (1) Subject to Board approval, as an inducement to your commencement of employment you will be granted an option (the “Option”) under the Company’s equity incentive plan in place at the time of grant (the "Plan"), to purchase 205,500 shares of common stock of the Company at an exercise price per share equal to the fair market value per share of the Company's common stock on the date of grant. Subject to your Continuous Service (as defined in the Plan) through each such vesting date, the Option will vest as to 25% of the shares of common stock underlying such Option on the one year anniversary of your Start Date and as to 1/48th of the shares of common stock underlying such Option in equal monthly installments for 36 months thereafter. All other terms, conditions, and limitations of the Option will be set forth in a stock option grant notice, the Company's standard stock option agreement and the Plan (collectively, the “Stock Option Documents,” which shall govern your Option). To the extent there is a conflict between this Agreement and the Stock Option Documents, the Stock Option Documents shall govern.

(2) In addition, subject to Board approval and as an inducement to your commencement of employment, you will be granted under the Plan 34,250 restricted stock units ("RSUs"). Subject to your Continuous Service with the Company through each vesting date, 25% of the shares of common stock subject to the RSUs will vest on each anniversary of your Start Date so that all of the shares subject to the RSU will vest four years from your Start Date. All other terms, conditions, and limitations of the RSUs will be set forth in a Restricted Stock Unit Grant Notice, the Company's Restricted Stock Unit Award Agreement and the Plan (collectively, the "RSU Documents," which shall govern your RSUs). To the extent there is a conflict between this Agreement and the RSU Documents, the RSU Documents shall govern.

- ***Change of Control Severance Benefits.*** You are eligible for benefits under the Company's Change in Control Severance Benefit Plan (the "CIC Plan") and Participation Agreement (the "Participation Agreement"), which is included with this Agreement.

- ***Sign-On Bonus.*** In addition to your base salary, you will be eligible for a one-time sign-on bonus in the amount of $50,000 (less applicable taxes), which the Company will advance to you on your first payroll date after you have started working. Please note that if your employment is terminated for cause or you voluntarily resign prior to completing one year of service, you will be required to return the entire sign-on bonus amount within 60 days of such termination. To the extent permitted by applicable law, you expressly authorize the Company to deduct from your final paycheck any portion of the sign-on bonus that you are required to repay.

Benefits: You will be eligible to participate on the same basis as similarly situated employees in the Company's benefit plans in effect from time to time during your employment. All matters of eligibility for coverage or employee benefits under any benefit plan shall be determined in accordance with the provisions of such plan. For a more detailed understanding of the Company's benefits and the eligibility requirements, please consult the policies and summary plan descriptions for the programs which will be made available to you. Please note that the Company reserves the right to change, alter, or terminate any benefit plan in its sole discretion.

At-Will Employment; Certain Conditions of Employment: Your employment with the Company is "at will," which means that the Company may modify the terms of employment at any time, and either you or the Company may terminate your employment at any time for any or no reason, with or without prior notice. Along these same lines, please note that nothing in this Agreement is a promise or guarantee of employment for any specific period of time or for continued employment.

In addition to the above, by signing this Agreement you are representing that you have full authority to accept this position and perform the duties of the position without conflict with any other obligations, and that you are not involved in any situation that might create, or appear to create, a conflict of interest with respect to your loyalty to or duties for the Company. You specifically warrant that you are not subject to an employment agreement or restrictive covenant preventing full performance of your duties to the Company.

You further acknowledge that the Company's board of directors has determined that you will be performing significant policy-making functions for the Company and shall therefore be regarded as a Section 16 officer of the Company pursuant to Section 16(a) of the Securities Exchange Act ("Section 16 Officer"). For so long as the Company's board of directors continues to regard you as a Section 16 Officer, you acknowledge your obligation to make certain periodic filings with the SEC, including but not limited to, the "Initial Statement of Beneficial Ownership of Securities" on Form 3 and the "Statement of Changes

of Beneficial Ownership of Securities" on SEC Form 4. You represent and warrant that you will timely comply with all obligations relating to your role as a Section 16 Officer.

Severance Eligibility: Subject to the other provisions of this Agreement, upon termination of your employment, the Company shall pay your base salary and accrued and unused vacation benefits earned through the date of termination at the rate in effect at the time of termination, less standard deductions and withholdings (the "Accrued Obligations"). In addition, you will be eligible for the following severance benefits if your employment is terminated under the circumstances described below.

If the Company terminates your employment without Cause (as defined below) or if you terminate your employment for Good Reason (as defined below) and provided such termination constitutes a "Separation from Service" (as defined under U.S. Treasury Regulation Section 1.409A-1(h), without regard to any alternative definition thereunder) and such termination is not as a result of your death or Disability, then in addition to the Accrued Obligations, you will be eligible to receive the following benefits:

(i) You shall continue to receive your then-current base salary (ignoring any decrease that forms the basis for your termination for Good Reason, if applicable), less standard deductions and withholdings, for fifteen (15) months following the date of termination (the "Severance Period").

(ii) If you are eligible for and timely elect to continue your health insurance coverage under the Company's group health plans under the Consolidated Omnibus Budget Reconciliation Act of 1985 or the state equivalent ("COBRA"), the Company will pay the COBRA premiums for you and your eligible dependents until the earlier of (A) the end of the Severance Period, (B) the expiration of your eligibility for the continuation coverage under COBRA, or (C) such time as you become employed by another employer or self-employed through which you are eligible for health insurance (thereafter, you will be responsible for all COBRA premium payments, if any) (such period from your termination date through the earliest of (A) through (C), the "COBRA Payment Period"). For purposes of this Section, references to COBRA premiums shall not include any amounts payable by you under an Internal Revenue Code Section 125 health care reimbursement plan. Notwithstanding the foregoing, if the Company determines, in its sole discretion, that the Company cannot provide the COBRA premiums without potentially incurring financial costs or penalties under applicable law (including, without limitation, Section 2716 of the Public Health Service Act), the Company shall in lieu thereof pay you a taxable cash amount, which payment shall be made regardless of whether you elect health care continuation coverage (the "Health Care Benefit Payment"). The Health Care Benefit Payment shall be paid in monthly installments on the same schedule that the COBRA premiums would otherwise have been paid to you and shall be equal to the amount that the Company would have otherwise paid for COBRA premiums (which amount shall be calculated based on your COBRA premium for the first month of coverage), and shall be paid until the earlier of (i) expiration of the COBRA Payment Period or (ii) the date you voluntarily enroll in a health insurance plan offered by another employer or entity.

(iii) If your termination occurs within one (1) month prior to or twelve (12) months following a Change in Control, you shall be eligible to receive the payments and benefits as described in the Company's Change in Control Severance Benefit Plan (the "CIC Plan") and the Participation Agreement thereunder (the "Participation Agreement") attached thereto. If as a result of your termination or resignation you become entitled to severance benefits under the CIC Plan and you are also entitled to severance benefits described under Sections (i) and (ii) of the "Severance Eligibility" section of this Agreement above, the severance benefits under the CIC Plan shall be provided in lieu of the severance benefits you are entitled to under Sections (i) and (ii) of the "Severance Eligibility" section of this Agreement described above.

Severance benefits under this Agreement are expressly conditioned upon (a) your delivery to the Company of a signed release and waiver of claims in such form as may be specified by the Company (the "Release") within the applicable deadline set forth therein, and permitting the Release to become effective in accordance with its terms no later than the Release Deadline (as defined in the Section 409A Section below); and (b) your fully complying with your obligations under your Proprietary Information, Inventions, Non-Solicitation, and Non-Competition Agreement.

For the avoidance of doubt, you shall not be eligible for severance and continued benefits (other than the Accrued Obligations) if you resign without Good Reason, are terminated by the Company for Cause, or are terminated due to your death or Disability.

Definitions: For purposes of this Agreement, the following terms shall have the following meanings set forth in the CIC Plan: Cause, Good Reason, and Change in Control.

Section 409A: Notwithstanding anything in this Agreement to the contrary, the following provisions apply to the extent severance benefits provided herein are subject to Section 409A of the Internal Revenue Code of 1986, as amended (the "Code") and the regulations and other guidance thereunder and any state law of similar effect (collectively "Section 409A"). Severance benefits shall not commence until you have a Separation from Service. Each installment of severance benefits is a separate "payment" for purposes of Treasury Regulations Section 1.409A-2(b)(2)(i), and the severance benefits are intended to satisfy the exemptions from application of Section 409A provided under Treasury Regulations Sections 1.409A-1(b)(4), 1.409A-1(b)(5) and 1.409A-1(b)(9). However, if such exemptions are not available and you are, upon Separation from Service, a "specified employee" for purposes of Section 409A, then, solely to the extent necessary to avoid adverse personal tax consequences under Section 409A, the timing of the severance benefits payments shall be delayed until the earlier of (i) six (6) months and one day after your Separation from Service, or (ii) your death. You shall receive severance benefits only if you execute and return to the Company the Release within the applicable time period set forth therein and permit such Release to become effective in accordance with its terms, which date may not be later than sixty (60) days following the date of your Separation from Service (such latest permitted date, the "Release Deadline"). If the severance benefits are not covered by one or more exemptions from the application of Section 409A and the Release could become effective in the calendar year following the calendar year in which your Separation from Service occurs, the Release will not be deemed effective any earlier than the Release Deadline. None of the severance benefits will be paid or otherwise delivered prior to the effective date of the Release. Except to the minimum extent that payments must be delayed because you are a "specified employee" or until the effectiveness of the Release, all amounts will be paid as soon as practicable in accordance with the schedule provided herein and in accordance with the Company's normal payroll practices. All in-kind benefits provided and expenses eligible for reimbursement under this Agreement shall be provided by the Company or incurred by you during the time periods described in this Agreement. All reimbursements shall be paid as soon as administratively practicable, but in no event shall any reimbursement be paid after the last day of the taxable year following the taxable year in which the expense was incurred. The amount of in-kind benefits provided or reimbursable expenses incurred in one taxable year shall not affect the in-kind benefits to be provided or the expenses eligible for reimbursement in any other taxable year. Such right to reimbursement or in-kind benefits is not subject to liquidation or exchange for another benefit. The benefits under this Agreement are intended to qualify for an exemption from application of Section 409A or comply with its requirements to the extent necessary to avoid adverse personal tax consequences under Section 409A, and any ambiguities herein shall be interpreted accordingly.

Compliance with Rules, etc.: You will comply at all times with (i) all Company policies, rules and procedures as they may be established, stated and/or modified from time to time at the Company's sole discretion,

(ii) the terms of that certain Proprietary Information, Inventions, Non-Solicitation, and Non-Competition Agreement, and (iii) all laws and regulations applicable to the Company's business and your performance of your duties for the Company.

General: By signing this Agreement, you acknowledge that the terms described in this letter, together with the Equity Documents, CIC Plan, Participation Agreement, and Proprietary Information, Inventions, Non-Solicitation, and Non-Competition Agreement attached hereto, set forth the entire offer to you and understanding between you and the Company and supersedes any prior representations or agreements, whether written or oral pertaining to the subject matter herein. You further acknowledge that there are no terms, conditions, representations, warranties or covenants other than those contained herein. No term or provision of this letter may be amended waived, released, discharged or modified except in writing, signed by you and an authorized officer of the Company, except that the Company may, in its sole discretion, adjust salaries, incentive compensation, stock plans, benefits, job titles, locations, duties, responsibilities, and reporting relationships.

We look forward to you joining the Flexion team.

Sincerely,

/s/ Michael Clayman
Michael Clayman
Chief Executive Officer

ACCEPTED AND AGREED TO:

Name: /s/ William T. Andrews, MD, FACP Date: May 26, 2021
William T. Andrews, MD, FACP

Attachments:

Change in Control Severance Benefit Plan Participation Agreement

Proprietary Information, Inventions, Non-Solicitation, and Non-Competition Agreement

Indemnity Agreement

Exhibit 10.4

SECOND AMENDMENT TO AMENDED AND RESTATED CREDIT AND SECURITY AGREEMENT

SECOND AMENDMENT TO AMENDED AND RESTATED CREDIT AND SECURITY AGREEMENT (this "**Agreement**") is dated as of July 30 2021, by and among (a) **SILICON VALLEY BANK**, a California corporation ("**SVB**"), in its capacity as administrative agent and collateral agent ("**Agent**"), (b) SVB, as a Revolving Line Lender and as a 2021 Term Loan Lender, **MIDCAP FUNDING IV TRUST**, a Delaware statutory trust, as a Revolving Line Lender (in such capacity and together with its successors and assigns, "**MidCap Lender**"), and **MIDCAP FINANCIAL TRUST**, a Delaware statutory trust, and **MIDCAP FUNDING XIII TRUST**, a Delaware statutory trust ("**MidCap XIII**"), each as a 2021 Term Loan Lender (in such capacity and together its successors and assigns, collectively the "**MidCap Term Loan Lender**", and together with MidCap Lender, "**MidCap**") and each other Lender listed on Schedule 1 attached hereto and the other financial institutions party hereto from time to time (each, a "**Lender**" and collectively, the "**Lenders**"), (c) **MidCap XIII**, **ELM 2020-3 TRUST**, a Delaware statutory trust, and **ELM 2020-4 TRUST**, a Delaware statutory trust (each an "**Existing Term Loan Lender**" and collectively, the "**Existing Term Loan Lenders**"), and (d) **FLEXION THERAPEUTICS, INC**., a Delaware corporation ("**Borrower**").

W I T N E S S E T H:

WHEREAS, Borrower, Lenders and Agent are parties to that certain Amended and Restated Credit and Security Agreement, dated as of August 2, 2019, as amended by that certain First Amendment to Amended and Restated Credit Agreement dated as of May 18, 2020 by and among Borrower, Lenders, and Agent (as further amended, restated, supplemented or otherwise modified from time to time, the "**Credit Agreement**"; capitalized terms used herein have the meanings given to them in the Credit Agreement except as otherwise expressly defined herein), pursuant to which Lenders have agreed to provide to Borrower certain loans and other extensions of credit in accordance with the terms and conditions thereof;

WHEREAS, Borrower, Agent and Lenders desire to amend certain provisions of the Credit Agreement in accordance with, and subject to, the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the premises, the covenants and agreements contained herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Borrower, Lenders and Agent hereby agree as follows:

1. **Acknowledgment of Obligations.** Borrower hereby acknowledges, confirms and agrees that all Credit Extensions made prior to the date hereof, together with interest accrued and accruing thereon, and fees, costs, expenses and other charges owing by Borrower (on behalf of itself and the other Credit Parties) to Agent and Lenders under the Credit Agreement and the other Loan Documents, are unconditionally owing by Borrower (on behalf of itself and the other Credit Parties) to Agent and Lenders, without offset, defense or counterclaim of any kind, nature or description whatsoever except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting creditor's rights generally.

