Table of Contents

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

FORM 10-Q

(Mark One)

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

For the quarterly period ended September 30, 2023

or

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

For the transition period from _____ to _____

Commission File Number: 001-00100

TherapeuticsMD, INC.
(Exact name of Registrant as specified in its Charter)

Nevada	**87-0233535**
(State or other jurisdiction of incorporation or organization)	**(I.R.S. Employer Identification No.)**
951 Yamato Road, Suite 220 Boca Raton, Florida	**33431**
(Address of principal executive offices)	**(Zip Code)**

561-961-1900
(Registrant's telephone number, including area code)

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

Title of Each Class	Trading symbol	Name of each exchange on which registered
Common Stock, par value $0.001 per share	**TXMD**	**The Nasdaq Stock Market LLC**

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

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

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

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

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

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

As of November 14, 2023, there were 10,575,240 shares of the registrant's common stock, par value $0.001 per share, outstanding.

Table of Contents

Table of Contents

Table of Contents

Part I - Financial Information

Item 1. Financial statements

TherapeuticsMD, Inc. and Subsidiaries
Condensed Consolidated Balance Sheets
(in thousands, except share data)

	September 30, 2023 (Unaudited)	December 31, 2022
Assets:		
Current assets:		
Cash and cash equivalents	$ 10,166	$ 38,067
Restricted cash	—	11,250
Royalty receivable, current portion	2,705	—
Prepaid and other current assets	4,570	6,034
Total current assets	17,441	55,351
Fixed assets, net	19	78
License rights and other intangible assets, net	6,657	6,943
Right of use assets	7,055	7,580
Royalty receivable, long term	19,067	20,253
Other non-current assets	254	253
Total assets	$ 50,493	$ 90,458
Liabilities and stockholders' equity:		
Current liabilities:		
Accounts payable	$ 696	$ 2,162
Accrued expenses and other current liabilities	6,928	18,846
Current liabilities of discontinued operations	6,888	25,831
Total current liabilities	14,512	46,839
Operating lease liabilities	6,740	7,369
Other non-current liabilities	1,189	1,107
Total liabilities	22,441	55,315
Commitments and contingencies (Note 7)		
Stockholders' equity (deficit):		
Common stock, par value $0.001; 32,000 and 12,000 shares authorized, 10,575 and 9,498 shares issued and outstanding as of September 30, 2023 and December 31, 2022, respectively	11	9
Additional paid-in capital	976,799	974,497
Accumulated deficit	(948,758)	(939,363)
Total stockholders' equity	28,052	35,143
Total liabilities and stockholders' equity	$ 50,493	$ 90,458

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

TherapeuticsMD, Inc. and Subsidiaries
Condensed Consolidated Statements of Comprehensive Income
(Unaudited - in thousands, except per share data)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
License and service revenue	$ (53)	$ 354	$ 800	$ 1,397
Cost of revenue	—	354	—	1,397
Gross profit (loss)	(53)	—	800	—
Operating expenses:				
Selling, general and administrative	1,590	14,246	7,427	46,367
Depreciation & amortization	130	273	285	884
Total operating expenses	1,720	14,519	7,712	47,251
Loss from operations	(1,773)	(14,519)	(6,912)	(47,251)
Other (expense) income:				
Interest expense and other financing costs	(20)	—	(115)	—
Miscellaneous income (expense)	359	(112)	869	(128)
Total other income (loss), net	339	(112)	754	(128)
Loss from continuing operations before income taxes	(1,434)	(14,631)	(6,158)	(47,379)
Income (loss) from discontinued operations, net of income taxes	(1,944)	(14,334)	(3,237)	81,674
Net income (loss)	$ (3,378)	$ (28,965)	$ (9,395)	$ 34,295
Income (loss) per common share, basic and diluted:				
Continuing operations	(0.13)	(1.58)	(0.60)	(5.34)
Discontinued operations, net	(0.18)	(1.55)	(0.32)	9.20
Net income (loss) per common share, basic and diluted	$ (0.32)	$ (3.13)	$ (0.92)	$ 3.86
Weighted average common shares, basic	10,701	9,261	10,241	8,877
Weighted average common shares, diluted	10,701	9,261	10,241	8,877
Net income (loss)	$ (3,378)	$ (28,965)	$ (9,395)	$ 34,295
Other comprehensive income	—	—	—	—
Comprehensive income (loss):	$ (3,378)	$ (28,965)	$ (9,395)	$ 34,295

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

TherapeuticsMD, Inc. and Subsidiaries
Condensed Consolidated Statements of Stockholders' Equity (Deficit)
(Unaudited - in thousands)

	Common Stock		Additional Paid in	Accumulated	
	Shares	Amount	Capital	Deficit	Total
Balance, January 1, 2023	9,498	$ 9	$974,497	$ (939,363)	$ 35,143
Shares issued for vested restricted stock units	455	1	—	—	1
Share-based compensation	—	—	483	—	483
Net loss	—	—	—	(3,603)	(3,603)
Balance, March 31, 2023	9,953	$ 10	$974,980	$ (942,966)	$ 32,024
Shares issued for vested restricted stock units	309	—	—	—	—
Shares issued for sale of common stock related to private placement sale	313	1	1,149	—	1,150
Share-based compensation	—	—	437	—	437
Net loss	—	—	—	(2,414)	(2,414)
Balance, June 30, 2023	10,575	$ 11	$976,566	$ (945,380)	$ 31,197
Share-based compensation	—	—	233	—	233
Net loss	—	—	—	(3,378)	(3,378)
Balance, September 30, 2023	10,575	$ 11	$976,799	$ (948,758)	$ 28,052
Balance, January 1, 2022	8,598	$ 9	$957,730	$(1,051,360)	$ (93,621)
Shares issued for vested restricted stock units	71	—	—	—	—
Share-based compensation	—	—	2,062	—	2,062
Net loss	—	—	—	(49,021)	(49,021)
Balance, March 31, 2022	8,669	$ 9	$959,792	$(1,100,381)	$(140,580)
Shares issued for rounding up of fractional shares in connection with the reverse stock split	142	—	—	—	—
Shares issued for vested restricted stock units	44	—	—	—	—
Shares issued for sale of common stock related to employee stock purchase plan	5	—	14	—	14
Share-based compensation	—	—	2,219	—	2,219
Net income	—	—	—	112,281	112,281
Balance, June 30, 2022	8,860	$ 9	$962,025	$ (988,100)	$ (26,066)
Sale of common stock, net of costs	565	—	2,454	—	2,454
Shares issued for vested restricted stock units	42	—	—	—	—
Share-based compensation	—	—	4,306	—	4,306
Net loss	—	—	—	(28,965)	(28,965)
Balance, September 30, 2022	9,467	$ 9	$968,785	$(1,017,065)	$ (48,271)

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

TherapeuticsMD, Inc. and Subsidiaries
Condensed Consolidated Statements of Cash Flows
(Unaudited - in thousands)

	Nine Months Ended September 30,	
	2023	2022
Cash flows from operating activities:		
Net income (loss)	$ (9,395)	$ 34,295
Less: income (loss) from discontinued operations, net of tax	(3,237)	81,674
Net loss from continuing operations	(6,158)	(47,379)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	285	884
Write-off of patents and trademarks	59	—
Share-based compensation	1,155	8,587
Other	525	(25)
Changes in operating assets and liabilities:		
Other assets	1,185	—
Prepaid and other current assets	(1,241)	394
Accounts payable	(1,466)	(1,290)
Accrued expenses and other current liabilities	(11,918)	18,337
Lease liabilities	(629)	—
Other non-current liabilities	82	(385)
Total adjustments	(11,963)	26,502
Net cash used in continuing operating activities	(18,121)	(20,877)
Cash flows from investing activities:		
Payment of patent related costs	—	(260)
Purchase of fixed assets	—	(21)
Net cash used in continuing investing activities	—	(281)
Cash flows from financing activities:		
Proceeds from sale of common stock, net of costs	1,149	2,454
Proceeds from exercise of options and warrants	—	14
Repayments of debt	—	(125,000)
Payment of debt financing fees	—	(729)
Net cash provided by (used in) continuing financing activities	1,149	(123,261)
Discontinued operations:		
Net cash provided by (used in) operating activities	(22,179)	117,573
Net cash provided by investing activities	—	54
Net cash provided by financing activities	—	—
Net cash provided by (used in) discontinued operations	(22,179)	117,627
Net decrease in cash	(39,151)	(26,792)
Cash, cash equivalents and restricted cash - continuing operations, beginning of period	49,317	65,122
Cash, cash equivalents and restricted cash - discontinued operations, beginning of period	—	—
Total cash and restricted cash, end of period	$ 10,166	$ 38,330
Supplemental disclosure of cash flow information:		
Interest paid	$ —	$ —
Supplemental disclosure of noncash financing activities:		
Paid in kind (“PIK”) interest with corresponding increase in debt	$ —	$ 2,452
PIK debt financing fees with corresponding increase in debt	$ —	$ 16,980
Issue of warrants to lenders related to debt financing fees	$ —	$ 1,983

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

TherapeuticsMD, Inc. and Subsidiaries
Notes to the Condensed Consolidated Financial Statements
(Unaudited)

1. Business, basis of presentation, new accounting standards and summary of significant accounting policies

General

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

TherapeuticsMD was previously a women's healthcare company with a mission of creating and commercializing innovative products to support the lifespan of women from pregnancy prevention through menopause. In December 2022, we changed our business to become a pharmaceutical royalty company, currently receiving royalties on products licensed to pharmaceutical organizations that possess commercial capabilities in the relevant territories. On December 30, 2022 (the "Closing Date"), we completed a transaction (the "Mayne Transaction") with Mayne Pharma LLC, a Delaware limited liability company ("Mayne Pharma") and subsidiary of Mayne Pharma Group Limited, an Australian public company, in which we and our subsidiaries (i) granted Mayne Pharma an exclusive license to commercialize our IMVEXXY, BIJUVA and prescription prenatal vitamin products sold under the BocaGreenMD and vitaMedMD brands (collectively, the "Licensed Products") in the United States and its possessions and territories, (ii) assigned to Mayne Pharma our exclusive license to commercialize ANNOVERA® (together with the Licensed Products, collectively, the "Products") in the United States and its possessions and territories, and (iii) sold certain other assets to Mayne Pharma in connection therewith.

In a License Agreement, dated December 4, 2022, between TherapeuticsMD and Mayne Pharma (the "Mayne License Agreement"), we granted Mayne Pharma, on the Closing Date, (i) an exclusive, sublicensable, perpetual, irrevocable license to research, develop, register, manufacture, have manufactured, market, sell, use, and commercialize the Licensed Products in the United States and its possessions and territories and (ii) an exclusive, sublicensable, perpetual, irrevocable license to manufacture, have manufactured, import and have imported the Licensed Products outside the United States for commercialization in the United States and its possessions and territories.

Under the Mayne License Agreement, Mayne Pharma will pay us milestone payments of each of (i) $ 5.0 million if aggregate net sales of all Products in the United States during a calendar year reach $100.0 million, (ii) $10.0 million if aggregate net sales of all Products in the United States during a calendar year reach $200.0 million and (iii) $15.0 million if aggregate net sales of all Products in the United States during a calendar year reach $300.0 million. Further, Mayne Pharma will pay us royalties on net sales of all Products in the United States at a royalty rate of 8.0% on the first $80.0 million in annual net sales and 7.5% on annual net sales above $80.0 million, subject to certain adjustments, for a period of 20 years following the Closing Date. The royalty rate will decrease to 2.0% on a Product-by-Product basis upon the earlier to occur of (i) the expiration or revocation of the last patent covering a Product and (ii) a generic version of a Product launching in the United States. Mayne Pharma will pay us minimal annual royalties of $3.0 million per year for 12 years, adjusted for inflation at an annual rate of 3%, subject to certain further adjustments, including as described below. Upon the expiry of the 20-year royalty term, the licenses granted to Mayne Pharma under the Mayne License Agreement will become a fully paid-up and royalty free license for the Licensed Products.

Under the Transaction Agreement, dated December 4, 2022, between TherapeuticsMD and Mayne Pharma (the "Transaction Agreement"), we sold to Mayne Pharma, at closing, certain assets for Mayne Pharma to commercialize the Products in the United States, including, with the Population Council's consent, our exclusive license from the Population Council to commercialize ANNOVERA (the "Transferred Assets").

The total consideration from Mayne Pharma to TherapeuticsMD for the purchase of the Transferred Assets and the grant of the licenses under the Mayne Transaction Agreement was (i) a cash payment of $140.0 million at closing, (ii) a cash payment of approximately $12.1 million at closing for the acquisition of net working capital as determined in accordance with the Transaction Agreement and subject to certain adjustments, (iii) a cash payment of approximately $1.0 million at closing for prepaid royalties in connection with the Mayne License Agreement Amendment (as defined below) and (iv) the right to receive the contingent consideration set forth in the Mayne License Agreement, as amended. The acquisition of net working capital was determined in accordance with the Transaction Agreement and included significant estimates which could change materially for a period of up to two years following the Closing Date.

