

**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, 2020

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 No. **001-00100**

THERAPEUTICSMD, INC.

(Exact Name of Registrant as Specified in Its Charter)

Nevada

(State or Other Jurisdiction of Incorporation or Organization)

87-0233535

(I.R.S. Employer Identification No.)

951 Yamato Road Suite 220 Boca Raton FL

(Address of Principal Executive Offices)

33431

(Zip Code)

561 961-1900

(Registrant's telephone number, including area code)

N/A

(Former Name, Former Address and Former Fiscal Year, if Changed Since Last Report)

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

Title of Each Class	Trading Symbol	Name of Each Exchange on Which Registered
Common Stock, par value \$0.001 per share	TXMD	The Nasdaq Stock Market LLC

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

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

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

Large Accelerated Filer

Non-accelerated filer

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

The number of shares outstanding of the registrant's common stock, par value \$0.001 per share, as of August 3, 2020 was 272,294,380.

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Item 1. Financial Statements

THERAPEUTICSMD, INC. AND SUBSIDIARIES
CONSOLIDATED BALANCE SHEETS

	<u>June 30, 2020</u> <u>(Unaudited)</u>	<u>December 31, 2019</u>
ASSETS		
Current Assets:		
Cash	\$ 113,839,234	\$ 160,829,713
Accounts receivable, net of allowance for doubtful accounts of \$722,240 and \$904,040, respectively	18,290,784	24,395,958
Inventory, net	10,172,312	11,860,716
Other current assets	6,641,587	11,329,793
Total current assets	<u>148,943,917</u>	<u>208,416,180</u>
Fixed assets, net	<u>2,145,926</u>	<u>2,507,775</u>
Other Assets:		
License rights, net	37,721,695	39,221,308
Intangible assets, net	5,942,873	5,258,211
Right of use assets	10,337,577	10,109,154
Other assets	446,925	473,009
Total other assets	<u>54,449,070</u>	<u>55,061,682</u>
Total assets	<u>\$ 205,538,913</u>	<u>\$ 265,985,637</u>
LIABILITIES AND STOCKHOLDERS' (DEFICIT) EQUITY		
Current Liabilities:		
Accounts payable	\$ 17,270,319	\$ 19,181,212
Other current liabilities	29,213,411	33,823,613
Total current liabilities	<u>46,483,730</u>	<u>53,004,825</u>
Long-Term Liabilities:		
Long-term debt	243,801,705	194,634,643
Operating lease liability	9,307,361	9,145,049
Other long-term liabilities	35,000	—
Total long-term liabilities	<u>253,144,066</u>	<u>203,779,692</u>
Total liabilities	<u>299,627,796</u>	<u>256,784,517</u>
Commitments and Contingencies - See Note 15		
Stockholders' (Deficit) Equity:		
Preferred stock - par value \$0.001; 10,000,000 shares authorized; no shares issued and outstanding	—	—
Common stock - par value \$0.001; 600,000,000 and 350,000,000 shares authorized: 272,294,380 and 271,177,076 issued and outstanding, respectively	272,294	271,177
Additional paid-in capital	709,885,568	704,351,222
Accumulated deficit	(804,246,745)	(695,421,279)
Total stockholders' (deficit) equity	<u>(94,088,883)</u>	<u>9,201,120</u>
Total liabilities and stockholders' equity	<u>\$ 205,538,913</u>	<u>\$ 265,985,637</u>

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

THERAPEUTICSMD, INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF OPERATIONS
(Unaudited)

	Three Months Ended June 30,		Six Months Ended June 30,	
	2020	2019	2020	2019
Product revenue, net	\$ 10,701,033	\$ 6,078,865	\$ 22,951,690	\$ 10,025,516
Cost of goods sold	4,400,485	1,248,860	7,115,536	2,011,687
Gross profit	6,300,548	4,830,005	15,836,154	8,013,829
Operating expenses:				
Sales, general, and administrative	48,340,628	41,387,451	105,267,649	76,251,533
Research and development	2,742,032	4,964,368	6,010,861	11,282,250
Depreciation and amortization	256,557	115,059	518,551	221,997
Total operating expenses	51,339,217	46,466,878	111,797,061	87,755,780
Operating loss	(45,038,669)	(41,636,873)	(95,960,907)	(79,741,951)
Other (expense) income				
Loss on extinguishment of debt	—	(10,057,632)	—	(10,057,632)
Miscellaneous income	88,858	486,597	424,340	1,175,318
Interest expense	(7,026,853)	(4,028,609)	(13,288,899)	(6,118,627)
Total other expense	(6,937,995)	(13,599,644)	(12,864,559)	(15,000,941)
Loss before income taxes	(51,976,664)	(55,236,517)	(108,825,466)	(94,742,892)
Provision for income taxes	—	—	—	—
Net loss	\$ (51,976,664)	\$ (55,236,517)	\$ (108,825,466)	\$ (94,742,892)
Loss per share, basic and diluted:				
Net loss per share, basic and diluted	\$ (0.19)	\$ (0.23)	\$ (0.40)	\$ (0.39)
Weighted average number of common shares outstanding, basic and diluted	271,876,238	241,221,840	271,667,879	241,114,532

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

THERAPEUTICSMD, INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY (DEFICIT)
(Unaudited)

	Common Stock		Additional Paid in Capital	Accumulated Deficit	Total
	Shares	Amount			
Balance, December 31, 2018	240,462,439	\$ 240,463	\$ 616,559,938	\$ (519,276,280)	\$ 97,524,121
Shares issued for exercise of options and warrants, net	759,401	759	99,348	—	100,107
Share-based compensation	—	—	2,575,369	—	2,575,369
Net loss	—	—	—	(39,506,375)	(39,506,375)
Balance, March 31, 2019	241,221,840	241,222	619,234,655	(558,782,655)	60,693,222
Share-based compensation	—	—	2,637,264	—	2,637,264
Net loss	—	—	—	(55,236,517)	(55,236,517)
Balance, June 30, 2019	241,221,840	\$ 241,222	\$ 621,871,919	\$ (614,019,172)	\$ 8,093,969
Balance, December 31, 2019	271,177,076	\$ 271,177	\$ 704,351,222	\$ (695,421,279)	\$ 9,201,120
Shares issued for exercise of options, net	350,666	351	71,758	—	72,109
Issuance of shares from release of restricted stock	150,000	150	(150)	—	—
Share-based compensation	—	—	2,366,453	—	2,366,453
Net loss	—	—	—	(56,848,802)	(56,848,802)
Balance, March 31, 2020	271,677,742	271,678	706,789,283	(752,270,081)	(45,209,120)
Shares issued for exercise of options, net	313,638	313	93,762	—	94,075
Issuance of shares from release of restricted stock	303,000	303	(303)	—	—
Share-based compensation	—	—	3,002,826	—	3,002,826
Net loss	—	—	—	(51,976,664)	(51,976,664)
Balance, June 30, 2020	272,294,380	\$ 272,294	\$ 709,885,568	\$ (804,246,745)	\$ (94,088,883)

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

THERAPEUTICSMD, INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF CASH FLOWS
(Unaudited)

	Six Months Ended	
	June 30,	
	2020	2019
CASH FLOWS FROM OPERATING ACTIVITIES		
Net loss	\$ (108,825,466)	\$ (94,742,892)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation of fixed assets	387,649	133,049
Amortization of intangible assets	130,902	88,948
Write off of patent and trademark costs	—	78,864
Operating lease impairment	81,309	—
Non-cash operating lease expense	689,089	443,734
(Recovery of) provision for doubtful accounts	(181,800)	167,500
Inventory obsolescence reserve	5,965,139	—
Loss on extinguishment of debt	—	10,057,632
Share-based compensation	5,369,279	5,224,212
Amortization of deferred financing fees	692,442	316,880
Amortization of license fee	1,499,613	—
Changes in operating assets and liabilities:		
Accounts receivable	6,286,974	(7,486,691)
Inventory	(4,276,735)	(4,226,770)
Other current assets	4,412,827	1,710,697
Accounts payable	(1,910,893)	(3,244,603)
Accrued expenses and other current liabilities	(5,420,628)	2,801,717
Net cash used in operating activities	(95,100,299)	(88,677,723)
CASH FLOWS FROM INVESTING ACTIVITIES		
Patent costs	(815,564)	(763,247)
Purchase of fixed assets	(25,800)	(1,092,504)
Security deposit	35,000	(20,420)
Net cash used in investing activities	(806,364)	(1,876,171)
CASH FLOWS FROM FINANCING ACTIVITIES		
Proceeds from exercise of options and warrants	166,184	100,107
Repayment of the Credit Agreement	—	(81,660,719)
Proceeds from the Financing Agreement	50,000,000	200,000,000
Payment of deferred financing fees	(1,250,000)	(6,652,270)
Net cash provided by financing activities	48,916,184	111,787,118
Increase (decrease) in cash	(46,990,479)	21,233,224
Cash, beginning of period	160,829,713	161,613,077
Cash, end of period	\$ 113,839,234	\$ 182,846,301
Supplemental disclosure of cash flow information		
Interest paid	\$ 12,032,014	\$ 6,989,570

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

THERAPEUTICSM D, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 1 – THE COMPANY

TherapeuticsMD, Inc., a Nevada corporation, or TherapeuticsMD or the Company, has three wholly owned subsidiaries, vitaMedMD, LLC, a Delaware limited liability company, or VitaMed; BocaGreenMD, Inc., a Nevada corporation, or BocaGreen; and VitaCare Prescription Services, Inc., a Florida corporation, or VitaCare. Unless the context otherwise requires, TherapeuticsMD, VitaMed, BocaGreen, and VitaCare collectively are sometimes referred to as “our company,” “we,” “our,” or “us.” TherapeuticsMD[®], vitaMedMD[®], BocaGreenMD[®], IMVEXXY[®], BIJUVA[®] and ANNOVERA[®] are registered trademarks of our company.

Nature of Business

We are a women’s healthcare company with a mission of creating and commercializing innovative products to support the lifespan of women from pregnancy prevention through menopause. At TherapeuticsMD, we combine entrepreneurial spirit, clinical expertise, and business leadership to develop and commercialize health solutions that enable new standards of care for women. Our solutions range from a patient-controlled, long-lasting contraceptive to advanced hormone therapy pharmaceutical products. We also manufacture and distribute branded and generic prescription prenatal vitamins under the vitaMedMD and BocaGreenMD brands. Our portfolio of products focused on women’s health allows us to efficiently leverage our sales and marketing plan to grow our recently approved products. During 2018, the U.S. Food and Drug Administration, or FDA, approval of our pharmaceutical products has transitioned our company from predominately focused on conducting research and development to one focused on commercializing our pharmaceutical products. In July 2018, we launched our FDA-approved product, IMVEXXY (estradiol vaginal inserts) for the treatment of moderate-to-severe dyspareunia (vaginal pain associated with sexual activity), a symptom of vulvar and vaginal atrophy, or VVA, due to menopause. In April 2019, we launched our FDA-approved product BIJUVA (estradiol and progesterone) capsules, our hormone therapy combination of bio-identical 17 β -estradiol and bio-identical progesterone in a single, oral softgel capsule, for the treatment of moderate-to-severe vasomotor symptoms, or VMS, due to menopause in women with a uterus. In October 2019, we began a test and learn market introduction for our FDA-approved product ANNOVERA (segesterone acetate and ethinyl estradiol vaginal system), the first and only patient-controlled, procedure-free, reversible prescription contraceptive option for women. Although we expected to commence the full commercial launch of ANNOVERA in the first quarter of 2020, as a result of the uncertainty surrounding the COVID-19 pandemic, we paused the commercial launch of ANNOVERA and deferred sales and marketing initiatives into subsequent quarters as the pandemic began to negatively affect our revenue growth. We resumed the launch of ANNOVERA on July 1, 2020. On July 30, 2018, we entered into an exclusive license agreement, or the Population Council License Agreement, with the Population Council, Inc., or the Population Council, to commercialize ANNOVERA in the U.S. In addition, on July 30, 2018, we entered into a license and supply agreement, or the Knight License Agreement, with Knight Therapeutics Inc., or Knight, pursuant to which we granted Knight an exclusive license to commercialize IMVEXXY and BIJUVA in Canada and Israel. On June 6, 2019, we entered into an exclusive license and supply agreement, or the Theramex License Agreement, with Theramex HQ UK Limited, or Theramex, to commercialize BIJUVA and IMVEXXY outside of the U.S., excluding Canada and Israel, or the Theramex Territory.

NOTE 2 – BASIS OF PRESENTATION AND RECENTLY ISSUED ACCOUNTING PRONOUNCEMENTS

Interim Financial Statements

The accompanying unaudited interim consolidated financial statements of TherapeuticsMD, Inc., which include our wholly owned subsidiaries, should be read in conjunction with the audited consolidated financial statements and notes thereto included in our Annual Report on Form 10-K for the year ended December 31, 2019, as filed with the Securities and Exchange Commission, or the SEC, from which we derived the accompanying consolidated balance sheet as of December 31, 2019. The accompanying unaudited interim consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America, or GAAP, for interim financial information and with the instructions to Form 10-Q and Article 10 of Regulation S-X. Accordingly, since they are interim statements, the accompanying unaudited interim consolidated financial statements do not include all of the information and notes required by GAAP for complete financial statements. The accompanying unaudited interim consolidated financial statements reflect all adjustments, consisting of normal recurring adjustments, that are, in the opinion of our management, necessary to a fair statement of the results for the interim periods presented. Interim results are not necessarily indicative of results for a full year or any other interim period in the future.

Risks and Uncertainties

We are subject to risks and uncertainties as a result of the COVID-19 pandemic. The extent of the impact of the COVID-19 pandemic on our business is highly uncertain and difficult to predict. We continue to provide an uninterrupted supply of our portfolio of products for patients. We have sufficient inventory of finished product to meet anticipated demand through at least the early fourth quarter of 2020. Additionally, we currently do not foresee any interruption in our ability to continue to manufacture additional product to be used beyond this period and have sufficient active pharmaceutical ingredients on hand for the continued manufacture of our products.

Since the early phase of the COVID-19 pandemic, we have been using substantial virtual options to ensure business continuity. Our VitaCare Prescription Services patient model assists patients in obtaining easy and convenient access to their prescriptions for products at a retail pharmacy of their choice, including via home delivery retail pharmacy options. We have also partnered with independent community pharmacies and multiple third-party online pharmacies and telemedicine providers that focus on contraception or menopause to ensure patients have real-time access to both diagnosis and treatment. We continue to support prescribers' needs with samples and product materials through our sales force. If access is restricted, we currently have mailing options in place for these materials. We also have business continuity plans and infrastructure in place that allows for virtual detailing.

As part of our response to the COVID-19 pandemic, we implemented measures to reduce marketing expenses for 2020. We also implemented cost saving measures, which included negotiating lower fees or suspending services from third party vendors; implementing a company-wide hiring freeze; delaying or cancelling non-critical information technology projects; and eliminating travel, entertainment, meeting, and event expenses. These savings can be extended further throughout 2020 or expanded depending on the impact of the COVID-19 pandemic.

As a result of the COVID-19 pandemic, our second quarter 2020 product revenues were reduced, which impacted our results of operations. As of the date of issuance of these consolidated financial statements, the future extent to which the COVID-19 pandemic may materially impact our financial condition, liquidity, or results of operations remains uncertain. We are continuing to assess the effect the COVID-19 pandemic on our operations by monitoring the spread of COVID-19 and the various actions implemented to combat the virus throughout the world.

While we currently believe that our COVID-19 contingency plan has the ability to mitigate the effect of the COVID-19 pandemic on our business, the severity of the impact of the COVID-19 pandemic on our business will depend on a number of factors, including, but not limited to, the duration and severity of the pandemic, the duration of "social distancing" orders, the ability of our sales force to access healthcare providers to promote our products, increases in unemployment, which could reduce access to commercial health insurance for our patients, thus limiting payer coverage for our products, and the impact of the pandemic on our global supply chain, all of which are uncertain. Our future results of operations and liquidity could be materially adversely affected by delays in payments of outstanding receivable amounts beyond normal payment terms, supply chain disruptions, uncertain demand, and the impact of any initiatives or programs that we may undertake to address financial and operations challenges that we may face.

Although there is uncertainty related to the anticipated impact of the COVID-19 pandemic on our future results, we believe that our current cash reserves and the recent steps we have taken to reduce our operating expenses will help us manage our business through the pandemic. We have reviewed numerous potential scenarios in connection with the impact of COVID-19 on our business and, based on our analysis, we believe that our existing cash reserves, our currently anticipated operating cash flows, and proceeds from potential future financings, if available to us, will be sufficient to meet our cash needs arising in the ordinary course of business for the next twelve months from the date of this Quarterly Report on Form 10-Q. However, if the successful commercialization of IMVEXXY, BIJUVA, or ANNOVERA is delayed, or the impact of the COVID-19 pandemic on our business is worse than we anticipate, our existing cash reserves and proceeds from potential future financings, if available to us, may be insufficient to satisfy our liquidity requirements until we are able to successfully commercialize IMVEXXY, BIJUVA, and ANNOVERA. If our available cash is insufficient to satisfy our liquidity requirements, we may curtail our sales, marketing, and other commercialization efforts and we may seek to sell additional equity or debt securities. Our ability to sell equity securities will be limited by market conditions. Our ability to sell debt securities or obtain additional debt financing is restricted pursuant to the Financing Agreement. To the extent that we raise additional capital through the sale of equity or convertible debt securities, to the extent permitted under the Financing Agreement, the ownership interests of our existing stockholders will be diluted, and the terms of these new securities may include liquidation or other preferences that adversely affect the rights of our existing stockholders. If we raise additional funds through collaborations, strategic alliances, or licensing arrangements with third parties, certain of which are restricted under the Financing Agreement, we may have to relinquish valuable rights to our technologies, future revenue streams, research programs, or proposed products, if permitted under the Financing Agreement. Additionally, we may have to grant licenses on terms that may not be favorable to us.

Recently Issued Accounting Pronouncements

In August 2018, the Financial Accounting Standards Board, or the FASB, issued Accounting Standards Update, or ASU, 2018-13 which eliminates certain disclosure requirements for fair value measurements for all entities, requires public entities to disclose certain new information and modifies some disclosure requirements. The FASB developed the amendments to Accounting Standards Codification, or ASC, 820 as part of its broader disclosure framework project, which aims to improve the effectiveness of disclosures in the notes to financial statements by focusing on requirements that clearly communicate the most important information to users of the financial statements. The new guidance is effective for all entities for fiscal years beginning after December 15, 2019 and for interim periods within those fiscal years. An entity is permitted to early adopt either the entire standard or only the provisions that eliminate or modify requirements. We adopted this standard on January 1, 2020, and the adoption did not have a material effect on our disclosures.

In June 2016, the FASB issued ASU No. 2016-13, Financial Instruments - Credit Losses (Topic 326), Measurement of Credit Losses on Financial Instruments. The amendments in this update require a financial asset (or a group of financial assets) measured at amortized cost basis to be presented at the net amount expected to be collected based on historical experience, current conditions, and reasonable supportable forecasts. The amendments in this update are effective for public business entities for fiscal years, and interim periods within those fiscal years, beginning after December 15, 2019, with early adoption permitted no sooner than the first quarter of 2019. A modified retrospective approach is required for all investments, except debt securities for which an other-than-temporary impairment had been recognized prior to the effective date, which will require a prospective transition approach and should be applied either prospectively or retrospectively depending on the nature of the disclosure. The adoption of ASU 2016-13 requires expanded quantitative and qualitative disclosures about the Company's expected credit losses. Effective January 1, 2020, we adopted ASU 2016-13 under a modified retrospective approach for all financial assets measured at amortized cost. There was no adjustment recorded for the cumulative effect of adopting ASU 2016-13. The adoption expanded disclosures about our credit losses.

Other recent accounting pronouncements issued by the FASB (including its Emerging Issues Task Force), the American Institute of Certified Public Accountants and the SEC did not, and are not expected to, have a material effect on our results of operations or financial position.

NOTE 3 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Trade Accounts Receivable and Allowance for Doubtful Accounts

Trade accounts receivable are customer obligations due under normal trade terms. We review accounts receivable for uncollectible accounts and credit card chargebacks and provide an allowance for doubtful accounts, which is based upon a review of outstanding receivables, historical collection information, reasonable supportable forecasts and existing economic conditions and we record an allowance that presents the net amount expected to be collected. We evaluate trade accounts receivable for delinquency. We write off delinquent receivables against our allowance for doubtful accounts based on individual credit evaluations, the results of collection efforts, and specific circumstances of customers. We record recoveries of accounts previously written off when received as an increase in the allowance for doubtful accounts. To the extent data we use to calculate these estimates does not accurately reflect bad debts, adjustments to these reserves may be required. Our exposure to credit losses may increase if our customers are adversely affected by changes in healthcare laws, coverage, and reimbursement, economic pressures or uncertainty associated with local or global economic recessions, disruption associated with the current COVID-19 pandemic, or other customer-specific factors. Although we have historically not experienced significant credit losses, it is possible that there could be a material adverse impact from potential adjustments of the carrying amount of trade receivables in the future.

Fair Value of Financial Instruments

Our financial instruments consist primarily of cash, accounts receivable, accounts payable, accrued expenses and long-term debt. The carrying amount of cash, accounts receivable, accounts payable and accrued expenses approximates their fair value because of the short-term maturity of such instruments, which are considered Level 1 assets under the fair value hierarchy. The carrying amount for long-term debt as of June 30, 2020 (as disclosed in Note 9) approximates fair value based on market activity for other debt instruments with similar characteristics and comparable risk (Level 2).

We categorize our assets and liabilities that are valued at fair value on a recurring basis into a three-level fair value hierarchy as defined by ASC 820, Fair Value Measurements, or ASC 820. The fair value hierarchy gives the highest priority to quoted prices in active markets for identical assets and liabilities (Level 1) and lowest priority to unobservable inputs (Level 3). Assets and liabilities recorded in the consolidated balance sheet at fair value are categorized based on a hierarchy of inputs, as follows:

Level 1	unadjusted quoted prices in active markets for identical assets or liabilities;
Level 2	quoted prices for similar assets or liabilities in active markets or inputs that are observable for the asset or liability, either directly or indirectly through market corroboration, for substantially the full term of the financial instrument; and
Level 3	unobservable inputs for the assets or liabilities.

At June 30, 2020 and 2019, we had no assets or liabilities that were valued at fair value on a recurring basis.

The fair value of indefinite-lived assets is measured on a non-recurring basis using significant unobservable inputs (Level 3) in connection with any required impairment test. There was no impairment of intangible assets during the six months ended June 30, 2020. During the six months ended June 30, 2019, we wrote off \$78,864 in costs related to trademarks and patents, including the net carrying amount of the OPERA patent.

Share-Based Compensation

We measure the compensation costs of share-based compensation arrangements based on the grant-date fair value and recognize the costs in the financial statements over the period during which employees are required to provide services. Share-based compensation arrangements include options, restricted stock, restricted stock units, performance-based awards, share appreciation rights, and employee share purchase plans. We amortize such compensation amounts, if any, over the respective service periods of the award. We use the Black-Scholes-Merton option pricing model, or the Black-Scholes Model, an acceptable model in accordance with ASC 718, Compensation-Stock Compensation, to value options. Option valuation models require the input of assumptions, including the expected life of the stock-based awards, the estimated stock price volatility, the risk-free interest rate, and the expected dividend yield. The risk-free interest rate assumption is based upon observed interest rates on zero coupon U.S. Treasury bonds whose maturity period is appropriate for the term of the instrument. Estimated volatility is a measure of the amount by which our stock price is expected to fluctuate each year during the term of the award. On January 1, 2017, we began using our own stock price in our volatility calculation along with the other peer entities whose stock prices were publicly available that were similar to our company and in 2019 we started using only our own stock price in the volatility calculation. Our calculation of estimated volatility is based on historical stock prices over a period equal to the expected term of the awards. On January 1, 2020, we began calculating the expected term of our stock-based awards, which represents the period that the stock-based awards are expected to be outstanding. Prior to January 1, 2020, the average expected life of options was based on the contractual terms of the stock option using the simplified method. We utilize a dividend yield of zero based on the fact that we have never paid cash dividends and have no current intention to pay cash dividends. The assumptions used in calculating the fair value of stock-based awards represent our best estimates, but these estimates involve inherent uncertainties and the application of management judgment. As a result, if factors change and we use different assumptions, our share-based compensation expense could be materially different in the future. We recognize the compensation expense for share-based compensation granted based on the grant date fair value estimated in accordance with ASC 718. We generally recognize the compensation expense on a straight-line basis over the employee's requisite service period. Effective January 1, 2017, we account for forfeitures when they occur. On January 1, 2019, we adopted ASU 2018-07 which simplified the accounting for share-based payments to non-employees by aligning it with the accounting for share-based payments to employees, with certain exceptions. The new guidance expanded the scope of ASC 718 to include share-based payments granted to non-employees in exchange for goods or services used or consumed in an entity's own operations and superseded the guidance in ASC 505-50. Prior to January 1, 2019, equity instruments issued to non-employees were recorded on a fair value basis, as required by ASC 505, Equity - Based Payments to Non-Employees.

We grant performance-based stock units and restricted stock units for shares of common stock, par value \$0.001 per share, or Common Stock, to employees. We value our restricted stock units and our performance-based stock units by reference to our stock price on the date of grant. We recognize compensation expense for restricted stock units based on a straight-line basis over the requisite service period of the entire award. We recognize performance-based restricted stock as compensation expense based on the most likely probability of attaining the prescribed performance and over the requisite service period beginning at its grant date and through the date the restricted stock vests. The number of target shares that vest are determined based on the level of attainment of the targets. If a minimum level of performance is attained for the awards, restricted stock is issued based on the level of attainment.

Revenue Recognition

In accordance with ASC 606, *Revenue from Contracts with Customers*, or ASC 606, revenue is recognized when a customer obtains control of promised goods or services. The amount of revenue recognized reflects the consideration to which we expect to be entitled to receive in exchange for these goods or services. The provisions of ASC 606 include a five-step process by which we determine revenue recognition, depicting the transfer of goods or services to customers in amounts reflecting the payment to which we expect to be entitled in exchange for those goods or services. ASC 606 requires us to apply the following steps: (1) identify the contract with the customer; (2) identify the performance obligations in the contract; (3) determine the transaction price; (4) allocate the transaction price to the performance obligations in the contract; and (5) recognize revenue when, or as, we satisfy the performance obligation.

Prescription Products

As of June 30, 2020, our products consisted primarily of prescription vitamins and our FDA-approved products: IMVEXXY, which we began selling during the third quarter of 2018, BIJUVA, which we began selling in the second quarter of 2019, and ANNOVERA, which we started selling in the third quarter of 2019. As a result of the uncertainty surrounding the COVID-19 pandemic, we paused the commercial launch of ANNOVERA in the first quarter of 2020 and deferred sales and marketing initiatives into subsequent quarters. We resumed the launch of ANNOVERA on July 1, 2020.

We sell our name brand and generic prescription products primarily through wholesale distributors and retail pharmacies. We have one performance obligation related to prescription products sold through wholesale distributors, which is to transfer promised goods to a customer, and two performance obligations related to products sold through retail pharmacies, which are to: (1) transfer promised goods and (2) provide customer service for an immaterial fee. We treat shipping as a fulfillment activity rather than as a separate obligation. We recognize prescription revenue only when we satisfy performance obligations by transferring a promised good or service to a customer. A good or service is considered to be transferred when the customer receives the goods or service or obtains control. Control refers to the customer's ability to direct the use of, and obtain substantially all of the remaining benefits from, an asset. Based on our contracts, we invoice customers once our performance obligations have been satisfied, at which point payment is unconditional. We disclose receivables from contracts with customers separately in the statement of financial position. Payment for goods or services sold by us is typically due between 30 and 60 days after an invoice is sent to the customer.

The transaction price of a contract is the amount of consideration which we expect to be entitled to in exchange for transferring promised goods or services to a customer. Prescription products are sold at fixed wholesale acquisition cost, or WAC, determined based on our list price. However, the total transaction price is variable as it is calculated net of estimated product returns, chargebacks, rebates, coupons, discounts and wholesaler fees. These estimates 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). In order to determine the transaction price, we estimate the amount of variable consideration at the outset of the contract either utilizing the expected value or most likely amount method, depending on the facts and circumstances relative to the contract or each variable consideration. The estimated amount of variable consideration is included in the transaction price only to the extent that it is probable that a significant reversal in the amount of cumulative revenue recognized will not occur when the uncertainty associated with the variable consideration is subsequently resolved. In determining amounts of variable consideration to include in a contract's transaction price, we rely on our historical experience and other evidence that supports our qualitative assessment of whether revenue would be subject to a significant reversal. We consider all the facts and circumstances associated with both the risk of a revenue reversal arising from an uncertain future event and the magnitude of the reversal if that uncertain event were to occur. Actual amounts of consideration ultimately received may differ from our estimates. If actual results in the future vary from our original estimates, we will adjust these estimates, which would affect net product revenue and earnings in the period such changes in estimates become known.

We accept returns of unsalable prescription products sold through wholesale distributors within a return period of six months prior to and up to 12 months following product expiration. Our vitamins and IMVEXXY currently have a shelf life of 24 months from the date of manufacture and BIJUVA and ANNOVERA currently have a shelf life of 18 months from the date of manufacture. We do not allow product returns for prescription products that have been dispensed to a patient. We estimate the amount of our product sales that may be returned by our customers and record this estimate as a reduction of revenue in the period the related product revenue is recognized. Where historical rates of return exist, we use history as a basis to establish a returns reserve for products shipped to wholesalers. For our newly launched products, for which the right of return exists but for which we currently do not have history of product returns, we estimate returns based on available industry data, our own sales information and our visibility into the inventory remaining in the distribution channel. At the end of each reporting period, we may decide to constrain revenue for product returns based on information from various sources, including channel inventory levels and dating and sell-through data, the expiration dates of products currently being shipped, price changes of competitive products and any introductions of generic products. We recognize the amount of expected returns as a refund liability, representing the obligation to return the customer's consideration. Since our returns primarily consist of expired and short dated products that will not be resold, we do not record a return asset for the right to recover the goods returned by the customer at the time of the initial sale (when recognition of revenue is deferred due to the anticipated return). Return estimates are recorded in other current liabilities on the consolidated balance sheet.

We offer various rebate and discount programs in an effort to maintain a competitive position in the marketplace and to promote sales and customer loyalty. We estimate the allowance for consumer rebates and coupons that we have offered based on our experience and industry averages, which is reviewed, and adjusted if necessary, on a quarterly basis. Estimates relating to these rebates and coupons are deducted from gross product revenues at the time the revenues are recognized. We record distributor fees based on amounts stated in contracts. Rebate and coupon estimates and distributor fees are recorded in other current liabilities on the consolidated balance sheet. We estimate chargebacks based on number of units sold during the period taking into account prices stated in contracts and our historical experience. Estimates related to distributors fees, rebates, coupons and returns are disclosed in Note 8. We provide invoice discounts to our customers for prompt payment. Estimates relating to invoice discounts and chargebacks are deducted from gross product revenues at the time the revenues are recognized.

As part of commercial launches for our FDA-approved prescription products, we introduced a co-pay assistance program for eligible enrolled patients whose out of pocket costs are reduced to a more affordable price. This allows patients to access the product at a reasonable cost and is in line with our responsible pricing approach. We reimburse pharmacies for this discount through third-party vendors. The variable consideration is estimated based on contract prices, the estimated percentage of patients that will utilize the copay assistance, the average assistance paid, the estimated levels of inventory in the distribution channel and the current level of prescriptions covered by patients' insurance. Payers may change coverage levels for our prescription products positively or negatively, at any time up to the time that we have formally contracted coverage with the payer. As such, the net transaction price of our prescription products is susceptible to such changes in coverage levels, which are outside the influence of the Company. As a result, we constrain variable consideration for our prescription products to an amount that will not result in a significant revenue reversal in future periods. Our ability to estimate the net transaction price for our prescription products is constrained by our estimates of the amount to be paid for the co-pay assistance program which is directly related to the level of prescriptions paid for by insurance. As such, we record an accrual to reduce gross sales for the estimated co-pay and other patient assistance based on currently available third-party data and our internal analyses. We re-evaluate variable consideration each reporting period.

License Revenue

License arrangements may consist of non-refundable upfront license fees, exclusive licensed rights to patented or patent pending technology, and various performance or sales milestones and future product royalty payments. Some of these arrangements may include multiple performance obligations. Non-refundable up-front fees that are not contingent on any future performance by us, and do not require continuing involvement on our part, are recognized as revenue when the right to use functional IP is transferred to the customer.

Disaggregation of revenue

The following table provides information about disaggregated revenue by product mix for the three and six months ended June 30, 2020 and 2019:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2020	2019	2020	2019
Prescription vitamins	\$ 2,428,382	\$ 2,822,872	\$ 4,902,073	\$ 4,758,844
IMVEXXY	5,085,190	3,121,711	11,477,791	5,132,390
BIJUVA	1,352,001	134,282	2,463,605	134,282
ANNOVERA	1,835,460	—	4,108,221	—
Net revenue	<u>\$ 10,701,033</u>	<u>\$ 6,078,865</u>	<u>\$ 22,951,690</u>	<u>\$ 10,025,516</u>

License Agreement with the Population Council

On July 30, 2018, we entered into the Population Council License Agreement to commercialize ANNOVERA in the U.S. We began selling ANNOVERA in a “test and learn” market introduction in the third quarter of 2019. As a result of the uncertainty surrounding the COVID-19 pandemic, we paused the commercial launch of ANNOVERA in the first quarter of 2020 and deferred sales and marketing initiatives into subsequent quarters.

Under the terms of the Population Council License Agreement, we paid the Population Council a milestone payment of \$20,000,000 within 30 days following the approval by the FDA of the new drug application, or NDA, for ANNOVERA and \$20,000,000 within 30 days following the first commercial batch release of ANNOVERA. Both milestone payments of \$20,000,000 were recorded as license rights in the consolidated balance sheets. We started amortizing license rights in the third quarter of 2019 once ANNOVERA became commercially available for use. The cost is amortized over the remaining useful life over which the license rights will contribute directly or indirectly to our cash flows, which is estimated to be the remaining patent life of the product, which expires in December 2032. The cost is amortized using the straight-line method as the pattern of economic benefit cannot be reliably determined. During the three and six months ended June 30, 2020, we recorded \$754,102 and \$1,499,613, respectively, in amortization expense related to the license fee which was recorded as a component of cost of sales.

The Population Council is also eligible to receive milestone payments and royalties from commercial sales of ANNOVERA. We are responsible for marketing expenses related to the commercialization of ANNOVERA. In addition, we are required to pay the Population Council, on a quarterly basis, step-based royalty payments based on annual net sales of ANNOVERA in the U.S. by the Company and its affiliates and permitted licensees as follows: (i) if annual net sales are less than or equal to \$50,000,000, a royalty of 5% of net sales; (ii) for annual net sales greater than \$50,000,000 and less than or equal to \$150,000,000, a royalty of 10% of such net sales; and (iii) for net sales greater than \$150,000,000, a royalty of 15% of such net sales. The annual royalty rate will be reduced to 50% of the initial rate during the six-month period beginning on the date of the first arms-length commercial sale of a generic equivalent of the one-year vaginal contraceptive system that is launched by a third party in the U.S., and thereafter will be reduced to 20% of the initial rate. We are required to pay the Population Council milestone payments of \$40 million upon cumulative net sales of ANNOVERA in the U.S. by us and our affiliates and permitted sublicensees of each of \$200 million, \$400 million and \$1 billion. The Population Council has agreed to perform and pay the costs and expenses associated with four post-approval studies required by the FDA for ANNOVERA and we have agreed to perform and pay the costs and expenses associated with a post approval study required by the FDA to measure risk for venous thromboembolism, provided that if the costs and expenses associated with such post-approval study exceed \$20,000,000, half of such excess will be offset against royalties or other payments owed by us to the Population Council under the Population Council License Agreement. We and the Population Council have agreed to form a joint product committee responsible for overseeing activities under the Population Council License Agreement. We will be responsible for all aspects of promotion, product positioning, pricing, education programs, publications, sales messages and any additional desired clinical studies for the one-year vaginal contraceptive system, subject to oversight and decisions made by the joint product committee. The Population Council License Agreement includes exclusive rights for us to negotiate co-development of two other investigational vaginal contraceptive systems in development by the Population Council.

Cost of Sales

Cost of sales includes the cost of inventory, manufacturing, manufacturing overhead and supply chain costs, and product shipping and handling costs. The Population Council License Agreement requires payment of royalties based on the sale of future products. Such royalties are recorded as a component of cost of sales. Additionally, the amortization of license fees or milestone payments related to licensed products are classified as components of cost of sales to the extent such payments become due in the future.

Inventory Obsolescence Reserve

We evaluate inventory quarterly and records an allowance for obsolescence primarily associated with materials that are not currently or likely to be used in production in the near future. As of June 30, 2020 and December 31, 2019, we recorded an inventory obsolescence reserve primarily related to BIJUVA, of \$5,965,139 and \$0, respectively, as a result of the impact of the COVID-19 pandemic on our business, which decreased demand of our products.

Segment Reporting

We are managed and operated as one business, which is focused on creating and commercializing products targeted exclusively for women. Our business operations are managed by a single executive leadership team that is chaired by the Chief Executive Officer of our Company, who oversees all operations. We do not operate separate lines of business with respect to any of our products and we do not prepare discrete financial information with respect to separate products. All product sales are derived from sales in the United States. Accordingly, we view our business as one reportable operating segment.

Research and Development Expenses

Research and development, or R&D, expenses include internal R&D activities, services of external contract research organizations, or CROs, costs of their clinical research sites, manufacturing, scale-up and validation costs, and other activities. Internal R&D activity expenses include laboratory supplies, salaries, benefits, and non-cash share-based compensation expenses. CRO activity expenses include preclinical laboratory experiments and clinical trial studies. Other activity expenses include regulatory consulting and other costs. The activities undertaken by our regulatory consultants that were classified as R&D expenses include assisting, consulting with, and advising our in-house staff with respect to various FDA submission processes, clinical trial processes, and scientific writing matters, including preparing protocols and FDA submissions. These consulting expenses were direct costs associated with preparing, reviewing, and undertaking work for our clinical trials and investigative drugs. We charge internal R&D activities and other activity expenses to operations as incurred. We make payments to CROs based on agreed-upon terms, which may include payments in advance of a study starting date. We expense nonrefundable advance payments for goods and services that will be used in future R&D activities when the activity has been performed or when the goods have been received rather than when the payment is made. We review and accrue CRO expenses and clinical trial study expenses based on services performed and rely on estimates of those costs applicable to the completion stage of a study as provided by CROs. Estimated accrued CRO costs are subject to revisions as such studies progress to completion. We charge revisions to expenses in the period in which the facts that give rise to the revision become known.

NOTE 4 – INVENTORY, NET

Inventory, net consists of the following:

	June 30, 2020	December 31, 2019
Finished products	\$ 3,923,210	\$ 4,976,910
Work in process	1,551,079	1,182,059
Raw materials	4,698,023	5,701,747
TOTAL INVENTORY, NET	<u>\$ 10,172,312</u>	<u>\$ 11,860,716</u>

NOTE 5 – OTHER CURRENT ASSETS

Other current assets consist of the following:

	June 30, 2020	December 31, 2019
Prepaid sales and marketing costs	\$ 1,474,007	\$ 1,583,698
Debt financing fees on undrawn tranches (Note 9)	275,378	550,757
Prepaid insurance	1,081,540	1,812,135
Prepaid manufacturing	794,010	2,595,721
Other prepaid costs	3,016,652	4,787,482
TOTAL OTHER CURRENT ASSETS	<u>\$ 6,641,587</u>	<u>\$ 11,329,793</u>

NOTE 6 – FIXED ASSETS, NET

Fixed assets, net consist of the following:

	June 30, 2020	December 31, 2019
Accounting system	\$ 301,096	\$ 301,096
Equipment	1,645,446	1,619,646
Furniture and fixtures	1,406,858	1,406,858
Computer hardware	80,211	80,211
Leasehold improvements	68,788	68,788
TOTAL FIXED ASSETS	3,502,399	3,476,599
Accumulated depreciation	(1,356,473)	(968,824)
TOTAL FIXED ASSETS, NET	<u>\$ 2,145,926</u>	<u>\$ 2,507,775</u>

Depreciation expense for the three months ended June 30, 2020 and 2019 was \$188,810 and \$66,556, respectively, and for the six months ended June 30, 2020 and 2019 was \$387,649 and \$133,049, respectively.

NOTE 7 – INTANGIBLE ASSETS, NET

The following table sets forth the gross carrying amount, accumulated amortization and net carrying amount of our intangible assets as of June 30, 2020 and December 31, 2019:

	June 30, 2020			Weighted-Average Remaining Amortization Period (yrs.)
	Gross Carrying Amount	Accumulated Amortization	Net Amount	
Amortizable intangible assets:				
Approved hormone therapy drug candidate patents	\$ 3,997,263	\$ (609,982)	\$ 3,387,281	12.5
Hormone therapy drug candidate patents (pending)	2,216,911	—	2,216,911	n/a
Non-amortizable intangible assets:				
Multiple trademarks	338,681	—	338,681	indefinite
TOTAL	<u>\$ 6,552,855</u>	<u>\$ (609,982)</u>	<u>\$ 5,942,873</u>	

	December 31, 2019			Weighted-Average Remaining Amortization Period (yrs.)
	Gross Carrying Amount	Accumulated Amortization	Net Amount	
Amortizable intangible assets:				
Approved hormone therapy drug candidate patents	\$ 3,463,082	\$ (478,983)	\$ 2,984,099	13
Hormone therapy drug candidate patents (pending)	1,979,299	—	1,979,299	n/a
Non-amortizable intangible assets:				
Multiple trademarks	294,813	—	294,813	indefinite
TOTAL	<u>\$ 5,737,194</u>	<u>\$ (478,983)</u>	<u>\$ 5,258,211</u>	

We capitalize external costs, consisting primarily of legal costs, related to securing our patents and trademarks. Once a patent is granted, we amortize the approved hormone therapy drug candidate patents using the straight-line method over the estimated useful life of approximately 20 years, which is the life of intellectual property patents. If the patent is not granted, we write-off any capitalized patent costs at that time. Trademarks are perpetual and are not amortized. During the six months ended June 30, 2019, we wrote off \$78,864 in costs related to trademarks and patents, including the net carrying amount of the OPERA patent.