2. Description in Change of Terms.

A. **Modifications to Credit Agreement**

1. The Credit Agreement shall be amended by adding the following new Section 2.3.1 to appear immediately following Section 2.3 thereof:

"2.3.1 2021 Term Loan Advances

(a) **Availability**. Subject to the terms and conditions of this Agreement, upon Borrower's request in accordance with Section 3.3(b), the Lenders with 2021 Term Loan Commitments (the "**2021 Term Loan Lenders**") severally and not jointly, shall make one (1) term loan advance to Borrower on or about the Second Amendment Closing Date in an original principal amount of Fifty-Five Million Dollars ($55,000,000.00) according to each 2021 Term Loan Lender's Applicable Commitment as set forth on Schedule 1 hereto (the "**2021 Term A Loan Advance**"), provided that all or a portion of the proceeds of the 2021 Term A Loan Advance shall be used to repay in full all of Borrower's obligations and liabilities with respect to the Term Loan Advances (including without limitation, the accrued portion of the Final Payment as of the Second Amendment Closing Date) (the "**2021 Prior Obligations**"). For the avoidance of doubt, the Existing Term Loan Lenders hereby waive the unaccrued portion of the Final Payment as of the Second Amendment Closing Date. Borrower hereby authorizes Agent to apply such proceeds to the 2021 Prior Obligation as part of the funding process without actually depositing such funds in an account of Borrower. Subject to the terms and conditions of this Agreement, during the 2021 Draw Period, upon Borrower's request in accordance with Section 3.3(b), the 2021 Term Loan Lenders, severally and not jointly, shall make one (1) term loan advance to Borrower in an original principal amount of Twenty Million Dollars ($20,000,000.00) according to each 2021 Term Loan Lender's Applicable Commitment as set forth on Schedule 1 hereto (the "**2021 Term B Loan Advance**"). The 2021 Term A Loan Advance and the 2021 Term B Loan Advance are each hereinafter referred to singly as a "**2021 Term Loan Advance**" and collectively as the "**2021 Term Loan Advances**". After repayment, no 2021 Term Loan Advance (or any portion thereof) may be reborrowed.

(b) **Interest Payments**. With respect to the 2021 Term Loan Advances, commencing on the first (1st) Payment Date following the Funding Date of the applicable 2021 Term Loan Advance and continuing on the Payment Date of each month thereafter, Borrower shall make monthly payments of interest to Agent, for the account of the Lenders, in arrears, on the principal amount of each 2021 Term Loan Advance, at the rate set forth in Section 2.4(a).

(c) **Repayment of the 2021 Term Loan Advances**. Commencing on the 2021 Term Loan Amortization Date, and continuing on each Payment Date thereafter, Borrower shall repay the aggregate outstanding 2021 Term Loan

Advances to Agent, for the account of the 2021 Term Loan Lenders, in (i) consecutive equal monthly installments of principal over the number of months for the period commencing as of the 2021 Term Loan Amortization Date and ending on the 2021 Term Loan Maturity Date, plus (ii) monthly payments of accrued interest at the rate set forth in Section 2.4(a). All outstanding principal and accrued and unpaid interest with respect to the 2021 Term Loan Advances, and all other outstanding Obligations under the 2021 Term Loan Advances, are due and payable in full on the 2021 Term Loan Maturity Date.

(d) **Permitted Prepayment**. Borrower shall have the option to prepay all, but not less than all, of the 2021 Term Loan Advances advanced by the 2021 Term Loan Lenders under this Agreement, provided Borrower (i) delivers written notice to Agent and each 2021 Term Loan Lender of its election to prepay the 2021 Term Loan Advances at least fifteen (15) days prior to such prepayment, and (ii) pays to Agent, for the account of each 2021 Term Loan Lender, as applicable, on the date of such prepayment (A) the outstanding principal plus accrued and unpaid interest with respect to the 2021 Term Loan Advances, (B) the 2021 Prepayment Premium, (C) the 2021 Final Payment and (D) all other sums, if any, that shall have become due and payable with respect to the 2021 Term Loan Advances, including Lenders' Expenses and interest at the Default Rate with respect to any past due amounts.

(e) **Mandatory Prepayment Upon an Acceleration**. If the 2021 Term Loan Advances are accelerated by Agent pursuant to Section 10.2 hereof (or to the extent otherwise automatically accelerated pursuant to Section 10.2 hereof following an Event of Default pursuant to Section 10.1(e)), following the occurrence and during the continuance of an Event of Default, Borrower shall immediately pay to Agent and each 2021 Term Loan Lender, as applicable, for the account of the 2021 Term Loan Lenders in accordance with its respective Pro Rata Share, an amount equal to the sum of (i) all outstanding principal plus accrued and unpaid interest with respect to the 2021 Term Loan Advances, (ii) the 2021 Prepayment Premium, (iii) the 2021 Final Payment and (iv) all other sums, if any, that shall have become due and payable with respect to the 2021 Term Loan Advances, including Lenders' Expenses and interest at the Default Rate with respect to any past due amounts."

2. The Credit Agreement shall be amended by deleting the following, appearing as Section 2.4(a) thereof:

"(a) Interest.

(i) Advances. Subject to Section 2.4(b), the principal amount outstanding under the Revolving Line shall accrue interest at a floating per annum rate equal to the greater of (A) five and one half of one percent (5.50%) and (B) the Prime Rate, which interest, in each case, shall be payable monthly in accordance with Section 2.4(e) below.

(ii) Term Loan Advances. Subject to Section 2.4(b), the principal amount outstanding under each Term Loan Advance shall accrue interest at a

floating per annum rate equal to the greater of (A) six and one half of one percent (6.50%) and (B) one and one-half of one percent (1.50%) above the Prime Rate, which interest, in each case, shall be payable monthly in accordance with Section 2.4(e) below."

and inserting in lieu thereof the following:

"(a) Interest.

(i) Advances. Subject to Section 2.4(b), the principal amount outstanding under the Revolving Line shall accrue interest at a floating per annum rate equal to the greater of (A) five percent (5.00%) and (B) one and three-quarters of one percent (1.75%) above the Prime Rate, which interest, in each case, shall be payable monthly in accordance with Section 2.4(e) below.

(ii) 2021 Term Loan Advances. Subject to Section 2.4(b), the principal amount outstanding under each 2021 Term Loan Advance shall accrue interest at a floating per annum rate equal to the greater of (A) six percent (6.00%) and (B) two and three-quarters of one percent (2.75%) above the Prime Rate, which interest, in each case, shall be payable monthly in accordance with Section 2.4(e) below."

3. The Credit Agreement shall be amended by deleting the following, appearing as Section 2.4(h)(i)-(iv) thereof:

" (i) Revolving Line Commitment Fee. A non-refundable Revolving Line commitment fee (the "Revolving Line Commitment Fee") in the amount of Two Hundred Thousand Dollars ($200,000.00) is fully earned as of the Closing Date and payable as follows: (i) One Hundred Thousand Dollars ($100,000.00), payable on the Closing Date and (ii) One Hundred Thousand Dollars ($100,000.00), payable on the earliest to occur of (A) an Event of Default, (B) the termination of this Agreement or the Revolving Line, or (C) the first (1st) anniversary of the Closing Date, to be shared between the Revolving Line Lenders pursuant to their respective Applicable Commitment Percentages;

(ii) Final Payment. The Final Payment, when due hereunder, to be shared between the Term Loan Lenders pursuant to their respective Applicable Commitment Percentages;

(iii) Prepayment Premium. The Prepayment Premium, when due hereunder, to be shared between the Term Loan Lenders pursuant to their respective Applicable Commitment Percentages;

(iv) Termination Fee. Upon termination of this Agreement or the termination of the Revolving Line for any reason prior to the Revolving Line Maturity Date, in addition to the payment of any other amounts then-owing, a termination fee (the "Termination Fee") in an amount equal to two percent (2.0%) of the Revolving Line if such termination occurs on or prior to the first anniversary of the Closing Date, (ii) one percent (1.0%) of the Revolving Line if such

termination occurs at any time after the first anniversary of the Closing Date but on or prior to the second anniversary of the Closing Date, and (iii) zero percent (0.0%) of the Revolving Line if such termination occurs at any time after the second anniversary of the Closing Date, in each case to be shared between the Term Loan Lenders pursuant to their respective Applicable Commitment Percentage;"

and inserting in lieu thereof the following:

" (i) Revolving Line Commitment Fee. A non-refundable Revolving Line commitment fee (the "Revolving Line Commitment Fee") in the amount of Two Hundred Fifty Thousand Dollars ($250,000.00) is fully earned as of the Second Amendment Closing Date and payable as follows: (i) One Hundred Twenty-Five Thousand Dollars ($125,000.00), payable on the Second Amendment Closing Date and (ii) One Hundred Twenty-Five Thousand Dollars ($125,000.00), payable on the earliest to occur of (A) an Event of Default (and such Event of Default has not been expressly waived in writing by Agent and Required Lenders), (B) the termination of this Agreement or the Revolving Line, or (C) the first (1st) anniversary of the Second Amendment Closing Date, in each case, to be shared between the Revolving Line Lenders pursuant to their respective Applicable Commitment Percentages;

(ii) 2021 Final Payment. The 2021 Final Payment, when due hereunder, to be shared between the 2021 Term Loan Lenders pursuant to their respective Applicable Commitment Percentages;

(iii) 2021 Prepayment Premium. The 2021 Prepayment Premium, when due hereunder, to be shared between the 2021 Term Loan Lenders pursuant to their respective Applicable Commitment Percentages;

(iv) Termination Fee. Upon termination of this Agreement or the termination of the Revolving Line for any reason prior to the Revolving Line Maturity Date, in addition to the payment of any other amounts then-owing, a termination fee (the "**Termination Fee**") in an amount equal to two percent (2.0%) of the Revolving Line if such termination occurs on or prior to the first anniversary of the Second Amendment Closing Date, (ii) one percent (1.0%) of the Revolving Line if such termination occurs at any time after the first anniversary of the Second Amendment Closing Date but on or prior to the second anniversary of the Second Amendment Closing Date, and (iii) zero percent (0.0%) of the Revolving Line if such termination occurs at any time after the second anniversary of the Second Amendment Closing Date, in each case to be shared between the 2021 Term Loan Lenders pursuant to their respective Applicable Commitment Percentage;"

4. The Credit Agreement shall be amended by deleting the following, appearing as Section 3.3 thereof:

"3.3 Procedures for Borrowing.

(a) Advances. Subject to the prior satisfaction of all other applicable conditions to the making of an Advance set forth in this Agreement, to obtain an Advance, Borrower (via an individual duly authorized by an Administrator) shall notify Agent (which notice shall be irrevocable) by electronic mail by 12:00 p.m. Eastern time on the Funding Date of the Advance. Such notice shall be made by Borrower through Agent's online banking program, provided, however, if Borrower is not utilizing Agent's online banking program, then such notice shall be in a written format acceptable to Agent that is executed by an Authorized Signer. Agent shall have received satisfactory evidence that the Board has approved that such Authorized Signer may provide such notices and request Advances. In connection with any such notification, Borrower must promptly deliver to Agent by electronic mail or through Agent's online banking program such reports and information, including without limitation, a Borrowing Base Report, sales journals, cash receipts journals, accounts receivable aging reports, as Agent may request in its sole discretion. Agent shall credit proceeds of an Advance to the Designated Deposit Account. Agent may make Advances under this Agreement based on instructions from an Authorized Signer or without instructions if the Advances are necessary to meet Obligations which have become due.

(b) Term Loan Advances. Subject to the prior satisfaction of all other applicable conditions to the making of a Term Loan Advances set forth in this Agreement, to obtain a Term Loan Advance, Borrower shall notify Agent (which notice shall be irrevocable) by electronic mail, facsimile, or telephone by 12:00 p.m. Eastern time at least five (5) Business Days before the proposed Funding Date (with the exception of the Term B Loan Advance that shall be made on the First Amendment Effective Date, which shall be one (1) Business Day before the proposed Funding Date) of the Term Loan Advance. Together with any such electronic or facsimile notification, Borrower shall deliver to Agent by electronic mail or facsimile a completed Disbursement Letter (and Payment Advance Request Form) executed by an Authorized Signer. Agent may rely on any telephone notice given by a person whom Agent believes is an Authorized Signer. On the Funding Date, Agent shall credit each Term Loan Advance to the Designated Deposit Account. Agent may make a Term Loan Advance under this Agreement based on instructions from an Authorized Signer or without instructions if such Term Loan Advance is necessary to meet Obligations which have become due."

and inserting in lieu thereof the following:

" (a) Advances. Subject to the prior satisfaction of all other applicable conditions to the making of an Advance set forth in this Agreement, to obtain an Advance, Borrower (via an individual duly authorized by an Administrator) shall notify Agent (which notice shall be irrevocable) by electronic mail by 12:00 p.m. Eastern time on the Funding Date of the Advance. Such notice shall be made by Borrower through Agent's online banking program, provided, however, if Borrower is not utilizing Agent's online banking program, then such notice shall be in a written format acceptable to Agent that is executed by an Authorized Signer. Agent shall have received satisfactory evidence that the Board has

approved that such Authorized Signer may provide such notices and request Advances. In connection with any such notification, Borrower must promptly deliver to Agent by electronic mail or through Agent's online banking program such reports and information, including without limitation, a Borrowing Base Report including a detailed accounts receivable agings, aged by invoice date, sales journals, cash receipts journals, monthly accounts receivable agings, aged by invoice date, monthly accounts payable agings, aged by invoice date, as Agent may request in its sole discretion. Agent shall credit proceeds of an Advance to the Designated Deposit Account. Agent may make Advances under this Agreement based on instructions from an Authorized Signer or without instructions if the Advances are necessary to meet Obligations which have become due.

