UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

Form 8-K

Current Report
Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): **August 15, 2018 (August 10, 2018)**

ASSERTIO THERAPEUTICS, INC.

(Exact name of registrant as specified in its charter)

001-13111
(Commission File Number)

Delaware	**94-3229046**
(State or other jurisdiction of incorporation)	(I.R.S. Employer Identification No.)

100 S. Saunders Road, Suite 300
Lake Forest, IL 60045
(Address of principal executive offices, with zip code)

(224) 419-7106
(Registrant's telephone number, including area code)

Depomed, Inc.
7999 Gateway Blvd., Suite 300
Newark, California 94560
(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (*see* General Instruction A.2. below):

o Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

o Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

o Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

o Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth Company o

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

Item 1.01. Entry into a Material Definitive Agreement.

Pursuant to an Agreement and Plan of Merger dated as of August 10, 2018 (the "Reincorporation Merger Agreement" and, as consummated, the "Reincorporation Merger"), on August 14, 2018 at 11:59 p.m. Eastern (the "Effective Time"), Depomed, Inc., a California corporation ("Depomed-California"), merged with and into Assertio Therapeutics, Inc., a Delaware corporation and wholly owned subsidiary of Depomed-California prior to the Effective Time ("Assertio-Delaware"), with Assertio-Delaware continuing as the surviving corporation (the "Reincorporation and Name Change"). The Reincorporation Merger was approved by Depomed-California's shareholders at the 2018 Annual Meeting of Shareholders on May 8, 2018, for which proxies were solicited pursuant to Section 14(a) of the Securities Exchange Act of 1934, as amended (the "Exchange Act") and effectuated by a Certificate of Merger filed with the Delaware and California Secretaries of State (the "Certificate of Merger"). The use of the "Company" herein refers to Depomed-California any time prior to the Effective Time and to Assertio-Delaware any time after the Effective Time.

Pursuant to Rule 12g-3(a) under the Exchange Act and as of the Effective Time, Assertio-Delaware is deemed the successor issuer to Depomed-California and the shares of the Company's common stock, par value $0.0001 per share (the "Common Stock"), are deemed to be registered under Section 12(b) of the Exchange Act. The Reincorporation Merger did not alter any Stockholders's percentage ownership interest or number of shares owned in

the Company. As of market open on August 15, 2018, the Company's Common Stock trades on the Nasdaq Global Select Market under the ticker symbol "ASRT" and new CUSIP number 04545L 107.

Other than the change in the Company's name and state of incorporation, the Reincorporation and Name Change itself did not result in any change in the business, management, assets, liabilities or capitalization of the Company. The descriptions of the Reincorporation Merger Agreement and the Certificate of Merger contained herein do not purport to be complete and are qualified in their entirety by the full text of each, which are attached hereto as Exhibit 2.1 and Exhibit 3.1 respectively.

Corporate Governance and Stockholder Rights

Pursuant to the Reincorporation Merger Agreement, at the Effective Time, the board of directors and officers of Depomed-California immediately prior to the Reincorporation Merger became the board of directors and officers of Assertio-Delaware. Each continued their directorship or services with the Company on the same terms as their directorship or service immediately prior to the Effective Time. In addition, the standing committees of the Company's Board of Directors (the Audit Committee, the Compensation Committee, the Nominating and Corporate Governance Committee and the Opioid Matter Oversight Committee) and the members thereof remain unchanged following the Effective Time.

As a result of the Reincorporation and Name Change, the internal affairs of the Company ceased to be subject to the California Corporation Code or governed by Depomed-California's Articles of Incorporation (the "California Articles") and its Bylaws (the "California Bylaws"). As of the Effective Time, the Company is subject to the Delaware General Corporation Law ("DGCL") and governed by the Assertio-Delaware Certificate of Incorporation (the "Delaware Certificate") and Bylaws (the "Delaware Bylaws"). While the Company sought to maintain the material rights of stockholders, and the Delaware Certificate and the Delaware Bylaws contain provisions that are similar to the provisions of the California Articles and California Bylaws, there are also key differences that may impact the rights of stockholders. A description of certain of these differences, as well as certain differences between the California Corporations Code and the DGCL, are included in the proxy statement filed by Depomed-California with the Securities and Exchange Commission on March 27, 2018 (the "2018 Proxy"), under "Proposal 3" and "Proposal 4," both of which are incorporated herein by reference. The descriptions of the Delaware Certificate and the Delaware Bylaws contained herein, including those incorporated by reference to the 2018 Proxy, do not purport to be complete are qualified in their entirety by the full text of the Delaware Certificate and the Delaware Bylaws filed as Exhibit 3.2 and Exhibit 3.3, respectively, to this Current Report on Form 8-K and incorporated herein by reference. A specimen copy of the Company's new form stock certificate is filed as Exhibit 3.4 to this Current Report on Form 8-K.

Company Equity Plans

All outstanding Depomed-California equity awards, including stock options to purchase Depomed-California common stock and restricted stock units and performance stock units representing the right to receive Depomed-California common stock upon vesting, that were outstanding under Depomed-California's equity incentive plans, including its Second Amended and Restated 2004 Equity Incentive Plan, its Amended and Restated 2014 Omnibus Incentive Plan and its Amended and Restated 2004 Employee Stock Purchase Plan (the "Equity Plans"), or granted as inducement grants, as well as options, restricted stock units, performance stock units or other equity awards granted under the Equity Plans or granted as inducement grants in the future, have been assumed by Assertio-Delaware and will represent an option, restricted stock unit or performance stock unit, as applicable, to acquire or receive shares of Assertio-Delaware on a one-for-one basis and, in the case of stock options, at an exercise price equal to the exercise price of the Depomed-California option. Other than a change in the identity of the Company to which the awards granted under the Equity Plans are subject, the terms and conditions of these equity awards has not changed.

Entry into Second Supplemental Indenture

Concurrent with the Reincorporation Merger, Assertio-Delaware entered into a Second Supplemental Indenture dated August 14, 2018, with the Bank of New York Mellon Trust Company, N.A., as trustee (the "Trustee"), pursuant to which Assertio-Delaware assumed Depomed-California's obligations under the indenture dated as of September 9, 2014 (the "Base Indenture"), as supplemented by the First Supplemental Indenture dated as of September 9, 2014 (the "Supplemental Indenture") among Depomed-California and the Trustee providing for the issuance of 2.50% Convertible Senior Notes due 2021. The foregoing description does not purport to be complete and is subject to and qualified in its entirety by the full text of each of the Base Indenture and the First Supplemental Indenture filed as Exhibits 4.1 and 4.2, respectively, to the Current Report on Form 8-K filed by Depomed-California on September 9, 2014, and the Second Supplemental Indenture filed as Exhibit 4.1 to this Current Report on Form 8-K, all of which are incorporated herein by reference.

Note Purchase Agreement Consent and Assumption Agreement

In connection with the Reincorporation and Name Change, on August 14, 2018, Assertio-Delaware and Depomed-California entered into a Consent to Note Purchase Agreement and Assumption Agreement (the "Deerfield Consent") with certain purchasers, credit parties and Deerfield Private Design Fund III, L.P., as purchaser and collateral agent ("Deerfield" and together, the "Purchasers") with respect to the Note Purchase Agreement, dated as of March 12, 2015, among the Company, the purchaser parties thereto and Deerfield (as supplemented or amended on December 29, 2015, December 4, 2017, and August 1, 2018, the "Purchase Agreement"). Pursuant to the Deerfield Consent, the Purchasers provided their consent to the Reincorporation Merger and Assertio-Delaware assumed Depomed-California's obligations under the Purchase Agreement. The foregoing description does not purport to be complete and is qualified in its entirety by the full text of the Deerfield Consent filed as Exhibit 10.1 to this Current Report on Form 8-K and incorporated herein by reference.

Director and Officer Indemnification Agreements

Also in connection with the Reincorporation Merger, the Company has entered into indemnification agreements with each of its officers and directors in which the Company agrees to hold harmless and indemnify the officer or director to the fullest extent permitted by the DGCL. The foregoing description does not purport to be complete and is qualified in its entirety by reference to the full text of the Form of Indemnification Agreement, a copy of which is filed as Exhibit 10.2 to this Current Report on Form 8-K and incorporated herein by reference.

Management Continuity Agreements

In connection with the Reincorporation and Name Change, the Company adopted a Form of Amended and Restated Management Continuity Agreement (the "Management Continuity Agreement") which the Company expects to be entered into with certain executive officers of the Company. The form of Management Continuity Agreement contains substantively similar provisions to the Depomed-California form in use immediately prior to the Effective Time.

The form of Management Continuity Agreement provides, among other things, that in the event that the executive officer suffers a change in control involuntary termination (as defined in the Management Continuity Agreement), the executive officer will receive: (i) 100% acceleration of such officer's unvested Company equity based awards; (ii) a lump sum severance payment equal to 24 months (if the officer is the chief executive officer), or 12 months (if the officer is not the chief executive officer) of the base salary which the officer was receiving immediately prior to or following to the change of control, whichever is higher; (iii) a lump sum payment equal to two times (if such officer is the chief executive officer) or equal to (if the officer is not the chief executive officer) such officer's target annual bonus that may be earned for performance during the Company's fiscal year in which a termination occurs, and (iv) continuation of payment by the Company of its portion of the health insurance benefits provided to such officers immediately prior to the change of control through the earlier of 24 months (if the officer is the chief executive officer) or 12 months (if the officer is not the chief executive officer) or until such officer is no longer eligible for such benefits under applicable law.

In addition, the Management Continuity Agreements provides, among other things, that in the event the executive officer is subject to an other involuntary termination (as defined in the Management Continuity Agreement), the executive officer will receive: (i) acceleration of 12 months' of such officer's unvested Company equity awards if the officer is the chief executive officer; and (ii) severance payments for a period of 18 months (if the officer is the chief executive officer) or 12 months (if the officer is not the chief executive officer), equal to the base salary which the officer was receiving immediately prior to the change of control; and (iii) continuation of payment by the Company of the full cost of the health insurance benefits provided to such officers immediately prior to the change of control through the earlier of the end of the severance period or until such officer is no longer eligible for such benefits under applicable law.

The foregoing description does not purport to be complete and is subject to and qualified in its entirety by the full text of the form of Management Continuity Agreement, filed as Exhibit 10.3 to this Current Report on Form 8-K and incorporated herein by reference.

Item 2.03 Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.

The disclosures set forth in Item 1.01 of this Current Report on Form 8-K are incorporated by reference into this Item 2.03.

As of the Effective Time, Assertio-Delaware assumed and succeeded to by operation of law all of the prior debts, liabilities, obligations and duties of Depomed-California and such debts, liabilities, obligations and duties may be enforced against Assertio-Delaware to the same extent as if the Assertio-Delaware had itself incurred or contracted all such debts, liabilities, obligations and duties. For more information concerning these debts, liabilities, obligations and duties, see generally Depomed-California's Annual Report on Form 10-K for the year ended December 31, 2017, Quarterly Reports on Form 10-Q for the quarters ended March 31, 2018 and June 30, 2018, and Current Reports on Form 8-K filed during 2018.

Item 3.03. Material Modification to Rights of Security Holders.

The disclosures set forth in Item 1.01 of this Current Report on Form 8-K are incorporated by reference into this Item 3.03.

Item 5.02. Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

The disclosures set forth in Item 1.01 of this Current Report on Form 8-K are incorporated by reference into this Item 5.02.

Item 5.03. Amendments to Articles of Incorporation or By-Laws; Change in Fiscal Year.

The disclosures set forth in Item 1.01 of this Current Report on Form 8-K are incorporated by reference into this Item 5.03.

Item 8.01. Other Events.

On August 15, 2018, the Company issued a press release announcing the completion of the Reincorporation and Name Change. A copy of that press release is furnished as Exhibit 99.1 and is incorporated herein by reference.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits

Exhibit No.	Description
2.1	Agreement and Plan of Merger, dated August 10, 2018, by and between Depomed Inc., a California corporation and Assertio Therapeutics, Inc., a Delaware corporation
3.1	Certificate of Merger effective August 14, 2018 at 11:59 p.m. Eastern
3.2	Certificate of Incorporation of Assertio Therapeutics, Inc., a Delaware corporation
3.3	Bylaws of Assertio Therapeutics, Inc., a Delaware corporation
3.4	Specimen Common Stock Certificate of Assertio Therapeutics, Inc., a Delaware corporation
4.1	Second Supplemental Indenture, dated August 14, 2018, by and between Assertio Therapeutics, Inc., a Delaware corporation, and the Bank of New York Melon Trust Company, N.A. as Trustee
10.1	Consent to Note Purchase Agreement and Assumption Agreement dated August 14, 2018.
10.2	Form of Indemnification Agreement of Assertio Therapeutics, Inc., a Delaware corporation.

10.3	Form of Amended and Restated Management Continuity Agreement of Assertio Therapeutics, Inc., a Delaware Corporation.
99.1	Press release dated August 15, 2018, announcing the Reincorporation and Name Change

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 hereunto duly authorized.

DEPOMED, INC.

Date: August 15, 2018

By: /s/ Amar Murugan
Amar Murugan
Senior Vice President and General Counsel

AGREEMENT AND PLAN OF MERGER
OF

ASSERTIO THERAPEUTICS, INC.
A DELAWARE CORPORATION,

AND

DEPOMED, INC.,
A CALIFORNIA CORPORATION

This AGREEMENT AND PLAN OF MERGER, dated as of August 10, 2018 (the "**Merger Agreement**"), is made by and between Assertio Therapeutics, Inc., a Delaware corporation ("**Depomed-Delaware**"), and Depomed, Inc., a California corporation ("**Depomed-California**"). Depomed-Delaware and Depomed-California are referred to herein as the "**Constituent Corporations**." Depomed-Delaware is a wholly-owned subsidiary of Depomed-California.

RECITALS

A. Depomed-Delaware is a corporation duly incorporated and existing under the laws of the State of Delaware and has a total authorized capital stock of 205,000,000 shares, of which 200,000,000 are designated common stock, par value $0.0001 per share (the "**Depomed-Delaware Common Stock**"), and 5,000,000 are designated Preferred Stock, par value $0.0001 per share (the "**Depomed-Delaware Preferred Stock**"). The Depomed-Delaware Preferred Stock is undesignated as to series, rights, preferences, privileges or restrictions. As of the date hereof, and before giving effect to the transactions contemplated hereby, 1,000 shares of Depomed-Delaware Common Stock are issued and outstanding, all of which are held by Depomed-California, and no shares of Depomed-Delaware Preferred Stock are issued and outstanding.

B. Depomed-California is a corporation duly incorporated and existing under the laws of the State of California and has a total authorized capital stock of 205,000,000 shares, of which 200,000,000 are designated common stock, without par value (the "**Depomed-California Common Stock**"), and 5,000,000 are designated Preferred Stock, without par value (the "**Depomed-California Preferred Stock**"). The Depomed-California Preferred Stock is undesignated as to series, rights, preferences, privileges or restrictions. As of the date hereof, and before giving effect to the transactions contemplated hereby, 63,915,766 shares of Depomed-California Common Stock, and no shares of Depomed-California Preferred Stock are issued and outstanding.

C. The Board of Directors of Depomed-California has determined that, for the purpose of effecting the reincorporation of Depomed-California in the State of Delaware, it is advisable and in the best interests of Depomed-California and its shareholders that Depomed-California merge with and into Depomed-Delaware upon the terms and conditions herein provided.

D. The Constituent Corporations intend, by executing this Merger Agreement, to adopt a plan of reorganization within the meaning of Section 368 of the Internal Revenue Code of 1986, as amended (the "**Code**"), and to cause the Merger (as defined below) to qualify as a reorganization under the provisions of Section 368 of the Code.

E. The respective Boards of Directors of the Constituent Corporations and the shareholders of Depomed-California have approved this Merger Agreement and have directed that this Merger Agreement be executed by the undersigned officers.

NOW, THEREFORE, in consideration of the mutual agreements and covenants set forth herein, Depomed-Delaware and Depomed-California hereby agree, subject to the terms and conditions hereinafter set forth, as follows:

1. MERGER

1.1 Merger. In accordance with the provisions of this Merger Agreement, the General Corporation Law of the State of Delaware (the "**DGCL**") and the California Corporations Code, Depomed-California shall be merged with and into Depomed-Delaware (the "**Merger**"), the separate existence of Depomed-California shall cease and Depomed-Delaware shall be, and is herein sometimes referred to as, the "Surviving Corporation," and the name of the Surviving Corporation shall be Depomed, Inc.

1.2 Filing and Effectiveness. The Merger shall become effective in accordance with Section 1108 of the California Corporations Code and Section 252 of the DGCL. The date and time when the Merger shall become effective, as aforesaid, is herein called the "Effective Date."

1.3 Effect of the Merger. Upon the Effective Date, the separate existence of Depomed-California shall cease, and Depomed-Delaware, as the Surviving Corporation, shall: (i) continue to possess all of its assets, rights, powers and property as constituted immediately prior to the Effective Date, (ii) be subject to all actions previously taken by its and Depomed- California's Boards of Directors, (iii) succeed, without other transfer, to all of the assets, rights, powers and property of Depomed-California in the manner as more fully set forth in Section 259 of the DGCL, (iv) continue to be subject to all of its debts, liabilities and obligations as constituted immediately prior to the Effective Date, and (v) succeed, without other transfer, to all of the debts, liabilities and obligations of Depomed-California in the same manner as if Depomed-Delaware had itself incurred them, all as more fully provided under the applicable provisions of the DGCL and the California Corporations Code.

2. CHARTER DOCUMENTS, DIRECTORS AND OFFICERS

2.1 Certificate of Incorporation. The Certificate of Incorporation of Depomed-Delaware as in effect immediately prior to the Effective Date (the "**Certificate of Incorporation**") shall continue in full force and effect as the Certificate of Incorporation of the Surviving Corporation until duly amended in accordance with the provisions thereof and applicable law.

2.2 Bylaws. The Bylaws of Depomed-Delaware as in effect immediately prior to the Effective Date shall continue in full force and effect as the Bylaws of the Surviving Corporation until duly amended in accordance with the provisions thereof and applicable law.

2.3 Directors and Officers. The Constituent Corporations shall take all necessary action such that the directors and officers of Depomed-California immediately prior to the Effective Date shall be the directors and officers of the Surviving Corporation until their successors shall have been duly elected and qualified or until as otherwise provided by law, the Certificate of Incorporation of the Surviving Corporation or the Bylaws of the Surviving Corporation.

3. MANNER OF CONVERSION OF STOCK

3.1 Depomed-California Common Stock. Upon the Effective Date, each share of Depomed-California Common Stock issued and outstanding immediately prior thereto shall, by virtue of the Merger and without any action by the Constituent Corporations, the holder of such shares or any other person, be converted into and exchanged for one (1) fully paid and nonassessable share of Depomed-Delaware Common Stock.

3.2 Depomed-Delaware Common Stock. Upon the Effective Date, each share of Depomed-Delaware Common Stock issued and outstanding immediately prior thereto shall, by virtue of the Merger and without any action by Depomed-Delaware, or the holder of such shares or any other person, be cancelled and returned to the status of authorized and unissued shares of Depomed-Delaware Common Stock, without any consideration being delivered in respect thereof.

3.3 Exchange of Certificates. After the Effective Date, each holder of an outstanding certificate representing shares of Depomed-California Common Stock may, at such shareholder's option, surrender the same for cancellation to an exchange agent designated by the Surviving Corporation (the "**Exchange Agent**"), and each such holder shall be entitled to receive, in exchange therefor, a certificate or certificates representing the number of shares of Depomed-Delaware Common Stock into which the shares formerly represented by the surrendered certificate were converted as herein provided. Until so surrendered, each certificate that represented shares of Depomed-California Common Stock outstanding immediately prior to the Effective Date shall be deemed for all purposes, from and after the Effective Date, to represent the number of shares of Depomed-Delaware Common Stock into which such shares of Depomed-California Common Stock were converted in the Merger. In addition:

(a) The registered owner on the books and records of the Surviving Corporation or the Exchange Agent of any shares of stock represented by such certificate shall, until such certificate shall have been surrendered for transfer or conversion or otherwise accounted for to the Surviving Corporation or the Exchange Agent, have and be entitled to exercise any voting and other rights with respect to and to receive dividends and other distributions upon the shares of Depomed-Delaware Common Stock represented by such certificate as provided above.

(b) Each certificate representing shares of Depomed-Delaware Common Stock so issued in the Merger shall bear the same legends, if any, with respect to the restrictions on transferability as the certificate of Depomed-California so converted and given in exchange therefor, unless otherwise determined by the Board of Directors of the Surviving Corporation in compliance with applicable laws.

3.4 Depomed-California Employee Benefit and Equity Incentive Plans.

(a) Upon the Effective Date, the Surviving Corporation shall assume and continue any and all employee benefit and incentive compensation plans existing immediately prior to the Effective Date, including all stock option, stock incentive and other equity-based award plans heretofore adopted by Depomed-California (collectively, the "**Plans**"). Each outstanding and unexercised option, warrant, restricted stock unit or other right to purchase or receive, or security convertible into, Depomed-California Common Stock shall become an option, warrant, restricted stock unit or other right to purchase or receive, or security convertible into, Depomed-Delaware Common Stock on the basis of one (1) share of Depomed-Delaware Common Stock for each one (1) share of Depomed-California Common Stock issuable pursuant to any such option, warrant, restricted stock unit or right to purchase or receive, or convertible security, on the same terms and conditions as were applicable to such option, warrant, restricted stock unit, other right or security prior to the Effective Date. For avoidance of doubt, the Depomed-Delaware stock options, warrants, rights and securities will, as applicable, have an exercise price per share equal to the exercise price per share applicable to any such Depomed-California option, warrant, right and security prior to the Effective Date. Other than the change in the identity of the corporation to which the awards granted under the Plans are subject, no other changes in the terms and conditions of such options, restricted stock units or other equity awards will occur.

(b) A number of shares of Depomed-Delaware Common Stock shall be reserved for issuance under the Plans equal to the number of shares of Depomed-California Common Stock so reserved immediately prior to the Effective Date.

(c) The registration statements of Depomed-California on file with the SEC immediately prior to the effective time of the Merger will be assumed by Depomed-Delaware, and the shares of Common Stock of Depomed-Delaware will continue to be listed on the NASDAQ.

4. CONDITIONS

4.1 Conditions to Depomed-California's Obligations. The obligations of Depomed-California under this Merger Agreement shall be conditioned upon the occurrence of the following events:

(a) The principal terms of this Merger Agreement shall have been duly approved by the shareholders of Depomed-California;

(b) Any consents, approvals or authorizations that Depomed-California deems necessary or appropriate to be obtained in connection with the consummation of the Merger shall have been obtained, including, but not limited to, approvals with respect to federal and state securities laws; and

(c) The Depomed-Delaware Common Stock to be issued and reserved for issuance in connection with the Merger shall have been approved for listing by the NASDAQ Stock Market.

5. GENERAL

5.1 Covenants of Depomed-Delaware. Depomed-Delaware covenants and agrees that it will, on or before the Effective Date:

(a) File this Merger Agreement with the Secretary of State of the State of California; and

(b) Take such other actions as may be required by the California Corporations Code.

5.2 Further Assurances. From time to time, as and when required by Depomed-Delaware or by its successors or assigns, there shall be executed and delivered on behalf of Depomed-California such deeds and other instruments, and there shall be taken or caused to be taken by Depomed-Delaware and Depomed-California such further and other actions, as shall be appropriate or necessary in order to vest or perfect in or conform of record or otherwise by Depomed-Delaware the title to and possession of all the property, interests, assets, rights, privileges, immunities, powers, franchises and authority of Depomed-California and otherwise to carry out the purposes of this Merger Agreement, and the officers and directors of Depomed-Delaware are fully authorized in the name and on behalf of Depomed-California or otherwise to take any and all such action and to execute and deliver any and all such deeds and other instruments.

5.3 Abandonment. At any time before the Effective Date, this Merger Agreement may be terminated and the Merger may be abandoned for any reason whatsoever by the Board of Directors of either or both of the Constituent Corporations, notwithstanding the approval of this Merger Agreement by the shareholders of Depomed-California or by the sole stockholder

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of Depomed-Delaware, or by both. In the event of the termination of this Merger Agreement, this Merger Agreement shall become void and of no effect and there shall be no obligations on either Constituent Corporation or their respective Board of Directors, shareholders or stockholders with respect thereto.

5.4 Amendment. The Boards of Directors of the Constituent Corporations may amend this Merger Agreement at any time prior to the effectiveness of the filing of this Merger Agreement (or a certificate of merger in lieu thereof) with the Secretaries of State of the States of California and Delaware, provided that an amendment made subsequent to the adoption of this Merger Agreement by the shareholders or stockholders of either Constituent Corporation shall not, unless approved by such shareholders or stockholders as required by law:

(a) Alter or change the amount or kind of shares, securities, cash, property and/or rights to be received in exchange for or on conversion of all or any of the shares of any class or series thereof of such Constituent Corporation;

(b) Alter or change any term of the Certificate of Incorporation of the Surviving Corporation to be effected by the Merger; or

(c) Alter or change any of the terms and conditions of this Merger Agreement if such alteration or change would adversely affect the holders of any class or series of capital stock of any Constituent Corporation.

5.5 Governing Law. This Merger Agreement shall in all respects be construed, interpreted and enforced in accordance with and governed by the laws of the State of Delaware and, so far as applicable, the merger provisions of the California Corporations Code.

5.6 Counterparts. In order to facilitate the filing and recording of this Merger Agreement, the same may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument.

(***Remainder of this page intentionally left blank.***
Signatures of the parties follow on the next page.)