As of June 30, 2020, we had 35 issued domestic patents and 35 issued foreign patents, including:

- 14 domestic patents and seven foreign patents that relate to BIJUVA as well as three domestic patents that relate to estradiol and progesterone product candidates. These patents establish an important intellectual property foundation and are owned by us. The domestic patents will expire in 2032. The foreign patents will expire no earlier than 2032. In addition, we have pending patent applications relating to BIJUVA in the U.S., Argentina, Australia, Brazil, Canada, China, Europe, Hong Kong, Israel, Japan, Mexico, New Zealand, Russia, South Africa, and South Korea.
- Ten domestic patents (eight utility and two design) and 16 foreign patents (six utility and ten design) that relate to IMVEXXY. These patents establish an important intellectual property foundation for IMVEXXY and are owned by us. The domestic patents will expire in 2032 or 2033. The foreign utility patents will expire no earlier than 2033. The foreign design patents provide protection expiring no earlier than 2025. In certain countries, the foreign design patents provide protection through at least 2037. In addition, we have pending patent applications related to IMVEXXY in the U.S., Argentina, Australia, Brazil, Canada, Europe, Hong Kong, Israel, Japan, Mexico, New Zealand, Russia, South Africa, and South Korea.
- One domestic utility patent that relates to our topical-cream candidates, which is owned by us. The domestic patent will expire in 2035.
- One domestic utility patent and eight foreign patents that relate to our transdermal-patch candidates, which are owned by us. The domestic utility patent will expire in 2032. The foreign patents will expire no earlier than 2033. We have pending patent applications with respect to our transdermal-patch candidates in the U.S., Brazil, Canada, Mexico, and South Africa.
- Three domestic utility patents that relate to TX-009HR, a progesterone and estradiol product candidate, which are owned by us and will expire in 2037.
- Two domestic and four foreign patents that relate to formulations containing progesterone, which are owned by us. The domestic patents will expire between 2032 and 2036. The foreign patents will expire no earlier than 2033.
- One domestic utility patent that relates to our OPERA information-technology platform, which is owned by us and will expire in 2031.

Amortization expense was \$67,748 and \$48,503 for the three months ended June 30, 2020 and 2019, respectively, and \$130,902 and \$88,948 for the six months ended June 30, 2020 and 2019, respectively.

Estimated amortization expense, based on current patent cost being amortized, for the next five years is as follows:

Year Ending December 31,	Estimated Amortization
2020 (6 months)	\$ 135,495
2021	\$ 270,990
2022	\$ 270,990
2023	\$ 270,990
2024	\$ 270,990

NOTE 8 – OTHER CURRENT LIABILITIES

Other current liabilities consist of the following:

	June 30, 2020	December 31, 2019
Accrued payroll, bonuses and commission costs	\$ 3,224,923	\$ 8,040,278
Allowance for coupons and returns	8,608,125	10,316,298
Accrued sales and marketing costs	1,506,414	3,285,662
Accrued compensated absences	2,277,967	1,463,878
Allowance for wholesale distributor fees	3,898,318	2,347,122
Accrued legal and accounting expense	646,855	422,336
Accrued research and development	803,676	1,049,603
Operating lease liability	2,107,413	1,501,539
Accrued rebates	4,846,957	3,916,672
Other accrued expenses	1,292,763	1,480,225
TOTAL OTHER CURRENT LIABILITIES	\$ 29,213,411	\$ 33,823,613

NOTE 9 – DEBT

On April 24, 2019, we entered into a Financing Agreement, as amended, or the Financing Agreement, with TPG Specialty Lending, Inc., as administrative agent, or the Administrative Agent, various lenders from time to time party thereto, and certain of our subsidiaries party thereto from time to time as guarantors, which provides us with up to a \$300,000,000 first lien secured term loan credit facility, or the Facility. The Facility provides for availability to us in three tranches: (i) \$200,000,000 was drawn upon entering into the Financing Agreement; (ii) \$50,000,000 was drawn on February 18, 2020 following our achievement of more than \$11,000,000 in net revenues from IMVEXXY, BIJUVA and ANNOVERA for the fourth quarter of 2019 and (iii) \$50,000,000 was previously available to us in the Administrative Agent's sole and absolute discretion either contemporaneously with the delivery of our financial statements for the quarter ended June 30, 2020 or at such earlier date as the Administrative Agent may have consented to. We and the Administrative Agent are not moving forward with the undrawn \$50,000,000 tranche under the Financing Agreement, which was designed to be drawn following the successful full commercial launch of ANNOVERA in the second quarter of 2020, due to the pause in the launch timing caused by the COVID-19 pandemic. However, the Administrative Agent has agreed to continue to discuss with us the terms upon which additional financing could be made available to us by the Administrative Agent in the future at our request and in its discretion. Borrowings under the Facility accrue interest at either (i) 3-month LIBOR plus 7.75%, subject to a LIBOR floor of 2.70% or (ii) the prime rate plus 6.75%, subject to a prime rate floor of 5.2% as selected by us. Interest on amounts borrowed under the Facility is payable quarterly. The outstanding principal amount of the Facility is payable in four equal quarterly installments beginning on June 30, 2023, with the Facility maturing on March 31, 2024. We have the right to prepay borrowings under the Facility in whole or in part at any time, subject to a prepayment fee on the principal amount being prepaid of (i) 30.0% for the first two years following the initial funding date of the applicable borrowing, (ii) 5.0% for the third year following the initial funding date of the applicable borrowing, (iii) 3.0% for the fourth year following the initial funding date of the applicable borrowing and (iv) 1.0% for the fifth year following the initial funding date of the applicable borrowing but prior to March 31, 2024. In connection with the initial borrowing under the Facility, we paid, for the benefit of the lenders, a facility fee equal to 2.5% of the initial amount borrowed and will be required to pay such a facility fee in connection with any subsequent borrowings under the Facility. We are also required to pay the Administrative Agent and the lenders an annual administrative fee in addition to other fees and expenses. The Financing Agreement contains customary mandatory prepayments, restrictions and covenants applicable to us that are customary for financings of this type. Among other requirements, we are required to (i) maintain a minimum unrestricted cash balance of \$60,000,000, and (ii) achieve certain minimum consolidated net revenue amounts attributable to commercial sales of our IMVEXXY, BIJUVA and ANNOVERA products beginning with the fiscal quarter ending December 31, 2020. The Financing Agreement also includes other representations, warranties, indemnities and events of default that are customary for financings of this type, including an event of default relating to a change of control of the Company. Upon or after an event of default, the Administrative Agent and the lenders may declare all or a portion of our obligations under the Financing Agreement to be immediately due and payable and exercise other rights and remedies provided for under the Financing Agreement. The obligations of our company and its subsidiaries under the Financing Agreement are secured, subject to customary permitted liens and other agreed upon exceptions, by a first priority perfected security interest in all existing and after acquired assets of our company and its subsidiaries. The obligations under the Financing Agreement will be guaranteed by each of our future direct and indirect subsidiaries, subject to certain exceptions.

On May 1, 2018, we entered into a Credit and Security Agreement, or the Credit Agreement, with MidCap Financial Trust, or MidCap, as agent, or Agent, and as lender, and the additional lenders party thereto from time to time (together with MidCap as a lender, the Lenders), as amended. The Credit Agreement provided a secured term loan facility in an aggregate principal amount of up to \$200,000,000, or the Term Loan. Under the terms of the Credit Agreement, the Term Loan was available to be made in three separate tranches, with each tranche to be made available to us, at our option, upon our achievement of certain milestones. Amounts borrowed under the Term Loan bore interest at a rate equal to the sum of (i) one-month LIBOR (subject to a LIBOR floor of 1.50%) plus (ii) 7.75% per annum.

On April 24, 2019, we terminated the Credit Agreement. A portion of the initial tranche of borrowing under the Financing Agreement in the amount of approximately \$81,661,000 was used to repay all amounts outstanding under the Credit Agreement, which included a prepayment fee of 4%, a repayment fee of 4% and other fees and expenses payable to the lenders under the Credit Agreement. As a result of the termination of the Credit Agreement, we recorded \$10,057,632 in loss on extinguishment of debt in the second quarter of 2019. Interest expense for the six months ending June 30, 2019 related to the Credit Agreement was \$1,816,747. During the six months ended June 30, 2019, and prior to the repayment of the Credit Agreement, we amortized \$120,146 of deferred financing fees as interest expense in the accompanying unaudited consolidated financial statements.

As of June 30, 2020, we had \$250,000,000 in borrowings outstanding under the Financing Agreement, which are classified as long-term debt in the accompanying consolidated financial statements. We incurred \$7,902,270 in deferred financing fees related to the Financing Agreement. Deferred financing fees related to the entire Financing Agreement have been allocated pro rata between the funded and unfunded tranches. Allocated deferred financing fees related to the two tranches of borrowings that we received of \$7,626,891 have been reflected as a debt discount and are accreted to interest expense using the effective interest method. Deferred financing fees associated with an unfunded tranche are deferred as assets until such tranche has been drawn. As of June 30, 2020, deferred financing fees related to the unfunded tranche of \$50,000,000 were included in other current assets in the accompanying consolidated financial statements. During the three and six months ended June 30, 2020, we amortized \$373,034 and \$692,442, respectively, of deferred financing fees related to the two tranches that have been received as interest expense in the accompanying consolidated financial statements. During the three and six months ended June 30, 2019, we amortized \$196,734, of deferred financing fees related to the Financing Agreement as interest expense in the accompanying consolidated financial statements. Interest on amounts borrowed under the Financing Agreement is due and payable quarterly in arrears. Interest expense for the three and six months ended June 30, 2020 was \$6,653,819 and \$12,596,458, respectively. The overall effective interest rate under the Financing Agreement was approximately 11% as of June 30, 2020.

As of June 30, 2020 and December 31, 2019, the carrying value of our debt consisted of the following:

	June 30, 2020	December 31, 2019
Financing Agreement	\$ 250,000,000	\$ 200,000,000
Debt discount and financing fees	(6,198,295)	(5,365,357)
TOTAL LONG-TERM DEBT	\$ 243,801,705	\$ 194,634,643

On April 27, 2020, we received a loan pursuant to the Paycheck Protection Program under the Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act"), as administered by the U.S. Small Business Administration. The loan in the principal amount of \$6,477,094 (the "PPP Loan") was disbursed by Bank of America, NA, a national banking association, pursuant to a promissory note issued by the Company. Although we believed, in good faith, we were qualified for the PPP Loan under the available regulations, as a result of newly-issued guidance, particularly with respect to publicly traded companies receiving funding under the CARES Act, we voluntarily returned the PPP Loan proceeds on May 14, 2020.

NOTE 10 – NET LOSS PER SHARE

We calculate earnings per share, or EPS, in accordance with ASC 260, *Earnings Per Share*, which requires the computation and disclosure of two EPS amounts: basic and diluted. We compute basic EPS based on the weighted-average number of shares of Common Stock outstanding during the period. We compute diluted EPS based on the weighted-average number of shares of our Common Stock outstanding plus all potentially dilutive shares of our Common Stock outstanding during the period. Such potentially dilutive shares of our Common Stock consist of options, warrants and restricted stock units and were excluded from the calculation of diluted earnings per share because their effect would have been anti-dilutive due to the net loss reported by us. The table below presents potentially dilutive securities that could affect our calculation of diluted net loss per share allocable to common stockholders for the periods presented.

	June 30, 2020	June 30, 2019
Stock options	24,590,141	22,072,469
Warrants	1,782,571	1,832,571
Performance stock units	2,422,885	—
Restricted stock units	6,029,957	1,040,000
	34,825,554	24,945,040

NOTE 11 – STOCKHOLDERS' EQUITY

Preferred Stock

At June 30, 2020, we had 10,000,000 shares of preferred stock, par value \$0.001 per share, authorized for issuance, of which no shares were issued or outstanding.

Common Stock

At June 30, 2020, we had 600,000,000 shares of Common Stock authorized for issuance, of which 272,294,380 shares of Common Stock were issued and outstanding.

Issuances During the Three and Six Months ended June 30, 2020

During the three months ended June 30, 2020, stock options to purchase an aggregate of 313,638 shares of Common Stock were exercised for \$94,075 in cash. During the six months ended June 30, 2020, stock options to purchase an aggregate of 664,304 shares of Common Stock were exercised for \$166,184 in cash.

Issuances During the Three and Six Months ended June 30, 2019

During the three months ended June 30, 2019, no options to purchase shares of Common Stock were exercised. During the six months ended June 30, 2019, stock options to purchase an aggregate of 276,383 shares of Common Stock were exercised for \$100,107 in cash. Also, during the same period, stock options to purchase an aggregate of 12,097 shares of Common Stock were exercised pursuant to the options' cashless exercise provisions, wherein an aggregate of 11,834 shares of Common Stock were issued.

Warrants to Purchase Common Stock

As of June 30, 2020, we had warrants outstanding to purchase an aggregate of 1,782,571 shares of Common Stock with a weighted-average contractual remaining life of approximately 1.5 years, and exercise prices ranging from \$0.24 to \$8.20 per share, resulting in a weighted average exercise price of \$2.51 per share.

The valuation methodology used to determine the fair value of our warrants is the Black-Scholes Model. The Black-Scholes Model requires the use of a number of assumptions, including volatility of the stock price, the risk-free interest rate, dividend yield and the term of the warrant.

During the six months ended June 30, 2020, no warrants were granted. During the six months ended June 30, 2019, we granted warrants to purchase an aggregate of 75,000 shares of Common Stock to outside consultants at an exercise price of \$5.63. The fair value for these warrants was determined by using the Black-Scholes Model on the date of the grant using a term of five years; volatility of 60.8%; risk free rate of 2.52%; and dividend yield of 0%. The grant date fair value of the warrants was \$3.00 per share. The warrants vested ratably over a 12-month period and have an expiration date of February 12, 2024.

During the six months ended June 30, 2020, no warrants were exercised. During the six months ended June 30, 2019, warrants to purchase an aggregate of 1,250,000 shares of Common Stock were exercised pursuant to the warrants' cashless exercise provisions, wherein an aggregate of 471,184 shares of Common Stock were issued.

We recorded share-based compensation expense related to warrants previously issued of \$0 and \$56,172 for the three months ended June 30, 2020 and 2019, respectively, and \$27,446 and \$141,888 for the six months ended June 30, 2020 and 2019, respectively, in the accompanying consolidated financial statements. At June 30, 2020, there was no unrecognized compensation expense remaining related to unvested warrants.

Options to Purchase Common Stock

In 2009, we adopted the 2009 Long Term Incentive Compensation Plan, or the 2009 Plan, to provide financial incentives to employees, directors, advisers, and consultants of our company who are able to contribute towards the creation of or who have created stockholder value by providing them stock options and other stock and cash incentives, or the Awards. As of June 30, 2020, there were non-qualified stock options to purchase an aggregate of 14,024,041 shares of Common Stock outstanding under the 2009 Plan. Effective upon our adoption of the TherapeuticsMD, Inc. 2019 Stock Incentive Plan, or the 2019 Plan, on June 20, 2019, no future awards may be made under the 2009 Plan.

In 2012, we adopted the 2012 Stock Incentive Plan, or the 2012 Plan, a non-qualified plan that was amended in August 2013. The 2012 Plan was designed to serve as an incentive for retaining qualified and competent key employees, officers, directors, and certain consultants and advisors of our company. As of June 30, 2020, there were non-qualified stock options to purchase an aggregate of 6,308,599 shares of Common Stock outstanding and an aggregate of 890,000 restricted stock units under the 2012 Plan. Effective upon our adoption of the 2019 Plan, no future awards may be made under the 2012 Plan.

On June 20, 2019, we adopted the 2019 Plan to serve as an incentive for retaining qualified and competent key employees, officers, directors, and certain consultants and advisors of our company. The Awards available under the 2019 Plan consist of stock options, stock appreciation rights, restricted stock, restricted stock units, performance stock, performance units, and other stock or cash awards as described in the 2019 Plan. Generally, the options vest annually over four years or as determined by our board of directors, upon each option grant. Options may be exercised by paying the price for shares or on a cashless exercise basis after they have vested and prior to the specified expiration date provided and applicable exercise conditions are met, if any. The expiration date is generally ten years from the date the option is issued.

As of June 30, 2020, there were 3,286,444 shares of Common Stock available for issuance under the 2019 Plan, consisting of (i) 453,772 new shares, (ii) 2,403,208 unallocated shares previously available for issuance under the 2012 Plan that were not then subject to outstanding "Awards" (as defined in the 2012 Plan), and (iii) 429,464 unallocated shares previously available for issuance under the 2009 Plan that were not then subject to outstanding "Awards" (as defined in the 2009 Plan). Any shares subject to outstanding options or other equity "Awards" under the 2019 Plan, the 2012 Plan and the 2009 Plan that are forfeited, expire or otherwise terminate without issuance of the underlying shares, or if any such Award is settled for cash or otherwise does not result in the issuance of all or a portion of the shares subject to such Award (other than shares tendered or withheld in connection with the exercise of an Award or the satisfaction of withholding tax liabilities), the shares to which those Awards were subject, shall, to the extent of such forfeiture, expiration, termination, cash settlement or non-issuance, again be available for delivery with respect to Awards under the 2019 Plan. As of June 30, 2020, there were non-qualified stock options to purchase an aggregate of 4,257,501 shares of Common Stock outstanding under the 2019 Plan and an aggregate of 5,139,957 restricted stock units and 2,422,885 performance stock units outstanding under the 2019 Plan.

The valuation methodology used to determine the fair value of stock options is the Black-Scholes Model. The Black-Scholes Model requires the use of a number of assumptions including volatility of the stock price, the risk-free interest rate, and the expected life of the stock options. The ranges of assumptions used in the Black-Scholes Model during the six months ended June 30, 2020 and 2019 are set forth in the table below.

	June 30, 2020	June 30, 2019
Weighted average grant date fair value	\$ 0.95	\$ 2.57
Risk-free interest rate	0.34-1.68%	2.19-2.54%
Volatility	63.53-67.92%	61.25-61.85%
Term (in years)	6-6.8	5.5-6.25
Dividend yield	0.00%	0.00%

A summary of option activity under the 2009, 2012 and 2019 Plans and related information during the six months ended June 30, 2020 is as follows:

	Number of Shares Under Options	Weighted Average Exercise Price	Weighted Average Remaining Contractual Life in Years	Aggregate Intrinsic Value
Balance at December 31, 2019	25,030,234	\$ 4.65	5.84	\$ 3,668,171
Granted	736,500	\$ 1.58		
Exercised	(664,304)	\$ 0.25		\$ 1,027,627
Expired	(197,914)	\$ 2.53		
Cancelled/Forfeited	(314,375)	\$ 3.82		
Balance at June 30, 2020	24,590,141	\$ 4.70	5.59	\$ 721,720
Vested and Exercisable at June 30, 2020	19,725,267	\$ 5.02	4.80	\$ 673,250
Unvested at June 30, 2020	4,864,874	\$ 3.42	8.83	\$ 48,470

At June 30, 2020, our outstanding options had exercise prices ranging from \$0.20 to \$8.92 per share. Share-based compensation expense related to options recognized in our results of operations for the three months ended June 30, 2020 and 2019 was \$1,160,510 and \$2,230,829, respectively, and for the six months ended June 30, 2020 and 2019 was \$2,997,141 and \$4,374,069, respectively, and it is based on awards vested. At June 30, 2020, total unrecognized estimated compensation expense related to unvested options was approximately \$7,703,000, which may be adjusted for future changes in forfeitures. This cost is expected to be recognized over a weighted-average period of 2.2 years. No tax benefit was realized due to a continued pattern of operating losses.

Restricted Stock

Restricted stock units granted under our 2009, 2012 and 2019 Plans entitle the holder to receive, at the end of vesting period, a specified number of shares of our Common Stock. Share-based compensation expense is measured by the market value of our Common Stock on the day of the grant. The shares vest ratably over the period specified in the grant. There is no partial vesting and any unvested portion is forfeited.

Performance stock units will vest if certain performance targets are achieved. If minimum performance thresholds are achieved, each award will convert into Common Stock at a defined ratio depending on the degree of achievement of the performance target designated by each individual award. If minimum performance thresholds are not achieved, then no shares will be issued. We recognize performance-based restricted stock as compensation expense based on the most likely probability of attaining the prescribed performance and over the requisite service period beginning at its grant date and through the date the restricted stock vests. The expected levels of achievement are reassessed over the requisite service periods and, to the extent that the expected levels of achievement change, stock-based compensation is adjusted and recorded on the consolidated statements of income and the remaining unrecognized stock-based compensation is recognized over the remaining requisite service period.

During the three and six months ended June 30, 2020 we recorded \$1,842,316 and \$2,345,693, respectively, and during the three and six months ended June 30, 2019 we recorded \$350,263 and \$696,676, respectively, in share-based compensation expense related to restricted stock units and performance stock units. As of June 30, 2020, we recognized performance-based compensation expense using our assessment of the most likely probability of attaining EBITDA break-even which would result in vesting two times the base number of performance stock units. At June 30, 2020, total unrecognized estimated compensation expense related to unvested restricted stock units and performance stock units was approximately \$13,161,000, which may be adjusted if certain performance targets are achieved or for future changes in forfeitures. This cost is expected to be recognized over a weighted-average period of 1.9 years.

	Restricted Stock Units		Performance Stock Units	
	Number of Shares	Weighted Average Grant Date Fair Value	Number of Shares	Weighted Average Grant Date Fair Value
Balance at December 31, 2019	1,240,000	\$ 3.56	—	\$ —
Granted	5,102,817	\$ 1.40	2,585,745	\$ 1.08
Vested/Released	(301,500)	\$ 1.78	(151,500)	\$ 1.14
Forfeited	(11,360)	\$ 1.07	(11,360)	\$ 1.07
Balance at June 30, 2020	6,029,957	\$ 1.83	2,422,885*	\$ 1.08

* The number of performance stock units (PSUs) represents the base number of PSUs that may vest. The actual number of PSUs that will vest will be between zero and two times the base number of PSUs depending on the Company's achievement of break-even quarterly EBITDA.

Employee Stock Purchase Plan

On June 18, 2020, our stockholders approved the TherapeuticsMD, Inc. 2020 Employee Stock Purchase Plan (the "ESPP"), which reserved 5,400,000 shares of Common Stock for purchase. The ESPP permits eligible employee participants to purchase Common Stock at a price per share which is equal to 85% of the lesser of (a) the fair market value of the shares on the offering date of the offering period or (b) the fair market value of the shares on the purchase date.

NOTE 12 – INCOME TAXES

Deferred income tax assets and liabilities are determined based upon differences between the financial reporting and tax basis of assets and liabilities and are measured using the enacted tax rates and laws that will be in effect when the differences are expected to reverse. We do not expect to pay any significant federal or state income tax for 2020 as a result of (i) the losses recorded during the six months ended June 30, 2020, (ii) additional losses expected for the remainder of 2020, and/or (iii) net operating loss carry forwards from prior years. Accounting standards require the consideration of a valuation allowance for deferred tax assets if it is "more likely than not" that some component or all of the benefits of deferred tax assets will not be realized. As of June 30, 2020, we maintain a full valuation allowance for all deferred tax assets. Based on these requirements, no provision or benefit for income taxes has been recorded. There were no recorded unrecognized tax benefits at the end of the reporting period.

NOTE 13 – RELATED PARTIES

In July 2015, J. Martin Carroll, a director of our company, was appointed to the board of directors of Catalent, Inc. From time to time, we have entered into agreements with Catalent, Inc. and its affiliates, or Catalent, in the normal course of business. Agreements with Catalent have been reviewed by independent directors of our Company, or a committee consisting of independent directors of our company, since July 2015. During the three months ended June 30, 2020 and 2019, we were billed by Catalent approximately \$741,000 and \$974,000, respectively, for manufacturing activities related to our clinical trials, scale-up, registration batches, stability and validation testing. During the six months ended June 30, 2020 and 2019, we were billed by Catalent approximately \$2,044,000 and \$2,371,000, respectively, for manufacturing activities related to our clinical trials, scale-up, registration batches, stability and validation testing. As of June 30, 2020 and December 31, 2019, there were amounts due to Catalent of approximately \$592,000 and \$35,000, respectively. In addition, we have minimum purchase requirements in place with Catalent as disclosed in Note 15, Commitments and Contingencies.

In April 2020, Karen L. Ling, Executive Vice President and Chief Human Resources Officer of American International Group, Inc., or AIG, was appointed to our board of directors. From time to time, we have entered into agreements with AIG in the normal course of business. Agreements with AIG have been reviewed by independent directors of our Company, or a committee consisting of independent directors of our Company, since April 2020. During the three and six months ended June 30, 2020, we were billed by AIG approximately \$72,000 and \$143,000, respectively, for various insurance coverage for our Company.

NOTE 14 – BUSINESS CONCENTRATIONS

We purchase our prescription products from several suppliers with approximately 18%, 36% and 39% of our purchases supplied by three vendors each, respectively, during the six months ended June 30, 2020, and 14%, 18%, 31% and 37% of our purchases supplied by four vendors each, respectively, during the six months ended June 30, 2019.

We sell our prescription products to wholesale distributors, specialty pharmacies, specialty distributors, and chain drug stores that generally sell products to retail pharmacies, hospitals, and other institutional customers. During the six months ended June 30, 2020, four customers each accounted for more than 10% of our total prescription revenues. Prescription revenue from the four customers combined accounted for approximately 70% of our prescription revenue for the six months ended June 30, 2020. During the six months ended June 30, 2019, three customers each generated more than 10% of our prescription revenues. Revenue generated from the three customers combined accounted for approximately 60% of our prescription revenue for the six months ended June 30, 2019.

During the six months ended June 30, 2020, Pillpack, Inc. accounted for approximately \$5,707,000 of our prescription revenue, Cardinal Health accounted for approximately \$3,772,000 of our prescription revenue, McKesson Corporation accounted for approximately \$3,356,000 of our prescription revenue, and Pharmacy Innovation PA accounted for approximately \$3,178,000 of our prescription revenue. During the six months ended June 30, 2019, Pillpack, Inc. accounted for approximately \$3,615,000 of our prescription revenue, AmerisourceBergen accounted for approximately \$1,365,000 of our prescription revenue and Cardinal Health accounted for approximately \$1,048,000 of our prescription revenue.

NOTE 15 – COMMITMENTS AND CONTINGENCIES

Operating Leases

We adopted ASC 842 effective January 1, 2019. Substantially all our operating lease right-of-use assets and operating lease liabilities represent leases for office space used to conduct our business. Upon adoption, we recognized a right-of-use asset and a lease liability for all leases that have commenced as of January 1, 2019. The right-of-use assets represent the right to use the leased asset for the lease term. The lease liabilities represent the present value of the lease payments under the lease. The right-of-use asset is initially measured at cost, which primarily comprises the initial amount of the lease liability, plus any initial direct costs incurred, less any lease incentives received. All right-of-use assets are reviewed for impairment. The lease liability is initially measured at the present value of the lease payments, discounted using our secured incremental borrowing rate for the same term as the underlying lease because the rates are not implicit in the leases. Some of our leases contain variable lease payments, including payments based on an index or rate. Variable lease payments based on an index or rate are initially measured using the index or rate in effect at lease commencement. Additional payments based on the change in an index or rate, or payments based on a change in our portion of the operating expenses are recorded as a period expense when incurred. Lease modifications result in remeasurement of the lease liability. Included in lease expense are any variable lease payments incurred in the period that were not included in the initial lease liability.

We lease administrative office space in Boca Raton, Florida pursuant to a non-cancelable operating lease that commenced on July 1, 2013 and originally provided for a 63-month term. On February 18, 2015, we entered into an agreement with the same lessors to lease additional administrative office space in the same location, pursuant to an addendum to such lease. In addition, on April 26, 2016, we entered into an agreement with the same lessors to lease additional administrative office space in the same location. This agreement was effective beginning May 1, 2016 and extended the original expiration of the lease term to October 31, 2021. On October 4, 2016, we entered into an agreement with the same lessors to lease additional administrative office space in the same location, pursuant to an addendum to such lease. This addendum became effective beginning November 1, 2016.

In October 2018, we entered into a lease for new corporate offices in Boca Raton, Florida. The lease includes 56,212 rentable square feet, or the full premises, of which the lease on 7,561 square feet commenced in 2018 and the lease on the remaining 48,651 square feet commenced in August 2019, or the full premises commencement date. The lease will expire 11 years after the full premises commencement date, unless terminated earlier in accordance with the terms of the lease. We have the option to extend the term of the lease for two additional consecutive periods of five years. The extension option is not included in the determination of the lease term as it is not reasonably certain to be exercised. The term of the lease includes escalating rent and free rent periods. We are also responsible for certain other operating costs under the lease, including electricity and utility expenses. In June 2019, we entered into an agreement with the same lessors to lease additional 6,536 square feet of administrative office space in the same location, pursuant to an addendum to such lease, which commenced in May 2020.

Supplemental lease information:	June 30, 2020	December 31, 2019
Right-of-use asset	\$ 10,337,577	\$ 10,109,154
Short-term operating lease liability (included in Other current liabilities)	\$ 2,107,413	\$ 1,501,539
Long-term operating lease liability	\$ 9,307,361	\$ 9,145,049
Weighted average remaining term	9 years	9 years
Weighted average discount rate	8.3%	8.25%

Supplemental cash flow information for the six months ended	June 30, 2020	June 30, 2019
Cash paid for amounts included in the measurement of lease liabilities for operating lease	\$ 670,793	\$ 564,092
Right-of-use assets obtained in exchange for lease obligation	\$ 998,821	\$ 3,760,171

The following table reconciles the undiscounted cash flows for all operating leases at June 30, 2020 to the operating lease liabilities recorded on the balance sheet:

Years Ended December 31,	
2020 (6 months)	\$ 946,852
2021	2,334,582
2022	1,413,289
2023	1,443,143
2024	1,476,534
Thereafter	8,947,869
Total undiscounted lease payments	16,562,269
Less: imputed interest	(5,147,495)
Present value of lease payments	\$ 11,414,774

During the three and six months ended June 30, 2020, operating lease expense related to our real estate leases was approximately \$595,000 and \$1,158,000, respectively, and variable lease expense was insignificant for the same periods. During the three and six months ended June 30, 2019, operating lease expense related to our real estate leases was approximately \$295,000 and \$590,000, respectively, and variable lease expense was insignificant for the same periods.

Intellectual Property Licenses

The Population Council License Agreement provides for future milestone payments to be paid by us for access to certain technologies. In addition, we pay royalties as a percent of revenue as described in Note 7, Intangible Assets, to these consolidated financial statements.

Purchase Commitments

We have manufacturing and supply agreements whereby we are required to purchase from Catalent a minimum number of softgels during the first contract year and a higher number of softgels after the first contract year. If the minimum order quantities of specific products are not met, we are required to pay Catalent 50% of the difference between the total amount we would have paid to Catalent if the minimum requirement had been fulfilled and the sum of all purchases of our products from Catalent during the contract year. In addition, we have a manufacturing and supply agreement whereby we are required to purchase a minimum number of units of ANNOVERA during a contract year. As of June 30, 2020, we have met our contract year purchase commitments with Catalent.

Legal Proceedings

From time to time, we are involved in litigation and proceedings in the ordinary course of business. We are not currently involved in any legal proceeding that we believe would have a material effect on our consolidated financial condition, results of operations, or cash flows.

Off-Balance Sheet Arrangements

As of June 30, 2020 and 2019, we had no off-balance sheet arrangements that have had or are reasonably likely to have current or future effects on our financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, capital expenditures or capital resources that are material to investors.

Employment Agreements

We have entered into employment agreements with certain of our executives that provide for compensation and certain other benefits. Under certain circumstances, including a change in control, some of these agreements provide for severance or other payments, if those circumstances occur during the term of the employment agreement.

NOTE 16 – SUBSEQUENT EVENTS

On August 5, 2020, we entered into Amendment No. 5 to the Financing Agreement (the “Amendment”) with the Administrative Agent, various lenders from time to time party thereto, and certain of our subsidiaries party thereto from time to time as guarantors. The Amendment adjusts the covenant in the Financing Agreement regarding our achievement of minimum consolidated net revenue attributable to commercial sales of our IMVEXXY, BIJUVA and ANNOVERA products to reflect the impact of COVID-19 on our business. The covenant is effective beginning with the fiscal quarter ending December 31, 2020. In connection with the Amendment and in lieu of a cash amendment fee, we issued to the Administrative Agent and the lenders under the Financing Agreement warrants to purchase an aggregate of approximately 4,750,000 shares of Common Stock with an exercise price of \$1.58 per share and a ten year term (the “Lender Warrants”). The Lender Warrants were issued pursuant to an exemption from registration under the Securities Act of 1933, as amended, and no registration rights were issued. The Lender Warrants do not have anti-dilution protection, other than for customary stock splits and similar transactions.

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

General

The following discussion and analysis provides information that we believe to be relevant to an assessment and understanding of our results of operations and financial condition for the periods described. This discussion should be read together with our unaudited consolidated financial statements and the notes to the financial statements, which are included in this Quarterly Report on Form 10-Q. This information should also be read in conjunction with the information contained in our Annual Report on Form 10-K for the year ended December 31, 2019 filed with the Securities and Exchange Commission, or the SEC, on February 24, 2020, or our Annual Report, including the audited financial statements and notes included therein. The reported results will not necessarily reflect future results of operations or financial condition.

In addition, this Quarterly Report on Form 10-Q contains forward-looking statements that involve substantial risks and uncertainties. Forward-looking statements may include, but are not limited to, statements relating to our objectives, plans and strategies as well as statements, other than historical facts, that address activities, events or developments that we intend, expect, project, believe or anticipate will or may occur in the future. These statements are often characterized by terminology such as “believes,” “hopes,” “may,” “anticipates,” “should,” “intends,” “plans,” “will,” “expects,” “estimates,” “projects,” “positioned,” “strategy” and similar expressions and are based on assumptions and assessments made in light of management’s experience and perception of historical trends, current conditions, expected future developments and other factors believed to be appropriate. Forward-looking statements are made as of the date of this Quarterly Report on Form 10-Q and we undertake no duty to update or revise any such statements, whether as a result of new information, future events or otherwise, except as required by law or by the rules and regulations of the SEC. Forward-looking statements are not guarantees of future performance and are subject to risks and uncertainties, many of which are outside of our control. Important factors that could cause actual results, developments and business decisions to differ materially from forward-looking statements are described in the sections titled “Risk Factors” in our Annual Report, and include the following: the effects of the COVID-19 pandemic; our ability to maintain or increase sales of our approved products; our ability to successfully commercialize IMVEXXY®, BIJUVA®, and ANNOVERA® and obtain additional financing necessary therefor; our commercialization, marketing and manufacturing capabilities and strategy for our approved products; the size of markets and the potential market opportunity for which our products are approved and our ability to penetrate such markets; the rate and degree of market acceptance of our products; the willingness of healthcare providers to prescribe and patients to use our products; our ability to obtain additional financing when needed; our competitive position and the success of competing products that are or become available for the indications that we are pursuing; our intellectual property position; whether we will be able to comply with the covenants and conditions under our term loan facility, the length, cost and uncertain results of our clinical trials, the potential of adverse side effects or other safety risks that could adversely affect the commercialization of our current or future approved products or preclude the approval of our future drug candidates; whether the U.S. Food and Drug Administration (FDA) will approve the efficacy supplement for the lower dose of BIJUVA; our ability to protect our intellectual property, including with respect to the Paragraph IV notice letters we received regarding IMVEXXY and BIJUVA; the length, cost and uncertain results of future clinical trials; our reliance on third parties to conduct our manufacturing, research and development and clinical trials; the ability of our licensees to commercialize and distribute our products; the ability of our marketing contractors to market ANNOVERA; the availability of reimbursement from government authorities and health insurance companies for our products; the impact of product liability lawsuits; the influence of extensive and costly government regulation; the volatility of the trading price of our common stock; and the concentration of power in our stock ownership.

Throughout this Quarterly Report on Form 10-Q, the terms “we,” “us,” “our,” “TherapeuticsMD,” or “our company” refer to TherapeuticsMD, Inc., a Nevada corporation, and unless specified otherwise, include our wholly owned subsidiaries, vitaMedMD, LLC, a Delaware limited liability company, or VitaMed; BocaGreenMD, Inc., a Nevada corporation, or BocaGreen; and VitaCare Prescription Services, Inc., a Florida corporation, or VitaCare.

This Quarterly Report on Form 10-Q includes our trademarks, trade names and service marks, such as vitaMedMD®, BocaGreenMD®, IMVEXXY®, BIJUVA® and ANNOVERA® which are protected under applicable intellectual property laws and are the property of, or licensed to, our company. Solely for convenience, trademarks, trade names and service marks referred to in this Quarterly Report on Form 10-Q may appear without the ®, ™ or SM symbols, but such references are not intended to indicate, in any way, that we will not assert, to the fullest extent under applicable law, our rights or the right of the applicable licensor to these trademarks, trade names and service marks. We do not intend our use or display of other parties’ trademarks, trade names or service marks to imply, and such use or display should not be construed to imply, a relationship with, or endorsement or sponsorship of us by, these other parties.

Overview

TherapeuticsMD is a women's healthcare company with a mission of creating and commercializing innovative products to support the lifespan of women from pregnancy prevention through menopause. At TherapeuticsMD, we combine entrepreneurial spirit, clinical expertise, and business leadership to develop and commercialize health solutions that enable new standards of care for women. Our solutions range from a patient-controlled, long-lasting contraceptive to advanced hormone therapy pharmaceutical products. We also have a portfolio of branded and generic prescription prenatal vitamins under the vitaMedMD and BocaGreenMD brands that furthers our women's healthcare focus.

Our portfolio of products focused on women's health allows us to efficiently leverage our sales and marketing plans to grow our recently approved products. During 2018, the U.S. Food and Drug Administration, or FDA, approval of our pharmaceutical products has transitioned our company from predominately focused on conducting research and development to one focused on commercializing our pharmaceutical products.

- In July 2018, we launched our FDA-approved product, IMVEXXY (estradiol vaginal inserts) for the treatment of moderate-to-severe dyspareunia (vaginal pain associated with sexual activity), a symptom of vulvar and vaginal atrophy, or VVA, due to menopause, which was approved by the FDA in May 2018.
- In April 2019, we launched our FDA-approved product, BIJUVA (estradiol and progesterone) capsules, our hormone therapy combination of bio-identical 17 β -estradiol and bio-identical progesterone in a single, oral softgel capsule, for the treatment of moderate-to-severe vasomotor symptoms, or VMS, due to menopause in women with a uterus, which was approved by the FDA in October 2018.
- In October 2019, we began a "test and learn" market introduction for our FDA-approved product ANNOVERA (segesterone acetate and ethinyl estradiol vaginal system), the first and only patient-controlled, procedure-free, reversible prescription contraceptive option for women, which was approved by the FDA in August 2018 and which we have licensed for commercialization in the U.S. pursuant to an exclusive license agreement, or the Population Council License Agreement, with the Population Council, Inc., or the Population Council. We paused the planned full commercial launch of ANNOVERA in March 2020 due to the impact of the COVID-19 pandemic and resumed this initiative on July 1, 2020.

We have also entered into license agreements with strategic partners to commercialize IMVEXXY and BIJUVA outside of the U.S.

- In July 2018, we entered into a license and supply agreement with Knight Therapeutics Inc., or Knight, pursuant to which we granted Knight an exclusive license to commercialize IMVEXXY and BIJUVA in Canada and Israel.
- In June 2019, we entered into an exclusive license and supply agreement, or the Theramex License Agreement, with Theramex HQ UK Limited, or Theramex, a leading, global specialty pharmaceutical company dedicated to women's health, to commercialize BIJUVA and IMVEXXY outside of the U.S., excluding Canada and Israel.

Our common stock, par value \$0.001 per share, or the Common Stock, is traded on the Nasdaq Global Select Market of The Nasdaq Stock Market LLC, or the Nasdaq, under the symbol "TXMD." We maintain websites at www.therapeuticsmd.com as well as various product websites. The information contained on our websites or that can be accessed through our websites does not constitute part of this Quarterly Report on Form 10-Q.

Impact of COVID-19 on our Business

Our business has been, and we anticipate that it will continue to be, impacted by the coronavirus (COVID-19) pandemic. During the second quarter of 2020, all of our products were affected by the COVID-19 pandemic, primarily due to our sales force having limited access to healthcare professionals and our patients deferring visits to healthcare professionals. In particular, we paused the full commercial launch of ANNOVERA in March 2020 as we deferred sales and marketing initiatives. As live interactions resumed toward the latter portion of the second quarter of 2020 when healthcare professional offices opened, we resumed the full launch of ANNOVERA on July 1, 2020.

At this time, the extent of the impact of the COVID-19 pandemic on our business is highly uncertain and difficult to predict. We developed a comprehensive COVID-19 contingency plan designed to preserve the value of our investments in our sales and marketing infrastructure, protect our balance sheet during this period of market disruption, and meet the needs of our patients and prescribers. This contingency plan was designed to be implemented in stages as we continue to evaluate the length of time that COVID-19 may impact our business, which is intended to allow us to conserve our financial resources during the COVID-19 pandemic and re-scale our sales and marketing activity when conditions warrant.

Our COVID-19 contingency plan is designed to support our strategy of driving revenues by prioritizing ANNOVERA as the lead product, IMVEXXY in the second position and BIJUVA in the third position. As part of this plan, we reduced our marketing focus on BIJUVA so that we can prioritize driving our revenue growth for ANNOVERA and IMVEXXY. Our COVID-19 contingency plan includes containing costs and cutting spending, preparing for a potential longer-term impact throughout the year, leveraging vitaCare to continue to meet the needs of our patients and prescribers, and ensuring continued availability of our products to patients.

Cost Containment and Spending Cuts

The COVID-19 pandemic accelerated our focus on reducing our operating expenses. During the second quarter of 2020, we deferred consumer and healthcare practitioner, or HCP, marketing spend for ANNOVERA and IMVEXXY and initiated other measures to reduce our operating expenses. As live interactions resumed toward the latter portion of the second quarter of 2020 when healthcare professional offices opened, we resumed the full commercial launch of ANNOVERA on July 1, 2020 and currently intend to launch the initial consumer marketing campaign for IMVEXXY in August 2020.

We plan to further reduce quarterly operating expenses for the third and fourth quarters of 2020. These cost cuts and reductions included permanent cost savings that had been identified by management, as well as the interim cessation of certain spending that may be restarted in future quarters. These cost cuts included:

- Negotiating lower fees or suspending services from third party vendors;
- Implementing certain hiring restrictions;
- Delaying or cancelling non-critical information technology projects;
- Eliminating travel, entertainment, meeting, and event expenses; and
- Reducing the size of our sales force and eliminating certain staff positions.

We anticipate that these savings can be extended further throughout 2020 or expanded depending on the impact of the COVID-19 pandemic.

Employees and Sales Force

Our sales force continues to function utilizing digital engagement tools and tactics and virtual detailing to remain engaged with prescribers and distribution channels and supplement live interactions, which began to pick up as the second quarter progressed and physician offices opened.

- We have enhanced the ability of our sales force to support healthcare providers remotely, including the sales forces' ability to continue to provide HCPs with access to patient product samples, product marketing information, and information regarding patient affordability programs and support services.

- Our sales force is in regular interaction with healthcare providers, including conducting “virtual” lunch and learn programs with providers.
- Our sales force also continues product training, including sharing best practices, in advance of our anticipated future sales and marketing ramp.

Remote Pharmacy and At-Home Delivery Options

As of the date of this Quarterly Report on Form 10-Q, we are providing continued access to our products for patients.