(b) 2021 Term Loan Advances. Subject to the prior satisfaction of all other applicable conditions to the making of a 2021 Term Loan Advances set forth in this Agreement, to obtain a 2021 Term Loan Advance, Borrower shall notify Agent (which notice shall be irrevocable) by electronic mail, facsimile, or telephone by 12:00 p.m. Eastern time at least five (5) Business Days before the proposed Funding Date of the 2021 Term Loan Advance. Together with any such electronic or facsimile notification, Borrower shall deliver to Agent by electronic mail or facsimile a completed Disbursement Letter (and Payment Advance Request Form) executed by an Authorized Signer. Agent may rely on any telephone notice given by a person whom Agent believes is an Authorized Signer. On the Funding Date, Agent shall credit each 2021 Term Loan Advance to the Designated Deposit Account. Agent may make a 2021 Term Loan Advance under this Agreement based on instructions from an Authorized Signer or without instructions if such 2021 Term Loan Advance is necessary to meet Obligations which have become due."

5. The Credit Agreement shall be amended by deleting the following, appearing as Section 6.2(a) and (b) thereof:

" (a) a Borrowing Base Report (and any schedules related thereto and including any other information requested by Agent with respect to Borrower's Accounts) within seven (7) days after the end of each month;

(b) within thirty (30) days after the end of each month, (i) monthly accounts receivable agings, aged by invoice date, (ii) monthly accounts payable agings, aged by invoice date, and outstanding or held check registers, if any, and (iii) monthly reconciliations of accounts receivable agings (aged by invoice date), transaction reports, sell through reports, detailed Account Debtor listing, Deferred Revenue report, and general ledger;"

and inserting in lieu thereof the following:

" (a) a Borrowing Base Report (and any schedules related thereto and including a detailed accounts receivable agings, aged by invoice date, and any other information requested by Agent with respect to Borrower's Accounts) (i)

within seven (7) days after the end of each month, (ii) and with each request for an Advance;

(b) within thirty (30) days after the end of each month (and with each request for an Advance for subsections (i) and (ii) hereof), (i) monthly accounts receivable agings, aged by invoice date, (ii) monthly accounts payable agings, aged by invoice date, and outstanding or held check registers, if any, and (iii) monthly reconciliations of accounts receivable agings (aged by invoice date), transaction reports, sell through reports, detailed Account Debtor listing, Deferred Revenue report, and general ledger;"

6. The Credit Agreement shall be amended by deleting the following, appearing as Section 6.2(d) thereof:

" (d) within thirty (30) days after the last day of each month and together with the Monthly Financial Statements, a duly completed Compliance Certificate signed by a Responsible Officer, certifying that as of the end of such month, Borrower was in full compliance with all of the terms and conditions of this Agreement, and setting forth calculations showing compliance with the financial covenants set forth in this Agreement and such other information as Agent may reasonably request, including, without limitation, a statement that at the end of such month there were no held checks;"

and inserting in lieu thereof the following:

" (d) within thirty (30) days after the last day of each month and together with the Monthly Financial Statements (provided that for the months ending March 31, June 30, and September 30, within forty-five days after the last day of each such month, and for the month ending December 31, within 90 days after the last day of such month), a duly completed Compliance Certificate signed by a Responsible Officer, certifying that as of the end of such month, Borrower was in full compliance with all of the terms and conditions of this Agreement, and setting forth calculations showing compliance with the financial covenants set forth in this Agreement and such other information as Agent may reasonably request, including, without limitation, a statement that at the end of such month there were no held checks;"

7. The Credit Agreement shall be amended by deleting the following, appearing as Section 6.2(f) thereof:

" (f) as soon as available, and in any event within ninety (90) days following the end of Borrower's fiscal year, audited consolidated financial statements prepared under GAAP, consistently applied, together with an unqualified opinion on the financial statements from an independent certified public accounting firm reasonably acceptable to Agent;"

and inserting in lieu thereof the following:

" (f) (i) as soon as available, and in any event within forty-five (45) days after the end of the first three fiscal quarters of Borrower, a company prepared consolidated balance sheet and income statement covering Borrower's consolidated operations for such quarter, consistent with such quarterly financial statements submitted to the SEC, in a form acceptable to Agent; and (ii) as soon as available, and in any event within ninety (90) days following the end of Borrower's fiscal year, Borrower shall deliver its 10-K report, together with audited consolidated financial statements prepared under GAAP, consistently applied, together with an unqualified opinion on the financial statements from an independent certified public accounting firm reasonably acceptable to Agent;"

1. The Credit Agreement shall be amended by deleting the following appearing as Section 6.6(a) thereof:

"Borrower shall, and shall cause each Credit Party to, maintain all of its operating accounts, the Cash Collateral Account and excess cash with SVB and SVB's Affiliates. Notwithstanding the foregoing, Borrower shall be permitted to invest up to fifty (50.0%) percent of its excess cash and cash equivalents in securities/investment accounts maintained at another bank or financial institution other than SVB subject to the terms and conditions of this Agreement. In addition, Borrower shall conduct all of its primary banking facilities with SVB, including, without limitation, cash management, asset management, letters of credit and business credit cards."

and inserting in lieu the following:

"Borrower shall, and shall cause each Credit Party to, maintain all of its operating accounts, the Cash Collateral Account and excess cash with SVB and SVB's Affiliates. In addition, Borrower shall conduct all of its primary banking facilities with SVB, including, without limitation, cash management, asset management, letters of credit and business credit cards. Notwithstanding the foregoing, prior to the expiration of the 2021 Transition Period, Borrower may maintain its lockbox account with Wells Fargo Bank (the "**Wells Fargo Account**"), provided that any and all funds deposited into the Wells Fargo Account shall be transferred into an account in the name of Borrower maintained with SVB every three (3) Business Days."

8. Section 6.13 of the Credit Agreement shall be amended in its entirety and replaced with the following:

"6.13 Minimum Revenue. Borrower shall maintain minimum Revenue (measured as of the last day of each fiscal quarter) in at least the amount set forth for the corresponding measuring periods in the table below, or as applicable as determined in accordance with the last paragraph of this Section 6.13. Notwithstanding the foregoing, minimum Revenue will not be tested (a) for any quarter, when Borrower has, at all times during such quarter maintained Liquidity, as determined by Agent in its sole discretion, of at least One Hundred Million Dollars ($100,000,000.00), and (b) notwithstanding clause (a), upon the occurrence of the 2021 Milestone Event, and at all times thereafter, for any quarter

in which a Streamline Period is in effect for the entirety of such quarter.

Period Ending	**Minimum Revenue**
June 30, 2021	At least $47,689,000.00 for the trailing six (6) month period ending June 30, 2021
September 30, 2021	At least $48,510,000.00 for the trailing six (6) month period ending September 30, 2021
December 31, 2021	At least $52,311,000.00 for the trailing six (6) month period ending December 31, 2021
March 31, 2022	At least $54,000,000.00 for the trailing six (6) month period ending March 31, 2022
June 30, 2022	At least $57,000,000.00 for the trailing six (6) month period ending June 30, 2022
September 30, 2022	At least $63,000,000.00 for the trailing six (6) month period ending September 30, 2022
December 31, 2022	At least $68,000,000.00 for the trailing six (6) month period ending December 31, 2022

With respect to the trailing six (6) month period ending March 31, 2023 and each fiscal quarter thereafter, the minimum Revenue levels shall be proposed by Agent and Lenders to Borrower in writing based upon Borrower's Board approved operating budget acceptable to Agent and each Lender in Agent's and each such Lender's sole discretion and based upon each Lender's then current credit underwriting. With respect thereto, Borrower's failure to agree in writing (which agreement shall be set forth in a written amendment to this Agreement) on or prior to March 15, 2023, to any such covenant levels with respect with respect to the trailing six (6) month period ending March 31, 2023 and each fiscal quarter thereafter, shall result in an immediate Event of Default for which there shall be no grace or cure period."

9. The Credit Agreement shall be amended by inserting the following new definitions, appearing alphabetically in Section 13.1 thereof:

" "**2017 Convertible Note Event**" occurs if and when (if ever) Agent confirms in writing that it has received evidence, satisfactory to Agent and each Lender in Agent's and each Lender's sole and absolute discretion, that Borrower has either (i) (a) entered into fully-executed written amendments to the 2017 Convertible Notes, (b) entered into fully-executed unsecured convertible notes, replacing the 2017 Convertible Notes, or (c) completed a refinancing of the 2017 Convertible Notes, in the case of (a), (b) or (c), on terms satisfactory to Agent and each Lender in Agent's and each Lender's sole and absolute discretion, including, without limitation, extending the maturity date of the 2017 Convertible Notes (or such replacement or refinanced unsecured convertible notes) to no earlier than November 1, 2026; or (ii) fully converted all 2017 Convertible Notes into equity securities of Borrower."

" "**2021 Draw Period**" is the period commencing on the occurrence of the 2021 Milestone Event, and ending on the earlier to occur of (a) March 31, 2022, or (b) an Event of Default (and such Event of Default has not been expressly waived in writing by Agent and Required Lenders)."

" "**2021 Final Payment**" is a payment (in addition to and not in substitution for the regular monthly payments of principal plus accrued interest) equal to the original principal amount of the 2021 Term Loan Advances extended by the 2021 Term Loan Lenders to Borrower hereunder multiplied by four and three-quarters of one percent (4.75%) due on the earliest to occur of (a) the 2021 Term Loan Maturity Date, (b) the repayment in full of the 2021 Term Loan Advance, (c) as required pursuant to Section 2.3.1(d) or 2.3.1(e), or (d) the termination of this Agreement."

" "**2021 Interest Only Extension Event**" occurs if and when (if ever) Agent confirms in writing that it has received evidence, on or prior to July 31, 2023, satisfactory to Agent and each 2021 Term Loan Lender in Agent's and each 2021 Term Loan Lender's sole and absolute discretion, that each of the following has occurred on or prior to July 31, 2023: (i) 2021 Milestone Event, and (ii) Borrower has requested and Lenders have made the 2021 Term B Loan Advance to Borrower; and no Event of Default has occurred and is continuing at such time. "

" "**2021 Milestone Event**" occurs if and when (if ever) Agent confirms in writing that it has received evidence, on or prior to March 31, 2022, satisfactory to Agent and each 2021 Term Loan Lender in Agent's and each 2021 Term Loan Lender's sole and absolute discretion, that Borrower has (a) (i) received positive data with respect to Borrower's FX201 phase 1 clinical trial sufficient to progress to a phase 2 clinical trial as indicated by the FDA, or (ii) received positive data with respect to Borrower's FX301 phase 1b clinical trial sufficient to progress to a phase 2 clinical trial as indicated by the FDA, and (b) achieved Revenue of at least One Hundred Million Dollars ($100,000,000.00) for a trailing twelve (12) month period ending after the Second Amendment Closing Date, but

on or prior to March 31, 2022, provided, however, that Revenue shall be tested for the trailing twelve (12) month period ending on the last day of the calendar month for the reporting period immediately prior to the date on which Borrower requests the 2021 Term B Loan Advance."

" "**2021 Prepayment Premium**" shall be an additional fee, payable to Agent, for the ratable benefit of the 2021 Term Loan Lenders based on their Pro Rata Share, with respect to the 2021 Term Loan Advances, in an amount equal to:

(a) for a prepayment of the 2021 Term Loan Advances made on or prior to the first (1st) anniversary of the Second Amendment Closing Date, three percent (3.0%) of the then outstanding principal amount of the 2021 Term Loan Advances immediately prior to the date of such prepayment;

(b) for a prepayment of the 2021 Term Loan Advances made after the first (1st) anniversary of the Second Amendment Closing Date, but on or prior to the second (2nd) anniversary of the Second Amendment Closing Date, two percent (2.0%) of the then outstanding principal amount of the 2021 Term Loan Advances immediately prior to the date of such prepayment;

(c) for a prepayment of the 2021 Term Loan Advances made after the second (2nd) anniversary of the Second Amendment Closing Date, but on or prior to the third (3rd) anniversary of the Second Amendment Closing Date, one percent (1.0%) of the then outstanding principal amount of the 2021 Term Loan Advances immediately prior to the date of such prepayment; and

(d) for a prepayment of the 2021 Term Loan Advances made after the third (3rd) anniversary of the Second Amendment Closing Date, zero percent (0.0%) of the then outstanding principal amount of the 2021 Term Loan Advances immediately prior to the date of such prepayment.

" "**2021 Prior Obligations**" has the meaning given it in Section 2.3.1(a)."

" "**2021 Term A Loan Advance**" has the meaning given it in Section 2.3.1(a)."

" "**2021 Term B Loan Advance**" has the meaning given it in Section 2.3.1(a)."

" "**2021 Term Loan Advance**" and "**2021 Term Loan Advances**" each has the meaning given it in Section 2.3.1(a)."

" "**2021 Term Loan Amortization Date**" means August 1, 2023, which shall be extended to August 1, 2024, upon the occurrence of the 2021 Interest Only Extension Event."

" "**2021 Term Loan Commitment**" means, for any Lender, the obligation of such Lender to make a 2021 Term Loan Advance as and when available, up to the principal amount shown on Schedule 1. "**2021 Term Loan Commitments**" means the aggregate amount of such commitments of all Lenders."

" "**2021 Term Loan Lenders**" has the meaning given it in Section 2.3.1(a)."

" "**2021 Term Loan Maturity Date**" is February 1, 2024, which shall be extended to July 1, 2026 upon the occurrence of the 2017 Convertible Note Event."

" "**2021 Transition Period**" is the period of time commencing upon the Second Amendment Closing Date, and ending on the earlier to occur of (a) October 28, 2021, and (b) an Event of Default."

" "**Existing Term Loan Lenders**" means, individually and collectively, **MIDCAP FUNDING XIII TRUST**, a Delaware statutory trust, **ELM 2020-3 TRUST**, a Delaware statutory trust, and **ELM 2020-4 TRUST**, a Delaware statutory trust."