On the Closing Date, TherapeuticsMD and Mayne Pharma entered into Amendment No. 1 to the Mayne License Agreement (the "Mayne License Agreement Amendment"). Pursuant to the Mayne License Agreement Amendment, Mayne Pharma agreed to pay us approximately $1.0 million in prepaid royalties on the Closing Date. The prepaid royalties will reduce the first four quarterly payments that would have otherwise been payable pursuant to the Mayne License Agreement by an amount equal to $257 thousand per quarterly royalty payment plus interest calculated at 19% per annum accruing from the Closing Date until the date such quarterly royalty payment is paid to us. We and Mayne Pharma settled the $1.5 million of consideration due to Mayne for the assumed obligations under a long-term services agreement (see the section entitled "vitaCare divestiture" below for a discussion of the long-term services agreement), including our minimum payment obligations thereunder. As the parties agreed, during the second quarter of 2023, Mayne Pharma held back our royalty payment and we funded an additional $0.9 million in August 2023 to settle the original $1.5 million payable.

As part of the transformation that included the Mayne License Agreement, historical results of commercial operations for all periods prior to the Closing Date have been reflected as discontinued operations in our condensed consolidated financial statements. Assets and liabilities associated with the commercial business are classified as assets and liabilities of discontinued operations in our condensed consolidated balance sheets. Additional disclosures regarding discontinued operations are provided in Note 2 of our condensed consolidated financial statements.

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

- In July 2018, we entered into a license and supply agreement (the "Knight License Agreement") with Knight Therapeutics Inc. ("Knight") pursuant to which we granted Knight an exclusive license to commercialize IMVEXXY and BIJUVA in Canada and Israel.
- In September 2019, we entered into an exclusive license and supply agreement (the "Theramex License Agreement") with Theramex HQ UK Limited ("Theramex") to commercialize IMVEXXY and BIJUVA outside of the U.S., excluding Canada and Israel. In 2021, Theramex secured regulatory approval for BIJUVA in certain European countries and began commercialization efforts in those countries.

In connection with our transformation into a pharmaceutical royalty company, the termination of our executive management team (except for Mr. Marlan Walker, our former General Counsel and current Chief Executive Officer) and all other employees was completed by December 31, 2022. Severance obligations for all employees other than executive officers were paid in full in January 2023 and severance obligations for terminated executive officers are paid in accordance with their employment agreements and separation agreements as previously disclosed. As of December 31, 2022 and September 30, 2023, we employed one full-time employee primarily engaged in an executive position.

We have engaged external consultants who support our relationship with current partners and assist with certain financial, legal, and regulatory matters and the continued wind-down of our historical business operations. On August 15, 2023, we entered into a master services agreement with JZ Advisory Group, pursuant to which Joseph Ziegler would serve as our Principal Financial Officer. On August 17, 2023 Michael C. Donegan notified us of his decision to resign from the positions of Principal Financial and Accounting Officer of our Company effective as of August 17, 2023. Mr. Ziegler succeeded Mr. Donegan as Principal Financial and Accounting Officer as of the date of Mr. Donegan's resignation.

vitaCare Divestiture

On April 14, 2022, we completed the divestiture of our former subsidiary vitaCare Prescription Services, Inc. ("vitaCare") with the sale of all of vitaCare's issued and outstanding capital stock (the "vitaCare Divestiture"). We received net proceeds of $142.6 million, after deducting transaction costs of $7.2 million, and we recognized a gain on sale of business of $ 143.4 million. Included in the net proceeds amount was $11.3 million of customary holdbacks as provided in the stock purchase agreement (the "Purchase Agreement") which we received in 2023. Additionally, the Purchase Agreement provides that we may receive up to an additional $7.0 million in earn-out consideration, contingent upon vitaCare's financial performance through 2023 as determined in accordance with the terms of the Purchase Agreement; however, we do not believe this earnout will be realized. We will record the contingent consideration at the settlement amount if and when the consideration is realized or realizable.

The Purchase Agreement contains customary representations and warranties, covenants, and indemnities of the parties thereto. The commitments under a long-term services agreement related to vitaCare were transferred to Mayne Pharma as part of the Mayne Transaction. In addition, under the Mayne License Agreement Amendment, we owed Mayne Pharma $1.5 million payable from one royalty payment. During the second quarter of 2023, Mayne Pharma held back our royalty payment and we funded an additional $0.9 million in August 2023 to settle the original $1.5 million payable.

The divestiture of vitaCare was determined to be a component of discontinued operations in December 2022, when we changed our business by becoming a royalty company and as a result vitaCare activities were reclassified to discontinued operations for the nine months ended September 30, 2023 and 2022.

COVID-19

With multiple variant strains of the SARS-Cov-2 virus and the COVID-19 disease that it causes (collectively, "COVID-19") still circulating, we continue to be subject to risks and uncertainties in connection with the COVID-19 pandemic. The extent of the future impact of the COVID-19 pandemic on our business continues to be highly uncertain and difficult to predict.

As of the date of issuance of these condensed consolidated financial statements, the future extent to which the COVID-19 pandemic may continue to materially impact our financial condition, liquidity, or results of operations remains uncertain and difficult to predict. Even after the COVID-19 pandemic has subsided, we may continue to experience adverse impacts to our business as a result of any economic recession or depression that has occurred or may occur in the future.

Going concern

On December 4, 2022, we entered into agreements with Mayne Pharma pursuant to which we granted Mayne Pharma an exclusive license to commercialize IMVEXXY, BIJUVA, and prescription prenatal vitamin products (in the United States and its possessions and territories), (ii) assign to Mayne Pharma our exclusive license to commercialize ANNOVERA in the United States and its possessions and territories, and (iii) sell certain other assets to Mayne Pharma.

The total consideration from Mayne Pharma to TherapeuticsMD for the purchase of the Transferred Assets and the grant of the licenses under the Mayne License Agreement consisted of (i) a cash payment of $140.0 million at closing, (ii) a cash payment of approximately $12.1 million at closing for the acquisition of net working capital subject to certain adjustments, (iii) a cash payment of approximately $1.0 million at closing for prepaid royalties in connection with the Mayne License Agreement Amendment and (iv) the right to receive the contingent consideration set forth in the Mayne License Agreement, as amended.

On the Closing Date, we repaid all obligations under the Financing Agreement, dated as of April 24, 2019, as amended, with Sixth Street Specialty Lending, Inc., as administrative agent, the various lenders from time-to-time party thereto, and certain of our subsidiaries party thereto from time to time as guarantors (the "Financing Agreement") and the Financing Agreement was terminated.

Following the transaction with Mayne Pharma, our primary source of revenue is from royalties on products licensed to pharmaceutical organizations that possess commercial capabilities in the relevant territories. We may need to raise additional capital to provide additional liquidity to fund our operations until we become cash flow positive. To address our capital needs, we may pursue various equity and debt financing and other alternatives. The equity financing alternatives may include the private placement of equity, equity-linked, or other similar instruments or obligations with one or more investors, lenders, or other institutional counterparties or an underwritten public equity or equity-linked securities offering. Our ability to sell equity securities may be limited by market conditions, including the market price of our common stock, and our available authorized shares.

To the extent that we raise additional capital through the sale of such securities, the ownership interests of our existing stockholders will be diluted, and the terms of these new securities may include liquidation or other preferences that adversely affect the rights of our existing stockholders. If we are not successful in obtaining additional financing, we could be forced to discontinue or curtail our business operations, sell assets at unfavorable prices, or merge, consolidate, or combine with a company with greater financial resources in a transaction that might be unfavorable to us.

On May 1, 2023, we entered into a Subscription Agreement (the "Subscription Agreement") with Rubric Capital Management LP ("Rubric"), pursuant to which we agreed to sell to Rubric, or one or more of its affiliates, up to an aggregate of 5,000,000 shares of our common stock, par value $0.001 per share (our "Common Stock"), from time to time during the term of the Subscription Agreement in separate draw-downs at our election. On June 29, 2023, we issued and sold 312,525 shares of Common Stock at a price per share equal to $ 3.6797 pursuant to the Subscription Agreement. We received gross proceeds of $1.15 million from the draw down, before expenses. The Common Stock issued pursuant to the Subscription Agreement was sold and issued without registration under the Securities Act of 1933, as amended (the "Securities Act"), in reliance on the exemptions provided by Section 4(a)(2) of the Securities Act as transactions not involving a public offering and Rule 5-06 of Regulation D promulgated under the Securities Act as sales to accredited investors, and in reliance on similar exemptions under applicable state laws.

If Mayne Pharma's sales of IMVEXXY, BIJUVA, or ANNOVERA grow more slowly than expected or decline, if the net working capital settlement with Mayne Pharma under the Transaction Agreement is greater than our current estimates, if we are unsuccessful with future financings or if the continued impact of the COVID-19 pandemic on us or the third-parties we or our licensees rely on or the supply chains related to the third-party contract manufacturers are worse than we anticipate, our existing cash reserves may be insufficient to satisfy our liquidity requirements. The potential impact of these factors in conjunction with the uncertainty of the capital markets raises substantial doubt about our ability to continue as a going concern for the next twelve months from the issuance of these financial statements.

The accompanying condensed consolidated financial statements do not include any adjustments that might be necessary if we are unable to continue as a going concern.

Basis of presentation

We prepared the condensed consolidated financial statements included in this 10-Q Report following the requirements of the United States ("U.S.") Securities and Exchange Commission ("SEC") for interim reporting. As permitted under those rules, certain notes or other financial information that are normally required by accounting principles generally accepted in the U.S. ("U.S. GAAP") for complete financial statements can be condensed or omitted. However, except as disclosed herein, there has been no material change in the information disclosed in the notes included in our 2022 Annual Report on Form 10-K (the "2022 10-K Report").

As part of the transformation as a result of the Mayne Transaction, historical results of commercial operations for all periods prior to the Closing Date have been reflected as discontinued operations in the condensed consolidated financial statements. Assets and liabilities associated with the commercial business are classified as assets and liabilities of discontinued operations in the condensed consolidated balance sheet. Additional disclosures regarding discontinued operations are provided in Note 2 of the condensed consolidated financial statements.

Revenues, expenses, assets, liabilities, and equities can vary during each quarter of the year. Therefore, the results and trends in these interim financial statements may not be representative of those for the full year. In our opinion, all adjustments necessary for a fair presentation of the financial statements, which are of a normal and recurring nature, have been made for the interim periods reported. The information included in this 10-Q Report should be read in conjunction with the consolidated financial statements and accompanying notes included in our 2022 10-K Report. Certain amounts in the consolidated financial statements and accompanying notes may not add due to rounding, and all percentages have been calculated using unrounded amounts. Certain prior period amounts have been reclassified to conform to current-period presentation.

New accounting standards

Adoption of new accounting standards

New accounting standards or "ASUs" were assessed and determined to be either not applicable or did not have a material impact on our condensed consolidated financial statements or processes.

Common stock reverse stock split

On May 6, 2022, we completed a reverse stock split of our Common Stock. As a result, shares of our outstanding Common Stock were split at a ratio of 50-for-1 (the "Reverse Stock Split") with any fractional shares resulting from the Reserve Stock Split rounded up to the next whole share of Common Stock. The number of authorized shares of Common Stock was also correspondingly reduced from 600.0 million shares to 12.0 million shares to give effect to the Reverse Stock Split. Additionally, all rights to receive shares of Common Stock under outstanding warrants, options, restricted stock units ("RSUs") and performance stock units ("PSUs") were adjusted to give effect to the Reverse Stock Split. Furthermore, remaining shares of Common Stock available for future issuance under share-based payment award plans and our employee stock purchase plan were adjusted to give effect to the Reverse Stock Split. Pursuant to Section 78.209 of the Nevada Revised Statutes, the approval of our stockholders was not required for our Board of Directors to effectuate the Reverse Stock Split.

All historical numbers of shares of Common Stock and per share data have been adjusted to give effect to the Reverse Stock Split. Additionally, since the Common Stock par value was unchanged, historical amounts for Common Stock and additional paid-in capital have been adjusted to give effect to the Reverse Stock Split.

Increase of authorized shares

On June 26, 2023, at our combined 2022 and 2023 Annual Meeting, our stockholders approved an amendment to our Amended and Restated Articles of Incorporation to increase the number of authorized shares of Common Stock from 12 million shares to 32 million shares.

Estimates and assumptions

The preparation of our condensed consolidated financial statements in conformity with U.S. GAAP requires us to make certain estimates and assumptions that affect the reported amounts of assets and liabilities, disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenue and expenses during the reporting periods. We evaluate our estimates and assumptions based on historical experience and on various other assumptions that are believed to be reasonable, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ, at times in material amounts, from these estimates under different assumptions or conditions.

Significant accounting policies

The significant accounting policies we use for quarterly financial reporting are disclosed in Note 1 of the accompanying notes to the consolidated financial statements included in our 2022 10-K report and in the section below.