- Our products have broad distribution at all major retail pharmacy chains across the country.
- Our vitaCare patient model assists patients in obtaining easy and convenient access to their prescriptions for products at a retail pharmacy of their choice, including via home delivery retail pharmacy options. We anticipate that home delivery pharmacy options will be attractive to patients during the COVID-19 pandemic.
- We anticipate that vitaCare will support continued patient access to our products during the COVID-19 pandemic and will help sustain the strong refill trends for our products given vitaCare’s broad use by our patients.
- We have also engaged with independent community pharmacies and multiple third-party online pharmacies and telemedicine providers that focus on contraception or menopause to help ensure patients have real-time access to both diagnosis and treatment.

Supply of Products

As of the date of this Quarterly Report on Form 10-Q, we do not anticipate a shortage of our products due to the COVID-19 pandemic.

- We currently have sufficient inventory of finished product in our contracted warehouses to meet anticipated demand through at least the fourth quarter of 2020.
- We currently do not foresee any interruption in our contract manufacturers’ abilities to continue to manufacture additional product to be used. Our contract manufacturers have sufficient active pharmaceutical ingredients on hand for the continued manufacture of our products and there is currently no interruption in the supply chain for the active pharmaceutical ingredients for our products.
- We currently have uninterrupted wholesale and retail distribution of our products and are actively working to ensure that there continues to be an adequate supply of our products at pharmacies for sales to patients.

While we currently believe that our COVID-19 contingency plan has the ability to mitigate the effect of the COVID-19 pandemic on our business, the severity of the impact of the COVID-19 pandemic on our business will depend on a number of factors, including, but not limited to, the duration and severity of the pandemic, the duration of “stay at home,” quarantine or “social distancing” orders, the ability of our sales force to access healthcare providers to promote our products, increases in unemployment, which could reduce access to commercial health insurance for our patients, thus limiting payer coverage for our products, and the impact of the pandemic on our global supply chain, all of which are uncertain and cannot be predicted. Our future results of operations and liquidity could be materially adversely affected by delays in payments of outstanding receivable amounts beyond normal payment terms, supply chain disruptions, uncertain demand, and the impact of any initiatives or programs that we may undertake to address financial and operations challenges that we may face.

Our business may also be affected by negative impacts of the COVID-19 pandemic on capital markets and economies worldwide, and it is possible that the pandemic could cause a local and/or global economic recession. While policymakers globally have responded with fiscal policy actions to support the healthcare industry and economy as a whole, the magnitude and overall effectiveness of these actions remains uncertain.

Our Products

IMVEXXY

In May 2018, the FDA approved the 4- μ g and 10- μ g doses of IMVEXXY (estradiol vaginal inserts) for the treatment of moderate-to-severe dyspareunia (vaginal pain associated with sexual activity), a symptom of VVA, due to menopause. The 4- μ g formulation of IMVEXXY represents the lowest FDA-approved dose of vaginal estradiol available. IMVEXXY 10- μ g became available for commercial distribution in July 2018 and both doses were commercially available in September 2018.

IMVEXXY is a small, digitally inserted, softgel vaginal insert that dissolves completely. It is administered mess-free, without the need for an applicator, and can be used any time of day. IMVEXXY provides a mechanism of action and dosing that are familiar and comfortable for patients, with no patient education required for dose application or applicators. IMVEXXY demonstrated efficacy as early as two weeks (secondary endpoint) and maintained efficacy through week 12 in clinical studies, with no increase in systemic hormone levels beyond the normal postmenopausal range (the clinical relevance of systemic absorption rates for vaginal estrogen therapies is not known).

As part of the FDA's approval of IMVEXXY, we have committed to conduct a post-approval observational study to evaluate the risk of endometrial cancer in post-menopausal women with a uterus who use a low-dose vaginal estrogen unopposed by a progestogen. The FDA has also asked the sponsors of other vaginal estrogen products to participate in the observational study. In connection with the observational study, we will be required to provide progress reports to the FDA on an annual basis. The development of this method is underway, and we do not believe that the costs will be material on an annual basis. In addition, the FDA asked for post-approval information with respect to certain characteristics related to the product's specifications, which we submitted to the FDA.

BIJUVA

In October 2018, the FDA approved BIJUVA (estradiol and progesterone) capsules, 1 mg/100 mg, the first and only FDA-approved bio-identical hormone therapy combination of estradiol and progesterone in a single, oral capsule for the treatment of moderate-to-severe VMS (commonly known as hot flashes or flushes), due to menopause in women with a uterus. The estrogen and progesterone in BIJUVA have the same molecular structure as the hormones that are naturally produced in a woman's body. We launched BIJUVA in April 2019.

BIJUVA offers the convenience of a single-capsule combination of two hormones (estradiol and progesterone), which may improve a user's compliance. The estradiol and progesterone in BIJUVA are plant-based, not animal-sourced, and contain no peanut allergens. BIJUVA provides a sustained steady state of estradiol which reduced the frequency and severity of hot flashes in clinical studies with no demonstrated impact on a patient's weight or blood pressure. Additionally, through clinical trials BIJUVA has demonstrated endometrial safety and greater than 90% amenorrhea rates, while providing no clinically meaningful changes in mammograms.

We submitted a New Drug Application, or NDA, efficacy supplement for the 0.5/100 mg dose of BIJUVA to the FDA in late January 2020 for review and potential approval. The NDA efficacy supplement uses existing data from our Phase 3 REPLENISH trial for BIJUVA, for which we announced results in December 2016, together with additional information and analyses. The REPLENISH trial was the first time that a combination of bio-identical estradiol and bio-identical progesterone used in a continuous combined daily fashion demonstrated safety and efficacy data to support FDA-approval, when the 1/100 mg dose of BIJUVA was approved. We do not anticipate that the FDA will require any new clinical trials in connection with our submission of the NDA efficacy supplement, however, there is no assurance that will be the case. The NDA efficacy supplement has been accepted for review by the FDA and has a Prescription Drug User Fee Act target action date for the completion of the FDA's review of November 16, 2020. Despite the FDA's acceptance of the NDA efficacy supplement and previous approval of the 1/100 mg dose of BIJUVA, there can be no assurance that the 0.5/100 mg dose of BIJUVA will be approved.

With the approval of BIJUVA, the FDA required a post-approval commitment to further develop and validate our in-vitro dissolution method to show how BIJUVA is released from the capsule in an in-vitro setting for quality control assessments. The development of this method and validation were completed and submitted to the FDA as required in our approval.

Our hormone therapy pharmaceutical products are characterized by safety and efficacy profiles that can be consistently manufactured to target specifications. This provides an alternative to the non-FDA approved compounded bio-identical market. We believe that our FDA-approved pharmaceutical products offer advantages in terms of demonstrated safety and efficacy, consistency in the hormone dose, lower patient cost due to the increased likelihood of insurance coverage and improved access as a result of availability from major retail pharmacy chains rather than custom order or formulation by individual compounders.

ANNOVERA

In July 2018, we entered into an exclusive license agreement with the Population Council to commercialize in the U.S. ANNOVERA (segesterone acetate and ethinyl estradiol vaginal system), the first and only patient-controlled, procedure-free, reversible prescription contraceptive that can prevent pregnancy for up to a total of 13 cycles (one year), which was approved by the FDA in August 2018. In October 2019, we began a “test and learn” market introduction phase of launch for ANNOVERA. We paused the planned full commercial launch of ANNOVERA in March 2020 due to the impact of the COVID-19 pandemic and resumed this initiative on July 1, 2020.

ANNOVERA was classified by the FDA as a “new chemical entity,” or NCE, and thus has five years of regulatory exclusivity under the Drug Price Competition and Patent Term Restoration Act of 1984, otherwise known as the Hatch-Waxman Act. ANNOVERA is a one-year ring-shaped contraceptive vaginal system, or CVS. ANNOVERA, which is made with a silicone elastomer, contains segesterone acetate, a 19-nor progesterone derivative also known as Nestorone®, or SA, and ethinyl estradiol, or EE. EE is an approved active ingredient in many marketed hormonal contraceptive products. Segesterone acetate, an NCE, is a potent progestin that, based on pharmacological studies in animals and *in vitro*, does not bind to the androgen or estrogen receptors and has no glucocorticoid activity at contraceptive doses. SA has been evaluated in 51 clinical studies across these delivery systems with more than 26,794 cycles of exposure.

ANNOVERA can be inserted and removed by the woman herself without the aid of a healthcare provider and, unlike oral contraceptives, ANNOVERA does not require daily administration to obtain the contraceptive effect. After 21 days of use, the woman removes ANNOVERA for seven days, thereby providing a regular bleeding pattern (i.e., withdrawal/scheduled bleeding). The same CVS is then re-inserted for additional 21/7-days in/out, for up to a total of 13 cycles (one year). ANNOVERA releases daily vaginal doses of both active ingredients (SA and EE). The claimed release rate of 150 µg/day SA and 13/day µg EE is supported by the calculated average release rate from an ex vivo analysis of ANNOVERA used for 13 cycles and is also supported by data from 13 cycles of in vitro release.

As part of the approval of ANNOVERA, the FDA has required a post-approval observational study be performed to measure the risk of venous thromboembolism. In accordance with the post-marketing requirements, the full protocol for the study was submitted to the FDA in August 2019. We have agreed to perform and pay the costs and expenses associated with this post-approval study, provided that if the costs and expenses associated with such post-approval study exceed \$20 million, half of such excess will offset against royalties or other payments owed by us to the Population Council under the Population Council License Agreement. Given the observational nature of the study, we do not believe that the costs of the study will be material on an annual basis.

We believe that ANNOVERA will compete across all the contraception options for women with focus on those women seeking a long-lasting option without a procedure.

For patients, ANNOVERA provides a single long-lasting reversible birth control product that does not require a procedure at the doctor’s office for insertion or removal, empowering women to be in complete control of their fertility and menstruation with a 21/7 regimen. We believe that ANNOVERA is a unique alternative for women who have previously chosen other forms of birth control. These include nulliparous women (or women who have never given birth), women who are considering an IUD but would rather not have a procedure, women who are between pregnancies but desire protection without a long-term commitment, and women who are not satisfied with oral options due to the daily usage or potential side effects.

We believe that the strong initial commercial net revenue per unit of ANNOVERA and commercial insurance adoption provide us with an opportunity to deploy additional financial resources to maximize ANNOVERA’s consumer-focused commercialization strategy and leverage the ability of doctor/patient choice of contraceptive to override insurance company formularies when necessary. As part of this strategy, we are pursuing distribution opportunities for ANNOVERA to provide women with additional access to ANNOVERA, particularly during the COVID-19 pandemic, with multiple direct-to-consumer contraceptive platforms that extend the reach of our products. However, as a result of the COVID-19 pandemic, we have deferred a significant portion of our planned 2020 marketing spend for ANNOVERA.

Commercialization Model

We are commercializing the products in our portfolio through a common model focused on the belief that providing good experiences for both HCPs and patients will drive profitability for TherapeuticsMD. Given that our portfolio focus is exclusively in women's health, we believe that each new product launch will allow us to further leverage our existing infrastructure and build out our reputation as the premier women's health organization in the U.S. Below is more detail on our commercialization model:

HCP Education - Initially, we focus on the high writing and high potential HCPs in each territory to gain a full understanding of their prescribing behavior and practices. Our focus is on driving initial prescriptions of these writers for each new product launch and utilizing the time to also pull through on our portfolio of existing products. Once regular writing is established with the initial group of HCPs, we expand our reach to a larger set of HCPs writing in the category. We educate HCPs on our products primarily with our field sales organization supplemented by non-personal promotion. Our sales force currently targets approximately 130 territories, which includes the most significant part of the addressable markets across our product portfolio. As of June 30, 2020, at least 18,500 HCPs had written at least one prescription of IMVEXXY and at least 5,800 HCPs had written at least one prescription of BIJUVA, the majority of which are also IMVEXXY writers demonstrating the value of portfolio and focus. In addition, as of June 30, 2020, approximately 2,000 HCPs had written at least one prescription of ANNOVERA. In addition to our sales organization, we leverage non-personal promotion (multi-channel advertising) to targets and non-targets that drive awareness, education, and action. These efforts allow for pull through of the sales organization efforts and identification of new targets that have interest in writing prescriptions for one or more of our products. We believe this will drive increased prescribing for our products and lift the overall writing universe and our products top of mind in the HCP community.

BIO-IGNITE - In addition to our sales organization calling on HCPs, we have a Key Account Management, or KAM, team to support our existing BIO-IGNITE pharmacy partners and additional pharmacies that wish to enroll in the BIO-IGNITE program. Additionally, KAM's are focusing on supporting current prescribers of BIJUVA as well as high decile prescribers of hormone therapy for menopause.

Payer Access - With the ever-changing payer environment, it is critical to maximize breadth of coverage as quickly as possible to not inhibit patient access to product. We do this while working to negotiate the best possible contracts for us. Many commercial payers employ "new-to-market blocks" for newly launched products until the payers have the opportunity to make a coverage decision based upon their internal review of the product. When a product is not covered, the patient is responsible to pay the full price for the medication, which can significantly limit utilization of the product. As we seek to increase the number of lives covered by commercial payers, it is our objective to continue to seek unrestricted coverage. As of June 30, 2020, we have obtained coverage for the majority of commercial payers for IMVEXXY and BIJUVA and continue to seek unrestricted coverage from the remaining commercial insurance plans that we have not yet contracted with to provide affordable access for patients. For IMVEXXY, we achieved unrestricted coverage with the top ten commercial payers of VVA products by commercial payer lives and we continue to sign new agreements with other payers to cover IMVEXXY. In addition, as of June 30, 2020, four of the top eight Medicare Part D payers of VVA products were adjudicating IMVEXXY, with additional decisions for other Medicare Part D payers expected during the second half of 2020. For BIJUVA, through June 30, 2020, we have achieved unrestricted coverage with eight of the top ten commercial payers of VMS products by commercial payer lives and we continue to sign new agreements with payers to cover BIJUVA. Although Medicare is a small percentage of the VMS market, as of June 30, 2020, two of the top six Medicare Part D payers of VMS products were adjudicating BIJUVA.

For ANNOVERA, we believe that its unique characteristics will assist us in pursuing favorable commercial payer coverage, including only one pharmacy fill fee per year and no office visit or procedure fees. We have made substantial progress in achieving unrestricted access to ANNOVERA through commercial payers, including having achieved adjudication with five of the top ten commercial payers by commercial payer lives as of June 30, 2020, and we continue to pursue discussions with several of the country's largest commercial insurers to further expand coverage. As of June 30, 2020, approximately 66% of the commercial payer market covered ANNOVERA with unrestricted access under pharmacy benefits and approximately 78% covered ANNOVERA with step or prior authorization access.

In February 2020, we entered into an agreement with Afaxys Pharma, LLC, a pharmaceutical company focused on serving women in the public health system, to market ANNOVERA in the U.S. public health sector. As part of the Population Council License Agreement, we have agreed to provide significantly reduced pricing to federally designated Title X family planning clinics serving underrepresented women. We also have agreements to market ANNOVERA to the U.S. Department of Defense, the U.S. Department of Veteran's Affairs, and in Puerto Rico.

Supply - We want to ensure our products are available in all classes of trade and delivery systems. We offer our products through traditional chain wholesalers (Cardinal, McKesson and AmerisourceBergen) and independent retail pharmacies, community compounding pharmacies with our BIO-IGNITE program, and online pharmacies. We continue to develop unique opportunities to sell direct to pharmacies to streamline distribution and better control costs.

Patient Affordability Programs - We have affordability and adherence programs in place for patients so that we can support appropriate use of our products by patients. Our co-pay assistance programs allow all patients to access our products at a reasonable cost.

- We continue to support our patient education and affordability program that allows all eligible patients who enroll to receive IMVEXXY and BIJUVA at a reasonable cost. When a product is not covered by a patient's commercial insurance, the patient is responsible to pay the full price for the medication, which can significantly limit a patient's ability to pay and subsequent utilization of the product. For IMVEXXY and BIJUVA, enrolled patients pay as little as \$35 for a prescription with commercial insurance coverage and pay as little as \$50 for a prescription without commercial insurance coverage. For ANNOVERA, for commercially insured patients, we offer patients assistance for as low as \$60 for an annual prescription. Many patients will not need a co-pay assistance program for ANNOVERA given the requirements of the ACA at the federal level and similar laws at the state level.
- We continue to dialogue with the FDA regarding the potential inclusion of ANNOVERA as a new class of contraception for women in the FDA's Birth Control Guide, which would require private health plans to cover ANNOVERA with no patient out-of-pocket costs as part of the ACA. There is no assurance that the FDA will make such a determination and it is possible that other FDA-approved products could also be included in such a new class. The FDA may also find that ANNOVERA fits into the vaginal contraceptive ring class, which it would share with NuvaRing and its generic equivalents, and potentially others. Eight states require insurance coverage of prescription contraception with co-pay regardless of inclusion in the FDA's Birth Control Guide and 11 states, plus Washington D.C., require coverage of prescription contraception with no co-pay regardless of inclusion in the FDA's Birth Control Guide.

Patient Adherence - Establishing compliance and adherence programs that make getting on a prescription medication and obtaining prescribed refills easy and convenient for the patient and HCPs is a critical lever in our commercial model. Our focus is on minimizing complications in patients filling their first prescription and engaging with them throughout the life of their treatment to ensure patients stay on and use therapy for the appropriate length of time. We have delivered effective patient engagement programs for all of our products.

Consumer Communication - Another critical level in the commercial model is consumer outreach. Our initial focus is on those patients who are already predisposed to seek treatment, such as those patients new to therapy, and those patients dissatisfied with their current therapy. Next, we are focused on expanding the market by energizing patients who are experiencing bothersome symptoms but who have not been motivated to seek treatment. Methods of communication include online and offline media and span branded and unbranded communication to ensure we drive action from awareness of symptoms to desire to speak to an HCP to acquire a prescription.

License Agreements

License Agreement with the Population Council

Under the terms of the Population Council License Agreement, we paid the Population Council a milestone payment of \$20 million within 30 days following approval by the FDA of the NDA for ANNOVERA. The first commercial batch of ANNOVERA was released during the third quarter of 2019, and we paid the Population Council a second milestone payment of \$20 million as a result of the commercial batch release. The Population Council is eligible to receive additional milestone payments and royalties from commercial sales of ANNOVERA, as detailed below. We assumed responsibility for marketing expenses related to the commercialization of ANNOVERA. We are required to pay the Population Council additional milestone payments of \$40 million upon cumulative net sales of ANNOVERA in the U.S. by us and our affiliates and permitted sublicensees of each of \$200 million, \$400 million and \$1.0 billion.

In addition, we are required to pay the Population Council, on a quarterly basis, step-based royalty payments based on annual net sales of ANNOVERA in the U.S. by us and our affiliates and permitted sublicensees as follows:

Annual Net Sales	Royalty Rate
Less than or equal to \$50.0 million	5%
Greater than \$50.0 million and less than or equal to \$150.0 million	10%
Greater than \$150.0 million	15%

The annual royalty rate will be reduced to 50% of the initial rate during the six-month period beginning on the date of the first arms-length commercial sale of a generic equivalent of ANNOVERA that is launched by a third party in the U.S., and thereafter will be reduced to 20% of the initial rate.

The Population Council has agreed to perform and pay the costs and expenses associated with two post-approval studies required by the FDA for ANNOVERA and we have agreed to perform and pay the costs and expenses associated with a post-approval study required by the FDA to measure risk for venous thromboembolism, provided that if the costs and expenses associated with such post-approval study exceed \$20 million, half of such excess will be offset against royalties or other payments owed by us to the Population Council under the Population Council License Agreement. We and the Population Council formed a joint product committee responsible for overseeing activities under the Population Council License Agreement. We are responsible for all aspects of promotion, product positioning, pricing, education programs, publications, sales messages and any additional desired clinical studies for the one-year vaginal contraceptive system, subject to oversight and decisions made by the joint product committee.

Unless earlier terminated, the Population Council License Agreement will remain in effect until the later of the expiration of the last-to-expire of the Population Council's U.S. patents that are licensed to us, or the date following such expiration that follows a continuous period of six months during which we and our affiliates have not made a commercial sale of ANNOVERA in the U.S. The Population Council License Agreement may also be terminated for certain breach and bankruptcy-related events and by us on 180 days' prior notice to the Population Council.

As part of the Population Council License Agreement, we have the exclusive right to negotiate co-development and U.S. marketing rights for two other investigational vaginal contraceptive systems in development by the Population Council.

License Agreement with Knight

In July 2018, we entered into a license and supply agreement, or the Knight License Agreement, with Knight pursuant to which we granted Knight an exclusive license to commercialize IMVEXXY and BIJUVA in Canada and Israel. Pursuant to the terms of the Knight License Agreement, Knight will pay us a milestone fee upon the first regulatory approval in Canada of each of IMVEXXY and BIJUVA, sales milestone fees based upon certain aggregate annual sales in Canada and Israel of each of IMVEXXY and BIJUVA and royalties based on aggregate annual sales of each of IMVEXXY and BIJUVA in Canada and Israel. In October 2019 and November 2019, Knight's New Drug Submissions for IMVEXXY and BIJUVA, respectively, were accepted for review by Health Canada. Knight will be responsible for all regulatory and commercial activities in Canada and Israel related to IMVEXXY and BIJUVA. We may terminate the Knight License Agreement if Knight does not submit all regulatory applications, submissions and/or registrations required for regulatory approval to use and commercialize IMVEXXY and BIJUVA in Canada within certain specified time periods. We also may terminate the Knight License Agreement if Knight challenges our patents. Either party may terminate the Knight License Agreement for any material breach by the other party that is not cured within certain specified time periods or if the other party files for bankruptcy or other related matters. As part of the Knight License Agreement, Knight is prohibited from exporting IMVEXXY and BIJUVA to the United States.

License Agreement with Theramex

In June 2019, we entered into a licensing and supply agreement, or the Theramex License Agreement, with Theramex pursuant to which we granted Theramex an exclusive, perpetual license to commercialize BIJUVA and IMVEXXY for human use outside of the U.S., except for Canada and Israel, or the Theramex Territory. Pursuant to the terms of the Theramex License Agreement, Theramex paid us an upfront fee of EUR 14 million in cash. We are also eligible to receive up to an additional EUR 29.5 million in cash milestone payments, comprised of (i) an aggregate of EUR 2 million in regulatory milestone payments based on regulatory approvals for each of BIJUVA and IMVEXXY in certain specified markets and (ii) an aggregate of EUR 27.5 million in sales milestone payments to be paid in escalating tranches based on Theramex first attaining certain aggregate annual net sales milestones in the Theramex Territory ranging from EUR 25 million to EUR 100 million. We are also entitled to receive quarterly royalty payments based on net sales of BIJUVA and IMVEXXY in the Theramex Territory. Theramex has agreed to submit all regulatory applications, submissions and/or registrations required for regulatory approval to use and commercialize BIJUVA and IMVEXXY in certain specified markets within certain specified time periods and we may terminate the Theramex License Agreement if Theramex does not submit certain of such regulatory applications, submissions and/or registrations. We may also terminate the Theramex License Agreement if Theramex challenges our patents. Either party may terminate the Theramex License Agreement for any material breach by the other party that is not cured within certain specified time periods or if the other party files for bankruptcy or other related matters. Theramex may sublicense its rights to commercialize BIJUVA and IMVEXXY in the Theramex Territory, except for certain specified markets. Pursuant to the terms of the Theramex License Agreement, we agreed to supply, or cause to be supplied, BIJUVA and IMVEXXY to Theramex. We and Theramex have agreed to form a joint product committee responsible for advising and overseeing activities under the Theramex License Agreement.

Intellectual Property

As of June 30, 2020, we had 35 issued foreign patents and 35 issued domestic or, U.S., patents, which included 14 domestic utility patents that relate to BIJUVA, three domestic patents that relate to estradiol and progesterone product candidates, ten domestic patents that relate to IMVEXXY, which establish an important intellectual property foundation for IMVEXXY, one domestic utility patent that relates to a pipeline transdermal patch technology, one domestic utility patent that relates to our topical-cream candidates, two domestic patents that relate to formulations containing progesterone, one domestic utility patent that relates to our OPERA® information technology platform that we wrote off in the second quarter of 2019, and three domestic utility patents that relate to TX-009HR, our progesterone and estradiol drug candidate.

Research and Development Expenses

A significant portion of our historical operating expenses have been incurred in research and development activities. Research and development expenses relate primarily to the development, support and maintenance of our drug candidates. Our research and development expenses consist primarily of expenses incurred under agreements with contract research organizations, or CROs, and consultants that conduct our clinical and preclinical studies; employee related expenses, which include salaries and benefits, and non-cash share-based compensation; the cost of developing our chemistry, manufacturing, and controls capabilities, and costs associated with other research activities and regulatory approvals. Other research and development costs listed below consist of costs incurred with respect to drug candidates that have not received Investigational New Drug Application approval from the FDA.

The following table indicates our research and development expense by project for the periods indicated:

	Three Months Ended		Six Months Ended	
	June 30,		June 30,	
	2020	2019	2020	2019
	(000s)		(000s)	
TX 001-HR (BIJUVA)	\$ 530	\$ 905	\$ 1,117	\$ 2,415
TX 004-HR(IMVEXXY)	376	577	757	1,342
ANNOVERA	493	840	868	1,714
Other research and development	1,343	2,642	3,269	5,811
Total	\$ 2,742	\$ 4,964	\$ 6,011	\$ 11,282

Research and development expenditures have been reduced as we refocused our resources towards the commercialization of our approved pharmaceutical products. We will continue to deploy limited resources as we develop our drug pipeline, continue stability testing and validation on our pharmaceutical products, develop and validate secondary manufacturers, prepare regulatory submissions and work with regulatory authorities on existing submissions.

The costs of clinical trials may vary significantly over the life of a project owing to a variety of factors. We base our expenses related to clinical trials on estimates that are based on our experience and estimates from CROs and other third parties. Research and development expenditures for the drug candidates will continue after the trial completes for on-going stability and laboratory testing, regulatory submission and response work. For a discussion of the nature of efforts, steps and costs necessary to complete these projects, see “Item 1. Business — Research and Development” and “Item 7. Management’s Discussion and Analysis of Financial Condition and Results of Operations — Research and Development Expenses” contained in our Annual Report.

Results of Operations

Three months ended June 30, 2020 compared with three months ended June 30, 2019

	Three Months Ended June 30,		Change
	2020	2019	
	(000s)		
Revenue, net	\$ 10,701	\$ 6,079	\$ 4,622
Cost of goods sold	4,400	1,249	3,151
Operating expenses	51,339	46,467	4,872
Operating loss	(45,038)	(41,637)	(3,401)
Other expense, net	(6,938)	(13,600)	6,662
Net loss	\$ (51,976)	\$ (55,237)	\$ 3,261

Revenues and Cost of Goods Sold

Revenue is recorded net of sales discounts, chargebacks, wholesaler fees, customer rebates, coupons and estimated returns. We launched IMVEXXY in the third quarter of 2018 and BIJUVA in the second quarter of 2019. We started selling ANNOVERA in the third quarter of 2019. We paused the planned full commercial launch of ANNOVERA in March 2020 due to the impact of the COVID-19 pandemic, and resumed this initiative on July 1, 2020. Revenue for the three months ended June 30, 2020 increased approximately \$4,622,000, or 76%, to approximately \$10,701,000, compared with approximately \$6,079,000 for the three months ended June 30, 2019. Revenue increased primarily due to continued ramping of sales of IMVEXXY and BIJUVA and pre-launch sales of ANNOVERA during the three months ended June 30, 2020, as compared to the prior year period, partially offset by impacts from the COVID-19 pandemic. Our revenue in the prior year period only consisted of sales of IMVEXXY, BIJUVA and our prenatal vitamins.

Sales of IMVEXXY increased approximately \$1,963,000 as compared to the prior period, primarily due to a higher number of units sold and increased net revenue per unit and sales of BIJUVA increased approximately \$1,218,000 as compared to the prior period, primarily due to a higher number of units sold and increased net revenue per unit. Revenue for the three months ended June 30, 2020 also included sales of ANNOVERA of approximately \$1,835,000. In addition, during the three months ended June 30, 2020, our prenatal vitamin sales decreased approximately \$394,000 due to decreased number of units sold, partially offset by increased net revenue per unit as compared to the prior year period.

During the launches of IMVEXXY and BIJUVA we introduced co-pay assistance programs which allow eligible enrolled patients to access the products at a reasonable cost regardless of insurance coverage. We expect that our product revenue will improve in the long term as commercial and Medicare payer coverage increases, and plans complete the process needed to adjudicate IMVEXXY, BIJUVA, and ANNOVERA prescriptions at pharmacies.

Cost of goods sold increased approximately \$3,151,000, or 252%, to approximately \$4,400,000 for the three months ended June 30, 2020, as compared with approximately \$1,249,000 for the three months ended June 30, 2019. This increase in cost of goods sold is attributable to the 76% increase in revenue as compared to the prior period, royalty fees of approximately \$92,000 and amortization of our license fee of approximately \$754,000 related to ANNOVERA, as well as approximately \$1,944,000 of inventory obsolescence expense primarily related to BIJUVA recorded during the three months ended June 30, 2020. Our gross margin related to prescription products was approximately 59% and 79% for the three-month periods ended June 30, 2020 and 2019, respectively. The change in our gross margin between the two periods is primarily related to the change in product mix and its related costs as well as inventory obsolescence expense described above.

Operating Expenses

Our principal operating costs include the following items as a percentage of total operating expenses.

	Three Months Ended June 30,	
	2020	2019
Sales and marketing costs, excluding human resources costs	45.5%	45.1%
Human resources related costs, including salaries, benefits and taxes	31.4%	27.0%
Product research and development costs	5.3%	10.7%
Professional fees and consulting costs	5.8%	7.3%
Other operating expenses	12.0%	9.9%

Our operating costs have increased as we continue to support the launch of our new pharmaceutical products in the market. We started selling ANNOVERA in the third quarter of 2019. We paused the planned full commercial launch of ANNOVERA in March 2020 due to the impact of the COVID-19 pandemic, and resumed this initiative on July 1, 2020. During the three months ended June 30, 2019, we were primarily focused on growing sales of IMVEXXY and our prenatal vitamins, as well as BIJUVA, which was launched in the second quarter of 2019. Our principal operating costs include the following items as a percentage of total operating expenses:

	Three Months Ended June 30,		
	2020	2019	Change
		(000s)	
Sales and marketing costs, excluding human resources costs	\$ 23,339	\$ 20,978	\$ 2,361
Human resources related costs	16,115	12,546	3,569
Product research and development costs	2,742	4,964	(2,222)
Professional fees and consulting costs	2,991	3,391	(400)
Other operating expenses	6,152	4,588	1,564
Total operating expenses	<u>\$ 51,339</u>	<u>\$ 46,467</u>	<u>\$ 4,872</u>

Sales and marketing costs, excluding human resources costs, for the three months ended June 30, 2020 increased by approximately \$2,361,000, or 11%, to approximately \$23,339,000, compared with approximately \$20,978,000 for the three months ended June 30, 2019. The sales and marketing costs, excluding human resources costs, increased due to higher advertising expense, which was partially offset by cost cutting initiatives put in place at the beginning of the COVID-19 pandemic, including reducing consulting and agency fees. Sales and marketing costs, excluding human resources costs, during the three months ended June 30, 2020 also reflect the write down of product samples of approximately \$3,900,000, primarily related to BIJUVA, partially offset by lower physician education and training expenses caused by restrictions on in-person speaker programs due to the COVID-19 pandemic.

Human resources costs, including salaries, benefits and taxes, for the three months ended June 30, 2020 increased by approximately \$3,569,000, or 28%, to approximately \$16,115,000, compared with approximately \$12,546,000 for the three months ended June 30, 2019, primarily as a result of an increase of approximately \$2,901,000 in personnel costs in sales, marketing and regulatory areas to support the commercialization of our prescription products and an increase of approximately \$668,000 in non-cash compensation expense included in this category related to employee stock-based compensation during 2020 as compared to 2019.

Product research and development costs for the three months ended June 30, 2020 decreased by approximately \$2,222,000, or 45%, to approximately \$2,742,000, compared with approximately \$4,964,000 for the three months ended June 30, 2019. Research and development costs include costs related to manufacturing validation and early development trials, as well as salaries, wages, non-cash compensation, and benefits of personnel involved in research and development activities. Research and development expenditures have been reduced as we refocused our resources towards the commercialization of our approved pharmaceutical products. We continue to deploy limited resources as we develop our drug pipeline, continue stability testing and validation on our pharmaceutical products, develop and validate secondary manufacturers, prepare regulatory submissions and work with regulatory authorities on existing submissions.

- Since the project’s inception in February 2013, we have incurred approximately \$132,152,000 in research and development costs with respect to BIJUVA.
- Since the project’s inception in August 2014, we have incurred approximately \$49,018,000 in research and development costs with respect to IMVEXXY.

For a discussion of the nature of efforts, steps and costs related to our research and development projects, see “Item 1. Business — Research and Development” and “Item 7. Management’s Discussion and Analysis of Financial Condition and Results of Operations — Research and Development Expenses” contained in our Annual Report.

Professional fees and consulting costs for the three months ended June 30, 2020 decreased by approximately \$400,000, or 12%, to approximately \$2,991,000, compared with approximately \$3,391,000 for the three months ended June 30, 2019, primarily as a result of decreased recruiting and consulting fees.

All other operating expenses for the three months ended June 30, 2020 increased by approximately \$1,564,000, or 34%, to approximately \$6,152,000, compared with approximately \$4,588,000 for the three months ended June 30, 2019, primarily as a result of increased information technology, dues and subscriptions, rent, and insurance, partially offset by lower other office and travel expenses due to travel restrictions caused by the COVID-19 pandemic.

Operating Loss

As a result of the foregoing, our operating loss increased approximately \$3,401,000, or 8%, to approximately \$45,038,000 for the three months ended June 30, 2020, compared with approximately \$41,637,000 for the three months ended June 30, 2019, primarily as a result of an increase in total operating expenses to support commercialization and launch efforts related to our pharmaceutical products, as well as write off of product samples and inventory due to the COVID-19 pandemic, partially offset by increased total net revenue.

We anticipate that we will continue to have operating losses for the near future until we successfully commercialize IMVEXXY, BIJUVA, and ANNOVERA, although there is no assurance that any commercialization of IMVEXXY, BIJUVA and ANNOVERA will be successful.

Other expense, net

Other non-operating expenses, net decreased by approximately \$6,662,000, or 49%, to an expense of approximately \$6,938,000 for the three months ended June 30, 2020, compared with an expense of approximately \$13,600,000 for the three months ended June 30, 2019, primarily as a result of the loss on extinguishment of debt of approximately \$10,058,000 incurred during the three months ended June 30, 2019, partially offset by increased interest expense related to our Financing Agreement. For more information regarding our Financing Agreement, see “Liquidity and Capital Resources” below.

Net Loss

Because of the net effects of the foregoing, net loss decreased approximately \$3,261,000, or 6%, to approximately \$51,976,000 for the three months ended June 30, 2020, compared with approximately \$55,237,000 for the three months ended June 30, 2019. Net loss per share of Common Stock, basic and diluted, was (\$0.19) and (\$0.23) for the three months ended June 30, 2020 and 2019, respectively.

Six months ended June 30, 2020 compared with six months ended June 30, 2019

	Six Months Ended		Change
	June 30,		
	2020	2019	
	(000s)		
Revenue, net	\$ 22,952	\$ 10,026	\$ 12,926
Cost of goods sold	7,116	2,012	5,104
Operating expenses	111,797	87,756	24,041
Operating loss	(95,961)	(79,742)	(16,219)
Other expense, net	(12,865)	(15,001)	2,136
Net loss	<u>\$ (108,826)</u>	<u>\$ (94,743)</u>	<u>\$ (14,083)</u>

Revenues and Cost of Goods Sold

Revenue is recorded net of sales discounts, chargebacks, wholesaler fees, customer rebates, coupons and estimated returns. We launched IMVEXXY in the third quarter of 2018 and BIJUVA in the second quarter of 2019. We started selling ANNOVERA in the third quarter of 2019. We paused the planned full commercial launch of ANNOVERA in March 2020 due to the impact of the COVID-19 pandemic, and resumed this initiative on July 1, 2020.

Revenue for the six months ended June 30, 2020 increased approximately \$12,926,000, or 129%, to approximately \$22,952,000, compared with approximately \$10,026,000 for the six months ended June 30, 2019. Revenue increased primarily due to continued ramping of sales of IMVEXXY and BIJUVA and pre-launch sales of ANNOVERA, partially offset by impacts from the COVID-19 pandemic. Our revenue in the prior year period only consisted of sales of IMVEXXY, BIJUVA and our prenatal vitamins.

Sales of IMVEXXY increased approximately \$6,346,000 as compared to the prior period, which was primarily due to a higher number of units sold and increased net revenue per unit, and sales of BIJUVA increased approximately \$2,329,000 as compared to the prior period, which was primarily due to a higher number of units sold and increased net revenue per unit. Revenue for the six months ended June 30, 2020 also included sales of ANNOVERA of approximately \$4,108,000. In addition, during the six months ended June 30, 2020, our prenatal vitamin sales increased approximately \$143,000 due to increased net revenue per unit as compared to the prior year period, partially offset by a decreased number of units sold.

During the launches of IMVEXXY and BIJUVA, we introduced co-pay assistance programs which allow eligible enrolled patients to access the products at a reasonable cost regardless of insurance coverage. We expect that our product revenue will improve in the long term as commercial and Medicare payer coverage increases, and plans complete the process needed to adjudicate IMVEXXY, BIJUVA, and ANNOVERA prescriptions at pharmacies.

Cost of goods sold increased approximately \$5,104,000, or 254%, to approximately \$7,116,000 for the six months ended June 30, 2020, compared with approximately \$2,012,000 for the six months ended June 30, 2019. This increase is attributable to a 129% increase in revenue as compared to the prior period, royalty fees of approximately \$205,000, and amortization of our license fee related to ANNOVERA of approximately \$1,500,000, as well as \$2,080,000 inventory obsolescence expense, primarily related to BIJUVA, recorded during the six months ended June 30, 2020. Our gross margin related to prescription products was approximately 69% and 80% for the six-month periods ended June 30, 2020 and 2019, respectively. The change in our gross margin between the two periods is primarily related to the change in product mix and its related costs, as well as inventory obsolescence expense described above.

Operating Expenses

Our principal operating costs include the following items as a percentage of total operating expenses.

	Six Months Ended June 30,	
	2020	2019
Sales and marketing costs, excluding human resources costs	49.0%	43.3%
Human resources related costs, including salaries, benefits and taxes	28.9%	27.0%
Product research and development costs	5.4%	12.9%
Professional fees and consulting costs	5.6%	6.8%
Other operating expenses	11.1%	10.0%

Our operating costs have increased as we continue to support the launch of our new pharmaceutical products in the market. We commercially launched ANNOVERA in early March 2020, which was subsequently paused due to the outbreak of the COVID-19 pandemic. During the six months ended June 30, 2019, we were primarily focused on growing sales of IMVEXXY and our prenatal vitamins, as well as BIJUVA, which was launched in the second quarter of 2019. Our principal operating costs include the following items as a percentage of total operating expenses:

	Six Months Ended June 30,		
	2020	2019	Change
	(000s)		
Sales and marketing costs, excluding human resources costs	\$ 54,869	\$ 37,991	\$ 16,878
Human resources related costs	32,345	23,655	8,690
Product research and development costs	6,011	11,282	(5,271)
Professional fees and consulting costs	6,222	5,925	297
Other operating expenses	12,350	8,903	3,447
Total operating expenses	<u>\$ 111,797</u>	<u>\$ 87,756</u>	<u>\$ 24,041</u>

Sales and marketing costs, excluding human resources costs, for the six months ended June 30, 2020 increased by approximately \$16,878,000, or 44%, to approximately \$54,869,000, compared with approximately \$37,991,000 for the six months ended June 30, 2019. This increase was primarily due to higher expenses associated with sales and marketing efforts to support the significant initiatives related to the launch of ANNOVERA in March 2020, which was subsequently paused as a result of the COVID-19 pandemic, as well as continuing to support the commercialization of BIJUVA and IMVEXXY, which was partially offset by cost cutting initiatives put in place at the beginning of the COVID-19 pandemic, including reducing consulting and agency fees. Sales and marketing costs, excluding human resources costs, during the six months ended June 30, 2020, also reflect the write down of product samples of approximately \$5,100,000, primarily related to BIJUVA, which was partially offset by lower physician education and training expenses caused by restrictions on in-person speaker programs due to the COVID-19 pandemic.

Human resources costs, including salaries, benefits and taxes, for the six months ended June 30, 2020 increased by approximately \$8,690,000, or 37%, to approximately \$32,345,000, compared with approximately \$23,655,000 for the six months ended June 30, 2019, primarily as a result of an increase of approximately \$7,977,000 in personnel costs in sales, marketing and regulatory areas to support commercialization of our prescription products and an increase of approximately \$713,000 in non-cash compensation expense included in this category related to employee stock-based compensation during 2020 as compared to 2019.

Product research and development costs for the six months ended June 30, 2020 decreased by approximately \$5,271,000, or 47%, to approximately \$6,011,000, compared with approximately \$11,282,000 for the six months ended June 30, 2019. Research and development costs include costs related to manufacturing validation and early development trials, as well as salaries, wages, non-cash compensation, and benefits of personnel involved in research and development activities. Research and development expenditures have been reduced as we refocused our resources towards the commercialization of our approved pharmaceutical products. We continue to deploy limited resources as we develop our drug pipeline, continue stability testing and validation on our pharmaceutical products, develop and validate secondary manufacturers, prepare regulatory submissions and work with regulatory authorities on existing submissions.

- Since the project's inception in February 2013, we have incurred approximately \$132,152,000 in research and development costs with respect to BIJUVA.
- Since the project's inception in August 2014, we have incurred approximately \$49,018,000 in research and development costs with respect to IMVEXXY.

For a discussion of the nature of efforts, steps and costs related to our research and development projects, see "Item 1. Business — Research and Development" and "Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations — Research and Development Expenses" contained in our Annual Report.

Professional fees and consulting costs for the six months ended June 30, 2020 increased by approximately \$297,000, or 5%, to approximately \$6,222,000, compared with approximately \$5,925,000 for the six months ended June 30, 2019, primarily as a result of increased legal, accounting and other professional fees, partially offset by reduced recruiting and consulting fees.

All other operating expense for the six months ended June 30, 2020 increased by approximately \$3,447,000, or 39%, to approximately \$12,350,000, compared with approximately \$8,903,000 for the six months ended June 30, 2019, primarily as a result of increased information technology, dues and subscriptions, rent, and insurance, partially offset by lower other office and travel expenses due to travel restrictions caused by the COVID-19 pandemic.

Operating Loss

As a result of the foregoing, our operating loss increased approximately \$16,219,000, or 20%, to approximately \$95,961,000 for the six months ended June 30, 2020, compared with approximately \$79,742,000 for the six months ended June 30, 2019, primarily as a result of an increase in total operating expenses to support commercialization and launch efforts related to our pharmaceutical products, as well as write off of product samples and inventory due to the COVID-19 pandemic, as described above, partially offset by increased total net revenue.

We anticipate that we will continue to have operating losses for the near future until we successfully commercialize IMVEXXY, BIJUVA, and ANNOVERA, although there is no assurance that any commercialization of IMVEXXY, BIJUVA, and ANNOVERA will be successful.