IN WITNESS WHEREOF, this Merger Agreement, having first been approved by resolutions of the Boards of Directors of Assertio Therapeutics, Inc., a Delaware corporation, and Depomed, Inc., a California corporation, and is hereby executed on behalf of each of such two corporations and attested by their respective officers thereunto duly authorized.

ASSERTIO THERAPEUTICS, INC.
a Delaware corporation

By: /s/ Arthur J. Higgins
Arthur J. Higgins
President

By: /s/ Phillip B. Donenberg
Phillip B. Donenberg
Secretary

DEPOMED, INC.,
a California corporation

By: /s/ Arthur J. Higgins
Arthur J. Higgins
President and Chief Executive Officer

By: /s/ Phillip B. Donenberg
Phillip B. Donenberg
Senior Vice President and Chief Financial Officer

CERTIFICATE OF MERGER

OF

DEPOMED, INC.,
(a California corporation)

WITH AND INTO

ASSERTIO THERAPEUTICS, INC.,
(a Delaware corporation)

Pursuant to Section 252 of the
Delaware General Corporation Law

Assertio Therapeutics, Inc., a Delaware corporation, hereby certifies as follows pursuant to Section 103 of the Delaware General Corporation Law (the "DGCL"):

FIRST: The names and states of incorporation of the constituent corporations to this merger are as follows:

Name of Corporation	State of Incorporation
Depomed, Inc.	California
Assertio Therapeutics, Inc.	Delaware

SECOND: An Agreement and Plan of Merger has been approved, adopted, certified, executed and acknowledged by each of the constituent corporations in accordance with Section 252(c) of the DGCL, by Assertio Therapeutics, Inc. in accordance with Section 228 of the DGCL and by Depomed, Inc. in accordance with Section 1108 of the California Corporations Code.

THIRD: The name of the corporation surviving the merger is Assertio Therapeutics, Inc.

FOURTH: The Certificate of Incorporation of Assertio Therapeutics, Inc. shall be the certificate of incorporation of the surviving corporation until further amended in accordance with the DGCL.

FIFTH: The executed Agreement and Plan of Merger is on file at an office of the surviving corporation, the address of which is 100 S. Saunders Road, Suite 300, Lake Forest, IL 60045. A copy of the Agreement and Plan of Merger will be furnished by the surviving corporation on request, without cost, to any stockholder of the constituent corporations.

SIXTH: The authorized capital stock of Depomed, Inc. consists of 200,000,000 shares of common stock, without par value, and 5,000,000 shares of preferred stock, without par value.

SEVENTH: This Certificate of Merger, and the merger referenced herein, shall be effective at 11:59 p.m. (local time in Wilmington, Delaware) on August 14, 2018.

[Signature page follows]

IN WITNESS WHEREOF, the undersigned corporation has caused this Certificate of Merger to be executed by its undersigned duly authorized officer on the date set forth below.

ASSERTIO THERAPEUTICS, INC.

By: /s/ Arthur J. Higgins
Arthur J. Higgins
President

Date: August 10, 2018

CERTIFICATE OF INCORPORATION
OF
ASSERTIO THERAPEUTICS, INC.
(a Delaware corporation)

ARTICLE I
NAME

The name of the corporation is Assertio Therapeutics, Inc. (the "Corporation").

ARTICLE II
AGENT

The address of the Corporation's registered office in the State of Delaware is 1209 Orange Street, Wilmington, New Castle County, Delaware 19801. The name of its registered agent at such address is The Corporation Trust Company.

ARTICLE III
PURPOSE

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware (the "DGCL").

ARTICLE IV
STOCK

Section 4.1 Authorized Stock. The total number of shares which the Corporation shall have authority to issue is 205,000,000 of which 200,000,000 shall be designated as Common Stock, par value $0.0001 per share (the "Common Stock"), and 5,000,000 shall be designated as Preferred Stock, par value $0.0001 per share (the "Preferred Stock").

Section 4.2 Common Stock.

(a) Each holder of Common Stock, as such, shall be entitled to one vote for each share of Common Stock held of record by such holder on all matters on which stockholders generally are entitled to vote; provided, however, that, except as otherwise required by law, holders of Common Stock, as such, shall not be entitled to vote on any amendment to this Certificate of Incorporation, including any certificate of designations relating to any series of Preferred Stock (each hereinafter referred to as a "Preferred Stock Designation"), that relates solely to the terms of one or more outstanding series of Preferred Stock if the holders of such affected series are entitled, either separately or together with the holders of one or more other such series, to vote thereon pursuant to this Certificate of Incorporation (including any Preferred Stock Designation).

(b) Dividends. Subject to the rights of the holders of any outstanding series of Preferred Stock, the holders of shares of Common Stock shall be entitled to receive dividends to the extent permitted by law when, as and if declared by the Board of Directors.

(c) Liquidation. Upon or following the dissolution, liquidation or winding up of the Corporation, subject to the rights of the holders of any outstanding series of Preferred Stock, the holders of shares of Common Stock shall be entitled to receive the assets of the Corporation available for distribution to its stockholders ratably in proportion to the number of shares held by them.

Section 4.3 Preferred Stock. The Preferred Stock may be issued from time to time in one or more series. Subject to limitations prescribed by law and the provisions of this Article IV, the Board of Directors is hereby authorized to provide by resolution and by causing the filing of a Preferred Stock Designation for the issuance of the shares of Preferred Stock in one or more series, and to establish from time to time the number of shares to be included in each such series, and to fix the designations, powers, preferences, and relative, participating, optional or other rights, if any, and the qualifications, limitations or restrictions, if any, of the shares of each such series.

Section 4.4 No Class Vote on Changes in Authorized Number of Shares of Stock. Subject to the rights of the holders of any outstanding series of Preferred Stock, the number of authorized shares of any class or classes of stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of at least a majority of the voting power of the stock entitled to vote thereon irrespective of the provisions of Section 242(b)(2) of the DGCL.

ARTICLE V
STOCKHOLDER ACTION

Section 5.1 Action by Written Consent. Except as otherwise provided for or fixed pursuant to the provisions of Article IV hereof (including any Preferred Stock Designation), any action required or permitted to be taken at any annual or special meeting of the stockholders of the Corporation may be taken without a meeting, without prior notice and without a vote by consent in accordance with Section 228 of the DGCL.

Section 5.2 Ability of Stockholders to Call Special Meetings of Stockholders. Except as otherwise required by law, and except as otherwise provided for or fixed pursuant to the provisions of Article IV hereof (including any Preferred Stock Designation), a special meeting of the stockholders of the Corporation may be called by the Board of Directors, the Chairman of the Board, the President, or the Secretary of the Corporation, and shall be called by the Chairman of the Board or the Secretary upon the written request of the holders that own (as defined in the Bylaws of the Corporation, as amended from time (the "Bylaws")) shares that as of the record date as fixed or determined in accordance with the Bylaws to determine who may deliver a written request to call the special meeting, represented not less than 10% of the voting power of the stock entitled to vote on the matters to be considered at the proposed special meeting. Stockholder-requested special meetings shall be subject to any conditions, procedures and requirements set forth in the Bylaws. Except as otherwise provided for or fixed pursuant to the

provisions of Article IV hereof (including any Preferred Stock Designation) and this Article V, the stockholders of the Corporation shall not have the ability to call a special meeting of stockholders. Any action permitted by the Bylaws may be considered and voted upon at such stockholder-requested special meeting. For the avoidance of doubt, Preferred Stock Directors may be removed at stockholder-requested special meetings if the applicable Preferred Stock Designation so provides.

ARTICLE VI
BUSINESS COMBINATIONS WITH INTERESTED STOCKHOLDERS

The Corporation hereby expressly elects that it shall not be bound or governed by, or otherwise subject to, Section 203 of the DGCL.

ARTICLE VII
EXISTENCE

The Corporation shall have perpetual existence.

ARTICLE VIII
AMENDMENT

Section 8.1 Amendment of Certificate of Incorporation. The Corporation reserves the right at any time, and from time to time, to amend, alter, change or repeal any provision contained in this Certificate of Incorporation (including any Preferred Stock Designation), and other provisions authorized by the laws of the State of Delaware at the time in force may be added or inserted, in the manner now or hereafter prescribed by the laws of the State of Delaware, and all powers, preferences and rights of any nature conferred upon stockholders, directors or any other persons by and pursuant to this Certificate of Incorporation (including any Preferred Stock Designation) in its present form or as hereafter amended are granted subject to this reservation.

Section 8.2 Amendment of Bylaws. In furtherance and not in limitation of the powers conferred by the laws of the State of Delaware, the Board of Directors is expressly authorized to adopt, amend or repeal the Bylaws of the Corporation. Except as otherwise required in this Certificate of Incorporation (including the terms of any Preferred Stock Designation that require an additional vote) or the Bylaws of the Corporation, and in addition to any requirements of law, the affirmative vote of at least a majority of the voting power of the stock outstanding and entitled to vote thereon, voting together as a single class, shall be required for the stockholders to adopt, amend or repeal any provision of the Bylaws of the Corporation.

ARTICLE IX
LIABILITY OF DIRECTORS

Section 9.1 No Personal Liability. To the fullest extent permitted by the DGCL as the same exists or as may hereafter be amended, no director of the Corporation shall be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director.

Section 9.2 Amendment or Repeal. Any amendment, alteration or repeal of this Article X that adversely affects any right of a director shall be prospective only and shall not limit or eliminate any such right with respect to any proceeding involving any occurrence or alleged occurrence of any action or omission to act that took place prior to such amendment, alteration or repeal.

ARTICLE X
INCORPORATOR

The name and mailing address of the incorporator are as follows:

Eric W. Yang
Gibson, Dunn & Crutcher LLP
333 South Grand Avenue
Los Angeles, CA 90071-3197

ARTICLE XI
ELECTION OF INITIAL DIRECTORS

The powers of the incorporator are to terminate upon the filing of this Certificate of Incorporation with the Secretary of State of the State of Delaware. The name and mailing address of the persons who are to serve as the initial directors of the Corporation until the first annual meeting of stockholders of the Corporation, or until their successors shall have been duly elected and qualified, are:

James P. Fogarty
c/o Assertio Therapeutics, Inc.
100 S. Saunders Road, Suite 300,
Lake Forest, IL 60045

Karen A. Dawes
c/o Assertio Therapeutics, Inc.
100 S. Saunders Road, Suite 300,
Lake Forest, IL 60045

Arthur J. Higgins
c/o Assertio Therapeutics, Inc.
100 S. Saunders Road, Suite 300,
Lake Forest, IL 60045

Louis J. Lavigne Jr.
c/o Assertio Therapeutics, Inc.
100 S. Saunders Road, Suite 300,
Lake Forest, IL 60045

William T. McKee
c/o Assertio Therapeutics, Inc.
100 S. Saunders Road, Suite 300,
Lake Forest, IL 60045

Peter D. Staple
c/o Assertio Therapeutics, Inc.
100 S. Saunders Road, Suite 300,
Lake Forest, IL 60045

James L. Tyree
c/o Assertio Therapeutics, Inc.
100 S. Saunders Road, Suite 300,
Lake Forest, IL 60045

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IN WITNESS WHEREOF, the undersigned incorporator hereby acknowledges that the foregoing Certificate of Incorporation is his act and deed and that the facts stated herein are true.

Dated: July 18, 2018

By: /s/ Eric W. Yang
Name: Eric W. Yang
Title: Incorporator

BYLAWS

OF

ASSERTIO THERAPEUTICS, INC.

(a Delaware corporation)

ARTICLE I
CORPORATE OFFICES

Section 1.1 Registered Office. The registered office of Assertio Therapeutics, Inc., a Delaware corporation (the "Corporation") shall be fixed in the Certificate of Incorporation of the Corporation.

Section 1.2 Other Offices. The Corporation may also have an office or offices, and keep the books and records of the Corporation, except as otherwise required by law, at such other place or places, either within or without the State of Delaware, as the Board of Directors may from time to time determine or the business of the Corporation may require.

ARTICLE II
MEETINGS OF STOCKHOLDERS

Section 2.1 Annual Meeting. The annual meeting of stockholders, for the election of directors and for the transaction of such other business as may properly come before the meeting, shall be held at such place, if any, either within or without the State of Delaware, on such date, and at such time as the Board of Directors shall fix. The Board of Directors may postpone, reschedule or cancel any annual meeting of stockholders previously scheduled by the Board of Directors.

Section 2.2 Special Meeting.

(a) Except as otherwise required by law, and except as otherwise provided for or fixed pursuant to the Certificate of Incorporation, including any certificate of designations relating to any series of Preferred Stock (each hereinafter referred to as a "Preferred Stock Designation"), a special meeting of the stockholders of the Corporation:

(i) may be called at any time by the Board of Directors, Chairman of the Board, the President or the Secretary of the Corporation; or

(ii) shall be called by the Chairman of the Board or the Secretary upon the written request or requests of one or more persons who satisfy the following requirements:

(A) own (as defined below) shares representing at least 10% of the voting power of the stock entitled to vote on the matters to be considered at the proposed special meeting (hereinafter, the "Requisite Percent"); and

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(B) comply with the notice procedures set forth in this Section 2.2 with respect to any matter that is a proper subject for stockholder action under applicable law. Except as otherwise required by law, and except as otherwise provided for or fixed pursuant to the Certificate of Incorporation (including any Preferred Stock Designation), special meetings of the stockholders of the Corporation may not be called by any other person or persons.

(b) For purposes of satisfying the Requisite Percent under this Section 2.2:

(i) A person is deemed to "own" those outstanding shares of stock of the Corporation as to which such person possesses the full voting and investment rights pertaining to the shares; and

(ii) A person "owns" shares held in the name of a nominee or other intermediary so long as such person retains the full voting and investment rights pertaining to the shares. The person's ownership of shares is deemed to continue during any period in which the person has delegated any voting power by means of a proxy, power of attorney, or other instrument or arrangement that is revocable at any time by the person.

(c) In order for a special meeting requested by the stockholders to be called by the Chairman of the Board or the Secretary of the Corporation, one or more written requests for a special meeting (the "Special Meeting Request") shall be delivered by registered mail or personal delivery to the Chairman of the Board, the Chief Executive Officer, or the Secretary (each a "Designated Officer") and signed by stockholders (or their duly authorized agents) who own (or who are acting on behalf of persons who own) at least the Requisite Percent as of the date that is 30 days prior to delivery of the Special Meeting Request to a Designated Officer (the "Ownership Record Date"). If a record stockholder is the nominee for more than one beneficial owner of stock, the record stockholder may deliver a written request solely with respect to the capital stock of the Corporation owned by the beneficial owner who is directing the record stockholder to submit the written request. The Special Meeting Request shall: (i) state the business (including the identity of nominees for election as a director, if any) proposed to be acted on at the meeting, which shall be limited to the business set forth in the Special Meeting Request Notice received by the Secretary (the "Proposed Business"); (ii) bear the date of signature of each such stockholder (or duly authorized agent) submitting the Special Meeting Request; (iii) set forth the name and address of each stockholder submitting the Special Meeting Request, as they appear in the Corporation's books; (iv) comply with and contain the information required by Section 2.10(a) below with respect to any director nominations or other business proposed to be presented at the special meeting, and as to each stockholder requesting the meeting and each other person (including any beneficial owner) on whose behalf the stockholder is acting, other than stockholders or beneficial owners who have provided such request solely in response to any form of public solicitation for such requests, and the additional information required by Section 2.9 below; (v) include documentary evidence that the requesting stockholders own the Requisite Percent as of the Ownership Record Date; provided, however, that if the requesting stockholders are not the beneficial owners of the shares

representing the Requisite Percent, then to be valid, the Special Meeting Request must also include documentary evidence of the number of shares owned by the beneficial owners on whose behalf the Special Meeting Request is made as of the Ownership Record Date; (vi) state a date, time and place

requested for the special meeting which shall not be less than 35 nor more than 60 days after the receipt of the Special Meeting Request or, in the case of written requests from more than one stockholder, not less than 35 nor more than 60 days after the receipt of the written request that results in the Requisite Percent; and (vii) be received by a Designated Officer by registered mail, return receipt requested, or personal delivery within 30 days after the Ownership Record Date. The information required to be contained in Special Meeting Request shall be current as of the record date for determining the stockholders entitled to vote at the meeting.

(d) Within five business days after receiving a Special Meeting Request, the Board of Directors shall determine in good faith whether the requirements for calling a special meeting of stockholders have been satisfied, and the Corporation shall notify the person or persons requesting the meeting of the Board's finding. The special meeting shall be held at the date, time and place set forth in the Special Meeting Request, and the date of the special meeting (including the date of any special meeting fixed pursuant to the proviso to this sentence) shall not be not less than 35 nor more than 60 days after the receipt of the Special Meeting Request; provided, that, if the Board determines that holding the special meeting at the date, time and place requested is not practicable, the special meeting shall be held on the nearest date, and at the nearest time and place, to the requested date, time and place that the Board determines is practicable, with the determinations by the Board pursuant to this proviso being made in good faith and based on any factors that the Board deems relevant. The record date for the special meeting shall be fixed by the Board of Directors as set forth in Section 7.6(a) below.

(e) Any stockholder who submitted a Special Meeting Request may revoke its written request by written revocation delivered to the Secretary of the Corporation at the principal executive offices of the Corporation at any time prior to the stockholder-requested special meeting. A Special Meeting Request shall be deemed revoked (and any meeting scheduled in response may be cancelled) if the stockholders submitting the Special Meeting Request, and any beneficial owners on whose behalf they are acting (as applicable), do not continue to own at least the Requisite Percent at all times between the date the delivery of the Special Meeting Request and the date of the applicable stockholder-requested special meeting, and the requesting stockholder shall promptly notify the Secretary of the Corporation of any decrease in ownership of shares of stock of the Corporation that results in such a revocation. If, as a result of any revocations, there are no longer valid unrevoked written requests from the Requisite Percent of stockholders, the Board of Directors shall have the discretion to determine whether or not to proceed with the special meeting.

(f) Business transacted at a stockholder-requested special meeting shall be limited to: (i) the Proposed Business stated in the valid Special Meeting Request received from the Requisite Percent of stockholders; and (ii) any additional business that the Board of Directors determines to include in the Corporation's notice of meeting.

(g) Except for stockholder-requested special meetings scheduled pursuant to Section 2.2(a)(ii), the Board of Directors may postpone, reschedule or cancel any special meeting of stockholders previously scheduled pursuant to this Section 2.2.

Section 2.3 Notice of Stockholders' Meetings.

(a) Whenever stockholders are required or permitted to take any action at a meeting, notice of the place, if any, date, and time of the meeting of stockholders, the record date for determining the stockholders entitled to vote at the meeting (if such date is different from the record date for determining the stockholders entitled to notice of the meeting) and the means of remote communications, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such meeting, shall be given. The notice shall be given not less than 10 nor more than 60 days before the date on which the meeting is to be held, to each stockholder entitled to vote at such meeting as of the record date for determining the stockholders entitled to notice of the meeting, except as otherwise provided by law, the Certificate of Incorporation (including any Preferred Stock Designation) or these Bylaws. In the case of a special meeting, the purpose or purposes for which the meeting is called also shall be set forth in the notice. Except as otherwise required by law, notice may be given personally or by mail, or by electronic transmission to the extent permitted by Section 232 of the General Corporation Law of the State of Delaware (the "DGCL"). If mailed, such notice shall be deemed given when deposited in the United States mail, postage prepaid, directed to each stockholder at such stockholder's address as it appears on the records of the Corporation. Notice by electronic transmission shall be deemed given as provided in Section 232 of the DGCL. An affidavit that notice has been given, executed by the Secretary of the Corporation, Assistant Secretary or any transfer agent or other agent of the Corporation, shall be *prima facie* evidence of the facts stated in the notice in the absence of fraud. Notice shall be deemed to have been given to all stockholders who share an address if notice is given in accordance with the "householding" rules set forth in Rule 14a-3(e) under the Securities Exchange Act of 1934 (the "Exchange Act") and Section 233 of the DGCL.

(b) When a meeting is adjourned to another time or place, notice need not be given of the adjourned meeting if the place, if any, date and time thereof, and the means of remote communications, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such adjourned meeting are announced at the meeting at which the adjournment is taken; provided, however, that if the adjournment is for more than 30 days, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. If after the adjournment a new record date for stockholders entitled to vote is fixed for the adjourned meeting, the Board of Directors shall fix a new record date for notice of such adjourned meeting in accordance with Section 7.6(a), and shall give notice of the adjourned meeting to each stockholder of record entitled to vote at such adjourned meeting as of the record date fixed for notice of such adjourned meeting.

Section 2.4 Organization.

(a) Meetings of stockholders shall be presided over by the Chairman of the Board of Directors, or in his or her absence, by the Chief Executive Officer or, in his or her absence, by another person designated by the Board of Directors (such person being referred to as the "Meeting Chair"). The Secretary of the Corporation, or in his or her absence, an Assistant Secretary, or in the absence of the Secretary and all Assistant Secretaries, a person whom the Meeting Chair shall appoint, shall act as secretary of the meeting and keep a record of the proceedings thereof.

(b) The date and time of the opening and the closing of the polls for each matter upon which the stockholders shall vote at a meeting of stockholders shall be announced at the meeting. The Board of Directors or the Meeting Chair may adopt such rules and regulations for the conduct of any meeting of stockholders as it shall deem appropriate. Except to the extent inconsistent with such rules and regulations as adopted by the Board of Directors, the Meeting Chair shall have the authority to adopt and enforce such rules and regulations for the conduct of any meeting of stockholders and the safety of those in attendance as, in the judgment of the Meeting Chair, are necessary, appropriate or convenient for the conduct of the meeting. Rules and regulations for the conduct of meetings of stockholders, whether adopted by the Board of Directors or by the Meeting Chair, may include without limitation, establishing: (i) an agenda or order of business for the meeting; (ii) rules and procedures for maintaining order at the meeting and the safety of those present; (iii) limitations on attendance at or participation in the meeting to stockholders entitled to vote at the meeting, their duly authorized and constituted proxies and such other persons as the Meeting Chair shall permit; (iv) restrictions on entry to the meeting after the time fixed for the commencement thereof; (v) limitations on the time allotted for consideration of each agenda item and for questions and comments by participants; (vi) regulations for the opening and closing of the polls for balloting and matters which are to be voted on by ballot (if any); and (vii) procedures (if any) requiring attendees to provide the Corporation advance notice of their intent to attend the meeting. Subject to any rules and regulations adopted by the Board of Directors, the Meeting Chair may convene and, from time to time, adjourn and/or recess any meeting of stockholders pursuant to Section 2.7. The Meeting Chair, in addition to making any other determinations that may be appropriate to the conduct of the meeting, shall have the power to declare that a nomination or other business was not properly brought before the meeting if the facts warrant (including if a determination is made, pursuant to Section 2.10(c)(i) of these Bylaws, that a nomination or other business was not made or proposed, as the case may be, in accordance with Section 2.10 of these Bylaws), and if such Meeting Chair should so declare, such nomination shall be disregarded or such other business shall not be transacted.

Section 2.5 List of Stockholders. The Corporation shall prepare, at least 10 days before every meeting of stockholders, a complete list of the stockholders of record entitled to vote at the meeting; provided, however, that if the record date for determining the stockholders entitled to vote is less than 10 days before the date of the meeting, the list shall reflect the stockholders entitled to vote as of the 10th day before the meeting date. Such list shall be arranged in alphabetical order and shall show the address of each stockholder and the number of shares registered in the name of each stockholder. Nothing in this Section 2.5 shall require the Corporation to include electronic mail addresses or other electronic contact information on such list. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting at least 10 days prior to the meeting: (a) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of meeting; or (b) during ordinary business hours at the principal place of business of the Corporation. In the event that the Corporation determines to make the list available on an electronic network, the Corporation may take reasonable steps to ensure that such information is available only to stockholders of the Corporation. If the meeting is to be held at a place, then a list of stockholders entitled to vote at the meeting shall be produced and kept at the time and place of the meeting during the whole time thereof and may be examined by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then the

list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting. Except as otherwise required by law, the stock ledger shall be the only evidence as to who are the stockholders entitled to examine the list of stockholders required by this Section 2.5 or to vote in person or by proxy at any meeting of stockholders.

Section 2.6 Quorum. Except as otherwise required by law, the Certificate of Incorporation (including any Preferred Stock Designation) or these Bylaws, at any meeting of stockholders, a majority of the voting power of the stock outstanding and entitled to vote at the meeting, present in person or represented by proxy, shall constitute a quorum for the transaction of business; provided, however, that where a separate vote by a class or series or classes or series is required, a majority of the voting power of the stock of such class or series or classes or series outstanding and entitled to vote on that matter, present in person or represented by proxy, shall constitute a quorum entitled to take action with respect to such matter. If a quorum is not present or represented at any meeting of stockholders, then the Meeting Chair shall have power to adjourn or recess the meeting from time to time in accordance with Section 2.7, until a quorum is present or represented. Subject to applicable law, if a quorum initially is present at any meeting of stockholders, the stockholders may continue to transact business until adjournment or recess, notwithstanding the withdrawal of enough stockholders to leave less than a quorum, but if a quorum is not present at least initially, no business other than adjournment or recess may be transacted (if so directed by the Meeting Chair).

Section 2.7 Adjourned or Recessed Meeting. Any annual or special meeting of stockholders, whether or not a quorum is present, may be adjourned or recessed for any reason from time to time by the Meeting Chair, subject to any rules and regulations adopted by the Board of Directors pursuant to Section 2.4(b). Any such meeting may be adjourned for any reason (and may be recessed if a quorum is not present or represented) from time to time by a majority of the voting power of the stock present in person or represented by proxy at the meeting and entitled to vote thereon. At any such adjourned or recessed meeting at which a quorum may be present, any business may be transacted that might have been transacted at the meeting as originally called.