2. Discontinued Operations

As discussed in Note 1, we changed our business in 2022 by licensing our products to receive royalties and future sales related milestone payments, after granting an exclusive license to commercialize our IMVEXXY, BIJUVA, and prescription prenatal vitamin products sold under the BocaGreenMD and vitaMedMD brands in the United States and assigning our exclusive license to commercialize ANNOVERA to Mayne Pharma.

This plan represented a strategic shift having a major effect on our operations and financial results. Upon our conversion from a commercial pharmaceutical company to a licensing only company with the consummation of the Mayne Transaction, we classified all direct revenues, costs and expenses related to commercial operations, within income (loss) from discontinued operations, net of tax, in the condensed consolidated statements of comprehensive income for all periods presented. We have not allocated any amounts for shared general and administrative operating support expense to discontinued operations. As required by the terms of the Financing Agreement, proceeds from the Mayne Transaction and the VitaCare Divestiture were used to fully repay our outstanding debt borrowings, and as a result interest expense and amortization of deferred financing costs as well as expense for accretion of Series A Preferred Stock and loss on extinguishment of debt are included within income (loss) from discontinued operations, net of tax (as disclosed below).

Additionally, the related assets and liabilities have been reported as assets and liabilities of discontinued operations in our condensed consolidated balance sheets as of September 30, 2023 and December 31, 2022.

The total consideration from Mayne Pharma consisted of (i) a cash payment of $ 140.0 million at closing, (ii) a cash payment of $ 12.1 million for the acquisition of net working capital subject to certain adjustments, (iii) a cash payment of approximately $1.0 million for prepaid royalties in connection with the Mayne License Agreement Amendment and (iv) the right to receive the contingent consideration set forth in the Mayne License Agreement, as amended.

Our estimate of net working capital at closing was determined in accordance with the Transaction Agreement which establishes the process for the determination of final net working capital. The determination of net working capital includes significant estimates which could change materially for a period of up to two years following the Closing Date. On March 29, 2023, we received Mayne Pharma’s closing net working capital calculation which differed significantly from our estimate of closing net working capital. We believe that our estimate of net working capital is reasonable and intend to resolve this matter through the process outlined in the Transaction Agreement. During the three months ended September 30, 2023, we revised certain estimates pertaining to contracts we were a party to when we were an operating company. These included an incremental accrual of approximately $2 million for net working capital adjustments related to the Transaction Agreement .

The following table presents results of discontinued operations (in thousands):

	Three months ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
Product revenue, net	$ (833)	$ 20,562	$ (833)	$ 67,413
Cost of goods sold	—	3,434	—	11,991
Gross profit	(833)	17,128	(833)	55,422
Operating expenses:				
Selling and marketing	—	19,129	—	61,703
General and administrative	(39)	3,107	296	8,157
Research and development	—	1,112	—	4,092
Depreciation & amortization	—	8	—	36
Total operating expenses	(39)	23,356	296	73,988
Operating loss from discontinued operations	(794)	(6,228)	(1,129)	(18,566)
Other income (expense), net	(1,150)	(8,106)	(2,108)	100,240
Total other income (expense), net	(1,150)	(8,106)	(2,108)	100,240
Net income (loss) from discontinued operations	$ (1,944)	$ (14,334)	$ (3,237)	$ 81,674

The following table presents the carrying amounts of the classes of assets and liabilities of discontinued operations as of September 30, 2023 and December 31, 2022 (in thousands):

	September 30, 2023	December 31, 2022
Liabilities:		
Current liabilities:		
Accounts payable	$ 113	$ 12,243
Accrued expenses and other current liabilities	6,775	13,588
Total current liabilities	$ 6,888	$ 25,831

3. Prepaid and other current assets

Our prepaid and other current assets consisted of the following as of September 30, 2023 and December 31, 2022 (in thousands):

	September 30, 2023	December 31, 2022
Insurance	$ 632	$ 1,167
Rent receivable	429	—
Capitalized legal	2,334	2,334
Other	1,175	2,533
Prepaid and other current assets	$ 4,570	$ 6,034

4. Fixed assets

Our fixed assets, net consisted of the following as of September 30, 2023 and December 31, 2022 (in thousands):

	September 30, 2023	December 31, 2022
Furniture and fixtures	$ 931	$ 931
Computer and office equipment	1,167	1,168
Computer software	375	375
Leasehold improvements	49	49
Fixed assets	2,522	2,523
Less: accumulated depreciation and amortization	(2,503)	(2,445)
Fixed assets, net	$ 19	$ 78

We recorded, in continuing operations, depreciation expense of $ 0.0 million and $0.2 million for the three months ended September 30, 2023 and 2022, respectively, and depreciation expense of $0.0 million and $0.4 million for the nine months ended September 30, 2023 and 2022, respectively.

5. Licensed rights and other intangible assets

The following provides information about our license rights and other intangible assets, net as of September 30, 2023 and December 31, 2022 (in thousands):

	September 30, 2023			December 31, 2022		
	Gross Carrrying Amount	Accumulated Amortization	Net	Gross Carrrying Amount	Accumulated Amortization	Net
Intangible assets subject to amortization:						
Hormone therapy drug patents	$ 6,224	$ 1,824	$ 4,400	$ 6,225	$ 1,598	$4,627
Hormone therapy drug patents applied and pending approval	1,936	—	1,936	1,995	—	1,995
Intangible assets subject to amortization	8,160	1,824	6,336	8,220	1,598	6,622
Intangible assets not subject to amortization:						
Trademarks/trade name rights	321	—	321	321	—	321
License rights and other intangible assets, net	$ 8,481	$ 1,824	$ 6,657	$ 8,541	$ 1,598	$6,943

We recorded, in continuing operations, amortization expense related to patents of $ 0.1 million and $0.1 million for the three months ended September 30, 2023 and 2022, respectively, and amortization expense related to patents of $ 0.2 million and $0.4 million for the nine months ended September 30, 2023 and 2022, respectively.

Our intangible assets subject to amortization are expected to be amortized as follows (in thousands):

Year ending December 31,	
2023	$ 110
2024	439
2025	438
2026	438
2027	438
Thereafter	2,537
Total	$ 4,400

6. Accrued expenses and other current liabilities

Other accrued expenses and other current liabilities consisted of the following (in thousands):

	September 30, 2023	December 31, 2022
Payroll and related costs	$ 332	$ 8,748
Accrued contract termination costs	1,632	4,700
Research and development expenses	—	978
Professional fees	273	415
Operating lease liabilities	1,464	1,390
Prepaid royalty	—	1,011
Other accrued expenses and current liabilities	3,227	1,604
Accrued expenses and other current liabilities	$ 6,928	$ 18,846

7. Commitments and contingencies

Mayne Pharma Agreement

Mayne Pharma paid us approximately $12.1 million at closing on December 30, 2022, for the acquisition of net working capital, as determined in accordance with the Transaction Agreement, and such payment is subject to certain adjustments for a period of up to two years following the Closing Date. During the three months ended September 30, 2023, we revised certain estimates; including an incremental accrual of approximately $2 million for net working capital adjustments related to the Transaction Agreement .

Pursuant to the Mayne License Agreement Amendment, Mayne Pharma also paid us approximately $ 1.0 million in prepaid royalties on the Closing Date. The prepaid royalties will reduce the first four quarterly payments that would have otherwise been payable pursuant to the Mayne License Agreement by an amount equal to $257,250 per quarterly royalty payment plus interest calculated at 19% per annum accruing from the Closing Date until the date such quarterly royalty payment is paid to us. Additionally, we owed Mayne Pharma $1.5 million payable from one royalty payment. During the second quarter of 2023, Mayne Pharma held back our royalty payment and we funded an additional $0.9 million in August 2023 to settle the original $1.5 million payable. We recognized $(0.1) million and $0.8 million in royalty revenues from Mayne Pharma during the three and nine months ended September 30, 2023, respectively.

Population Council License Agreement

Under the terms of our license agreement with the Population Council, Inc. (the “Population Council License Agreement”), we paid the Population Council a milestone payment of $20.0 million in 2018, which was within 30 days following the approval by the FDA of the New Drug Application (“NDA”) for ANNOVERA, and $20.0 million in 2019 following the first commercial batch release of ANNOVERA. The aggregate $40.0 million of milestone payments were recorded as license rights. The Population Council was also eligible to receive future payments upon the achievement of certain commercial sales milestones of ANNOVERA. On December 30, 2022, we assigned the ANNOVERA license to Mayne Pharma. Our rights and obligations under the Population Council License Agreement have been transferred to Mayne Pharma and may revert back to us upon the occurrence of certain events.

Legal proceedings

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

infringed. In July 2021, following a proposal by Teva, the District Court entered an order temporarily staying all proceedings in the IMVEXXY litigation, which order was filed under seal. In September 2021, the District Court made available a public version of the order following the parties' agreement to a consent motion to redact information Teva contended was confidential. The order provides that the statutory stay that prevents the FDA from granting final approval of the ANDA for 30 months from the date of the IMVEXXY Notice Letter will be extended for the number of days that the stay of the IMVEXXY litigation is in place. The length of the stay of the IMVEXXY litigation is dependent on further action by Teva. We have incurred and recorded legal costs amounting to $2.3 million in prepaid expenses and other current assets as of September 30, 2023, for the IMVEXXY Paragraph IV legal proceeding since we believe that we will successfully prevail in this legal proceeding. Upon the successful conclusion of the legal proceeding, the related capitalized legal costs will be reclassified to patents, in license rights and other intangible assets, net, in the accompanying condensed consolidated balance sheets, and such costs will be amortized over the remaining useful life of the patents. If we are unsuccessful in this legal proceeding, then the related capitalized legal costs for this legal preceding and any unamortized IMVEXXY patent costs that were previously capitalized will be immediately expensed in the period in which we become aware of an unsuccessful legal proceeding.

Beginning on December 30, 2022 and per the Mayne License Agreement, Mayne Pharma is responsible for all enforcement of our patents, including the litigation discussed above with respect to Teva.

In September 2023, one of our former contractors retained to market Annovera under Title X, filed a lawsuit that accused us of breach of contract. We answered their complaint and filed breach of contract counterclaims.

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

Off-balance sheet arrangements

As of September 30, 2023 and December 31, 2022 we had no off-balance sheet arrangements that have had or are reasonably likely to have current or future effects on our financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, capital expenditures or capital resources that we consider material.

Employment agreements

In connection with our transformation into a pharmaceutical royalty company, the termination of our executive management team (except for Mr. Marlan Walker, our former General Counsel and current Chief Executive Officer) and all other employees was completed by December 30, 2022. Severance obligations for all employees other than executive officers were paid in full in the first quarter of 2023. As of September 30, 2023, we employ one full-time employee primarily engaged in an executive position. We have engaged external consultants who support our relationship with current partners and assist with certain financial, legal, and regulatory matters and the continued wind-down of our historical business operations. The separation of our former Interim Co-Chief Executive Officers, former Interim Chief Financial Officer and other executives from TherapeuticsMD was each a termination without "Good Cause," as defined in their respective employment agreements. In the aggregate, as of September 30, 2023, we have accrued severance liabilities for executive termination obligations of $1.6 million.

8. Stockholders' equity (deficit)

Warrants

As of September 30, 2023, the following table summarizes the status of our outstanding and exercisable warrants and related transactions since December 31, 2022 (in thousands, except weighted average exercise price and weighted average remaining contractual life data):

	Warrants Outstanding and exercisable			
	Warrants	Weighted Average Exercise Price	Aggregate Intrinsic Value	Weighted Average Remaining Contractual Life (in Years)
As of January 1, 2022	536	$ 13.10	$ 2,427	9.3
Exercised	(435)	—	(634)	(4.5)
Expired	(2)	—	—	—
As of September 30, 2023	99	$ 66.61	$ 1,793	6.5

Share-based compensation payment plans

As of September 30, 2023, 382,207 shares of common stock were subject to outstanding awards under our share-based payment award plans and inducement grants (calculated using the base number of PSUs that may vest). As of September 30, 2023, 392,504 shares of common stock were available for future grants of share-based payment awards under the TherapeuticsMD, Inc. 2019 Stock Incentive Plan.