Other expense, net

Other non-operating expense, net decreased by approximately \$2,136,000, or 14%, to an expense of approximately \$12,865,000 for the six months ended June 30, 2020, compared with an expense of approximately \$15,001,000 for the six months ended June 30, 2019, primarily as a result of the loss on extinguishment of debt of \$10,058,000 incurred during the six months ended June 30, 2019, partially offset by increased interest expense related to our Financing Agreement. For more information regarding our Financing Agreement, see "Liquidity and Capital Resources" below.

Net Loss

Because of the net effects of the foregoing, net loss increased approximately \$14,083,000, or 15%, to approximately \$108,826,000 for the six months ended June 30, 2020, compared with approximately \$94,743,000 for the six months ended June 30, 2019. Net loss per share of Common Stock, basic and diluted, was (\$0.40) and (\$0.39) for the six months ended June 30, 2020 and 2019, respectively.

Liquidity and Capital Resources

We have funded our operations primarily through public offerings of our Common Stock and private placements of equity and debt securities. For the three-year period ended December 31, 2019, we received approximately \$236,000,000 in net proceeds from the issuance of shares of our Common Stock. As of June 30, 2020, we had cash and cash equivalents totaling approximately \$113,839,000. However, changing circumstances may cause us to consume funds significantly faster than we currently anticipate, and we may need to spend more money than currently expected because of circumstances beyond our control.

Our net days sales outstanding, or net DSO, is calculated by dividing gross accounts receivable less the reserve for doubtful accounts, chargebacks and payment discounts by the average daily net product revenues during the quarter. We also disclose gross DSO, which includes the calculation of gross accounts receivable divided by the average daily gross product revenues to distributors during the quarter. For the three months ended June 30, 2020, our gross DSO was 55 days compared to 55 days for the three months ended December 31, 2019 and our net DSO was 156 days for the three months ended June 30, 2020 compared to 141 days for the three months ended December 31, 2019. We anticipate that our DSO will fluctuate in the future based upon a variety of factors, including longer payment terms associated with the launches of IMVEXXY, BIJUVA, and ANNOVERA and changes in the healthcare industry. Our exposure to credit losses may increase if our customers are adversely affected by changes in healthcare laws, coverage, and reimbursement, economic pressures or uncertainty associated with local or global economic recessions, disruption associated with the COVID-19 pandemic, or other customer-specific factors. Although we have historically not experienced significant credit losses, it is possible that there could be a material adverse impact from potential adjustments of the carrying amount of trade receivables in the future.

On April 24, 2019, we entered into a Financing Agreement, as amended, or the Financing Agreement, with TPG Specialty Lending, Inc., as administrative agent, or the Administrative Agent, various lenders from time to time party thereto, and certain of our subsidiaries party thereto from time to time as guarantors, which provides us with up to a \$300,000,000 first lien secured term loan credit facility, or the Facility. The Facility provides for fund availability in multiple tranches: \$200,000,000 was drawn upon entering into the Financing Agreement while an additional \$50,000,000 was drawn on February 18, 2020. An additional \$50,000,000 was previously available to us in the Administrative Agent's sole and absolute discretion either contemporaneously with the delivery of our financial statements for the quarter ended June 30, 2020 or at such earlier date as the Administrative Agent may have consented to. We and the Administrative Agent are not moving forward with the undrawn \$50,000,000 tranche under the Financing Agreement, which was designed to be drawn following the successful full commercial launch of ANNOVERA in the second quarter of 2020, due to the pause in the launch timing caused by the COVID-19 pandemic. However, the Administrative Agent has agreed to continue to discuss with us the terms upon which additional financing could be made available to us by the Administrative Agent in the future at our request and in its discretion.

Although there is uncertainty related to the anticipated impact of the COVID-19 pandemic on our future results, we believe that our current cash reserves and the recent steps we have taken to reduce our operating expenses will help us manage our business through the pandemic. We have reviewed numerous potential scenarios in connection with the impact of COVID-19 on our business and, based on our analysis, we believe that our existing cash reserves, our currently anticipated operating cash flows, and proceeds from potential future financings, if available to us, will be sufficient to meet our cash needs arising in the ordinary course of business for the next twelve months from the date of this Quarterly Report on Form 10-Q. However, if the successful commercialization of IMVEXXY, BIJUVA, or ANNOVERA is delayed, or the impact of the COVID-19 pandemic on our business is worse than we anticipate, our existing cash reserves and proceeds from potential future financings, if available to us, may be insufficient to satisfy our liquidity requirements until we are able to successfully commercialize IMVEXXY, BIJUVA, and ANNOVERA. If our available cash is insufficient to satisfy our liquidity requirements, we may curtail our sales, marketing, and other commercialization efforts and we may seek to sell additional equity or debt securities. Our ability to sell equity securities will be limited by market conditions. Our ability to sell debt securities or obtain additional debt financing is restricted pursuant to the Financing Agreement. To the extent that we raise additional capital through the sale of equity or convertible debt securities, to the extent permitted under the Financing Agreement, the ownership interests of our existing stockholders will be diluted, and the terms of these new securities may include liquidation or other preferences that adversely affect the rights of our existing stockholders. If we raise additional funds through collaborations, strategic alliances, or licensing arrangements with third parties, certain of which are restricted under the Financing Agreement, we may have to relinquish valuable rights to our technologies, future revenue streams, research programs, or proposed products, if permitted under the Financing Agreement. Additionally, we may have to grant licenses on terms that may not be favorable to us.

We need substantial amounts of cash to complete the launch and commercialization of our hormone therapy and contraceptive drugs. The following table sets forth the primary sources and uses of cash for each of the periods set forth below:

Summary of (Uses) and Sources of Cash

	Six Months Ended	
	June 30,	
	2020	2019
	(000s)	
Net cash used in operating activities	\$ (95,100)	\$ (88,678)
Net cash used in investing activities	\$ (806)	\$ (1,876)
Net cash provided by financing activities	\$ 48,916	\$ 111,787

Operating Activities

The principal use of cash in operating activities for the six months ended June 30, 2020 was to fund our current expenses primarily related to supporting commercialization activities for IMVEXXY, BIJUVA, and ANNOVERA, sales, marketing, scale-up and manufacturing activities and clinical development, adjusted for non-cash items. The increase of approximately \$6,422,000 in cash used in operating activities for the six months ended June 30, 2020 compared with the prior year period was primarily due to an increase in our net loss and changes in the components of working capital as well as decrease in non-cash items.

Investing Activities

Investing activities include costs related to patents and fixed assets. Investing activities for the six months ended June 30, 2020 decreased by approximately \$1,070,000 primarily due to lower costs related to the purchase of fixed assets during the six months ended June 30, 2020 compared with the prior year period.

Financing Activities

Financing activities currently represent the principal source of our cash flow. Our financing activities for the six months ended June 30, 2020 provided net cash of approximately \$48,916,000 which consisted of the funding from our Financing Agreement of \$50,000,000 and the exercise of options to purchase Common Stock of approximately \$166,000, partially offset by the payment of deferred financing fees of \$1,250,000. Our financing activities for the six months ended June 30, 2019 provided net cash of approximately \$111,787,000, which consisted of the net funding from our Facility of approximately \$193,348,000 and the exercise of options and warrants to purchase Common Stock of approximately \$100,000, partially offset by the repayment of the MidCap Agreement of approximately \$81,661,000.

New Accounting Pronouncements

In August 2018, the Financial Accounting Standards Board, or the FASB, issued Accounting Standards Update, or ASU, 2018-13 which eliminates certain disclosure requirements for fair value measurements for all entities, requires public entities to disclose certain new information and modifies some disclosure requirements. The FASB developed the amendments to Accounting Standards Codification, or ASC, 820 as part of its broader disclosure framework project, which aims to improve the effectiveness of disclosures in the notes to financial statements by focusing on requirements that clearly communicate the most important information to users of the financial statements. The new guidance is effective for all entities for fiscal years beginning after December 15, 2019 and for interim periods within those fiscal years. An entity is permitted to early adopt either the entire standard or only the provisions that eliminate or modify requirements. We adopted this standard on January 1, 2020, and the adoption did not have a material effect on our disclosures.

In June 2016, the FASB issued ASU No. 2016-13, Financial Instruments - Credit Losses (Topic 326), Measurement of Credit Losses on Financial Instruments. The amendments in this update require a financial asset (or a group of financial assets) measured at amortized cost basis to be presented at the net amount expected to be collected based on historical experience, current conditions, and reasonable supportable forecasts. The amendments in this update are effective for public business entities for fiscal years, and interim periods within those fiscal years, beginning after December 15, 2019, with early adoption permitted no sooner than the first quarter of 2019. A modified retrospective approach is required for all investments, except debt securities for which an other-than-temporary impairment had been recognized prior to the effective date, which will require a prospective transition approach and should be applied either prospectively or retrospectively depending on the nature of the disclosure. The adoption of ASU 2016-13 requires expanded quantitative and qualitative disclosures about the Company's expected credit losses. Effective January 1, 2020, we adopted ASU 2016-13 under a modified retrospective approach for all financial assets measured at amortized cost. There was no adjustment recorded for the cumulative effect of adopting ASU 2016-13. The adoption expanded disclosures about our credit losses.

Other recent accounting pronouncements issued by the FASB (including its Emerging Issues Task Force), the American Institute of Certified Public Accountants and the SEC did not, and are not expected to, have a material effect on our results of operations or financial position.

Item 3. Quantitative and Qualitative Disclosures about Market Risk

Our primary exposure to market risk is interest rate sensitivity, which is affected by changes in the general level of U.S. interest rates. To minimize this risk, we intend to maintain an investment portfolio that may include cash, cash equivalents and investment securities available-for-sale in a variety of securities which may include money market funds, government and non-government debt securities and commercial paper, all with various maturity dates. Due to the low risk profile of our investments, an immediate 100 basis point change in interest rates would not have a material effect on the fair market value of our portfolio.

Amounts borrowed under the Financing Agreement accrue interest at either (i) 3-month LIBOR plus 7.75%, subject to a LIBOR floor of 2.70% or (ii) the prime rate plus 6.75%, subject to a prime rate floor of 5.20%. Considering the total outstanding principal balance under the Financing Agreement of \$250,000,000 at June 30, 2020, a 1.0% change in interest rates would result in an impact to loss before income taxes of \$2,500,000 per year.

Item 4. Controls and Procedures

Disclosure Controls and Procedures

Disclosure controls and procedures are designed to ensure that information required to be disclosed in the reports filed or submitted under the Securities Exchange Act of 1934, as amended, or the Exchange Act, is recorded, processed, summarized and reported, within the time period specified in the SEC's rules and forms and is accumulated and communicated to our management, including our principal executive officer and principal financial officer, as appropriate, in order to allow timely decisions regarding required disclosure.

Evaluation of Disclosure Controls and Procedures

Our management, with the participation of our Chief Executive Officer and Chief Financial Officer, evaluated the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act) as of the end of the period covered by this Quarterly Report on Form 10-Q. Based on that evaluation, our Chief Executive Officer and Chief Financial Officer concluded that our disclosure controls and procedures as of the end of the period covered by this Quarterly Report on Form 10-Q were effective in providing reasonable assurance that information required to be disclosed by us in reports that we file or submit under the Exchange Act is (i) recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms and (ii) accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosure.

Our management, including our Chief Executive Officer and Chief Financial Officer, does not expect that our disclosure controls and procedures or our internal controls will prevent all error and all fraud. A control system, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met. Further, the design of a control system must reflect the fact that there are resource constraints, and the benefits of controls must be considered relative to their costs. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues, misstatements, errors, and instances of fraud, if any, within our company have been or will be prevented or detected. Further, internal controls may become inadequate as a result of changes in conditions, or through the deterioration of the degree of compliance with policies or procedures.

Changes in Internal Controls

During the three months ended June 30, 2020, there were no changes in our internal control over financial reporting 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

From time to time, we are involved in litigation and proceedings in the ordinary course of our business.

On February 20, 2020, we received a Paragraph IV certification notice letter, or the IMVEXXY Notice Letter, regarding an Abbreviated New Drug Application, or ANDA, submitted to the FDA by Teva Pharmaceuticals USA, Inc., or Teva. The ANDA seeks approval from the FDA to commercially manufacture, use, or sell a generic version of the 4 mcg and 10 mcg doses of IMVEXXY. In the IMVEXXY Notice Letter, Teva alleges that TherapeuticsMD patents listed in the FDA's Orange Book that claim compositions and methods of IMVEXXY, or the IMVEXXY Patents, are invalid, unenforceable, and/or will not be infringed by Teva's commercial manufacture, use, or sale of its proposed generic drug product. The IMVEXXY Patents identified in the IMVEXXY Notice Letter expire in 2032 or 2033. On April 1, 2020, we filed a complaint for patent infringement against Teva in the United States District Court for the District of New Jersey arising from Teva's ANDA filing with the FDA. We are seeking, among other relief, an order that the effective date of any FDA approval of Teva's ANDA would be a date no earlier than the expiration of the IMVEXXY Patents and equitable relief enjoining Teva from infringing the IMVEXXY Patents. Teva has filed its answer and counterclaim to the complaint, alleging that the IMVEXXY Patents are invalid and not infringed. A trial date has not been set.

On March 17, 2020, we received a Paragraph IV certification notice letter, or the BIJUVA Notice Letter, regarding an ANDA submitted to the FDA by Amneal Pharmaceuticals, or Amneal. The ANDA seeks approval from the FDA to commercially manufacture, use, or sell a generic version of BIJUVA. In the BIJUVA Notice Letter, Amneal alleges that TherapeuticsMD patents listed in the FDA's Orange Book that claim compositions and methods of BIJUVA, or the BIJUVA Patents, are invalid, unenforceable, and/or will not be infringed by Amneal's commercial manufacture, use, or sale of its proposed generic drug product. The BIJUVA Patents identified in the BIJUVA Notice Letter expire in 2032. On April 29, 2020, we filed a complaint for patent infringement against Amneal in the United States District Court for the District of New Jersey arising from Amneal's ANDA filing with the FDA. We are seeking, among other relief, an order that the effective date of any FDA approval of Amneal's ANDA would be a date no earlier than the expiration of the BIJUVA Patents and equitable relief enjoining Amneal from infringing the BIJUVA Patents. Amneal has filed its answer and counterclaim to the complaint, alleging that the BIJUVA Patents are invalid and not infringed. A trial date has not been set.

Item 1A. Risk Factors

Except as set forth below, there have been no material changes with respect to those risk factors previously disclosed in Item 1A "Risk Factors" in Part I of our Annual Report.

Our financial condition and results of operations for fiscal year 2020 and beyond may be materially adversely affected by the ongoing COVID-19 (coronavirus) pandemic.

The outbreak of the novel COVID-19 (coronavirus) has evolved into a global pandemic. COVID-19 has spread to many regions of the world, including virtually all of the United States. Our business has been, and we anticipate that it will continue to be, impacted by the COVID-19 pandemic. During the second quarter of 2020, all of our products were affected by the COVID-19 pandemic, primarily due to our sales force having limited access to healthcare professionals and our patients deferring visits to healthcare professionals. While we have developed a comprehensive COVID-19 contingency plan designed to preserve the value of our investments in our sales and marketing infrastructure, protect our balance sheet during this period of market disruption and meet the needs of our patients and prescribers, the severity of the impact of the COVID-19 pandemic on our business and operating results will depend on future developments that are highly uncertain and cannot be accurately predicted.

Stay at home, quarantine and social distancing orders and closures and restrictions on travel have negatively affected the ability of our sales force to access healthcare providers to promote our products and the ability of patients to visit their healthcare professionals for non-emergent matters. Our sales force is currently functioning using a hybrid model of office visits where possible and digital engagement tools and tactics and virtual detailing, which may be less effective than our ordinary course sales and marketing programs. Increases in unemployment could reduce access to commercial health insurance for our patients, thus limiting payer coverage for our products, which could lead to increased use of our co-pay assistance programs and negatively affect our results of operations.

Our future results of operations and liquidity could be materially adversely affected by, and we may require an increased level of working capital as a result of, extended billing and collection cycles as a result of displaced employees at our company, payers, revenue cycle management contractors, or otherwise; delays in payments of outstanding receivable amounts beyond normal payment terms; supply chain disruptions; uncertain demand; and the impact of any initiatives or programs that we may undertake to address financial and operations challenges that we may face.

Additionally, although we currently continue to have uninterrupted wholesale and retail distribution of our products and we do not anticipate a shortage of our products due to COVID-19 at this time, disruptions may occur for our customers or suppliers that may materially affect our ability to obtain supplies or other components for our products, manufacture additional products or deliver inventory in a timely manner. This would result in lost sales, additional costs, or penalties, or damage to our reputation.

Our business may also be affected by negative impacts of the COVID-19 pandemic on capital markets and economies worldwide, and it is possible that the pandemic could cause a local and/or global economic recession. While policymakers globally have responded with fiscal policy actions to support the healthcare industry and economy as a whole, the magnitude and overall effectiveness of these actions remains uncertain.

We may also experience other unknown impacts from COVID-19 that cannot be predicted. Accordingly, disruptions to our business as a result of COVID-19 could result in a material adverse effect on our business, results of operations, financial condition and prospects in the near-term and beyond 2020.

Item 5. Other Information

Amendment No. 5 to Financing Agreement

On August 5, 2020, we and our subsidiaries entered into Amendment No. 5 to the Financing Agreement, or Amendment No. 5, with the Administrative Agent and the lenders party thereto, pursuant to which we modified the minimum consolidated net revenue requirements attributable to commercial sales of our IMVEXXY, BIJUVA, and ANNOVERA products, which requirements are effective beginning with the fiscal quarter ending

December 31, 2020. The foregoing summary of Amendment No. 5 does not purport to be complete and is subject to, and qualified in its entirety by, the full text of Amendment No. 5, a copy of which is filed as Exhibit 10.4 to this Quarterly Report on Form 10-Q and is incorporated herein by reference.

In lieu of a cash amendment fee, to induce the lenders to enter into Amendment No. 5, on August 5, 2020, we issued warrants, or the Warrants, to the lenders under the Financing Agreement to purchase an aggregate of approximately 4,750,000 shares of Common Stock, pursuant to a subscription agreement among the parties, or the Subscription Agreement. The Warrants have an exercise price of \$1.58 per share of Common Stock and an expiration date of August 5, 2030. The Warrants may also be exercised via cashless exercise pursuant to the terms thereof. Each lender represented to us, among other things, that it was an “accredited investor” (as such term is defined in Rule 501(a) of Regulation D under the Securities Act of 1933, as amended, or the Securities Act), and we issued the Warrants, and would issue the shares of Common Stock issuable upon exercise thereof, in reliance upon an exemption from registration contained in Section 4(a)(2) under the Securities Act and Regulation D promulgated thereunder. The Warrants and shares of Common Stock issuable upon exercise thereof may not be offered, sold, pledged, or otherwise transferred in the United States absent registration or an applicable exemption from the registration requirements under the Securities Act. No registration rights were issued pursuant to the Warrants or Subscription Agreement. The Warrants do not have anti-dilution protection, other than for customary stock splits and similar transactions. The Subscription Agreement contains customary representations and warranties of the parties, certain affirmative covenants of our company, and an obligation of our company to indemnify the lenders in connection therewith. The foregoing summary of the Warrants and Subscription Agreement does not purport to be complete and is subject to, and qualified in its entirety by, the full text of the form of Warrant and Subscription Agreement, copies of which are filed as Exhibits 4.1 and 10.5, respectively, to this Quarterly Report on Form 10-Q and are incorporated herein by reference.

Appointment of Chief Accounting Officer and Principal Accounting Officer

On August 4, 2020, Michael Donegan, our Vice President, Finance, was appointed as our Chief Accounting Officer and Principal Accounting Officer. The role of Principal Accounting Officer was previously held by James C. D’Arecca, our Chief Financial Officer and Principal Financial Officer. For more information about Mr. Donegan, including his business experience and role with our company, and his compensation, please see our definitive proxy statement on Schedule 14A filed with the SEC on May 4, 2020.

There are no arrangements or understandings between Mr. Donegan and any other person pursuant to which he was appointed as our Chief Accounting Officer and Principal Accounting Officer and no family relationship between Mr. Donegan and any director or executive officer of our company. Other than as described in our definitive proxy statement on Schedule 14A filed with the SEC on May 4, 2020 under the section “Executive Compensation”, since the beginning of our last fiscal year, we have not engaged in any transactions, and there are no proposed transactions, or series of similar transactions, in which we were or are to be a participant and in which Mr. Donegan had a direct or indirect material interest in which the amount involved exceeds or exceeded \$120,000.

Item 6. Exhibits

Exhibit	Date	Description
<u>3.1*</u>	June 22, 2020	Composite Amended and Restated Articles of Incorporation of TherapeuticsMD, Inc., as amended.
<u>4.1*</u>	August 5, 2020	Form of Warrant to Purchase Common Stock issued by TherapeuticsMD, Inc. to the Subscribers party to that certain Subscription Agreement, dated as of August 5, 2020.
<u>10.1*</u>	April 17, 2020	Amendment No. 2 to Financing Agreement, by and among TherapeuticsMD, Inc., VitaMedMD, LLC, BocagreenMD, Inc., VitaCare Prescription Services, Inc., TPG Specialty Lending, Inc. and the lenders thereto.
<u>10.2*</u>	May 1, 2020	Amendment No. 3 to Financing Agreement, by and among TherapeuticsMD, Inc., VitaMedMD, LLC, BocagreenMD, Inc., VitaCare Prescription Services, Inc., TPG Specialty Lending, Inc., and the lenders thereto.
<u>10.3*</u>	May 13, 2020	Amendment No. 4 to Financing Agreement, by and among TherapeuticsMD, Inc., VitaMedMD, LLC, BocagreenMD, Inc., VitaCare Prescription Services, Inc., TPG Specialty Lending, Inc., and the lenders thereto.
<u>10.4*</u>	August 5, 2020	Amendment No. 5 to Financing Agreement, by and among TherapeuticsMD, Inc., VitaMedMD, LLC, BocagreenMD, Inc., VitaCare Prescription Services, Inc., TPG Specialty Lending, Inc., and the lenders thereto.
<u>10.5*</u>	August 5, 2020	Subscription Agreement, by and among TherapeuticsMD, Inc. and the Subscribers identified on the Schedule of Subscribers attached thereto.
<u>10.6*</u>	June 1, 2020	Employment Agreement, by and between TherapeuticsMD, Inc. and James C. D'Arecca.
<u>10.7</u>	June 18, 2020	TherapeuticsMD, Inc. 2020 Employee Stock Purchase Plan (incorporated herein by reference to Appendix B of the Registrant's Definitive Proxy Statement on Schedule 14A filed on May 4, 2020).
<u>31.1*</u>	August 6, 2020	Certification of Chief Executive Officer pursuant to Rule 13a-14(a) and Rule 15d-14(a).
<u>31.2*</u>	August 6, 2020	Certification of Chief Financial Officer pursuant to Rule 13a-14(a) and Rule 15d-14(a).
<u>32.1**</u>	August 6, 2020	Section 1350 Certification of Chief Executive Officer.
<u>32.2**</u>	August 6, 2020	Section 1350 Certification of Chief Financial Officer.
101.INS*	n/a	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*	n/a	XBRL Taxonomy Extension Schema Document.
101.CAL*	n/a	XBRL Taxonomy Extension Calculation Linkbase Document.
101.DEF*	n/a	XBRL Taxonomy Extension Definition Linkbase Instance Document.
101.LAB*	n/a	XBRL Taxonomy Extension Label Linkbase Instance Document.
101.PRE*	n/a	XBRL Taxonomy Extension Presentation Linkbase Instance Document.
104*	n/a	Cover Page Interactive Data File (formatted as Inline XBRL and Contained in Exhibit 101).

* Filed herewith.

** Furnished herewith.

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.

DATE: August 6, 2020

THERAPEUTICSMD, INC.

By: /s/ Robert G. Finizio

Robert G. Finizio
Chief Executive Officer
(Principal Executive Officer)

By: /s/ James C. D'Arecca

James C. D'Arecca
Chief Financial Officer
(Principal Financial Officer)

By: /s/ Michael Donegan

Michael Donegan
Chief Accounting Officer
(Principal Accounting Officer)

THIS COMPOSITE AMENDED AND RESTATED ARTICLES OF INCORPORATION, AS AMENDED, OF THERAPEUTICSMD, INC. (THE “CORPORATION”) REFLECTS THE PROVISIONS OF THE CORPORATION’S ARTICLES OF INCORPORATION, AS AMENDED AND RESTATED ON AUGUST 3, 2011, AND ALL AMENDMENTS THERETO FILED WITH THE SECRETARY OF STATE OF THE STATE OF NEVADA THEREAFTER ON OR PRIOR TO JUNE 22, 2020, BUT IS NOT AN AMENDMENT AND/OR RESTATEMENT THEREOF.

**COMPOSITE AMENDED AND RESTATED
ARTICLES OF INCORPORATION, AS AMENDED,
OF
THERAPEUTICSMD, INC.
A NEVADA CORPORATION**

**ARTICLE I
CORPORATE NAME**

The name of the corporation is TherapeuticsMD, Inc. (the “Corporation”).

**ARTICLE II
REGISTERED AGENT**

The registered agent for the Corporation in the State of Nevada is Paracorp Incorporated, 318 N. Carson Street, Suite 208, Carson City, Nevada 87901.

**ARTICLE III
DURATION AND PURPOSE**

The duration of the Corporation shall be perpetual. The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the NRS.

**ARTICLE IV
CAPITAL STOCK**

The total number of shares of all classes of capital stock that the Corporation has the authority to issue is Six Hundred Ten Million (610,000,000) shares of which Six Hundred Million (600,000,000) shares will be designated common stock, \$0.001 par value per share (“Common Stock”) and Ten Million (10,000,000) shares will be designated preferred stock, \$0.001 par value per share (“Preferred Stock”).

The Ten Million (10,000,000) shares of Preferred Stock may be designated from time to time in one or more series upon authorization of the Corporation’s board of directors. The Corporation’s board of directors, without further approval of the Corporation’s shareholder, will be authorized to fix the dividend rights and terms, conversion rights, voting rights, redemption rights and terms, liquidation preferences, and any other rights, preferences, privileges and restrictions applicable to each series of Preferred Stock so designated.

**ARTICLE V
NUMBER OF DIRECTORS**

The business of the Corporation shall be managed by or under the direction of the Corporation’s Board of Directors. The Corporation must maintain at least one director at all times and initially sets the number of directors at four members. The number of individuals comprising the Corporation’s Board of Directors shall be fixed upon resolution of the Board of Directors and may be increased or decreased from time to time in the manner provided in the Corporation’s Bylaws.

**ARTICLE VI
BYLAWS**

In furtherance and not in limitation of the powers conferred upon the Board of Directors of the Corporation by the NRS, the Board of Directors shall have the power to alter, amend, change, add to and repeal, from time to time, the Bylaws of the Corporation, subject to the rights of the Corporation's shareholders entitled to vote with respect thereto to alter, amend, change, add to and repeal the Bylaws adopted by the Board of Directors of the Corporation.

**ARTICLE VII
LIMITATION ON LIABILITY OF DIRECTORS AND OFFICERS**

No director or officer of the Corporation shall be personally liable to the Corporation or any of its shareholders for damages for breach of fiduciary duty as a director or officer involving any act or omission of any act by such director or officer, provided, however, that the foregoing provision shall not eliminate or limit the liability of a director or officer (i) for acts or omissions which involve intentional misconduct, fraud, or a known violation of the law, or (ii) the payment of dividends in violation of Section 78.300 of the NRS. Any repeal or modification of this Article by the shareholders of the Corporation shall be prospective only and shall not adversely affect any limitations on the personal liability of a director or officer of the Corporation for acts or omissions prior to such repeal or modification.

**ARTICLE IX
INDEMNIFICATION**

The Corporation shall, to the fullest extent permitted by the provisions of 78.502 of the NRS, as the same may be amended and supplemented, indemnify any and all persons whom it shall have power to indemnify under said section from and against any and all of the expenses, liabilities, or other matters referred to in or covered by said section, and the indemnification provided for herein shall not be deemed exclusive of any other rights to which those indemnified may be entitled under the Corporation's Bylaws, agreement, vote of shareholders, or disinterested directors, or otherwise, both as to action in his official capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee, or agent and shall inure to the benefit of the heirs, executors, and administrators of such person.

[FORM OF WARRANT]

NEITHER THE ISSUANCE AND SALE OF THE SECURITIES REPRESENTED BY THIS WARRANT NOR THE SECURITIES INTO WHICH THESE SECURITIES ARE EXERCISABLE HAVE BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR APPLICABLE STATE SECURITIES LAWS. THE SECURITIES MAY NOT BE OFFERED FOR SALE, SOLD, TRANSFERRED OR ASSIGNED IN THE ABSENCE OF (A) AN EFFECTIVE REGISTRATION STATEMENT FOR THE SECURITIES UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR (B) AN OPINION OF COUNSEL SELECTED BY THE HOLDER, IN A FORM REASONABLY SATISFACTORY TO THE COMPANY, THAT REGISTRATION IS NOT REQUIRED UNDER SAID ACT. NOTWITHSTANDING THE FOREGOING, THE SECURITIES MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN OR FINANCING ARRANGEMENT SECURED BY THE SECURITIES.

THIS WARRANT IS ONE OF THE WARRANTS TO PURCHASE COMMON STOCK ISSUED PURSUANT TO THAT CERTAIN SUBSCRIPTION AGREEMENT, DATED AS OF AUGUST 5, 2020, BY AND AMONG THE COMPANY AND THE INVESTORS REFERRED TO THEREIN. ANY HOLDER OF THIS WARRANT TAKES SUCH WARRANT SUBJECT TO THE TERMS AND CONDITIONS OF SUCH SUBSCRIPTION AGREEMENT AND, BY ITS ACCEPTANCE HEREOF, AGREES TO ABIDE BY THE TERMS AND CONDITIONS THEREOF NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH HEREIN.

THERAPEUTICSMD, INC.

WARRANT TO PURCHASE COMMON STOCK

Warrant No.: _____
Number of Shares of Common Stock: _____
Date of Issuance: August 5, 2020 (“**Issuance Date**”)

TherapeuticsMD, Inc., a Nevada corporation (the “**Company**”), hereby certifies that, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, [LENDER DESIGNEE], the registered holder hereof or its permitted assigns (the “**Holder**”), is entitled, subject to the terms set forth below, to purchase from the Company, at the Exercise Price (as defined below) then in effect, at any time or times on or after the Issuance Date, but not after 11:59 p.m., New York time, on the Expiration Date, (as defined below), _____ (_____) fully paid nonassessable shares of Common Stock, subject to adjustment as provided herein (the “**Warrant Shares**”). Except as otherwise defined herein, capitalized terms in this Warrant to Purchase Common Stock (including any Warrants to Purchase Common Stock issued in exchange, transfer or replacement hereof, this “**Warrant**”), shall have the meanings set forth in Section 17. This Warrant is one of the Warrants to purchase Common

Stock (the “**Lender Warrants**”) issued pursuant to Section 2 of that certain Subscription Agreement, dated as of August 5, 2020 (the “**Subscription Date**”), by and among the Company and the investors (the “**Subscribers**”) referred to therein (the “**Subscription Agreement**”). Capitalized terms used herein and not otherwise defined shall have the definitions ascribed to such terms in the Subscription Agreement.

1. EXERCISE OF WARRANT.

(a) Mechanics of Exercise. Subject to the terms and conditions hereof (including, without limitation, the limitations set forth in Section 1(f)), this Warrant may be exercised by the Holder at any time or times on or after the Issuance Date, in whole or in part, by (i) delivery of a written notice, in the form attached hereto as Exhibit A (the “**Exercise Notice**”), of the Holder’s election to exercise this Warrant and (ii) (A) payment to the Company of an amount equal to the applicable Exercise Price multiplied by the number of Warrant Shares as to which this Warrant is being exercised (the “**Aggregate Exercise Price**”) in cash by wire transfer of immediately available funds to an account designated in writing by the Company or (B) by notifying the Company in writing that this Warrant is being exercised pursuant to a Cashless Exercise (as defined in Section 1(d)). No ink-original Exercise Notice shall be required, nor shall any medallion guarantee (or other type of guarantee or notarization) of any Exercise Notice be required, provided that the Company shall have no liability to the Holder for honoring a non-medallion guaranteed Exercise Notice that the Company reasonably believes to be genuine. The registered Holder shall not be required to deliver the original Warrant in order to effect an exercise hereunder. Execution and delivery of the Exercise Notice with respect to less than all of the Warrant Shares shall have the same effect as cancellation of the original Warrant and issuance of a new Warrant evidencing the right to purchase the remaining number of Warrant Shares. On or before the first (1st) Trading Day following the Trading Day on which the Holder has delivered an Exercise Notice and the Aggregate Exercise Price (or notice of a Cashless Exercise) to the Company (for purposes of this Warrant, if an Exercise Notice is delivered to the Company on a day that is not a Trading Day, such Exercise Notice shall be deemed to have been delivered on the first Trading Day following the day of actual delivery), the Company shall transmit by electronic mail an acknowledgment of confirmation of receipt of the Exercise Notice to the Holder. On or before the earlier of (i) the second (2nd) Trading Day and (ii) the number of Trading Days comprising the Standard Settlement Period, in each case, following the date on which the Holder has delivered the Exercise Notice and the Aggregate Exercise Price (or notice of a Cashless Exercise) to the Company (a “**Share Delivery Date**”), the Company shall (X) provided that the Company’s transfer agent (the “**Transfer Agent**”) is participating in The Depository Trust Company (“**DTC**”) Fast Automated Securities Transfer Program and (A) the Warrant Shares are subject to an effective resale registration statement in favor of the Holder and the Holder has delivered to the Company a representation that such Warrant Shares have been sold pursuant to such registration statement or (B) if exercised via Cashless Exercise, at a time when Rule 144 would be available for immediate resale of the Warrant Shares by the Holder, and the Holder has delivered to the Company a representation that such Warrant Shares have been sold pursuant to Rule 144, credit such aggregate number of Warrant Shares to which the Holder is entitled pursuant to such exercise to the Holder’s or its designee’s balance account with DTC through its Deposit / Withdrawal At Custodian system, or (Y) if (A) the Transfer Agent is not participating in the DTC Fast Automated Securities Transfer Program or (B) the Warrant Shares are not subject to an effective resale registration statement in favor of the Holder or the Holder has not delivered to the Company a representation that such Warrant Shares have been sold pursuant to such registration statement and, if exercised via Cashless Exercise, at a time when Rule 144 would not be available for immediate resale of the Warrant Shares by the Holder or the Holder has not delivered to the Company a representation that such Warrant Shares have been sold pursuant to such registration statement, (i) issue and dispatch by overnight courier to the address as specified in the Exercise Notice, a certificate, registered in the Company’s share register in the name of the Holder or its designee and bearing such restrictive legends as the Company deems necessary, for the number of Warrant Shares to which the Holder is entitled pursuant to such exercise, or (ii) issue and dispatch by electronic mail to the address as specified in the Exercise Notice, evidence of book entry, registered in the Company’s share register in the name of the Holder or its designee and bearing such restrictive legends as the Company deems necessary, for the number of Warrant Shares to which the Holder is entitled pursuant to such exercise. The Company shall be responsible for all fees and expenses of the Transfer Agent and all fees and expenses with respect to the issuance of Warrant Shares via DTC, if any, including without limitation for same day processing. Upon delivery of the Exercise Notice and the Aggregate Exercise Price (or notice of a Cashless Exercise), the Holder shall be deemed for all corporate purposes to have become the holder of record of the Warrant Shares with respect to which this Warrant has been exercised, irrespective of the date such Warrant Shares are credited to the Holder’s DTC account or the date of delivery of the certificates or book entry evidence evidencing such Warrant Shares, as the case may be. If this Warrant is submitted in connection with any exercise pursuant to this Section 1(a) and the number of Warrant Shares represented by this Warrant submitted for exercise is greater than the number of Warrant Shares being acquired upon an exercise, then the Company shall as soon as practicable and in no event later than five (5) Trading Days after any exercise and at its own expense, issue a new Warrant (in accordance with Section 7(d)) representing the right to purchase the number of Warrant Shares issuable immediately prior to such exercise under this Warrant, less the number of Warrant Shares with respect to which this Warrant is exercised. No fractional Warrant Shares are to be issued upon the exercise of this Warrant, but rather the number of Warrant Shares to be issued shall be rounded to the nearest whole number. The Company shall pay any and all taxes which may be payable with respect to the issuance and delivery of Warrant Shares upon exercise of this Warrant.

(b) Exercise Price. For purposes of this Warrant, “**Exercise Price**” means \$1.58, subject to adjustment as provided herein.

(c) [Reserved].

(d) Cashless Exercise. Notwithstanding anything contained herein to the contrary, the Holder may, in its sole discretion, exercise this Warrant in whole or in part and, in lieu of making the cash payment otherwise contemplated to be made to the Company upon such exercise in payment of the Aggregate Exercise Price, elect instead to receive upon such exercise the “**Net Number**” of shares of Common Stock determined according to the following formula (a “**Cashless Exercise**”):

$$\text{Net Number} = \frac{(A \times B) - (A \times C)}{B}$$

For purposes of the foregoing formula:

A= the total number of shares with respect to which this Warrant is then being exercised.

B= as applicable: (i) the Weighted Average Price of the Common Stock on the Trading Day immediately preceding the date of the applicable Exercise Notice if such Exercise Notice is (1) both executed and delivered pursuant to Section 1(a) hereof on a day that is not a Trading Day or (2) both executed and delivered pursuant to Section 1(a) hereof on a Trading Day prior to the opening of “regular trading hours” (as defined in Rule 600(b)(68) of Regulation NMS promulgated under the federal securities laws) on such Trading Day, (ii) at the option of the Holder indicated in the Exercise Notice, either (x) the Weighted Average Price of the Common Stock on the Trading Day immediately preceding the date of the applicable Exercise Notice, or (y) the Weighted Average Price of the Common Stock on the Trading Day of the applicable Exercise Notice if such Exercise Notice is executed and delivered during “regular trading hours” on a Trading Day pursuant to Section 1(a) hereof, or (iii) the Weighted Average Price of the Common Stock on the date of the applicable Exercise Notice if the date of such Exercise Notice is a Trading Day and such Exercise Notice is both executed and delivered pursuant to Section 1(a) hereof after the close of “regular trading hours” on such Trading Day.

C= the Exercise Price then in effect for the applicable Warrant Shares at the time of such exercise.

For purposes of Rule 144(d) promulgated under the 1933 Act, as in effect on the date hereof, the Company hereby acknowledges and agrees that the Warrant Shares issued in a Cashless Exercise shall be deemed to have been acquired by the Holder, and the holding period for the Warrant Shares shall be deemed to have commenced, on the date this Warrant was last acquired by such Holder prior to such Cashless Exercise. The Company agrees not to take any position contrary to this Section 1(d).

(e) Disputes. In the case of a dispute as to the determination of the Exercise Price or the arithmetic calculation of the Warrant Shares, the Company shall promptly issue to the Holder the number of Warrant Shares that are not disputed and resolve such dispute in accordance with Section 12.

(f) Beneficial Ownership Limitations on Exercises. Notwithstanding anything to the contrary contained herein, the Company shall not effect the exercise of any portion of this Warrant, and the Holder shall not have the right to exercise any portion of this Warrant, and any such exercise shall be null and void and treated as if never made, to the extent that after giving effect to such exercise, the Holder together with the other Attribution Parties collectively would beneficially own in excess of 4.99% (the “**Maximum Percentage**”) of the number of shares of Common Stock outstanding immediately after giving effect to such exercise. For purposes of the foregoing sentence, the aggregate number of shares of Common Stock beneficially owned by the Holder and the other Attribution Parties shall include the number of shares of Common Stock held by the Holder and all other Attribution Parties plus the number of shares of Common Stock issuable upon exercise of this Warrant with respect to which the determination of such sentence is being made, but shall exclude the number of shares of Common Stock which would be issuable upon (A) exercise of the remaining, unexercised portion of this Warrant beneficially owned by the Holder or any of the other Attribution Parties and (B) exercise or conversion of the unexercised or unconverted portion of any other securities of the Company (including, without limitation, any convertible notes or convertible preferred stock or warrants, including the other Lender Warrants) beneficially owned by the Holder or any other Attribution Party subject to a limitation on conversion or exercise analogous to the limitation contained in this Section 1(f). For purposes of this Section 1(f), beneficial ownership shall be calculated in accordance with Section 13(d) of the Securities Exchange Act of 1934, as amended (the “**1934 Act**”). For purposes of determining the number of outstanding shares of Common Stock the Holder may acquire upon the exercise of this Warrant without exceeding the Maximum Percentage, the Holder may rely on the number of outstanding shares of Common Stock as reflected in (x) the Company’s most recent Annual Report on Form 10-K, Quarterly Report on Form 10-Q, Current Report on Form 8-K or other public filing with the Securities and Exchange Commission (the “**SEC**”), as the case may be, (y) a more recent public announcement by the Company or (z) any other written notice by the Company or the Transfer Agent setting forth the number of shares of Common Stock outstanding (the “**Reported Outstanding Share Number**”). If the Company receives an Exercise Notice from the Holder at a time when the actual number of outstanding shares of Common Stock is less than the Reported Outstanding Share Number, the Company shall (i) notify the Holder in writing of the number of shares of Common Stock then outstanding and, to the extent that such Exercise Notice would otherwise cause the Holder’s beneficial ownership, as determined pursuant to this Section 1(f), to exceed the Maximum Percentage, the Holder must notify the Company of a reduced number of Warrant Shares to be purchased pursuant to such Exercise Notice (the number of shares by which such purchase is reduced, the “**Reduction Shares**”) and (ii) as soon as reasonably practicable, the Company shall return to the Holder any Exercise Price paid by the Holder for the Reduction Shares. For any reason at any time, upon the written or oral request of the Holder, the Company shall within one (1) Trading Day confirm orally and in writing or by electronic mail to the Holder the number of shares of Common Stock then outstanding. The number of outstanding shares of Common Stock shall be determined after giving effect to the conversion or exercise of securities of the Company, including this Warrant, by the Holder and any other Attribution Party since the date as of which the Reported Outstanding Share Number was reported. In the event that the issuance of shares of Common Stock to the Holder upon exercise of this Warrant results in the Holder and the other Attribution Parties being deemed to beneficially own, in the aggregate, more than the Maximum Percentage of the number of outstanding shares of Common Stock (as determined under Section 13(d) of the 1934 Act), the number of shares so issued by which the Holder’s and the other Attribution Parties’ aggregate beneficial ownership exceeds the Maximum Percentage (the “**Excess Shares**”) shall be deemed null and void and shall be cancelled ab initio, and the Holder shall not have the power to vote or to transfer the Excess Shares. As soon as reasonably practicable after the issuance of the Excess Shares has been deemed null and void, the Company shall return to the Holder the Exercise Price paid by the Holder for the Excess Shares. Upon delivery of a written notice to the Company, the Holder may from time to time increase or decrease the Maximum Percentage to any other percentage not in excess of 9.99% as specified in such notice; provided that (i) any such increase in the Maximum Percentage will not be effective until the sixty-first (61st) day after such notice is delivered to the Company and (ii) any such increase or decrease will apply only to the Holder and the other Attribution Parties and not to any other holder of Lender Warrants that is not an Attribution Party of the Holder. For purposes of clarity, the shares of Common Stock issuable pursuant to the terms of this Warrant in excess of the Maximum Percentage shall not be deemed to be beneficially owned by the Holder for any purpose including for purposes of Section 13(d) or Rule 16a-1(a)(1) of the 1934 Act. No prior inability to exercise this Warrant pursuant to this paragraph shall have any effect on the applicability of the provisions of this paragraph with respect to any subsequent determination of exercisability. The provisions of this paragraph shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this Section 1(f) to the extent necessary to correct this paragraph or any portion of this paragraph which may be defective or inconsistent with the intended beneficial ownership limitation contained in this Section 1(f) or to make changes or supplements necessary or desirable to properly give effect to such limitation. The limitation contained in this paragraph may not be waived and shall apply to a successor holder of this Warrant.