" "**Second Amendment Closing Date**" means July 30, 2021."

" "**Wells Fargo Account**" has the meaning given it in Section 6.6(a)."

10. The Credit Agreement shall be amended by deleting the following definitions, appearing in Section 13.1 thereof:

" "**Credit Extension**" is any Advance, Overadvance, Term Loan Advance, or any other extension of credit by any Lender for Borrower's benefit."

" "**Lenders**" and "**Lenders**" has the meaning given it in the preamble of this Agreement, including, without limitation or duplication, each Revolving Line Lender and each Term Loan Lender.

" "**Maturity Date**" means the Revolving Line Maturity Date and/or the Term Loan Maturity Date, as applicable."

" "**Obligations**" means all of Borrower's obligations to pay when due any debts, principal, interest, Lenders' Expenses, fees, indemnities, the Revolving Line Commitment Fee, the Unused Revolving Line Facility Fee, the Termination Fee, the Prepayment Fee, the Final Payment and other amounts Borrower owes the Agent or Lenders now or later under this Agreement or the other Loan Documents, including, without limitation, interest accruing after Insolvency Proceedings begin (whether or not allowed) and debts, liabilities, or obligations of Borrower assigned

to the Lenders and/or Agent, and the payment and performance of each other Credit Party's covenants and obligations under the Loan Documents. "Obligations" does not include obligations under any warrants issued to Agent or a Lender."

" "**Payment Date**" means (a) with respect to Advances, the last calendar day of each calendar month, and (b) with respect to the Term Loan Advances, the first calendar day of each calendar month.

" "**Required Lenders**" means, unless all of the Lenders and Agent agree otherwise in writing, Lenders having (a) more than sixty percent (60.0)% of the Applicable Commitments of all Lenders, or (b) if such Applicable Commitments have expired or been terminated, more than sixty percent (60.0%) of the aggregate outstanding principal amount of the Credit Extensions; provided, however, that so long as a Lender on the Closing Date does not assign any portion of its Term Loan Commitment, its Revolving Line Commitment, or all or any part of its Term Loan Advances or its portion of the Revolving Line (other than, in each case, an assignment to any Affiliate or Approved Fund of such Lender), the "Required Lenders" shall include such Lender (or such Affiliate or Approved Fund of such Lender)."

" "**Revolving Line**" is the aggregate principal amount equal to Five Million Dollars ($5,000,000.00)."

" "**Revolving Line Maturity Date**" is January 1, 2024."

" "**Streamline Period**" is, on and after the Closing Date, provided no Event of Default has occurred and is continuing: (a) commencing on the first day of the month following the day that Borrower provides to Agent a written report that Borrower has, at all times during the immediately preceding calendar month maintained Liquidity, as determined by Agent in its sole discretion, of at least Eighty Million Dollars ($80,000,000.00) (the "**Streamline Threshold**"); and (b) terminating on the earlier to occur of (i) the occurrence of an Event of Default, or (ii) the first day thereafter in which Borrower fails to maintain the Streamline Threshold, as confirmed by Agent in its sole discretion. Upon the termination of a Streamline Period, Borrower must maintain the Streamline Threshold each consecutive day for one (1) month as determined by Agent in its sole discretion, prior to entering into a subsequent Streamline Period. Borrower shall give Agent prior written notice of Borrower's election to enter into any such Streamline Period, and each such Streamline Period shall commence on the first day of the monthly period following the date Agent determines, in its sole discretion, that the Streamline Threshold has been achieved."

" "**Term Loan Maturity Date**" is January 1, 2024."

and inserting in lieu thereof the following:

" "**Credit Extension**" is any Advance, Overadvance, Term Loan Advance, 2021 Term Loan Advance, or any other extension of credit by any Lender for Borrower's benefit."

" "**Lenders**" and "**Lenders**" has the meaning given it in the preamble of this Agreement, including, without limitation or duplication, each Revolving Line Lender, each Term Loan Lender, and each 2021 Term Loan Lender."

" "**Maturity Date**" means the Revolving Line Maturity Date, the Term Loan Maturity Date, and/or the 2021 Term Loan Maturity Date, as applicable."

" "**Obligations**" means all of Borrower's obligations to pay when due any debts, principal, interest, Lenders' Expenses, fees, indemnities, the Revolving Line Commitment Fee, the Unused Revolving Line Facility Fee, the Termination Fee, the 2021 Prepayment Fee, the 2021 Final Payment and other amounts Borrower owes the Agent or Lenders now or later under this Agreement or the other Loan Documents, including, without limitation, interest accruing after Insolvency Proceedings begin (whether or not allowed) and debts, liabilities, or obligations of Borrower assigned to the Lenders and/or Agent, and the payment and performance of each other Credit Party's covenants and obligations under the Loan Documents. "Obligations" does not include obligations under any warrants issued to Agent or a Lender."

" "**Payment Date**" means (a) with respect to Advances, the last calendar day of each calendar month, and (b) with respect to the 2021 Term Loan Advances and the Term Loan Advances, the first calendar day of each calendar month."

" "**Required Lenders**" means, unless all of the Lenders and Agent agree otherwise in writing, Lenders having (a) more than sixty percent (60.0)% of the Applicable Commitments of all Lenders, or (b) if such Applicable Commitments have expired or been terminated, more than sixty percent (60.0%) of the aggregate outstanding principal amount of the Credit Extensions; provided, however, that so long as a Lender on the Second Amendment Closing Date does not assign any portion of its 2021 Term Loan Commitment, its Revolving Line Commitment, or all or any part of its 2021 Term Loan Advances or its portion of the Revolving Line (other than, in each case, an assignment to any Affiliate or Approved Fund of such Lender), the "Required Lenders" shall include such Lender (or such Affiliate or Approved Fund of such Lender)."

" "**Revolving Line**" is the aggregate principal amount equal to Twenty-Five Million Dollars ($25,000,000.00)."

" "**Revolving Line Maturity Date**" is February 1, 2024, which shall be extended to July 1, 2026 upon the occurrence of the 2017 Convertible Note Event."

" "**Streamline Period**" is, on and after the Second Amendment Closing Date, provided no Event of Default has occurred and is continuing, the period (a) commencing on the first day of the month following the day that Borrower provides to Agent a written report that Borrower has, at all times during the immediately preceding calendar month maintained Liquidity, as determined by Agent in its sole discretion, of at least One Hundred Twenty Million Dollars ($120,000,000.00) (the "**Streamline Threshold**"); and (b) terminating on the earlier to occur of (i) the occurrence of an Event of Default (and such Event of Default has not been expressly waived in writing by Agent and Required Lenders), or (ii) the first day thereafter in which Borrower fails to maintain the Streamline Threshold, as confirmed by Agent in its sole discretion. Upon the termination of a Streamline Period, Borrower must maintain the Streamline Threshold each consecutive day for one (1) month as determined by Agent in its sole discretion, prior to entering into a subsequent Streamline Period. Borrower shall give Agent prior written notice of Borrower's election to enter into any such Streamline Period, and each such Streamline Period shall commence on the first day of the monthly period following the date Agent determines, in its sole discretion, that the Streamline Threshold has been achieved."

" "**Term Loan Maturity Date**" is the Second Amendment Closing Date."

11. Schedule 1 (Credit Facility Schedule) appearing as Schedule 1 to the Credit Agreement is hereby deleted and replaced with the Schedule 1 (Credit Facility Schedule) attached as Exhibit A hereto.

12. The Compliance Certificate appearing as Exhibit B to the Credit Agreement is hereby deleted and replaced with the Compliance Certificate attached as Exhibit B hereto.

3. No Other Amendments. Except for the amendments set forth and referred to in Sections 2 above, the Credit Agreement and the other Loan Documents shall remain unchanged and in full force and effect and Borrower hereby ratifies and reaffirm all of its obligations under the Credit Agreement and the other Loan Documents as amended by this Agreement. Nothing in this Agreement is intended, or shall be construed, to constitute a novation or an accord and satisfaction of any of Borrower's Obligations or to modify, affect or impair the perfection or continuity of Agent's security interests in, security titles to or other liens, for the benefit of itself and the Lenders, on any Collateral for the Obligations.

4. Representations and Warranties. To induce Agent and Lenders to enter into this Agreement, Borrower hereby warrants, represents and covenants to Agent and Lenders that (i) each representation or warranty of each Credit Party set forth in the Credit Agreement and other Loan Documents are hereby restated and reaffirmed as true, accurate and complete in all material respects on

and as of the date hereof as if such representation or warranty were made on and as of the date hereof (provided, however, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof, and provided, further, that those representations and warranties expressly referring to a specific date shall be true, accurate and complete in all material respects as of such date), (ii) both before and after giving effect to this Agreement, no Default or Event of Default has occurred and is continuing and (iii) each Credit Party has the power and is duly authorized and has obtained all necessary consents and has taken all necessary actions to enter into, deliver and perform this Agreement and this Agreement is the legal, valid and binding obligation of each Credit Party enforceable against such Credit Party in accordance with its terms.

5. **No Defense of Borrower.** Borrower hereby acknowledges and agrees that Borrower has no offsets, defenses, claims, or counterclaims against Agent and Lenders with respect to the Obligations, or otherwise, and that if Borrower now has, or ever did have, any offsets, defenses, claims, or counterclaims against Agent and Lenders, whether known or unknown, at law or in equity, all of them are hereby expressly WAIVED and Borrower hereby RELEASES Agent and Lenders from any liability thereunder.

6. **Updated Perfection Certificate**. Borrower has delivered an updated Perfection Certificate in connection with this Agreement (the "**Updated Perfection Certificate**") dated as of the date hereof, which Updated Perfection Certificate shall supersede in all respects that certain Perfection Certificate of Borrower dated as of August 2, 2019. Borrower agrees that all references in the Credit Agreement to "Perfection Certificate" shall hereinafter be deemed to be a reference to the Updated Perfection Certificate.

7. **Ratification of Pledge Agreement.** Borrower hereby ratifies, confirms and reaffirms, all and singular, the terms and conditions of a certain Pledge Agreement dated as of August 2, 2019 between Borrower and Agent, and acknowledges, confirms and agrees that said Pledge Agreement shall remain in full force and effect.

8. **Electronic Execution of Documents**. The words "execution," "signed," "signature" and words of like import in any Loan Document shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity and enforceability as a manually executed signature or the use of a paper-based recordkeeping systems, as the case may be, to the extent and as provided for in any applicable law, including, without limitation, any state law based on the Uniform Electronic Transactions Act.

9. **Severability of Provisions.** In case any provision of or obligation under this Agreement shall be invalid, illegal or unenforceable in any applicable jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

10. **Counterparts.** This Agreement may be executed in multiple counterparts and all of which when taken together shall constitute one and the same instrument.

11. **GOVERNING LAW.** THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE WITHOUT

REGARD TO THE PRINCIPLES THEREOF REGARDING CONFLICTS OF LAWS.

12. **Entire Agreement.** The Credit Agreement and the other Loan Documents as and when amended through this Agreement embody the entire agreement between the parties hereto relating to the subject matter thereof and supersede all prior agreements, representations and understandings, if any, relating to the subject matter thereof.

13. **No Strict Construction, Etc.** The parties hereto have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provisions of this Agreement. Time is of the essence for this Agreement.

14. **Costs and Expenses.** Borrower absolutely and unconditionally agrees to pay or reimburse upon demand for all reasonable fees, costs and expenses incurred by Agent and the Lenders in connection with the preparation, negotiation, execution and delivery of this Agreement and any other Loan Documents or other agreements prepared, negotiated, executed or delivered in connection with this Agreement or transactions contemplated hereby.

15. **Effectiveness**. This Agreement shall be deemed effective upon (a) the due execution and delivery to Agent of this Agreement by each party hereto, (b) delivery of each of the deliverables listed on the document agenda, satisfactory to Agent and each Lender, (c) Borrower's payment of (i) the Revolving Line Commitment Fee payable on the Second Amendment Closing Date, and (ii) Lender's Expenses incurred in connection with this Amendment.

[*Remainder of page intentionally blank; signature pages follow.***]**

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the Closing Date.

BORROWER:

FLEXION THERAPEUTICS, INC.

By /s/ Mark S. Levine

Name: Mark S. Levine
Title: Secretary

AGENT:

SILICON VALLEY BANK, as Agent

By /s/ Lauren Cole

Name: Lauren Cole

Title: Director

LENDERS:

SILICON VALLEY BANK

By /s/ Lauren Cole

Name: Lauren Cole

Title: Director

MIDCAP FINANCIAL TRUST
By: Apollo Capital Management, L.P., its investment manager
By: Apollo Capital Management GP, LLC, its general partner

By: /s/ Maurice Amsellem
Name: Maurice Amsellem
Title: Authorized Signatory

MIDCAP FUNDING IV TRUST
By: Apollo Capital Management, L.P., its investment manager
By: Apollo Capital Management GP, LLC, its general partner

By: /s/ Maurice Amsellem
Name: Maurice Amsellem
Title: Authorized Signatory

MIDCAP FUNDING XIII TRUST
By: Apollo Capital Management, L.P., its investment manager
By: Apollo Capital Management GP, LLC, its general partner

By: /s/ Maurice Amsellem
Name: Maurice Amsellem
Title: Authorized Signatory

EXISTING TERM LOAN LENDERS

MIDCAP FUNDING XIII TRUST
By: Apollo Capital Management, L.P., its investment manager
By: Apollo Capital Management GP, LLC, its general partner

By: /s/ Maurice Amsellem
Name: Maurice Amsellem
Title: Authorized Signatory

ELM 2020-3 TRUST
By: MidCap Financial Services Capital Management, LLC, as Servicer

By: /s/ John O'Dea
Name: John O'Dea
Title: Authorized Signatory

ELM 2020-4 TRUST
By: MidCap Financial Services Capital Management, LLC, as Servicer

By: /s/ John O'Dea
Name: John O'Dea
Title: Authorized Signatory

EXHIBIT A

Schedule 1

2021 Credit Facility Schedule

Revolving Line

Lender	**Applicable Commitment**	**Applicable Commitment Percentage**
Silicon Valley Bank	$12,500,000.00	50.0%
MidCap Funding IV Trust	$12,500,000.00	50.0%
TOTAL	**$25,000,000.00**	**100.0000%**

2021 Term A Loan Advance

Lender	**Applicable Commitment**	**Applicable Commitment Percentage**
Silicon Valley Bank	$27,500,000.00	50.0%
MidCap Financial Trust	$20,625,000.00	37.50%
Midcap Funding XIII Trust	$6,875,000.00	12.50%
TOTAL	**$55,000,000.00**	**100.0000%**

2021 Term B Loan Advance

Lender	**Applicable Commitment**	**Applicable Commitment Percentage**
Silicon Valley Bank	$10,000,000.00	50.0%
MidCap Financial Trust	$10,000,000.00	50.0%
TOTAL	**$20,000,000.00**	**100.0000%**

EXHIBIT B

EXHIBIT B

COMPLIANCE CERTIFICATE

TO: SILICON VALLEY BANK, as Agent, and the Lenders Date:
FROM: FLEXION THERAPEUTICS, INC.