The following table summarizes the status of our outstanding and exercisable options and related transactions (each adjusted to account for the Reverse Stock Split) since December 31, 2022 (in thousands, except weighed average exercise price and weighted average remaining contractual life data):

	Outstanding				Exercisable			
	Options Awards	Weighted Average Exercise Price	Aggregate Intrinsic Value	Weighted Average Remaining Contractual Life (in Years)	Options Awards	Weighted Average Exercise Price	Aggregate Intrinsic Value	Weighted Average Remaining Contractual Life (in Years)
As of January 1, 2023	172	$228.28	—	3.6	170	$229.43	—	3.6
Granted	—	—	—	—	—	—	—	—
Exercised	—	—	—	—	—	—	—	—
Cancelled/Forfeited	—	—	—	—	—	—	—	—
Expired	(92)	206.54	—	—	(90)	206.54	—	—
As of September 30, 2023	80	$253.31	—	3.2	80	$253.31	—	3.2

The following table summarizes the status of our RSUs and related transactions (each adjusted to account for the Reverse Stock Split) since December 31, 2022 (in thousands, except weighed average grant date fair value):

	RSUs awards outstanding		
	RSUs	Weighted Average Grant Date Fair Value	Aggregate Intrinsic Value
As of January 1, 2023	57	$ 14.57	$ 318.63
Granted	163	4.82	—
Vested	(136)	—	—
Cancelled/Forfeited	—	—	—
Unvested as of September 30, 2023	84	$ 8.12	$ 253.67

The following table summarizes the status of our PSUs and related transactions for each for the following years (each adjusted to account for the Reverse Stock Split) since December 31, 2022 (in thousands, except weighed average grant date fair value):

	Outstanding		
	PSUs (1)	Weighted Average Grant Date Fair Value	Aggregate Intrinsic Value
Unvested as of January 1, 2023	19	$ 52.15	$ 107.55
Granted	—	—	—
Vested	(5)	—	—
Cancelled/Forfeited	—	—	—
Unvested, as of September 30, 2023	14	$ 50.87	$ 43.71

(1) The number of PSUs represents the base number of PSUs that may vest.

Share-based payment compensation cost

Share-based payment compensation expense for PSUs is based on 100% vesting which was a part of the termination benefits for all employees who were terminated in 2022. We recorded share-based payment award compensation costs related to previously issued options, RSU and PSUs, as well as shares of common stock issued under our employee stock purchase plan (“ESPP”) totaling $0.2 million and $4.3 million for the three months ended September 30, 2023 and 2022 , respectively, and $1.2 million and $8.5 million for the nine months ended September 30, 2023 and 2022, respectively.

As of September 30, 2023, we had $ 0.4 million of unrecognized share-based payment award compensation cost related to unvested options, RSUs and PSUs as well as shares issuable under our ESPP, which may be adjusted for future changes in forfeitures and is included as additional paid-in capital in the accompanying condensed consolidated balance sheets. No tax benefit was realized due to a continued pattern of net losses.

The unrecognized compensation cost as of September 30, 2023 of $ 0.4 million is expected to be recognized as share-based payment award compensation over a weighted average period of 0.6 years.

9. Revenue

Pursuant to the Mayne License Agreement, the Company granted Mayne Pharma, on the Closing Date, (i) an exclusive, sublicensable, perpetual, irrevocable license to research, develop, register, manufacture, have manufactured, market, sell, use, and commercialize the Licensed Products in the United States and its possessions and territories and (ii) an exclusive, sublicensable, perpetual, irrevocable license to manufacture, have manufactured, import and have imported the Licensed Products outside the United States for commercialization in the United States and its possessions and territories.

Pursuant to the Mayne License Agreement, Mayne Pharma will make one-time, milestone payments to the Company of each of (i) $ 5.0 million if aggregate net sales of all Products in the United States during a calendar year reach $100.0 million, (ii) $10.0 million if aggregate net sales of all Products in the United States during a calendar year reach $200.0 million and (iii) $15.0 million if aggregate net sales of all Products in the United States during a calendar year reach $300.0 million. Further, Mayne Pharma will pay to the Company royalties on net sales of all Products in the United States at a royalty rate of 8.0% on the first $ 80 million in annual net sales and 7.5% on annual net sales above $80.0 million, subject to certain adjustments, for a period of 20 years following the Closing Date. The royalty rate will decrease to 2.0% on a Product-by-Product basis upon the earlier to occur of (i) the expiration or revocation of the last patent covering a Product and (ii) a generic version of a Product launching in the United States. Mayne Pharma will pay to the Company minimal annual royalties of $3.0 million per year for 12 years, adjusted for inflation at an annual rate of 3%, subject to certain further adjustments, including as described below.

Upon the expiry of the 20-year royalty term, the licenses granted to Mayne Pharma under the Mayne License Agreement will become a fully paid-up and royalty free license for the Licensed Products.

We reported revenue of ($0.1) million in the third quarter of 2023 due to changes in estimates of revenue amounting to ($ 0.3) million subject to royalty due to TXMD by Mayne. Additionally, a portion of this adjustment is due to reallocations of revenue to other income (expense). On a quarterly basis, we reallocate royalty revenue proportionately between operating revenue for the amounts related to our licensed intellectual property and other income for royalties related to intellectual property we sold.

10. Income taxes

We do not expect to pay any significant federal or state income taxes as a result of (i) the losses recorded during the nine months ended September 30, 2023 and 2022, (ii) additional losses expected for the remainder of 2023 or losses recorded in 2022, or (iii) net operating losses carry forwards from prior years.

We recorded a full valuation allowance of the net operating losses for the nine months ended September 30, 2023 and 2022. Accordingly, there were no provisions for income taxes for the nine months ended September 30, 2023 and 2022. Additionally, as of September 30, 2023 and December 31, 2022, we maintain a full valuation allowance for all deferred tax assets.

11. Income (Loss) per common share

The following table sets forth the computation of basic and diluted (loss) per common share (each adjusted to account for the Reverse Stock Split) for the periods presented (in thousands, except per share amounts):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
Numerator:				
Net income (loss) from continuing operations	$ (1,434)	$ (14,631)	$ (6,158)	$ (47,379)
Net income (loss) from discontinued operations	(1,944)	(14,334)	(3,237)	81,674
Net income (loss)	$ (3,378)	$ (28,965)	$ (9,395)	$ 34,295
Denominator:				
Weighted average common shares for basic loss per common share	10,701	9,261	10,241	8,877
Effect of dilutive securities	—	—	—	—
Weighted average common shares for diluted loss per common share	10,701	9,261	10,241	8,877
Income (loss) per common share, continuing operations				
Basic	$ (0.13)	$ (1.58)	$ (0.60)	$ (5.34)
Diluted	(0.13)	(1.58)	(0.60)	(5.34)
Income (loss) per common share, discontinued operations				
Basic	$ (0.18)	$ (1.55)	$ (0.32)	$ 9.20
Diluted	(0.18)	(1.55)	(0.32)	9.20

Since we reported a net loss from continuing operations for the nine months ended September 30, 2023 and 2022, our potentially dilutive securities are deemed to be anti-dilutive, accordingly, there was no effect of dilutive securities. Therefore, our basic and diluted loss per common share and our basic and diluted weighted average common shares are the same for the nine months ended September 30, 2023 and 2022.

The following table sets forth the outstanding securities as of the periods presented which were not included in the calculation of diluted earnings per common share during the respective nine months ended September 30, 2023 and 2022 (in thousands):

	September 30, 2023	
	2023	2022
Stock options	80	197
RSUs	84	301
PSUs	14	100
Warrants	99	411
	277	1,009

12. Related parties

On August 23, 2022, we appointed Mr. Justin Roberts as a director to fill a newly created vacancy on our Board of Directors. Mr. Roberts was elected to serve as a director at our combined 2022 and 2023 Annual Meeting held on June 26, 2023. Mr. Roberts will serve until our next Annual Meeting of Stockholders or until his successor is duly elected or appointed or his earlier death or resignation. As a director of our Company, Mr. Roberts is entitled to receive compensation in the same manner as our other non-employee directors, described in the section entitled “Director Compensation” in our Amendment No. 1 to Form 10-K for the fiscal year ended December 31, 2022, filed with the Securities and Exchange Commission on May 1, 2023, but he has elected not to receive any compensation for his service as a non-employee director at this time. Mr. Roberts currently serves as a Partner of Rubric. On July 29, 2022, September 30, 2022, October 28, 2022, and May 1, 2023, we entered into subscription agreements with Rubric. On December 30, 2022, in accordance with the terms of the Certificate of Designation, we redeemed all 29,000 outstanding shares of Series A Preferred Stock previously issued to affiliates of Rubric at a purchase price of $ 1,333 per share. also paid certain affiliates of Rubric approximately $3.0 million as a make-whole payment pursuant to the subscription agreements previously entered into between us and Rubric. On June 29, 2023, we issued and sold 312,525 shares of Common Stock to Rubric at a price per share equal to $3.6797 pursuant to the Subscription Agreement and received gross proceeds of $ 1.15 million, before expenses.

13. Business concentrations

TherapeuticsMD was previously a women’s healthcare company with a mission of creating and commercializing innovative products to support the lifespan of women from pregnancy prevention through menopause. In December 2022, we changed our business to become a pharmaceutical royalty company, currently receiving royalties on products licensed to pharmaceutical organizations that possess commercial capabilities in the relevant territories. As part of the transformation that included the Mayne License Agreement, historical results of commercial operations for all periods prior to the Closing Date have been reflected as discontinued operations in our condensed consolidated financial statements. Assets and liabilities associated with the commercial business are classified as assets and liabilities of discontinued operations in our condensed consolidated balance sheets. Additional disclosures regarding discontinued operations are provided in Note 2.

For the three and nine months ended September 30, 2023, 100% of license revenue related to Mayne Pharma and Theramex.

As of September 30, 2023, we had a royalty receivable of $ 2.7 million relating to the short-term portion of receivable from Mayne Pharma and Theramex and $19.1 million relating to the long-term portion of royalty receivable which includes royalties recognized from the minimum annual royalty that Mayne Pharma is obligated to pay to us under the Mayne License Agreement.

14. Subsequent events

On November 10, 2023, we delivered a drawdown notice (the “Notice”) to Rubric under the terms of the Subscription Agreement. Pursuant to the Notice, we agreed to sell 877,192 shares of Common Stock to Rubric at a price per share of $ 2.28, for total gross proceeds of approximately $2.0 million. The settlement of the transaction is expected to occur on the third trading day following the delivery of the Notice in accordance with the terms of the Subscription Agreement.

Item 2. Management's discussion and analysis of financial condition and results of operations

The following discussion should be read in conjunction with our 2022 Annual Report on Form 10-K ("2022 10-K Report"), and the condensed consolidated financial statements and related notes in Item 1, Financial Statements, appearing elsewhere in this Quarterly Report on Form 10-Q ("10-Q Report"). The following discussion may contain forward-looking statements, and our actual results may differ materially from the results suggested by these forward-looking statements. Factors that might cause such differences include, but are not limited to, those discussed in Part I, Item 1A of our 2022 10-K Report under the heading "Risk Factors." We assume no obligation to revise or update any forward-looking statements for any reason, except as required by law.

Certain amounts in the following discussion may not add due to rounding, and all percentages have been calculated using unrounded amounts.

Forward-looking statements

This 10-Q Report contains forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. These forward-looking statements involve substantial risks and uncertainties. For example, statements regarding our operations, financial position, debt position, liquidity, business strategy, and other plans and objectives for future operations, and assumptions and predictions about future cost reduction strategies, expenses and royalties are all forward-looking statements. These statements are generally accompanied by words such as "intend," "anticipate," "believe," "estimate," "potential(ly)," "continue," "forecast," "predict," "plan," "may," "will," "could," "would," "should," "expect," or the negative of such terms or other comparable terminology.

We have based these forward-looking statements on our current expectations and projections about future events. We believe that the assumptions and expectations reflected in such forward-looking statements are reasonable, based on information available to us on the date of this 10-Q Report, and we cannot assure you that these assumptions and expectations will prove to have been correct or that we will take any action that we may presently be planning. These forward-looking statements are inherently subject to known and unknown risks and uncertainties. Actual results or experience may differ materially from those expected or anticipated in the forward-looking statements. We do not undertake to update any forward-looking statements or to publicly announce the results of any revisions to any statements to reflect new information or future events or developments, except as required by law or by the rules and regulations of the SEC.

Forward-looking statements are not guarantees of future performance and are subject to risks and uncertainties, many of which are outside of our control. Factors that could cause or contribute to such differences include, but are not limited to, our liquidity requirements, supply chain issues, management transitions, risks related to our licensing agreements, market and general economic factors, and the other risks discussed in Part I, Item 1A of our 2022 10-K Report, as updated and supplemented by Part II, Item 1A of this 10-Q Report.

Our company

TherapeuticsMD was previously a women's healthcare company with a mission of creating and commercializing innovative products to support the lifespan of women from pregnancy prevention through menopause.

In December 2022, we changed our business to become a pharmaceutical royalty company, primarily collecting royalties from our licensees. We are no longer engaged in research and development or commercial operations. On December 30, 2022 (the "Closing Date"), we completed a transaction (the "Mayne Transaction") with Mayne Pharma LLC, a Delaware limited liability company ("Mayne Pharma") and subsidiary of Mayne Pharma Group Limited, an Australian public company, pursuant to which we (i) granted Mayne Pharma an exclusive license to commercialize IMVEXXY, BIJUVA and prescription prenatal vitamin products sold under the BocaGreenMD and vitaMedMD brands (collectively, the "Licensed Products") in the United States and its possessions and territories, (ii) assigned to Mayne Pharma our exclusive license to commercialize ANNOVERA (together with the Licensed Products, collectively, the "Products") in the United States and its possessions and territories, and (iii) sold certain other assets to Mayne Pharma in connection therewith.