2. ADJUSTMENT OF EXERCISE PRICE AND NUMBER OF WARRANT SHARES. Adjustment Upon Subdivision or Combination of Shares of Common Stock. If the Company at any time on or after the Subscription Date subdivides (by any stock split, stock dividend, recapitalization or otherwise) its outstanding shares of Common Stock into a greater number of shares, the Exercise Price in effect immediately prior to such subdivision will be proportionately reduced and the number of Warrant Shares will be proportionately increased. If the Company at any time on or after the Subscription Date combines (by combination, reverse stock split or otherwise) its outstanding shares of Common Stock into a smaller number of shares, the Exercise Price in effect immediately prior to such combination will be proportionately increased and the number of Warrant Shares will be proportionately decreased. Any adjustment under this Section 2 shall become effective at the close of business on the date the subdivision or combination becomes effective.

3. [Reserved].

4. FUNDAMENTAL TRANSACTIONS. In the event of a Fundamental Transaction, the Company shall make appropriate provision to ensure that (a) the purchaser (or its parent) shall assume this Warrant (with appropriate changes to the Exercise Price to take into account the value of the securities substituted for the Common Stock so as to preserve the intrinsic spread between the fair market value of any substituted securities and the Exercise Price), or (b) Holder will thereafter have the right to receive upon an exercise of this Warrant, in lieu of the shares of the Common Stock (or other securities, cash, assets or other property) issuable upon the exercise of this Warrant prior to such Fundamental Transaction, such securities, cash or other assets (including warrants or other purchase or subscription rights) which the Holder would have been entitled to receive on a per share basis upon the happening of such Fundamental Transaction had this Warrant been exercised immediately prior to such Fundamental Transaction (without regard to any limitations on the exercise of this Warrant); provided, however, that following any Fundamental Transaction, this Warrant shall only be exercisable via Cashless Exercise. The provisions of this Section 4 shall apply similarly and equally to successive Fundamental Transactions.

5. NONCIRCUMVENTION. The Company hereby covenants and agrees that the Company will not, by amendment of its Articles of Incorporation or Bylaws, or through any reorganization, transfer of assets, consolidation, merger, scheme of arrangement, dissolution, issue or sale of securities, or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Warrant, and will at all times in good faith carry out all of the provisions of this Warrant and take all action as may be required to protect the rights of the Holder. Without limiting the generality of the foregoing, the Company (a) shall not increase the par value of any shares of Common Stock receivable upon the exercise of this Warrant above the Exercise Price then in effect, (b) shall take all such actions as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and nonassessable shares of Common Stock upon the exercise of this Warrant, and (c) shall, so long as any of the Lender Warrants are outstanding, take all action necessary to reserve and keep available out of its authorized and unissued shares of Common Stock, solely for the purpose of effecting the exercise of the Lender Warrants, 100% of the number of shares of Common Stock as shall from time to time be necessary to effect the exercise of the Lender Warrants then outstanding (without regard to any limitations on exercise).

6. WARRANT HOLDER NOT DEEMED A STOCKHOLDER. Except as otherwise specifically provided herein, the Holder, solely in such Person's capacity as a holder of this Warrant, shall not be entitled to vote or receive dividends or be deemed the holder of capital stock of the Company for any purpose, nor shall anything contained in this Warrant be construed to confer upon the Holder, solely in such Person's capacity as the Holder of this Warrant, any of the rights of a stockholder of the Company or any right to vote, give or withhold consent to any corporate action (whether any reorganization, issue of stock, reclassification of stock, consolidation, merger, conveyance or otherwise), receive notice of meetings, receive dividends or subscription rights, or otherwise, prior to the issuance to the Holder of the Warrant Shares which such Person is then entitled to receive upon the due exercise of this Warrant. In addition, nothing contained in this Warrant shall be construed as imposing any liabilities on the Holder to purchase any securities (upon exercise of this Warrant or otherwise) or as a stockholder of the Company, whether such liabilities are asserted by the Company or by creditors of the Company.

7. REISSUANCE OF WARRANTS.

(a) Transfer of Warrant. If this Warrant is to be transferred, the Holder shall surrender this Warrant to the Company, whereupon the Company will forthwith issue and deliver upon the order of the Holder a new Warrant (in accordance with Section 7(d)), registered as the Holder may request, representing the right to purchase the number of Warrant Shares being transferred by the Holder and, if less than the total number of Warrant Shares then underlying this Warrant is being transferred, a new Warrant (in accordance with Section 7(d)) to the Holder representing the right to purchase the number of Warrant Shares not being transferred.

(b) Lost, Stolen or Mutilated Warrant. Upon receipt by the Company of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Warrant, and, in the case of loss, theft or destruction, of any indemnification undertaking by the Holder to the Company in customary form and, in the case of mutilation, upon surrender and cancellation of this Warrant, the Company shall execute and deliver to the Holder a new Warrant (in accordance with Section 7(d)) representing the right to purchase the Warrant Shares then underlying this Warrant.

(c) Exchangeable for Multiple Warrants. This Warrant is exchangeable, upon the surrender hereof by the Holder at the principal office of the Company, for a new Warrant or Warrants (in accordance with Section 7(d)) representing in the aggregate the right to purchase the number of Warrant Shares then underlying this Warrant, and each such new Warrant will represent the right to purchase such portion of such Warrant Shares as is designated by the Holder at the time of such surrender; provided, however, that no Lender Warrants for fractional Warrant Shares shall be given.

(d) Issuance of New Warrants. Whenever the Company is required to issue a new Warrant pursuant to the terms of this Warrant, such new Warrant (i) shall be of like tenor with this Warrant, (ii) shall represent, as indicated on the face of such new Warrant, the right to purchase the Warrant Shares then underlying this Warrant (or in the case of a new Warrant being issued pursuant to Section 7(a) or Section 7(c), the Warrant Shares designated by the Holder which, when added to the number of shares of Common Stock underlying the other new Warrants issued in connection with such issuance, does not exceed the number of Warrant Shares then underlying this Warrant), (iii) shall have an issuance date, as indicated on the face of such new Warrant which is the same as the Issuance Date, and (iv) shall have the same rights and conditions as this Warrant.

8. NOTICES. Whenever notice is required to be given under this Warrant, unless otherwise provided herein, such notice shall be given in accordance with Section 6.3 of the Subscription Agreement. The Company will give written notice to the Holder (a) promptly following any adjustment of the Exercise Price, setting forth in reasonable detail, and certifying, the calculation of such adjustment and (b) at least ten (10) days prior to the date on which the Company closes its books or takes a record (i) with respect to any dividend or distribution upon the shares of Common Stock, (ii) with respect to any grants, issuances or sales of any options, convertible securities or rights to purchase stock, warrants, securities or other property, in each case pro rata to all record holders of Common Stock, or (iii) for determining rights to vote with respect to any Fundamental Transaction, dissolution or liquidation; provided in each case that such information shall be made known to the public prior to or in conjunction with such notice being provided to the Holder.

9. AMENDMENT AND WAIVER. Except as otherwise provided herein, the provisions of this Warrant may be amended or waived and the Company may take any action herein prohibited, or omit to perform any act herein required to be performed by it, only if the Company has obtained the written consent of the Required Holders. Any amendment or waiver by the Company and the Required Holders shall be binding on the Holder of this Warrant and all holders of the Lender Warrants.

10. GOVERNING LAW; JURISDICTION; JURY TRIAL. This Warrant shall be governed by and construed and enforced in accordance with, and all questions concerning the construction, validity, interpretation and performance of this Warrant shall be governed by, the internal laws of the State of New York, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New York or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of New York. The Company hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in The City of New York, Borough of Manhattan, for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. Nothing contained herein shall be deemed or operate to preclude the Holder from bringing suit or taking other legal action against the Company in any other jurisdiction to collect on the Company's obligations to the Holder, to realize on any collateral or any other security for such obligations, or to enforce a judgment or other court ruling in favor of the Holder. **THE COMPANY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION WITH OR ARISING OUT OF THIS WARRANT OR ANY TRANSACTION CONTEMPLATED HEREBY.**

11. CONSTRUCTION; HEADINGS. This Warrant shall be deemed to be jointly drafted by the Company and all of the Subscribers and shall not be construed against any Person as the drafter hereof. The headings of this Warrant are for convenience of reference and shall not form part of, or affect the interpretation of, this Warrant.

12. DISPUTE RESOLUTION. In the case of a dispute as to the determination of the Exercise Price or the arithmetic calculation of the Warrant Shares, the Company shall submit the disputed determinations or arithmetic calculations via electronic mail within three (3) Business Days of receipt of the Exercise Notice giving rise to such dispute, as the case may be, to the Holder. If the Holder and the Company are unable to agree upon such determination or calculation of the Exercise Price or the Warrant Shares within three (3) Business Days of such disputed determination or arithmetic calculation being submitted to the Holder, then the Company shall, within three (3) Business Days submit via electronic mail (a) the disputed determination of the Exercise Price, together with the Company's and Holder's respective calculations, to an independent, reputable investment bank or financial services firm selected by the Holder and approved by the Company, such approval not to be unreasonably withheld, conditioned, or delayed, or (b) the disputed arithmetic calculation of the Warrant Shares, together with the Company's and Holder's respective calculations, to an independent, outside accountant, selected by the Holder and approved by the Company, such approval not to be unreasonably withheld, conditioned, or delayed. The Company shall cause the investment bank, financial services firm or accountant, as the case may be, to perform the determinations or calculations and notify the Company and the Holder of the results no later than five (5) Business Days from the time it receives the disputed determinations or calculations. Such investment bank's, financial services firm's or accountant's determination or calculation, as the case may be, shall be binding upon all parties absent demonstrable error. The costs of such investment bank, financial services firm or accountant shall be allocated by such firm between the Company and the Holder proportionally based on such firm's determination or calculation and the Company's and Holder's respective calculations submitted to such firm.

13. REMEDIES, OTHER OBLIGATIONS, BREACHES AND INJUNCTIVE RELIEF. The remedies provided in this Warrant shall be cumulative and in addition to all other remedies available under this Warrant and the other Transaction Documents, at law or in equity (including a decree of specific performance and/or other injunctive relief), and nothing herein shall limit the right of the Holder to pursue actual damages for any failure by the Company to comply with the terms of this Warrant. The Company acknowledges that a breach by it of its obligations hereunder will cause irreparable harm to the Holder and that the remedy at law for any such breach may be inadequate. The Company therefore agrees that, in the event of any such breach or threatened breach, the holder of this Warrant shall be entitled, in addition to all other available remedies, to seek an injunction restraining any breach, without the necessity of showing economic loss and without any bond or other security being required.

14. TRANSFER. This Warrant and the Warrant Shares may be offered for sale, sold, transferred, pledged or assigned without the consent of the Company, except as may otherwise be required by Section 6.5 of the Subscription Agreement.

15. SEVERABILITY. If any provision of this Warrant is prohibited by law or otherwise determined to be invalid or unenforceable by a court of competent jurisdiction, the provision that would otherwise be prohibited, invalid or unenforceable shall be deemed amended to apply to the broadest extent that it would be valid and enforceable, and the invalidity or unenforceability of such provision shall not affect the validity of the remaining provisions of this Warrant so long as this Warrant as so modified continues to express, without material change, the original intentions of the parties as to the subject matter hereof and the prohibited nature, invalidity or unenforceability of the provision(s) in question does not substantially impair the respective expectations or reciprocal obligations of the parties or the practical realization of the benefits that would otherwise be conferred upon the parties. The parties will endeavor in good faith negotiations to replace the prohibited, invalid or unenforceable provision(s) with a valid provision(s), the effect of which comes as close as possible to that of the prohibited, invalid or unenforceable provision(s).

16. DISCLOSURE. Upon delivery by the Company to the Holder of any notice required to be given in accordance with the terms of this Warrant, unless the Company has in good faith determined that the matters relating to such notice do not constitute material, nonpublic information relating to the Company or its Subsidiaries, the Company shall contemporaneously with any such delivery publicly disclose such material, nonpublic information on a Current Report on Form 8-K or otherwise. In the event that the Company believes that any notice required to be delivered by the Company in accordance with the terms of this Warrant contains material, nonpublic information relating to the Company or its Subsidiaries, the Company so shall indicate to the Holder contemporaneously with delivery of such notice, and in the absence of any such indication, the Holder shall be allowed to presume that all matters relating to such notice do not constitute material, nonpublic information relating to the Company or its Subsidiaries.

17. CERTAIN DEFINITIONS. For purposes of this Warrant, the following terms shall have the following meanings:

(a) “**1933 Act**” means the Securities Act of 1933, as amended.

(b) “**Affiliate**” shall have the meaning ascribed to such term in Rule 405 of the 1933 Act.

(c) “**Attribution Parties**” means, collectively, the following Persons and entities: (i) any investment vehicle, including, any funds, feeder funds or managed accounts, currently, or from time to time after the Issuance Date, directly or indirectly managed or advised by the Holder’s investment manager or any of its Affiliates or principals, (ii) any direct or indirect Affiliates of the Holder or any of the foregoing, (iii) any Person acting or who could be deemed to be acting as a Group together with the Holder or any of the foregoing and (iv) any other Persons whose beneficial ownership of the Common Stock would or could be aggregated with the Holder’s and the other Attribution Parties for purposes of Section 13(d) of the 1934 Act. For clarity, the purpose of the foregoing is to subject collectively the Holder and all other Attribution Parties to the Maximum Percentage.

(d) “**Bloomberg**” means Bloomberg Financial Markets.

(e) “**Business Day**” means any day other than Saturday, Sunday or other day on which commercial banks in The City of New York, New York are authorized or required by law to remain closed; provided, however, for clarification, commercial banks shall not be deemed to be authorized or required by law to remain closed due to “stay at home”, “shelter-in-place”, “non-essential employee” or any other similar orders or restrictions or the closure of any physical branch locations at the direction of any governmental authority so long as the electronic funds transfer systems (including for wire transfers) of commercial banks in The City of New York, New York generally are open for use by customers on such day.

(f) “**Common Stock**” means (i) the Company’s shares of common stock, par value \$0.001 per share, and (ii) any capital stock into which such Common Stock shall have been changed or any capital stock resulting from a reclassification, reorganization or recapitalization of such Common Stock.

(g) “**Designee**” means Sixth Street Specialty Lending, Inc.

(h) “**Eligible Market**” means the Principal Market, the NYSE American, The Nasdaq Global Select Market, The Nasdaq Global Market, The Nasdaq Capital Market or The New York Stock Exchange, Inc.

(i) “**Expiration Date**” means the date that is one hundred twenty (120) months after the Issuance Date or, if such date falls on a day other than a Business Day or on which trading does not take place on the Principal Market (a “**Holiday**”), the next day that is not a Holiday.

(j) “**Fundamental Transaction**” means (A) that the Company shall, directly or indirectly, including through Subsidiaries, Affiliates or otherwise, in one or more related transactions, (i) consolidate or merge with or into (whether or not the Company is the surviving corporation) another Subject Entity, or (ii) sell, assign, transfer, convey or otherwise dispose of all or substantially all of the properties or assets of the Company, or (iii) make, or allow one or more Subject Entities to make, or allow the Company to be subject to or have its Common Stock be subject to or party to one or more Subject Entities making, a purchase, tender or exchange offer that is accepted by the holders of at least either (x) 50% of the outstanding shares of Common Stock, (y) 50% of the outstanding shares of Common Stock calculated as if any shares of Common Stock held by all Subject Entities making or party to, or Affiliated with any Subject Entities making or party to, such purchase, tender or exchange offer were not outstanding; or (z) such number of shares of Common Stock such that all Subject Entities making or party to, or Affiliated with any Subject Entity making or party to, such purchase, tender or exchange offer, become collectively the beneficial owners (as defined in Rule 13d-3 under the 1934 Act) of at least 50% of the outstanding shares of Common Stock, or (iv) consummate a stock purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off or scheme of arrangement) with one or more Subject Entities whereby such Subject Entities, individually or in the aggregate, acquire, either (x) at least 50% of the outstanding shares of Common Stock, (y) at least 50% of the outstanding shares of Common Stock calculated as if any shares of Common Stock held by all the Subject Entities making or party to, or Affiliated with any Subject Entity making or party to, such stock purchase agreement or other business combination were not outstanding; or (z) such number of shares of Common Stock such that the Subject Entities become collectively the beneficial owners (as defined in Rule 13d-3 under the 1934 Act) of at least 50% of the outstanding shares of Common Stock, or (v) reorganize, recapitalize or reclassify its Common Stock, (B) that the Company shall, directly or indirectly, including through Subsidiaries, Affiliates or otherwise, in one or more related transactions, allow any Subject Entity individually or the Subject Entities in the aggregate to be or become the “beneficial owner” (as defined in Rule 13d-3 under the 1934 Act), directly or indirectly, whether through acquisition, purchase, assignment, conveyance, tender, tender offer, exchange, reduction in outstanding shares of Common Stock, merger, consolidation, business combination, reorganization, recapitalization, spin-off, scheme of arrangement, reorganization, recapitalization or reclassification or otherwise in any manner whatsoever, of either (x) at least 50% of the aggregate ordinary voting power represented by issued and outstanding Common Stock, (y) at least 50% of the aggregate ordinary voting power represented by issued and outstanding Common Stock not held by all such Subject Entities as of the Subscription Date calculated as if any shares of Common Stock held by all such Subject Entities were not outstanding, or (z) a percentage of the aggregate ordinary voting power represented by issued and outstanding shares of Common Stock or other equity securities of the Company sufficient to allow such Subject Entities to effect a statutory short form merger or other transaction requiring other stockholders of the Company to surrender their shares of Common Stock without approval of the stockholders of the Company or (C) directly or indirectly, including through Subsidiaries, Affiliates or otherwise, in one or more related transactions, the issuance of or the entering into any other instrument or transaction structured in a manner to circumvent, or that circumvents, the intent of this definition in which case this definition shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this definition to the extent necessary to correct this definition or any portion of this definition which may be defective or inconsistent with the intended treatment of such instrument or transaction.

(k) “**Group**” means a “group” as that term is used in Section 13(d) of the 1934 Act and as defined in Rule 13d-5 thereunder.

(l) “**Person**” means an individual, a limited liability company, a partnership, a joint venture, a corporation, a trust, an unincorporated organization, any other entity and a government or any department or agency thereof.

(m) “**Principal Market**” means The Nasdaq Stock Market LLC.

(n) “**Required Holders**” means the holders of the Lender Warrants representing at least a majority of the shares of Common Stock underlying the Lender Warrants then outstanding and shall include the Designee as long as the Designee or any of its Affiliates holds any Lender Warrants.

(o) “**Standard Settlement Period**” means the standard settlement period, expressed in a number of Trading Days, on the principal securities exchange or securities market on which the Common Stock is then traded as in effect on the date of delivery of the applicable Exercise Notice.

(p) “**Subject Entity**” means any Person, Persons or Group or any Affiliate or associate of any such Person, Persons or Group.

(q) “**Subsidiary**” has the meaning as set forth in the Subscription Agreement.

(r) “**Trading Day**” means any day on which the Common Stock is traded on the Principal Market, or, if the Principal Market is not the principal trading market for the Common Stock on such day, then on the principal securities exchange or securities market on which the Common Stock is then traded.

(s) “**Weighted Average Price**” means, for any security as of any date, the dollar volume-weighted average price for such security on the Principal Market during the period beginning at 9:30:01 a.m., New York time (or such other time as the Principal Market publicly announces is the official open of trading), and ending at 4:00:00 p.m., New York time (or such other time as the Principal Market publicly announces is the official close of trading), as reported by Bloomberg through its “Volume at Price” function or, if the foregoing does not apply, the dollar volume-weighted average price of such security in the over-the-counter market on the electronic bulletin board for such security during the period beginning at 9:30:01 a.m., New York time (or such other time as such market publicly announces is the official open of trading), and ending at 4:00:00 p.m., New York time (or such other time as such market publicly announces is the official close of trading), as reported by Bloomberg, or, if no dollar volume-weighted average price is reported for such security by Bloomberg for such hours, the average of the highest closing bid price and the lowest closing ask price of any of the market makers for such security as reported in the OTC Link or “pink sheets” by OTC Markets Group Inc. (formerly Pink OTC Markets Inc.). If the Weighted Average Price cannot be calculated for a security on a particular date on any of the foregoing bases, the Weighted Average Price of such security on such date shall be the fair market value as mutually determined by the Company and the Holder. If the Company and the Holder are unable to agree upon the fair market value of such security, then such dispute shall be resolved pursuant to Section 12 with the term “Weighted Average Price” being substituted for the term “Exercise Price.” All such determinations shall be appropriately adjusted for any stock dividend, stock split, stock combination, reclassification or other similar transaction during the applicable calculation period.

[Signature Page Follows]

IN WITNESS WHEREOF, the Company has caused this Warrant to Purchase Common Stock to be duly executed as of the Issuance Date set out above in accordance with the terms of the Warrant.

THERAPEUTICSMD, INC.

By: _____
Name:
Title:

EXERCISE NOTICE

TO BE EXECUTED BY THE REGISTERED HOLDER TO EXERCISE THIS
WARRANT TO PURCHASE COMMON STOCK

THERAPEUTICSMD, INC.

The undersigned holder hereby exercises the right to purchase _____ of the shares of Common Stock (“**Warrant Shares**”) of TherapeuticsMD, Inc., a Nevada corporation (the “**Company**”), evidenced by the attached Warrant to Purchase Common Stock (the “**Warrant**”). Capitalized terms used herein and not otherwise defined shall have the respective meanings set forth in the Warrant.

1. Form of Exercise Price. The Holder intends that payment of the Exercise Price shall be made as:

_____ a “Cash Exercise” with respect to _____ Warrant Shares; and/or

_____ a “Cashless Exercise” with respect to _____ Warrant Shares, resulting in a delivery obligation of the Company to the Holder of _____ shares of Common Stock representing the applicable Net Number.

2. Payment of Exercise Price. In the event that the holder has elected a Cash Exercise with respect to some or all of the Warrant Shares to be issued pursuant hereto, the holder shall pay the Aggregate Exercise Price in the sum of \$ _____ to the Company in accordance with the terms of the Warrant.

3. Delivery of Warrant Shares. The Company shall deliver to the holder _____ Warrant Shares in accordance with the terms of the Warrant as follows, subject to Section 1(a) of the Warrant.

_____ Warrant Shares have been sold pursuant to an effective resale registration statement and should be credited to the Holder’s or its designee’s balance account with DTC through its Deposit / Withdrawal At Custodian system pursuant to the information that accompanies this notice; and/or

_____ Warrant Shares acquired via Cashless Exercise have been sold pursuant to Rule 144 and the Holder has delivered to the Company representations from the Holder and the Holder’s broker indicating such and such Warrant Shares should be credited to the Holder’s or its designee’s balance account with DTC through its Deposit / Withdrawal At Custodian system pursuant to the information that accompanies this notice; and/or

_____ Warrant Shares represented by a certificate or evidence of book entry should be sent to the Holder or its designee at the address below.

Date: _____, _____

Name of Registered Holder

By: _____
Name:
Title:

Address for certificate or evidence of book entry delivery (if applicable):

DTC Information (if applicable):

ACKNOWLEDGMENT

The Company hereby acknowledges this Exercise Notice and hereby directs Computershare Trust Company, N.A. to issue the above indicated number of shares of Common Stock.

THERAPEUTICSMD, INC.

By: _____

Name:

Title:

**AMENDMENT NO. 2
TO FINANCING AGREEMENT**

AMENDMENT NO. 2 TO FINANCING AGREEMENT, dated as of April 17, 2020 (this "Amendment"), to the Financing Agreement, dated as of April 24, 2019 (as amended, restated, supplemented or otherwise modified from time to time, the "Financing Agreement"), by and among THERAPEUTICSMD, INC., a Nevada corporation ("Company" or "Borrower"), certain Subsidiaries of Borrower, as Guarantors, the Lenders from time to time party thereto, and TPG SPECIALTY LENDING, INC., a Delaware corporation ("TSL"), as administrative agent for the Lenders (in such capacity, together with its successors and assigns in such capacity, the "Administrative Agent").

WHEREAS, the Loan Parties have requested that the Administrative Agent and the Lenders amend certain terms and conditions of the Financing Agreement; and

WHEREAS, the Administrative Agent and the Lenders are willing to amend such terms and conditions of the Financing Agreement on the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. **Definitions.** All terms used herein that are defined in the Financing Agreement and not otherwise defined herein shall have the meanings assigned to them in the Financing Agreement.

2. **Amendments.**

(a) **New Definitions.** Section 1.01 of the Financing Agreement is hereby amended by adding the following definitions, in appropriate alphabetical order:

(i) "Amendment No. 2" means Amendment No. 2 to Financing Agreement, dated as of April 17, 2020, by and among the Loan Parties, the Administrative Agent and the Lenders."

(ii) "Amendment No. 2 Effective Date" means the "Amendment Effective Date" as set forth in Amendment No. 2."

(iii) "CARES Act" means the Coronavirus Aid, Relief and Economic Security Act, as amended, and the related rules and regulations promulgated thereunder."

(iv) "CARES Act Loan" means any loan or other financial accommodation under the Payroll Protection Program established pursuant to the CARES Act under 15 U.S.C. 636(a)(36) (as added to the Small Business Act by Section 1102 of the CARES Act); provided that (i) such Indebtedness is unsecured, (ii) the proceeds therefrom are used solely in a manner that is permitted by the CARES Act and (iii) the Loan Parties have fully complied with and satisfied all eligibility requirements under the Payroll Protection Program established pursuant to the CARES Act to borrow such Indebtedness."

(v) ““SBA” means the U.S. Small Business Administration.”

(vi) ““Small Business Act” means the Small Business Act (15 U.S. Code Chapter 14A – Aid to Small Business).”

(b) Existing Definitions. The following definitions in Section 1.01 of the Financing Agreement are hereby amended as follows:

(i) The definition of “Permitted Indebtedness” is hereby amended by deleting “and” at the end of clause (l), deleting the “.” at the end of clause (m) and inserting “; and” at the end of such clause, and inserting a new clause (n) to read as follows:

“(n) Indebtedness under the CARES Act Loan in an aggregate principal amount not to exceed \$5,980,902 outstanding at any time.”

(c) Article V (Affirmative Covenants). A new Section 5.14 is hereby added to the Financing Agreement as follows:

“Section 5.14 CARES Act Loan. The Loan Parties shall:

(a) Comply, in all material respects, with the SBA’s terms and conditions applicable to the CARES Act Loan;

(b) use the proceeds of the CARES Act Loans solely for “allowable uses” of proceeds of an SBA PPP Loan as described in Section 1102 of the CARES Act and solely to the extent such uses permit all of the CARES Act Loan to be eligible for forgiveness;

(c) promptly (and in any event within five (5) Business Days) upon receipt or delivery thereof, as applicable, provide copies of all material documents, applications and correspondence with any applicable lender or any applicable Governmental Authority received or delivered relating to the CARES Act Loan, including with respect to loan forgiveness; and

(d) promptly apply for forgiveness of the CARES Act Loan and submit all documents required to obtain forgiveness or other relief of the CARES Act Loan by all deadlines required by the CARES Act (and provide documentation and status of such forgiveness to the Administrative Agent upon the Administrative Agent’s reasonable request).”

3. Conditions to Effectiveness. This Amendment shall become effective only upon satisfaction in full, in a manner satisfactory to the Administrative Agent, of the following conditions precedent (the first date upon which all such conditions shall have been satisfied being hereinafter referred to as the “Amendment Effective Date”):

(a) Payment of Fees, Etc. The Borrowers shall have paid on or before the Amendment Effective Date all fees, costs, expenses and taxes then payable, if any, pursuant to Section 2.7 or 10.2 of the Financing Agreement.

(b) Representations and Warranties. The representations and warranties contained in this Amendment and in Article IV of the Financing Agreement and in each other Loan Document shall be true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations or warranties that already are qualified or modified as to “materiality” or “Material Adverse Effect” in the text thereof, which representations and warranties shall be true and correct in all respects subject to such qualification) on and as the Amendment Effective Date to the same extent as though made on and as of that date, except to the extent such representations and warranties specifically relate to an earlier date, in which case such representations and warranties shall have been true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations or warranties that already are qualified or modified as to “materiality” or “Material Adverse Effect” in the text thereof, which representations and warranties shall be true and correct in all respects subject to such qualification) on and as of such earlier date.

(c) No Default; Event of Default. No Default or Event of Default shall have occurred and be continuing on the Amendment Effective Date or result from this Amendment becoming effective in accordance with its terms.

(d) Delivery of Documents. The Administrative Agent shall have received on or before the Amendment Effective Date the following, each in form and substance satisfactory to the Administrative Agent and, unless indicated otherwise, dated the Amendment Effective Date:

- (i) this Amendment, duly executed by the Loan Parties, the Administrative Agent and the Lenders; and
- (ii) duly executed copies of all documents evidencing the CARES Act Loan.

(e) Material Adverse Effect. The Administrative Agent shall have determined, in its reasonable judgment, that no event or development shall have occurred since December 31, 2018, which could reasonably be expected to have a Material Adverse Effect.

(f) Liens; Priority. The Administrative Agent shall be satisfied that the Administrative Agent has been granted, and holds, for the benefit of the Administrative Agent and the Lenders, a perfected, first priority Lien on and security interest in all of the Collateral, subject only to Permitted Liens, to the extent such Liens and security interests are required pursuant to the Loan Documents to be granted or perfected on or before the Amendment Effective Date.

(g) Approvals. All consents, authorizations and approvals of, and filings and registrations with, and all other actions in respect of, any Governmental Authority or other Person required in connection with any Loan Document or the transactions contemplated thereby or the conduct of the Loan Parties’ business shall have been obtained or made and shall be in full force and effect. There shall exist no claim, action, suit, investigation, litigation or proceeding (including, without limitation, shareholder or derivative litigation) pending or, to the knowledge of any Loan Party, threatened in any court or before any arbitrator or Governmental Authority which (i) relates to the Loan Documents or the transactions contemplated thereby or (ii) could reasonably be expected to have a Material Adverse Effect.

4. Continued Effectiveness of the Financing Agreement and Other Loan Documents. Each Loan Party hereby (a) acknowledges and consents to this Amendment, (b) confirms and agrees that the Financing Agreement and each other Loan Document to which it is a party is, and shall continue to be, in full force and effect and is hereby ratified and confirmed in all respects, except that on and after the Amendment Effective Date, all references in any such Loan Document to “the Financing Agreement”, the “Agreement”, “thereto”, “thereof”, “thereunder” or words of like import referring to the Financing Agreement shall mean the Financing Agreement as amended by this Amendment, and (c) confirms and agrees that, to the extent that any such Loan Document purports to assign or pledge to the Administrative Agent, for the benefit of the Administrative Agent and the Lenders, or to grant to the Administrative Agent, for the benefit of the Administrative Agent and the Lenders, a security interest in or Lien on any Collateral as security for the Obligations of the Loan Parties from time to time existing in respect of the Financing Agreement (as amended hereby) and the other Loan Documents, such pledge, assignment and/or grant of the security interest or Lien is hereby ratified and confirmed in all respects. This Amendment does not and shall not affect any of the obligations of the Loan Parties, other than as expressly provided herein, including, without limitation, the Loan Parties’ obligations to repay the Loans in accordance with the terms of Financing Agreement or the obligations of the Loan Parties under any Loan Document to which they are a party, all of which obligations shall remain in full force and effect. Except as expressly provided herein, the execution, delivery and effectiveness of this Amendment shall not operate as a waiver of any right, power or remedy of Administrative Agent or any Lender under the Financing Agreement or any other Loan Document nor constitute a waiver of any provision of the Financing Agreement or any other Loan Document.

5. No Novation. Nothing herein contained shall be construed as a substitution or novation of the Obligations outstanding under the Financing Agreement or instruments securing the same, which shall remain in full force and effect, except as modified hereby.

6. No Representations by Administrative Agent or Lenders. Each Loan Party hereby acknowledges that it has not relied on any representation, written or oral, express or implied, by Administrative Agent or any Lender, other than those expressly contained herein, in entering into this Amendment.

7. Release. Each Loan Party hereby acknowledges and agrees that: (a) neither it nor any of its Subsidiaries has any claim or cause of action against Administrative Agent or any Lender (or any of the directors, officers, employees, agents, attorneys or consultants of any of the foregoing) and (b) the Administrative Agent and the Lenders have heretofore properly performed and satisfied in a timely manner all of their obligations to the Loan Parties, and all of their Subsidiaries and Affiliates. Notwithstanding the foregoing, the Administrative Agent and the Lenders wish (and the Loan Parties agree) to eliminate any possibility that any past conditions, acts, omissions, events or circumstances would impair or otherwise adversely affect any of their rights, interests, security and/or remedies. Accordingly, for and in consideration of the agreements contained in this Amendment and other good and valuable consideration, each Loan Party (for itself and its Subsidiaries and Affiliates and the successors, assigns, heirs and representatives of each of the foregoing) (collectively, the “Releasors”) does hereby fully, finally, unconditionally and irrevocably release, waive and forever discharge the Administrative Agent and the Lenders, together with their respective Affiliates and Related Funds, and each of the directors, officers, employees, agents, attorneys and consultants of each of the foregoing (collectively, the “Released Parties”), from any and all debts, claims, allegations, obligations, damages, costs, attorneys’ fees, suits, demands, liabilities, actions, proceedings and causes of action, in each case, whether known or unknown, contingent or fixed, direct or indirect, and of whatever nature or description, and whether in law or in equity, under contract, tort, statute or otherwise, which any Releasor has heretofore had or now or hereafter can, shall or may have against any Released Party by reason of any act, omission or thing whatsoever done or omitted to be done, in each case, on or prior to the Amendment Effective Date directly arising out of, connected with or related to this Amendment, the Financing Agreement or any other Loan Document, or any act, event or transaction related or attendant thereto, or the agreements of Administrative Agent or any Lender contained therein, or the possession, use, operation or control of any of the assets of any Loan Party, or the making of any Loans or other advances, or the management of such Loans or other advances or the Collateral. Each Loan Party represents and warrants that it has no knowledge of any claim by any Releasor against any Released Party or of any facts or acts or omissions of any Released Party which on the date hereof would be the basis of a claim by any Releasor against any Released Party which would not be released hereby.

8. Further Assurances. The Loan Parties shall execute any and all further documents, agreements and instruments, and take all further actions, as may be required under applicable law or as Administrative Agent may reasonably request, in order to effect the purposes of this Amendment.

9. Miscellaneous.

(a) This Amendment may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which shall be deemed to be an original but all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of this Amendment by facsimile or electronic mail shall be equally effective as delivery of an original executed counterpart of this Amendment.

(b) Section and paragraph headings herein are included for convenience of reference only and shall not constitute a part of this Amendment for any other purpose.

(c) This Amendment shall be governed by, and construed in accordance with, the laws of the State of New York.

(d) Each Loan Party hereby acknowledges and agrees that this Amendment constitutes a "Loan Document" under the Financing Agreement. Accordingly, it shall be an immediate Event of Default under the Financing Agreement if (i) any representation or warranty made by any Loan Party under or in connection with this Amendment shall have been incorrect in any respect when made or deemed made, or (ii) any Loan Party shall fail to perform or observe any term, covenant or agreement contained in this Amendment.

(e) Any provision of this Amendment that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining portions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed and delivered as of the date set forth on the first page hereof.

BORROWER:

THERAPEUTICSMD, INC.

By: /s/ Daniel Cartwright

Name: Daniel Cartwright

Title: Chief Financial Officer

GUARANTORS:

VITAMEDMD, LLC

By: /s/ Daniel Cartwright

Name: Daniel Cartwright

Title: Chief Financial Officer

BOCAGREENMD, INC.

By: /s/ Daniel Cartwright

Name: Daniel Cartwright

Title: Chief Financial Officer

VITACARE PRESCRIPTION SERVICES, INC.

By: /s/ Daniel Cartwright

Name: Daniel Cartwright

Title: Chief Financial Officer

TPG SPECIALTY LENDING, INC., as Administrative Agent and Lender

By: /s/ Joshua Easterly

Name: Joshua Easterly

Title: CEO

TOP IV TALENTS, LLC, as Lender

By: /s/ Joshua Peck

Name: Joshua Peck

Title: Vice President

TAO TALENTS, LLC, as Lender

By: /s/ Joshua Peck

Name: Joshua Peck

Title: Vice President

**AMENDMENT NO. 3
TO FINANCING AGREEMENT**

AMENDMENT NO. 3 TO FINANCING AGREEMENT, dated as of May 1, 2020 (this "Amendment"), to the Financing Agreement, dated as of April 24, 2019 (as amended, restated, supplemented or otherwise modified from time to time, the "Financing Agreement"), by and among THERAPEUTICSMD, INC., a Nevada corporation ("Company" or "Borrower"), certain Subsidiaries of Borrower, as Guarantors, the Lenders from time to time party thereto, and TPG SPECIALTY LENDING, INC., a Delaware corporation ("TSL"), as administrative agent for the Lenders (in such capacity, together with its successors and assigns in such capacity, the "Administrative Agent").

WHEREAS, the Loan Parties have requested that the Administrative Agent and the Lenders amend certain terms and conditions of the Financing Agreement; and

WHEREAS, the Administrative Agent and the Lenders are willing to amend such terms and conditions of the Financing Agreement on the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Definitions. All terms used herein that are defined in the Financing Agreement and not otherwise defined herein shall have the meanings assigned to them in the Financing Agreement.

2. Amendments.

(a) New Definitions. Section 1.01 of the Financing Agreement is hereby amended by adding the following definitions, in appropriate alphabetical order:

(i) "Amendment No. 3" means Amendment No. 3 to Financing Agreement, dated as of May 1, 2020, by and among the Loan Parties, the Administrative Agent and the Lenders."

(ii) "Amendment No. 3 Effective Date" means the "Amendment Effective Date" as set forth in Amendment No. 3."

(b) Existing Definitions. The following definition in Section 1.01 of the Financing Agreement is hereby amended as follows:

(i) Clause (n) of the definition of "Permitted Indebtedness" is hereby amended and restated in its entirety to read as follows:

"(n) Indebtedness under the CARES Act Loan in an aggregate principal amount not to exceed \$6,477,094 outstanding at any time."

3. Conditions to Effectiveness. This Amendment shall become effective only upon satisfaction in full, in a manner satisfactory to the Administrative Agent, of the following conditions precedent (the first date upon which all such conditions shall have been satisfied being hereinafter referred to as the "Amendment Effective Date"):

(a) Payment of Fees, Etc. The Borrowers shall have paid on or before the Amendment Effective Date all fees, costs, expenses and taxes then payable, if any, pursuant to Section 2.7 or 10.2 of the Financing Agreement.

(b) Representations and Warranties. The representations and warranties contained in this Amendment and in Article IV of the Financing Agreement and in each other Loan Document shall be true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations or warranties that already are qualified or modified as to "materiality" or "Material Adverse Effect" in the text thereof, which representations and warranties shall be true and correct in all respects subject to such qualification) on and as the Amendment Effective Date to the same extent as though made on and as of that date, except to the extent such representations and warranties specifically relate to an earlier date, in which case such representations and warranties shall have been true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations or warranties that already are qualified or modified as to "materiality" or "Material Adverse Effect" in the text thereof, which representations and warranties shall be true and correct in all respects subject to such qualification) on and as of such earlier date.

(c) No Default; Event of Default. No Default or Event of Default shall have occurred and be continuing on the Amendment Effective Date or result from this Amendment becoming effective in accordance with its terms.

(d) Delivery of Documents. The Administrative Agent shall have received on or before the Amendment Effective Date the following, each in form and substance satisfactory to the Administrative Agent and, unless indicated otherwise, dated the Amendment Effective Date:

- (i) this Amendment, duly executed by the Loan Parties, the Administrative Agent and the Lenders; and
- (ii) duly executed copies of all documents evidencing the CARES Act Loan.

(e) Material Adverse Effect. The Administrative Agent shall have determined, in its reasonable judgment, that no event or development shall have occurred since December 31, 2018, which could reasonably be expected to have a Material Adverse Effect.

(f) Liens; Priority. The Administrative Agent shall be satisfied that the Administrative Agent has been granted, and holds, for the benefit of the Administrative Agent and the Lenders, a perfected, first priority Lien on and security interest in all of the Collateral, subject only to Permitted Liens, to the extent such Liens and security interests are required pursuant to the Loan Documents to be granted or perfected on or before the Amendment Effective Date.

(g) Approvals. All consents, authorizations and approvals of, and filings and registrations with, and all other actions in respect of, any Governmental Authority or other Person required in connection with any Loan Document or the transactions contemplated thereby or the conduct of the Loan Parties' business shall have been obtained or made and shall be in full force and effect. There shall exist no claim, action, suit, investigation, litigation or proceeding (including, without limitation, shareholder or derivative litigation) pending or, to the knowledge of any Loan Party, threatened in any court or before any arbitrator or Governmental Authority which (i) relates to the Loan Documents or the transactions contemplated thereby or (ii) could reasonably be expected to have a Material Adverse Effect.

4. Continued Effectiveness of the Financing Agreement and Other Loan Documents. Each Loan Party hereby (a) acknowledges and consents to this Amendment, (b) confirms and agrees that the Financing Agreement and each other Loan Document to which it is a party is, and shall continue to be, in full force and effect and is hereby ratified and confirmed in all respects, except that on and after the Amendment Effective Date, all references in any such Loan Document to "the Financing Agreement", the "Agreement", "thereto", "thereof", "thereunder" or words of like import referring to the Financing Agreement shall mean the Financing Agreement as amended by this Amendment, and (c) confirms and agrees that, to the extent that any such Loan Document purports to assign or pledge to the Administrative Agent, for the benefit of the Administrative Agent and the Lenders, or to grant to the Administrative Agent, for the benefit of the Administrative Agent and the Lenders, a security interest in or Lien on any Collateral as security for the Obligations of the Loan Parties from time to time existing in respect of the Financing Agreement (as amended hereby) and the other Loan Documents, such pledge, assignment and/or grant of the security interest or Lien is hereby ratified and confirmed in all respects. This Amendment does not and shall not affect any of the obligations of the Loan Parties, other than as expressly provided herein, including, without limitation, the Loan Parties' obligations to repay the Loans in accordance with the terms of Financing Agreement or the obligations of the Loan Parties under any Loan Document to which they are a party, all of which obligations shall remain in full force and effect. Except as expressly provided herein, the execution, delivery and effectiveness of this Amendment shall not operate as a waiver of any right, power or remedy of Administrative Agent or any Lender under the Financing Agreement or any other Loan Document nor constitute a waiver of any provision of the Financing Agreement or any other Loan Document.