Section 2.8 Voting; Proxies.

(a) Except as otherwise required by law or the Certificate of Incorporation (including any Preferred Stock Designation), each holder of stock of the Corporation entitled to vote at any meeting of stockholders shall be entitled to one vote for each share of such stock held of record by such holder that has voting power upon the subject matter in question.

(b) Except as otherwise required by law, the Certificate of Incorporation (including any Preferred Stock Designation), these Bylaws or any law, rule or regulation applicable to the Corporation or its securities, at each meeting of stockholders at which a quorum is present, all corporate actions to be taken by vote of the stockholders shall be authorized by the affirmative vote of at least a majority of the voting power of the stock present in person or represented by proxy and entitled to vote on the subject matter, and where a separate vote by a class or series or classes or series is required, if a quorum of such class or series or classes or

series is present, such act shall be authorized by the affirmative vote of at least a majority of the voting power of the stock of such class or series or classes or series present in person or represented by proxy and entitled to vote on the subject matter.

(c) Every stockholder entitled to vote for directors, or on any other matter, shall have the right to do so either in person or by one or more persons authorized to act for such stockholder by proxy, but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period. A proxy shall be irrevocable if it states that it is irrevocable and if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power. A proxy may be made irrevocable regardless of whether the interest with which it is coupled is an interest in the stock itself or an interest in the Corporation generally. A stockholder may revoke any proxy which is not irrevocable by attending the meeting and voting in person or by delivering to the Secretary of the Corporation a revocation of the proxy or executed new proxy bearing a later date.

Section 2.9 Submission of Information by Director Nominees.

(a) To be eligible to be a nominee for election or re-election as a director of the Corporation, a nominee, including nominees of the Corporation, must deliver to the Secretary of the Corporation at the principal executive offices of the Corporation the following information:

(i) a written representation and agreement, which shall be signed by such person and pursuant to which such person shall represent and agree that such person consents to serving as a director if elected and (if applicable) to being named in the Corporation's proxy statement and form of proxy as a nominee, and currently intends to serve as a director for the full term for which such person is standing for election; and

(ii) all completed and signed questionnaires required of the Corporation's directors (which will be provided to such person promptly following a request therefor).

(b) A nominee for election or re-election as a director of the Corporation shall also provide to the Corporation such other information as it may reasonably request, including information that is necessary to permit the Corporation to determine the eligibility of such person to serve as a director of the Corporation or information relevant to a determination whether such person can be considered an independent director.

(c) Notwithstanding any other provision of these Bylaws, if a stockholder has submitted notice of an intent to nominate a candidate for election or re-election as a director pursuant to Section 2.10, the questionnaires described in Section 2.9(a)(ii) above and the additional information described in Section 2.9(b) above shall be considered timely if provided to the Corporation promptly upon request by the Corporation and all information provided pursuant to this Section 2.9 shall be deemed part of the stockholder's notice submitted pursuant to Section 2.10.

Section 2.10 Notice of Stockholder Business and Nominations.

(a) Annual Meeting.

(i) Nominations of persons for election to the Board of Directors and the proposal of business other than nominations to be considered by the stockholders may be made at an annual meeting of stockholders only: (A) pursuant to the Corporation's notice of meeting (or any supplement thereto); (B) by or at the direction of the Board of Directors (or any authorized committee thereof); or (C) by any stockholder of the Corporation who is a stockholder of record at the time the notice provided for in this Section 2.10(a) is delivered to the Secretary of the Corporation, who is entitled to vote at the meeting and who complies with the notice procedures set forth in this Section 2.10(a). For the avoidance of doubt, the foregoing clause (C) shall be the exclusive means for a stockholder to make nominations or propose other business at an annual meeting of stockholders (other than a proposal included in the Corporation's proxy statement pursuant to and in compliance with Rule 14a-8 under the Exchange Act).

(ii) For nominations or other business to be properly brought before an annual meeting by a stockholder pursuant to clause (C) of the foregoing paragraph, the stockholder must have given timely notice thereof in writing to the Secretary of the Corporation and, in the case of business other than nominations, such business must be a proper subject for stockholder action. To be timely, a stockholder's notice must be delivered to the Secretary at the principal executive offices of the Corporation not later than the close of business (as defined in Section 2.10(c)(ii) below) on the 120th day nor earlier than the close of business on the 150th day prior to the first anniversary of the preceding year's annual meeting (provided that in the case of the first annual meeting of the Corporation held following the merger of Depomed, Inc., a California corporation ("Depomed-California"), with and into the Corporation, the preceding year's annual meeting of stockholders shall be deemed to be the last annual meeting of stockholders held by Depomed-California prior to such merger); provided, however, that in the event that the date of the annual meeting is more than 30 days before or more than 30 days after such anniversary date, or if no annual meeting was held in the preceding year, notice by the stockholder to be timely must be so delivered not later than the close of business on the later of the 120th day prior to such annual meeting or the 10th day following the date on which public announcement (as defined in Section 2.10(c)(ii) below) of the date of such meeting is first made by the Corporation. In no event shall an adjournment or recess of an annual meeting, or a postponement of an annual meeting for which notice of the meeting has already been given to stockholders or a public announcement of the meeting date has already been made, commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above. Such stockholder's notice shall set forth:

(A) as to each person whom the stockholder proposes to nominate for election or re-election as a director: (1) all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors in an election contest, or is otherwise required, in each case pursuant to and in accordance with Regulation 14A under the Exchange Act; and (2) the information required to be submitted by nominees pursuant to Section 2.9 above;

(B) as to any other business that the stockholder proposes to bring before the meeting, a brief description of the business desired to be brought before the meeting, the text of the proposal or business (including the text of any resolutions proposed for consideration and in the event that such business includes a proposal to amend the Bylaws of the Corporation, the language of the proposed amendment), the reasons for conducting such business at the meeting and any substantial interest (within the meaning of Item 5 of Schedule 14A under the Exchange Act) in such business of such stockholder and the beneficial owner (within the meaning of Section 13(d) of the Exchange Act), if any, on whose behalf the proposal is made;

(C) as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination is made or the other business is proposed:

(1) the name and address of such stockholder, as they appear on the Corporation's books, and the name and address of such beneficial owner;

(2) the class or series and number of shares of stock of the Corporation which are owned of record by such stockholder and such beneficial owner as of the date of the notice, and a representation that the stockholder will notify the Corporation in writing within five business days after the record date for such meeting of the class or series and number of shares of stock of the Corporation owned of record by the stockholder and such beneficial owner as of the record date for the meeting; and

(3) a representation that the stockholder (or a qualified representative of the stockholder) intends to appear at the meeting to make such nomination or propose such business;

(D) as to the stockholder giving the notice or, if the notice is given on behalf of a beneficial owner on whose behalf the nomination is made or the other business is proposed, as to such beneficial owner, and if such stockholder or beneficial owner is an entity, as to each director, executive, managing member or control person of such entity (any such individual or control person, a "control person"):

(1) the class or series and number of shares of stock of the Corporation which are beneficially owned (as defined in Section 2.10(c)(ii) below) by such stockholder or beneficial owner and by any control person as of the date of the notice, and a representation that the stockholder will notify the Corporation in writing within five business days after the record date for such meeting of the class or series and number of shares of stock of the Corporation beneficially owned by such stockholder or beneficial owner and by any control person as of the record date for the meeting;

(2) a description of any agreement, arrangement or understanding with respect to the nomination or other business between or among such stockholder, beneficial owner or control person and any other person, including without limitation any agreements that would be required to be disclosed pursuant to Item 5 or Item 6 of Exchange Act Schedule 13D (regardless of whether the requirement to file a Schedule 13D is applicable) and a representation that the stockholder will notify the Corporation in writing within five business days after the record date for such meeting of any such agreement, arrangement or understanding in effect as of the record date for the meeting;

(3) a description of any agreement, arrangement or understanding (including without limitation any derivative or short positions, profit interests, options, hedging transactions, and borrowed or loaned shares) that has been entered into as of the date of the stockholder's notice by, or on behalf of, such stockholder, beneficial owner or control person, the effect or intent of which is to mitigate loss, manage risk or benefit from changes in the share price of any class or series of the Corporation's stock, or maintain, increase or decrease the voting power of the stockholder, beneficial owner or control person with respect to securities of the Corporation, and a representation that the stockholder will notify the Corporation in writing within five business days after the record date for such meeting of any such agreement, arrangement or understanding in effect as of the record date for the meeting;

(4) a representation whether the stockholder or the beneficial owner, if any, will engage in a solicitation with respect to the nomination or other business and, if so, the name of each participant in such solicitation (as defined in Item 4 of Schedule 14A under the Exchange Act) and whether such person intends or is part of a group which intends to deliver a proxy statement and/or form of proxy to holders of shares representing at least 50% of the voting power of the stock entitled to vote generally in the election of directors in the case of a nomination, or holders of at least the percentage of the Corporation's stock required to approve or adopt the business to be proposed in the case of other business.

(iii) Notwithstanding anything in Section 2.10(a)(ii) above or Section 2.10(b) below to the contrary, if the record date for determining the stockholders entitled to vote at any meeting of stockholders is different from the record date for determining the stockholders entitled to notice of the meeting, a stockholder's notice required by this Section 2.10 shall set forth a representation that the stockholder will notify the Corporation in writing within five business days after the record date for determining the stockholders entitled to vote at the meeting, or by the opening of business on the date of the meeting (whichever is earlier), of the information required under clauses (ii)(C)(2) and (ii)(D)(1)-(3) of this Section 2.10(a), and such information when provided to the Corporation shall be current as of the record date for determining the stockholders entitled to vote at the meeting.

(iv) This Section 2.10(a) shall not apply to a proposal proposed to be made by a stockholder if the stockholder has notified the Corporation of his or her intention to present the proposal at an annual or special meeting only pursuant to and in compliance with Rule 14a-8 under the Exchange Act and such proposal has been included in a proxy statement that has been prepared by the Corporation to solicit proxies for such meeting.

(v) Notwithstanding anything in this Section 2.10(a) to the contrary, in the event that the number of directors to be elected to the Board of Directors at an annual meeting is increased and there is no public announcement by the Corporation naming all of the nominees for directors or specifying the size of the increased Board of Directors made by the Corporation at least 10 days prior to the last day a stockholder may deliver a notice in accordance with Section 2.10(a)(ii) above, a stockholder's notice required by this Section 2.10(a) shall also be considered timely, but only with respect to nominees for any new positions created

by such increase, if it shall be delivered to the Secretary of the Corporation at the principal executive offices of the Corporation not later than the close of business on the 10th day following the day on which such public announcement is first made by the Corporation.

(b) Special Meeting. Nominations of persons for election to the Board of Directors may be made at a special meeting of stockholders at which directors are to be elected pursuant to the Corporation's notice of meeting: (i) by or at the direction of the Board of Directors (or any authorized committee thereof); or (ii) provided that one or more directors are to be elected at such meeting, by any stockholder of the Corporation who is a stockholder of record at the time the notice provided for in this Section 2.10(b) is delivered to the Secretary of the Corporation, who is entitled to vote at the meeting and upon such election and who delivers notice thereof in writing setting forth the information required by Section 2.10(a) above and provides the additional

information required by Section 2.9 above; or (iii) in the case of a stockholder-requested special meeting, by any stockholder of the Corporation pursuant to Section 2.2. In the event the Corporation calls a special meeting of stockholders for the purpose of electing one or more directors to the Board of Directors, any stockholder entitled to vote in such election of directors may nominate a person or persons (as the case may be) for election to such position(s) as specified in the Corporation's notice of meeting, if the notice required by this Section 2.10(b) shall be delivered to the Secretary at the principal executive offices of the Corporation not earlier than the close of business on the 150th day prior to such special meeting and not later than the close of business on the later of the 120th day prior to such special meeting or the 10th day following the date on which public announcement of the date of the special meeting and of the nominees proposed by the Board of Directors to be elected at such meeting is first made by the Corporation. In no event shall an adjournment, recess or postponement of a special meeting commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above. Notwithstanding any other provision of these Bylaws, in the case of a stockholder-requested special meeting, no stockholder may nominate a person for election to the Board of Directors or propose any other business to be considered at the meeting, except pursuant to the written request(s) delivered for such special meeting pursuant to Section 2.2(a).

(c) General.

(i) Except as otherwise required by law, only such persons who are nominated in accordance with the procedures set forth in this Section 2.10 shall be eligible to be elected at any meeting of stockholders of the Corporation to serve as directors and only such other business shall be conducted at a meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in this Section 2.10. Except as otherwise required by law, each of the Chairman of the Board of Directors, Board of Directors or the Meeting Chair shall have the power to determine whether a nomination or any other business proposed to be brought before the meeting was made or proposed, as the case may be, in accordance with the procedures set forth in this Section 2.10 (including whether a stockholder or beneficial owner solicited (or is part of a group which solicited) or did not so solicit, as the case may be, proxies in compliance with such stockholder's representation as required by clause (a)(ii)(D)(4) of this Section 2.10). If any proposed nomination or other business is not in compliance with this Section 2.10, then except as otherwise required by law, the Meeting Chair shall have the power to declare that such nomination shall be disregarded or that such other

business shall not be transacted. Notwithstanding the foregoing provisions of this Section 2.10, unless otherwise required by law, or otherwise determined by the Chairman of the Board of Directors, Board of Directors or the Meeting Chair, if the stockholder does not provide the information required under Section 2.9 or clauses (a)(ii)(C)(2) and (a)(ii)(D)(1)-(3) of this Section 2.10 to the Corporation within the time frames specified herein, or if the stockholder (or a qualified representative of the stockholder) does not appear at the annual or special meeting of stockholders of the Corporation to present a nomination or other business, such nomination shall be disregarded and such other business shall not be transacted, notwithstanding that proxies in respect of such vote may have been received by the Corporation. For purposes of this Section 2.10, to be considered a qualified representative of a stockholder, a person must be a duly authorized officer, manager or partner of such stockholder or authorized by a writing executed by such stockholder (or a reliable reproduction or electronic transmission of the writing) delivered to the Corporation prior to the making of such nomination or proposal at such meeting stating that such person is authorized to act for such stockholder as proxy at the meeting of stockholders.

(ii) For purposes of this Section 2.10, the "close of business" shall mean 5:00 p.m. local time at the principal executive offices of the Corporation on any calendar day, whether or not the day is a business day, and a "public announcement" shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or a comparable national news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Sections 13, 14 or 15(d) of the Exchange Act. For purposes of clause (a)(ii)(D)(1) of this Section 2.10, shares shall be treated as "beneficially owned" by a person if the person beneficially owns such shares, directly or indirectly, for purposes of Section 13(d) of the Exchange Act and Regulations 13D and 13G thereunder or has or shares pursuant to any agreement, arrangement or understanding (whether or not in writing): (A) the right to acquire such shares (whether such right is exercisable immediately or only after the passage of time or the fulfillment of a condition or both); (B) the right to vote such shares, alone or in concert with others; and/or (C) investment power with respect to such shares, including the power to dispose of, or to direct the disposition of, such shares.

(iii) Nothing in this Section 2.10 shall be deemed to affect any rights of the holders of any series of Preferred Stock to elect directors pursuant to any applicable provisions of the Certificate of Incorporation (including any Preferred Stock Designation).

Section 2.11 Action by Written Consent.

(a) Except as otherwise provided for or fixed pursuant to the Certificate of Incorporation (including any Preferred Stock Designation), any action required or permitted to be taken at any annual or special meeting of stockholders of the Corporation may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, are signed by the holders of the outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted. To be effective, a written consent must be delivered to the Corporation by delivery to its registered office in the State of Delaware, its principal place of business or an officer of agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery

made to the Corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. No written consent shall be effective to take the corporate action referred to therein unless written consents signed by a sufficient number of holders to take action are delivered to the Corporation in accordance with this Section 2.11 within 60 days of the first date on which a written consent is so delivered to the Corporation. Any person executing a consent may provide, whether through instruction to an agent or otherwise, that such a consent shall be effective at a future time (including a time determined upon the happening of an event), no later than 60 days after such instruction is given or such provision is made, if evidence of such instruction or provision is provided to the Corporation. Unless otherwise provided, any such consent shall be revocable prior to its becoming effective.

(b) Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing and who, if the action had been taken at a meeting, would have been entitled to notice of the meeting if the record date for notice of such meeting had been the date that written consents signed by a sufficient number of stockholders to take the action were delivered to the Corporation in the manner required by this Section 2.11.

Section 2.12 Inspectors of Election. Before any meeting of stockholders, the Corporation may, and shall if required by law, appoint one or more inspectors of election to act at the meeting and make a written report thereof. If not previously chosen, one or more inspectors shall be appointed by the Meeting Chair if a stockholder or proxy holder so requests or if required by law. When inspectors are appointed at the request of a stockholder or proxy holder, the majority of shares represented in person or by proxy shall determine the number of inspectors that shall be chosen. Inspectors may be employees of the Corporation. The Corporation may designate one or more persons as alternate inspectors to replace any inspector who fails to act. If no inspector or alternate is able to act at a meeting of stockholders, the Meeting Chair may, and shall if required by law, appoint replacement inspectors to act in their place at the meeting. Each inspector, before entering upon the discharge of his or her duties, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of his or her ability. Inspectors need not be stockholders. No director or nominee for the office of director at an election shall be appointed as an inspector at such election.

Such inspectors shall:

(a) determine the number of shares outstanding and the voting power of each, the number of shares represented at the meeting, the existence of a quorum, and the validity of proxies and ballots;

(b) determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by the inspectors;

(c) count and tabulate all votes and ballots; and

(d) certify their determination of the number of shares represented at the meeting, and their count of all votes and ballots.

Section 2.13 Meetings by Remote Communications. The Board of Directors may, in its sole discretion, determine that a meeting of stockholders shall not be held at any place, but may instead be held solely by means of remote communication in accordance with Section 211(a)(2) of the DGCL. If authorized by the Board of Directors in its sole discretion, and subject to such guidelines and procedures as the Board of Directors may adopt, stockholders and proxyholders not physically present at a meeting of stockholders may, by means of remote communication: (a) participate in a meeting of stockholders; and (b) be deemed present in person and vote at a meeting of stockholders whether such meeting is to be held at a designated place or solely by means of remote communication, provided that: (i) the Corporation shall implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a stockholder or proxyholder; (ii) the Corporation shall implement reasonable measures to provide such stockholders and proxyholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the stockholders, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with such proceedings; and (iii) if any stockholder or proxyholder votes or takes other action at the meeting by means of remote communication, a record of such vote or other action shall be maintained by the Corporation.

ARTICLE III
DIRECTORS

Section 3.1 Powers. Except as otherwise required by the DGCL or as provided in the Certificate of Incorporation (including any Preferred Stock Designation), the business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors. In addition to the powers and authorities these Bylaws expressly confer upon it, the Board of Directors may exercise all such powers of the Corporation and do all such lawful acts and things as are not by law, the Certificate of Incorporation (including any Preferred Stock Designation) or these Bylaws required to be exercised or done by the stockholders.

Section 3.2 Number. Except as otherwise provided for or fixed pursuant to the Certificate of Incorporation (including any Preferred Stock Designation), the Board of Directors shall consist of not fewer than five nor more than nine directors, and the exact number shall be fixed by resolution of the Board of Directors. The first Board of Directors shall consist of the person or persons elected by the incorporator or designated in the Certificate of Incorporation. The number of directors constituting the first Board of Directors shall be equal to the number of directors that are elected by the incorporator or designated in the Certificate of Incorporation.

Section 3.3 Election, Term of Office, Vacancies and Newly Created Directorships.

(a) At each annual meeting of stockholders, directors shall be elected to hold office until the next annual meeting and until a successor has been duly elected and qualified. Subject to the rights of the holders of any outstanding series of Preferred Stock, and unless otherwise required by law or resolution of the Board of Directors, newly created directorships resulting from any increase in the authorized number of directors and any vacancies in the Board of Directors not caused by removal may be filled by the affirmative vote of a majority of the remaining directors then in office and entitled to vote thereon, even though less than a quorum, or by the sole remaining director, and any director so chosen shall hold office until the next

election of directors and until a successor shall have been duly elected and qualified. The stockholders may elect a director at any time to fill any vacancy not filled, or which cannot be filled, by the Board of Directors. No reduction in the authorized number of directors shall have the effect of removing any director prior to the expiration of his or her term of office. Directors need not be stockholders unless so required by the Certificate of Incorporation (including any Preferred Stock Designation) or these Bylaws, wherein other qualifications for directors may be prescribed.

(b) In any uncontested election of directors of the Corporation, each nominee shall be elected if the number of votes cast for the nominee's election exceeds the number of votes cast against the nominee's election.

(i) Any director who is not elected by a majority of the votes cast is expected to tender his or her resignation to the Nominating/Corporate Governance Committee, after which:

(A) The Nominating/Corporate Governance Committee will recommend to the Board whether to accept or reject the resignation offer, or whether other action should be taken. In determining whether to recommend that the Board accept any resignation offer, the Nominating/Corporate Governance Committee may consider all factors that the Committee's members believe are relevant.

(B) The Board will act on the Nominating/Corporate Governance Committee's recommendation within 90 days following certification of the election results. In deciding whether to accept the resignation offer, the Board will consider the factors considered by the Nominating/Corporate Governance Committee and any additional information and factors that the Board believes to be relevant. Thereafter, the Board will promptly publicly disclose its decision regarding the director's resignation offer (including the reason(s) for rejecting the resignation offer, if applicable).

(C) If the Board accepts a director's resignation offer pursuant to this process, the Nominating/Corporate Governance Committee will recommend to the Board and the Board will thereafter determine whether to fill the vacancy or reduce the size of the Board. Any director who tenders his or her resignation pursuant to this provision will not participate in the proceedings of either the Nominating/Corporate Governance Committee or the Board with respect to his or her own resignation offer.

(ii) For the purposes of this Section 3.3, an "uncontested election" means any meeting of stockholders at which the number of candidates does not exceed the number of directors to be elected and with respect to which: (a) no stockholder has submitted notice of an intent to nominate a candidate for election at such meeting in accordance with Section 2.10; or (b) such a notice has been submitted, and on or before the fifth business day prior to the date that the Corporation files its definitive proxy statement relating to such meeting with the Securities and Exchange Commission (regardless of whether thereafter revised or supplemented), the notice has been: (i) withdrawn in writing to the Secretary of the Corporation; (ii) determined not to be a valid notice of nomination, with such determination to be made by the Board of Directors (or a committee thereof) pursuant to Section 2.10, or if challenged in court,

by a final court order; or (iii) determined by the Board of Directors (or a committee thereof) not to create a bona fide election contest.

(c) In any election of directors of the Corporation that is not an uncontested election, the nominees for election as a director shall be elected by a plurality of the votes cast.

Section 3.4 Resignations and Removal.

(a) Any director may resign at any time upon notice given in writing or by electronic transmission to the Board of Directors, the Chairman of the Board of Directors or the Secretary of the Corporation. Such resignation shall take effect upon delivery, unless the resignation specifies a later effective date or time or an effective date or time determined upon the happening of an event or events. Unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

(b) Except for such additional directors, if any, as are elected by the holders of any series of Preferred Stock as provided for or fixed pursuant to the Certificate of Incorporation (including any Preferred Stock Designation), and unless otherwise restricted by law, any director, or the entire Board of Directors, may be removed, with or without cause, by the affirmative vote of a majority of the voting power of the stock outstanding and entitled to vote thereon.

Section 3.5 Regular Meetings. Regular meetings of the Board of Directors shall be held at such place or places, within or without the State of Delaware, on such date or dates and at such time or times, as shall have been established by the Board of Directors and publicized among all directors. A notice of each regular meeting shall not be required.

Section 3.6 Special Meetings. Special meetings of the Board of Directors for any purpose or purposes may be called at any time by the Chairman of the Board of Directors, the Chief Executive Officer or a majority of the directors then in office. The person or persons authorized to call special meetings of the Board of Directors may fix the place, within or without the State of Delaware, date and time of such meetings. Notice of each such meeting shall be given to each director, if by mail, addressed to such director at his or her residence or usual place of business, at least five days before the day on which such meeting is to be held, or shall be sent to such director by electronic transmission, or be delivered personally or by telephone, in each case at least 24 hours prior to the time set for such meeting. A notice of special meeting need not state the purpose of such meeting, and, unless indicated in the notice thereof, any and all business may be transacted at a special meeting.

Section 3.7 Participation in Meetings by Conference Telephone. Members of the Board of Directors, or of any committee thereof, may participate in a meeting of such Board of Directors or committee by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and such participation shall constitute presence in person at such meeting.

Section 3.8 Quorum and Voting. Except as otherwise required by law, the Certificate of Incorporation or these Bylaws, a majority of the authorized number of directors shall constitute a quorum for the transaction of business at any meeting of the Board of Directors, and

the vote of a majority of the directors present at a duly held meeting at which a quorum is present shall be the act of the Board of Directors. The chairman of the meeting or a majority of the directors present may adjourn the meeting to another time and place whether or not a quorum is present. At any adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted at the meeting as originally called.