The undersigned authorized officer of FLEXION THERAPEUTICS, INC. ("**Borrower**") certifies that under the terms and conditions of the Amended and Restated Credit and Security Agreement among Borrower, SVB, as Agent and Lender and the other Lenders from time to time party thereto (the "**Loan Agreement**"):

(1) Borrower is in complete compliance for the period ending _____ with all required covenants except as noted below, (2) there are no Events of Default, (3) all representations and warranties in the Agreement are true and correct in all material respects on this date except as noted below; provided, however, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and provided, further that those representations and warranties expressly referring to a specific date shall be true, accurate and complete in all material respects as of such date, (4) Borrower, and each of its Subsidiaries, has timely filed all required tax returns and reports, and Borrower has timely paid all foreign, federal, state and local taxes, assessments, deposits and contributions owed by Borrower except as otherwise permitted pursuant to the terms of Section 5.6 of the Agreement, and (5) no Liens have been levied or claims made against Borrower or any of its Subsidiaries relating to unpaid employee payroll or benefits of which Borrower has not previously provided written notification to Agent.

Attached are the required documents supporting the certification. The undersigned certifies that these are prepared in accordance with GAAP consistently applied from one period to the next except as explained in an accompanying letter or footnotes. The undersigned acknowledges that no borrowings may be requested at any time or date of determination that Borrower is not in compliance with any of the terms of the Agreement, and that compliance is determined not just at the date this certificate is delivered. Capitalized terms used but not otherwise defined herein shall have the meanings given them in the Agreement.

Please indicate compliance status by circling Yes/No under "Complies" column.

Reporting Covenants	**Required**	**Complies**
Monthly financial statements	Monthly within 30 days	Yes No
Compliance Certificates	Monthly within 30 days (45 days for March, June, September, and 90 days for December)	Yes No
10-Q Report	Quarterly (Q1, Q2, and Q3) within 45 days	Yes No
10-K Report and annual financial statements (CPA audited)	FYE within 90 days	Yes No
Filed 10-Q, 10-K, and 8-K	Within 5 days after filing with SEC	Yes No
A/R & A/P Agings	Monthly within 30 days and with each Advance request	Yes No

Deferred Revenue report	Monthly within 30 days	Yes No
Sell through reports	Monthly within 30 days	Yes No
Borrowing Base Reports with detailed A/R aging	Monthly within 7 days and with each Advance request	Yes No
Board approved projections	FYE within 90 days and as amended/updated	Yes No
The following Material Intellectual Property was registered after the Closing Date (if no registrations, state "None") _____		

Financial Covenant	**Required**	**Actual**	**Complies**
Minimum Revenue	See Schedule 1	$_____	Yes No

Streamline Period	**Required**	**Actual**	**Complies**
Maintain:			
Liquidity	≥ $120,000,000.00	$_____	Yes No

Other Matters

Have there been any amendments of or other changes to the capitalization table of Borrower and to the Operating Documents of Borrower or any of its Subsidiaries? If yes, provide copies of any such amendments or changes with this Compliance Certificate. Yes No

The following are the exceptions with respect to the certification above: (If no exceptions exist, state "No exceptions to note.")

FLEXION THERAPEUTICS, INC.

By:
Name:
Title:

AGENT USE ONLY

Received by: _____
AUTHORIZED SIGNER
Date: _____

Verified: _____
AUTHORIZED SIGNER
Date: _____

Compliance Status: Yes No

Schedule 1 to Compliance Certificate

Financial Covenants of Borrower

In the event of a conflict between this Schedule and the Agreement, the terms of the Agreement shall govern.

Dated: _____

I. **Minimum Revenue** (Section 6.13)

Required: Minimum Revenue. Borrower shall maintain minimum Revenue (measured as of the last day of each fiscal quarter) in at least the amount set forth for the corresponding measuring periods in the table below, or as applicable as determined in accordance with the last paragraph of this Section 6.13. Notwithstanding the foregoing, minimum Revenue will not be tested (a) for any quarter, when Borrower has, at all times during such quarter maintained Liquidity, as determined by Agent in its sole discretion, of at least One Hundred Million Dollars ($100,000,000.00), and (b) notwithstanding clause (a), upon the occurrence of the 2021 Milestone Event, and at all times thereafter, for any quarter in which a Streamline Period is in effect for the entirety of such quarter.

Period Ending	**Minimum Revenue**
June 30, 2021	At least $47,689,000.00 for the trailing six (6) month period ending June 30, 2021
September 30, 2021	At least $48,510,000.00 for the trailing six (6) month period ending September 30, 2021
December 31, 2021	At least $52,311,000.00 for the trailing six (6) month period ending December 31, 2021
March 31, 2022	At least $54,000,000.00 for the trailing six (6) month period ending March 31, 2022
June 30, 2022	At least $57,000,000.00 for the trailing six (6) month period ending June 30, 2022
September 30, 2022	At least $63,000,000.00 for the trailing six (6) month period ending September 30, 2022
December 31, 2022	At least $68,000,000.00 for the trailing six (6) month period ending December 31, 2022

**See Section 6.13 with respect to the fiscal quarter ending March 31, 2023 and each fiscal quarter thereafter.*

Actual: $ _____

No, not in compliance Yes, in compliance

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

SUPPLY AGREEMENT

This Supply Agreement ("Agreement") is made effective as of the 1st day of July, 2016 (the "Effective Date") by and between Evonik Corporation, an Alabama Corporation with its principal place of business at 299 Jefferson Road, Parsippany, New Jersey 07054 and with a facility at 750 Lakeshore Parkway, Birmingham, Alabama 35211 (hereinafter referred to as "Supplier") and Flexion Therapeutics, Inc. with its principal place of business at 10 Mall Road, Suite 301, Burlington, Massachusetts 01803 (hereinafter referred to as "Purchaser"). Supplier and Purchaser are sometimes referred to herein individually as a "Party" and collectively as the "Parties."

PREAMBLE

WHEREAS, Supplier is engaged in the business of selling a certain polymer product known as […***…] as further identified in Exhibit A (hereinafter "Product"); and

WHEREAS, Purchaser is engaged in the business of formulation development and commercial manufacturing and desires to utilize and incorporate the Product, which Supplier shall supply in accordance with certain specifications agreed upon by Supplier and Purchaser to be attached as Exhibit B hereto ("Specifications"), as a raw material in Purchaser's subsequent manufacture of Purchaser's product referred to as Zilretta™ (also known as FX006) containing the active ingredient triamcinolone acetonide ("Finished Product"); and

WHEREAS, Purchaser acknowledges, understands and agrees: (i) that Supplier is only willing to enter into this Agreement and to sell Product hereunder provided that Purchaser accepts and agrees to purchase Product subject to the terms and conditions hereof including but not limited to the disclaimer set forth in Section 2.4 hereof (the "Disclaimer"), and (ii) that Supplier is relying upon Purchaser's warranties and representations to that effect, as an express inducement to enter into this Agreement; and

WHEREAS, upon the Effective Date the Parties have simultaneously executed a quality agreement ("Quality Agreement") which describes the relationship of the Parties hereunder and the responsibilities of each Party regarding quality systems practices and activities concerning the Product. However, this Agreement will expressly and exclusively govern all provisions regarding the purchase and sale of all Product between the Parties and all terms, obligations, responsibility, and liability regarding same. The aforementioned Quality Agreement will only provide guidelines with regard to the quality of the Product and each Party's responsibilities regarding quality systems practices and activities concerning the Product.

***Certain Confidential Information Omitted

NOW, THEREFORE, in consideration of the premises and the mutual promises herein made, and in consideration of the representations, warranties, and covenants herein contained, the Supplier and Purchaser agree as follows:

The recitals described above are hereby expressly made part of this Agreement.

1.DEFINITIONS. For purposes of this Agreement, the following terms have the meaning set forth below:

1.1 “Affiliate” of a Party means any person, corporation, association or other entity that directly or indirectly owns, is owned by, or is under common ownership of such Party, either now or at any time during the term of this Agreement. The terms “owns,” “owned,” or “ownership” mean the direct or indirect possession of more than fifty percent (50%) of the voting securities of, or income interest or comparable equity in, such entity.

1.2 ““Applicable Laws”“ means all federal, state, and local ordinances, rules, and regulations of any kind whatsoever, which as it applies to Supplier are applicable to Product or the manufacture thereof or, as it applies to Purchaser, applicable to the Finished Product.

1.3 “Batch” means […***…] of monomer (lactide and glycolide) that is charged into a GMP commercial vessel yielding a minimum of […***…] of Product. The Parties will mutually agree upon any adjustments to the minimum volume of Product yield in a Batch and consequently the definition of Batch, annually, based upon actual Product yields.

1.4 “Binding Forecast” has the meaning set forth in Section 3.4(a).

1.5 “Certificate of Analysis” means a document certifying that the Product meets all Product Requirements. Each Certificate of Analysis shall also include the test results, batch lot number, location of manufacture, and date of manufacture.

1.6 “Confidential Information” has the meaning set forth in Section 8.1.

1.7 “Contract Year” means each consecutive twelve (12) month period beginning on the Effective Date or anniversary thereof, as applicable.

1.8 “Current Good Manufacturing Practices” (abbreviated “GMPs” or **“**cGMPs**”**) means the standards established by the FDA for current Good Manufacturing Practices, as specified in the International Pharmaceutical Excipients Council (IPEC) and the Pharmaceutical Quality Group (PQG) for current Good Manufacturing Practices for Pharmaceutical Excipients, as specified in the 2006 Guide (or their successor provisions), as any of the foregoing may be amended from time to time.

1.9 “Delivery Notice” has the meaning set forth in Section 3.6.

1.10 “Disclaimer” has the meaning set forth in the Preamble.

***Certain Confidential Information Omitted

0.11 “Disqualification” has the meaning set forth in Section 4.2(c).

0.12 “DMF” means any drug master file filed with the FDA, and any equivalent filing in other countries or regulatory jurisdictions covering Product.

0.13 “Effective Date” has the meaning set forth in the introductory paragraph to this Agreement.

0.14 “Excess” has the meaning set forth in Section 3.5.

0.15 “FDA” means the United States Food and Drug Administration and any successor agency or entity that may be established hereafter.

0.16 “Finished Product” has the meaning set forth in the Preamble.

0.17 “Firm Purchase Orders” has the meaning set forth in Section 3.4(a).

0.18 “Force Majeure” has the meaning set forth in Section 10.

0.19 “Initial Term” has the meaning set forth in Section 9.1.

0.20 “Latent Defect” means a failure of Product to meet the Product Requirements, upon delivery, that is not readily determinable upon a reasonable inspection of the Product (based on physical inspection, identity test on satellite sample(s), release testing of Product to the extent conducted by Purchaser at its sole discretion, and review of the Certificate of Analysis) which occurs at the time Product is delivered to the shipping destination point specified in the applicable Purchase Order.

0.21 “Losses” has the meaning set forth in Section 6.1.

0.22 “Nonbinding Forecast” has the meaning set forth in Section 3.4(a).

0.23 “Party” has the meaning set forth in the introductory paragraph to this Agreement.

0.24 “Price” has the meaning set forth in Section 3.8.

0.25 “Product” has the meaning set forth in the Preamble.

0.26 “Product Requirements” has the meaning set forth in Section 4.4(a).

0.27 “Product Technical File” means the technical file that describes non-confidential information regarding the facilities, processes, or articles used in the manufacturing, processing, packaging, and storing of the Product.

0.28 “Purchaser” has the meaning set forth in the Preamble.

0.29 “Quality Agreement” has the meaning set forth in the Preamble.

***Certain Confidential Information Omitted

0.30 “Quality Failure” means (i) any failure by Supplier to materially comply the terms of the Quality Agreement; and (ii) which also results in a determination by Purchaser’s quality function that […***…].

0.31 “Regulatory Approval” means all authorizations by the appropriate Regulatory Authority necessary for commercial sale of Finished Product in a jurisdiction.

0.32 “Regulatory Authority” means any national, state, provincial, or local or any foreign or supranational government, governmental, regulatory or administrative authority, agency or commission of any court, tribunal or judicial or arbitral body, including without limitation the FDA.

0.33 “Rejection Notice” has the meaning set forth in Section 3.5.

0.34 “Rejection Period” has the meaning set forth in Section 4.4(a).

0.35 “Renewal Term” has the meaning set forth in Section 9.1.

0.36 “Representatives” has the meaning set forth in Section 2.4.

0.37 “Reserved Amount” has the meaning set forth in Section 3.4(b).

0.38 “Rolling Forecast” has the meaning set forth in Section 3.4(a).

0.39 “Specifications” has the meaning set forth in the Preamble.

0.40 “Supplier” has the meaning set forth in the introductory paragraph to this Agreement.

0.41 “Supply Failure” means Supplier’s failure to either: (i) give Delivery Notice within […***…] days of the applicable delivery month, […***…] or more times in a Contract Year, or (ii) deliver Product which meet the Product Requirements, and failure to replace such Product within […***…] days during the first Contract Year and […***…] days in any other Contract Year, greater than […***…] per Contract Year.

0.42 “Term” has the meaning set forth in Section 9.1.