5. No Novation. Nothing herein contained shall be construed as a substitution or novation of the Obligations outstanding under the Financing Agreement or instruments securing the same, which shall remain in full force and effect, except as modified hereby.

6. No Representations by Administrative Agent or Lenders. Each Loan Party hereby acknowledges that it has not relied on any representation, written or oral, express or implied, by Administrative Agent or any Lender, other than those expressly contained herein, in entering into this Amendment.

7. Release. Each Loan Party hereby acknowledges and agrees that: (a) neither it nor any of its Subsidiaries has any claim or cause of action against Administrative Agent or any Lender (or any of the directors, officers, employees, agents, attorneys or consultants of any of the foregoing) and (b) the Administrative Agent and the Lenders have heretofore properly performed and satisfied in a timely manner all of their obligations to the Loan Parties, and all of their Subsidiaries and Affiliates. Notwithstanding the foregoing, the Administrative Agent and the Lenders wish (and the Loan Parties agree) to eliminate any possibility that any past conditions, acts, omissions, events or circumstances would impair or otherwise adversely affect any of their rights, interests, security and/or remedies. Accordingly, for and in consideration of the agreements contained in this Amendment and other good and valuable consideration, each Loan Party (for itself and its Subsidiaries and Affiliates and the successors, assigns, heirs and representatives of each of the foregoing) (collectively, the "Releasors") does hereby fully, finally, unconditionally and irrevocably release, waive and forever discharge the Administrative Agent and the Lenders, together with their respective Affiliates and Related Funds, and each of the directors, officers, employees, agents, attorneys and consultants of each of the foregoing (collectively, the "Released Parties"), from any and all debts, claims, allegations, obligations, damages, costs, attorneys' fees, suits, demands, liabilities, actions, proceedings and causes of action, in each case, whether known or unknown, contingent or fixed, direct or indirect, and of whatever nature or description, and whether in law or in equity, under contract, tort, statute or otherwise, which any Releasor has heretofore had or now or hereafter can, shall or may have against any Released Party by reason of any act, omission or thing whatsoever done or omitted to be done, in each case, on or prior to the Amendment Effective Date directly arising out of, connected with or related to this Amendment, the Financing Agreement or any other Loan Document, or any act, event or transaction related or attendant thereto, or the agreements of Administrative Agent or any Lender contained therein, or the possession, use, operation or control of any of the assets of any Loan Party, or the making of any Loans or other advances, or the management of such Loans or other advances or the Collateral. Each Loan Party represents and warrants that it has no knowledge of any claim by any Releasor against any Released Party or of any facts or acts or omissions of any Released Party which on the date hereof would be the basis of a claim by any Releasor against any Released Party which would not be released hereby.

8. Further Assurances. The Loan Parties shall execute any and all further documents, agreements and instruments, and take all further actions, as may be required under applicable law or as Administrative Agent may reasonably request, in order to effect the purposes of this Amendment.

9. Miscellaneous.

(a) This Amendment may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which shall be deemed to be an original but all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of this Amendment by facsimile or electronic mail shall be equally effective as delivery of an original executed counterpart of this Amendment.

(b) Section and paragraph headings herein are included for convenience of reference only and shall not constitute a part of this Amendment for any other purpose.

(c) This Amendment shall be governed by, and construed in accordance with, the laws of the State of New York.

(d) Each Loan Party hereby acknowledges and agrees that this Amendment constitutes a “Loan Document” under the Financing Agreement. Accordingly, it shall be an immediate Event of Default under the Financing Agreement if (i) any representation or warranty made by any Loan Party under or in connection with this Amendment shall have been incorrect in any respect when made or deemed made, or (ii) any Loan Party shall fail to perform or observe any term, covenant or agreement contained in this Amendment.

(e) Any provision of this Amendment that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining portions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed and delivered as of the date set forth on the first page hereof.

BORROWER:

THERAPEUTICSMD, INC.

By: /s/ Daniel Cartwright
Name: Daniel Cartwright
Title: Chief Financial Officer

GUARANTORS:

VITAMEDMD, LLC

By: /s/ Daniel Cartwright
Name: Daniel Cartwright
Title: Chief Financial Officer

BOCAGREENMD, INC.

By: /s/ Daniel Cartwright
Name: Daniel Cartwright
Title: Chief Financial Officer

VITACARE PRESCRIPTION SERVICES, INC.

By: /s/ Daniel Cartwright
Name: Daniel Cartwright
Title: Chief Financial Officer

TPG SPECIALTY LENDING, INC., as Administrative Agent and Lender

By: /s/ Joshua Easterly
Name: Joshua Easterly
Title: CEO

TOP IV TALENTS, LLC, as Lender

By: /s/ Joshua Peck
Name: Joshua Peck
Title: Vice President

TAO TALENTS, LLC, as Lender

By: /s/ Joshua Peck
Name: Joshua Peck
Title: Vice President

**AMENDMENT NO. 4
TO FINANCING AGREEMENT**

AMENDMENT NO. 4 TO FINANCING AGREEMENT, dated as of May 13, 2020 (this "Amendment"), to the Financing Agreement, dated as of April 24, 2019 (as amended, restated, supplemented or otherwise modified from time to time, the "Financing Agreement"), by and among THERAPEUTICSMD, INC., a Nevada corporation ("Company" or "Borrower"), certain Subsidiaries of Borrower, as Guarantors, the Lenders from time to time party thereto, and TPG SPECIALTY LENDING, INC., a Delaware corporation ("TSL"), as administrative agent for the Lenders (in such capacity, together with its successors and assigns in such capacity, the "Administrative Agent").

WHEREAS, the Loan Parties have requested that the Administrative Agent and the Lenders amend certain terms and conditions of the Financing Agreement; and

WHEREAS, the Administrative Agent and the Lenders are willing to amend such terms and conditions of the Financing Agreement on the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Definitions. All terms used herein that are defined in the Financing Agreement and not otherwise defined herein shall have the meanings assigned to them in the Financing Agreement.

2. Amendments.

(a) New Definitions. Section 1.01 of the Financing Agreement is hereby amended by adding the following definitions, in appropriate alphabetical order:

(i) "Amendment No. 4" means Amendment No. 4 to Financing Agreement, dated as of May 13, 2020, by and among the Loan Parties, the Administrative Agent and the Lenders."

(ii) "Amendment No. 4 Effective Date" means the "Amendment Effective Date" as set forth in Amendment No. 4."

(b) Section 6.17 (Prepayments of Certain Indebtedness). Section 6.17 of the Financing Agreement is hereby amended and restated in its entirety to read as follows:

"Section 6.17 Prepayments of Certain Indebtedness. No Loan Party shall, directly or indirectly, voluntarily purchase, redeem, defease or prepay any principal of, premium, if any, interest or other amount payable in respect of any Indebtedness prior to its scheduled maturity, other than (a) the Obligations, (b) Indebtedness secured by a Permitted Lien if the asset securing such Indebtedness has been sold or otherwise disposed of in accordance with Section 6.9 and (c) Indebtedness under the CARES Act Loan."

3. Conditions to Effectiveness. This Amendment shall become effective only upon satisfaction in full, in a manner satisfactory to the Administrative Agent, of the following conditions precedent (the first date upon which all such conditions shall have been satisfied being hereinafter referred to as the "Amendment Effective Date"):

(a) Payment of Fees, Etc. The Borrowers shall have paid on or before the Amendment Effective Date all fees, costs, expenses and taxes then payable, if any, pursuant to Section 2.7 or 10.2 of the Financing Agreement.

(b) Representations and Warranties. The representations and warranties contained in this Amendment and in Article IV of the Financing Agreement and in each other Loan Document shall be true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations or warranties that already are qualified or modified as to "materiality" or "Material Adverse Effect" in the text thereof, which representations and warranties shall be true and correct in all respects subject to such qualification) on and as the Amendment Effective Date to the same extent as though made on and as of that date, except to the extent such representations and warranties specifically relate to an earlier date, in which case such representations and warranties shall have been true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations or warranties that already are qualified or modified as to "materiality" or "Material Adverse Effect" in the text thereof, which representations and warranties shall be true and correct in all respects subject to such qualification) on and as of such earlier date.

(c) No Default; Event of Default. No Default or Event of Default shall have occurred and be continuing on the Amendment Effective Date or result from this Amendment becoming effective in accordance with its terms.

(d) Delivery of Documents. The Administrative Agent shall have received on or before the Amendment Effective Date this Amendment, duly executed by the Loan Parties, the Administrative Agent and the Lenders.

(e) Material Adverse Effect. The Administrative Agent shall have determined, in its reasonable judgment, that no event or development shall have occurred since December 31, 2018, which could reasonably be expected to have a Material Adverse Effect.

(f) Liens; Priority. The Administrative Agent shall be satisfied that the Administrative Agent has been granted, and holds, for the benefit of the Administrative Agent and the Lenders, a perfected, first priority Lien on and security interest in all of the Collateral, subject only to Permitted Liens, to the extent such Liens and security interests are required pursuant to the Loan Documents to be granted or perfected on or before the Amendment Effective Date.

(g) Approvals. All consents, authorizations and approvals of, and filings and registrations with, and all other actions in respect of, any Governmental Authority or other Person required in connection with any Loan Document or the transactions contemplated thereby or the conduct of the Loan Parties' business shall have been obtained or made and shall be in full force and effect. There shall exist no claim, action, suit, investigation, litigation or proceeding (including, without limitation, shareholder or derivative litigation) pending or, to the knowledge of any Loan Party, threatened in any court or before any arbitrator or Governmental Authority which (i) relates to the Loan Documents or the transactions contemplated thereby or (ii) could reasonably be expected to have a Material Adverse Effect.

4. Continued Effectiveness of the Financing Agreement and Other Loan Documents. Each Loan Party hereby (a) acknowledges and consents to this Amendment, (b) confirms and agrees that the Financing Agreement and each other Loan Document to which it is a party is, and shall continue to be, in full force and effect and is hereby ratified and confirmed in all respects, except that on and after the Amendment Effective Date, all references in any such Loan Document to “the Financing Agreement”, the “Agreement”, “thereto”, “thereof”, “thereunder” or words of like import referring to the Financing Agreement shall mean the Financing Agreement as amended by this Amendment, and (c) confirms and agrees that, to the extent that any such Loan Document purports to assign or pledge to the Administrative Agent, for the benefit of the Administrative Agent and the Lenders, or to grant to the Administrative Agent, for the benefit of the Administrative Agent and the Lenders, a security interest in or Lien on any Collateral as security for the Obligations of the Loan Parties from time to time existing in respect of the Financing Agreement (as amended hereby) and the other Loan Documents, such pledge, assignment and/or grant of the security interest or Lien is hereby ratified and confirmed in all respects. This Amendment does not and shall not affect any of the obligations of the Loan Parties, other than as expressly provided herein, including, without limitation, the Loan Parties’ obligations to repay the Loans in accordance with the terms of Financing Agreement or the obligations of the Loan Parties under any Loan Document to which they are a party, all of which obligations shall remain in full force and effect. Except as expressly provided herein, the execution, delivery and effectiveness of this Amendment shall not operate as a waiver of any right, power or remedy of Administrative Agent or any Lender under the Financing Agreement or any other Loan Document nor constitute a waiver of any provision of the Financing Agreement or any other Loan Document.

5. No Novation. Nothing herein contained shall be construed as a substitution or novation of the Obligations outstanding under the Financing Agreement or instruments securing the same, which shall remain in full force and effect, except as modified hereby.

6. No Representations by Administrative Agent or Lenders. Each Loan Party hereby acknowledges that it has not relied on any representation, written or oral, express or implied, by Administrative Agent or any Lender, other than those expressly contained herein, in entering into this Amendment.

7. Release. Each Loan Party hereby acknowledges and agrees that: (a) neither it nor any of its Subsidiaries has any claim or cause of action against Administrative Agent or any Lender (or any of the directors, officers, employees, agents, attorneys or consultants of any of the foregoing) and (b) the Administrative Agent and the Lenders have heretofore properly performed and satisfied in a timely manner all of their obligations to the Loan Parties, and all of their Subsidiaries and Affiliates. Notwithstanding the foregoing, the Administrative Agent and the Lenders wish (and the Loan Parties agree) to eliminate any possibility that any past conditions, acts, omissions, events or circumstances would impair or otherwise adversely affect any of their rights, interests, security and/or remedies. Accordingly, for and in consideration of the agreements contained in this Amendment and other good and valuable consideration, each Loan Party (for itself and its Subsidiaries and Affiliates and the successors, assigns, heirs and representatives of each of the foregoing) (collectively, the “Releasors”) does hereby fully, finally, unconditionally and irrevocably release, waive and forever discharge the Administrative Agent and the Lenders, together with their respective Affiliates and Related Funds, and each of the directors, officers, employees, agents, attorneys and consultants of each of the foregoing (collectively, the “Released Parties”), from any and all debts, claims, allegations, obligations, damages, costs, attorneys’ fees, suits, demands, liabilities, actions, proceedings and causes of action, in each case, whether known or unknown, contingent or fixed, direct or indirect, and of whatever nature or description, and whether in law or in equity, under contract, tort, statute or otherwise, which any Releasor has heretofore had or now or hereafter can, shall or may have against any Released Party by reason of any act, omission or thing whatsoever done or omitted to be done, in each case, on or prior to the Amendment Effective Date directly arising out of, connected with or related to this Amendment, the Financing Agreement or any other Loan Document, or any act, event or transaction related or attendant thereto, or the agreements of Administrative Agent or any Lender contained therein, or the possession, use, operation or control of any of the assets of any Loan Party, or the making of any Loans or other advances, or the management of such Loans or other advances or the Collateral. Each Loan Party represents and warrants that it has no knowledge of any claim by any Releasor against any Released Party or of any facts or acts or omissions of any Released Party which on the date hereof would be the basis of a claim by any Releasor against any Released Party which would not be released hereby.

8. Further Assurances. The Loan Parties shall execute any and all further documents, agreements and instruments, and take all further actions, as may be required under applicable law or as Administrative Agent may reasonably request, in order to effect the purposes of this Amendment.

9. Miscellaneous.

(a) This Amendment may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which shall be deemed to be an original but all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of this Amendment by facsimile or electronic mail shall be equally effective as delivery of an original executed counterpart of this Amendment.

(b) Section and paragraph headings herein are included for convenience of reference only and shall not constitute a part of this Amendment for any other purpose.

(c) This Amendment shall be governed by, and construed in accordance with, the laws of the State of New York.

(d) Each Loan Party hereby acknowledges and agrees that this Amendment constitutes a "Loan Document" under the Financing Agreement. Accordingly, it shall be an immediate Event of Default under the Financing Agreement if (i) any representation or warranty made by any Loan Party under or in connection with this Amendment shall have been incorrect in any respect when made or deemed made, or (ii) any Loan Party shall fail to perform or observe any term, covenant or agreement contained in this Amendment.

(e) Any provision of this Amendment that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining portions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed and delivered as of the date set forth on the first page hereof.

BORROWER:

THERAPEUTICSMD, INC.

By: /s/ Daniel Cartwright
Name: Daniel Cartwright
Title: Chief Financial Officer

GUARANTORS:

VITAMEDMD, LLC

By: /s/ Daniel Cartwright
Name: Daniel Cartwright
Title: Chief Financial Officer

BOCAGREENMD, INC.

By: /s/ Daniel Cartwright
Name: Daniel Cartwright
Title: Chief Financial Officer

VITACARE PRESCRIPTION SERVICES, INC.

By: /s/ Daniel Cartwright
Name: Daniel Cartwright
Title: Chief Financial Officer

TPG SPECIALTY LENDING, INC., as Administrative Agent and Lender

By: /s/ Joshua Easterly

Name: Joshua Easterly

Title: CEO

TOP IV TALENTS, LLC, as Lender

By: /s/ Joshua Peck

Name: Joshua Peck

Title: Vice President

TAO TALENTS, LLC, as Lender

By: /s/ Joshua Peck

Name: Joshua Peck

Title: Vice President

**AMENDMENT NO. 5
TO FINANCING AGREEMENT**

AMENDMENT NO. 5 TO FINANCING AGREEMENT, dated as of August 5, 2020 (this "Amendment"), to the Financing Agreement, dated as of April 24, 2019 (as amended, restated, supplemented or otherwise modified from time to time, the "Financing Agreement"), by and among THERAPEUTICSMD, INC., a Nevada corporation ("Company" or "Borrower"), certain Subsidiaries of Borrower, as Guarantors, the Lenders from time to time party thereto, and SIXTH STREET SPECIALTY LENDING, INC. (f/k/a TPG Specialty Lending, Inc.), a Delaware corporation ("Sixth Street"), as administrative agent for the Lenders (in such capacity, together with its successors and assigns in such capacity, the "Administrative Agent").

WHEREAS, the Loan Parties have requested that the Administrative Agent and the Lenders amend certain terms and conditions of the Financing Agreement; and

WHEREAS, the Administrative Agent and the Lenders are willing to amend such terms and conditions of the Financing Agreement on the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Definitions. All terms used herein that are defined in the Financing Agreement and not otherwise defined herein shall have the meanings assigned to them in the Financing Agreement.

2. Amendments.

(a) Certain References. All references in the Financing Agreement to (i) TPG Specialty Lending, Inc. are hereby deemed to refer to Sixth Street Specialty Lending, Inc. and (ii) TSL are hereby deemed to refer to Sixth Street.

(b) New Definitions. Section 1.01 of the Financing Agreement is hereby amended by adding the following definitions, in appropriate alphabetical order:

(i) "Amendment No. 5" means Amendment No. 5 to Financing Agreement, dated as of August 5, 2020, by and among the Loan Parties, the Administrative Agent and the Lenders."

(ii) "Amendment No. 5 Effective Date" means the "Amendment Effective Date" as set forth in Amendment No. 5."

(c) Section 6.8(b).(Minimum Revenue). Section 6.8(b) of the Financing Agreement is hereby amended and restated in its entirety to read as follows:

“(b) Minimum Revenue. Borrower shall not permit Product Revenue for any Fiscal Quarter set forth below to be less than the amount set forth opposite such Fiscal Quarter:

Fiscal Quarter Ending	Product Revenue
December 31, 2020	\$20,000,000
March 31, 2021	\$25,000,000
June 30, 2021	\$37,500,000
September 30, 2021	\$47,500,000
December 31, 2021	\$57,500,000
March 31, 2022	\$65,000,000
June 30, 2022	\$75,000,000
September 30, 2022	\$85,000,000
December 31, 2022 and each Fiscal Quarter thereafter	\$95,000,000”

(d) Appendix B. Appendix B to the Financing Agreement is hereby amended and restated in its entirety in the form annexed hereto as Exhibit 1.

3. Conditions to Effectiveness. This Amendment shall become effective only upon satisfaction in full, in a manner satisfactory to the Administrative Agent, of the following conditions precedent (the first date upon which all such conditions shall have been satisfied being hereinafter referred to as the “Amendment Effective Date”):

(a) Payment of Fees, Etc. The Borrowers shall have paid on or before the Amendment Effective Date all fees, costs, expenses and taxes then payable, if any, pursuant to Section 2.7 or 10.2 of the Financing Agreement.

(b) Representations and Warranties. The representations and warranties contained in this Amendment and in Article IV of the Financing Agreement and in each other Loan Document shall be true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations or warranties that already are qualified or modified as to “materiality” or “Material Adverse Effect” in the text thereof, which representations and warranties shall be true and correct in all respects subject to such qualification) on and as the Amendment Effective Date to the same extent as though made on and as of that date, except to the extent such representations and warranties specifically relate to an earlier date, in which case such representations and warranties shall have been true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations or warranties that already are qualified or modified as to “materiality” or “Material Adverse Effect” in the text thereof, which representations and warranties shall be true and correct in all respects subject to such qualification) on and as of such earlier date.

(c) No Default; Event of Default. No Default or Event of Default shall have occurred and be continuing on the Amendment Effective Date or result from this Amendment becoming effective in accordance with its terms.

(d) Delivery of Documents. The Administrative Agent shall have received on or before the Amendment Effective Date:

(i) this Amendment, duly executed by the Loan Parties, the Administrative Agent and the Lenders; and

(ii) (A) the Warrant to Purchase Common Stock of the Borrower and (B) the Subscription Agreement between the Borrower and Sixth Street, in each case dated as of the date hereof and in form and substance acceptable to the Administrative Agent and the Lenders.

(e) Material Adverse Effect. The Administrative Agent shall have determined, in its reasonable judgment, that no event or development shall have occurred since December 31, 2019, which could reasonably be expected to have a Material Adverse Effect.

(f) Liens; Priority. The Administrative Agent shall be satisfied that the Administrative Agent has been granted, and holds, for the benefit of the Administrative Agent and the Lenders, a perfected, first priority Lien on and security interest in all of the Collateral, subject only to Permitted Liens, to the extent such Liens and security interests are required pursuant to the Loan Documents to be granted or perfected on or before the Amendment Effective Date.

(g) Approvals. All consents, authorizations and approvals of, and filings and registrations with, and all other actions in respect of, any Governmental Authority or other Person required in connection with any Loan Document or the transactions contemplated thereby or the conduct of the Loan Parties' business shall have been obtained or made and shall be in full force and effect. There shall exist no claim, action, suit, investigation, litigation or proceeding (including, without limitation, shareholder or derivative litigation) pending or, to the knowledge of any Loan Party, threatened in any court or before any arbitrator or Governmental Authority which (i) relates to the Loan Documents or the transactions contemplated thereby or (ii) could reasonably be expected to have a Material Adverse Effect.

4. Continued Effectiveness of the Financing Agreement and Other Loan Documents. Each Loan Party hereby (a) acknowledges and consents to this Amendment, (b) confirms and agrees that the Financing Agreement and each other Loan Document to which it is a party is, and shall continue to be, in full force and effect and is hereby ratified and confirmed in all respects, except that on and after the Amendment Effective Date, all references in any such Loan Document to "the Financing Agreement", the "Agreement", "thereto", "thereof", "thereunder" or words of like import referring to the Financing Agreement shall mean the Financing Agreement as amended by this Amendment, and (c) confirms and agrees that, to the extent that any such Loan Document purports to assign or pledge to the Administrative Agent, for the benefit of the Administrative Agent and the Lenders, or to grant to the Administrative Agent, for the benefit of the Administrative Agent and the Lenders, a security interest in or Lien on any Collateral as security for the Obligations of the Loan Parties from time to time existing in respect of the Financing Agreement (as amended hereby) and the other Loan Documents, such pledge, assignment and/or grant of the security interest or Lien is hereby ratified and confirmed in all respects. This Amendment does not and shall not affect any of the obligations of the Loan Parties, other than as expressly provided herein, including, without limitation, the Loan Parties' obligations to repay the Loans in accordance with the terms of Financing Agreement or the obligations of the Loan Parties under any Loan Document to which they are a party, all of which obligations shall remain in full force and effect. Except as expressly provided herein, the execution, delivery and effectiveness of this Amendment shall not operate as a waiver of any right, power or remedy of Administrative Agent or any Lender under the Financing Agreement or any other Loan Document nor constitute a waiver of any provision of the Financing Agreement or any other Loan Document.

5. No Novation. Nothing herein contained shall be construed as a substitution or novation of the Obligations outstanding under the Financing Agreement or instruments securing the same, which shall remain in full force and effect, except as modified hereby.

6. No Representations by Administrative Agent or Lenders. Each Loan Party hereby acknowledges that it has not relied on any representation, written or oral, express or implied, by Administrative Agent or any Lender, other than those expressly contained herein, in entering into this Amendment.

7. Release. Each Loan Party hereby acknowledges and agrees that: (a) neither it nor any of its Subsidiaries has any claim or cause of action against Administrative Agent or any Lender (or any of the directors, officers, employees, agents, attorneys or consultants of any of the foregoing) and (b) the Administrative Agent and the Lenders have heretofore properly performed and satisfied in a timely manner all of their obligations to the Loan Parties, and all of their Subsidiaries and Affiliates. Notwithstanding the foregoing, the Administrative Agent and the Lenders wish (and the Loan Parties agree) to eliminate any possibility that any past conditions, acts, omissions, events or circumstances would impair or otherwise adversely affect any of their rights, interests, security and/or remedies. Accordingly, for and in consideration of the agreements contained in this Amendment and other good and valuable consideration, each Loan Party (for itself and its Subsidiaries and Affiliates and the successors, assigns, heirs and representatives of each of the foregoing) (collectively, the "Releasors") does hereby fully, finally, unconditionally and irrevocably release, waive and forever discharge the Administrative Agent and the Lenders, together with their respective Affiliates and Related Funds, and each of the directors, officers, employees, agents, attorneys and consultants of each of the foregoing (collectively, the "Released Parties"), from any and all debts, claims, allegations, obligations, damages, costs, attorneys' fees, suits, demands, liabilities, actions, proceedings and causes of action, in each case, whether known or unknown, contingent or fixed, direct or indirect, and of whatever nature or description, and whether in law or in equity, under contract, tort, statute or otherwise, which any Releasor has heretofore had or now or hereafter can, shall or may have against any Released Party by reason of any act, omission or thing whatsoever done or omitted to be done, in each case, on or prior to the Amendment Effective Date directly arising out of, connected with or related to this Amendment, the Financing Agreement or any other Loan Document, or any act, event or transaction related or attendant thereto, or the agreements of Administrative Agent or any Lender contained therein, or the possession, use, operation or control of any of the assets of any Loan Party, or the making of any Loans or other advances, or the management of such Loans or other advances or the Collateral. Each Loan Party represents and warrants that it has no knowledge of any claim by any Releasor against any Released Party or of any facts or acts or omissions of any Released Party which on the date hereof would be the basis of a claim by any Releasor against any Released Party which would not be released hereby.

8. Further Assurances. The Loan Parties shall execute any and all further documents, agreements and instruments, and take all further actions, as may be required under applicable law or as Administrative Agent may reasonably request, in order to effect the purposes of this Amendment.

9. Miscellaneous.

(a) This Amendment may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which shall be deemed to be an original but all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of this Amendment by facsimile or electronic mail shall be equally effective as delivery of an original executed counterpart of this Amendment.

(b) Section and paragraph headings herein are included for convenience of reference only and shall not constitute a part of this Amendment for any other purpose.

(c) This Amendment shall be governed by, and construed in accordance with, the laws of the State of New York.

(d) Each Loan Party hereby acknowledges and agrees that this Amendment constitutes a "Loan Document" under the Financing Agreement. Accordingly, it shall be an immediate Event of Default under the Financing Agreement if (i) any representation or warranty made by any Loan Party under or in connection with this Amendment shall have been incorrect in any respect when made or deemed made, or (ii) any Loan Party shall fail to perform or observe any term, covenant or agreement contained in this Amendment.

(e) Any provision of this Amendment that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining portions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed and delivered as of the date set forth on the first page hereof.

BORROWER:

THERAPEUTICSMD, INC.

By: /s/ Robert G. Finizio
Name: Robert G. Finizio
Title: Chief Executive Officer

GUARANTORS:

VITAMEDMD, LLC

By: /s/ Robert G. Finizio
Name: Robert G. Finizio
Title: Manager

BOCAGREENMD, INC.

By: /s/ Robert G. Finizio
Name: Robert G. Finizio
Title: Chief Executive Officer

VITACARE PRESCRIPTION SERVICES, INC.

By: /s/ John C.K. Milligan, IV
Name: John C.K. Milligan, IV
Title: Assistant Secretary

SIXTH STREET SPECIALTY LENDING, INC., as Administrative Agent
and Lender

By: /s/ Joshua Easterly

Name: Joshua Easterly

Title: Chief Executive Officer

TOP IV TALENTS, LLC, as Lender

By: /s/ Joshua Peck

Name: Joshua Peck

Title: Vice President

TAO TALENTS, LLC, as Lender

By: /s/ Joshua Peck

Name: Joshua Peck

Title: Vice President

**APPENDIX B
TO FINANCING AGREEMENT**

Notice Addresses

THERAPEUTICSMD, INC.

951 Yamato Road, Suite 220
Boca Raton, FL 33431
Attention: James C. D'Arecca, Chief Financial Officer

VITAMEDMD, LLC

BOCAGREENMD, INC.

VITACARE PRESCRIPTION SERVICES, INC.

951 Yamato Road, Suite 220
Boca Raton, FL 33431
Attention: James C. D'Arecca, Chief Financial Officer

in each case, with a copy to:

DLA Piper LLP
200 South Biscayne Boulevard
Suite 2500
Miami, FL 33131
Attention: Joshua M. Samek

SIXTH STREET SPECIALTY LENDING, INC., as
Administrative Agent and a Lender

Administrative Agent's Principal Office:
888 7th Avenue, 35th Floor
New York, NY 10106
Attention: Parker Hooper

with a copy to:

Proskauer Rose LLP
Eleven Times Square
New York, New York 10036
Attention: Frederic L. Ragucci

TOP IV TALENTS, LLC and
TAO TALENTS, LLC
as Lenders

2100 McKinney Avenue, Suite 1030
Dallas, Texas 75201
Attention: TSSPOps

with a copy to:

Proskauer Rose LLP
Eleven Times Square
New York, New York 10036
Attention: Frederic L. Ragucci

SUBSCRIPTION AGREEMENT

This Subscription Agreement is entered into and dated as of August 5, 2020 (this “**Agreement**”), by and among TherapeuticsMD, Inc., a Nevada corporation with offices located at 951 Yamato Road, Suite 220, Boca Raton, FL 33431 (the “**Company**”), and the Subscribers identified on the Schedule of Subscribers attached hereto (each, a “**Subscriber**” and, together, the “**Subscribers**”). Capitalized terms not defined below shall have the meaning as set forth in Section 1.1.

RECITALS

A. The Company and each Subscriber is executing and delivering this Agreement in reliance upon the exemption from securities registration afforded by Section 4(a)(2) of the Securities Act of 1933, as amended (the “**1933 Act**”), and Rule 506 of Regulation D (“**Regulation D**”) as promulgated by the United States Securities and Exchange Commission (the “**Commission**”) under the 1933 Act.

B. The Company is a borrower under that certain Financing Agreement, dated as of April 24, 2019, by and among the Company, as borrower, certain subsidiaries of the Company, as guarantors, the lenders from time to time party thereto, and Sixth Street Specialty Lending, Inc. (f/k/a TPG Specialty Lending, Inc.), as administrative agent for the lenders thereunder (as amended, amended and restated, supplemented or otherwise modified from time to time, the “**Financing Agreement**”).

C. To induce the Subscribers (or Affiliates thereof) to further amend the Financing Agreement, the Company wishes to issue, upon the terms and conditions stated in this Agreement, a warrant to acquire up to that aggregate number of shares of Common Stock set forth opposite such Subscriber’s name in column (3) on the Schedule of Subscribers, in the form attached hereto as Exhibit A (the “**Warrants**”) (as exercised, collectively, the “**Warrant Shares**”), subject to adjustment for any stock split, stock dividend, stock combination, reclassification or similar transaction.

E. The Warrants and the Warrant Shares are collectively referred to herein as the “**Securities**.”

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants contained in this Agreement, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Company and each Subscriber, severally and not jointly, agree as follows:

ARTICLE I.
DEFINITIONS

1.1 Section 1.1: **Definitions.** In addition to the terms defined elsewhere in this Agreement, the following terms shall have the meanings set forth in this Section 1.1:

“**1934 Act**” means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

“**Affiliate**” shall have the meaning ascribed to such term in Rule 405 of the 1933 Act.

“**Business Day**” means any day other than Saturday, Sunday or other day on which commercial banks in the City of New York, New York are authorized or required by law to remain closed; provided, however, for clarification, commercial banks shall not be deemed to be authorized or required by law to remain closed due to “stay at home”, “shelter-in-place”, “non-essential employee” or any other similar orders or restrictions or the closure of any physical branch locations at the direction of any governmental authority so long as the electronic funds transfer systems (including for wire transfers) of commercial banks in the City of New York, New York generally are open for use by customers on such day.

“**Common Stock**” means (a) the Company’s shares of common stock, par value \$0.001 per share, and (b) any share capital into which such common stock shall have been changed or any share capital resulting from a reclassification, reorganization or recapitalization of such common stock.

“**Designee**” means Sixth Street Specialty Lending, Inc.

“**Eligible Market**” means the Principal Market, the NYSE American, The Nasdaq Global Select Market, The Nasdaq Global Market, The Nasdaq Capital Market or The New York Stock Exchange, Inc.

“**Governmental Authority**” shall mean any: (a) nation, state, commonwealth, province, territory, county, municipality, district or other jurisdiction of any nature; (b) federal, state, provincial, local, municipal, foreign or other government; (c) governmental or quasi-governmental authority of any nature (including any governmental division, department, agency, commission, commissioner, bureau, tribunal, instrumentality, official, ministry, fund, foundation, center, organization, board, unit, body or Person and any court or other tribunal); or (d) regulatory or self-regulatory organization (including the Principal Market or other applicable Eligible Market).

“**Lien**” means any mortgage, deed of trust, lien, charge, claim, encumbrance, security interest, right of first refusal, preemptive right or other restrictions of any kind.

“**Person**” means an individual or corporation, partnership, trust, incorporated or unincorporated association, joint venture, limited liability company, joint stock company, government (or an agency or subdivision thereof) or other entity of any kind.

“**Principal Market**” means The Nasdaq Stock Market LLC.

“**Proceeding**” means an action, claim, suit, inquiry, investigation or proceeding (including, without limitation, an investigation or partial proceeding, such as a deposition), whether commenced or, to the Company’s knowledge, threatened in writing.

“**Required Holders**” means the holders of Warrants representing at least a majority of the number of shares of Common Stock issuable upon exercise of the Warrants then outstanding and shall include the Designee so long as the Designee or any of its Affiliates holds any Warrants.

“**SEC Reports**” shall mean all reports, schedules, forms, applications and other documents, together with any amendments required to be made with respect thereto, required to be filed by the Company under the 1933 Act and the 1934 Act, including pursuant to Section 13(a) or 15(d) thereof, for the two (2) years preceding the date hereof (or such shorter period as the Company was required by law or regulation to file such materials).

“**Subsidiary**” has the meaning as set forth in the Financing Agreement.

“**Trading Day**” means any day on which the Common Stock is traded on the Principal Market, or, if the Principal Market is not the principal trading market for the Common Stock, then on the principal securities exchange or securities market on which the Common Stock is then traded.

“**Transaction Documents**” means this Agreement, the Warrants and any other documents, certificates, letters of instruction, or agreements executed or delivered in connection with the transactions contemplated hereby, but shall not include the Loan Documents (as defined in the Financing Agreement).

ARTICLE II.
PURCHASE AND SALE

2.1 Purchase and Sale of the Securities. Subject to the terms and conditions of this Agreement, each Subscriber agrees, severally and not jointly, to purchase from the Company, and the Company agrees to sell and issue to each Subscriber, at the Closing, such Warrants to acquire up to that aggregate number of Warrant Shares as is set forth opposite such Subscriber’s name in column (3) on the Schedule of Subscribers.

2.2 Closing. The issuance of the Warrants pursuant to the terms of this Agreement (the “**Closing**”) shall take place remotely by electronic transfer of Closing documentation at 10:00 a.m. (New York City time) on the date hereof (the “**Closing Date**”).

2.3 Form of Payment. On the Closing Date, the Company shall deliver to each Subscriber a Warrant pursuant to which such Subscriber shall have the right to acquire up to such aggregate number of Warrant Shares as is set forth opposite such Subscriber’s name in column (3) of the Schedule of Subscribers, duly executed on behalf of the Company and registered in the name of such Subscriber or its designee.

2.4 Tax Matters. The parties agree that for U.S. federal income tax purposes (a) pursuant to Treasury Regulation 1.761-3 the Warrant shall not be treated as stock of the Company unless and until exercised in accordance with the terms hereof, (b) the issuance of the Warrant shall be treated as a payment in respect of the Initial Term Loan (as defined in the Financing Agreement) (and not as a fee or as a payment of interest) and (c) (1) the Initial Term Loan and the Warrant constitute an “investment unit” and (2) the issue price of the Initial Term Loan is \$192,500,000 and the issue price of the Warrant is \$7,500,000 (clauses (a) through (b), the “**Tax Treatment**”). Neither the Company nor the Subscribers shall take any position inconsistent with the Tax Treatment on any tax return except required otherwise by a change in law or pursuant to a final determination by an applicable tax authority.

ARTICLE III.
REPRESENTATIONS AND WARRANTIES

3.1 Representations and Warranties of the Company. The Company hereby represents and warrants as of the date hereof and as of the Closing Date (except for representations and warranties that speak as of a specific date, which shall be made as of such date) to each of the Subscribers, except as set forth in the Schedules delivered herewith:

(a) Authorization; Enforcement. The Company has the requisite corporate power and authority to enter into and to consummate the transactions contemplated by each of the Transaction Documents and otherwise to carry out its respective obligations hereunder and thereunder. Other than the Required Approvals (as defined in Section 3.1(c)), the execution and delivery by the Company of each of the Transaction Documents to which it is a party and the consummation by it of the transactions contemplated hereunder and thereunder have been duly authorized by all necessary action on the part of the Company and no further consent or action is required by the Company, or its board of directors or stockholders. Each Transaction Document has been (or upon delivery will have been) duly executed by the Company, and, when delivered in accordance with the terms hereof, will constitute the valid and binding obligation of the Company, enforceable against the Company, in accordance with its terms, except as such enforceability may be limited by general principles of equity or applicable bankruptcy, insolvency, reorganization, moratorium, liquidation or similar laws relating to, or affecting generally, the enforcement of applicable creditors’ rights and remedies and except as rights to indemnification and to contribution may be limited by federal or state securities law.

(b) No Conflicts. The execution, delivery and performance of the Transaction Documents by the Company and the consummation by the Company of the transactions contemplated hereby and thereby (including, without limitation, the issuance of the Warrants and the Warrant Shares and the reservation for issuance of the Warrant Shares) do not and will not (i) conflict with or violate any provision of the Company’s or any of its Subsidiaries’ certificate or articles of incorporation, bylaws or other organizational or charter documents, (ii) conflict with, or constitute a default (or an event that with notice or lapse of time or both would become a default) under, result in the creation of any Lien upon any of the properties or assets of the Company or any of its Subsidiaries, or give to others any rights of termination, amendment, acceleration or cancellation (with or without notice, lapse of time or both) of, any agreement, credit facility, debt or other instrument (evidencing a Company or a Company Subsidiary’s debt or otherwise) or other understanding to which the Company any of its Subsidiaries is a party or by which any property or asset of the Company or any of its Subsidiaries is bound or affected, or (iii) result in a violation of any law, rule, regulation, order, judgment, injunction, decree or other restriction of any Governmental Authority to which the Company or a Company Subsidiary is subject (including, without limitation, foreign, federal and state securities laws and regulations and the rules and regulations of the Principal Market), or by which any property or asset of the Company or a Company Subsidiary is bound or affected; except in the case of clause (ii) or (iii) above, as would not, reasonably be expected to, (i) have or result in a material adverse effect on the legality, validity, binding effect or enforceability of any Transaction Document, (ii) have or result in a material adverse effect on the business operations, properties, assets, condition (financial or otherwise) or liabilities of the Company and its Subsidiaries, taken as a whole, or (iii) have or result in a material adverse effect on the Company’s authority or ability to perform fully on a timely basis its obligations under any Transaction Document (any of (i), (ii) or (iii), a “**Material Adverse Effect**”).

(c) Filings, Consents and Approvals. Neither the Company nor any Company Subsidiary is required to obtain any consent, waiver, authorization, permit or order of, give any notice to, or make any filing or registration with, any Governmental Authority or other Person in connection with the execution, delivery and performance by the Company of the Transaction Documents, other than (i) the filing by the Company of a Notice of Sale of Securities on Form D with the Commission under Regulation D and state and applicable Blue Sky filings, (ii) the filing of any requisite notices and/or applications(s) to the Principal Market for the issuance and sale of the Warrants and the issuance of the Warrant Shares upon exercise of the Warrants and the listing of the Warrant Shares for trading thereon, and (iii) the filing of a Current Report on Form 8-K, or the disclosure required thereby in another filing, with the Commission (collectively, but excluding the foregoing clauses (i) through (iii), the “**Required Approvals**”). All Required Approvals have been obtained or effected on or prior to the Closing Date, and neither the Company nor any Company Subsidiary are aware of any facts or circumstances which might prevent the Company or any Company Subsidiary from obtaining or effecting any of the registration, application or filings contemplated by the Transaction Documents. The Company is not in violation of any material requirements of the Principal Market and has no knowledge of any facts or circumstances which would reasonably be expected to result in the delisting or suspension of the Common Stock in the foreseeable future.

(d) Issuance of the Securities. The issuance of the Warrants is duly authorized and, upon issuance in accordance with the terms of the Transaction Documents, the Warrants will be validly issued free from all preemptive or similar rights, taxes, Liens (other than Liens under the 1933 Act and applicable Blue Sky laws) and charges with respect to the issue thereof. As of the Closing, the Company shall have reserved from its duly authorized capital stock not less than 100% of the maximum number of Warrant Shares issuable upon exercise of the Warrants (without taking into account any limitations on the exercise of the Warrants set forth therein). Upon exercise in accordance with the Warrants, the Warrant Shares when issued, will be validly issued, fully paid and nonassessable and free from all preemptive or similar rights, taxes, Liens and charges with respect to the issue thereof, with the holders being entitled to all rights accorded to a holder of Common Stock (as set forth in the applicable charter documents). Subject to the accuracy of the representations and warranties of the Subscribers in this Agreement, the offer and issuance by the Company of the Securities is exempt from registration under the 1933 Act.

(e) Capitalization. The number of shares and type of all authorized, issued and outstanding capital stock of the Company has been set forth in the SEC Reports and has changed since the date set forth in the most recent applicable SEC Report only to reflect exercises of stock options and other convertible securities that have not been required to be reported by the Company under the 1934 Act. Without limiting the foregoing, as of the date hereof, immediately prior to the issuance of the Warrants, the authorized capital stock of the Company consists of (i) 600,000,000 shares of Common Stock, of which 272,294,380 shares are issued and outstanding, 24,590,141 shares are reserved for issuance pursuant to issued and outstanding options, 12,658,298 shares are reserved for issuance pursuant to securities (other than the aforementioned options) exercisable or exchangeable for, or convertible into, shares of Common Stock, 3,286,444 shares are reserved for issuance under the Company's 2019 Stock Incentive Plan, and 5,400,000 shares are reserved for issuance under the Company's 2020 Employee Stock Purchase Plan; and (ii) 10,000,000 shares of preferred stock, par value \$0.001 per share, none of which are outstanding. Other than as stated in the immediately preceding sentence, the Company does not have any outstanding securities that are exercisable or exchangeable for, or convertible into, shares of Common Stock. All of such outstanding shares are duly authorized and have been, or upon issuance will be, validly issued and are fully paid and nonassessable. No securities of the Company are entitled to preemptive or similar rights, and no Person has any right of first refusal, preemptive right, right of participation, or any similar right to participate in the transactions contemplated by the Transaction Documents. There are no securities or instruments containing anti-dilution or similar provisions that will be triggered by the issuance of the Securities. The Company does not have any stock appreciation rights or "phantom stock" or similar plans or agreements currently outstanding except as disclosed above.