Section 3.9 Board of Directors Action by Written Consent Without a Meeting. Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, any action required or permitted to be taken at any meeting of the Board of Directors, or any committee thereof, may be taken without a meeting, provided that all members of the Board of Directors or committee, as the case may be, consent in writing or by electronic transmission to such action, and the writing or writings or electronic transmission or transmissions are filed with the minutes or proceedings of the Board of Directors or committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in

electronic form. Any person (whether or not then a director) may provide, whether through instruction to an agent or otherwise, that a consent to action shall be effective at a future time (including a time determined upon the happening of an event), no later than 60 days after such instruction is given or such provision is made and such consent shall be deemed to have been given at such effective time so long as such person is then a director and did not revoke the consent prior to such time. Any such consent shall be revocable prior to its becoming effective.

Section 3.10 Chairman of the Board. The Chairman of the Board shall preside at meetings of stockholders and directors and shall perform such other duties as the Board of Directors may from time to time determine. If the Chairman of the Board is not present at a meeting of the Board of Directors, another director chosen by the Board of Directors shall preside.

Section 3.11 Rules and Regulations. The Board of Directors shall adopt such rules and regulations not inconsistent with the provisions of law, the Certificate of Incorporation or these Bylaws for the conduct of its meetings and management of the affairs of the Corporation as the Board of Directors shall deem proper.

Section 3.12 Fees and Compensation of Directors. Unless otherwise restricted by the Certificate of Incorporation, directors may receive such compensation, if any, for their services on the Board of Directors and its committees, and such reimbursement of expenses, as may be fixed or determined by resolution of the Board of Directors. Nothing herein shall preclude any director from serving the Corporation in another capacity and receiving compensation for such service.

Section 3.13 Emergency Bylaws. In the event of any emergency, disaster or catastrophe, as referred to in Section 110 of the DGCL, or other similar emergency condition, as a result of which a quorum of the Board of Directors or a standing committee of the Board of Directors cannot readily be convened for action, then the director or directors in attendance at the meeting shall constitute a quorum. Such director or directors in attendance may further take action to appoint one or more of themselves or other directors to membership on any standing or temporary committees of the Board of Directors as they shall deem necessary and appropriate.

ARTICLE IV
COMMITTEES

Section 4.1 Committees of the Board of Directors. The Board of Directors may designate one or more committees, each such committee to consist of two or more of the directors of the Corporation. The Board of Directors may designate one or more directors as alternate members of any committee to replace any absent or disqualified member at any meeting of the committee. Any such committee, to the extent permitted by law and provided in the resolution of the Board of Directors establishing such committee, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation (if one has been adopted) to be affixed to all papers which may require it; but no such committee shall have the power or authority in reference to the following matters: (a) approving or adopting, or recommending to the stockholders, any action or matter (other than the election or removal of directors) expressly required by the DGCL to be submitted to stockholders for approval; or (b) adopting, amending or repealing any bylaw of the Corporation. All committees of the Board of Directors shall keep minutes of their meetings and shall report their proceedings to the Board of Directors when requested or required by the Board of Directors.

Section 4.2 Meetings and Action of Committees. Unless the Board of Directors provides otherwise by resolution, any committee of the Board of Directors may adopt, alter and repeal such rules and regulations not inconsistent with the provisions of law, the Certificate of Incorporation or these Bylaws for the conduct of its meetings as such committee may deem proper. Except as otherwise required by law, the Certificate of Incorporation or these Bylaws, and except as otherwise provided in a resolution of the Board of Directors: (a) a majority of the directors then serving on a committee shall constitute a quorum for the transaction of business by the committee; provided, however, that in no case shall a quorum be less than one-third of the directors then serving on the committee; and (b) the vote of a majority of the members of a committee present at a meeting at which a quorum is present shall be the act of the committee.

ARTICLE V
OFFICERS

Section 5.1 Officers. The officers of the Corporation shall consist of a Chief Executive Officer, a President, a Chief Financial Officer, one or more Vice Presidents, a Secretary, a Treasurer, and such other officers as the Board of Directors may from time to time determine, each of whom shall be elected by the Board of Directors, each to have such authority, functions or duties as set forth in these Bylaws or as determined by the Board of Directors. Each officer shall be elected by the Board of Directors and shall hold office for such term as may be prescribed by the Board of Directors and until such person's successor shall have been duly elected and qualified, or until such person's earlier death, disqualification, resignation or removal. Any number of offices may be held by the same person; provided, however, that no officer shall execute, acknowledge or verify any instrument in more than one capacity if such instrument is required by law, the Certificate of Incorporation or these Bylaws to be executed, acknowledged or verified by two or more officers. The Board of Directors may require any officer, agent or employee to give security for the faithful performance of his or her duties.

Section 5.2 Compensation. The salaries of the officers of the Corporation and the manner and time of the payment of such salaries shall be fixed and determined by the Board of Directors and may be altered by the Board of Directors from time to time as it deems appropriate, subject to the rights, if any, of such officers under any contract of employment.

Section 5.3 Removal, Resignation and Vacancies. Any officer of the Corporation may be removed, with or without cause, by the Board of Directors or by a duly authorized officer, without prejudice to the rights, if any, of such officer under any contract to which it is a party. Any officer may resign at any time upon notice given in writing or by electronic transmission to the Corporation, without prejudice to the rights, if any, of the Corporation under any contract to which such officer is a party. If any vacancy occurs in any office of the Corporation, the Board of Directors may elect a successor to fill such vacancy for the remainder of the unexpired term and until a successor shall have been duly elected and qualified.

Section 5.4 Chief Executive Officer. The Chief Executive Officer shall have general supervision and direction of the business and affairs of the Corporation, shall be responsible for corporate policy and strategy, and shall report directly to the Board of Directors. Unless otherwise provided in these Bylaws or determined by the Board of Directors, all other officers of the Corporation shall report directly to the Chief Executive Officer or as otherwise determined by the Chief Executive Officer. The Chief Executive Officer shall, if present and in the absence of the Chairman of the Board of Directors, preside at meetings of the stockholders.

Section 5.5 President. The President shall be the chief operating officer of the Corporation, with general responsibility for the management and control of the operations of the Corporation. The President shall, when requested, counsel with and advise the other officers of the Corporation and shall perform such other duties as the Board of Directors or the Chief Executive Officer may from time to time determine. Unless otherwise designated by the Board of Directors, the Chief Executive Officer shall also be the President.

Section 5.6 Chief Financial Officer. The Chief Financial Officer shall exercise all the powers and perform the duties of the office of the chief financial officer and in general have overall supervision of the financial operations of the Corporation. The Chief Financial Officer shall, when requested, counsel with and advise the other officers of the Corporation and shall perform such other duties as the Board of Directors, the Chief Executive Officer or the President may from time to time determine.

Section 5.7 Vice Presidents. Each Vice President shall have such powers and duties as shall be prescribed by his or her superior officer, the Chief Executive Officer or the President. A Vice President shall, when requested, counsel with and advise the other officers of the Corporation and shall perform such other duties as the Board of Directors, the Chief Executive Officer, the President or another duly authorized officer may from time to time determine.

Section 5.8 Treasurer. The Treasurer shall supervise and be responsible for all the funds and securities of the Corporation, the deposit of all moneys and other valuables to the credit of the Corporation in depositories of the Corporation, borrowings and compliance with the provisions of all indentures, agreements and instruments governing such borrowings to which the Corporation is a party, the disbursement of funds of the Corporation and the investment of its

funds, and in general shall perform all of the duties incident to the office of the Treasurer. The Treasurer shall, when requested, counsel with and advise the other officers of the Corporation and shall perform such other duties as the Board of Directors, the Chief Executive Officer, the President or the Chief Financial Officer may from time to time determine. Unless otherwise designated by the Board of Directors, the Chief Financial Officer shall also be the Treasurer.

Section 5.9 Secretary. The powers and duties of the Secretary are: (i) to act as Secretary at all meetings of the Board of Directors, of the committees of the Board of Directors and of the stockholders and to record the proceedings of such meetings in a book or books to be kept for that purpose; (ii) to see that all notices required to be given by the Corporation are duly given and served; (iii) to act as custodian of the seal of the Corporation and affix the seal or cause it to be affixed to all certificates of stock of the Corporation and to all documents, the execution of which on behalf of the Corporation under its seal is duly authorized in accordance with the provisions of these Bylaws; (iv) to have charge of the books, records and papers of the Corporation and see that the reports, statements and other documents required by law to be kept and filed are properly kept and filed; and (v) to perform all of the duties incident to the office of Secretary. The Secretary shall, when requested, counsel with and advise the other officers of the Corporation and shall perform such other duties as the Board of Directors, the Chief Executive Officer or the President may from time to time determine.

Section 5.10 Additional Matters. The Chief Executive Officer and the Chief Financial Officer of the Corporation shall have the authority to designate employees of the Corporation to have the title of Vice President, Assistant Vice President, Assistant Treasurer or Assistant Secretary. Any employee so designated shall have the powers and duties determined by the officer making such designation. The persons upon whom such titles are conferred shall not be deemed officers of the Corporation unless elected by the Board of Directors.

Section 5.11 Checks; Drafts; Evidences of Indebtedness. From time to time, the Board of Directors shall determine the method, and designate (or authorize officers of the Corporation to designate) the person or persons who shall have authority, to sign or endorse all checks, drafts, other orders for payment of money and notes, bonds, debentures or other evidences of indebtedness that are issued in the name of or payable by the Corporation, and only the persons so authorized shall sign or endorse such instruments.

Section 5.12 Corporate Contracts and Instruments; How Executed. Except as otherwise provided in these Bylaws, the Board of Directors may determine the method, and designate (or authorize officers of the Corporation to designate) the person or persons who shall have authority to enter into any contract or execute any instrument in the name of and on behalf of the Corporation. Such authority may be general or confined to specific instances. Unless so authorized, or within the power incident to a person's office or other position with the Corporation, no person shall have any power or authority to bind the Corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or for any amount.

Section 5.13 Signature Authority. Unless otherwise specifically determined by the Board of Directors or otherwise provided by law or these Bylaws, contracts, evidences of indebtedness and other instruments or documents of the Corporation may be executed, signed or endorsed: (i) by the Chief Executive Officer or the President; or (ii) by the Chief Financial Officer, any Vice President, Treasurer or Secretary, in each case only with regard to such instruments or documents that pertain to or relate to such person's duties or business functions.

Section 5.14 Action with Respect to Securities of Other Corporations or Entities. The Chief Executive Officer or any other officer of the Corporation authorized by the Board of Directors or the Chief Executive Officer is authorized to vote, represent, and exercise on behalf of the Corporation all rights incident to any and all shares or other equity interests of any other corporation or entity or corporations or entities, standing in the name of the Corporation. The authority herein granted may be exercised either by such person directly or by any other person authorized to do so by proxy or power of attorney duly executed by the person having such authority.

Section 5.15 Delegation. The Board of Directors may from time to time delegate the powers or duties of any officer to any other officers or agents, notwithstanding the foregoing provisions of this Article V.

ARTICLE VI
INDEMNIFICATION AND ADVANCEMENT OF EXPENSES

Section 6.1 Right to Indemnification.

(a) Each person who was or is a party or is threatened to be made a party to, or was or is otherwise involved in, any action, suit, arbitration, alternative dispute resolution mechanism, investigation, inquiry, judicial, administrative or legislative hearing, or any other threatened, pending or completed proceeding, whether brought by or in the right of the Corporation or otherwise, including any and all appeals, whether of a civil, criminal, administrative, legislative, investigative or other nature (hereinafter a "proceeding"), by reason of the fact that he or she is or was a director or an officer of the Corporation or while a director or officer of the Corporation is or was serving at the request of the Corporation as a director, officer, employee, agent or trustee of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to an employee benefit plan (hereinafter an "indemnitee"), or by reason of anything done or not done by him or her in any such capacity, shall be indemnified and held harmless by the Corporation to the fullest extent authorized by the DGCL, as the same exists or may hereafter be amended, against all expense, liability and loss (including attorneys' fees, judgments, fines, ERISA excise taxes, penalties and amounts paid in settlement by or on behalf of the indemnitee) actually and reasonably incurred by such indemnitee in connection therewith, all on the terms and conditions set forth in these Bylaws; provided, however, that, except as otherwise required by law or provided in Section 6.3 with respect to suits to enforce rights under this Article VI, the Corporation shall indemnify any such indemnitee in connection with a proceeding, or part thereof, voluntarily initiated by such indemnitee (including claims and counterclaims, whether such counterclaims are asserted by: (i) such indemnitee; or (ii) the Corporation in a proceeding initiated by such indemnitee) only if such proceeding, or part thereof, was authorized or ratified by the Board of Directors or the Board of Directors otherwise determines that indemnification or advancement of expenses is appropriate.

(b) To receive indemnification under this Section 6.1, an indemnitee shall submit a written request to the Secretary of the Corporation. Such request shall include documentation or information that is necessary to determine the entitlement of the indemnitee to indemnification and that is reasonably available to the indemnitee. Upon receipt by the Secretary of the Corporation of such a written request, the entitlement of the indemnitee to indemnification shall be determined by the following person or persons who shall be empowered to make such determination, as selected by the Board of Directors (except with respect to clause (v) of this Section 6.1(b)): (i) the Board of Directors by a majority vote of the directors who are not parties to such proceeding, whether or not such majority constitutes a quorum; (ii) a committee of such directors designated by a majority vote of such directors, whether or not such majority constitutes a quorum; (iii) if there are no such directors, or if such directors so direct, by independent legal counsel in a written opinion to the Board of Directors, a copy of which shall be delivered to the indemnitee; (iv) the stockholders of the Corporation; or (v) in the event that a change of control (as defined below) has occurred, by independent legal counsel in a written opinion to the Board of Directors, a copy of which shall be delivered to the indemnitee. The determination of entitlement to indemnification shall be made and, unless a contrary determination is made, such indemnification shall be paid in full by the Corporation not later than 60 days after receipt by the Secretary of the Corporation of a written request for indemnification. For purposes of this Section 6.1(b), a "change of control" will be deemed to have occurred if, with respect to any particular 24-month period, the individuals who, at the beginning of such 24-month period, constituted the Board of Directors (the "incumbent board"), cease for any reason to constitute at least a majority of the Board of Directors; provided, however, that any individual becoming a director subsequent to the beginning of such 24-month period whose election, or nomination for election by the stockholders of the Corporation, was approved by a vote of at least a majority of the directors then comprising the incumbent board shall be considered as though such individual were a member of the incumbent board, but excluding, for this purpose, any such individual whose initial assumption of office occurs as a result of an actual or threatened election contest with respect to the election or removal of directors or other actual or threatened solicitation of proxies or consents by or on behalf of a person other than the Board of Directors.

Section 6.2 Right to Advancement of Expenses.

(a) In addition to the right to indemnification conferred in Section 6.1, an indemnitee shall, to the fullest extent permitted by law, also have the right to be paid by the Corporation the expenses (including attorneys' fees) incurred in defending any proceeding in advance of its final disposition (hereinafter an "advancement of expenses"); provided, however, that an advancement of expenses shall be made only upon delivery to the Corporation of an undertaking (hereinafter an "undertaking"), by or on behalf of such indemnitee, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision of a court of competent jurisdiction from which there is no further right to appeal (hereinafter a "final adjudication") that such indemnitee is not entitled to be indemnified for such expenses under this Article VI or otherwise.

(b) To receive an advancement of expenses under this Section 6.2, an indemnitee shall submit a written request to the Secretary of the Corporation. Such request shall reasonably evidence the expenses incurred by the indemnitee and shall include or be

accompanied by the undertaking required by Section 6.2(a). Each such advancement of expenses shall be made within 20 days after the receipt by the Secretary of the Corporation of a written request for advancement of expenses.

Section 6.3 Right of Indemnitee to Bring Suit. In the event that: (a) a determination is made that the indemnitee is not entitled to indemnification, (b) payment is not timely made following a determination of entitlement to indemnification pursuant to Section 6.1(b) or (c) an advancement of expenses is not timely made under Section 6.2(b), then in each case, the indemnitee may at any time thereafter bring suit against the Corporation in a court of competent jurisdiction in the State of Delaware seeking an adjudication of entitlement to such indemnification or advancement of expenses. If successful in whole or in part in any such suit, or in a suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the indemnitee shall be entitled to be paid also the expense of prosecuting or defending such suit to the fullest extent permitted by law. In any suit brought by the indemnitee to enforce a right to indemnification hereunder (but not in a suit brought by the indemnitee to enforce a right to an advancement of expenses) it shall be a defense that the indemnitee has not met any applicable standard of conduct for indemnification set forth in the DGCL. Further, in any suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the Corporation shall be entitled to recover such expenses upon a final adjudication that the indemnitee has not met any applicable standard of conduct for indemnification set forth in the DGCL. Neither the failure of the Corporation (including its directors who are not parties to such action, a committee of such directors, independent legal counsel or its stockholders) to

have made a determination prior to the commencement of such suit that indemnification of the indemnitee is proper in the circumstances because the indemnitee has met the applicable standard of conduct set forth in the DGCL, nor an actual determination by the Corporation (including its directors who are not parties to such action, a committee of such directors, independent legal counsel or its stockholders) that the indemnitee has not met such applicable standard of conduct, shall create a presumption that the indemnitee has not met the applicable standard of conduct or, in the case of such a suit brought by the indemnitee, be a defense to such suit. In any suit brought by the indemnitee to enforce a right to indemnification or to an advancement of expenses hereunder, or brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the burden of proving that the indemnitee is not entitled to be indemnified, or to such advancement of expenses, under applicable law, this Article VI or otherwise shall be on the Corporation.

Section 6.4 Non-Exclusivity of Rights. The rights to indemnification and to the advancement of expenses conferred in this Article VI shall not be exclusive of any other right which any person may have or hereafter acquire under any law, agreement, vote of stockholders or disinterested directors, provisions of a certificate of incorporation or bylaws, or otherwise.

Section 6.5 Insurance. The Corporation may maintain insurance, at its expense, to protect itself and any director, officer, employee or agent of the Corporation or another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the DGCL.

Section 6.6 Indemnification of Employees and Agents of the Corporation. The Corporation may, to the extent and in the manner permitted by law, and to the extent authorized from time to time, grant rights to indemnification and to the advancement of expenses to any employee or agent of the Corporation.

Section 6.7 Nature of Rights. The rights conferred upon indemnitees in this Article VI shall be contract rights and such rights shall continue as to an indemnitee who has ceased to be a director or officer and shall inure to the benefit of the indemnitee's heirs, executors and administrators. Any amendment, alteration or repeal of this Article VI that adversely affects any right of an indemnitee or its successors shall be prospective only and shall not limit or eliminate any such right with respect to any proceeding involving any occurrence or alleged occurrence of any action or omission to act that took place prior to such amendment, alteration or repeal.

Section 6.8 Settlement of Claims. Notwithstanding anything in this Article VI to the contrary, the Corporation shall not be liable to indemnify any indemnitee under this Article VI for any amounts paid in settlement of any proceeding effected without the Corporation's written consent, which consent shall not be unreasonably withheld.

Section 6.9 Subrogation. In the event of payment under this Article VI, the Corporation shall be subrogated to the extent of such payment to all of the rights of recovery of the indemnitee (excluding insurance obtained on the indemnitee's own behalf), and the indemnitee shall execute all papers required and shall do everything that may be necessary to secure such rights, including the execution of such documents necessary to enable the Corporation effectively to bring suit to enforce such rights.

Section 6.10 Severability. If any provision or provisions of this Article VI shall be held to be invalid, illegal or unenforceable as applied to any person or entity or circumstance for any reason whatsoever, then, to the fullest extent permitted by law: (a) the validity, legality and enforceability of such provision in any other circumstance and of the remaining provisions of this Article VI (including, without limitation, all portions of any paragraph of this Article VI containing any such provision held to be invalid, illegal or unenforceable, that are not by themselves invalid, illegal or unenforceable) and the application of such provision to other persons or entities or circumstances shall not in any way be affected or impaired thereby; and (b) to the fullest extent possible, the provisions of this Article VI (including, without limitation, all portions of any paragraph of this Article VI containing any such provision held to be invalid, illegal or unenforceable, that are not themselves invalid, illegal or unenforceable) shall be construed so as to give effect to the intent of the parties that the Corporation provide protection to the indemnitee to the fullest extent set forth in this Article VI.

ARTICLE VII
CAPITAL STOCK

Section 7.1 Certificates of Stock. The shares of the Corporation shall be represented by certificates; provided, however, that the Board of Directors may provide by resolution or resolutions that some or all of any or all classes or series of stock shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the Corporation. Every holder of stock represented by certificates shall be

entitled to have a certificate signed by or in the name of the Corporation by any two authorized officers of the Corporation, including, without limitation, the Chief Executive Officer, the President, the Chief Financial Officer, the Treasurer, the Secretary, or an Assistant Treasurer or Assistant Secretary, of the Corporation certifying the number of shares owned by such holder in the Corporation. Any or all such signatures may be facsimiles. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate has ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if such person were such officer, transfer agent or registrar at the date of issue.

Section 7.2 Special Designation on Certificates. If the Corporation is authorized to issue more than one class of stock or more than one series of any class, then the powers, the designations, the preferences, and the relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights shall be set forth in full or summarized on the face or back of the certificate that the Corporation shall issue to represent such class or series of stock; provided, however, that, except as otherwise provided in Section 202 of the DGCL, in lieu of the foregoing requirements there may be set forth on the face or back of the certificate that the Corporation shall issue to represent such class or series of stock a statement that the Corporation will furnish without charge to each stockholder who so requests the powers, the designations, the preferences, and the relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights. Within a reasonable time after the issuance or transfer of uncertificated stock, the registered owner thereof shall be given a notice, in writing or by electronic transmission, containing the information required to be set forth or stated on certificates pursuant to this

Section 7.2 or Sections 151, 156, 202(a) or 218(a) of the DGCL or with respect to this Section 7.2 and Section 151 of the DGCL a statement that the Corporation will furnish without charge to each stockholder who so requests the powers, the designations, the preferences, and the relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights. Except as otherwise expressly provided by law, the rights and obligations of the holders of uncertificated stock and the rights and obligations of the holders of certificates representing stock of the same class and series shall be identical.

Section 7.3 Transfers of Stock. Transfers of shares of stock of the Corporation shall be made only on the books of the Corporation upon authorization by the registered holder thereof or by such holder's attorney thereunto authorized by a power of attorney duly executed and filed with the Secretary of the Corporation or a transfer agent for such stock, and if such shares are represented by a certificate, upon surrender of the certificate or certificates for such shares properly endorsed or accompanied by a duly executed stock transfer power and the payment of any taxes thereon; provided, however, that the Corporation shall be entitled to recognize and enforce any lawful restriction on transfer.

Section 7.4 Lost Certificates. The Corporation may issue a new share certificate or uncertificated shares in the place of any certificate theretofore issued by it, alleged to have been lost, stolen or destroyed, and the Corporation may require the owner of the lost, stolen or destroyed certificate or the owner's legal representative to give the Corporation a bond (or other

adequate security) sufficient to indemnify it against any claim that may be made against it (including any expense or liability) on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate or uncertificated shares. The Board of Directors may adopt such other provisions and restrictions with reference to lost certificates, not inconsistent with applicable law, as it shall in its discretion deem appropriate.

Section 7.5 Registered Stockholders. The Corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise required by law.

Section 7.6 Record Date for Determining Stockholders.

(a) In order that the Corporation may determine the stockholders entitled to notice of any meeting of stockholders or any adjourned meeting, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall, unless otherwise required by law, not be more than 60 nor less than 10 days before the date of such meeting. If the Board of Directors so fixes a date, such date shall also be the record date for determining the stockholders entitled to vote at such meeting unless the Board of Directors determines, at the time it fixes such record date, that a later date on or before the date of the meeting shall be the date for making such determination. If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of and to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjourned meeting; provided, however, that the Board of Directors may fix a new record date for the determination of stockholders entitled to vote at the adjourned meeting, and in such case shall also fix as the record date for stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote in accordance herewith at the adjourned meeting.

(b) In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall not be more than 60 days prior to such action. If no such record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

(c) Unless otherwise restricted by the Certificate of Incorporation (including any Preferred Stock Designation), in order that the Corporation may determine the stockholders entitled to express consent to corporate action in writing without a meeting, the Board of Directors may fix a record date, which record date shall not precede the date upon which the

resolution fixing the record date is adopted by the Board of Directors, and which record date shall not be more than 10 days after the date upon which the resolution fixing the record date is adopted by the Board of Directors. If no record date has been fixed by the Board of Directors, the record date for determining stockholders entitled to express consent to corporate action in writing without a meeting, when no prior action of the Board of Directors is required by law, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken was delivered to the Corporation in accordance with Section 2.10. If no record date has been fixed by the Board of Directors, the record date for determining stockholders entitled to express consent to corporate action in writing without a meeting, if prior action by the Board of Directors is required by law, shall be at the close of business on the day on which the Board of Directors adopts the resolution taking such prior action.

Section 7.7 Regulations. To the extent permitted by applicable law, the Board of Directors may make such additional rules and regulations as it may deem expedient concerning the issue, transfer and registration of shares of stock of the Corporation.

Section 7.8 Waiver of Notice. Whenever notice is required to be given under any provision of the DGCL or the Certificate of Incorporation or these Bylaws, a written waiver, signed by the person entitled to notice, or a waiver by electronic transmission by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholders, the Board of Directors or a committee of the Board of Directors need be specified in any written waiver of notice or any waiver by electronic transmission unless so required by the Certificate of Incorporation or these Bylaws.

ARTICLE VIII
GENERAL MATTERS

Section 8.1 Fiscal Year. The fiscal year of the Corporation shall begin on the first day of January of each year and end on the last day of December of the same year, or shall extend for such other 12 consecutive months as the Board of Directors may designate.