0.43 “Total Commercial Volume Requirement” means, for purposes of calculating Purchaser’s total volume requirements for Product for a given Contract Year, the total amount of […***…] that Purchaser orders for delivery from […***…] in a given Contract Year, that Purchaser intends to incorporate into Finished Product that is to be sold commercially.

0.44 “Validation Batches” means the batches used to validate Supplier’s Product manufacturing process and has the meaning set forth in Section 3.11.

2.MANUFACTURE AND SALE OF PRODUCT

0.45 Subject to the provisions of the Disclaimer set forth in Section 2.4 below and the terms and conditions of this Agreement, Supplier agrees to sell Product to

***Certain Confidential Information Omitted

Purchaser in accordance with the terms hereof for the Term. This Agreement applies to all Product delivered from Supplier to Purchaser beginning as of the Effective Date through the Term. The terms and conditions of any purchase orders or quotations submitted prior to the Effective Date, for which Product will be delivered after the Effective Date shall be disregarded and all such sales of Product shall be governed pursuant to the terms of this Agreement, with the exception of pricing terms, which shall

remain as specified in such purchase orders or quotations. From time to time and pursuant to Section 12 of this Agreement, Products may be added in writing to or deleted from Exhibit A with corresponding additions or deletions to the Specifications in Exhibit B attached hereto and made a part hereof, with the mutual written consent of the Parties.

0.46 Product shall meet the Specifications as set forth in Exhibit B, which Purchaser warrants and represents shall meet its needs.

0.47 Supplier agrees to supply the Product in accordance with the Specifications, all Applicable Laws, the DMF, cGMPs, and the […***…] and to furnish every Batch with a Certificate of Analysis, to confirm conformity to the Specifications; provided, however, that the Supplier's obligations to supply Product in accordance with the […***…] shall be subject to the limitations in Section 6.4. Supplier additionally agrees to maintain a Product Technical File for the benefit of Purchaser. On an […***…] basis, within […***…] days of Purchaser's annual report due date, Purchaser can request updates, which Supplier shall consider in good faith and upon reasonable notice, to the Product Technical File based on changes to the DMF, provided that Purchaser shall pay Supplier $[…***…] for such updates. For clarity, if there are no changes to the DMF, then there shall not be updates to the Product Technical File.

0.48 As an express inducement to Supplier to enter into this Agreement, Purchaser warrants and represents that it has read, understood and accepted and agrees to the following Disclaimer, and that the sale of Product hereunder is in all respects subject to such Disclaimer:

> It shall be Supplier's sole responsibility under this Agreement to provide Product that meets the Specifications, is made in accordance with cGMP, the DMF, and all Applicable Laws and has at least […***…] of shelf life remaining upon Delivery Notice. The suitability of the Specifications and/or of Product that conforms to the terms of this Agreement for use in Purchaser's Finished Product […***…] and Purchaser shall indemnify, defend and hold Supplier and its parent, subsidiary(ies) and Affiliates and their respective directors, officers, employees, agents and assigns ("Representatives") as set forth in Section 6.1.

0.49 Changes in Manufacturing. Purchaser may, upon written notice to Supplier, request changes to the Specifications, and Supplier agrees to negotiate in good faith an appropriate adjustment to the Price in order to accommodate such request.

3.COMMERCIAL TERMS OF SALE

***Certain Confidential Information Omitted

0.50 During Contract Years […***…] of the Term of this Agreement, Purchaser agrees that, subject to Section 3.2, Purchaser shall order from Supplier […***…]%) of its Total Commercial Volume Requirements from Supplier. During Contract Years […***…] of the Term of the Agreement, Purchaser agrees that, subject to Section 3.2, Purchaser shall order from

Supplier at least […***…]%) of the Total Commercial Volume Requirements from Supplier.

0.51 Notwithstanding anything to the contrary contained in this Agreement:

(a) Purchaser may either supply itself or obtain supply of Product from a third party in each of the following circumstances and, in each such circumstance, such supply of Product shall be included when determining if Purchaser's minimum Total Commercial Volume Requirements have been met: (i) during any period in which Supplier is in breach or default of any provision of this Agreement in any material manner, (ii) for the Excess if Supplier provides a Rejection Notice pursuant to Section 3.5, (iii) if Purchaser cancels any unfulfilled part of a Firm Purchase Order pursuant to Section 3.7, (iv) if Purchaser has ordered a quantity of Product but Product is rightfully rejected by Purchaser pursuant to Section 4.4 and Supplier is to provide Purchaser a Product credit instead of replacement Product, (v) during any ongoing Force Majeure event declared by Supplier, or (vi) subject to the additional provisions in Section 6.4, during any period in which a Quality Failure has occurred and has not been cured within […***…] days of Purchaser's notice or such other time period as agreed to by the Parties; and

(b) Purchaser may, notwithstanding Purchaser's minimum Total Commercial Volume Requirements in Section 3.1, during Contract Years […***…] of the Term, order material from a third party supplier in order to qualify (and thereafter maintain) alternative sources of supply of Product; provided, however, that Purchaser may only use up to an aggregative total of […***…] of Product […***…] from a third party during such time period in order qualify (and thereafter maintain) alternative sources of supply of Product.

0.52 To assure compliance with Section 3.1 and Section 3.2, Supplier shall have the right, […***…] during the Term of this Agreement, to, upon reasonable notice, have Purchaser's records audited by an independent third party that is mutually acceptable to Supplier and Purchaser and that has entered into a confidentiality agreement reasonably acceptable to both Parties. The costs of such evaluations shall be borne by the Party against whom the audit is resolved. Further, in the event that it is found the Purchaser has failed to purchase the required percentage in a given Contract Year or a relevant minimum volume pursuant to Section 3.4(b),

Purchaser agrees to pay to Supplier within sixty (60) days of the close of such Contract Year, a Price equal to […***…] of Product Purchaser has failed to purchase […***…]. Failure by Purchaser to purchase the required percentage of Product per calendar year shall be considered a material breach of this Agreement unless the foregoing corrective payment has been timely made.

***Certain Confidential Information Omitted

0.53 Forecasting/Purchase Orders

(c) Prior to the beginning of each calendar quarter during the Term (except for the first such calendar quarter, which shall be as soon as reasonable practicable after the Effective Date), Purchaser shall provide to Supplier a rolling […***…] month forecast of the quantity of Product (in Batches) to be ordered during the […***…] ("Rolling Forecast"). The Rolling Forecast shall be binding ("Binding Forecast") on Purchaser and Supplier for the immediate subsequent […***…] but non-binding for the remainder of the forecast ("Nonbinding Forecast"). At least […***…] days prior to the desired Product delivery date, Purchaser shall provide firm and binding purchase orders ("Firm Purchase Orders") to Supplier for its Product requirements. Each Firm Purchase Order shall designate the quantity of Product in Batches to be delivered, the desired delivery month, and delivery destination.

(d) In each Contract Year, Supplier is required to deliver the volume of Product set forth in such Firm Purchase Orders up to the Binding Forecast. Furthermore, for each Contract Year, Supplier agrees to make available for Purchaser to purchase for delivery in the […***…] calendar quarter of that calendar year […***…], an additional […***…]%) of Product (rounded up to the next Batch based on minimum Batch size), based on the Binding Forecast for that Contract Year (the "Reserved Amount"). Furthermore, in the event that Purchaser does not purchase the Reserved Amount in a given Contract Year, Purchaser must […***…].

0.54 If the cumulative Firm Purchase Orders exceeds the Binding Forecast plus the Reserved Amount (such excess amount, the "Excess"), Supplier shall use commercially reasonable efforts to deliver to Purchaser the Excess. If Supplier determines that, despite such commercially reasonable efforts, Supplier will be unable to deliver the Excess, Supplier may reject the Excess portion of the applicable Firm Purchase Order so long as it provides Purchaser notice of such rejection within […***…] days of the receipt of the applicable Firm Purchase Order ("Rejection Notice"). For clarity, notwithstanding such rejection, Supplier shall remain bound to deliver the Binding Forecast Amount plus the Reserved Amount. If Supplier does not provide Purchaser a Rejection Notice within […***…] days of the receipt of the applicable Firm Purchase Order including an Excess, (i) such Firm Purchase Order including the Excess shall become binding on Supplier, and (ii) Supplier shall deliver the Binding Forecast Amount, the Reserved Amount and Excess set forth in such Firm Purchase Orders.

0.55 Once Product is ready for delivery, Supplier shall notify Purchaser by email at […***…] ("Delivery Notice"), and Purchaser shall then arrange for delivery of Product. If Purchaser does not facilitate delivery of Product within […***…] days of receipt of the Delivery Notice, Supplier may arrange delivery of Product and invoice Purchaser for Product and cost of delivery. Delivery shall be […***…]. Title and Risk of Loss of Product pass to Purchaser upon […***…]. The termination of this Agreement shall not relieve Purchaser from its obligations to timely pay for Product purchased and delivered hereunder. For clarity, the Delivery Notice is not considered provided unless and until Product meets the Product Requirements (defined herein) and is ready for final packaging.

***Certain Confidential Information Omitted

0.56 Supplier will make Delivery Notice of ordered Product by the […***…] but will not be liable for any damages for failure to provide Delivery Notice within […***…] except as set forth in this Agreement, including that: if Supplier fails to give Delivery Notice in the […***…] set forth in a Firm Purchase Order by greater than […***…] days, (i) […***…], (ii) if Purchaser elects to accept delivery of such Purchase Order, […***…]. Unless, Supplier receives notice that Purchaser wishes to cancel such Firm Purchase Order prior to Supplier giving Delivery Notice, Supplier shall deliver and Purchaser shall accept and purchase Product in accordance with this Section.

0.57 The Price of Product is as set forth in Exhibit A ("Price").

0.58 All Product Prices are in U.S. dollars. Supplier shall submit invoices along with supporting documentation to Purchaser at the address and to the attention of the person identified by Purchaser on the Firm Purchase Order. Payment of undisputed amounts is due from Purchaser in full within […***…] days of the date of invoice receipt, which is presumed to have occurred within […***…] days of submission of an invoice to Purchaser at […***…]. If Purchaser is […***…] days late in payment of undisputed amounts, a […***…]% charge on undisputed amounts of the late invoice or, […***…], may be enforced and the appropriate invoice will be issued and become due. If Purchaser is more than […***…] days late in payment, a […***…]% charge on undisputed amounts of the late invoice or […***…] may be enforced […***…] and the appropriate invoice will be issued and become due. The Parties acknowledge and agree that where liquidated damages are provided as a remedy for the non-defaulting Party in this Section 3.9, such Party's actual damages are difficult to measure, such liquidated damages are reasonable compensation to the non-defaulting Party for its damages, and such liquidated damages are not a penalty. Further, if at any time, Purchaser fails to pay the undisputed amounts of an invoice when due, Supplier may, in its own discretion, […***…].

0.59 In ordering and delivering, the Parties shall use their standard ordering, invoicing, acknowledgment and/or shipping forms, but such forms shall be for the convenience of the Parties only, and nothing in those forms shall be construed as a modification or an amendment of the terms of this Agreement. In the event of any inconsistency between the terms of a Firm Purchase Order and this Agreement, the terms of this Agreement shall control, regardless of any provision to the contrary in any such Firm Purchase Order, and even if such Firm Purchase Order is dated later than this Agreement.

0.60 Initially Supplier will manufacture Product at its production facility located at […***…] which Purchaser represents has been qualified by Purchaser as a production facility for Product. However, upon mutual agreement by both Parties, Supplier shall attempt to have Product manufactured in its […***…] facility or another Supplier facility or location (if applicable). Once agreed, Supplier will make commercially reasonable efforts manufacture […***…] Batches for validation ("Validation Batches") in its […***…] facility or such other Supplier facility or location and Purchaser agrees to purchase […***…] per Batch […***…] at the then current Price, in order for Purchaser to perform its own validation of the Product, of which Purchaser agrees to make commercially reasonable efforts to do within […***…]. Once the Product is validated by Purchaser,

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Purchaser shall purchase […***…] of Product from the Validation Batches […***…] and Supplier may manufacture Product for delivery to Purchaser under this Agreement from […***…]. For clarity, any purchase of Validation Batches shall be taken into account in determining whether Purchaser has satisfied its obligations under a Binding Forecast, but only with respect to Batches ordered by Purchaser under a Binding Forecast that Supplier has not started manufacturing at the time such Validation Batches are purchased.

4.WARRANTY, REJECTION AND RECALLS

0.61 SUPPLIER PRODUCT WARRANTY. SUPPLIER MAKES NO WARRANTY WITH RESPECT TO THE PRODUCT OTHER THAN AS SET FORTH IN THIS ARTICLE 4 INCLUDING THAT, UPON DELIVERY, PRODUCT (i) MEETS SUPPLIER'S SPECIFICATIONS IN EXHIBIT B, (ii) WAS MADE IN ACCORDANCE WITH cGMP, THE DMF, AND ALL APPLICABLE LAWS, AND (iii) PRODUCT HAS AT LEAST […***…] OF SHELF LIFE REMAINING. THE FOREGOING WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES AND SUPPLIER MAKES NO WARRANTY OF, AND SHALL HAVE NO LIABILITY FOR ANY OTHER WARRANTIES, EXPRESS OR IMPLIED INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE. PURCHASER SHALL NOT MAKE ANY REPRESENTATION OR WARRANTY ON BEHALF OF SUPPLIER.

0.62 Supplier further represents, warrants and covenants that:

(e) Upon delivery, title to Product will pass to Purchaser free and clear of any security interest, lien or other encumbrance.