Pursuant to a License Agreement, dated December 4, 2022, between TherapeuticsMD and Mayne Pharma (the "Mayne License Agreement"), we granted Mayne Pharma, on the Closing Date, (i) an exclusive, sublicensable, perpetual, irrevocable license to research, develop, register, manufacture, have manufactured, market, sell, use, and commercialize the Licensed Products in the United States and its possessions and territories and (ii) an exclusive, sublicensable, perpetual, irrevocable license to manufacture, have manufactured, import and have imported the Licensed Products outside the United States for commercialization in the United States and its possessions and territories.

Pursuant to the Mayne License Agreement, Mayne Pharma will pay us one-time, milestone payments of each of (i) $5.0 million if aggregate net sales of all Products in the United States during a calendar year reach $100.0 million, (ii) $10.0 million if aggregate net sales of all Products in the United States during a calendar year reach $200.0 million and (iii) $15.0 million if aggregate net sales of all Products in the United States during a calendar year reach $300.0 million. Further, Mayne Pharma will pay us royalties on net sales of all Products in the United States at a royalty rate of 8.0% on the first $80 million in annual net sales and 7.5% on annual net sales above $80.0 million, subject to certain adjustments, for a period of 20 years following the Closing Date. The royalty rate will decrease to 2.0% on a Product-by-Product basis upon the earlier to occur of (i) the expiration or revocation of the last patent covering a Product and (ii) a generic version of a Product launching in the United States. Mayne Pharma will pay us minimum annual royalties of $3.0 million per year for 12 years, adjusted for inflation at an annual rate of 3%, subject to certain further adjustments, including as described below (the "Minimum Annual Royalty"). Upon the expiry of the 20-year royalty term, the licenses granted to Mayne Pharma under the Mayne License Agreement will become a fully paid-up and royalty free license for the Licensed Products.

Pursuant to a Transaction Agreement, dated December 4, 2022, between TherapeuticsMD and Mayne Pharma (the "Transaction Agreement"), we sold to Mayne Pharma, at closing, certain assets for Mayne Pharma to commercialize the Products in the United States, including our exclusive license from the Population Council to commercialize ANNOVERA (the "Transferred Assets").

The total consideration from Mayne Pharma to us for the purchase of the Transferred Assets and the grant of the licenses under the Mayne License Agreement was (i) a cash payment of $140.0 million at closing, (ii) a cash payment of approximately $12.1 million at closing for the acquisition of net working capital as determined in accordance with the Transaction Agreement and subject to certain adjustments, (iii) a cash payment of approximately $1.0 million at closing for prepaid royalties in connection with the Mayne License Agreement Amendment (as defined below) and (iv) the right to receive the contingent consideration set forth in the Mayne License Agreement, as amended.

On the Closing Date, TherapeuticsMD and Mayne Pharma entered into Amendment No. 1 to the Mayne License Agreement (the "Mayne License Agreement Amendment"). Pursuant to the Mayne License Agreement Amendment, Mayne Pharma agreed to pay us approximately $1.0 million in prepaid royalties on the Closing Date. The prepaid royalties will reduce the first four quarterly payments that would have otherwise been received pursuant to the Mayne License Agreement by an amount equal to $257 thousand per quarterly royalty payment plus interest calculated at 19% per annum accruing from the Closing Date until the date such quarterly royalty payment is paid to TherapeuticsMD. In addition, under the Mayne License Agreement Amendment, we owed Mayne Pharma $1.5 million payable from one royalty payment. During the second quarter of 2023, Mayne Pharma held back our royalty payment and we funded an additional $0.9 million in August 2023 to settle the original $1.5 million payable.

This action represented a shift in our business and therefore, the related assets and liabilities associated with commercial operations are classified as discontinued operations on our condensed consolidated balance sheets and the results of operations have been presented as discontinued operations within our condensed consolidated statements of comprehensive income for all periods presented. See Note 2 - Discontinued Operations to the condensed consolidated financial statements included in this Quarterly Report on Form 10-Q for further details.

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

- In July 2018, we entered into a license and supply agreement (the "Knight License Agreement") with Knight Therapeutics Inc. ("Knight") pursuant to which we granted Knight an exclusive license to commercialize IMVEXXY and BIJUVA in Canada and Israel.

- In September 2019, we entered into an exclusive license and supply agreement (the "Theramex License Agreement") with Theramex HQ UK Limited ("Theramex") to commercialize IMVEXXY and BIJUVA outside of the U.S., excluding Canada and Israel. In 2021, Theramex secured regulatory approval for BIJUVA in certain European countries and began commercialization efforts in those countries.

In connection with our transformation into a pharmaceutical royalty company, the termination of our executive management team (except for Mr. Marlan Walker, our former General Counsel and current Chief Executive Officer) and all other employees was completed by December 31, 2022. Severance obligations for all employees other than executive officers were paid in full in the first quarter of 2023 and severance obligations for terminated executive officers will be paid in accordance with their employment agreements and separation agreements as previously disclosed. As of December 31, 2022 and September 30, 2023, we employed one full-time employee primarily engaged in an executive position. We have engaged external consultants, including certain former members of our management team, who support our relationship with current partners and assist with certain financial, legal and regulatory matters and the continued wind-down of our historical business operations.

vitaCare Divestiture

On April 14, 2022, we completed the divestiture of vitaCare Prescription Services, Inc. ("vitaCare") with the sale of all vitaCare's issued and outstanding capital stock (the "vitaCare Divestiture"). We received net proceeds of $142.6 million, net of transaction costs of $7.2 million, and we recognized a gain on sale of business of $143.4 million. Included in the net proceeds amount was $11.3 million of customary holdbacks as provided in the stock purchase agreement between us and GoodRx, Inc. (the "Purchase Agreement"), which was recorded as restricted cash in the condensed consolidated balance sheets until the cash was released to us. The restricted cash was held by an escrow agent and was released to us in March 2023. Additionally, we may receive up to an additional $7.0 million in earn-out consideration, contingent upon vitaCare's financial performance through 2023 as determined in accordance with the terms of the Purchase Agreement, however we do not believe this earnout will be realized. We will record the contingent consideration at the settlement amount when the consideration is realized or realizable.

The Purchase Agreement contains customary representations and warranties, covenants, and indemnities of the parties thereto. Our commitments under a long-term services agreement related to vitaCare were transferred to Mayne Pharma as part of the Mayne Transaction. In addition, under the Mayne License Agreement Amendment, we owed Mayne Pharma $1.5 million payable from one royalty payment. During the second quarter of 2023, Mayne Pharma held back our royalty payment and we funded an additional $0.9 million in August 2023 to settle the original $1.5 million payable.

The pre-divesture operations of vitaCare were reclassified to discontinued operations in December 2022 when we transitioned to becoming a royalty company and licensed our products to Mayne Pharma.

COVID-19

With multiple variant strains of the SARS-Cov-2 virus and the COVID-19 disease that it causes (collectively, "COVID-19") still circulating, we continue to be subject to risks and uncertainties in connection with the COVID-19 pandemic. The extent of the future impact of the COVID-19 pandemic on our business continues to be highly uncertain and difficult to predict.

As of the date of the filing of this 10-Q Report, the future extent to which the COVID-19 pandemic may continue to materially impact our financial condition, liquidity, or results of operations remains uncertain and difficult to predict. Even after the COVID-19 pandemic has subsided, we may continue to experience adverse impacts to our business as a result of any economic recession or depression that has occurred or may occur in the future.

Going concern

On December 4, 2022, we entered into agreements with Mayne Pharma pursuant to which we (i) granted Mayne Pharma an exclusive license to commercialize IMVEXXY, BIJUVA, and prescription prenatal vitamin products (in the United States and its possessions and territories), (ii) assigned to Mayne Pharma our exclusive license to commercialize ANNOVERA in the United States and its possessions and territories, and (iii) sold certain other assets to Mayne Pharma.

The total consideration we received from Mayne Pharma for the purchase of the Transferred Assets and the grant of the licenses under the Mayne License Agreement consisted of (i) a cash payment of $140.0 million at closing, (ii) a cash payment of approximately $12.1 million at closing for the acquisition of net working capital subject to certain adjustments, (iii) a cash payment of approximately $1.0 million at closing for prepaid royalties in connection with the Mayne License Agreement Amendment and (iv) the right to receive the contingent consideration set forth in the Mayne License Agreement, as amended.

On the Closing Date, we repaid all obligations under the Financing Agreement, dated as of April 24, 2019, as amended, with Sixth Street Specialty Lending, Inc., as administrative agent, the various lenders from time-to-time party thereto, and certain of our subsidiaries party thereto from time to time as guarantors (the "Financing Agreement") and the Financing Agreement was terminated.

Following the transaction with Mayne Pharma, we changed our business to become a royalty company, currently receiving royalties on products licensed to pharmaceutical organizations that possess commercial capabilities in the relevant territories. We may need to raise additional capital to provide additional liquidity to fund our operations until we become cash flow positive. To address our capital needs, we are pursuing various equity and debt financing and other alternatives. The equity financing alternatives may include the private placement of equity, equity-linked, or other similar instruments or obligations with one or more investors, lenders, or other institutional counterparties or an underwritten public equity or equity-linked securities offering.

Our ability to sell equity securities may be limited by market conditions, including the market price of our common stock and our available authorized shares.

To the extent that we raise additional capital through the sale of such securities, the ownership interests of our existing stockholders will be diluted, and the terms of these new securities may include liquidation or other preferences that adversely affect the rights of our existing stockholders. If we are not successful in obtaining additional financing, we could be forced to discontinue or curtail our business operations, sell assets at unfavorable prices, or merge, consolidate, or combine with a company with greater financial resources in a transaction that might be unfavorable to us.

On May 1, 2023, we entered into a Subscription Agreement (the "Subscription Agreement") with Rubric Capital Management LP ("Rubric"), pursuant to which we agreed to sell to Rubric, or one or more of its affiliates, up to an aggregate of 5,000,000 shares of our common stock, par value $0.001 per share (our "Common Stock"), from time to time during the term of the Subscription Agreement in separate draw-downs at the election of the Company. On June 29, 2023, we issued and sold 312,525 shares of Common Stock at a price per share equal to $3.6797 pursuant to the Subscription Agreement. We received gross proceeds of $1.15 million from the draw down, before expenses. The Common Stock issued pursuant to the Subscription Agreement was sold and issued without registration under the Securities Act of 1933, as amended (the "Securities Act"), in reliance on the exemptions provided by Section 4(a)(2) of the Securities Act as transactions not involving a public offering and Rule 5-06 of Regulation D promulgated under the Securities Act as sales to accredited investors, and in reliance on similar exemptions under applicable state laws.

If Mayne Pharma's sales of IMVEXXY, BIJUVA, or ANNOVERA are delayed, if the net working capital settlement with Mayne Pharma under the Transaction Agreement is greater than our current estimates if we are unsuccessful with future financings or if the continued impact of the COVID-19 pandemic on us or the third parties we rely on is worse than we anticipate, our existing cash reserves may be insufficient to satisfy our liquidity requirements. The potential impact of these factors in conjunction with the uncertainty of the capital markets raises substantial doubt about our ability to continue as a going concern for the next twelve months from the issuance of these financial statements.

The accompanying condensed consolidated financial statements do not include any adjustments that might be necessary if we are unable to continue as a going concern.

Portfolio of our royalty-bearing products

In December 2022, we changed our business to become a pharmaceutical royalty company, currently receiving royalties on products licensed to pharmaceutical organizations that possess commercial capabilities in the relevant territories. On December 30, 2022, we granted an exclusive license to commercialize IMVEXXY, BIJUVA, and prescription prenatal vitamin products sold under the BocaGreenMD and vitaMedMD brands and assigning our exclusive license to commercialize ANNOVERA to Mayne Pharma.

IMVEXXY (estradiol vaginal inserts), 4-µg and 10-µg

This pharmaceutical product is for the treatment of moderate-to-severe dyspareunia (vaginal pain associated with sexual activity), a symptom of vulvar and vaginal atrophy due to menopause. As part of the FDA's approval of IMVEXXY, we committed to conduct a post-approval observational study to evaluate the risk of endometrial cancer in post-menopausal women with a uterus who use a low-dose vaginal estrogen unopposed by a progestogen.

On December 30, 2022, we granted an exclusive license to commercialize IMVEXXY in the United States and its possessions and territories to Mayne Pharma. We also have entered into licensing agreements with third parties to market and sell IMVEXXY outside of the U.S. We entered into the Knight License Agreement, with Knight pursuant to which, we granted Knight an exclusive license to commercialize IMVEXXY in Canada and Israel. We entered into the Theramex License Agreement with Theramex HQ UK Limited ("Theramex") pursuant to which we granted Theramex an exclusive license to commercialize IMVEXXY for human use outside of the U.S., except for Canada and Israel. As of September 30, 2023, no IMVEXXY sales had been made through the Theramex and Knight licensing agreements.