Section 8.2 Corporate Seal. The Board of Directors may provide a suitable seal, containing the name of the Corporation, which seal (if so adopted) shall be in the charge of the Secretary of the Corporation. If and when so directed by the Board of Directors or a committee thereof, duplicates of the seal may be kept and used by the Treasurer or by an Assistant Secretary or Assistant Treasurer.

Section 8.3 Reliance Upon Books, Reports and Records. Each director and each member of any committee designated by the Board of Directors shall, in the performance of his or her duties, be fully protected in relying in good faith upon the books of account or other records of the Corporation and upon such information, opinions, reports or statements presented to the Corporation by any of its officers or employees, or committees of the Board of Directors so designated, or by any other person as to matters which such director or committee member reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Corporation.

Section 8.4 Subject to Law and Certificate of Incorporation. All powers, duties and responsibilities provided for in these Bylaws, whether or not explicitly so qualified, are qualified by the Certificate of Incorporation (including any Preferred Stock Designation) and applicable law.

ARTICLE IX
FORUM FOR ADJUDICATION OF DISPUTES

Section 9.1 Forum. Unless the Corporation, in writing, selects or consents to the selection of an alternative forum, the sole and exclusive forum for any current or former stockholder (including any current or former beneficial owner) to bring internal corporate claims (as defined below), to the fullest extent permitted by law, and subject to applicable jurisdictional requirements, shall be the Court of Chancery of the State of Delaware (or, if the Court of Chancery does not have jurisdiction, the Superior Court of the State of Delaware, or if such court does not have jurisdiction, another state court or a federal court located within the State of Delaware). For purposes of this Article IX, internal corporate claims means claims, including claims in the right of the Corporation: (a) that are based upon a violation of a duty by a current or former director, officer, employee or stockholder in such capacity; or (b) as to which the DGCL confers jurisdiction upon the Court of Chancery.

Section 9.2 Consent to Jurisdiction. If any action the subject matter of which is within the scope of this Article IX is filed in a court other than the aforementioned courts in accordance with the preceding paragraph (a "foreign action") by any current or former stockholder (including any current or former beneficial owner), such stockholder shall be deemed to have consented to: (a) the personal jurisdiction of the Court of Chancery (or such other state or federal court located within the State of Delaware, as applicable) in connection with any action brought in any such court to enforce this Article IX; and (b) having service of process made upon such stockholder in any such action by service upon such stockholder's counsel in the foreign action as agent for such stockholder.

Section 9.2 Enforceability. If any provision of this Article IX shall be held to be invalid, illegal or unenforceable as applied to any person or entity or circumstance for any reason whatsoever, then, to the fullest extent permitted by law, the validity, legality and enforceability of such provision in any other circumstance and of the remaining provisions of this Article IX (including, without limitation, each portion of any sentence of this Article IX containing any such provision held to be invalid, illegal or unenforceable that is not itself held to be invalid, illegal or unenforceable) and the application of such provision to other persons or entities or circumstances shall not in any way be affected or impaired thereby.

ARTICLE X
AMENDMENTS

Section 10.1 Amendments. In furtherance and not in limitation of the powers conferred by the laws of the State of Delaware, the Board of Directors is expressly authorized to adopt,

amend or repeal these Bylaws. Except as otherwise provided in the Certificate of Incorporation (including the terms of any Preferred Stock Designation that require an additional vote) or these Bylaws , and in addition to any requirements of law, the affirmative vote of at least a majority of the voting power of the stock outstanding and entitled to vote thereon, voting together as a single class, shall be required for the stockholders to adopt, amend or repeal, or adopt any provision inconsistent with, any provision of these Bylaws.

The foregoing Bylaws were adopted by the Board of Directors on July 24, 2018.


NUMBER
ATI
SHARES
SPECIMEN
ASSERTIO
INCORPORATED UNDER THE LAWS OF THE STATE OF DELAWARE
SEE REVERSE FOR CERTAIN DEFINITIONS
COMMON STOCK
CUSIP 04545L 10 7
THIS CERTIFIES THAT:
SPECIMEN - NOT NEGOTIABLE
IS THE OWNER OF
FULLY PAID AND NON-ASSESSABLE SHARES OF COMMON STOCK OF $0.0001 PAR VALUE EACH OF
ASSERTIO THERAPEUTICS, INC.
transferable on the books of the Corporation in person or by attorney upon surrender of this certificate duly endorsed or assigned. This certificate and the shares represented hereby are subject to the laws of the State of Delaware, and to the Certificate of Incorporation and Bylaws of the Corporation, as now or hereafter amended. This certificate is not valid until countersigned by the Transfer Agent.
WITNESS the facsimile seal of the Corporation and the facsimile signatures of its duly authorized officers.
DATED:
ASSERTIO THERAPEUTICS, INC. CORPORATE SEAL 2018 DELAWARE
COUNTERSIGNED:
CONTINENTAL STOCK TRANSFER & TRUST COMPANY
NEW YORK, NY
TRANSFER AGENT
BY:
AUTHORIZED OFFICER
SPECIMEN
NOT NEGOTIABLE
SVP AND CHIEF FINANCIAL OFFICER
PRESIDENT AND CHIEF EXECUTIVE OFFICER
© COLUMBIA PRINTING SERVICES, LLC

Exhibit 3.4

The following abbreviations, when used in the inscription on the face of this certificate, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM - as tenants in common	*UNIF GIFT MIN ACT - .....Custodian.....*
TEN ENT - as tenants by the entireties	*(Cust) (Minor)*
JT TEN - as joint tenants with right of survivorship and not as tenants in common	*under Uniform Gifts to Minors Act .....*
	(State)

Additional abbreviations may also be used though not in the above list.

For Value Received,_____ hereby sell, assign and transfer unto

PLEASE INSERT SOCIAL SECURITY OR OTHER IDENTIFYING NUMBER OF ASSIGNEE

_____

(PLEASE PRINT OR TYPE NAME AND ADDRESS, INCLUDING ZIP CODE, OF ASSIGNEE)

_____

_____

_____ *Shares*

of the stock represented by the within Certificate, and do hereby irrevocably constitute and appoint

_____ *Attorney*

to transfer the said stock on the books of the within named Corporation with full power of substitution in the premises.

Dated _____

NOTICE: THE SIGNATURE TO THIS ASSIGNMENT MUST CORRESPOND WITH THE NAME AS WRITTEN UPON THE FACE OF THE CERTIFICATE IN EVERY PARTICULAR, WITHOUT ALTERATION OR ENLARGEMENT OR ANY CHANGE WHATSOEVER.

Signature(s) Guaranteed

By _____

The Signature(s) must be guaranteed by an eligible guarantor institution (Banks, Stockbrokers, Savings and Loan Associations and Credit Unions with membership in an approved Signature Guarantee Medallion Program), pursuant to SEC Rule 17Ad-15.

THE CORPORATION WILL FURNISH TO ANY STOCKHOLDER, UPON REQUEST AND WITHOUT CHARGE, A FULL STATEMENT OF THE DESIGNATIONS, RELATIVE RIGHTS, PREFERENCES AND LIMITATIONS OF THE SHARES OF EACH CLASS AND SERIES AUTHORIZED TO BE ISSUED, SO FAR AS THE SAME HAVE BEEN DETERMINED, AND OF THE AUTHORITY, IF ANY, OF THE BOARD TO DIVIDE THE SHARES INTO CLASSES OR SERIES AND TO DETERMINE AND CHANGE THE RELATIVE RIGHTS, PREFERENCES AND LIMITATIONS OF ANY CLASS OR SERIES. SUCH REQUEST MAY BE MADE TO THE SECRETARY OF THE CORPORATION OR TO THE TRANSFER AGENT NAMED ON THIS CERTIFICATE.

SECOND SUPPLEMENTAL INDENTURE

THIS SECOND SUPPLEMENTAL INDENTURE (this "*Supplemental Indenture*"), entered into as of August 14, 2018, between Assertio Therapeutics, Inc., a Delaware corporation (the "*Successor Company*"), and The Bank of New York Mellon Trust Company, N.A., as trustee (the "*Trustee*"). Capitalized terms used herein and not otherwise defined herein are used as defined in the Indenture referred to below.

W I T N E S S E T H

WHEREAS, Depomed, Inc., a California corporation (the "*Company*") is the issuer under that certain indenture dated as of September 9, 2014 (the "*Base Indenture*"), as supplemented by the First Supplemental Indenture dated as of September 9, 2014 (the "*Supplemental Indenture*") (the Base Indenture as so supplemented by the Supplemental Indenture shall hereinafter collectively be referred to as, the "*Indenture*") among the Company and the Trustee, providing for the issuance by the Predecessor Corporation of its 2.50% Convertible Senior Notes due 2021 (the "*Notes*");

WHEREAS, the Company is reincorporating in Delaware and changing its name;

WHEREAS, contemporaneously with the execution and delivery of this Supplemental Indenture, the reincorporation and name change is being achieved mechanically by a merger of the Company into the Successor Company, a wholly-owned subsidiary of the Company (the "*Merger*");

WHEREAS, as a result of the Merger, the existing holders of the common stock of the Company own all of the outstanding shares of the Successor Company, and there is no change in the number of shares owned by or in the percentage ownership of any shareholder as a result of the reincorporation and no adjustment of the Conversion Rate is required to be made pursuant to Section 11.04 of the Supplemental Indenture;

WHEREAS, other than the change in corporate domicile to Delaware, the reincorporation itself does not resulted in any change in the business, physical location, management, assets, liabilities or capitalization of the Company;

WHEREAS, the Company has sought to maintain intact the existing material rights of shareholders in the California corporation in forming the Delaware corporation;

WHEREAS, the Company may enter into a merger in accordance with Sections 10.01 and 10.02 of the Indenture;

WHEREAS, Section 9.01(b) and (f) and Article X of the Indenture provide that the Company, when authorized by the resolutions of the Board of Directors and the Trustee, may enter into a supplemental indenture to provide for the assumption by a Successor Company of the obligations of the Company under the Indenture without the consent of the Holders of the Notes;

WHEREAS, the Board of Directors of the Company has authorized the merger of the Company into the Successor Company, the reincorporation of the Company in Delaware, the entry into this Supplemental Indenture and the assumption by the Successor Company of the obligations of the Company under the Indenture;

WHEREAS, the Successor Company shall, after execution and delivery of this Supplemental Indenture by the parties hereto, assume all the obligations of an issuer under the Indenture and the Notes on the terms and conditions set forth herein;

WHEREAS, pursuant to Section 9.01(b) and (f) of the Indenture, subject to Article X of the Indenture, the Company and the Trustee are authorized to execute and deliver this Supplemental Indenture without the consent of Holders of the Notes; and

WHEREAS, all things necessary to make this Supplemental Indenture a valid indenture and agreement according to its terms have been done.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Successor Company and the Trustee mutually covenant and agree for the equal and ratable benefit of the Holders of the Notes as follows:

1. AMENDMENT. This Supplemental Indenture is an amendment supplemental to the Indenture, and the Indenture and this Supplemental Indenture will henceforth be read together.

2. AGREEMENT. Successor Company hereby agrees to become party to the Indenture as issuer and hereby expressly assumes all of the obligations and agreements of the Company under the Indenture and the Notes, including, without limitation due and punctual payment of the principal of and accrued and unpaid interest on all of the Notes, the due and punctual delivery or payment, as the case may be, of any consideration due upon conversion of the Notes and the due and punctual performance of all of the covenants and conditions of the Indenture to be performed by the Company effective upon the execution and delivery of this Supplemental Indenture, which is occurring contemporaneously with the Merger.

3. NEW YORK LAW TO GOVERN. THIS SUPPLEMENTAL INDENTURE AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THIS SUPPLEMENTAL INDENTURE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

4. COUNTERPARTS. The parties may sign any number of copies of this Supplemental Indenture. Each signed copy shall be deemed an original, but all of them together represent the same agreement. Delivery of an executed counterpart of a signature page to this Supplemental Indenture by facsimile, email or other electronic means shall be effective as delivery of a manually executed counterpart of this Supplemental Indenture.

5. EFFECT OF HEADINGS. The Section headings herein are for convenience only and shall not affect the construction hereof.

6. THE TRUSTEE. The Trustee shall not be responsible in any manner whatsoever for or in respect of the validity or sufficiency of this Supplemental Indenture or for or in respect of the recitals contained herein, all of which recitals are made solely by the Successor Company.

7. BENEFITS ACKNOWLEDGED. Successor Company acknowledges that it will receive direct and indirect benefits from the financing arrangements contemplated by the Indenture and this Supplemental Indenture and that its obligation to become an issuer of the Notes pursuant to this Supplemental Indenture are knowingly made in contemplation of such benefits.

8. SUCCESSORS. All agreements of the Successor Company in this Supplemental Indenture shall bind its successors, except as otherwise provided in the Indenture. All agreements of the Trustee in this Supplemental Indenture shall bind its successors.

9. WAIVER OF JURY TRIAL. EACH OF THE SUCCESSOR COMPANY AND THE TRUSTEE HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THE SUPPLEMENTAL INDENTURE OR THE TRANSACTIONS CONTEMPLATED HEREBY.

10. RATIFICATION OF THE INDENTURE. Except as expressly amended hereby, the Indenture is in all respects ratified and confirmed and all the terms, conditions and provisions thereof, including without limitation Section 7.06 thereof, shall remain in full force and effect. This Supplemental Indenture shall form a part of the Indenture for all purposes, and every Holder of Notes heretofore or hereafter authenticated and delivered shall be bound hereby.

11. NOTICES. All notices and other communications to the Successor Company shall be given as provided in the Indenture at the address set forth below.

Assertio Therapeutics, Inc.
100 S. Saunders Road, Suite 300
Lake Forest, IL 60045
Attention: General Counsel

[*Signature Page Follows*]

IN WITNESS WHEREOF, the parties hereto have caused this Supplemental Indenture to be duly executed and attested, all as of the date first above written.

ASSERTIO THERAPEUTICS, INC., as Successor Company

By: /s/ Phillip B. Donenberg
Phillip B. Donenberg
Senior Vice President and Chief Financial Officer

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., as Trustee

By: /s/ Lawrence M. Kusch
Name: Lawrence M. Kusch
Title: Vice President

CONSENT TO NOTE PURCHASE AGREEMENT
AND ASSUMPTION AGREEMENT

THIS **CONSENT TO NOTE PURCHASE AGREEMENT AND ASSUMPTION AGREEMENT**, dated as of August 10, 2018 (this "Agreement"), is entered into by and among **DEPOMED, INC.**, a California corporation (the "Borrower"), **ASSERTIO THERAPEUTICS, INC.**, a Delaware corporation (the "Successor Borrower"), the other Credit Parties party hereto, the Purchasers party hereto, and **DEERFIELD PRIVATE DESIGN FUND III, L.P.**, a Delaware limited partnership, as a Purchaser and as collateral agent (in such latter capacity, the "Agent").

BACKGROUND STATEMENT

A. The Borrower, the Purchasers and the Agent entered into that certain Note Purchase Agreement, dated as of March 12, 2015, as amended by that certain Consent and First Amendment to Note Purchase Agreement, dated as December 29, 2015, that Waiver and Second Amendment to Note Purchase Agreement, dated as December 4, 2017, and that Waiver, Consent and Third Amendment to Note Purchase Agreement and Partial Release of Security Interest, dated as of August 1, 2018 (as the same may be amended, modified, restated or otherwise supplemented from time to time, the "Purchase Agreement"), pursuant to which the Borrower issued up to $575,000,000 aggregate principal amount of secured notes to the Purchasers. Capitalized terms used and not otherwise defined herein shall have the meanings given to such terms in the Purchase Agreement.

B. The Borrower wishes to change its state of incorporation from California to Delaware, which reincorporation will be effected in accordance with the terms and conditions of the Agreement and Plan of Merger of the Borrower and the Successor Borrower, substantially in the form attached hereto as Exhibit A (the "Merger Agreement" and the merger effected in accordance with the terms thereof, the "Merger"). Pursuant to the Merger, the Borrower will merge into the Successor Borrower, which is currently a wholly-owned Subsidiary of the Borrower, with the Successor Borrower continuing as the surviving corporation and assuming all of the rights and obligations of the Borrower as "Borrower" under the Purchase Agreement and the other Credit Documents.

C. In connection with the Merger, the Successor Borrower desires to become the "Borrower" under the Purchase Agreement and the other Credit Documents and to assume all of the rights and obligations of the Borrower as "Borrower" thereunder.

D. The Borrower and the Successor Borrower have requested that the Purchasers consent to the Merger, including the Successor Borrower becoming the "Borrower" under the Purchase Agreement and the other Credit Documents and assuming all of the rights and obligations of the Borrower as "Borrower" thereunder.

E. The Purchasers party hereto, which constitute the Required Purchasers as required by Section 9.10 of the Purchase Agreement, are willing to provide the aforementioned consent in accordance with, and subject to, the terms and conditions set forth herein, including without limitation, the assumption by the Successor Borrower of the all the rights and obligations of the

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Borrower as "Borrower" under the Purchase Agreement and the other Credit Documents and amendments to the Purchase Agreement, in each case, as set forth below.

STATEMENT OF AGREEMENT

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

ARTICLE I

CONSENT

1.1 Subject to the terms and conditions hereof, the Purchasers party hereto, which constitute the Required Purchasers as required by Section 9.10 of the Purchase Agreement, hereby waive compliance with Section 6.1 of the Purchase Agreement in connection with, and consent to, the Borrower and the Successor Borrower entering into the Merger Agreement and consummating the Merger in accordance with the terms thereof pursuant to which the Successor Borrower will continue as the surviving corporation and assume all of the rights and obligations of the Borrower as "Borrower" under the Purchase Agreement and the other Credit Documents .

1.2 The waiver and consent set forth in **Section 1.1** is only with respect to the Merger Agreement substantially in the form attached hereto as Exhibit A and if any amendment, modification or supplement is made to the Merger Agreement or if any waiver is granted by any party thereto from compliance with the terms thereof, in each case, in a manner that could reasonably be expected to adversely affect the Purchasers in any material respect without the written consent of the Required Purchasers such waiver and consent shall be rendered null and void *ab initio*.

ARTICLE II

ASSUMPTION

2.1 Assumption. As of the Merger Effective Date (as defined below), the Successor Borrower hereby agrees (a) to become the "Borrower" as that term is defined in Section 1.1 of the Purchase Agreement and the other Credit Documents, with the same force and effect as if it had executed the Purchase Agreement and the other Credit Documents as of the original date of execution thereof, and (b) expressly and completely assumes, as its direct and primary obligation, the due and punctual payment of the Obligations and the due and punctual performance of and compliance with, and agrees to be bound by, all of the terms and conditions of the Purchase Agreement and the other Credit Documents to be performed or complied with by the Borrower.

2.2 Reference in Credit Documents. From and after the Merger Effective Date, each reference to "Borrower" in the Purchase Agreement and any of the other Credit Documents shall mean the Successor Borrower.

ARTICLE III

REPRESENTATIONS AND WARRANTIES

To induce the Purchasers to enter into this Agreement, the Borrower and the Successor Borrower hereby represent and warrant to the Agent and the Purchasers as follows:

3.1 Representations and Warranties. Both immediately before and after giving effect to this Agreement and the transactions contemplated hereby, each of the representations and warranties of each Credit Party contained in the Purchase Agreement and each other Credit Document is true and correct in all material respects on and as of the date hereof with the same effect as if made on and as of the date hereof (except to the extent any such representation or warranty is expressly stated to have been made as of a specific date, in which case such representation or warranty was true and correct as of such date).

3.2 No Default. Both immediately before and after giving effect to this Agreement and the transactions contemplated hereby, no Default or Event of Default has occurred and is continuing.

3.3 Authorization; Approvals. The execution, delivery and performance of this Agreement and the transactions contemplated hereby (a) are within the corporate or limited liability company authority, as applicable, of each Credit Party, (b) have been duly authorized by all necessary corporate or limited liability company action, as applicable, of each Credit Party, (c) do not and will not contravene any other Requirement of Law to which any Credit Party is subject or any judgment, order, writ, injunction, license or permit applicable to any Credit Party, and (d) do not violate or breach any provision of the governing documents of any Credit Party or any agreement or other instrument binding upon any Credit Party. The execution, delivery and performance of this Agreement by each Credit Party does not require the approval or consent of, or filing with, any Governmental Authority.

3.4 Enforceability. This Agreement has been duly executed and delivered by each Credit Party and constitutes each Credit Party's legal, valid and binding obligation, enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, reorganization, insolvency, moratorium or other similar laws affecting creditors' rights generally or by general equitable principles.

3.5 Material Non-Public Information. As of 8:30 a.m. on the second Business Day immediately following the Merger Effective Date, it has disclosed all material, non-public information (if any) provided or made available to any Restricted Purchaser (or any such Restricted Purchaser's agents or representatives) on or prior to such date by it or any of its respective officers, directors, employees, Affiliates or agents in connection with the transactions contemplated by this Agreement, the Merger or otherwise.

ARTICLE IV

EFFECTIVENESS

4.1 This Agreement shall become effective as of the date when, and only when, each of the following conditions precedent shall have been satisfied (such date, the "Effective Date"):

(a) The Agent shall have received an executed counterpart of this Agreement from the Borrower, the Successor Borrower and each other Credit Party and Purchasers constituting the Required Purchasers.

(b) The Agent shall have received an opinion of counsel to the Credit Parties dated as of the Effective Date and addressed to the Purchasers, in form and substance reasonably satisfactory to the Required Purchasers.

(c) The Agent shall have received a certificate of the secretary or an assistant secretary of the Successor Borrower, in form and substance reasonably satisfactory to the Required Purchasers, certifying (i) that attached thereto is a true and complete copy of the articles or certificate of incorporation, certificate of formation or other organizational document and all amendments thereto of the Successor Borrower, certified as of a recent date by the Secretary of State (or comparable Governmental Authority) of its jurisdiction of organization, and that the same has not been amended since the date of such certification, (ii) that attached thereto is a true and complete copy of the bylaws, operating agreement or similar governing document of the Successor Borrower, as then in effect and as in effect at all times from the date on which the resolutions referred to in clause (iii) below were adopted to and including the date of such certificate, (iii) that attached thereto is a true and complete copy of resolutions adopted by the board of directors (or similar governing body) of the Successor Borrower, authorizing the execution, delivery and performance of this Agreement and the other Credit Documents to which it is a party either as signatory thereto or as successor-in-interest to the Borrower, and (iv) as to the incumbency and genuineness of the signature of each officer of the Successor Borrower executing this Agreement or any of such other Credit Documents, and attaching all such copies of the documents described above.

(d) The Agent shall have received a certificate as of a recent date of the good standing of the Successor Borrower, under the laws of its jurisdiction of organization, from the Secretary of State (or comparable Governmental Authority) of such jurisdiction.

(e) The Agent shall have received evidence that UCC financing statements naming the Successor Borrower as debtor and the Agent as secured party and describing the collateral encumbered by the Security Documents have been duly filed in each jurisdiction necessary to perfect the Liens created by the Security Documents.

(f) The Agent shall have received certified reports from an independent search service satisfactory to it showing that there is no judgment or tax lien filing or UCC financing statement naming the Successor Borrower as debtor in any applicable jurisdiction.

(g) The Borrower shall have paid all expenses due in accordance with **Section 8.1** hereof.

(h) Both immediately before and after giving effect to this Agreement and the transactions contemplated hereby, each of the representations and warranties contained in this Agreement shall be true and correct in all material respects on and as of the Effective Date and the Merger Effective Date, with the same effect as if made on and as of such date.

ARTICLE V

POST-EFFECTIVENESS OBLIGATIONS

5.1 Within 3 Business Days of the Effective Date, (a) the Merger shall be effective (the date on which the Merger is effective, the "Merger Effective Date") and (b) the Borrower shall deliver to the Agent (i) a fully executed copy of the Merger Agreement and (ii) evidence that all filings required to be made with the Secretaries of State (or comparable Governmental Authorities) of Delaware and California in order to make the Merger effective have been made.

ARTICLE VI

SECURITIES ACT RELATED OBLIGATIONS

6.1 On or before 8:00 a.m., New York time, on the second Business Day immediately following the Merger Effective Date, the Borrower shall file a Current Report on Form 8-K (a) disclosing (i) the effectiveness of the Merger and (ii) all other material, non-public information (if any) provided or made available to any Restricted Purchaser (or any such Restricted Purchaser's agents or representatives) on or prior to such date by the Borrower, the Successor Borrower or any of their respective officers, directors, employees, Affiliates or agents in connection with the transactions contemplated by this Agreement, the Merger Agreement, or otherwise and (b) including this Agreement and the Merger Agreement in their entirety as exhibits thereto. After giving effect to the filing required under this **Section 6.1**, the Borrower and the Successor Borrower expressly acknowledge and agree that no Restricted Purchaser and none of its agents or representatives shall have any duty of trust or confidence with respect to, or a duty not to trade on the basis of, any information provided by the Borrower , the Successor Borrower or any of their respective officers, directors, employees, Affiliates or agents in connection with the transactions contemplated by this Agreement, the Merger or otherwise.