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(f) The facility used to manufacture Product was in material compliance with all Applicable Laws at the time of such manufacture (including applicable inspection requirements of FDA and other Regulatory Authorities);

(g) neither Supplier, nor any third party or Affiliates engaged by Supplier under this Agreement, has ever been, are currently, or shall become: (i) disqualified or debarred by the FDA (including United States law, including the statutory debarment provisions at 21 U.S.C. § 335a(a) or (b) or is under consideration or investigation to be disqualified or debarred, or has been convicted of, or is currently charged with, a felony for conduct relating to the development, approval, regulation or handing of any drug product under any Applicable Law; (ii) charged or convicted for conduct relating to the development or approval of, or otherwise relating to the regulation of, any drug product under any Applicable Laws; (iii) excluded or threatened with exclusion under state or federal laws, including under 42 U.S.C. § 1320a-7 or relevant regulations in 42 C.F.R. Part 1001, or assessed or threatened with assessment of civil money penalties pursuant to 42 U.S.C. Part 1003; (iv) ineligible for contract with the federal government; or (v) subject to similar actions by any state, local, or foreign governmental authority (collectively "Disqualification"). Supplier agrees to notify Purchaser immediately, in the event that Supplier or any of its officers, directors, employees, agents, or parties under contract to perform and work under this Agreement (i) becomes subject to Disqualification, or (ii) receives or becomes aware of an action, notice of action, inquiry, or investigation with relating to or that could result in Disqualification during the Term. In the event that Supplier receives any notice of actions set forth in this Section, without limiting any other rights or remedies of Purchaser, Purchaser shall, upon sixty (60) days' notice and opportunity for Supplier to cure within such sixty (60) day period (to the extent such Disqualification is capable of being cured and to the reasonable satisfaction of Purchaser), have the right to terminate this Agreement pursuant to the provisions of this Agreement. Any termination by Purchaser pursuant to this Section shall be deemed to be a termination by Purchaser for material breach of this Agreement by Supplier. Supplier shall remove the individuals who have caused such action from performing any work associated with this Agreement;

(h) entering into this Agreement with Purchaser and Supplier's manufacture of Product do not, and shall not, breach any agreement that obligates Supplier to keep in confidence any trade secrets or confidential information of any third party; and

(i) the manufacture of Product provided under this Agreement will not infringe the intellectual property rights of any third party, and Supplier will promptly notify Purchaser in writing should it become aware of any claims asserting such infringement.

0.63 Purchaser Warranty. Purchaser warrants and represents that (i) it has read, understood, accepts and agrees to be bound by the provisions of this Agreement, including Supplier's disclaimer in Section 2.4 above and (ii) without Supplier's written consent, it shall not make or request any third party to make any analysis or any observation of the chemical composition and/or physical characteristics of the Product

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for the purpose of reverse-engineering the Product (i.e. for the purpose of recreating such Product).

0.64 Rejection of Product for Failure to Conform to Specifications

(j) Purchaser shall have (i) […***…] days after the receipt of any shipment of Product, or (ii) in the case of Latent Defects, for which Purchaser shall have […***…] days from the date of its determination that Product does not conform to the Product Requirements and a maximum of […***…] from delivery of Product (in each case a "Rejection Period"), to inspect the Product, to conduct quality control testing to determine conformity to the Specifications, cGMPs, the DMF, and all Applicable Laws ("**Product Requirements**"); provided, however, that with respect to Applicable Laws, the determination shall be based upon conformance to Applicable Laws in a material manner. If Purchaser fails to give such notice within the Rejection Period, the Product shall be deemed to conform to the terms of this Agreement, and Purchaser shall be bound to accept and pay for the Product in accordance with the terms of this Agreement. Purchaser expressly waives any rights Purchaser may have to revoke acceptance after the Rejection Period.

(k) If such Product fails to meet the Product Requirements, Purchaser may return the entire shipment, or any portion thereof, to Supplier at Supplier's expense within a reasonable time following the above described testing provided that notice of non-conformity is received by Supplier from Purchaser within the applicable Rejection Period. Supplier shall replace such returned Product as soon as reasonably possible and in no event longer than […***…] days at Supplier's expense using expedited shipment with Product which conforms to the Product Requirements or in the event Supplier cannot replace such returned Product within […***…] days, promptly provide Purchaser with full credit for the returned Product including all shipping and other charges. Should there be a discrepancy between Purchaser's Product test results and the results of testing performed by Supplier pursuant to this Section 4.4, including any disagreement regarding whether or not Product has met Product Requirements, such discrepancies shall be finally resolved by testing performed by a third party mutually agreed upon by Purchaser and Supplier. The costs of such testing shall be borne by the Party against whom the discrepancy is resolved.

(l) Supplier's measurements shown on the packaging slip accompanying each delivery shall be deemed to be correct unless Purchaser notifies Supplier in writing of a shortage within […***…] days of the date of the Product is delivered to the shipping destination point specified in the applicable Firm Purchase Order. In the event of a shortage, Purchaser will remain liable for payment for the Product delivered and Supplier shall promptly deliver to Purchaser an amount of Product necessary to eliminate such shortage.

0.65 Recall. Purchaser shall be responsible for coordinating the recall of Finished Product. Purchaser shall notify Supplier if any Product is the cause of a recall and provide Supplier with a copy of relevant documents relating to such recall. Supplier shall reasonably cooperate with Purchaser in connection with any recall. Unless such recall is caused by […***…], Purchaser shall be responsible for all of the costs and

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expenses of such recall. If a recall, product withdrawal or field correction is necessary due to […***…], Supplier will bear the reasonable costs associated with such recall, product withdrawal or field correction (including, but not limited to […***…]) as well as responsible for the costs and expenses of the […***…]. For clarity, notwithstanding anything in this Section, any and all Supplier costs and liability pursuant to this Section 4.5 are […***…].

5.RESPONSIBILITIES OF PURCHASER

Purchaser shall be fully responsible for compliance with any and all Applicable Laws relating to the design, production, and sale of Finished Product.

6.INDEMNIFICATION, LIMIT OF LIABILITY AND THE QUALITY AGREEMENT

0.66 Purchaser hereby agrees to indemnify, save harmless and defend Supplier and Representatives from and against any and all third party losses, liabilities, claims, penalties, forfeitures, suits, and the cost and expenses incident thereto (including cost of defense, settlement and reasonable attorney's fees) ("Losses") which Supplier or Supplier's Representatives may hereafter incur, become responsible for or pay out to the extent: (1) caused by Purchaser's breach of any term or provision of this Agreement, including but not limited to Section 2.4, (2) caused by the gross negligence, misconduct or omission of Purchaser, its Affiliates or its or their employees or agents in the performance of this Agreement, (3) relating to or arising out of the suitability of the Specifications and/or the use of conforming Product, including the use of conforming Product in Purchaser's products including Finished Product, or (4) due to the infringement or misappropriation of the intellectual property rights of any third party by Purchaser's Finished Product; except in each case to the extent such Losses result from matters contemplated by Section 6.2.

0.67 Supplier hereby agrees to indemnify, save harmless and defend Purchaser and Representatives from and against any and all third party Losses which Purchaser or Purchaser's Representatives may hereafter incur, become responsible for or pay out to the extent: (1) caused by the gross negligence, misconduct or omission of Supplier, its Affiliates or its or their employees or agents in the performance of this Agreement, or (2) due to the infringement or misappropriation of the intellectual property rights of any third party by Product or its manufacture; except in each case to the extent such Losses result from matters contemplated by Section 6.1.

0.68 EACH PARTY'S LIABILITY UNDER THIS AGREEMENT FOR EACH CLAIM, SHALL BE LIMITED TO […***…] THE PURCHASE PRICE OF THE BATCH OF PRODUCT SUPPLIED (OR TO HAVE BEEN SUPPLIED) HEREUNDER IN RESPECT OF WHICH DAMAGES ARE CLAIMED. FURTHERMORE, EACH PARTY'S LIABILITY UNDER THIS AGREEMENT IN THE AGGREGATE, SHALL BE LIMITED TO […***…] THE PURCHASE PRICE OF ALL PRODUCT SUPPLIED (OR TO HAVE BEEN SUPPLIED) UNDER THE AGREEMENT. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL OR OTHER DAMAGES, AND REGARDLESS WHETHER THE CLAIM IS BASED ON WARRANTY, CONTRACT, TORT, STRICT LIABILITY, NEGLIGENCE OR OTHERWISE. HOWEVER,

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IN NO EVENT WILL THE LIABILITY RESTRICTIONS IN THIS SECTION 6.3 APPLY WITH REGARDS TO LIABILITY PURSUANT TO SECTIONS 6.1, 6.2 OR SECTION 8.

0.69 Limitation of Liability and Remedies Regarding the Quality Agreement. During the manufacture of Product pursuant to this Agreement, in the event of a Quality Failure, Purchaser shall, within […***…] days of such Quality Failure, provide Supplier with written notice of such Quality Failure and Supplier shall cure such Quality Failure with respect to the applicable Batch(es) within […***…] days of Purchaser's notice or such other time period as mutually agreed by the Parties ("Cure Period").

(m) Should Supplier, within the Cure Period, notify Purchaser that it disagrees as to whether or not a Quality Failure has occurred, then such disagreement shall be finally resolved within […***…] days of the date of such notice, by a determination of a qualified technical third party mutually agreed upon by Purchaser and Supplier. […***…].

(n) If Supplier indicates it has cured such Quality Failure and Purchaser disagrees and provides written notice that it does not believe Supplier has cured the Quality Failure within […***…] days, then such disagreement shall be finally resolved within […***…] days of the date of such notice, by a determination of a qualified technical third party mutually agreed upon by Purchaser and Supplier. The costs of such third party determination shall be borne by the Party against whom the discrepancy is resolved.

(o) If Supplier provides such notice that it disagrees with the Quality Failure or if Supplier indicates it has cured such Quality Failure and Purchaser disagrees, and such discrepancy is resolved by the qualified technical third party in favor of Supplier, and Purchaser's quality function […***…] as a result of Supplier's non-compliance with the Quality Agreement, then:

(i) Purchaser must pay for all Batches ordered pursuant to Firm Purchase Orders, which (y) otherwise conform to the Product Requirements and (z) had been released by Supplier's quality group at the time of such Quality Failure;

(ii) Purchaser may invoke its backup supply rights under Section 3.2(a)(vi), subject to paying Supplier […***…];

(iii) and Purchaser shall remain obligated to […***…], through the remainder of Term of the Agreement, […***…].

(p) If Supplier fails to notify Purchaser that is disagrees with the Quality Failure or if Supplier indicates it has cured such Quality Failure and Purchaser disagrees, and such discrepancy is resolved in favor of Purchaser, then:

(iv) Purchaser must pay for […***…]%) of all Batches ordered pursuant to Firm Purchase Orders, which (y) […***…] and (z) had been […***…];

(v) Purchaser may invoke its backup supply rights under Section 3.2(a)(vi);

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(vi) and Supplier shall give Purchaser […***…].

(q) EXCLUDING THE […***…], IN NO EVENT SHALL SUPPLIER BE LIABLE TO PURCHASER FOR ANY DAMAGES WHATSOEVER, INCLUDING BUT NOT LIMITED TO DIRECT, INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES. EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION 6.4, PURCHASER SHALL NOT HAVE GROUND NOT TO PAY FOR PRODUCT THAT CONFORMS TO THE PRODUCT REQUIREMENTS SOLELY TO THE EXTENT BASED ON […***…].

7.INSURANCE

0.70 Each Party shall, at its sole cost and expense, procure and maintain in full force during the entire Term of this Agreement the following types of insurance in the minimum amounts set forth below with insurance carriers having a rating of at least A VII as to financial strength by the latest edition of A. M. Best & Co:

Comprehensive General Liability insurance including Products Liability (in the case of Purchaser), Completed Operations Liability, Personal Injury Liability and Advertising Liability covering bodily injury and property damage with combined single limits of $[…***…] each occurrence and $[…***…] annual aggregate.

0.71 Upon execution of this Agreement, each Party shall furnish to the other Party a copy of the certificate of insurance evidencing such coverages referred herein on an Accord form. Each Party shall provide at least thirty (30) days' written notice to the other Party in the event that such required insurance is being cancelled (except for cancellation due to nonpayment of a premium, which notice shall be at least ten (10) days). All stated insurance policies, where applicable, will designate the other Party as additional insured including primary and non-contributory wording without qualifications or limitation, as its interest may appear. Each Party shall cause its insurers to waive all rights of subrogation against the other Party. The waiver of subrogation clause and additional insured wording must be stated explicitly on the face of the certificate of insurance.

8.CONFIDENTIALITY

0.72 Both Parties acknowledge that it may be necessary for each to disclose certain technical and proprietary information with respect to the Product to the other. For purposes of this Agreement, the term "Confidential Information" shall mean all such information, including the Specifications, all technical and/or proprietary information relating to the Product, information relating to the marketing of, customers for, and sales as well as the pricing of Product, and all other written information clearly identified as "Confidential" when submitted by the disclosing Party to the receiving Party. The fact that Supplier is manufacturing Product pursuant to the Specifications for Purchaser shall be deemed the Confidential Information of Purchaser. Notwithstanding anything to the contrary in this Agreement, but Subject to the limitations in Section 4.3, Purchaser shall be entitled to provide the Specifications to Purchaser's contract manufacturers or contract testing laboratories, for purposes of producing Product and any bioresorbable

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polymer that can replace Product in Finished Product. All test methods regarding or associated with the manufacture of Product and/or process of manufacturing Product shall be deemed the Confidential Information of Supplier.

0.73 Each receiving Party shall hold in strict confidence any such Confidential Information received from the other Party. Each receiving Party shall not, without the prior written consent of the disclosing Party, (i) disclose such Confidential Information to any third party, other than disclosure of such Confidential Information to a Party's Representatives; or (ii) use such Confidential Information for its own benefit or the benefit of others, in each case, except as may be as may be necessary to fulfill its obligations hereunder or in furtherance of its rights hereunder. In any such case of consented to disclosure, the Party requesting such consent of the disclosing Party shall cause any person to whom such disclosure may be authorized as aforesaid, to agree to hold such information in confidence and not to use or disclose same to the same extent as such Party. However, the foregoing obligations shall not apply to information which:

(r) at the time of disclosure to the receiving Party or at the time the receiving Party learns of such Confidential Information, was in the public domain, or which thereafter enters the public domain, through no act or omission of the receiving Party; or

(s) at the time of disclosure to the receiving Party or at the time the receiving Party learns of such Confidential Information, was already in the possession of the receiving Party or its Representatives, and was not acquired (i) from the disclosing Party, or (ii) from another source under an obligation of confidence and/or non-use, as documented by receiving Party’s written records documenting such knowledge; or

(t) is hereafter lawfully received by the receiving Party or its Representatives on a non-restricted basis from another source having rightful possession of such Confidential Information and the legal right to disclose it to the receiving Party as documented by the receiving Party’s written records; or

(u) is hereafter independently developed by the receiving Party or its Representatives who is shown not to have received or have available to him or her any such Confidential Information, as documented by the receiving Party’s written records.