The FDA has also asked the sponsors of other vaginal estrogen products to participate in the observational study. In connection with the observational study, we would have been required to provide progress reports to the FDA on an annual basis. The obligation to conduct this study was transferred to Mayne Pharma as part of the Mayne License Agreement.

BIJUVA (estradiol and progesterone) capsules, 1 mg/100 mg

This pharmaceutical product is the first and only FDA approved bioidentical hormone therapy combination of estradiol and progesterone in a single, oral capsule for the treatment of moderate-to-severe vasomotor symptoms (commonly known as hot flashes or flushes) due to menopause in women with a uterus.

On December 30, 2022, we granted an exclusive license to commercialize BIJUVA in the United States and its possessions and territories to Mayne Pharma. We also have entered into the Knight License Agreement with Knight pursuant to which we granted Knight an exclusive license to commercialize BIJUVA in Canada and Israel. We have entered into the Theramex License Agreement with Theramex pursuant to which we granted Theramex an exclusive license to commercialize BIJUVA for human use outside of the U.S., except for Canada and Israel.

ANNOVERA (segesterone acetate ("SA") and ethinyl estradiol ("EE") vaginal system)

On December 30, 2022, we assigned our exclusive license to commercialize ANNOVERA to Mayne Pharma. This pharmaceutical product is a one-year ring-shaped contraceptive vaginal system ("CVS") and the first and only patient-controlled, procedure-free, reversible prescription contraceptive that can prevent pregnancy for up to a total of 13 cycles (one year). ANNOVERA is commercially sold in the U.S. pursuant to the terms of the Population Council License Agreement. As part of the approval of ANNOVERA, the FDA has required a post-approval observational study be performed to measure the risk of venous thromboembolism. We agreed to perform and pay the costs and expenses associated with this post-approval study, provided that if the costs and expenses associated with such post-approval study exceed $20.0 million, half of such excess will offset against royalties or other payments owed by us under the Population Council License Agreement. In August 2021, we filed a supplemental New Drug Application ("NDA") with the FDA to modify the testing specifications for ANNOVERA to allow increased consistency of supply of ANNOVERA. In May 2022, the FDA approved the supplemental NDA for ANNOVERA. Our obligations to perform the post-approval study have been transferred to Mayne Pharma as part of the Mayne License Agreement.

Prenatal vitamin products

On December 30, 2022, we granted an exclusive license to commercialize, in the United States and its possessions and territories, our prescription prenatal vitamin product lines under our vitaMedMD brand name and authorized generic formulations of some of our prescription prenatal vitamin products under our BocaGreenMD Prenatal name to Mayne Pharma.

Results of operations

Three months ended September 30, 2023 compared with three months ended September 30, 2022

In December 2022, we granted an exclusive license to commercialize our IMVEXXY, BIJUVA, and prescription prenatal vitamin products and assigned our exclusive license to commercialize ANNOVERA to Mayne Pharma, which resulted in a business shift that had a major effect on our operations and financial results.

As part of the transformation that included the Mayne License Agreement, historical results of commercial operations have been reflected as discontinued operations in our condensed consolidated financial statements for all periods prior to the Closing Date. Assets and liabilities associated with the commercial business are classified as assets and liabilities of discontinued operations in our condensed consolidated balance sheets. Additional disclosures regarding discontinued operations are provided in Note 2 to the condensed consolidated financial statements included in this Quarterly Report.

The discussion below, and the revenues and expenses discussed below, are based on and relate to our continuing operations.

The following table sets forth the results of our operations (in thousands):

	Three months ended September 30,	
	2023	2022
Revenue:		
License and service revenue	$ (53)	$ 354
Cost of revenue	—	354
Gross profit	(53)	—
Operating expenses:		
Selling, general and administrative	1,590	14,246
Depreciation and amortization	130	273
Total operating expenses	1,720	14,519
Loss from operations	(1,773)	(14,519)
Other income (expense):		
Interest expense and other financing costs	(20)	—
Miscellaneous income (expense)	359	(112)
Total other income (expense), net	339	(112)
Loss from continuing operations before income taxes	(1,434)	(14,631)
Provision for income taxes	—	—
Net loss from continuing operations	(1,434)	(14,631)
Loss from discontinued operations, net of income taxes	(1,944)	(14,334)
Net loss	$ (3,378)	$ (28,965)

Revenue. As part of our transformation and the Mayne License Agreement, historical results of commercial operations have been reflected as discontinued operations in the condensed consolidated financial statements for all periods presented.

License and service revenue. We recorded $(0.1) million in license revenue for the third quarter of 2023, primarily from the Mayne License Agreement, offset by adjustments described below in the third quarter of 2023, compared to $0.4 million in sales to another licensee for the third quarter of 2022.

We report royalty revenue in excess of the contractual minimums each quarter totaling approximately $0.1 million in the third quarter of 2023. Royalties reported as license revenue for intellectual property licensed by us totaled approximately $(0.1) million and royalties reported as other income for intellectual property we sold totaled approximately $0.1 million in the third quarter of 2023.

We are reporting license revenue of ($0.1) million in the third quarter of 2023 due to product sales adjustments reported by our licensed partners amounting to ($0.2) million. Additionally, a portion of this adjustment is due to reallocations of license revenue to other income (expense). On a quarterly basis, we reallocate royalty revenue proportionately between operating revenue for the amounts related to our licensed intellectual property and other income for royalties related to intellectual property we sold.

Operating expenses. Total operating expenses for the third quarter of 2023 were $1.7 million, a decrease of $12.8 million, or 88.2%, compared to the third quarter of 2022. This decrease was due to the transition of our business from a manufacturing and commercialization business to a royalty-based business with limited infrastructure.

Selling, general and administrative. Selling, general and administrative expenses were $1.6 million for the third quarter of 2023, a decrease of $12.7 million, or 88.8%, compared to the third quarter of 2022. This decrease was due to the transition of our business from a manufacturing and commercialization business to a royalty-based business.

Depreciation & amortization. Depreciation and amortization expense was $0.1 million for the third quarter of 2023, a decrease of $0.1 million, or 52.4%, compared to the third quarter of 2022. This decrease was due to the transition of our business from a manufacturing and commercialization business to a royalty-based business.

Loss from operations. In the third quarter of 2023, we had a loss from operations of $1.8 million, as compared to a loss from operations of $14.5 million for the third quarter of 2022. This change was primarily due to the transition of our business from a manufacturing and commercialization business to a royalty-based business and the associated decrease in expenses.

Other income (expense), net. During the third quarter of 2023, we had other income of $0.3 million compared to other expense of $0.1 million in the third quarter of 2022. This change was due to the transition of our business from a manufacturing and commercialization business to a royalty-based business. Royalties reported as other income for intellectual property we sold totaled approximately $0.1 million in the third quarter of 2023.

Provision for income taxes. During the third quarter of 2023 and 2022, we recorded no provision for income taxes for continuing operations.

Net loss from continuing operations. For the third quarter of 2023, we had a net loss of $1.4 million, or $0.13 per basic and diluted common share, compared to a loss of $14.6 million, or $1.58 per basic and diluted common share, for the third quarter of 2022.

Discontinued Operations - Revenues from discontinued operations were $(0.8) million for the third quarter of 2023, a decrease of $21.4 million as compared to the third quarter of 2022. Operating expenses from discontinued operations were $0.0 million in the third quarter of 2023, a decrease of $23.4 million, as compared to the third quarter of 2022. Net income (loss) from discontinued operations for the third quarter of 2023 was $1.9 million, a decrease of $12.4 million as compared to the third quarter of 2022.

For additional information, see Note 2 - Discontinued Operations, in the notes to the condensed consolidated financial statements appearing elsewhere in this Quarterly Report.

Results of operations

Nine months ended September 30, 2023 compared with nine months ended September 30, 2022

In December 2022, we granted an exclusive license to commercialize our IMVEXXY, BIJUVA, and prescription prenatal vitamin products and assigned our exclusive license to commercialize ANNOVERA to Mayne Pharma, which resulted in a business shift that had a major effect on our operations and financial results.

As part of the transformation that included the Mayne License Agreement, historical results of commercial operations have been reflected as discontinued operations in our condensed consolidated financial statements for all periods prior to the Closing Date. Assets and liabilities associated with the commercial business are classified as assets and liabilities of discontinued operations in our condensed consolidated balance sheets. Additional disclosures regarding discontinued operations are provided in Note 2 to the condensed consolidated financial statements included in this Quarterly Report.

The discussion below, and the revenues and expenses discussed below, are based on and relate to our continuing operations.

The following table sets forth the results of our operations (in thousands):

	Nine months ended September 30,	
	2023	2022
Revenue:		
License and service revenue	$ 800	$ 1,397
Cost of revenue	—	1,397
Gross profit	800	—
Operating expenses:		
Selling, general and administrative	7,427	46,367
Depreciation and amortization	285	884
Total operating expenses	7,712	47,251
Loss from operations	(6,912)	(47,251)
Other income (expense):		
Interest expense and other financing costs	(115)	—
Miscellaneous income (expense)	869	(128)
Total other income (expense), net	754	(128)
Loss from continuing operations before income taxes	(6,158)	(47,379)
Provision for income taxes	—	—
Net loss from continuing operations	(6,158)	(47,379)
Income (loss) from discontinued operations, net of income taxes	(3,237)	81,674
Net income (loss)	$ (9,395)	$ 34,295

Revenue. As part of our transformation and the Mayne License Agreement, historical results of commercial operations have been reflected as discontinued operations in the condensed consolidated financial statements for all periods presented.

License and service revenue. We recorded $0.8 million in license revenue for the first nine months of 2023, primarily from the Mayne License Agreement partially offset by adjustments described below, compared to $1.4 million in sales to another licensee during the first nine months of 2022.

We report royalty revenue in excess of the contractual minimums each quarter totaling approximately $1.0 million year-to-date. Royalties reported as license revenue for intellectual property licensed by us totaled approximately $0.5 million and royalties reported as other income for intellectual property we sold totaled approximately $0.5 million year-to-date. On a quarterly basis, we reallocate royalty revenue proportionately between operating revenue for the amounts related to our licensed intellectual property and other income for royalties related to intellectual property we sold.

Operating expenses. Total operating expenses for the first nine months of 2023 were $7.7 million, a decrease of $39.5 million, or 83.7%, compared to the first nine months of 2022. This decrease was due to the transition of our business from a manufacturing and commercialization business to a royalty-based business with limited infrastructure.

Selling, general and administrative. Selling, general and administrative expenses were $7.4 million for the first nine months of 2023, a decrease of $38.9 million, or 84.0%, compared to the first nine months of 2022. This decrease was due to the transition of our business from a manufacturing and commercialization business to a royalty-based business.

Depreciation & amortization. Depreciation and amortization expenses were $0.3 million for the first nine months of 2023, a decrease of $0.6 million, or 67.8%, compared to the first nine months of 2022. This decrease was due to the transition of our business from a manufacturing and commercialization business to a royalty-based business.

Loss from operations. For the first nine months of 2023, we had a loss from operations of $6.9 million, as compared to a loss from operations of $47.3 million, for the first nine months of 2022. This change was primarily due to the transition of our business from a manufacturing and commercialization business to a royalty-based business and the associated decrease in expenses.

Other income (expense), net. During the first nine months of 2023 we had other income of $0.8 million as compared to a other expense of $0.1 million during the first nine months of 2022. This increase was due to the transition of our business from a manufacturing and commercialization business to a royalty-based business. Other income represents interest income from banks accounts as well the present value of the minimum royalty receivables recorded compared to actual minimum royalties received and other miscellaneous items.

Provision for income taxes. During the first nine months of 2023 and 2022, we recorded no provision for income taxes for continuing operations.

Net loss from continuing operations. For the first nine months of 2023, we had a net loss of $6.2 million, or $0.60 per basic and diluted common share, compared to a loss of $47.4 million, or $5.34 per basic and diluted common share, for the first nine months of 2022.

Discontinued Operations - Revenues from discontinued operations were $(0.8) million for the first nine months of 2023, a decrease of $68.2 million as compared to the first nine months of 2022. Operating expenses from discontinued operations were $0.3 million for the first nine months of 2023, a decrease of $73.7 million, as compared to the first nine months of 2022. Net loss from discontinued operations for the first nine months of 2023 was $3.2 million, a decrease of $84.9 million as compared to the first nine months of 2022.

For additional information, see Note 2 - Discontinued Operations, in the notes to the condensed consolidated financial statements appearing elsewhere in this Quarterly Report.