(f) Certain Fees. No brokerage or finder's fees or commissions are or will be payable by the Subscribers to any broker, financial advisor or consultant, finder, placement agent, investment banker, bank or other Person with respect to the transactions contemplated by this Agreement as a result of an agreement entered into by the Company.

(g) Private Placement; No Integrated Offering; No General Solicitation; No Disqualification Events. Assuming in part the accuracy of each Subscriber's representations and warranties set forth in Section 3.2(c)-(g), (i) no registration under the 1933 Act is required for the offer and sale of the Securities by the Company to the Subscribers under the Transaction Documents, and (ii) the issuance and sale of the Securities hereunder does not contravene the rules and regulations of the Principal Market. Assuming in part the accuracy of the Subscribers' representations and warranties set forth in Section 3.2, neither the Company, the Company Subsidiaries, any of their respective Affiliates, nor any Person acting on their behalf has, directly or indirectly, made any offers or sales of any Company security or solicited any offers to buy any security, under circumstances that would require registration of the issuance of any of the Securities under the 1933 Act, whether through integration with prior offerings or otherwise or cause this offering of the Securities to require approval of stockholders of the Company for purposes of the 1933 Act or any applicable stockholder approval provisions, including, without limitation, under the rules and regulations of any exchange or automated quotation system on which any of the securities of the Company are listed or designated. Neither the Company, the Company Subsidiaries nor their Affiliates, nor any Person acting on its or their behalf, has engaged in any form of general solicitation or general advertising (within the meaning of Regulation D) in connection with the offer or sale of the Securities. With respect to Securities to be offered and sold hereunder in reliance on Rule 506(b) under the 1933 Act ("**Regulation D Securities**"), none of the Company, any of its predecessors, any affiliated issuer, any director, executive officer, other officer of the Company participating in the offering hereunder, any beneficial owner of 20% or more of the Company's outstanding voting equity securities, calculated on the basis of voting power, nor any promoter (as that term is defined in Rule 405 under the 1933 Act) connected with the Company in any capacity at the time of sale, nor any other Person covered by Rule 506(d) (each, an "**Issuer Covered Person**" and, together, "**Issuer Covered Persons**") is or has been subject to any of the "Bad Actor" disqualifications described in Rule 506(d)(1)(i) to (viii) under the 1933 Act (a "**Disqualification Event**"), except for a Disqualification Event covered by Rule 506(d)(2) or (d)(3). The Company has determined that no Issuer Covered Person is subject to a Disqualification Event. The Company has complied, to the extent applicable, with its disclosure obligations under Rule 506(e), and has furnished to the Subscribers a copy of any disclosures provided thereunder. No Person has been or will be paid (directly or indirectly) remuneration for solicitation of Subscribers or potential purchasers in connection with the sale of any Regulation D Securities.

(h) Application of Takeover Protections. The Company and its Board of Directors have taken all necessary action, if any, in order to render inapplicable any control share acquisition, interested stockholder, business combination, poison pill (including any distribution under a rights agreement, or similar arrangement or plan) or other similar anti-takeover provision under the Company's articles of incorporation and bylaws, each as amended, that is or could become applicable to the Subscribers as a result of the Subscribers and the Company fulfilling their obligations or exercising their rights under the Transaction Documents, including without limitation as a result of the Company's issuance of the Securities and the Subscribers' ownership of the Securities. The Company and its Board of Directors have taken all necessary action, if any, in order to render inapplicable any stockholder rights plan or similar arrangement now in effect relating to accumulations of beneficial ownership of shares of Common Stock or a change in control of the Company or any Company Subsidiary.

(i) Transfer Taxes. On the Closing Date, all stock transfer or other taxes (other than income or similar taxes) which are required to be paid in connection with the sale and transfer of the Securities to be sold to each Subscriber hereunder will be, or will have been, fully paid or provided for by the Company, and all laws imposing such taxes will be or will have been complied with.

(j) Investment Company Status. Neither the Company nor any Company Subsidiary is, and upon consummation of the sale of the Securities, will not be, an "investment company," a company controlled by an "investment company" or an "affiliated person" of, or "promoter" or "principal underwriter" for, an "investment company" as such terms are defined in the Investment Company Act of 1940, as amended.

(k) U.S. Real Property Holding Corporation. The Company is not and has never been a U.S. real property holding corporation within the meaning of Section 897 of the Internal Revenue Code of 1986, as amended, and the Company shall so certify upon any Subscriber's request.

(l) Loan Documents. The Company hereby acknowledges and agrees that each of the Transaction Documents constitutes a “Loan Document” under the Financing Agreement, including for purposes of determining an Event of Default under the Financing Agreement.

3.2 Representations and Warranties of the Subscribers. Each Subscriber hereby, as to itself only and for no other Subscriber, represents and warrants as of the date hereof and as of the Closing Date (except for representations and warranties that speak as of a specific date, which shall be made as of such date) to the Company as follows:

(a) Organization; Authority. Such Subscriber is an entity duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization with the requisite power and authority to enter into and to consummate the transactions contemplated by the Transaction Documents and otherwise to carry out its obligations hereunder and thereunder. The execution, delivery and performance by such Subscriber of the Transaction Documents to which it is a party have been duly authorized by all necessary action on the part of such Subscriber. Each of the Transaction Documents to which such Subscriber is a party has been duly executed by such Subscriber and, when delivered by such Subscriber in accordance with terms hereof, will constitute the valid and legally binding obligation of such Subscriber, enforceable against it in accordance with its terms, except as such enforceability may be limited by general principles of equity or applicable bankruptcy, insolvency, reorganization, moratorium, liquidation or similar laws relating to, or affecting generally, the enforcement of applicable creditors’ rights and remedies.

(b) No Conflicts. The execution, delivery and performance of the Transaction Documents by such Subscriber and the consummation by such Subscriber of the transactions contemplated hereby and thereby do not and will not (i) conflict with or violate any provision of such Subscriber’s certificate or articles of incorporation, bylaws or other organizational or charter documents, (ii) conflict with, or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, any agreement, indenture or instrument to which such Subscriber is a party or by which any property or asset of such Subscriber is bound or affected, or (iii) result in a violation of any law, rule, regulation, order, judgment, injunction, decree or other restriction of any Governmental Authority to which such Subscriber is subject (including, without limitation, foreign, federal and state securities laws and regulations); except in the case of clause (ii) or (iii) above, as would not, reasonably be expected to have, individually or in the aggregate, a material adverse effect on the ability of the Subscriber to perform its obligations thereunder.

(c) Investment Intent. Such Subscriber is acquiring the Securities as principal for its own account for investment purposes and not with a view to distributing or reselling such Securities or any part thereof in violation of applicable securities laws, without prejudice, however, to such Subscriber’s right at all times to sell or otherwise dispose of all or any part of such Securities in compliance with applicable federal and state securities laws. Nothing contained herein shall be deemed a representation or warranty by such Subscriber to hold the Securities for any period of time. Notwithstanding the foregoing, such Subscriber understands that the Securities have not been registered under the 1933 Act, and therefore the Securities may not be sold, assigned or transferred unless pursuant to (i) an effective registration statement under the 1933 Act with respect thereto or (ii) an available exemption from the registration requirements of the 1933 Act. Such Subscriber has been advised or is aware of the provisions of Rule 144 promulgated under the 1933 Act (or a successor rule thereto) (collectively, “**Rule 144**”) as in effect from time to time, which permit limited resale of shares purchased in a private placement subject to the satisfaction of certain conditions.

(d) Subscriber Status. At the time such Subscriber was offered the Securities, it was, and at the date hereof it is, and on each date on which it exercises the Warrants it will be, an “accredited investor” as defined in Rule 501(a) under the 1933 Act.

(e) Experience of such Subscriber. Such Subscriber, either alone or together with its representatives, has such knowledge, sophistication and experience in business and financial matters so as to be capable of evaluating the merits and risks of the prospective investment in the Securities, and has so evaluated the merits and risks of such investment. Such Subscriber is able to bear the economic risk of an investment in the Securities and, at the present time, is able to afford a complete loss of such investment.

(f) General Solicitation. Such Subscriber is not purchasing the Securities as a result of any advertisement, article, notice or other communication regarding the Securities published in any newspaper, magazine or similar media or broadcast over television or radio or presented at any seminar or, to such Subscriber’s knowledge, any other general solicitation or general advertisement.

(g) Access to Data. Such Subscriber has received and reviewed information about the Company and has had an opportunity to discuss the Company’s business, management and financial affairs with its management and to review the Company’s facilities. Such Subscriber acknowledges that it has been afforded (i) the opportunity to ask such questions as it has deemed necessary of, and to receive answers from, representatives of the Company concerning the terms and conditions of the offering of the Securities and the merits and risks of investing in the Securities; (ii) access to information about the Company and its respective financial condition, results of operations, business, properties, management and prospects sufficient to enable it to evaluate its investment; and (iii) the opportunity to obtain such additional information that the Company possesses or can acquire without unreasonable effort or expense that is necessary to make an informed investment decision with respect to the investment. In deciding to enter into this Agreement and the transactions contemplated hereby, such Subscriber has not relied upon any representations and warranties other than the express representations and warranties contained in the Loan Documents. The foregoing, however, does not limit or modify the representations and warranties made by the Company in this Agreement or any other provision in this Agreement or the right of the Subscribers to rely thereon. Such Subscriber has sought such accounting, legal and tax advice as it has considered necessary to make an informed decision with respect to its acquisition of the Securities.

(h) Transfer or Resale. Such Subscriber understands that: (i) the Securities have not been and are not being registered under the 1933 Act or any state securities laws, and may not be offered for sale, sold, assigned or transferred unless (A) subsequently registered thereunder, (B) such Subscriber shall have delivered to the Company (if requested by the Company) an opinion of counsel to such Subscriber, reasonably satisfactory to the Company as to such counsel and to the form of opinion, to the effect that such Securities may be sold, assigned or transferred without registration under the applicable requirements of the 1933 Act; provided, however, that Schulte Roth & Zabel LLP shall be deemed reasonably satisfactory to the Company; provided, further, that no such opinion shall be required to sell, assign or otherwise transfer all or any portion of such Securities to an Affiliate of the holder of the Securities, or (C) such Subscriber provides the Company with assurance reasonably satisfactory to the Company that such Securities can be sold, assigned or transferred pursuant to Rule 144 or to an accredited investor in a private transaction exempt from the registration requirements of the 1933 Act; (ii) any sale of the Securities made in reliance on Rule 144 may be made only in accordance with the terms of Rule 144; and (iii) neither the Company nor any other Person is under any obligation to register the Securities under the 1933 Act or any state securities laws or to comply with the terms and conditions of any exemption thereunder.

(i) Reliance on Exemptions. Such Subscriber understands that the Securities are being offered and sold to it in reliance on specific exemptions from the registration requirements of United States federal and state securities laws and that the Company is relying in part upon the truth and accuracy of, and such Subscriber's compliance with, the representations, warranties, agreements, acknowledgements and understandings of such Subscriber set forth herein in order to determine the availability of such exemptions and the eligibility of such Subscriber to acquire the Securities.

(j) No Governmental Review. Such Subscriber understands that no United States federal or state agency or any other government or governmental agency has passed on or made any recommendation or endorsement of the Securities or the fairness or suitability of the investment in the Securities nor have such authorities passed upon or endorsed the merits of the offering of the Securities.

(k) Legends. Such Subscriber understands that the certificates or other instruments representing the Warrants and the stock certificates representing the Warrant Shares, except as set forth below, shall bear a restrictive legend in substantially the following form (and a stop-transfer order may be placed against transfer of such stock certificates):

[NEITHER THE ISSUANCE AND SALE OF THE SECURITIES REPRESENTED BY THIS WARRANT NOR THE SECURITIES INTO WHICH THESE SECURITIES ARE EXERCISABLE HAVE BEEN][THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN] REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR APPLICABLE STATE SECURITIES LAWS. THE SECURITIES MAY NOT BE OFFERED FOR SALE, SOLD, TRANSFERRED OR ASSIGNED IN THE ABSENCE OF (A) AN EFFECTIVE REGISTRATION STATEMENT FOR THE SECURITIES UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR (B) AN OPINION OF COUNSEL SELECTED BY THE HOLDER, IN A FORM REASONABLY SATISFACTORY TO THE COMPANY, THAT REGISTRATION IS NOT REQUIRED UNDER SAID ACT. NOTWITHSTANDING THE FOREGOING, THE SECURITIES MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN OR FINANCING ARRANGEMENT SECURED BY THE SECURITIES.

The legend set forth above shall be removed and the Company shall issue a certificate without such legend to the holder of the Securities upon which it is stamped or issue to such holder by electronic delivery at the applicable balance account at The Depository Trust Company (“DTC”), if (i) such Securities are registered for resale under the 1933 Act and the holder has delivered to the Company a representation that such Securities have been sold pursuant to such registration statement, or (ii) in connection with a sale, assignment or other transfer, such holder provides the Company with an opinion of counsel, reasonably satisfactory to the Company as to such counsel and to the form of opinion, to the effect that such sale, assignment or transfer of the Securities may be made (or was made, as applicable under Rule 144) without registration under the applicable requirements of the 1933 Act; provided, however, that Schulte Roth & Zabel LLP shall be deemed reasonably satisfactory to the Company; provided, further, that no such opinion shall be required to sell, assign or otherwise transfer all or any portion of such Securities to an Affiliate of the holder of the Securities. The Company shall be responsible for the fees of its transfer agent and all DTC fees associated with such issuance.

The Company acknowledges and agrees that no Subscriber makes or has made any representations or warranties with respect to the transactions contemplated hereby or by any other Transaction Document other than those specifically set forth in Section 3.2.

ARTICLE IV.
OTHER AGREEMENTS OF THE PARTIES

4.1 Register; Pledge.

(a) The Company shall maintain at its principal executive offices (or such other office or agency of the Company as it may designate by notice to each holder of Securities), a register for each series of the Warrants in which the Company shall record the name and address of the Person in whose name the Warrants have been issued (including the name and address of each permitted transferee) the number of Warrant Shares issuable upon exercise of the Warrants held by such Person. The Company shall keep the register open and available at all times during business hours upon reasonable notice for inspection of any Subscriber or its legal representatives.

(b) The Company acknowledges and agrees that a Subscriber may from time to time pledge or grant a security interest in some or all of the Securities in connection with a bona fide margin agreement secured by the Securities and, if required under the terms of such agreement, such Subscriber may transfer pledged or secured Securities to the pledgees or secured parties. Such a pledge or transfer would not be subject to approval of the Company and no legal opinion of the pledgee, secured party or pledgor shall be required in connection therewith. Further, no notice shall be required of such pledge. At the appropriate Subscriber’s expense, the Company will execute and deliver such reasonable documentation as a pledgee or secured party of Securities may reasonably request in connection with a pledge or transfer of the Securities.

4.2 Integration. The Company shall not, and shall use its reasonable best efforts to ensure that no Affiliate of the Company shall, sell, offer for sale or solicit offers to buy or otherwise negotiate in respect of any security (as defined in Section 2 of the 1933 Act) that would be integrated with the offer or sale of the Securities in a manner that would require the registration under the 1933 Act of the sale of the Securities to the Subscribers or that would be integrated with the offer or sale of the Securities for purposes of the rules and regulations of the Principal Market.

4.3 Reservation and Listing of Securities. So long as any Subscriber owns any Warrants, the Company shall take all action necessary to at all times after the date hereof have authorized, and reserved for the purpose of issuance, no less than 100% of the number of shares of Common Stock issuable upon exercise of the Warrants then outstanding (without taking into account any limitations on the exercise of the Warrants set forth in the Warrants).

4.4 Form D and Blue Sky. The Company shall file a Form D with respect to the Securities as required under Regulation D. The Company shall, on or before the Closing Date, take such action as the Company shall reasonably determine is necessary in order to obtain an exemption for, or to, qualify the Securities for sale to the Subscribers at the Closing pursuant to this Agreement under applicable securities or "Blue Sky" laws of the states of the United States (or to obtain an exemption from such qualification), and shall provide evidence of any such action so taken to the Subscribers on or prior to the Closing Date. Without limiting any other obligation of the Company under this Agreement, the Company shall timely make all filings and reports relating to the offer and sale of the Securities required under all applicable securities laws (including, without limitation, all applicable federal securities laws and all applicable "Blue Sky" laws), and the Company shall comply with all applicable federal, state and local laws, statutes, rules, regulations and the like relating to the offering and sale of the Securities to the Subscribers.

4.5 Indemnification. In consideration of each Subscriber's execution and delivery of the Transaction Documents and acquiring the Securities thereunder and in addition to all of the Company's other obligations under the Transaction Documents, the Company shall defend, protect, indemnify and hold harmless each Subscriber and each other holder of the Warrants and all of their shareholders, partners, members, officers, directors, employees and investors and any of the foregoing Persons' agents or other representatives (including, without limitation, those retained in connection with the transactions contemplated by this Agreement) (collectively, the "**Indemnitees**") from and against any and all actions, causes of action, suits, claims, losses, costs, penalties, fees, liabilities and damages, and expenses in connection therewith (irrespective of whether any such Indemnitee is a party to the action for which indemnification hereunder is sought), and including reasonable attorneys' fees and disbursements (the "**Indemnified Liabilities**"), incurred by any Indemnitee as a result of, or arising out of, or relating to (a) any misrepresentation or breach of any representation or warranty made by the Company in the Transaction Documents, (b) any breach of any covenant, agreement or obligation of the Company contained in the Transaction Documents, or (c) any cause of action, suit or claim brought or made against such Indemnitee by a third party (including for these purposes a derivative action brought on behalf of the Company) and arising out of or resulting from (i) the execution, delivery, performance or enforcement of the Transaction Documents, or (ii) the status of such Subscriber as an investor in the Company pursuant to the transactions contemplated by the Transaction Documents. For the avoidance of doubt, clauses (a) and (b) of the preceding sentence are intended to apply, and shall apply, to direct claims asserted by any Subscriber against the Company as well as any third party claims asserted by an Indemnitee (other than a Subscriber) against the Company. To the extent that the foregoing undertaking by the Company may be unenforceable for any reason, the Company shall make the maximum contribution to the payment and satisfaction of each of the Indemnified Liabilities which is permissible under applicable law. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN ANY TRANSACTION DOCUMENT, THE COMPANY SHALL HAVE NO OBLIGATION TO ANY INDEMNITEE HEREUNDER WITH RESPECT TO (I) ANY INDEMNIFIED LIABILITIES TO THE EXTENT SUCH INDEMNIFIED LIABILITIES ARISE FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, AS DETERMINED BY A COURT OF COMPETENT JURISDICTION IN A FINAL ORDER SUBJECT TO NO FURTHER APPEAL, OF THAT INDEMNITEE OR ANY OF ITS AFFILIATES OR (II) ANY SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES RELATING TO ANY TRANSACTION DOCUMENT OR ARISING OUT OF ITS ACTIVITIES IN CONNECTION HERewith OR THEREWITH (WHETHER BEFORE OR AFTER THE CLOSING DATE).

ARTICLE V.
CLOSING DELIVERABLES

5.1 Closing Deliverables of the Company. At the Closing, the Company shall deliver to the Investors the following:

(a) Representations and Warranties; Certificates. The representations and warranties of the Company shall be true and correct in all material respects as of the date when made and as of the Closing Date as though made at that time (except for representations and warranties that speak as of a specific date which shall be true and correct as of such specified date) and the Company shall have performed, satisfied and complied in all material respects with the covenants, agreements and conditions required by the Transaction Documents to be performed, satisfied or complied with by the Company at or prior to the Closing Date. Such Subscriber shall have received a certificate, executed by the Chief Executive Officer of the Company, dated as of the Closing Date, to the foregoing effect and as to such other matters as may be reasonably requested by such Subscriber, in the form attached hereto as Exhibit B. In addition, such Subscriber shall have received a certificate, executed by the Secretary or other applicable officer of the Company, dated as of the Closing Date, as to the resolutions consistent with Section 3.1(a) as adopted by the Company's Board of Directors in a form reasonably acceptable to such Subscriber and the incumbency and specimen signature of each officer of the Company who may sign this Agreement and the other Transaction Documents, in the form attached hereto as Exhibit C.

(b) Transaction Documents. The Company shall have duly executed and delivered to such Subscriber (i) each of the Transaction Documents to which it is a party and (ii) Warrants for such aggregate number of shares of Common Stock as is set forth across from such Subscriber's name in column (3) of the Schedule of Subscribers.

(c) Legal Opinion. Such Subscriber shall have received the opinion of DLA Piper LLP (US), the Company's outside counsel, dated as of the Closing Date, in the form and substance reasonably acceptable to the Subscribers.

ARTICLE VI.
MISCELLANEOUS

6.1 Fees and Expenses. The Company shall reimburse the Designee or its designee(s) (in addition to any other expense amounts paid to any Subscriber prior to the date of this Agreement) for all reasonable and documented actual costs and expenses incurred in connection with the transactions contemplated by the Transaction Documents (including all reasonable and documented legal fees and disbursements in connection therewith and documentation and implementation of the transactions contemplated by the Transaction Documents) on or prior to the Closing, which amount shall be paid by the Company at the Closing. The Company shall pay, and hold each Subscriber harmless against, any liability, loss or expense (including, without limitation, reasonable attorney's fees and out-of-pocket expenses) arising in connection with any claim relating to any placement agent's fees, financial advisory fees, or broker's commissions (other than for any Persons engaged by any Subscriber) relating to or arising out of the transactions contemplated hereby as a result of an agreement entered into by the Company. Except as otherwise set forth in the Transaction Documents, each party to this Agreement shall bear its own expenses in connection with the sale of the Securities to the Subscribers.

6.2 Entire Agreement; Amendments. This Agreement and the other Transaction Documents supersede all other prior oral or written agreements between the Subscribers, the Company, their affiliates and Persons acting on their behalf with respect to the matters discussed herein, and this Agreement, the other Transaction Documents and the instruments referenced herein and therein contain the entire understanding of the parties with respect to the matters covered herein and therein and, except as specifically set forth herein or therein, neither the Company nor any Subscriber makes any representation, warranty, covenant or undertaking with respect to such matters. No provision of this Agreement may be amended other than by an instrument in writing signed by the Company and the Required Holders, and any amendment to this Agreement made in conformity with the provisions of this Section 6.2 shall be binding on all Subscribers and holders of Warrants. No provision hereof may be waived other than by an instrument in writing signed by the party against whom enforcement is sought. No such amendment shall be effective to the extent that it applies to less than all of the holders of Warrants then outstanding. The Company has not, directly or indirectly, made any agreements with any Subscribers relating to the terms or conditions of the transactions contemplated by the Transaction Documents except as set forth in the Transaction Documents. Without limiting the foregoing, the Company confirms that, except as set forth in this Agreement and the Financing Agreement, no Subscriber has made any commitment or promise or has any other obligation to provide any financing to the Company or otherwise. No consideration shall be offered or paid to any Person to amend or consent to a waiver or modification of any provision of any of the Transaction Documents unless the same consideration (other than the reimbursement of legal fees) also is offered to all of the parties to the Transaction Documents or holders of the Warrants, as the case may be.

6.3 Notices. Any notices, consents, waivers or other communications required or permitted to be given under the terms of this Agreement must be in writing and will be deemed to have been delivered: (a) upon delivery, when delivered personally; (b) upon confirmation of delivery, when sent by electronic mail; or (c) upon delivery or refusal of delivery when sent via a nationally recognized overnight delivery service, in each case properly addressed to the party to receive the same. The addresses, facsimile numbers and email addresses for such communications shall be:

If to the Company:	TherapeuticsMD, Inc. 951 Yamato Road, Suite 220 Boca Raton, FL 33431 Attention: General Counsel
With a copy (for information purposes only) to:	DLA Piper LLP (US) 200 South Biscayne Boulevard Suite 2500 Miami, FL 33131 Attention: Joshua M. Samek, Esq.
If to a Subscriber:	To its address set forth on the <u>Schedule of Subscribers</u> , with copies to such Subscriber's representatives as set forth on the <u>Schedule of Subscribers</u> .
With a copy (for information purposes only) to:	Schulte Roth & Zabel LLP 919 Third Avenue New York, NY 10022 Attention: F. Xavier Kowalski

or such other address as may be designated in writing hereafter, in the same manner, by such Person by two (2) Business Days' prior notice to the other party in accordance with this Section 6.3. Written confirmation of receipt (i) given by the recipient of such notice, consent, waiver or other communication, or (ii) provided by a courier or overnight courier service shall be rebuttable evidence of personal service or receipt from a nationally recognized overnight delivery service in accordance with clause (a) or (c) above, respectively.

6.4 Construction. The headings herein are for convenience only, do not constitute a part of this Agreement and shall not be deemed to limit or affect any of the provisions hereof. No specific representation or warranty shall limit the generality or applicability of a more general representation or warranty. The parties agree that each of them and/or their respective counsel has reviewed and had an opportunity to revise the Transaction Documents and, therefore, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of the Transaction Documents or any amendments hereto.

6.5 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties and their successors and permitted assigns. The Company may not assign this Agreement or any rights or obligations hereunder without the prior written consent of the Subscribers, except in connection with a Fundamental Transaction (as defined in the Warrant). Any Subscriber may assign its rights under this Agreement to any Person to whom such Subscriber assigns or transfers any Warrants, provided such transferee (i) agrees in writing in favor of the Company to be bound, with respect to the transferred Warrants, by the provisions hereof and of the applicable Transaction Documents that apply to the "Subscribers" and (ii) is not a Disqualified Institution (as defined in the Financing Agreement). Notwithstanding anything to the contrary herein, Securities may be pledged to any Person in connection with a bona fide margin account or other loan or financing arrangement secured by such Securities.

6.6 No Third-Party Beneficiaries. This Agreement is intended for the benefit of the parties hereto and their respective successors and permitted assigns and is not for the benefit of, nor may any provision hereof be enforced by, any other Person, except that each Indemnitee is an intended third party beneficiary of Section 4.5 and may enforce the provisions of such Sections directly against the parties with obligations thereunder.

6.7 Governing Law; Venue; Waiver of Jury Trial. This Agreement and the Warrants shall be governed by and construed and enforced in accordance with, and all questions concerning the construction, validity, interpretation and performance of this Agreement and the Warrants shall be governed by the internal laws of the State of New York, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New York or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of New York (except for matters governed by corporate law in the State of Nevada). The Company, each Subscriber and each holder of a Warrant, by acceptance thereof, agrees that all legal proceedings concerning the interpretations, enforcement and defense of the transactions contemplated by this Agreement and the Warrant (whether brought against any such party or its respective affiliates, directors, officers, stockholders, employees or agents) shall be commenced exclusively in the state and federal courts sitting in the City of New York, Borough of Manhattan. The Company, each Subscriber and each holder of a Warrant, by acceptance thereof, hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in the City of New York, Borough of Manhattan for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein (including with respect to the enforcement of this Agreement or a Warrant) and hereby irrevocably waives and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. **THE COMPANY, EACH SUBSCRIBER AND EACH HOLDER OF A WARRANT, BY ACCEPTANCE THEREOF, HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT, A WARRANT OR ANY TRANSACTION CONTEMPLATED HEREBY OR THEREBY.**

6.8 Survival. The representations, warranties, agreements and covenants contained herein shall survive the Closing and the delivery and/or exercise of the Warrants, as applicable.

6.9 Execution. This Agreement may be executed in two or more counterparts, all of which when taken together shall be considered one and the same agreement and shall become effective when counterparts have been signed by each party and delivered to the other party, it being understood that both parties need not sign the same counterpart. In the event that any signature is delivered by facsimile transmission or by an e-mail which contains a portable document format (.pdf) file of an executed signature page, such signature page shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) the same with the same force and effect as if such signature page were an original thereof.

6.10 Severability. If any provision of a Transaction Document is prohibited by law or otherwise determined to be invalid or unenforceable by a court of competent jurisdiction, the provision that would otherwise be prohibited, invalid, or unenforceable shall be deemed amended to apply to the broadest extent that it would be valid and enforceable, and the invalidity or unenforceability of such provision shall not affect the validity of the remaining provisions of the Transaction Document so long as the Transaction Document as so modified continues to express, without material change, the original intentions of the parties as to the subject matter hereof or thereof and the prohibited nature, invalidity or unenforceability of the provision(s) in question does not substantially impair the respective expectations or reciprocal obligations of the parties or the practical realization of the benefits that would otherwise be conferred upon the parties. The parties will endeavor in good faith negotiations to replace the prohibited, invalid, or unenforceable provision(s) with a valid provision(s), the effect of which comes as close as possible to that of the prohibited, invalid or unenforceable provision(s).

6.11 Rescission and Withdrawal Right. Notwithstanding anything to the contrary contained in (and without limiting any similar provisions of) the Transaction Documents, whenever any Subscriber exercises a right, election, demand or option under a Transaction Document and the Company does not timely perform its related obligations within the periods therein provided, then such Subscriber may rescind or withdraw, in its sole discretion from time to time upon written notice to the Company, any relevant notice, demand or election in whole or in part without prejudice to its future actions and rights.

6.12 Remedies. In addition to being entitled to exercise all rights provided herein or granted by law, including recovery of damages, the Company, each Subscriber and each holder of a Warrant, by acceptance thereof, will be entitled to specific performance under the Transaction Documents. Any Person having any rights under any provision of any Transaction Document shall be entitled to enforce such rights specifically (without posting a bond or other security), to recover damages by reason of any breach of any provision of the Transaction Document and to exercise all other rights granted by law. Furthermore, the Company, each Subscriber and each holder of a Warrant, by acceptance thereof, recognize that in the event that it fails to perform, observe, or discharge any or all of its obligations under the Transaction Documents, any remedy at law may prove to be inadequate relief to the other parties. Each of such parties therefore agrees that the other parties shall be entitled to seek specific performance and/or temporary, preliminary and permanent injunctive or other equitable relief from any court of competent jurisdiction in any such case without the necessity of showing economic loss and without any bond or other security being required.

6.13 Payment Set Aside. To the extent that the Company makes a payment or payments to any Subscriber hereunder or pursuant to any of the other Transaction Documents or any Subscriber enforces or exercises its rights hereunder or thereunder, and such payment or payments or the proceeds of such enforcement or exercise or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside, recovered from, disgorged by or are required to be refunded, repaid or otherwise restored to the Company or any Company Subsidiary by a trustee, receiver or any other person under any law (including, without limitation, any bankruptcy law, state or federal law, common law or equitable cause of action), then to the extent of any such restoration the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such enforcement or setoff had not occurred.

6.14 Further Assurances. The Company, each Subscriber and each holder of a Warrant, by acceptance thereof, shall do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other agreements, certificates, instruments and documents, as any other party may reasonably request in order to carry out the intent and accomplish the purposes of this Agreement and the consummation of the transactions contemplated hereby.

6.15 Replacement of Securities. If any certificate or instrument evidencing any Securities is mutilated, lost, stolen or destroyed, the Company shall issue or cause to be issued in exchange and substitution for and upon cancellation thereof, or in lieu of and substitution therefor, a new certificate or instrument, but only upon receipt of evidence reasonably satisfactory to the Company of such loss, theft or destruction and customary and reasonable indemnity, if requested. The applicants for a new certificate or instrument under such circumstances shall also pay any reasonable third-party costs associated with the issuance of such replacement Securities.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK
SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, each Subscriber and the Company have caused their respective signature page to this Agreement to be duly executed as of the date first written above.

COMPANY:

THERAPEUTICSMD, INC.

By: /s/ Robert G. Finizio

Name: Robert G. Finizio

Title: Chief Executive Officer

[Signature Page to Subscription Agreement]

IN WITNESS WHEREOF, each Subscriber and the Company have caused their respective signature page to this Agreement to be duly executed as of the date first written above.

SUBSCRIBER:

SIXTH STREET SPECIALTY LENDING, INC.

By: /s/ Joshua Easterly

Name: Joshua Easterly

Title: Chief Executive Officer

[Signature Page to Subscription Agreement]

IN WITNESS WHEREOF, each Subscriber and the Company have caused their respective signature page to this Agreement to be duly executed as of the date first written above.

SUBSCRIBER:

REDWOOD IV FINANCE 1, LLC

By: /s/ Joshua Peck

Name: Joshua Peck

Title: Vice President

[Signature Page to Subscription Agreement]

IN WITNESS WHEREOF, each Subscriber and the Company have caused their respective signature page to this Agreement to be duly executed as of the date first written above.

SUBSCRIBER:

TAO FINANCE 1, LLC

By: /s/ Joshua Peck

Name: Joshua Peck

Title: Vice President

[Signature Page to Subscription Agreement]

SCHEDULE OF SUBSCRIBERS

(1)	(2)	(3)	(4)
Subscriber	Address and Facsimile Number	Number of Warrant Shares	Legal Representative's Address and Facsimile Number
Sixth Street Specialty Lending, Inc.	2100 McKinney Ave, Suite 1500 Dallas Texas 75201 Attn: Joshua Peck; Sixth Street Legal	712,817	Schulte Roth & Zabel LLP 919 Third Avenue New York, New York 10022 Attention: F. Xavier Kowalski
Redwood IV Finance 1, LLC	2100 McKinney Ave, Suite 1500 Dallas Texas 75201 Attn: Joshua Peck; Sixth Street Legal	1,188,029	Schulte Roth & Zabel LLP 919 Third Avenue New York, New York 10022 Attention: F. Xavier Kowalski
TAO Finance 1, LLC	2100 McKinney Ave, Suite 1500 Dallas Texas 75201 Attn: Joshua Peck; Sixth Street Legal	2,851,270	Schulte Roth & Zabel LLP 919 Third Avenue New York, New York 10022 Attention: F. Xavier Kowalski

EXHIBIT A

Warrants

(See attached)

EXHIBIT B

Officer's Certificate

(See attached)

EXHIBIT C

Secretary's Certificate

(See attached)

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (this "Agreement"), by and between TherapeuticsMD, Inc., a Nevada corporation (the "Company"), and James C. D'Arecca ("Executive") is entered into and effective as of the 1st day of June 2020 (the "Effective Date").

WHEREAS, the Company and Executive now wish to provide for terms and conditions of Executive's continued employment with the Company, pursuant to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants set forth in this Agreement, the parties hereto agree as follows:

1. **Employment and Duties.**

(a) **Employment and Term.** The Company hereby agrees to employ Executive, and Executive hereby agrees to serve the Company, in accordance with the terms and conditions set forth herein, for a period of three (3) years, commencing as of the Effective Date (such three (3) year period, as it may be extended pursuant to this Section 1(a), the "Term"), unless sooner terminated pursuant to Section 3 hereof. Commencing on the third anniversary of the Effective Date, and each anniversary thereafter, the Term shall automatically be extended for one (1) additional year, unless at least ninety (90) days prior to such anniversary, the Company or Executive shall have given notice in accordance with Section 8 hereof that it or Executive does not wish to extend the Term.

(b) **Duties of Executive.** Executive shall serve as the Chief Financial Officer of the Company, shall diligently perform all services as may be reasonably assigned to Executive by the Company's Board of Directors (the "Board") or the Company's Chief Executive Officer (the "CEO"), of if delegated by the CEO the President of the Company or the Executive Vice President of Operations (the "President or EVP, Operations"). Executive shall exercise such power and authority as may from time to time be delegated to Executive by the Board, the CEO, and the President or EVP, Operations. Executive shall report solely and directly to the CEO (or to the President or EVP, Operations if instructed to by the CEO). During Executive's employment, Executive shall devote substantially all of Executive's full business time, energy, and ability exclusively to the business and interests of the Company, shall generally be physically present at the Company's offices in Boca Raton, Florida during normal business hours each week (other than permitted periods of working remotely, paid time off ("PTO") and on appropriate business travel for the benefit of the Company and shall not, without the Company's prior written consent, be engaged in any other business activity pursued for gain, profit, or other pecuniary advantage if such activity interferes in any material respect with Executive's duties and responsibilities hereunder. In Executive's capacity as the Chief Financial Officer of the Company, Executive shall do and perform all services, acts, or things necessary or advisable to manage and conduct the business of the Company, subject to the policies and procedures set by the Company, including but not limited to performing the Company's budgeting and forecasting, record keeping, internal and external reporting; performing financial risk management; managing – in conjunction with the CEO – the Company's internal relations functions; managing the Company's fundraising plans and capital structure; maintaining the Company's SOX compliance program, managing the Company's cash flow, overseeing the Company's finance systems; managing taxes, treasury, and other functions, and managing the finance organization. Except as otherwise agreed in writing by the Company, it shall not be a violation of this Agreement for Executive, and Executive shall be permitted, to (i) serve on any civic or charitable boards; (ii) deliver lectures, fulfill speaking engagements, or teach at educational institutions and other institutions; (iii) subject to any applicable Company policies, make personal investments in such form or manner as will neither require Executive's services in the operation or affairs of the companies or enterprises in which such investments are made nor subject Executive to any conflict of interest with respect to Executive's duties to the Company; and (iv) serve, with the written approval of the Board, as a director of one or more private or public companies, in each case so long as any such activities do not significantly interfere with the performance of Executive's responsibilities under this Agreement, create a conflict of interest, or create an adverse interest or position detrimental to Company.

(c) **Policies.** Executive shall faithfully adhere to, execute, and fulfill all lawful policies established by the Company as are communicated to Executive by the Company.

(d) **Place of Performance.** In connection with Executive's employment by the Company, Executive shall be based at the Company's principal executive offices in Boca Raton, Florida.

2. **Compensation.** For all services rendered by Executive, the Company shall compensate Executive as follows:

(a) **Base Salary.** Effective on the Effective Date, the base salary ("Base Salary") payable to Executive shall be Four hundred twenty thousand dollars (\$420,000) per year, payable on a regular basis in accordance with the Company's standard payroll procedures, but not less than monthly. The Board or a committee of the Board shall review Executive's performance on at least an annual basis and may make increases to such Base Salary if, in its sole discretion, any such increase is warranted. The Board may reduce the Base Salary without Executive's consent only if such reduction applies in the same or greater percentage to all other executives of the Company at the Chief level and above.

(b) **Annual Short-Term Incentive.** Executive shall be entitled to participate in the Company's annual short-term incentive compensation program, as such program may exist from time to time, at a level commensurate with that being offered to other executives of the Company at the Chief level and above. For calendar years beginning on or after January 1, 2020, the percentage of Base Salary targeted as annual cash short-term incentive compensation for each calendar year during the Term shall be seventy-five percent (75%) of Base Salary (the "Targeted Annual Bonus Award"). Executive acknowledges that the amount of annual short-term incentive compensation, if any, to be awarded shall be at the sole, good faith discretion of the Board or a committee of the Board, may be less or more than the Targeted Annual Bonus Award, and will be based on a number of factors determined by the Board or a committee of the Board for each calendar year, including the Company's performance in connection with, among other factors, the clinical program, regulatory filings, commercialization and/or sales, and Executive's individual performance. Any annual short-term incentive compensation earned for any calendar year shall be paid in the immediately following calendar year, as soon as practicable. Except as set forth in Sections 3(b)(ii), 3(b)(iii), and 3(b)(iv) hereof. Executive must be employed by the Company on the date on which short-term incentive compensation is paid in order to receive such short-term incentive compensation. Executive's 2020 bonus will not be prorated due to a mid-year start.

(c) **Long-Term Incentive.** Executive shall be entitled to participate in the Company's long-term incentive compensation program, as such program may exist from time to time, at a level commensurate with that being offered to other executives of the Company at the Chief level and above. Executive acknowledges that the amount of long-term incentive compensation, if any, to be awarded shall be at the sole, good faith discretion of the Board or a committee of the Board, and will be based on a number of factors determined by the Board or a committee of the Board for the applicable performance period, including the Company's performance in connection with, among other factors, the clinical program, regulatory filings, commercialization and/or sales, and Executive's individual performance. Any long-term incentive compensation earned for the applicable performance period shall be paid within the first two-and-a-half (2½) months of the calendar year immediately following the calendar year in which the applicable performance period ends. Except as otherwise set forth herein, Executive must be employed by the Company on the date on which long-term incentive compensation is paid to receive such long-term incentive compensation.

(d) **Restricted Stock Units.** As soon as practicable following the Effective Date and subject to approval by the Board of Directors, the Company will grant to Executive six hundred fifty-one thousand five hundred (651,500) restricted stock units ("RSUs") pursuant to the Company's 2019 Stock Incentive Plan, as the same may be amended from time to time (the "Plan"), which RSUs will vest in equal amounts annually over (3) years from the Effective Date, one-third vesting on each of June 1, 2021, June 1, 2022, and June 1, 2023, subject to Executive's continued employment with the Company and the terms and conditions in the Plan and an award agreement to be entered into between the Company and Executive. Executive will also be granted 151,500 performance share units ("PSUs") that will vest if the Company achieves EBITDA breakeven, provided EBITDA breakeven is accomplished on or before December 31, 2022.

(e) **Executive Perquisites, Benefits, and Other Compensation.** Executive shall be entitled to receive additional benefits and compensation from the Company in such form and to such extent as specified below:

(i) **Insurance Coverage.** During the Term, and as otherwise provided within the provisions of each of the respective plans, the Company shall make available to Executive all employee benefits to which other executives of the Company are entitled to receive, subject to the eligibility requirements and other provisions of such arrangements as applicable to executives of the Company generally. Such benefits shall include, but shall not be limited to, comprehensive health and major medical insurance, dental and life insurance, and short-term and long-term disability. The Company will provide to Executive D&O insurance and other insurance coverage typically provided to in-house legal counsel, including legal liability coverage, as reasonably necessary.

(ii) **Reimbursement for Expenses.** Reimbursement for business travel and other out-of-pocket expenses reasonably incurred by Executive in the performance of Executive's services under this Agreement, which shall be paid as paid for other executives of the Company at the Chief level and above., including, but not limited to, industry appropriate seminars and subscriptions and applicable licensing and continuing education expenses. All reimbursable expenses shall be appropriately documented in reasonable detail by Executive upon submission of any request for reimbursement and shall be in a format and manner consistent with the Company's expense reporting policy. Reimbursements under this section shall be paid within sixty (60) days following date of submission.

(iii) **Paid Time Off.** Executive shall be eligible to accrue PTO and utilize and carryover from year to year such PTO, consistent with the Company's policies and procedures in effect from time to time for executives of the Company at the Chief level and above.

(iv) **Other Executive Perquisites.** The Company shall provide Executive with other executive perquisites as may be made available to or deemed appropriate for Executive by the Board or a committee of the Board and participation in all other Company-wide employee benefits as are available to the Company's executives from time to time, including any plans, programs, or arrangements relating to retirement, deferred compensation, profit sharing, 401(k), and employee stock ownership.