ARTICLE VII

AFFIRMATION OF OBLIGATIONS

Each of the Credit Parties, including the Successor Borrower, hereby acknowledges and consents to all of the terms and conditions of this Agreement and agrees that this Agreement and all documents executed in connection herewith do not operate to reduce or discharge such Credit Party's obligations (as applicable) under the Purchase Agreement, the Guaranty, the Security Agreement and the other Credit Documents to which it is a party. Further, each of the Credit Parties hereby (i) ratifies and confirms its pledge of and grant of a security interest in and Lien on all of its collateral to the Agent made pursuant to the Security Agreement and the other Credit Documents to which it is a party, which security interest and Lien shall continue in full force and effect without interruption, and shall constitute the single grant of a security interest and Lien, (ii) confirms and agrees that, after giving effect to this Agreement, the Purchase Agreement, the Guaranty, the Security Agreement and the other Credit Documents to which it is a party remain in full force and effect and enforceable against such Credit Party in accordance with their respective terms and shall not be discharged, diminished, limited or otherwise affected in any respect, and (iii) represents and warrants to the Agent and the Purchasers that it has no knowledge of any claims, counterclaims, offsets, or defenses to or with respect to its obligations

under the Credit Documents, or if such Credit Party has any such claims, counterclaims, offsets, or defenses to the Credit Documents or any transaction related to the Credit Documents, the same are hereby waived, relinquished, and released in consideration of the execution of this Agreement. Each of the Credit Parties further waives any defense to its guaranty liability occasioned by this Agreement. This acknowledgement and confirmation by each of the Credit Parties is made and delivered to induce the Agent and the Purchasers to enter into this Agreement, and each Credit Party acknowledges that the Agent and the Purchasers would not enter into this Agreement in the absence of the acknowledgement and confirmation contained herein.

ARTICLE VIII

EXPENSES

8.1 Expenses. Whether or not the Effective Date occurs, the Borrower agrees, on demand, to pay all reasonable out-of-pocket costs and expenses of the Agent and each Purchaser (including, without limitation, reasonable fees and expenses of counsel) in connection with the preparation, negotiation, execution and delivery of this Agreement.

ARTICLE IX

MISCELLANEOUS

9.1 Effect of Agreement. From and after the Effective Date, all references to the Purchase Agreement set forth in the Purchase Agreement and any other Credit Document or other agreement or instrument shall, unless otherwise specifically provided, be references to the Purchase Agreement as modified by this Agreement. This Agreement is limited as specified and shall not constitute or be deemed to constitute an amendment, modification or waiver of any provision of the Purchase Agreement except as expressly set forth herein. Nothing herein shall be deemed to entitle the Borrower or any other Credit Party or Person to a consent to, or a waiver, amendment, modification or other change of, any of the terms, conditions, obligations, covenants or agreements contained in the Purchase Agreement or any other Credit Document in similar or different circumstances. For the avoidance of doubt, this Agreement shall be deemed a Credit Document.

9.2 Governing Law. This Agreement shall be governed by and construed and enforced in accordance with, the law of the State of New York (including Sections 5-1401 and 5-1402 of the New York General Obligations Law, but excluding all other choice of law and conflicts of law rules).

9.3 Severability. To the extent any provision of this Agreement is prohibited by or invalid under the applicable law of any jurisdiction, such provision shall be ineffective only to the extent of such prohibition or invalidity and only in any such jurisdiction, without prohibiting or invalidating such

provision in any other jurisdiction or the remaining provisions of this Agreement in any jurisdiction.

9.4 Successors and Assigns. This Agreement shall be binding upon, inure to the benefit of and be enforceable by the respective successors and assigns of the parties hereto.

9.5 Construction. The headings of the various sections and subsections of this Agreement have been inserted for convenience only and shall not in any way affect the meaning or construction of any of the provisions hereof.

9.6 Counterparts; Integration. This Agreement may be executed in any number of counterparts and by different parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all of which shall together constitute one and the same instrument. This Agreement or any counterpart may be executed and delivered by facsimile or electronic mail, each of which shall be deemed an original. This Agreement and the other Credit Documents constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof.

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IN WITNESS WHEREOF, the undersigned Agent, Purchasers, the Borrower and the other Credit Parties have caused this Agreement to be duly executed as of the date first above written.

Borrower:

DEPOMED, INC.

By: /s/ Arthur Higgins
Name: Arthur Higgins
Title: President and Chief Executive Officer

Successor Borrower:

ASSERTIO THERAPEUTICS, INC.

By: /s/ Arthur Higgins
Name: Arthur Higgins
Title: President and Chief Executive Officer

Other Credit Parties:

DEPO NF SUB, LLC

By: Depomed, Inc., its sole member

By: /s/ Arthur Higgins
Name: Arthur Higgins
Title: President and Chief Executive Officer

Agent and Purchasers:

DEERFIELD PRIVATE DESIGN FUND III, L.P., as Collateral Agent and a Purchaser

By: Deerfield Mgmt III, L.P.
General Partner

By: J.E. Flynn Capital III, LLC
General Partner

By: /s/ David J. Clark
Name: David J. Clark
Title: Authorized Signatory

DEERFIELD PARTNERS, L.P., as a Purchaser

By: Deerfield Mgmt, L.P.
General Partner

By: J.E. Flynn Capital, LLC

General Partner

By: /s/ David J. Clark
Name: David J. Clark
Title: Authorized Signatory

DEERFIELD INTERNATIONAL MASTER FUND, L.P., as a Purchaser

By: Deerfield Mgmt, L.P.
General Partner

By: J.E. Flynn Capital, LLC
General Partner

By: /s/ David J. Clark
Name: David J. Clark
Title: Authorized Signatory

DEERFIELD SPECIAL SITUATIONS FUND, L.P., as a Purchaser

By: Deerfield Mgmt, L.P.
General Partner

By: J.E. Flynn Capital, LLC
General Partner

By: /s/ David J. Clark
Name: David J. Clark
Title: Authorized Signatory

DEERFIELD PRIVATE DESIGN FUND II, L.P., as a Purchaser

By: Deerfield Mgmt, L.P.
General Partner

By: J.E. Flynn Capital, LLC
General Partner

By: /s/ David J. Clark
Name: David J. Clark
Title: Authorized Signatory

DEERFIELD PRIVATE DESIGN INTERNATIONAL II, L.P., as a Purchaser

By: Deerfield Mgmt, L.P.
General Partner

By: J.E. Flynn Capital, LLC
General Partner

By: /s/ David J. Clark
Name: David J. Clark
Title: Authorized Signatory

EXHIBIT A

See the Agreement and Plan of Merger dated August 10, 2018, by an between Depomed Inc., a California corporation, and Assertio Therapeutics Inc., a Delaware corporation, filed as Exhibit 2.1 to the Company's Current Report on Form 8-K filed on August 15, 2018.

FORM OF INDEMNIFICATION AGREEMENT

This Indemnification Agreement (this "Agreement") is entered into as of , 20 (the "Effective Date") by and between Assertio Therapeutics, Inc., a Delaware corporation (the "Company"), and (the "Indemnitee").

RECITALS

WHEREAS, the Board of Directors has determined that the inability to attract and retain qualified persons as directors and officers is detrimental to the best interests of the Company's stockholders and that the Company should act to assure such persons that there shall be adequate certainty of protection through insurance and indemnification against risks of claims and actions against them arising out of their service to and activities on behalf of the Company;

WHEREAS, the Company has adopted provisions in its Certificate of Incorporation and Bylaws providing for indemnification and advancement of expenses of its directors and officers to the fullest extent authorized by the General Corporation Law of the State of Delaware (the "DGCL"), and the Company wishes to clarify and enhance the rights and obligations of the Company and the Indemnitee with respect to indemnification and advancement of expenses;

WHEREAS, in order to induce and encourage highly experienced and capable persons such as the Indemnitee to serve and continue to serve as directors and officers of the Company and in any other capacity with respect to the Company as the Company may request, and to otherwise promote the desirable end that such persons shall resist what they consider unjustified lawsuits and claims made against them in connection with the good faith performance of their duties to the Company, with the knowledge that certain costs, judgments, penalties, fines, liabilities, and expenses incurred by them in their defense of such litigation are to be borne by the Company and they shall receive appropriate protection against such risks and liabilities, the Board of Directors of the Company has determined that the following Agreement is reasonable and prudent to promote and ensure the best interests of the Company and its stockholders; and

WHEREAS, the Company desires to have the Indemnitee continue to serve as a director or officer of the Company and in any other capacity with respect to the Company as the Company may request, as the case may be, free from undue concern for unpredictable, inappropriate, or unreasonable legal risks and personal liabilities by reason of the Indemnitee acting in good faith in the performance of the Indemnitee's duty to the Company; and the Indemnitee desires to continue so to serve the Company, provided, and on the express condition, that he or she is furnished with the protections set forth hereinafter.

AGREEMENT

NOW, THEREFORE, in consideration of the Indemnitee's continued service as a director or officer of the Company, the parties hereto agree as follows:

1. Definitions. For purposes of this Agreement:

(a) A "Change in Control" will be deemed to have occurred if, with respect to any particular 24-month period, the individuals who, at the beginning of such 24-month period, constituted the Board of Directors of the Company (the "Incumbent Board") cease for any reason to constitute at least a majority of the Board of Directors; provided, however, that any individual becoming a director subsequent to the beginning of such 24-month period whose election, or nomination for election by the stockholders of the Company, was approved by a vote of at least a majority of the directors then comprising the Incumbent Board shall be considered as though such individual were a member of the Incumbent Board, but excluding, for this purpose, any such individual whose initial assumption of office occurs as a result of an actual or threatened election contest with respect to the election or removal of directors or other actual or threatened solicitation of proxies or consents by or on behalf of a person other than the Board of Directors.

(b) "Disinterested Director" means a director of the Company who is not or was not a party to the Proceeding in respect of which indemnification is being sought by the Indemnitee.

(c) "Expenses" includes, without limitation, expenses incurred in connection with the defense or settlement of any action, suit, arbitration, alternative dispute resolution mechanism, investigation, inquiry, judicial, administrative, or legislative hearing, or any other threatened, pending, or completed proceeding, whether brought by or in the right of the Company or otherwise, including any and all appeals, whether of a civil, criminal, administrative, legislative, investigative, or other nature, attorneys' fees, witness fees and expenses, fees and expenses of accountants and other advisors, retainers and disbursements and advances thereon, the premium, security for, and other costs relating to any bond (including cost bonds, appraisal bonds, or their equivalents), and any expenses of establishing a right to indemnification or advancement under Sections 9, 11, 13, and 16 hereof, but shall not include the amount of judgments, fines, ERISA excise taxes, or penalties actually levied against the Indemnitee, or any amounts paid in settlement by or on behalf of the Indemnitee.

(d) "Independent Counsel" means a law firm or a member of a law firm that neither is presently nor in the past five years has been retained to represent (i) the Company or the Indemnitee in any matter material to either such party or (ii) any other party to the Proceeding giving rise to a request for indemnification hereunder. Notwithstanding the foregoing, the term "Independent Counsel" shall not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Company or the Indemnitee in an action to determine the Indemnitee's right to indemnification under this Agreement.

(e) "Proceeding" means any action, suit, arbitration, alternative dispute resolution mechanism, investigation, inquiry, judicial, administrative, or legislative hearing, or any other threatened, pending, or completed proceeding, whether brought by or in the right of the Company or otherwise, including any and all appeals, whether of a civil, criminal, administrative, legislative, investigative, or other nature, to which the Indemnitee was or is a party or is threatened to be made a party or is otherwise involved in by reason of the fact that the Indemnitee is or was a director, officer, employee, agent, or trustee of the Company or while a director, officer, employee, agent, or trustee of the Company is or was serving at the request of the Company as a director, officer, employee, agent, or trustee of another corporation or of a

partnership, joint venture, trust, or other enterprise, including service with respect to an employee benefit plan, or by reason of anything done or not done by the Indemnitee in any such capacity, whether or not the Indemnitee is serving in such capacity at the time any expense, liability, or loss is incurred for which indemnification or advancement can be provided under this Agreement.

2. Service by the Indemnitee. The Indemnitee shall serve and/or continue to serve as a director or officer of the Company faithfully and to the best of the Indemnitee's ability so long as the Indemnitee is duly elected or appointed and until such time as the Indemnitee's successor is elected and qualified or the Indemnitee is removed as permitted by applicable law or tenders a resignation in writing.

3. Indemnification and Advancement of Expenses. The Company shall indemnify and hold harmless the Indemnitee, and shall pay to the Indemnitee in advance of the final disposition of any Proceeding all Expenses incurred by the Indemnitee in defending any such Proceeding, to the fullest extent authorized by the DGCL, as the same exists or may hereafter be amended, all on the terms and conditions set forth in this Agreement. Without diminishing the scope of the rights provided by this Section, the rights of the Indemnitee to indemnification and advancement of Expenses provided hereunder shall include but shall not be limited to those rights hereinafter set forth, except that no indemnification or advancement of Expenses shall be paid to the Indemnitee:

(a) to the extent expressly prohibited by applicable law or the Certificate of Incorporation and Bylaws of the Company;

(b) for and to the extent that payment is actually made to the Indemnitee under a valid and collectible insurance policy or under a valid and enforceable indemnity clause, provision of the certificate of incorporation or bylaws, or agreement of the Company or any other company or other enterprise (and the Indemnitee shall reimburse the Company for any amounts paid by the Company and subsequently so recovered by the Indemnitee); or

(c) in connection with an action, suit, or proceeding, or part thereof voluntarily initiated by the Indemnitee (including claims and counterclaims, whether such counterclaims are asserted by (i) the Indemnitee, or (ii) the Company in an action, suit, or proceeding initiated by the Indemnitee), except a judicial proceeding or arbitration pursuant to Section 11 to enforce rights under this Agreement, unless the action, suit, or proceeding, or part thereof, was authorized or ratified by the Board of Directors of the Company or the Board of Directors otherwise determines that indemnification or advancement of Expenses is appropriate.

4. Action or Proceedings Other than an Action by or in the Right of the Company. Except as limited by Section 3 above, the Indemnitee shall be entitled to the indemnification rights provided in this Section if the Indemnitee was or is a party or is threatened to be made a party to, or was or is otherwise involved in, any Proceeding (other than an action by or in the right of the Company) by reason of the fact that the Indemnitee is or was a director, officer, employee, agent, or trustee of the Company or while a director, officer, employee, agent, or trustee of the Company is or was serving at the request of the Company as a director, officer, employee, agent, or trustee of another corporation or of a partnership, joint venture, trust, or

other enterprise, including service with respect to an employee benefit plan, or by reason of anything done or not done by the Indemnitee in any such capacity. Pursuant to this Section, the Indemnitee shall be indemnified against all expense, liability, and loss (including judgments, fines, ERISA excise taxes, penalties, amounts paid in settlement by or on behalf of the Indemnitee, and Expenses) actually and reasonably incurred by the Indemnitee in connection with such Proceeding, if the Indemnitee acted in good faith and in a manner the Indemnitee reasonably believed to be in or not opposed to the best interests of the Company, and with respect to any criminal Proceeding, had no reasonable cause to believe his or her conduct was unlawful.

5. Indemnity in Proceedings by or in the Right of the Company. Except as limited by Section 3 above, the Indemnitee shall be entitled to the indemnification rights provided in this Section if the Indemnitee was or is a party or is threatened to be made a party to, or was or is otherwise involved in, any Proceeding brought by or in the right of the Company to procure a judgment in its favor by reason of the fact that the Indemnitee is or was a director, officer, employee, agent, or trustee of the Company or while a director, officer, employee, agent, or trustee of the Company is or was serving at the request of the Company as a director, officer, employee, agent, or trustee of another corporation or of a partnership, joint venture, trust, or other enterprise, including service with respect to an employee benefit plan, or by reason of anything done or not done by the Indemnitee in any such capacity. Pursuant to this Section, the Indemnitee shall be indemnified against all expense, liability, and loss (including judgments, fines, ERISA excise taxes, penalties, amounts paid in settlement by or on behalf of the Indemnitee, and Expenses) actually and reasonably incurred by the Indemnitee in connection with such Proceeding if the Indemnitee acted in good faith and in a manner the Indemnitee reasonably believed to be in or not opposed to the best interests of the Company; provided, however, that no such indemnification shall be made in respect of any claim, issue, or matter as to which the DGCL expressly prohibits such indemnification by reason of any adjudication of liability of the Indemnitee to the Company, unless and only to the extent that the Court of Chancery of the State of Delaware or the court in which such Proceeding was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, the Indemnitee is entitled to indemnification for such expense, liability, and loss as such court shall deem proper.

6. Indemnification for Costs, Charges, and Expenses of Successful Party. Notwithstanding any limitations of Sections 3(c), 4, and 5 above, to the extent that the Indemnitee has been successful, on the merits or otherwise, in whole or in part, in defense of any Proceeding, or in defense of any claim, issue, or matter therein, including, without limitation, the dismissal of any action without prejudice, or if it is ultimately determined, by final judicial decision of a court of competent jurisdiction from which there is no further right to appeal, that the Indemnitee is otherwise entitled to be indemnified against Expenses, the Indemnitee shall be indemnified against all Expenses actually and reasonably incurred by the Indemnitee in connection therewith.

7. Partial Indemnification. If the Indemnitee is entitled under any provision of this Agreement to indemnification by the Company for some or a portion of the expense, liability, and loss (including judgments, fines, ERISA excise taxes, penalties, amounts paid in settlement by or on behalf of the Indemnitee, and Expenses) actually and reasonably incurred in connection

with any Proceeding, or in connection with any judicial proceeding or arbitration pursuant to Section 11 to enforce rights under this Agreement, but not, however, for all of the total amount thereof, the Company shall nevertheless indemnify the Indemnitee for the portion of such expense, liability, and loss

actually and reasonably incurred to which the Indemnitee is entitled.

8. Indemnification for Expenses of a Witness. Notwithstanding any other provision of this Agreement, to the maximum extent permitted by the DGCL, the Indemnitee shall be entitled to indemnification against all Expenses actually and reasonably incurred by the Indemnitee or on the Indemnitee's behalf if the Indemnitee appears as a witness or otherwise incurs legal expenses as a result of or related to the Indemnitee's service as a director or officer of the Company, in any threatened, pending, or completed action, suit, arbitration, alternative dispute resolution mechanism, investigation, inquiry, judicial, administrative, or legislative hearing, or any other threatened, pending, or completed proceeding, whether of a civil, criminal, administrative, legislative, investigative, or other nature, to which the Indemnitee neither is, nor is threatened to be made, a party.

9. Determination of Entitlement to Indemnification. To receive indemnification under this Agreement, the Indemnitee shall submit a written request to the Secretary of the Company. Such request shall include documentation or information that is necessary for such determination and is reasonably available to the Indemnitee. Upon receipt by the Secretary of the Company of a written request by the Indemnitee for indemnification, the entitlement of the Indemnitee to indemnification, to the extent not required pursuant to the terms of Section 6 or Section 8 of this Agreement, shall be determined by the following person or persons who shall be empowered to make such determination (as selected by the Board of Directors, except with respect to Section 9(e) below): (a) the Board of Directors of the Company by a majority vote of Disinterested Directors, whether or not such majority constitutes a quorum; (b) a committee of Disinterested Directors designated by a majority vote of such directors, whether or not such majority constitutes a quorum; (c) if there are no Disinterested Directors, or if the Disinterested Directors so direct, by Independent Counsel in a written opinion to the Board of Directors, a copy of which shall be delivered to the Indemnitee; (d) the stockholders of the Company; or (e) in the event that a Change in Control has occurred, by Independent Counsel in a written opinion to the Board of Directors, a copy of which shall be delivered to the Indemnitee. Such Independent Counsel shall be selected by the Board of Directors and approved by the Indemnitee, except that in the event that a Change in Control has occurred, Independent Counsel shall be selected by the Indemnitee. Upon failure of the Board of Directors so to select such Independent Counsel or upon failure of the Indemnitee so to approve (or so to select, in the event a Change in Control has occurred), such Independent Counsel shall be selected upon application to a court of competent jurisdiction. The determination of entitlement to indemnification shall be made and, unless a contrary determination is made, such indemnification shall be paid in full by the Company not later than 60 calendar days after receipt by the Secretary of the Company of a written request for indemnification. If the person making such determination shall determine that the Indemnitee is entitled to indemnification as to part (but not all) of the application for indemnification, such person shall reasonably prorate such partial indemnification among the claims, issues, or matters at issue at the time of the determination.

10. Presumptions and Effect of Certain Proceedings. The Secretary of the Company shall, promptly upon receipt of the Indemnitee's written request for indemnification, advise in

writing the Board of Directors or such other person or persons empowered to make the determination as provided in Section 9 that the Indemnitee has made such request for indemnification. Upon making such request for indemnification, the Indemnitee shall be presumed to be entitled to indemnification hereunder and the Company shall have the burden of proof in making any determination contrary to such presumption. If the person or persons so empowered to make such determination shall have failed to make the requested determination with respect to indemnification within 60 calendar days after receipt by the Secretary of the Company of such request, a requisite determination of entitlement to indemnification shall be deemed to have been made and the Indemnitee shall be absolutely entitled to such indemnification, absent actual fraud in the request for indemnification. The termination of any Proceeding described in Sections 4 or 5 by judgment, order, settlement, or conviction, or upon a plea of *nolo contendere* or its equivalent, shall not, of itself (a) create a presumption that the Indemnitee did not act in good faith and in a manner the Indemnitee reasonably believed to be in or not opposed to the best interests of the Company, and with respect to any criminal Proceeding, had reasonable cause to believe his or her conduct was unlawful or (b) otherwise adversely affect the rights of the Indemnitee to indemnification except as may be provided herein.

11. Remedies of the Indemnitee in Cases of Determination Not to Indemnify or to Advance Expenses; Right to Bring Suit. In the event that a determination is made that the Indemnitee is not entitled to indemnification hereunder or if payment is not timely made following a determination of entitlement to indemnification pursuant to Sections 9 and 10, or if an advancement of Expenses is not timely made pursuant to Section 16, the Indemnitee may at any time thereafter bring suit against the Company seeking an adjudication of entitlement to such indemnification or advancement of Expenses, and any such suit shall be brought in the Court of Chancery of the State of Delaware unless otherwise required by the law of the state in which the Indemnitee primarily resides and works. Alternatively, the Indemnitee at the Indemnitee's option may seek an award in an arbitration to be conducted by a single arbitrator in the State of Delaware pursuant to the rules of the American Arbitration Association, such award to be made within 60 calendar days following the filing of the demand for arbitration. The Company shall not oppose the Indemnitee's right to seek any such adjudication or award in arbitration. In any suit or arbitration brought by the Indemnitee to enforce a right to indemnification hereunder (but not in a suit or arbitration brought by the Indemnitee to enforce a right to an advancement of Expenses), it shall be a defense that the Indemnitee has not met any applicable standard of conduct for indemnification set forth in the DGCL, including the standard described in Section 4 or 5, as applicable. Further, in any suit brought by the Company to recover an advancement of Expenses pursuant to the terms of an undertaking, the Company shall be entitled to recover such Expenses upon a final judicial decision of a court of competent jurisdiction from which there is no further right to appeal that the Indemnitee has not met the standard of conduct described above. Neither the failure of the Company (including the Disinterested Directors, a committee of Disinterested Directors, Independent Counsel, or its stockholders) to have made a determination prior to the commencement of such suit or arbitration that indemnification of the Indemnitee is proper in the circumstances because the Indemnitee has met the standard of conduct described above, nor an actual determination by the Company (including the Disinterested Directors, a committee of Disinterested Directors, Independent Counsel, or its stockholders) that the Indemnitee has not met the standard of conduct described above shall create a presumption that the Indemnitee has not met the standard of conduct described above, or, in the case of such a suit brought by the Indemnitee, be a defense to such suit. In any suit brought by the Indemnitee to

enforce a right to indemnification or to an advancement of Expenses hereunder, or brought by the Company to recover an advancement of Expenses pursuant to the terms of an undertaking, the burden of proving that the Indemnitee is not entitled to be indemnified, or to such advancement of expenses, under this Section 11 or otherwise shall be on the Company. If a determination is made or deemed to have been made pursuant to the terms of Section 9 or 10 that the Indemnitee is entitled to indemnification, the Company shall be bound by such determination and is precluded from asserting that such determination has not been made or that the procedure by which such determination was made is not valid, binding, and enforceable. The Company further agrees to stipulate in any court or before any arbitrator pursuant to this Section 11 that the Company is bound by all the provisions of this Agreement and is precluded from making any assertions to the contrary. If the court or arbitrator shall determine that the Indemnitee is entitled to any indemnification or advancement of Expenses

hereunder, the Company shall pay all Expenses actually and reasonably incurred by the Indemnitee in connection with such adjudication or award in arbitration (including, but not limited to, any appellate proceedings) to the fullest extent permitted by law, and in any suit brought by the Company to recover an advancement of Expenses pursuant to the terms of an undertaking, the Company shall pay all Expenses actually and reasonably incurred by the Indemnitee in connection with such suit to the extent the Indemnitee has been successful, on the merits or otherwise, in whole or in part, in defense of such suit, to the fullest extent permitted by law.

12. Non-Exclusivity of Rights. The rights to indemnification and to the advancement of Expenses provided by this Agreement shall not be deemed exclusive of any other right that the Indemnitee may now or hereafter acquire under any applicable law, agreement, vote of stockholders or Disinterested Directors, provisions of a charter or bylaws (including the Certificate of Incorporation or Bylaws of the Company), or otherwise.

13. Expenses to Enforce Agreement. In the event that the Indemnitee is subject to or intervenes in any action, suit, or proceeding in which the validity or enforceability of this Agreement is at issue or seeks an adjudication or award in arbitration to enforce the Indemnitee's rights under, or to recover damages for breach of, this Agreement, the Indemnitee, if the Indemnitee prevails in whole or in part in such action, suit, or proceeding, shall be entitled to recover from the Company and shall be indemnified by the Company against any Expenses actually and reasonably incurred by the Indemnitee in connection therewith.