Liquidity and capital resources

Our primary use of cash is to fund our continued operations. We have funded our operations primarily through public offerings of our common stock and private placements of equity and debt securities, the divestiture of our former subsidiary vitaCare, and the transactions with Mayne Pharma. As of September 30, 2023, we had cash and cash equivalents totaling $10.2 million. We maintain cash at financial institutions that at times may exceed the Federal Deposit Insurance Corporation insured limits of $0.25 million per bank. We have never experienced any losses related to these funds.

vitaCare Divestiture

On April 14, 2022, we completed the vitaCare Divestiture. We may receive up to an additional $7.0 million in earn-out consideration, contingent upon vitaCare's financial performance through 2023 as determined in accordance with the terms of the Purchase Agreement, however we do not believe this earnout will be realized. We utilized $120.0 million of net proceeds from the vitaCare Divestiture to make a prepayment of the loans under the Financing Agreement.

Mayne Pharma License Agreement

On December 30, 2022, we granted Mayne Pharma (i) an exclusive, sublicensable, perpetual, irrevocable license to research, develop, register, manufacture, have manufactured, market, sell, use, and commercialize the Licensed Products in the United States and its possessions and territories and (ii) an exclusive, sublicensable, perpetual, irrevocable license to manufacture, have manufactured, import and have imported the Licensed Products outside the United States for commercialization in the United States and its possessions and territories. The total consideration from Mayne Pharma to us under the Mayne License Agreement consisted of (i) a cash payment of $140.0 million at closing, (ii) a cash payment of approximately $12.1 million at closing for the acquisition of net working capital as determined in accordance with the transaction agreement dated December 4, 2022, and subject to certain adjustments, (iii) a cash payment of approximately $1.0 million at closing for prepaid royalties in connection with the Mayne License Agreement Amendment and (iv) the right to receive the contingent consideration set forth in the Mayne License Agreement, as amended.

Pursuant to the Mayne License Agreement, Mayne Pharma will pay us one-time, milestone payments of each of (i) $5.0 million if aggregate net sales of all Products in the United States during a calendar year reach $100.0 million, (ii) $10.0 million if aggregate net sales of all Products in the United States during a calendar year reach $200.0 million and (iii) $15.0 million if aggregate net sales of all Products in the United States during a calendar year reach $300.0 million. Further, Mayne Pharma will pay us royalties on net sales of all Products in the United States at a royalty rate of 8.0% on the first $80 million in annual net sales and 7.5% on annual net sales above $80.0 million, subject to certain adjustments, for a period of 20 years following the Closing Date. The royalty rate will decrease to 2.0% on a Product-by-Product basis upon the earlier to occur of (i) the expiration or revocation of the last patent covering a Product and (ii) a generic version of a Product launching in the United States. Mayne Pharma will pay us minimal annual royalties of $3.0 million per year for 12 years, adjusted for inflation at an annual rate of 3%, subject to certain further adjustments, including as described below. Upon the expiry of the 20-year royalty term, the licenses granted to Mayne Pharma under the Mayne License Agreement will become a fully paid-up and royalty free license for the Licensed Products.

During the three months ended September 30, 2023, we revised certain estimates pertaining to contracts we were a party to when we were an operating company. These included an incremental accrual of approximately $2 million for net working capital adjustments related to the Transaction Agreement.

Subscription Agreement with Rubric Capital Management LP

On May 1, 2023, we entered into the Subscription Agreement with Rubric, pursuant to which we agreed to sell to Rubric, or one or more of its affiliates, up to an aggregate of 5,000,000 shares of Common Stock, from time to time during the term of the Subscription Agreement in separate draw downs at our election, at a purchase price of the five-day volume-weighted average price of our common stock at the time of the sale of such shares, at an aggregate purchase price of up to $5,000,000 (collectively, the “Private Placement”).

The initial draw down occurred on June 29, 2023 consisting of a sale of 312,525 shares of Common Stock at a price per share equal to $3.6797. We received gross proceeds of $1.15 million from the drawdown, before expenses.

See “Going Concern” above for further discussion related to our ability to generate and obtain adequate amounts of cash to meet our liquidity needs and our plans for to satisfy our such needs in the short-term and in the long-term.

Cash flows

The following table reflects the major categories of cash flows for each of the periods (in thousands).

	Nine Months Ended September 30,	
	2023	2022
Net cash used in operating activities	$ (18,121)	$ (20,877)
Net cash used in investing activities	—	(281)
Net cash provided by (used in) financing activities	1,149	(123,261)
Net cash provided by (used in) discontinued operations	(22,179)	117,627
Net (decrease) in cash	$ (39,151)	$ (26,792)

Operating Activities from continuing operations. For the first nine months of 2023, net cash used in operating activities was $18.1 million, compared to net cash used in operating activities of $20.9 million for the first nine months of 2022. This decrease of $2.8 million or 13.2%, was primarily due to a $41.2 million decrease in our net loss from continuing operations following our transition from a manufacturing and commercialization business to a royalty-based business, offset by a $38.5 million decrease in non-cash expenses as compared to the first nine months of 2022.

Investing Activities from continuing operations. Net cash used in investing activities for the first nine months of 2023 was $0.0 million, compared to net cash used in investing activities of $0.3 million for the first nine months of 2022. This change was due our transition from a manufacturing and commercialization business to a royalty-based business.

Financing Activities from continuing operations. For the first nine months of 2023, net cash received from financing activities was $1.2 million, compared to net cash used by financing activities of $123.3 million for the first nine months of 2022, reflecting the sale of common stock during the first nine months of 2023 and the payments of outstanding long-term debt during the first nine months of 2022.

Net cash used in discontinued operations. Net cash used in operating activities from discontinued operations for the first nine months of 2023 was $22.2 million as compared to net cash provided by operating activities of $117.6 million for first nine months of 2022. This change relates primarily to expenses incurred and the payment of current liabilities associated with our transition from a manufacturing and commercialization business to a royalty-based business. Net cash provided by investing activities from discontinued operations was $0.0 million for the first nine months of 2023 and $0.1 million for the first nine months of 2022. Net cash provided by financing activities from discontinued operations was $0.0 million for the first nine months of 2023 and 2022.

For additional details, see the condensed consolidated statements of cash flows in Item 1, Financial Statements, appearing elsewhere in this 10-Q Report.

Other liquidity measures

Receivable from Mayne. On December 30, 2022, Mayne Pharma acquired our accounts receivable balance of approximately $29.3 million which is subject to certain working capital adjustments. As of September 30, 2023, we had a royalty receivable of $2.7 million relating to the short-term portion of receivable from Mayne Pharma and $19.1 million relating to the long-term portion of royalty receivable which includes royalties recognized from the Minimum Annual Royalty. See Note 1 Business, basis of presentation, new accounting standards and summary of significant accounting policies (Revenue Recognition) to the condensed consolidated financial statements included in this Quarterly Report.

Inventory. On December 30, 2022, Mayne Pharma acquired our inventory balance of approximately $6.6 million, which is subject to certain net working capital adjustments.

Contractual obligations, off-balance sheet arrangements and purchase commitments and employment agreements

Our contractual obligations and off-balance sheet arrangements are set forth below. For additional information on any of the following and other obligations and arrangements, see “Note 7. Commitments and Contingencies” to the condensed consolidated financial statements included in this 10-Q Report.

In the ordinary course of business, we enter into agreements with third parties that include indemnification provisions, which, in our judgment, are normal and customary for companies in our industry sector. Pursuant to these agreements, we generally agree to indemnify, hold harmless, and reimburse indemnified parties for losses suffered or omitted by us. The maximum potential amount of future payments we could be required to make under these indemnification provisions is sometimes unlimited. We have not incurred material costs to defend lawsuits or settle claims related to these indemnification provisions. As a result, the estimated fair value of liabilities relating to these provisions is minimal. Accordingly, we had no liabilities recorded for these provisions as of September 30, 2023 and December 31, 2022.

In the normal course of business, we may be confronted with issues or events that may result in contingent liability. These generally relate to lawsuits, claims, environmental actions, or the actions of various regulatory agencies. We consult with counsel and other appropriate experts to assess the claim. If, in our opinion, we have incurred a probable loss as set forth by U.S. GAAP, an estimate is made of the loss and the appropriate accounting entries are reflected in our financial statements.

Critical accounting policies and estimates

Management's discussion and analysis of our financial condition and results of operations are based upon our condensed consolidated financial statements included elsewhere in this 10-Q Report, which has been prepared in accordance with U.S. GAAP. We make estimates and assumptions that affect the reported amounts on our condensed consolidated financial statements and accompanying notes as of the date of the condensed consolidated financial statements. The critical accounting policies and estimates used are disclosed in Item 7 - Critical accounting policies and estimates in our 2022 10-K Report.

Item 3. Quantitative and qualitative disclosures about market risk

As a "smaller reporting company," as defined by Rule 12b-2 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and pursuant to Instruction 6 to Item 201(e) of Regulation S-K, we are not required to provide this information.

Item 4. Controls and procedures

Management's evaluation of disclosure controls and procedures

Disclosure Controls and Procedures

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

Evaluation of Disclosure Controls and Procedures

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

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

Changes in internal controls over financial reporting

In connection with our transformation into a pharmaceutical royalty company, we terminated our executive management team and all other employees. As of September 30, 2023, we employed one full-time employee primarily engaged in an executive position. We have engaged external consultants who support our relationship with current partners and assist with certain financial, legal and regulatory matters and the continued wind-down of our historical commercial business operations. As a result of these changes, we have updated our risk assessment and design of internal controls over financial reporting that align with reduced transaction volume and reliance on external consultants to manage the day-to-day operations of the Company. The Company is and will continue to evaluate changes to processes, information technology systems and other components of internal controls over financial reporting as part of its ongoing business transformation activities, and as a result, controls may be periodically changed. The Company believes, however, that it will be able to maintain sufficient controls over its financial reporting throughout this transformation process.

Part II - Other Information

Item 1. Legal proceedings

From time to time, we are involved in litigation and proceedings in the ordinary course of our business. Other than the legal proceedings disclosed in Note 7, Commitments and contingencies in Part I, Item 1, Financial Statements, appearing elsewhere in this 10-Q Report, we are not involved in any legal proceeding that we believe would have a material effect on our business or financial condition.

Item 1A. Risk factors

Our business, financial condition and operating results can be affected by a number of factors, whether currently known or unknown, including but not limited to those described in Part I, Item 1A of the 2022 10-K Report under the heading “Risk Factors,” any one or more of which could, directly or indirectly, cause our actual financial condition and operating results to vary materially from past, or from anticipated future, financial condition and operating results. Any of these factors, in whole or in part, could materially and adversely affect our business, financial condition, operating results and stock price. There have been no material changes to our risk factors since the 2022 10-K Report.

Item 2. Unregistered sales of equity securities and use of proceeds

None.

Item 3. Defaults upon senior securities

None.

Item 4. Mine safety disclosures

None.

Item 5. Other information

On November 10, 2023, we delivered a drawdown notice (the “Notice”) to Rubric under the terms of the Subscription Agreement. Pursuant to the Notice, we agreed to sell 877,192 shares of Common Stock to Rubric at a price per share of $2.28, for total gross proceeds of approximately $2.0 million. The settlement of the transaction is expected to occur on the third trading day following the delivery of the Notice in accordance with the terms of the Subscription Agreement.

The Common Stock issued pursuant to the Subscription Agreement will be sold and issued without registration under the Securities Act, in reliance on the exemptions provided by Section 4(a)(2) of the Securities Act as transactions not involving a public offering and Rule 506 of Regulation D promulgated under the Securities Act as sales to accredited investors, and in reliance on similar exemptions under applicable state laws.

Item 6. Exhibits

Exhibit No.	Description
10.1†	Master Service Agreement, dated August 15, 2023, between TherapeuticsMD, Inc. and JZ Advisory Group.
31.1†	Certification of Chief Executive Officer pursuant to Rule 13a-14(a) and Rule 15d-14(a)
31.2†	Certification of Principal Financial Officer pursuant to Rule 13a-14(a) and Rule 15d-14(a)
32.1††	Section 1350 Certification of Chief Executive Officer
32.2††	Section 1350 Certification of Principal Financial Officer
101†	Inline XBRL Document Set for the condensed consolidated financial statements and accompanying notes in Part I, Item 1, "Financial Statements" of this Quarterly Report on Form 10-Q
104†	Inline XBRL for the cover page of this Quarterly Report on Form 10-Q, included in the Exhibit 101 Inline XBRL Document Set

† Filed herewith.
†† Furnished herewith.

Signatures

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

Date: November 14, 2023

TherapeuticsMD, Inc.

/s/ Marlan D. Walker
Marlan D. Walker
Chief Executive Officer
(Principal Executive Officer)

/s/ Joseph Ziegler
Joseph Ziegler
Principal Financial and Accounting Officer

Exhibit 10.1

MASTER SERVICES AGREEMENT

This **MASTER SERVICES AGREEMENT** (this "***Agreement***"), is effective as of August 15, 2023 (the "***Effective Date***"), by and between **TherapeuticsMD, Inc.**, a Nevada corporation maintaining its offices at 951 Yamato Road, Suite 220, Boca Raton, Florida 33431, and its Affiliates (collectively, "***TherapeuticsMD***"), and **JZ Advisory Group**, a Florida limited liability company maintaining offices at 1051 Hillsboro Mile, PH2, Hillsboro Beach, Florida 33062 ("***Company***"). TherapeuticsMD and Company are sometimes referred to herein individually as a "***Party***" or collectively as the "***Parties***."