(v) **Working Facilities.** During the Term, the Company shall furnish Executive with an office, staffing and administrative support and such other facilities and services suitable to Executive's position with the Company and adequate for the performance of Executive's duties hereunder, which will be reviewed and provided based on the Company's needs.

(vi) **Commute Expenses and Relocation.** The Company will reimburse Executive for his reasonable expenses with respect to his temporary housing or hotel, rental vehicle, and airfare to commute from his home to Boca Raton, Florida for a reasonable, mutually agreed upon period of time not to exceed two (2) years from the Effective Date. The Company will reimburse Executive for his reasonable expenses with respect to relocating his home to the Boca Raton, Florida area. Reimbursements under this section shall be paid within sixty (60) days following date of submission and in a manner consistent with the Company's policies and procedures in effect from time to time for executives of the Company at the Chief level and above.

3. **Term of Employment.**

(a) **Termination Under Certain Circumstances.**

(i) **Death.** Executive's employment and the Term shall be automatically terminated, without notice, effective upon the date of Executive's death.

(ii) **Disability.** If, as a result of incapacity due to physical or mental illness or injury, Executive shall have been absent from Executive's full-time duties hereunder for six (6) consecutive months, then thirty (30) days after giving written notice to Executive (which notice may occur before or after the end of such six (6) month period, but which shall not be effective earlier than the last day of such six (6) month period), the Company may terminate Executive's employment and the Term, provided Executive is unable to resume Executive's full-time duties at the conclusion of such notice period.

(iii) **Termination by the Company for Good Cause.** The Company may terminate Executive's employment and the Term upon ten (10) days prior written notice to Executive for "Good Cause," which shall mean any one or more of the following: (A) Executive's material breach of this Agreement (continuing for thirty (30) days after receipt of written notice of need to cure, if, in the Company's determination, such breach is curable); (B) Executive's negligence in the performance or intentional nonperformance (continuing for thirty (30) days after receipt of written notice of need to cure, if, in the Company's determination, such breach is curable) of any of Executive's material duties and responsibilities; (C) Executive's willful dishonesty, fraud, or misconduct with respect to the business or affairs of the Company; (D) Executive's indictment for, charge of, conviction of, or guilty or *nolo contendere* plea to a felony crime involving dishonesty or moral turpitude whether or not relating to the Company; (E) a confirmed positive drug test result for an illegal drug; or (F) a material sanction is imposed on Executive by any applicable professional organization or professional governing body including, for the avoidance of doubt, an accounting regulatory board.

(iv) **Termination by the Company Without Good Cause.** The Company may terminate Executive's employment and the Term at any time without Good Cause. A termination by Executive without Good Reason shall not be a breach of this Agreement by Executive.

(v) **Termination by Executive Without Good Reason.** Executive, at Executive's option and upon written notice to the Company, may terminate Executive's employment and the Term without Good Reason (as defined below) at any time, effective on the date of that notice.

(vi) **Termination by Executive With Good Reason.** At any time during the Term, Executive may terminate Executive's employment and the Term for Good Reason. For purposes of this Agreement, "Good Reason" shall mean (A) the assignment to Executive of material duties inconsistent with Executive's position as the Chief Financial Officer (including status, office, titles and reporting requirements), or any other action by the Company that results in a material diminution in such position, excluding for this purpose (i) any action not taken in bad faith and that is remedied by the Company promptly after receipt of a Notice of Termination for Good Reason (as defined below) thereof given by Executive and (ii) any change in status, office, titles and reporting requirements following a Change in Control of the Company in which the Company ceases to be a standalone public reporting company, provided that the material duties of Executive following such Change in Control are not inconsistent with those of Executive immediately prior to such Change in Control; (B) the Company requiring Executive to be based at any office or location other than in Palm Beach County, Florida, or within thirty-five (35) miles of such location, or such other location as mutually agreed to by the Company and Executive, except for travel reasonably required in the performance of Executive's responsibilities, provided, however, that this clause 3(iv)(B) will not have any force or effect until such time that and only for the period of time that Executive has permanently relocated his home and permanently resides within thirty-five (35) miles of the Company's Boca Raton headquarters; or (C) any material failure by the Company to comply with any of the provisions of this Agreement, other than a failure not occurring in bad faith and that is remedied by the Company promptly after receipt of a Notice of Termination for Good Reason given thereof by Executive. A termination of employment by Executive for Good Reason shall be effected by Executive's giving the Board written notice ("Notice of Termination for Good Reason") of the termination, setting forth in reasonable detail the specific conduct of the Company that constitutes Good Reason and the specific provision(s) of this Agreement on which Executive relies, within ninety (90) days of the initial existence of one of the conditions constituting Good Reason. A termination of employment by Executive for Good Reason shall be effective on the thirty-first (31st) day following the date when the Notice of Termination for Good Reason is given to the Company; provided that such a termination of employment shall not become effective if the Company shall have substantially corrected the circumstance giving rise to the Notice of Termination for Good Reason within thirty (30) days after the Company's receipt of such Notice of Termination for Good Reason.

(b) **Result of Termination.**

(i) Except as otherwise set forth in this Agreement, in the event of the termination of Executive's employment and the Term pursuant to Sections 3(a)(iii) ("Termination by the Company for Good Cause") or 3(a)(v) ("Termination by Executive Without Good Reason") hereof, Executive shall receive no further compensation under this Agreement other than the payment of Base Salary as shall have accrued and remained unpaid as of the date of termination, unreimbursed business expenses, and accrued but unused PTO consistent with the Company's policies and procedures therefor in effect at the time of such termination for officers of Executive's level.

(ii) In the event of the termination of Executive's employment and the Term pursuant to Sections 3(a)(iv) ("Termination by the Company Without Good Cause") or 3(a)(vi) ("Termination by Executive With Good Reason") hereof, (a) Executive shall, for a period of twelve (12) months following the effective date of such termination, continue to receive Executive's then current annual Base Salary, as provided in Section 2(a), (b) Executive shall receive an amount equal to Executive's Targeted Annual Bonus Award for the calendar year in which the termination of Executive's employment occurs, which amount shall be paid to Executive in a single lump sum, which is unpaid on the effective date of Executive's termination, and which shall be paid to Executive when paid to other similarly situated executives of the Company in accordance with Section 2(b) hereof, (c) Executive shall receive, beginning on the first payroll date occurring on or after the thirtieth (30th) day following the effective date of the termination of Executive's employment under this Agreement and for a period of twenty-four (24) months thereafter for a total of twenty-four (24) monthly payments, a monthly cash payment equal to the one (1) month cost of COBRA continuation of the health insurance benefits for Executive and Executive's immediate family as applicable, as the effective date of such termination, less, the one (1) month cost for the same health insurance benefits for Executive and Executive's immediate family as applicable that would have been incurred by Executive immediately prior to the effective date of such termination if Executive remained employed with the Company, (d) all unvested equity compensation of any kind (including, without limitation, stock options, restricted stock, RSUs, performance shares or PSUs) held by Executive in Executive's capacity as an employee of the Company on the effective date of the termination shall vest as of the effective date of such termination, (e) Executive shall receive payment for (1) Base Salary as shall have accrued and remained unpaid as of the date of termination, (2) unreimbursed business expenses, (3) accrued but unused PTO consistent with the Company's policies and procedures therefor in effect at the time of such termination for executives of the Company at the Chief level and above, and (4) any annual short-term incentive compensation earned pursuant to Section 2(b) hereof for the calendar year immediately preceding the calendar year in which the termination of Executive's employment occurs which is unpaid on the effective date of Executive's termination, which shall be paid to Executive when paid to other similarly situated executives of the Company in accordance with Section 2(b) hereof (the preceding clauses (e)(1), (e)(2), (e)(3) and (e)(4) collectively, the "Accrued Compensation").

(iii) In the event of the termination of Executive's employment and the Term pursuant to Sections 3(a)(i) ("Death") or 3(a)(ii) ("Disability") hereof, (a) Executive shall receive an amount equal to Executive's Targeted Annual Bonus Award for the calendar year in which the termination of Executive's employment occurs, multiplied by a fraction, the numerator of which is the number of full months of such calendar year during which Executive was employed with the Company, and the denominator of which is twelve (12), which amount shall be paid to Executive in a single lump sum on the first payroll date occurring on or after the thirtieth (30th) day following the effective date of the termination of Executive's employment under this Agreement, (b) all unvested equity compensation of any kind (including, without limitation, stock options, restricted stock, RSUs, performance shares or PSUs) held by Executive in Executive's capacity as an employee of the Company on the effective date of the termination shall vest as of the effective date of such termination, (c) Executive shall receive payment for the Accrued Compensation.

(iv) In the event of the termination of Executive's employment and the Term pursuant to Sections 3(a)(iv) ("Termination by the Company Without Good Cause") or 3(a)(vi) ("Termination by Executive With Good Reason") hereof during the twelve (12) month period immediately following a Change in Control or otherwise in connection with such Change in Control, then in lieu of any benefits or amounts otherwise payable under Section 3(b)(ii) hereof, (a) Executive shall, for a period of eighteen (18) months following the effective date of such termination, continue to receive Executive's then current annual Base Salary, as provided in Section 2(a), (b) Executive shall receive an amount equal to one and one half times (1.5x) Executive's Targeted Annual Bonus Award for the calendar year in which the termination of Executive's employment occurs, which amount shall be paid to Executive in a single lump sum on the first payroll date occurring on or after the thirtieth (30th) day following the effective date of the termination of Executive's employment under this Agreement, (c) Executive shall receive, beginning on the first payroll date occurring on or after the thirtieth (30th) day following the effective date of the termination of Executive's employment under this Agreement and for a period of eighteen (18) months thereafter for a total of eighteen (18) monthly payments, a monthly cash payment equal to the one (1) month cost of COBRA continuation of the health insurance benefits for Executive and Executive's immediate family as applicable, as the effective date of such termination, less, the one (1) month cost for the same health insurance benefits for Executive and Executive's immediate family as applicable that would have been incurred by Executive immediately prior to the effective date of such termination if Executive remained employed with the Company, (d) all unvested equity compensation of any kind (including, without limitation, stock options, restricted stock, RSUs, performance shares or PSUs) held by Executive in Executive's capacity as an employee of the Company on the effective date of the termination shall vest as of the effective date of such termination, (e) Executive shall receive payment for the Accrued Compensation.

(c) **Release.** Notwithstanding any other provision in this Agreement to the contrary, as a condition precedent to receiving any post-termination payments or benefits identified in Sections 3(b)(ii), 3(b)(iii) and 3(b)(iv) hereof, Executive agrees to execute (and not revoke) a full and complete release of all claims against the Company and its affiliates, in the form attached hereto as Exhibit A (subject to such modifications as the Company reasonably may request) (the “**Release**”). If Executive fails to execute and deliver to the Company the Release within twenty-one (21) days following the date of termination, or revokes the Release, within seven (7) days following the date Executive executes and delivers the Release, or materially breaches any term of this Agreement or any other agreement between Executive and the Company while receiving such post-termination payments or benefits, Executive agrees that Executive shall not be entitled to receive any such post-termination payments. For purposes of this Agreement, the Release shall be deemed to have been executed by Executive if it is signed by Executive’s legal representative in the case of legal incompetence or on behalf of Executive’s estate in the case of Executive’s death. Payment of any post-termination payments or benefits identified in Sections 3(b)(ii), 3(b)(iii) and 3(b)(iv) hereof shall be delayed until the first payroll date occurring on or after the thirtieth (30th) day following the effective date of the termination of Executive’s employment under this Agreement, and any payments that are so delayed shall be paid on the first payroll date occurring on or after the thirtieth (30th) day following the effective date of the termination of Executive’s employment under this Agreement.

(d) **Section 409A.** Any payments made by the Company pursuant to Sections 3(b)(ii), 3(b)(iii) and 3(b)(iv) hereof (except for unpaid annual short-term incentive compensation earned in the calendar year immediately preceding the calendar year in which the termination of Executive’s employment occurs, which shall be paid to Executive when paid to other similarly situated executives of the Company) shall be paid or commence on the first payroll date occurring on or after the thirtieth (30th) day following the effective date of Executive’s “separation from service” within the meaning of Section 409A (“**Section 409A**”) of the Internal Revenue Code of 1986, as amended (the “**Code**”). For purposes of applying the provisions of Section 409A to this Agreement, each separately identified amount to which Executive is entitled under this Agreement shall be treated as a separate payment. In addition, to the extent permissible under Section 409A, any series of installment payments under this Agreement shall be treated as a right to a series of separate payments. Executive shall receive no additional compensation following any termination except as provided herein. In the event of any termination, Executive shall resign all positions with the Company and its subsidiaries. If Executive is a “specified employee” within the meaning of Section 409A, then payments identified in Section 3(b) of this Agreement shall not commence until six (6) months following “separation from service” within the meaning of Section 409A to the extent necessary to avoid the imposition of the additional twenty percent (20%) tax under Section 409A (and in the case of installment payments, the first payment shall include all installment payments required by this subsection that otherwise would have been made during such six-month period). If the payments described in Section 3(b) are “deferred compensation” within the meaning of Section 409A and must be delayed for six (6) months pursuant to the preceding sentence, Executive shall not be entitled to additional compensation to compensate for such delay period. Upon the date such payment would otherwise commence, the Company shall reimburse Executive for such payments, to the extent that such payments otherwise would have been paid by the Company had such payments commenced upon Executive’s “separation from service” within the meaning of Section 409A. Any remaining payments shall be provided by the Company in accordance with the schedule and procedures specified herein. This Agreement is intended to satisfy the requirements of Section 409A with respect to amounts subject thereto, and shall be interpreted and construed consistent with such intent. Any reimbursements by the Company to Executive of any eligible expenses under this Agreement that are not excludable from Executive’s income for Federal income tax purposes (the “**Taxable Reimbursements**”) shall be made by no later than the last day of the taxable year of Executive following the year in which the expense was incurred. The amount of any Taxable Reimbursements, and the value of any in-kind benefits to be provided to Executive, during any taxable year of Executive shall not affect the expenses eligible for reimbursement, or in-kind benefits to be provided, in any other taxable year of Executive. The right to Taxable Reimbursement, or in-kind benefits, shall not be subject to liquidation or exchange for another benefit. Notwithstanding the foregoing, the Company does not make any representation to Executive that the payments or benefits provided under this Agreement are exempt from, or satisfy, the requirements of Section 409A, and the Company shall have no liability or other obligation to indemnify or hold harmless Executive or any beneficiary for any tax, additional tax, interest or penalties that Executive or any beneficiary may incur in the event that any provision of this Agreement, or any amendment or modification thereof, or any other action taken with respect thereto, is deemed to violate any of the requirements of Section 409A.

(e) **Section 280G.**

(i) **Certain Reductions in Agreement Payments.** Anything in this Agreement to the contrary notwithstanding, in the event a nationally recognized independent accounting firm designated by the Company and reasonably acceptable to Executive (the "Accounting Firm") shall determine that receipt of all payments or distributions by the Company and its affiliates in the nature of compensation to or for Executive's benefit, whether paid or payable pursuant to this Agreement or otherwise (a "Payment"), would subject Executive to the excise tax under Section 4999 of the Code, the Accounting Firm shall determine as required below in this Section 3(e) whether to reduce any of the Payments paid or payable pursuant to this Agreement (the "Agreement Payments") to the Reduced Amount (as defined below). The Agreement Payments shall be reduced to the Reduced Amount only if the Accounting Firm determines that Executive would have a greater Net After-Tax Receipt (as defined below) of aggregate Payments if Executive's Agreement Payments were so reduced. If the Accounting Firm determines that Executive would not have a greater Net After-Tax Receipt of aggregate Payments if Executive's Agreement Payments were so reduced, then Executive shall receive all Agreement Payments to which Executive is entitled.

(ii) **Accounting Firm Determinations.** If the Accounting Firm determines that aggregate Agreement Payments should be reduced to the Reduced Amount, then the Company shall promptly give Executive notice to that effect and a copy of the detailed calculation thereof. All determinations made by the Accounting Firm under this Section 3(e) shall be binding upon the Company and Executive and shall be made as soon as reasonably practicable and in no event later than twenty (20) days following the effective date of the termination of Executive's employment with the Company. For purposes of reducing the Agreement Payments to the Reduced Amount, only amounts payable under this Agreement (and no other Payments) shall be reduced. The reduction of the amounts payable hereunder, if applicable, shall be made (A) only from Payments that the Accounting Firm determines reasonably may be characterized as "parachute payments" under Section 280G of the Code; (B) only from Payments that are required to be made in cash, (C) only with respect to any amounts that are not payable pursuant to a "nonqualified deferred compensation plan" subject to Section 409A of the Code, until those payments have been reduced to zero, and (D) in reverse chronological order, to the extent that any Payments subject to reduction are made over time (e.g., in installments). In no event, however, shall any Payments be reduced if and to the extent such reduction would cause a violation of Section 409A of the Code or other applicable law. All fees and expenses of the Accounting Firm shall be borne solely by the Company.

(iii) Overpayments; Underpayments. As a result of the uncertainty in the application of Section 4999 of the Code at the time of the initial determination by the Accounting Firm hereunder, it is possible that amounts will have been paid or distributed by the Company to or for the benefit of Executive pursuant to this Agreement which should not have been so paid or distributed (an "Overpayment") or that additional amounts which will have not been paid or distributed by the Company to or for the benefit of Executive pursuant to this Agreement which should have been so paid or distributed (an "Underpayment"), in each case consistent with the calculation of the Reduced Amount hereunder. In the event that the Accounting Firm, based upon the assertion of a deficiency by the Internal Revenue Service against either the Company or Executive which the Accounting Firm believes has a high probability of success determines that an Overpayment has been made, Executive shall pay any such Overpayment to the Company together with interest at the applicable federal rate provided for in Section 7872(f)(2) of the Code; provided, however, that no amount shall be payable by Executive to the Company if and to the extent such payment would not either reduce the amount on which Executive is subject to tax under Section 1 and Section 4999 of the Code or generate a refund of such taxes. In the event that the Accounting Firm, based upon controlling precedent or other substantial authority, determines that an Underpayment has occurred, any such Underpayment shall be paid promptly (and in no event later than 60 days following the date on which the Underpayment is determined) by the Company to or for the benefit of Executive together with interest at the applicable federal rate provided for in Section 7872(f)(2) of the Code.

(iv) Definitions. The following terms shall have the following meanings for purposes of this Section 3:

(A) "Net After-Tax Receipt" shall mean the present value (as determined in accordance with Sections 280G(b)(2) (A)(ii) and 280G(d)(4) of the Code) of a Payment net of all taxes imposed on Executive with respect thereto under Sections 1 and 4999 of the Code and under applicable state and local laws, determined by applying the highest marginal rate under Section 1 of the Code and under state and local laws which applied to Executive's taxable income for the immediately preceding taxable year, or such other rate(s) as the Accounting Firm determined to be likely to apply to Executive in the relevant taxable year(s).

(B) "Reduced Amount" shall mean the greatest amount of Agreement Payments that can be paid that would not result in the imposition of the excise tax under Section 4999 of the Code if the Accounting Firm determines to reduce Agreement Payments pursuant to Section 3(e)(i) hereof.

4. **Competition and Non-Solicitation.**

(a) **Interests to be Protected.** The parties acknowledge that Executive will perform essential services for the Company, its employees, and its stockholders during the term of Executive's employment with the Company. Executive will be exposed to, have access to, and work with, a considerable amount of confidential information. The parties also expressly recognize and acknowledge that the personnel of the Company have been trained by, and are valuable to, the Company and that the Company will incur substantial recruiting and training expenses if the Company must hire new personnel or retrain existing personnel to fill vacancies. The parties expressly recognize that it could seriously impair the goodwill and diminish the value of the Company's business should Executive compete with the Company in any manner whatsoever. The parties acknowledge that this covenant has an extended duration; however, they agree that this covenant is reasonable and it is necessary for the protection of the Company, its stockholders, and employees. For these and other reasons, and the fact that there are many other employment opportunities available to Executive if Executive's employment is terminated, the parties are in full and complete agreement that the following restrictive covenants are fair and reasonable and are entered into freely, voluntarily, and knowingly. Furthermore, each party was given the opportunity to consult with independent legal counsel before entering into this Agreement.

(b) **Non-Competition.** During the term of Executive's employment with the Company and for eighteen (18) months after the termination of Executive's employment with the Company, which may be extended an additional twelve (12) months in the sole and absolute discretion of the Company for a total of thirty (30) months after termination of Executive's employment with the Company, regardless of the reason therefor, Executive shall not (whether directly or indirectly, as owner, principal, agent, stockholder, director, officer, manager, employee, partner, participant, or in any other capacity) engage or become substantially and directly financially interested in any Competitive Business Activities conducted within the Restricted Territory (as defined below). In the event of the termination of Executive's employment and the Term pursuant to Sections 3(a)(iv) ("Termination by the Company Without Good Cause") or 3(a)(vi) ("Termination by Executive With Good Reason") hereof, if the Company exercises its right to extend this non-competition clause by the additional twelve (12) months, then Executive will, (a) for a period of twelve (12) additional months, continue to receive Executive's then current annual Base Salary, as provided in Section 2(a) hereof, and (b) Executive will receive for a period of an additional six (6), a monthly cash payment equal to the one (1) month cost of COBRA continuation of the health insurance benefits for Executive and Executive's immediate family as applicable. As used herein, the term "Competitive Business Activities" shall mean business activities that are competitive with the business of the Company, including but not limited to, business activities in the pharmaceutical industry related to products that compete with the Company's products, and the term "Restricted Territory," shall mean any state or other geographical area in which the Company has demonstrated an intent to develop, commercialize, and/or distribute products during Executive's employment with the Company. Executive hereby agrees that, as of the date hereof, during Executive's employment with the Company, the Company has demonstrated an intent to develop, commercialize, and/or distribute products throughout the United States of America, Canada, Mexico, Brazil, Argentina, Europe, Australia, South Africa, Russia, Israel, Japan, and South Korea.

(c) **Non-Solicitation of Employees.** During the term of Executive's employment and for a period of twenty-four (24) months after the termination of Executive's employment with the Company, regardless of the reason therefor, Executive shall not directly or indirectly, for the Company, or on behalf of or in conjunction with any other person, company, partnership, corporation, or governmental or other entity, solicit for employment, seek to hire, or hire any person who is employed by the Company, is a consultant of the Company, or is an independent contractor of the Company, within twenty-four (24) months of the termination of Executive's employment, and, as related solely to consultants, for the purpose of having any such consultant engage in services that are the same as, similar to, or related to the services that such consultant provided for the Company and that are competitive with the services provided by the consultant for the Company.

(d) **Non-Solicitation of Customers.** During the term of Executive's employment and for a period of twenty-four (24) months after the termination of Executive's employment with the Company, regardless of the reason therefor, Executive shall not directly or indirectly, for the Company, or on behalf of, or in conjunction with, any other person, company, partnership, corporation, or governmental entity, call on, solicit, or engage in business with, any of the actual or targeted prospective customers or clients of the Company on behalf of any person or entity in connection with any Competitive Business, nor shall Executive make known the names and addresses of such actual or targeted prospective customers or clients, or any information relating in any manner to the trade or business relationships of the Company with such customers or clients, other than in connection with the performance of Executive's duties under this Agreement, and/or persuade or encourage or attempt to persuade or encourage any persons or entities with whom the Company does business or has some business relationship to cease doing business or to terminate its business relationship with the Company or to engage in any Competitive Business Activities on its own or with any competitor of the Company. As used herein, the term "Competitive Business" shall mean business that is directly competitive with the business of the Company, including but not limited to, business in the pharmaceutical industry related to products that directly compete with the Company's products.

(e) **Employee Assignment, Invention and Confidentiality Agreement.** Executive hereby affirms, acknowledges, and agrees that Executive will be subject to the terms and conditions set forth in that certain Employee Assignment, Invention, and Confidentiality Agreement (the "EAICA") by and between the Company and Executive and that this Agreement does not modify or amend the EAICA.

(f) **Equitable Relief.** In the event a violation of any of the restrictions contained in this Section 4 occurs, the Company shall be entitled to seek from a court of competent jurisdiction preliminary and permanent injunctive relief (without being required to post bond), reasonable attorneys' fees, and damages and an equitable accounting of all earnings, profits, and other benefits arising from such violation, which right shall be cumulative and in addition to any other rights or remedies to which the Company may be entitled. In the event of a violation of any provision of Section 4(b), Section 4(c), or Section 4(d) hereof, the period for which those provisions would remain in effect shall be extended for a period of time equal to that period beginning when such violation commenced and ending when the activities constituting such violation shall have been finally terminated in good faith.

(g) **Restrictions Separable.** If the scope of any provision of this Agreement (whether in this Section 4 or otherwise) is found by a court of competent jurisdiction to be too broad to permit enforcement to its full extent, then such provision shall be enforced to the maximum extent permitted by law. The parties agree that the scope of any provision of this Agreement may be modified by a judge in any proceeding to enforce this Agreement, so that such provision can be enforced to the maximum extent permitted by law. Each and every restriction set forth in this Section 4 is independent and severable from the others, and no such restriction shall be rendered unenforceable by virtue of the fact that, for any reason, any other or others of them may be unenforceable in whole or in part.

5. **Return of Company Property.** At any time as requested by the Company, or upon the termination of Executive's employment with the Company for any reason, Executive shall deliver promptly to the Company all files, lists, books, records, manuals, memoranda, drawings, and specifications; all other written or printed materials and computers, cell phones, and other equipment that are the property of the Company (and any copies of them); and all other materials that may contain confidential information relating to the business of the Company, which Executive may then have in Executive's possession or control, whether prepared by Executive or not.

6. **Cooperation.** Following the Term, Executive shall give assistance and cooperation willingly, upon reasonable advance notice with due consideration for Executive's other business or personal commitments, in any matter relating to Executive's position with the Company, or Executive's expertise or experience as the Company may reasonably request, including Executive's attendance and truthful testimony where deemed appropriate by the Company, with respect to any investigation or the Company's defense or prosecution of any existing or future claims or litigations or other proceedings relating to matters in which Executive was involved or potentially had knowledge by virtue of Executive's employment with the Company. The Company agrees that (a) it shall promptly reimburse Executive for Executive's reasonable and documented expenses in connection with rendering assistance and/or cooperation under this Section 6 upon Executive's presentation of documentation for such expenses and (b) Executive shall be reasonably compensated for his continued material services as required under this Section 6. The parties agree to negotiate the reasonable compensation reference in 6(b) in good faith.

7. **No Prior Agreements.** Executive hereby represents and warrants to the Company that the execution of this Agreement by Executive and Executive's employment by the Company and the performance of Executive's duties hereunder will not violate or be a breach of any agreement with a former employer, client, or any other person or entity. Further, Executive agrees to indemnify the Company for any claim, including, but not limited to, attorneys' fees and expenses of investigation, by any such third party that such third party may now have or may hereafter come to have against the Company based upon or arising out of any non-competition, invention, or secrecy agreement between Executive and such third party that was in existence as of the date of this Agreement.

8. **Miscellaneous.**

(a) **Notice.** All notices, requests, demands, and other communications required or permitted under this Agreement shall be in writing and shall be deemed to have been duly given, made, and received (i) if personally delivered, on the date of delivery, (ii) if by e-mail transmission, upon receipt, (iii) if mailed United States mail, registered or certified, return receipt requested, postage prepaid, and addressed as provided below, upon receipt or refusal of delivery, or (iv) if by a courier delivery service providing overnight or “next-day” delivery, upon receipt or refusal of delivery, in each case addressed as follows:

To the Company: TherapeuticsMD, Inc.
951 Yamato Road, Suite 220
Boca Raton, Florida 33431
Attention: Chief Executive Officer
Phone: (561) 961-1900

With a copy, which shall not constitute notice, to:

TherapeuticsMD, Inc.
951 Yamato Road, Suite 220
Boca Raton, Florida 33431
Attention: General Counsel
Phone: (561) 961-1900

To Executive: James C. D’Arecca

With a copy to: Stewart Reifler, Esq.
8 Brightfield Lane
Westport, Connecticut 06880
Phone: (203) 557-0722

Either party may alter the address to which communications or copies are to be sent by giving notice of such change of address in conformity with the provisions of this Section 8 for the giving of notice.

(b) **Indulgences; Waivers.** Neither any failure nor any delay on the part of either party to exercise any right, remedy, power, or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power, or privilege preclude any other or further exercise of the same or of any other right, remedy, power, or privilege, nor shall any waiver of any right, remedy, power, or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power, or privilege with respect to any other occurrence. No waiver shall be binding unless executed in writing by the party making the waiver.

(c) **Controlling Law.** This Agreement and all questions relating to its validity, interpretation, performance and enforcement, shall be governed by and construed in accordance with the laws of the State of Florida, notwithstanding any Florida or other conflict-of-interest provisions to the contrary, unless superseded by federal law. Venue for any action arising out of this Agreement or the employment relationship shall be brought only in courts of competent jurisdiction in or for Palm Beach County, Florida and each party hereby irrevocably waives, to the fullest extent permitted by law, any objection which they may now or hereafter have to the laying of venue in such courts and submits to the jurisdiction of such courts. **THE PARTIES (BY THEIR ACCEPTANCE HEREOF) HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHT EACH MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY DISPUTES BASED UPON OR ARISING OUT OF THIS AGREEMENT.**

(d) **Execution in Counterpart.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, and all of which shall together constitute one and the same instrument. This Agreement shall become binding when one or more counterparts hereof, individually or taken together, shall bear the signatures of the parties reflected hereon as the signatories.

(e) **Entire Agreement.** Except as herein contained, this Agreement contains the entire understanding between the parties hereto with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings, inducements, and conditions, express or implied, oral or written, which shall no longer have any force or effect. The express terms hereof control and supersede any course of performance and/or usage of the trade inconsistent with any of the terms hereof. This Agreement may not be modified or amended other than by an agreement in writing signed by Executive and an authorized representative with actual authority to bind Company.

(f) **Controlling Document.** If any provision of any agreement, plan, program, policy, arrangement or other written document between or relating to the Company and Executive conflicts with any provision of this Agreement, the provision of this Agreement shall control and prevail.

(g) **Section Headings.** The section headings in this Agreement are for convenience only; they form no part of this Agreement and shall not affect its interpretation.

(h) **Number of Days.** In computing the number of days for purposes of this Agreement, all days shall be counted, including Saturdays, Sundays, and holidays; provided, however, that if the final day of any time period falls on a Saturday, Sunday, or holiday, then the final day shall be deemed to be the next day that is not a Saturday, Sunday, or holiday.

(i) **Successors and Assigns.** This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto; provided that because the obligations of Executive hereunder involve the performance of personal services, such obligations shall not be delegated by Executive. For purposes of this Agreement, successors and assigns shall include, but not be limited to, any individual, corporation, trust, partnership, or other entity that acquires a majority of the stock or assets of the Company by sale, merger, consolidation, liquidation, or other form of transfer. The Company will require any successor (whether direct or indirect, by purchase, merger, consolidation, or otherwise) to all or substantially all of the business and/or assets of the Company to expressly assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform it if no such succession had taken place.

(j) **Tax Withholding.** The Company may withhold from any benefits payable under this Agreement all federal, state, city, or other taxes as may be required pursuant to any law or governmental regulation or ruling.

(k) **Survival.** The respective rights and obligations of the parties hereunder shall survive any termination of Executive's employment hereunder, including without limitation, the Company's obligations under Section 3 hereof and Executive's obligations under Section 4 hereof, and the expiration of the Term, to the extent necessary to the intended preservation of such rights and obligations.

(l) **Right to Consult with Counsel; No Drafting Party.** Executive acknowledges having read and considered all of the provisions of this Agreement carefully, and having had the opportunity to consult with counsel of Executive's own choosing, and, given this, Executive agrees that the obligations created hereby are not unreasonable. Executive acknowledges that Executive has had an opportunity to negotiate any and all of these provisions and no rule of construction shall be used that would interpret any provision in favor of or against a party on the basis of who drafted the Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

THERAPEUTICSMD, INC.

/s/ Robert Finizio

Robert Finizio

Chief Executive Officer

EXECUTIVE:

/s/ James C. D'Arecca

James C. D'Arecca

[Signature Page to Employment Agreement]

EXHIBIT A
FORM OF SEPARATION AGREEMENT AND RELEASE

This Separation Agreement (“Agreement”) is made between TherapeuticsMD, Inc. (“Company”) and _____ (“Employee”), intending to be legally bound, and in consideration of the mutual covenants contained herein, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Separation and Severance. Employee’s final day of employment with Company was _____. Although the parties agree that Company does not owe Employee any further consideration, as severance if this release is not executed by Employee, Company agrees to pay Employee as set forth in Employee’s Employment Agreement dated _____ (the “Employment Agreement”), provided Employee executes this Agreement, complies with its terms and the terms of Employee’s Employment Agreement[, and does not revoke this Agreement during the Revocation Period as defined in Section 8 below.]]¹ Employee acknowledges that no other compensation of any kind remains outstanding, that the consideration provided herein is more than Employee would otherwise be entitled to receive, that Employee shall not be entitled to any other payments or benefits from Company, and that no other amounts are due or owing or shall become due or owing relating to any obligation, agreement, or otherwise.

2. Execution of Separation Agreement. Should Employee wish to accept this Agreement, it must be signed and returned to _____ by _____.

3. EAICA. Employee acknowledges and agrees that Employee’s obligations contained in the paragraphs 2, 3, 4, 6, 8, 9, 10 and 11 of the Employee Assignment, Invention, and Confidentiality Agreement (“EAICA”) that Employee signed on _____, a copy of which is attached as Exhibit A, remain in full force and effect. The terms of this Agreement are in addition to and do not supersede the surviving terms of the EAICA.

4. Confidentiality of Agreement. Employee understands and agrees that the existence of this Agreement and the terms and conditions thereof, shall be considered confidential, and shall not be disclosed by Employee to any third party or entity except with the prior written approval of Company, to Employee’s spouse or attorney or financial advisor, or upon the order of a court of competent jurisdiction. Notwithstanding anything in this Agreement to the contrary, nothing in this Agreement or any other agreement between the Company and Employee shall prevent Employee from sharing information and communicating in good faith, without prior notice to the Company, with any federal government agency having jurisdiction over the Company or its operations, and cooperating in any investigation by any such federal government agency; provided that Employee receives no monies for compensatory or other damages as a result of participating in any such communication or cooperation with the EEOC.

¹ Employee will be entitled to a revocation period only if over the age of 40 at the date of termination.

5. Non-Disparagement. At all time Employee will refrain from and will not directly or indirectly engage in any conversation that would tend to negatively impact Company or any of its subsidiaries or any of its past and current directors and senior executives.

6. Return of Company Property. Employee agrees to immediately return to Company any and all property of Company in Employee's possession, custody, or control. No severance shall be paid pursuant to this Agreement until all Company property is returned.

7. Confidential Information. Employee acknowledges that Employee has had access to Company confidential and proprietary information and agrees that all such Confidential Information is and shall remain the exclusive property of Company. Employee further agrees that Employee shall not publish, disclose, or otherwise make available to any third party any such Confidential Information, except (i) as such disclosure or use may be or may have been required or appropriate in connection with his work as an employee of the Company, (ii) when required to do so by a court of law, by any governmental agency having supervisory authority over the business of the Company or by any administrative or legislative body (including a committee thereof) with apparent jurisdiction to order him to divulge, disclose or make accessible such information, (iii) as to such Confidential Information that becomes generally known to the public or trade without his violation of this Section 7 or (iv) to Employee's spouse, attorney and/or his personal tax and financial advisors as reasonably necessary or appropriate to advance Employee's tax, financial and other personal planning (each an "Exempt Person"), *provided, however*, that any disclosure or use of any Confidential Information by an Exempt Person shall be deemed to be a breach of this Section 7 by Employee. Employee acknowledges and agrees that Employee has continuing confidentiality obligations under the EAICA. Employee warrants that Employee has no materials containing Confidential Information, but if Employee does, Employee shall return immediately to Company any and all materials containing any Confidential Information in Employee's possession, custody, or control. The terms of this Separation Agreement comprise confidential information of the Company.

8. Release. That the undersigned, _____, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, intending to be legally bound, and Employee's past, present and future agents, representatives, attorneys, affiliates, heirs, executors, assigns and successors, and all other persons connected therewith, and on behalf of all successors and assigns, hereby releases and forever discharges TherapeuticsMD, Inc., vitaMedMD, LLC, BocaGreenMD, Inc., vitaCare Prescription Services and all of their past, present and future agents, representatives, principals, attorneys, affiliates, owners, parent corporations, subsidiaries, officers, directors, employees, assigns and successors, and all other persons, firms or corporations connected or affiliated therewith (collectively "Releasees"), of and from any and all legal, equitable or other claims, demands, setoffs, defenses, contracts, accounts, suits, debts, agreements, actions, causes of action, sums of money, judgments, findings, controversies, disputes, or past, present and future duties, responsibilities, obligations, or suits at law and/or equity of whatsoever kind, from the beginning of the world to the date hereof, in addition, without limitation, any and all actions, causes of action, claims, counterclaims, third party claims, and any and all other federal, state, local and/or municipality statutes, laws and/or regulations and any ordinance and/or common law pertaining to employment or otherwise and any and all other claims which have been or which could have been asserted against any party in any forum.

By signing this Agreement, Employee knowingly and voluntarily fully releases and forever discharges Releasees of and from all claims, demands and liability of any kind arising under any statute, law or ordinance, including, without limitation, Title VII of the Civil Rights Act of 1964, the Fair Labor Standards Act, the National Labor Relations Act, the Americans with Disabilities Act, any state Human Rights Act, Fla. Stat. 448, or any facts or claims arising under the Age Discrimination in Employment Act (“ADEA”). This release is intended to cover all actions, causes of action, claims and demands for damages, loss or injury arising from the beginning of time until the date of this Agreement, whether presently known or unknown to Employee. However, Employee does not waive Employee’s rights to claims which may arise after this Agreement becomes effective.

In addition, Employee is hereby advised to consult with an attorney prior to executing this Agreement. Employee agrees that Employee has been given a reasonable time in which to consider the Agreement and seek such consultation. Employee further warrants that Employee has consulted with knowledgeable persons concerning the effect of this Agreement and all rights which Employee might have under any and all state and federal laws relating to employment and employment discrimination and otherwise. Employee fully understands these rights and that by signing this Agreement Employee forfeits all rights to sue Releasees for matters relating to or arising out of employment, separation, or otherwise.

In accordance with provisions of the ADEA, as amended, 29 U.S.C. §601-634, Employee is hereby provided a period of twenty-one (21) days from the date Employee receives this Agreement to review the waiver of rights under the ADEA and sign this Agreement. Furthermore, Employee has seven (7) days after the date Employee signs the Agreement (“Revocation Period”) to revoke Employee’s consent. This Agreement shall not become effective or enforceable until the Revocation Period has expired. If Employee does not deliver a written revocation to _____ before the Revocation Period expires, this Agreement will become effective.

Notwithstanding anything in this Section 8 to the contrary, releases contained in this Agreement shall not apply to (i) any rights to receive any payments or benefits pursuant to Sections 3(b)(ii), 3(b)(iii) or 3(b)(iv) of the Employment Agreement, (ii) any rights or claims that may arise as a result of events occurring after the date this Agreement is executed, (iii) any indemnification rights Employee may have as a former officer or director of the Company or its subsidiaries or affiliated companies, (iv) any claims for benefits under any directors’ and officers’ liability policy maintained by the Company or its subsidiaries or affiliated companies in accordance with the terms of such policy, (v) any claims for vested benefits under any Company pension benefit plan or welfare benefit plan in which Employee and his dependents participate, and/or (vi) any rights as a holder of equity securities of the Company.

9. Opportunity to Seek Counsel. The parties represent that they have had an opportunity to retain legal counsel to represent them in connection with this matter, that they have been advised of the legal effect and consequences of this Agreement, that they have entered into this Agreement knowingly, freely and voluntarily of their own volition, and that they have not been coerced, forced, harassed, threatened or otherwise unduly pressured to enter into this Agreement.

10. Reporting of Known Issues. As a further condition to your receipt of the benefits described in this Agreement, you hereby represent and warrant that you have reported in writing to _____ any unethical conduct or violations of laws, regulations, Company policies and procedures by the Company, a Company employee, or a Company officer of which you are aware.

11. No Admissions. This Agreement is not and shall not in any way be construed as an admission by either party of any wrongful act or omission, or any liability due and owing, or any violation of any federal, state or local law or regulation.

12. Miscellaneous. This Agreement may not be amended or modified except in writing signed by Employee and an authorized representative with actual authority to bind Company, specifically stating that it is an amendment to this Agreement. This Agreement shall be governed by and construed in accordance with Sections 4(g) (Restrictions Separable), 8(a) (Notice), 8(b) (Indulgences; Waivers), 8(c) (Controlling Law), 8(d) (Execution in Counterpart), 8(f) (Section Headings), and 8(k) (Right to Consult with Counsel; No Drafting Party) of the Employment Agreement. This Agreement and the Employment Agreement constitute the entire Agreement between the parties hereto with respect to the subject matter hereof; provided, however, that Employee's continuing obligations to the Company under the terms of the EAICA are incorporated herein and shall remain in full force and effect as set forth herein.

IN WITNESS THEREOF, the parties hereto acknowledge, understand and agree to this Agreement and intend to be bound by all of the clauses contained in this document.

EMPLOYEE

THERAPEUTICSMD, INC.

By: _____

[Employee]

Its: _____

Date: _____

Date: _____

CERTIFICATION OF CHIEF EXECUTIVE OFFICER

I, Robert G. Finizio, certify that:

- (1) I have reviewed this quarterly report on Form 10-Q of TherapeuticsMD, 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.

August 6, 2020

/s/ Robert G. Finizio

Robert G. Finizio
Chief Executive Officer
(Principal Executive Officer)

CERTIFICATION OF CHIEF FINANCIAL OFFICER

I, James C. D'Arecca, certify that:

- (1) I have reviewed this quarterly report on Form 10-Q of TherapeuticsMD, 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.

August 6, 2020

/s/ James C. D'Arecca

James C. D'Arecca
Chief Financial Officer
(Principal Financial Officer)

SECTION 1350 CERTIFICATION OF CHIEF EXECUTIVE OFFICER

In connection with the quarterly report of TherapeuticsMD, Inc. (the "Company") on Form 10-Q for the quarterly period ended June 30, 2020 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Robert G. Finizio, Chief Executive Officer of the Company, certify, to my best knowledge and belief, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) 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(a) or 78o(d)); and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and result of operations of the Company.

August 6, 2020

/s/ Robert G. Finizio

Robert G. Finizio
Chief Executive Officer
(Principal Executive Officer)

A signed original of this certification has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

SECTION 1350 CERTIFICATION OF CHIEF FINANCIAL OFFICER

In connection with the quarterly report of TherapeuticsMD, Inc. (the "Company") on Form 10-Q for the quarterly period ended June 30, 2020 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, James C. D'Arecca, Chief Financial Officer of the Company, certify to my best knowledge and belief, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) 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(a) or 78o(d)); and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and result of operations of the Company.

August 6, 2020

/s/ James C. D'Arecca
James C. D'Arecca
Chief Financial Officer
(Principal Financial Officer)

A signed original of this certification has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.