14. Continuation of Indemnity. All agreements and obligations of the Company contained herein shall continue during the period the Indemnitee is a director, officer, employee, agent, or trustee of the Company or while a director, officer, employee, agent, or trustee is serving at the request of the Company as a director, officer, employee, agent, or trustee of another corporation or of a partnership, joint venture, trust, or other enterprise, including service with respect to an employee benefit plan, and shall continue thereafter with respect to any possible claims based on the fact that the Indemnitee was a director, officer, employee, agent, or trustee of the Company or was serving at the request of the Company as a director, officer, employee, agent, or trustee of another corporation or of a partnership, joint venture, trust, or other enterprise, including service with respect to an employee benefit plan. This Agreement shall be binding upon all successors and assigns of the Company (including any transferee of all or substantially all of its assets and any successor by merger or operation of law) and shall inure to the benefit of the Indemnitee's heirs, executors, and administrators.

15. Notification and Defense of Proceeding. Promptly after receipt by the Indemnitee of notice of any Proceeding, the Indemnitee shall, if a request for indemnification or an advancement of Expenses in respect thereof is to be made against the Company under this Agreement, notify the Company in writing of the commencement thereof; but the omission so to notify the Company shall not relieve it from any liability that it may have to the Indemnitee. Notwithstanding any other provision of this Agreement, with respect to any such Proceeding of which the Indemnitee notifies the Company:

(a) The Company shall be entitled to participate therein at its own expense;

(b) Except as otherwise provided in this Section 15(b), to the extent that it may wish, the Company, jointly with any other indemnifying party similarly notified, shall be entitled to assume the defense thereof, with counsel satisfactory to the Indemnitee. After notice from the Company to the Indemnitee of its election so to assume the defense thereof, the Company shall not be liable to the Indemnitee under this Agreement for any expenses of counsel subsequently incurred by the Indemnitee in connection with the defense thereof except as otherwise provided below. The Indemnitee shall have the right to employ the Indemnitee's own counsel in such Proceeding, but the fees and expenses of such counsel incurred after notice from the Company of its assumption of the defense thereof shall be at the expense of the Indemnitee unless (i) the employment of counsel by the Indemnitee has been authorized by the Company, (ii) the Indemnitee shall have reasonably concluded that there may be a conflict of interest between the Company and the Indemnitee in the conduct of the defense of such Proceeding, or (iii) the Company shall not within 60 calendar days of receipt of notice from the Indemnitee in fact have employed counsel to assume the defense of the Proceeding, in each of which cases the fees and expenses of the Indemnitee's counsel shall be at the expense of the Company. The Company shall not be entitled to assume the defense of any Proceeding brought by or on behalf of the Company or as to which the Indemnitee shall have made the conclusion provided for in (ii) above; and

(c) Notwithstanding any other provision of this Agreement, the Company shall not be liable to indemnify the Indemnitee under this Agreement for any amounts paid in settlement of any Proceeding effected without the Company's written consent, or for any judicial or other award, if the Company was not given an opportunity, in accordance with this Section 15, to participate in the defense of such Proceeding. The Company shall not settle any Proceeding in any manner that would impose any penalty or limitation on or disclosure obligation with respect to the Indemnitee, or that would directly or indirectly constitute or impose any admission or acknowledgment of fault or culpability with respect to the Indemnitee, without the Indemnitee's written consent. Neither the Company nor the Indemnitee shall unreasonably withhold its consent to any proposed settlement.

16. Advancement of Expenses. All Expenses incurred by the Indemnitee in defending any Proceeding described in Section 4 or 5 shall be paid by the Company in advance of the final disposition of such Proceeding at the request of the Indemnitee. The Indemnitee's right to advancement shall not be subject to the satisfaction of any standard of conduct and advances shall be made without regard to the Indemnitee's ultimate entitlement to indemnification under the provisions of this Agreement or otherwise. To receive an advancement of Expenses under this Agreement, the Indemnitee shall submit a written request to

the Secretary of the Company. Such request shall reasonably evidence the Expenses incurred by the Indemnitee and shall include or be accompanied by an undertaking, by or on behalf of the Indemnitee, to repay all amounts so advanced if it shall ultimately be determined, by final judicial decision of a court of competent jurisdiction from which there is no further right to appeal, that the Indemnitee is not entitled to be indemnified for such Expenses by the Company as provided by this Agreement or otherwise. The Indemnitee's undertaking to repay any such amounts is not required to be secured. Each such advancement of Expenses shall be made within 10 calendar days after the receipt by the Secretary of the Company of such written request. The Indemnitee's entitlement to Expenses under this Agreement shall include those incurred in connection with any action, suit, or proceeding by the Indemnitee seeking an adjudication or award in arbitration pursuant to Section 11 of this Agreement (including the enforcement of this provision) to the extent the court or arbitrator shall determine that the Indemnitee is entitled to an advancement of Expenses hereunder.

17. Severability; Prior Indemnification Agreements. If any provision or provisions of this Agreement shall be held to be invalid, illegal, or unenforceable as applied to any person or entity or circumstance for any reason whatsoever, then, to the fullest extent permitted by law (a) the validity,

legality, and enforceability of such provision in any other circumstance and of the remaining provisions of this Agreement (including, without limitation, all portions of any paragraphs of this Agreement containing any such provision held to be invalid, illegal, or unenforceable, that are not by themselves invalid, illegal, or unenforceable) and the application of such provision to other persons or entities or circumstances shall not in any way be affected or impaired thereby, and (b) to the fullest extent possible, the provisions of this Agreement (including, without limitation, all portions of any paragraph of this Agreement containing any such provision held to be invalid, illegal, or unenforceable, that are not themselves invalid, illegal, or unenforceable) shall be construed so as to give effect to the intent of the parties that the Company provide protection to the Indemnitee to the fullest extent set forth in this Agreement. This Agreement shall supersede and replace any prior indemnification agreements entered into by and between the Company and the Indemnitee and any such prior agreements shall be terminated upon execution of this Agreement.

18. Headings; References; Pronouns. The headings of the sections of this Agreement are inserted for convenience only and shall not be deemed to constitute part of this Agreement or to affect the construction thereof. References herein to section numbers are to sections of this Agreement. All pronouns and any variations thereof shall be deemed to refer to the singular or plural as appropriate.

19. Other Provisions.

(a) This Agreement and all disputes or controversies arising out of or related to this Agreement shall be governed by, and construed in accordance with, the internal laws of the State of Delaware, without regard to the laws of any other jurisdiction that might be applied because of conflicts of laws principles of the State of Delaware, unless otherwise required by the law of the state in which the Indemnitee primarily resides and works.

(b) This Agreement may be executed in two or more counterparts, all of which shall be considered one and the same instrument and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other party.

(c) This Agreement shall not be deemed an employment contract between the Company and any Indemnitee who is an officer of the Company, and, if the Indemnitee is an officer of the Company, the Indemnitee specifically acknowledges that the Indemnitee may be discharged at any time for any reason, with or without cause, and with or without severance compensation, except as may be otherwise provided in a separate written contract between the Indemnitee and the Company.

(d) In the event of payment under this Agreement, the Company shall be subrogated to the extent of such payment to all of the rights of recovery of the Indemnitee (excluding insurance obtained on the Indemnitee's own behalf), and the Indemnitee shall execute all papers required and shall do everything that may be necessary to secure such rights, including the execution of such documents necessary to enable the Company effectively to bring suit to enforce such rights.

(e) This Agreement may not be amended, modified, or supplemented in any manner, whether by course of conduct or otherwise, except by an instrument in writing specifically designated as an amendment hereto, signed on behalf of each party. No failure or delay of either party in exercising any right or remedy hereunder shall operate as a waiver thereof, and no single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such right or power, or any course of conduct, shall preclude any other or further exercise thereof or the exercise of any other right or power.

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, the Company and the Indemnitee have caused this Agreement to be executed as of the date first written above.

ASSERTIO THERAPEUTICS, INC.

By: _____
Name:
Title:

_____
Indemnitee

FORM OF

ASSERTIO THERAPEUTICS, INC.

AMENDED AND RESTATED MANAGEMENT CONTINUITY AGREEMENT

This Amended and Restated Management Continuity Agreement (the "Agreement") is effective as of , 20 (the "Effective Date") by and between ("Employee") and Assertio Therapeutics, Inc., a Delaware corporation (the "Company"). This Agreement is intended to provide Employee with certain benefits described herein upon the occurrence of specific events. This Agreement amends and restates that certain Management Continuity Agreement entered into between the parties as of (referred to herein as the "Prior Agreement").

RECITALS

A. It is expected that the Company may from time to time consider the possibility of realigning its organization.

B. It is further expected that another company may from time to time consider the possibility of acquiring the Company or that a change in control may otherwise occur, with or without the approval of the Company's Board of Directors.

C. The Board of Directors recognizes that such considerations can be a distraction to Employee and can cause Employee to consider alternative employment opportunities.

D. The Board of Directors has determined that it is in the best interests of the Company and its shareholders to assure that the Company will have the continued dedication and objectivity of the Employee, notwithstanding the foregoing factors.

E. The Company's Board of Directors believes it is in the best interests of the Company and its shareholders to retain Employee and provide incentives to Employee to continue in the service of the Company.

F. The Board of Directors further believes that it is imperative to provide Employee with certain benefits upon certain termination of Employee's employment, including in connection with a Change in Control, which benefits are intended to provide Employee with financial security and provide sufficient income and encouragement to Employee to remain with the Company, including and notwithstanding the possibility of a Change in Control.

G. To accomplish the foregoing objectives, the Board of Directors has directed the Company, upon execution of this Agreement by Employee, to agree to the terms provided in this Agreement, which Agreement shall supersede the Prior Agreement and any other agreement or understanding pertaining to the subject matter herein, including any offer letter between the Company and Employee, as of the Effective Date.

Now therefore, in consideration of the mutual promises, covenants and agreements contained herein, and in consideration of the continuing employment of Employee by the Company, the parties hereto agree as follows:

1. **At-Will Employment; Term**.

(a) The Company and Employee acknowledge that Employee's employment is and shall continue to be

at-will, as defined under applicable law, and that Employee's employment with the Company may be terminated by either party at any time for any or no reason. If Employee's employment terminates for any reason, Employee shall not be entitled to any payments, benefits, damages, award or compensation other than as provided in this Agreement or otherwise agreed to by the Company. The terms of this Agreement shall terminate upon the earlier of: (i) the date on which Employee ceases to be employed by the Company, other than as a result of a Change in Control Involuntary Termination or an Other Involuntary Termination, or (ii) the last day of the Term (such date

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being referred to herein as the "End Date"; provided, however, that in the event of a Pending Change in Control in effect on the End Date, the End Date shall be delayed until the later to occur of (x) the termination of any Pending Change in Control by the parties to such Pending Change in Control and (y) one year after the completion of any Pending Change in Control). Notwithstanding the foregoing, in no event shall this Agreement terminate prior to the time that all outstanding obligations of the parties hereunder have been satisfied. A termination of the terms of this Agreement pursuant to this Section 1(a) shall be effective for all purposes, except that such termination shall not affect the payment or provision of compensation or benefits on account of a termination of employment occurring prior to the termination of the terms of this Agreement. The rights and duties created by this Agreement are contingent upon the Employee's execution of a release of claims against the Company, in substantially the form attached hereto as *Appendix A*, within forty-five (45) days following his termination of employment and the expiration of any statutory revocation period and may not be modified in any way except by a written agreement executed by the Employee and an officer of the Company upon direction from the Board of Directors.

(b) Subject to Section 1(a), this Agreement shall be for an initial term that begins on the Effective Date and continues in effect through the third anniversary of the Effective Date (the "Initial Term") and, unless terminated sooner as herein provided, shall continue on a year to year basis after the third anniversary of the Effective Date (each a "Renewal Term" and together with the Initial Term, the "Term"). If the Company or the Employee elects not to renew this Agreement for a Renewal Term, the Company or the Employee must give a written notice of termination to the other party at least twelve (12) months before the expiration of the then-current Initial Term or Renewal Term, as applicable. In the event that one party provides the other with a written notice of termination pursuant to this Section 1(b), no further automatic extensions will occur and at the end of the then-existing Initial Term or Renewal Term, as applicable, the Term shall expire.

2. **Termination Benefits**.

(a) **Benefits Upon a Change in Control Involuntary Termination**.

(i) Treatment of Equity Awards. In the event that Employee is subject to a Change in Control Involuntary Termination, 100% of Employee's unvested Company option shares, restricted stock, restricted stock units and other equity-based awards shall become immediately vested on such termination date and the risk of forfeiture of 100% of Employee's restricted stock shall lapse on such termination date. Each such equity award shall be exercisable in accordance with the provisions of the award agreement and plan pursuant to which such equity award was granted, including, in the case of stock options, the plan or award agreement provisions regarding any post-termination period of exercisability.

(ii) Severance. In the event that Employee is subject to a Change in Control Involuntary Termination, Employee shall be entitled to receive severance benefits as follows: (A) a lump sum cash severance payment equal to **[one (1) times (*if Employee is not the CEO)*] [two (2) times *(if Employee is the CEO)*]** the higher of (1) the base salary which Employee was receiving immediately prior to the Change in Control or (2) the base salary which Employee was receiving immediately prior to the Change in Control Involuntary Termination, which payment shall be paid on the sixtieth (60th) day following the Change in Control Involuntary Termination; (B) a lump sum cash payment equal to **[one (1) times (*if Employee is not the CEO)*] [two (2) times *(if Employee is the CEO)*]** Employee's Target Annual Bonus; and (C) payment by the Company of the full cost of the health insurance benefits provided to Employee and Employee's spouse and dependents, as applicable, immediately prior to the Change in Control pursuant to the terms of the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended ("COBRA") or other applicable law through the earlier of the end of the **[twelve (12) month *(if Employee is not the CEO)*] [twenty-four (24) month *(if Employee is the CEO)*]** period following the Change in Control Involuntary Termination date or the date upon which Employee is no longer eligible for such COBRA or other benefits under applicable law. The benefits to be provided under clauses (a)(i) and (a)(ii) shall be paid on the sixtieth (60th) day following Employee's termination of employment ; except that any payments under clause (a)(ii)(C) shall be paid on a monthly basis commencing on the sixtieth (60^{th}) day following Employee's termination of employment (subject in all cases to Employee's release of claims against the Company as set forth in Section 1(a)). Notwithstanding the foregoing, in the event the Board of Directors concludes in its reasonable judgment that the provision of subsidized

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COBRA benefits to Employee is likely to cause the Company to become subject to excise tax as a result of the Patient Protection and Affordable Care Act, as amended by the Health Care and Education Reconciliation Act of 2010 (the "Healthcare Reform Act"), the Company shall pay Employee a monthly amount in cash equal to the amount of the COBRA subsidy during the period the Company is obligated to provide subsidized COBRA benefits to Employee. In addition, Employee shall receive payment(s) for all salary, bonuses and unpaid vacation accrued as of the date of Employee's termination of employment and up to three (3) months of outplacement services not to exceed $5,000 per month (with a provider and in a program selected by the Employee. provided Employee commences such services within ninety (90) days of Employee's Change in Control Involuntary Termination date).

(b) **Benefits Upon an Other Involuntary Termination**.

[Item (i) - if Employee is CEO only]

(i) Treatment of Equity Awards. In the event that Employee is subject to an Other Involuntary Termination, Employee shall be credited with an additional twelve (12) months of employment for purposes of determining the vesting of his equity-based awards, which shall result in the immediate vesting as of such termination date of those otherwise unvested Company option shares, restricted stock, restricted stock units and other equity-based awards that would have become vested if Employee had completed an additional twelve (12) months of employment following such termination date and the risk of forfeiture of Employee's applicable number of restricted stock, restricted stock units and similar equity-based awards shall lapse on such termination date. Each such equity award shall be exercisable in accordance with the provisions of the award agreement and plan pursuant to which such equity award was granted, including, in the case of stock options, the plan or award agreement provisions regarding any post-termination period of exercisability.

(ii) Severance. In the event that Employee is subject to an Other Involuntary Termination, Employee shall be entitled to receive severance benefits as follows: (A) severance payments for **[twelve (12) months (*if Employee is not the CEO)*] [eighteen months (18) *(if Employee is the CEO)*]** after the effective date of the termination (for purposes of this Section 2(b)**[(i)][(ii)]**, the "Severance Period") equal to the base salary which Employee was receiving immediately prior to the Other Involuntary Termination, which payments shall be paid during the Severance Period in accordance with the Company's standard payroll practices; and (B) payment by the Company of the full cost of the health insurance benefits provided to Employee and Employee's spouse and dependents, as applicable, immediately prior to the Other Involuntary Termination pursuant to the terms of COBRA or other applicable law through the earlier of the end of the Severance Period or the date upon which Employee is no longer eligible for such COBRA or other benefits under applicable law. The benefits to be provided under Section 2(b)(i)[and 2(b)(ii)] shall be paid or commence to be paid on the sixtieth (60^{th}) day following Employee's termination of employment (subject to Employee's release of claims against the Company as set forth in Section 1(a)). Notwithstanding the foregoing, in the event the Board of Directors concludes in its reasonable judgment that the provision of subsidized COBRA benefits to Employee could cause the Company to become subject to excise tax as a result of the Patient Protection and Affordable Care Act, as amended by the Healthcare Reform Act, the Company shall pay Employee a monthly amount in cash equal to the amount of the COBRA subsidy during the period the Company is obligated to provide subsidized COBRA benefits to Employee. In addition, Employee shall receive payment(s) for all salary, bonuses and unpaid vacation accrued as of the date of Employee's termination of employment and up to three (3) months of outplacement services not to exceed $5,000 per month (with a provider and in a program selected by the Company, provided Employee commences such services within ninety (90) days of Employee's Other Involuntary Termination date).

(c) **Termination for Cause**. If Employee's employment is terminated for Cause at any time, then Employee shall not be entitled to receive payment of any severance benefits or equity award acceleration. Employee shall receive payment(s) for all salary, bonuses and unpaid vacation accrued as of the date of Employee's termination of employment.

(d) **Voluntary Resignation**. If Employee voluntarily resigns from the Company under circumstances which do not constitute a Change in Control Involuntary Termination or an Other Involuntary Termination, then Employee shall not be entitled to receive payment of any severance benefits or equity award acceleration. Employee shall receive payment(s) for all salary, bonuses and unpaid vacation accrued as of the date of Employee's termination of employment.

(e) **Death or Disability.** If Employee's employment terminates on account of Employee's death or Disability at any time, whether or not in connection with a Change in Control or Pending Change in Control, then Employee shall not be entitled to receive payment of any severance benefits or equity award acceleration. Employee shall receive payment(s) for all salary, bonuses and unpaid vacation accrued as of the date of Employee's termination of employment.

3. **Definition of Terms**. The following terms referred to in this Agreement shall have the following meanings:

(a) **Cause**. "Cause" shall mean (i) gross negligence or willful misconduct in the performance of Employee's duties to the Company where such gross negligence or willful misconduct has resulted or is likely to result in substantial and material damage to the Company or its subsidiaries, (ii) repeated unexplained or unjustified absence from the performance of services for the Company, (iii) a material and willful violation of any federal or state law resulting or likely to result in substantial and material damage to the Company or its subsidiaries; (iv) commission of any act of fraud with respect to the Company resulting or likely to result in substantial and material damage to the Company or its subsidiaries, or (v) conviction of a felony or a crime involving moral turpitude causing material harm to the standing and reputation of the Company, in each case as determined in good faith by the Board of Directors, subject to the Company's compliance with the "Cause Cure Process".

(b) **Cause Cure Process**. "Cause Cure Process" shall mean that (i) Company reasonably determines that Employee has engaged in behavior constituting "Cause"; (ii) Company notifies the Employee in writing of the first occurrence of the behavior constituting "Cause" within ninety (90) days of the first occurrence of such condition; (iii) the Employee shall have [thirty (30)] days following such notice (the "Cause Cure Period"), to substantially remedy the condition, if curable;

(iv) notwithstanding such efforts, the condition constituting "Cause" continues to exist; and (v) Company terminates Employee's employment due to "Cause" within ninety (90) days after the end of the Cause Cure Period. For avoidance of doubt, if the behavior constituting "Cause" is not substantially curable, then the Cause Cure Period shall end on the date the Employee receives the Company's written notice set forth in clause (ii) above. If the Employee substantially cures the condition constituting "Cause" during the Cause Cure Period, such behavior constituting "Cause" shall be deemed not to have occurred.

(c) **Change in Control; Pending Change in Control**. "Change in Control" shall have the meaning given such term in the Amended and Restated Assertio Therapeutics, Inc. 2014 Omnibus Incentive Plan. "Pending Change in Control" shall mean any transaction or transactions which, if consummated, would result in a Change in Control with respect to which the Company enters into a definitive agreement prior to the End Date which has not been completed or terminated, as determined by the Board of Directors in its reasonable determination (whereupon the End Date shall be delayed as provided in Section 1(a) above). Pending Change in Control shall also include any Change in Control with respect to which the Company enters into a binding agreement within thirty (30) days after the termination of any other Pending Change in Control.

(d) **Change in Control Involuntary Termination**. "Change in Control Involuntary Termination" shall mean: (i) any termination by the Company other than for Cause, death or Disability, or (ii) Employee's voluntary termination for Good Reason (as defined in Section 3(d)), in each case in connection with, or within the period beginning (A) ninety (90) days prior to the effective date of a Change in Control and ending (B) twenty-four (24) months following the effective date of a Change in Control. For purposes of this Section 3(d), "Good Reason" shall mean that Employee has complied with the "Good Reason Process" following the occurrence of any of the following events: (i) a material diminution in Employee's responsibilities, authority or duties; (ii) a material diminution in the authority, duties, or responsibilities of the supervisor to whom Employee is required to report [including a requirement that Employee report to a corporate officer or other employee instead of reporting directly to the board of directors of a corporation (or similar governing body with respect to an entity other than a corporation) if

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Employee is the CEO]; (iii) a material diminution in Employee's base salary, target annual bonus amount or paid bonus amount (relative to the last annual bonus paid), in each case other than in connection with a general decrease in base salaries, target annual bonuses or paid annual bonuses, as applicable, for most officers of the successor corporation; provided, however, that any decrease in base salary and/or target annual bonus greater than ten percent (10%) shall provide grounds for "Good Reason" regardless of whether a general decrease in base salaries and/or target bonuses occurs for most officers of the successor corporation;

(iv) a change in the geographic location at which Employee provides services to the Company that increases Employee's one way commute by twenty-five (25) miles or more; or (v) failure of the successor corporation to assume the obligations under this Agreement.

(e) **Disability**. "Disability" shall mean the inability of Employee to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months as provided in Sections 22(e)(3) and 409A(a) (2)(C)(i) of the Internal Revenue Code of 1986, as amended (the "Code"), and will be determined by the Board of Directors on the basis of such medical evidence as the Board of Directors deems warranted under the circumstances.

(f) **Good Reason Process**. "Good Reason Process" shall mean that (i) Employee reasonably determines in good faith that a "Good Reason" condition has occurred, as may be applicable; (ii) Employee notifies the Company in writing of the first occurrence of the Good Reason condition within ninety (90) days of the first occurrence of such condition; (iii) Employee cooperates in good faith with the Company's efforts, for a period of thirty (30) days following such notice (the "Good Reason Cure Period"), to remedy the condition; (iv) notwithstanding such efforts, the Good Reason condition continues to exist; and (v) Employee terminates his employment within ninety (90) days after the end of the Good Reason Cure Period. If the Company substantially cures the Good Reason condition during the Good Reason Cure Period, Good Reason shall be deemed not to have occurred.

(g) **Other Involuntary Termination**. "Other Involuntary Termination" shall mean (i) any termination by the Company other than for Cause, death or Disability, or (ii) Employee's voluntary termination for Good Reason (as defined in this Section 3(g)), in each case, excluding a Change in Control Involuntary Termination. For purposes of this Section 3(g), "Good Reason" shall mean that Employee has complied with the "Good Reason Process" following the occurrence of any of the following events: (i) a ten percent (10%) or greater decrease in Employee's annual total cash compensation target (annual base salary plus annual bonus target) other than in connection with a general decrease in the total annual cash compensation target (annual base salary plus annual bonus target) for most officers of the Company and the successor corporation, if applicable; or (ii) a change in the geographic location at which Employee provides services to the Company that increases the Employee's one-way commute by twenty-five (25) miles or more.

(h) **Target Annual Bonus**. "Target Annual Bonus" shall mean Employee's target annual bonus that may be earned for performance during the Company's fiscal year in which a termination occurs; provided, however, that sign-on or other special bonuses shall not be taken into account. If Employee's Target Annual Bonus has not been set or determined as of the termination date, the "Target Annual Bonus" shall mean Employee's target annual bonus for the Company's most recently completed fiscal year.

4. **Limitation and Conditions on Payments**.