0.74 The burden of proving the applicability of any one or more of the above exceptions shall at all times be with the receiving Party. The mutual obligations of confidentiality under this Section shall survive expiration or earlier termination of this Agreement. If a receiving Party is required by a government body or court of law to disclose Confidential Information, the receiving Party agrees, to the extent permitted by law, to give the disclosing Party reasonable advance notice thereof and to cooperate with the reasonable efforts of disclosing Party to contest the disclosure or seek an appropriate protective order.

9.TERM AND TERMINATION

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0.75 This Agreement shall commence on the Effective Date and shall continue for a period of five (5) year(s) (the “Initial Term”). Upon the mutual written consent of both Parties prior to expiration of the Initial Term or any Renewal Term, this Agreement shall renew for successive two (2) year terms (each, a “Renewal Term” and together with the Initial Term, the “Term”). Each July 1 to June 30 of every year of the Agreement shall be considered a Contract Year. In the final Contract Year of the Term, Purchaser agrees to purchase […***…] for that final year and […***…].

0.76 This Agreement may be terminated by either Party:

(v) upon written notice if the other Party breaches this Agreement in any material manner and shall have failed to remedy or submit to the non-breaching Party a plan to cure such default within sixty (60) days after notice thereof from the terminating Party (a failure of Supplier to supply Product shall not be a terminable event except as covered under Section 9.2(b)); or

(w) upon written notice by Purchaser in the event of a Supply Failure by Supplier; or

(x) immediately if the other Party by voluntary or involuntary action goes into liquidation or receivership; or dissolves or files a petition for bankruptcy or reorganization or for suspension of payments or is adjudicated a bankrupt, becomes insolvent or assigns or makes any composition of its assets for the benefit of creditors.

0.77 This Agreement may be terminated at any time by Purchaser if Purchaser does not receive FDA approval to market, distribute and sell Finished Product by December 31, 2019 or, following such approval, if a Regulatory Authority determines that Purchaser is no longer permitted under Applicable Law to market, distribute or sell Finished Product nor have a third party market, distribute or sell Finished Product. If Purchaser provides a notice of termination pursuant to this Section 9.3, Supplier shall continue to supply and Purchaser shall continue to purchase Product the greater of (i) the next […***…], or (ii) the volume of Product […***…].

0.78 In the event this Agreement is terminated by Purchaser pursuant to Section 9.2 and/or 4.2(c), then the Binding Forecast and the Reserved Amount shall no longer be binding on Purchaser.

0.79 Notice of termination must in all cases be given pursuant to Section 14.

0.80 Notwithstanding anything else written in this Agreement, the rights and obligations of the Parties under Sections 3.3, 3.6, 3.7, 3.9, 4.1, 4.3, 4.4, 6.1, 6.2, 6.3, 6.4, 8, 9.5, 11, and 14 shall survive the expiration or termination of this Agreement in accordance with their terms.

10.FORCE MAJEURE

Neither Party shall be liable for delay or failure to perform its obligations hereunder due to any circumstances beyond its reasonable control, regardless of whether such circumstances can be reasonably foreseen, including, but not limited to acts of God, war

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(declared or undeclared), acts of terrorism (and related government actions), riot, political insurrection, rebellion, sabotage, revolution, acts, laws, regulations or orders of or expropriation by any government (whether de facto or de jure), acts of government prohibiting the import or export of the Product, governmental rationing, strike, lock-out or fire, flood, explosion, earthquake, tornados or other natural events or disasters(“Force Majeure”). Labor difficulties, strike, lockout or injunction shall be conclusively presumed to be beyond Supplier’s reasonable control, and accordingly within the meaning and intent of the definition of Force Majeure. If such Force Majeure occurs, the impacted Party shall notify the other Party in writing as soon as practicable of the occurrence of said Force Majeure event, the nature of and expected duration of the Force Majeure event as well as, in the case of Supplier, the effect the Force Majeure event will have on

Supplier’s performance of this Agreement. The impacted Party will be excused from performing its obligations hereunder only during the Force Majeure event and shall not be liable to the other Party for damages by reason of any delay or suspension of performance resulting from the Force Majeure event. Further, in the event of inability for any reason to supply the quantity of Product stated in this Agreement, Supplier must […***…]. If an event of Force Majeure continues and causes a Party to delay its performance of its obligations for more than one hundred and twenty (120) days, then the other Party shall have the right upon written notice to terminate this Agreement without any liability for such termination to the other Party.

11.GOVERNING LAW, PLACE OF VENUE

This Agreement and all rights and remedies hereunder shall be governed by and interpreted and enforced in accordance with the laws of the State of New Jersey, without regard to conflict of law principles. The federal and state courts of New Jersey shall have exclusive jurisdiction over any disputes or issues arising out of or in connection with this Agreement, and the Parties hereby irrevocably submit to such exclusive jurisdiction. In performance of this Agreement, Purchaser and Supplier shall comply with all Applicable Laws, including but not limited to those pertaining to environmental protection and safety and health.

12.AMENDMENT

Notwithstanding any course of performance hereunder or other course of dealing, any amendment to or waiver of any provision of this Agreement must be in writing signed by

each Party, and must specifically refer to the provision of the Agreement being amended or waived in order to be effective. Any purported amendment or waiver, whether oral, by electronic communication including emails between Parties, by conduct, custom shall not constitute a writing sufficient to amend this Agreement. The Parties are expressly and deliberately establishing these procedures specifically to avoid any possibility that an amendment, waiver or estoppel of or with respect to any of this Agreement’s terms could be deemed to have been affected in a manner other than as set forth in this Section.

13.ASSIGNMENT

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Neither Party may assign all or any part of this Agreement without the other Party's prior written consent, which shall not be unreasonably withheld. Notwithstanding the foregoing, neither Party shall be required to obtain the consent of the other Party in order to assign or otherwise transfer this Agreement (1) to an Affiliate, including its parent company, if applicable; or (2) in the event of a merger or the sale of substantially all of the assets of such Party or the portion of such Party's business responsible for performance of this Agreement. Benefits and burdens of this Agreement shall inure to the benefit of and be binding upon both Parties, their respective legal representatives and successors and their assigns, subsidiaries and parent companies.

14.NOTICES

All notices or other communication permitted or required hereunder shall be sufficiently given if sent by certified mail, return receipt requested, postage prepaid, by a nationally recognized overnight courier service which provides a delivery receipt, or by facsimile (with delivery confirmation), addressed to Purchaser or Supplier at the addresses set forth below or at such other address or as shall be furnished in writing by Purchaser or Supplier to the other pursuant to this Section 14. Any such notice or communication required or permitted hereunder shall be deemed to have been given as of the date received, as evidenced by the postmark on the envelope or the official notice of time and date on a facsimile.

If to Supplier:
Evonik Corporation,
299 Jefferson Road
Parsippany, NJ 07054
Attention: Jeff Smith
Facsimile: […***…]

If to Flexion:
Flexion Therapeutics, Inc.
10 Mall Road
Burlington, MA 01803
Attention: SVP, CMC Operations
Facsimile: […***…]

15.ENTIRE AGREEMENT

This Agreement and attachments hereto together with the Quality Agreement contain the entire understanding between the Parties with respect to the manufacture and supply of Product and supersedes any and all prior agreements, understandings and arrangements whether written or oral between the Parties with respect thereto. In the event of a conflict between the provisions of this Agreement and the provisions of the Quality Agreement, the provisions of the Quality Agreement shall govern with respect to quality matters and this Agreement shall govern with respect to all other matters.

16.WAIVER

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The waiver by any Party hereto of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach.

17.INDEPENDENT CONTRACTORS

Nothing in this Agreement shall operate to or be construed or interpreted as to render the Parties hereto as other than independent contractors, and neither shall be the employee or agent of the other.

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18.SEVERABILITY

In the event that individual provisions of this Agreement become wholly or partially invalid as evidenced by a ruling of a court of competent jurisdiction, the effectiveness of the remaining rulings shall not be affected, to the extent severable. The Parties undertake in good faith to replace an invalid provision by a valid one which most closely corresponds with the economic intention of the invalid ruling.

19.BINDING EFFECT.

This Agreement shall bind and inure to the benefit of Supplier, its successors, permitted assigns, and trustees, and of Purchaser, its successors, trustees, and permitted assigns.

20.CAPTIONS.

The captions and section headings used herein are for reference only and shall otherwise be disregarded.

21.COUNTERPARTS.

22.This Agreement may be executed in two or more counter-parts each of which shall be deemed an original. Facsimile and pdf signatures shall have the same force and effect as original signatures.

(Signature Page Follows)

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IN WITNESS WHEREOF, the Parties have caused these presents to be signed by their duly authorized representatives.

SUPPLIER: PURCHASER:

Evonik Corporation Flexion Therapeutics, Inc.

By: /s/ Yann D'herve By: /s/ Michael Clayman

Title: Global VP Sales Healthcare Title: CEO

Date: Nov 9, 2016 Date: Nov 10, 2016

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EXHIBIT A

Product:

[…***…]

Pricing of all Product:

[…***…]

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EXHIBIT B

[…***…]

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

AMENDMENT NO. 1
to the July 1, 2016 Supply Agreement

THIS AMENDMENT (this "Amendment No. 1"), effective as of June 30, 2021, to the July 1, 2016 Supply Agreement (the "Agreement") by and between Evonik Corporation, an Alabama Corporation, with a principal place of business at 299 Jefferson Road, Parsippany, New Jersey 07054 and a facility at 750 Lakeshore Parkway, Birmingham, Alabama 35211 ("Supplier"), and Flexion Therapeutics, Inc., a Delaware corporation with its principal place of business at 10 Mall Road, Suite 301, Burlington, Massachusetts 01803 (hereinafter referred to as "Purchaser").

WHEREAS, Supplier and Purchaser entered into the Agreement dated as of July 1, 2016; and

WHEREAS, Supplier and Purchaser hereto wish to amend the Agreement in accordance with Section 12 of the Agreement and agree upon certain additional terms set forth in this Amendment No. 1.

NOW, THEREFORE, in consideration of the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Amendment to Section 3. Section 3.1 is hereby deleted in its entirety and replaced with the following:

"3.1 During the Term, Purchaser agrees that, subject to Section 3.2, Purchaser shall order from Supplier [...***...]% of its Total Commercial Volume Requirements from Supplier, and agrees to purchase [...***...] for each Contract Year starting on or after July 1, 2021."

2. Amendment to Section 9. Section 9.1 is hereby deleted in its entirety and replaced with the following:

"9.1 This Agreement shall commence on the Effective Date and shall continue for eight years until June 30, 2024 (the "Term"). Each July 1 to June 30 of every year of the Agreement shall be considered a Contract Year. In the final Contract Year of the Term, Purchaser agrees to purchase [...***...] for that final year and [...***...]."

3. Amendment to Exhibit A. Exhibit A to the Agreement is hereby deleted in its entirety and replaced with the attached Exhibit A.

4. Miscellaneous.

(a) Effect on the Agreement. The Agreement shall continue in full force and effect as amended by this Amendment No. 1, and this Amendment No. 1, together with the Agreement, constitutes the entire agreement of the parties with respect to the matters set forth herein and there are no other agreements, commitments or understandings among the parties with respect to the matters set forth

***Certain Confidential Information Omitted

herein. In the event of any conflict or inconsistency between the provisions of this Amendment No. 1 and the provisions of the Agreement, the provisions of this Amendment No. 1 shall govern and control.
Each and every other term, condition, covenant, representation, warranty and provision set forth in the Agreement shall remain in full force and effect in accordance with the terms of the Agreement. From and after the date hereof, all references in the Agreement to the "Agreement" shall be deemed to mean the Agreement as amended by this Amendment No. 1.

(b) Counterparts. This Amendment No. 1 may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

(c) Defined Terms. Capitalized terms used but not defined herein shall have the meaning ascribed to them in the Agreement.

IN WITNESS WHEREOF, the parties have signed this Amendment No. 1 as of the date first set out above.

Evonik Corporation	Flexion Therapeutics, Inc.
By: /s/ Joseph P. Milde	By: /s/ Michael Clayman, MD
Name: Joseph P. Milde	Name: Michael Clayman, MD
Title: VP, Sales & Services	Title: CEO
Date: May 4th, 2021	Date: May 4, 2021

***Certain Confidential Information Omitted

EXHIBIT A

Product:

[...***...]

Pricing of all Product:

[...***...]
***Certain Confidential Information Omitted

Exhibit 31.1

CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER
PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Michael D. Clayman, M.D., certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Flexion Therapeutics, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 4, 2021

/s/ Michael D. Clayman, M.D.

Michael D. Clayman, M.D.
President and Chief Executive Officer

Exhibit 31.2

CERTIFICATION OF PRINCIPAL FINANCIAL AND ACCOUNTING OFFICER
PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Frederick W. Driscoll, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Flexion Therapeutics, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 4, 2021

/s/ Frederick W. Driscoll

Frederick W. Driscoll
Principal Financial and Accounting Officer

Exhibit 32.1

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

Each of Michael D. Clayman, M.D., President and Chief Executive Officer of Flexion Therapeutics, Inc. (the "Registrant"), and Frederick W. Driscoll, Chief Financial Officer of the Registrant, do hereby certify in accordance with 18 U.S.C. 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, based upon our knowledge:

(1) this Quarterly Report on Form 10-Q of the Registrant, to which this certification is attached as an exhibit (the "Report"), fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m); and

(2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Registrant.

Date: August 4, 2021

/s/ Michael D. Clayman, M.D.
Michael D. Clayman, M.D.
President and Chief Executive Officer

Date: August 4, 2021

/s/ Frederick W. Driscoll
Frederick W. Driscoll
Principal Financial and Accounting Officer

The foregoing certification is being furnished solely pursuant to 18 U.S.C. Section 1350 and is not being filed as part of the Report or as a separate disclosure document.