In the event that the severance and other benefits provided to Employee under this Agreement and any other agreement (i) constitute "parachute payments" within the meaning of Section 280G of the Code and (ii) but for this Section, would be subject to the excise tax imposed by Section 4999 of the Code, then Employee's severance benefits under Sections 2(a) and 2(b) shall be payable either:

(a) in full; or

(b) as to such lesser amount which would result in no portion of such severance benefits being subject to excise tax under Section 4999 of the Code;

whichever of the foregoing amounts, taking into account the applicable federal, state and local income taxes and the excise tax imposed by Section 4999, results in the receipt by Employee on an after-tax basis, of the greatest amount of severance benefits under Section 2(a) and 2(b), notwithstanding that all or some portion of such severance benefits may be taxable under Section 4999 of the Code. The reduction of payments and benefits hereunder, if applicable, shall be made by reducing, first, cash severance pay that is exempt from Section 409A of the Code; second, any other cash severance pay; third. any other payments or benefits to be paid in cash hereunder in the order in which such payment or benefit would be paid or provided (beginning with such payment or benefit that would be made last in time and continuing, to the extent necessary, through to such payment or benefit that would be made first in time); fourth, reducing any benefit to be provided in kind hereunder in a similar order, except for equity-based awards; fifth, any restricted stock, restricted stock units or similar awards, to be reduced in a similar order; and lastly, sixth, any stock options, stock appreciation right or similar awards, to be reduced in a similar order. Unless the Company and Employee otherwise agree in writing, any determination required under this Section 4 shall be made in writing by a qualified independent certified public accounting or law firm selected by the Company and approved by the Employee, which such approval shall not be unreasonably withheld (the "Independent Tax Professional"). The Employee shall not be deemed to have unreasonably withheld approval if the Employee does not consent to an Independent Tax Professional selected by the Company that has provided any services to the Company or any successor corporation within the preceding five (5) year period. The Independent Tax Professional shall provide its determinations and any supporting calculations both to the Company and the Employee in writing setting forth in reasonable detail the basis of the Independent Tax Professional's determinations, which shall be subject to approval by the Employee, which such approval shall not be unreasonably withheld. Such determination shall be conclusive and binding upon Employee and the Company for all purposes. For purposes of making the calculations required by this Section 4, the Independent Tax Professional may make reasonable assumptions and approximations concerning applicable taxes and may rely on reasonable, good faith interpretations concerning the application of Section 280G and 4999 of the Code. The Company and Employee shall furnish to the Independent Tax Professional such information and documents as the Independent Tax Professional may reasonably request in order to make a determination under this Section. The Company shall bear all costs the Independent Tax Professional may reasonably incur in connection with any calculations contemplated by this Section 4. If, after the payment of severance benefits has been made to the Employee, it is established that the payments made to, or provided for the benefit of Employee, exceed the limitations provided in Section 4(b) (an "Excess Payment") or are less than such limitations (an "Underpayment"), as the case may be, then the following shall apply: (x) if it is determined that an Excess Payment has been made, the Employee shall repay the Excess Payment within 20 days following the determination of such Excess Payment; and (y) if it is determined that an Underpayment has occurred, the Company shall pay an amount equal to the Underpayment to the Employee on the later of (A) 20 days after such determination or resolution and (B) the time period such payment would otherwise have been paid or provided to the Employee absent the application of Section 4(b).

5. **Section 409A**. Notwithstanding any provision of this Agreement to the contrary, if, at the time of Employee's termination of employment with the Company, Employee is a "specified employee" (as defined in Section 409A of the Code) and the deferral of the commencement of any severance payments or benefits otherwise payable pursuant to this Agreement as a result of such termination of employment is necessary in order to prevent any accelerated income recognition or additional tax under Section 409A of the Code, then the Company will not commence any payment of any such severance payments or benefits otherwise required hereunder (but without any reduction in such payments or benefits ultimately paid or provided to Employee) that (a) will not and may not under any circumstances, regardless of when such termination occurs, be paid in full by March 15 of the year following Employee's termination of employment, and (b) are in excess of the lesser of (i) two (2) times Employee's then annual compensation or (ii) two (2) times the limit on compensation then set forth in Section 401(a)(17) of the Code and will not be paid by the end of the second calendar year following the year in which the termination occurs, *until* the first payroll date that occurs after the date that is six (6) months following Employee's "separation of service" with the Company (as defined under Code Section 409A). If any payments are delayed due to such requirements, such amounts will be paid in a lump sum to Employee on the earliest of (x) the Employee's death following the date

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of Employee's termination of employment with the Company or (y) the first payroll date that occurs after the date that is six (6) months following Employee's "separation of service" with the Company. For these purposes, each severance payment or benefit is designated as a separate payment or benefit for purposes of Treas. Reg. § 1.409A-2(b) and will not collectively be treated as a single payment or benefit. This paragraph is intended to comply with the requirements of Section 409A of the Code so that none of the severance payments and benefits to be provided hereunder will be subject to the additional tax imposed under Section 409A of the Code and any ambiguities herein will be interpreted to so comply. Employee and the Company agree to work together in good faith to consider amendments to this Agreement and to take such reasonable actions which are necessary, appropriate or desirable to avoid imposition of any additional tax or income recognition prior to actual payment to Employee under Section 409A of the Code. Notwithstanding anything to the contrary contained herein, to the extent that any amendment to this Agreement with respect to the payment of any severance payments or benefits would constitute under Code Section 409A a delay in a payment or a change in the form of payment, then such amendment must be done in a manner that complies with Code Section 409A(a)(4)(C).

6. **Conflicts**. Employee represents that Employee's performance of all the terms of this Agreement will not breach any other agreement to which Employee is a party. Employee has not, and will not during the term of this Agreement, enter into any oral or written agreement in conflict with any of the provisions of this Agreement. Employee further represents that Employee is entering into or has entered into an employment relationship with the Company of Employee's own free will.

7. **Successors**. Any successor to the Company (whether direct or indirect and whether by purchase, lease, merger, consolidation, liquidation or otherwise) to all or substantially all of the Company's business and/or assets shall assume the obligations under this Agreement and agree expressly to perform the obligations under this Agreement in the same manner and to the same extent as the Company would be required to perform such obligations in the absence of a succession. The terms of this Agreement and all of Employee's rights hereunder and thereunder shall inure to the benefit of, and be enforceable by, Employee's personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees and legatees.

8. **Notice**. Notices and all other communications contemplated by this Agreement shall be in writing and shall be deemed to have been duly given when personally delivered or when mailed by U.S. registered or certified mail, return receipt requested and postage prepaid. Mailed notices to Employee shall be addressed to Employee at the home address which Employee most recently communicated to the Company in writing. In the case of the Company, mailed notices shall be addressed to its corporate headquarters, and all notices shall be directed to the attention of the Company's Legal Department.

9. **Miscellaneous Provisions**.

(a) **No Duty to Mitigate**. Employee shall not be required to mitigate the amount of any payment contemplated by this Agreement (whether by seeking new employment or in any other manner), nor shall any such payment be reduced by any earnings that Employee may receive from any other source.

(b) **Waiver**. No provision of this Agreement shall be modified, waived or discharged unless the modification, waiver or discharge is agreed to in writing and signed by Employee and by an authorized officer of the Company (other than Employee). No waiver by either party of any breach of, or of compliance with, any condition or provision of this Agreement by the other party shall be considered a waiver of any other condition or provision or of the same condition or provision at another time.

(c) **Whole Agreement**. No agreements, representations or understandings (whether oral or written and whether express or implied) which are not expressly set forth in this Agreement have been made or entered into by either party with respect to the subject matter hereof. This Agreement supersedes any agreement of the same title and concerning similar subject matter dated prior to the date hereof, and by execution of this Agreement both parties agree that any such predecessor agreement shall be deemed null and void.

(d) **Choice of Law**. The validity, interpretation, construction and performance of this Agreement shall be governed by the laws of the State of Delaware without reference to conflict of laws provisions.

(e) **Severability**. If any term or provision of this Agreement or the application thereof to any circumstance shall, in any jurisdiction and to any extent, be invalid or unenforceable, such term or provision shall be ineffective as to such jurisdiction to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining terms and provisions of this Agreement or the application of such terms and provisions to circumstances other than those as to which it is held invalid or unenforceable, and a suitable and equitable term or provision shall be substituted therefor to carry out, insofar as may be valid and enforceable, the intent and purpose of the invalid or unenforceable term or provision.

(f) **Arbitration**. All claims, demands, causes of action, disputes, controversies or other matters in question ("Claims") arising out of this Agreement or the Employee's service (or termination from service) with the Company, whether arising in contract, tort or otherwise and whether provided by statute, equity or common law, that the Company may have against the Employee or that the Employee may have against the Company, or its parents or subsidiaries, or against each of the foregoing entities' respective officers, directors, employees or agents in their capacity as such or otherwise, shall be settled in accordance with the procedures described in Section 9(f)(i) and (ii). Claims covered by this Section 9(f) include, without limitation, claims by the Employee for breach of this Agreement, wrongful termination, discrimination (based on age, race, sex, disability, national origin, sexual orientation, or any other factor), harassment and retaliation.

(i) Agreement to Negotiate. First, the parties shall attempt in good faith to resolve any Claims promptly by negotiations between the Employee and executives or directors of the Company or its affiliates (or, following the occurrence of a Change in Control, any person or committee selected by the Compensation Committee of the Board of Directors prior to the Change in Control (referred to as the "Independent Decision Maker"), who shall act on behalf of the Company or its affiliates), who shall have authority to settle the Claims. Either party may give the other disputing party written notice of any Claim not resolved in the normal course of business. Within five (5) days after the effective date of that notice, the Employee and such executives or directors of the Company, or, following the occurrence of a Change in Control, the Independent Decision Maker, shall agree upon a mutually acceptable time and place to meet and shall meet at that time and place, and thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the Claim. The first of those meetings shall take place within thirty (30) days of the date of the disputing party's notice. If the Claim has not been resolved within sixty (60) days of the date of the disputing party's notice, or if the parties fail to agree on a time and place for an initial meeting within five (5) days of that notice, either party may elect to undertake arbitration in accordance with Section 9(f)(ii).

(ii) Agreement to Arbitrate. If a Claim is not resolved by negotiation pursuant to Section 9(f)(i), such Claim must be resolved through arbitration regardless of whether the Claim involves claims that the Agreement is unlawful, unenforceable, void, or voidable or involves claims under statutory, civil or common law. Any arbitration shall be conducted in accordance with the then-current International Arbitration Rules of the American Arbitration Association ("AAA"). If a party refuses to honor its obligations under this Section 9(f)(ii), the other party may compel arbitration in any federal or state court of competent jurisdiction. The arbitrator shall apply the substantive law of Delaware (excluding choice-of-law principles that might call for the application of some other jurisdiction's law) or federal law as applied by the United States Court of Appeals for the Ninth Circuit, or both as applicable to the Claims asserted. The arbitration shall be conducted by a single arbitrator selected by the parties according to the rules of AAA. In the event that the parties fail to agree on the selection of the arbitrator within 30 days after either party's request for arbitration, the arbitrator will be chosen by AAA. The arbitration proceeding shall commence on a mutually agreeable date within 90 days after the request for arbitration, unless otherwise agreed by the parties. The arbitrator shall have exclusive authority to resolve any dispute relating to the interpretation, applicability or enforceability or formation of this Agreement (including this Section 9(f)), including any claim that all or part of the Agreement is void or voidable and any Claim that an issue is not subject to arbitration. The results of arbitration will be binding and conclusive on the parties hereto. Any arbitrator's award or finding or any judgment or verdict thereon will be final and unappealable. The seat of arbitration shall be in the State of Delaware, and unless agreed otherwise by the parties, all hearings shall take place at the seat. Any and all of the arbitrator's orders, decisions and awards

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may be enforceable in, and judgment upon any award rendered by the arbitrator may be confirmed and entered by any federal or state court having jurisdiction. All evidentiary privileges under applicable state and federal law, including attorney-client, work product and party communication privileges, shall be preserved and protected. The decision of the arbitrator will be binding on all parties. Arbitrations will be conducted in such a manner that the final decision of the arbitrator will be made and provided to the Employee and the Company no later than 120 days after a matter is submitted to arbitration. All proceedings conducted pursuant to this agreement to arbitrate, including any order, decision or award of the arbitrators, shall be kept confidential by all

parties. Each party shall pay its own attorneys' fees and disbursements and other costs of arbitration and the parties to the arbitration shall split all of the arbitrator's fees equally; ; provided, however, that following the occurrence of a Change in Control, the Company will bear the forum fees required by AAA and any other administrative fees associated with the arbitration and shall advance to the Employee the fees and expenses (including legal fees) in connection with any arbitration proceeding provided that Employee shall be obligated to repay all such amounts in the event the Employee does not prevail in such proceeding. EMPLOYEE ACKNOWLEDGES THAT, BY SIGNING THIS AGREEMENT, EMPLOYEE IS WAIVING ANY RIGHT THAT EMPLOYEE MAY HAVE TO A JURY TRIAL OR A COURT TRIAL OF ANY SERVICE RELATED CLAIM ALLEGED BY EMPLOYEE.

(g) **Legal Fees and Expenses**. The parties shall each bear their own expenses, legal fees and other fees incurred in connection with entering into this Agreement.

(h) **No Assignment of Benefits**. The rights of any person to payments or benefits under this Agreement shall not be made subject to option or assignment, either by voluntary or involuntary assignment or by operation of law, including (without limitation) bankruptcy, garnishment, attachment or other creditor's process, and any action in violation of this Section 9(h) shall be void.

(i) **Employment Taxes**. All payments made pursuant to this Agreement will be subject to withholding of applicable income and employment taxes.

(j) **Assignment by Company**. The Company may assign its rights under this Agreement to an affiliate, and an affiliate may assign its rights under this Agreement to another affiliate of the Company or to the Company. In the case of any such assignment, the term "Company" when used in a section of this Agreement shall mean the corporation that actually employs the Employee. Notwithstanding the foregoing, neither the Company (or any successor thereto) nor the Employee may assign its obligations under this Agreement.

(k) **Counterparts**. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together will constitute one and the same instrument.

[SIGNATURE PAGE FOLLOWS]

The parties have executed this Management Continuity Agreement on the date first written above.

ASSERTIO THERAPEUTICS, INC.

By: _____
Name: _____
Title: _____

EMPLOYEE

_____
[Name]

Address:

APPENDIX A

DEPOMED, INC.

WAIVER AND RELEASE AGREEMENT

Assertio Therapeutics, Inc. has offered to pay me certain benefits (the "Benefits") pursuant to Section 2 of my management continuity agreement with Assertio Therapeutics, Inc., effective as of , 20 (the "Management Continuity Agreement"), which were offered to me in exchange for my agreement, among other things, to waive all of my claims against and release Assertio Therapeutics, Inc. and its predecessors, successors and assigns (collectively referred to as the "Company"), all of the affiliates (including parents and subsidiaries) of the Company (collectively referred to as the "Affiliates") and the Company's and Affiliates' directors and officers, employees and agents, insurers, employee benefit plans and the fiduciaries and agents of said plans (collectively, with the Company and Affiliates, referred to as the "Corporate Group") from any and all claims, demands, actions, liabilities and damages arising out of or relating in any way to my employment with or separation from the Company or the Affiliates; provided, however, that this Waiver and Release shall not apply to (1) any existing right I have to indemnification, contribution and a defense, (2) any directors and officers and general liability insurance coverage, (3) any rights I may have as a shareholder of the Company, (4) any rights I have to the Benefits, (5) rights to vested benefits under the Company's benefit plans and (6) any rights which cannot be waived or released as a matter of law.

I understand that signing this Waiver and Release is an important legal act. I acknowledge that the Company has advised me in writing to consult an attorney before signing this Waiver and Release and has given me at least [twenty-one (21)] [forty-five (45)] calendar days from the day I received a copy of this Waiver and Release to sign it. I understand my termination is an ["Other Involuntary Termination"]["Change in Control Involuntary Termination"] pursuant to the Management Continuity Agreement.

In exchange for the payment to me of Benefits, I (1) agree not to sue in any local, state and/or federal court regarding or relating in any way to my employment with or separation from the Company or the Affiliates, (2) knowingly and voluntarily waive all claims and release the Corporate Group from any and all claims, demands, actions, liabilities, and damages, whether known or unknown, arising out of or relating in any way to my employment with or separation from the Company or the Affiliates (including any claim for a bonus in respect of actual performance for the year of termination in the event that such bonus has not yet been paid) and (3) waive any rights that I may have under any of the Company's involuntary severance benefit plans (other than the Management Continuity Agreement), except to the extent that my rights are vested under the terms of an employee benefit plan sponsored by the Company or

an Affiliate and except with respect to such rights or claims as may arise after the date this Waiver and Release is executed. This Waiver and Release includes, but is not limited to, claims and causes of action under: Title VII of the Civil Rights Act of 1964, as amended ("Title VII"); the Age Discrimination in Employment Act of 1967, as amended, including the Older Workers Benefit Protection Act of 1990 ("ADEA"); the Civil Rights Act of 1866, as amended; the Civil Rights Act of 1991; the Americans with Disabilities Act of 1990 ("ADA"); the Energy Reorganization Act, as amended, 42 U.S.C. §§ 5851; the Workers Adjustment and Retraining Notification Act of 1988; the Sarbanes-Oxley Act of 2002; the Employee Retirement Income Security Act of 1974, as amended; the Family and Medical Leave Act of 1993; the Fair Labor Standards Act; the Occupational Safety and Health Act; the Illinois Human Rights Act; retaliation claims; claims in connection with or "whistle blower" statutes (except to the extent prohibited by law); and/or contract, tort, defamation, slander, wrongful termination or any other state or federal regulatory, statutory or common law. Further, I expressly represent that no promise or agreement which is not expressed in the Management Continuity Agreement has been made to me in executing this Waiver and Release, and that I am relying on my own judgment in executing this Waiver and Release, and that I am not relying on any statement or representation of the Company, any of the Affiliates or any other member of the Corporate Group or any of their agents. I agree that this Waiver and Release is valid, fair, adequate and reasonable, is entered into with my full knowledge and consent, was not procured through fraud, duress or mistake and has not had the effect of misleading, misinforming or failing to inform me.

I agree that I am not entitled to any severance or benefits, bonus, commissions, equity, paid time off, vehicle allowance, other wages, or any other payments of any kind. In particular, I agree that I have been paid all compensation, bonuses, commissions, and equity, received all benefits due to me as a result of my employment with or separation from the Company, and am not aware of any facts or circumstances constituting a violation of the Fair Labor Standards Act ("FLSA") or any other federal, state or local constitution, statute, rule, regulation, or common law. I understand that I will not be entitled to receive any amounts under any other plan, program, or agreement with the Company, including, without limitation, incentive bonuses, stock options, equity, profit interest units, and any grant agreements, which bonuses, options, agreements, and unvested awards shall automatically terminate, cancel, forfeit, and expire on the [Separation Date], and all other benefits and perquisites that I am currently receiving cease on my [Separation Date].

The Company takes its obligations to comply with applicable laws and regulations very seriously and, therefore, needs to be made aware of any violations of applicable rules as well as applicable laws and regulations so that the Company may continuously improve their compliance efforts. Therefore, I certify that during my employment with the Company, I had an opportunity to read the Company's policies, employment manuals, and code of conduct, and as the former [POSITION], I was responsible for enforcing and adhering to these policies and programs. I certify that I have not become aware of any violations of law or of such policies by the Company or any of its employees, including, but not limited to, law and policies concerning: compliance with requirements of Medicare, Medicaid, and other federal health care programs; discrimination, harassment and equal employment opportunity; workplace safety; and gifts and gratuities.

In further exchange for the payment to me of Benefits, I agree not to make any disparaging or derogatory statements concerning the Company. The Company hereby agrees to instruct its officers and directors not to make any disparaging statements concerning you. These non-disparagement obligations shall not in any way affect my or the Company's obligation or rights in connection with any legal proceeding. I further acknowledge and agree that I am bound by and will comply with the Employee Confidential Information and Inventions Agreement and any similar agreements that I have entered into with the Company and that I will, within seven (7) calendar days of the date of this Waiver and Release, return all Company property to the Company.

Notwithstanding the foregoing, nothing contained in this Waiver and Release is intended to prohibit or restrict me in any way from (1) bringing a lawsuit against the Company to enforce the Company's obligations under the Management Continuity Agreement; (2) making any disclosure of information permitted or required by law; (3) providing information to, or testifying or otherwise assisting in any investigation or proceeding brought by, any federal regulatory or law enforcement agency or legislative body, any self-regulatory organization, or the Company's legal, compliance or human resources officers; (4) testifying or participating in or otherwise assisting in a proceeding relating to an alleged violation of any federal, state or municipal law relating to fraud or any rule or regulation of the Securities and Exchange Commission or any self-regulatory organization; or (5) filing any claims that are not permitted to be waived or released under applicable law (although my ability to recover damages or other relief is still waived and released to the extent permitted by law). Nothing contained in this Waiver and Release is intended to waive any rights I may have related to unemployment compensation and workers' compensation and indemnification claims .

Pursuant to 18 USC Section 1833(b), I will not be held criminally or civilly liable under any federal or state trade secret law for any disclosure of a trade secret that is made (i) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney; and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or is made in a complaint or other document that is filed under seal in a lawsuit or other proceeding. If I file a lawsuit for retaliation by the Company for reporting a suspected violation of law, I may disclose the Company's trade secrets to the employee's attorney and use the trade secret information in the court proceeding if I: (i) file any document containing the trade secret under seal, and (ii) do not disclose the trade secret, except pursuant to court order.

I acknowledge that I may discover facts different from or in addition to those which I now know or believe to be true and that this Waiver and Release shall be and remain effective in all respects notwithstanding such different or additional facts or the discovery thereof. I hereby expressly waive any and all rights and benefits conferred upon me by the provisions of Section 1542 of the Civil Code of the State of California, and/or any analogous law of any other state.

Section 1542 states:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Should any of the provisions set forth in this Waiver and Release be determined to be invalid by a court, agency or other tribunal of competent jurisdiction, it is agreed that such determination shall not affect the enforceability of other provisions of this Waiver and Release. I acknowledge that this Waiver and Release and the Management Continuity Agreement set forth the entire understanding and agreement between me and the Company or any other member of the Corporate Group concerning the subject matter of this Waiver and Release and supersede any prior or contemporaneous oral and/or written agreements or representations, if any, between me and the Company or any other member of the Corporate Group on the same subject matter. **I understand that** for a period of seven (7) calendar days following the date that I sign this Waiver and Release, I may revoke my acceptance of the offer, provided that my written statement of revocation is received on or before that seventh day by the Senior Vice President, Human Resources, Assertio Therapeutics, Inc., 100

South Saunders Road, Suite 300, Lake Forest, IL 60045, facsimile number: (510) 744-8001, in which case the Waiver and Release will not become effective. In the event I revoke my acceptance of this offer, the Company shall have no obligation to provide me Benefits. I understand that failure to revoke my acceptance of the offer within seven (7) calendar days from the date I sign this Waiver and Release will result in this Waiver and Release being permanent and irrevocable.

I acknowledge that I have read this Waiver and Release, have had an opportunity to ask questions and have it explained to me, have been advised to and have had the opportunity to consult with legal counsel, and that I understand that this Waiver and Release will have the effect of knowingly and voluntarily waiving any action I might pursue, including breach of contract, personal injury, retaliation, discrimination on the basis of race, age, sex, national origin, or disability and any other claims arising prior to the date of this Waiver and Release. By execution of this document, I do not waive or release or otherwise relinquish any legal rights I may have which are attributable to or arise out of acts, omissions, or events of the Company or any other member of the Corporate Group which occur after the date of the execution of this Waiver and Release.

Employee's Name	Company Representative's Signature
Employee's Signature and Title	Company's Representative's Name
Employee's Signature Date	Company's Execution Date

Exhibit 99.1

Depomed Inc. Announces Corporate Name Change to Assertio Therapeutics, Inc.

Name Change Reflects Company's Focus on Neurology, Orphan and Specialty Businesses

August 15, 2018, Lake Forest, Illinois - Assertio Therapeutics, Inc. (NASDAQ: ASRT), a leading specialty pharmaceutical company committed to advancing patient care, has announced that its corporate name change from "Depomed, Inc." to "Assertio Therapeutics, Inc." became effective at 11:59 p.m. ET yesterday, August 14, 2018. In connection with the name change, the Company's common stock will begin trading under a new ticker symbol "ASRT" and a new CUSIP number, 04545L 107, at the opening of trading today, August 15, 2018.

"Over the last several years, we have taken strategic actions to transition the Company to focus on our neurology, orphan and specialty medicines," said Arthur Higgins, President and CEO of Assertio Therapeutics, Inc. "As we've transformed, it has become clear that the name Depomed no longer accurately reflects the business we're in today or the future direction in which we're headed.

Assertio reflects an aspirational mindset consistent with our focus on advancing patient care. It's a new brand identity that says we're assertive and decisive when it comes to our mission, vision, values and strategy as well as our commitment to delivering shareholder value. It's forward thinking and confident, energetic and entrepreneurial. It's a new name — and a renewed mission to advance patient care in our core areas of neurology, orphan and specialty medicines."

Additionally, on August 15, 2018, the Company completed the relocation of its corporate headquarters from Newark, CA, to Lake Forest, IL. The relocation is consistent with the Company's strategy to attract new pharmaceutical talent in the Chicagoland area.

About Assertio Therapeutics, Inc.

Assertio Therapeutics is committed to providing responsible solutions to advance patient care in the Company's core areas of neurology, orphan and specialty medicines. Assertio currently markets three FDA-approved products and continues to identify, license and develop new products that offer enhanced options for patients that may be underserved by existing therapies. To learn more about Assertio, visit www.assertiotx.com.

"Safe Harbor" Statement under the Private Securities Litigation Reform Act of 1995

This news release contains forward-looking statements. These statements involve inherent risks and uncertainties that could cause actual results to differ materially from those projected or anticipated, including risks related to our corporate name change, our reincorporation in Delaware, the relocation of our corporate headquarters and other risks outlined in the Company's public filings with the Securities and Exchange Commission, including the Company's most recent annual report on Form 10-K and subsequent Quarterly Reports on Form 10-Q. All information provided in this news release speaks as of the date hereof. Except as otherwise required by law, the Company undertakes no obligation to update or revise its forward-looking statements.

INVESTOR AND MEDIA CONTACTS:

John B. Thomas
SVP, Investor Relations and Corporate Communications
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