RECITALS

WHEREAS, the purpose of this Agreement is to establish a master services arrangement between TherapeuticsMD and Company; and

WHEREAS, TherapeuticsMD wishes to engage Company for the performance of Services (as defined herein) and Company wishes to accept such engagement under the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the terms and conditions set forth herein and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Parties intending to be legally bound hereby agree as follows:

1. CONSTRUCTION AND DEFINITIONS

1.1 Construction. Unless otherwise explicitly specified, this Agreement is to be interpreted such that (a) words denoting the singular will include the plural and vice versa; (b) the terms "*include*," "*including*," "*comprise*," "*comprises*," and words of similar effect are used in the inclusive sense of "including, without limitation; (c) "*or*" is used in the inclusive sense of "and/or" unless used in connection with the word "either," "unless," "alternatively," and words of similar effect; (d) "*any*" is used in the sense of "any and/or all"; (e) " *herein*," "*hereof*," "*hereunder*," and words of similar effect refer to the entirety of this Agreement; and (f) " *days*" refer to calendar days. The language of this Agreement will be construed according to its fair meaning and not strictly against either Party.

1.2 "***Affiliate***" means any legal entity which owns or controls, is owned or controlled by, or is under common ownership or control with, a Party ("*ownership*" for purposes of this definition only means possession of at least 50% equity; " *control*" for purposes of this definition only means the ability to direct or cause the direction of the management and policies of such legal entity).

1.3 *"Applicable Law"* or "***Law***" means all laws, treaties, or ordinances, rules, regulations, interpretations, authorizations, judgments, directives, injunctions, or orders, as in effect from time-to-time, of any court of any international, supra-national, national, regional, local, or other governmental body, agency, authority, or court, or arbitrator, that has jurisdiction over this Agreement or the subject matter of this Agreement, including, but not limited to, the Federal Food, Drug and Cosmetic Act; current Good Manufacturing Practices; current principles of good clinical practice as established by the FDA and E6; Good Laboratory Practices; the European Medicines Agency; and pursuant to International Conference on Harmonization Guidelines, as applicable.

1.4 "***Company Confidential Information***" means materials or information, other than TherapeuticsMD Confidential Information, in existence prior to the Effective Date including documents, reports, concepts, products, results, samples, or data, of any kind, whether or not identified as "confidential" or "proprietary," that is disclosed by Company to TherapeuticsMD. Company Confidential Information will not include information that (i) is generally known to the public at the time of the disclosure; (ii) does after the disclosure become publicly known other than as a result of a breach of this Agreement; (iii) is information that TherapeuticsMD or TherapeuticsMD Personnel or an Affiliate possessed prior to the disclosure and the Effective Date; (iv) is hereafter lawfully disclosed by a third party to TherapeuticsMD or TherapeuticsMD Personnel or an Affiliate thereof, or (v) is information that was independently developed by or on behalf of TherapeuticsMD or an Affiliate thereof without reference to, or reliance upon, the disclosed materials or information.

1.5 "*Company Intellectual Property*" means any and all patents, patent applications, copyrights, know-how, inventions, trade secrets, and any other intellectual property rights owned, licensed, or controlled by Company or any of its Affiliates as of the Effective Date. Company Intellectual Property will not include any and all intellectual property rights in or derived from (a) Work Product or (b) Inventions.

1.6 ***"Confidential Information"*** means TherapeuticsMD Confidential Information or Company Confidential Information, as applicable.

1.7 "***Deliverable***" means any Work Product provided to TherapeuticsMD in accordance with an SOW.

1.8 "***Dispute***" means a controversy, claim, or dispute of whatever nature arising between the Parties.

1.9 "***Dispute Notice***" means notice from the complaining Party of a Dispute pursuant to Section 12.7, setting for the nature of the Dispute.

1.10 "***FDA***" means the Food and Drug Administration of the United States Department of Health and Human Services, and any successor agency.

1.11 "***Fixed Fee*"** means the fee for Services or Deliverables pursuant to and as set forth in an SOW.

1.12 "*Inventions*" means any discoveries or inventions conceived of, or made by, any Company Personnel arising out of such Company Personnel's participation in any Services performed under this Agreement.

1.13 "***Marks***" means trademarks, trade names, service marks, logos, and symbols.

1.14 "***Party***" will have the meaning in the preamble.

1.15 "***Pass-through Costs***" means only actual reimbursable costs (a) designated in an SOW or (b) otherwise approved in advance in writing by TherapeuticsMD.

1.16 "***Personnel***" means any individuals used by a Party or any of its Affiliates to perform the Services, including employees, agents, and other third parties.

1.17 "***Product***" means a drug, biologic, or medical device related to the Services or Work Product that is subject to review by or that has been approved by FDA or any other regulatory authority.

1.18 *"**Recipient"*** means a Party receiving Confidential Information.

1.19 "***Special Equipment"*** means any non-standard equipment, including analytical instrumentation or process equipment, which is required for the performance of Services in a SOW.

1.20 "***Statement of Work" ("SOW")*)** means a written statement of work substantially in the form attached as Exhibit A hereto, setting forth a description of specific obligations of the Parties with respect to the performance of applicable Services or provision of deliverables, the cost of those Services, and payment terms as agreed to by the Parties in accordance with this Agreement.

1.21 "***Services*"** means the services to be performed by Company as set forth under this Agreement, in an SOW, or schedules, attachments, or exhibits thereto.

1.22 "***Subcontract***" means any agreement between Company or its Affiliates and a third party for the provision of Services or Work Product other than agreements with vendors for generally available goods or services.

1.23 "***Subcontractors***" means any third party performing the Services for, or on behalf of, Company under this Agreement or any SOW executed by Company.

1.24 "***Term***" means three (3) years from the Effective Date and any renewal term pursuant to Section 8.1.

1.25 "***TherapeuticsMD Confidential Information***" means any and all non-public or proprietary scientific, technical, financial, or business materials or information (whether in written, electronic, oral, or visual form, tangible or intangible), as well as any information not generally known by actual or potential competitors or by the public generally, including, without limitation, TherapeuticsMD Intellectual Property, documents, reports, concepts, products, results, samples, or data, of any kind, and any reproductions or copies thereof, whether or not identified as "confidential" or "proprietary" that (a) is disclosed, either directly or indirectly, by TherapeuticsMD or an Affiliate, or an agent, consultant, representative, or contractor of either thereof to Company or Company Personnel, (b) is derived through observation or examination of the Work Product, Services, or other activities of TherapeuticsMD, (c) otherwise becomes known by Company or Company Personnel during the Term, (d) is commonly regarded as confidential and/or proprietary in the life sciences industry, (e) is information or material generated in the performance of Services or embodied in Work Product, or (f) relates to the existence and terms of this Agreement or any SOW. TherapeuticsMD Confidential Information will not include information that (i) is generally known to the public at the time of the disclosure; (ii) does after the disclosure become publicly known except as a result of a breach of this Agreement; (iii) is information that the Company or Company Personnel or an Affiliate possessed prior to the disclosure; (iv) is hereafter lawfully disclosed by a third party to the Company or Company Personnel or an Affiliate thereof; or (v) is information that Company can demonstrate was independently developed by or on behalf of the Company or an Affiliate thereof without reference to, or reliance upon, the disclosed materials or information.

1.26 "*TherapeuticsMD Intellectual Property*" means any and all patents, patent applications, copyrights, know-how, inventions, trade secrets, and any other intellectual property rights owned, licensed, or controlled by TherapeuticsMD. TherapeuticsMD Intellectual Property also includes any and all intellectual property rights arising from or relating to (a) Work Product or (b) Inventions.

1.27 "***Third Party***" means a party or entity that is not TherapeuticsMD or one of TherapeuticsMD's Affiliates or Company or one of Company's Affiliates.

1.28 "***Time and Materials***" means fees based on the agreed upon rate for actual time expended and cost of actual materials used in the performance of Services for which TherapeuticsMD has agreed to pay Company pursuant to an SOW.

1.29 "***Trade Control Laws***" means all applicable export control, import, customs, and economic sanctions laws and regulations of the United States and other governments, including sanctioned countries and the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Asset Control, Department of the Treasury.

1.30 "***Work Product***" means any and all materials or information including documents, reports, concepts, products, results, samples, or data produced in the course of, or as a result of, performing the Services, inclusive of Deliverables.

2. SERVICES

2.1 Statements of Work ("SOW"). Each scope of Services for which TherapeuticsMD engages Company will be covered by a separate SOW entered into by the Parties in writing in accordance with and governed by this Agreement. Each SOW will be uniquely numbered (*e.g.*, **SOW 1**, **SOW 2**, etc.), and will contain a description of the specific obligations of the Parties in the performance of applicable Services or provision of Deliverables and will include a description of the Services to be performed or Deliverables to be provided, the costs and payment terms for the Services, and any other terms and conditions agreed to by the Parties. A template for each SOW is attached hereto as Exhibit A. Each SOW, when read in conjunction with this Agreement, will exist independently from any other SOW. In the event of any conflict or inconsistency between any material term of this Agreement and any SOW, the terms of this Agreement will control unless the SOW specifically states that a particular provision in such SOW will control for specific conflicts or all conflicts with this Agreement, and then with respect to only such SOW.

2.2 Performance Efforts. TherapeuticsMD hereby engages Company, and Company hereby accepts TherapeuticsMD's engagement, to perform in a diligent and timely manner all of the tasks and render such advice and services as is contemplated under this Agreement and in each SOW in accordance with the terms thereof. Company also will satisfactorily and timely perform the Services or provision of the Deliverables in accordance with the Agreement, the SOW, the requests, or instructions from TherapeuticsMD as determined by TherapeuticsMD in its sole discretion. Company represents and warrants that it will perform the Services in accordance with, and Company and Company Personnel will comply with, all Applicable Laws. In addition to the specifications in an SOW, TherapeuticsMD may provide further instructions or requirements to Company from time to time in writing, whether via email or otherwise. Such instructions or requirements will be deemed accepted by Company unless Company objects in writing within 10 days of the date TherapeuticsMD provides such instruction or requirement, provided that Company may only object if the instructions or requirements materially change the scope of an SOW or cause Company to incur additional costs not reasonably contemplated by such SOW. Any related service that the Parties agree are outside the scope of the Services to be performed or Deliverables to be provided under a particular SOW may be added thereto or become the subject of a separate SOW.

2.3 Non-conforming Services or Deliverables. Following receipt of any Deliverable by TherapeuticsMD or performance of any Services for TherapeuticsMD pursuant to an SOW, if TherapeuticsMD determines in its reasonable discretion that any Deliverable or Service does not conform to the specifications agreed upon in the SOW or otherwise, or in the event any timelines or milestones to be met by the performance of Services have not been fully achieved by the date established, Company will, at no additional cost to TherapeuticsMD and at TherapeuticsMD's option, (a) replace with a conforming Deliverable; or (b) repeat that portion of the Services that is defective until such time as the results have been deemed valid by TherapeuticsMD.

2.4 Appointment of Project Director. Company will appoint a project director to be responsible for each executed SOW. The project director will coordinate Company's performance under the SOW with a TherapeuticsMD designated representative, which representative will have responsibility over all matters related to performance of the SOW on behalf of TherapeuticsMD. Substitution of the project director or substantial changes in his/her level of effort will not be made by Company without the prior written approval of TherapeuticsMD, such approval not to be unreasonably withheld. TherapeuticsMD will have the right to require Company to replace the project director if TherapeuticsMD reasonably deems such project director to be unfit or otherwise unsatisfactory to perform Company's duties under an SOW. Company will not charge TherapeuticsMD for any costs associated with replacing any project director without prior written approval of TherapeuticsMD. Provided the replaced individual remains in the employ of Company, such individual will continue to be available by telephone to answer any questions related to Services.

2.5 Subcontracting. Company may utilize third parties to provide any part of the Services or Work Product only with the prior written approval of TherapeuticsMD, provided that the foregoing will not apply to vendors of generally available goods and services. If TherapeuticsMD approves a Subcontractor, then Company will enter a written agreement with such Subcontractor that enables Company to comply with its obligations under this Agreement. Any such Subcontract will also identify TherapeuticsMD as an intended third party beneficiary of such contract. Upon request, Company will promptly provide TherapeuticsMD with a fully-executed unredacted copy of each such Subcontract. Company will oversee all Services performed by any Subcontractor, and will be responsible for such Services as if such Services were performed by Company under this Agreement. If any Subcontractor materially breaches such Subcontract or this Agreement, Company will: (a) notify TherapeuticsMD of such breach as soon as possible, but in no event later than three (3) business days after Company becomes aware of such breach, and include in such notice all information then in Company's possession or control related to such breach; (b) use best efforts to enforce the Subcontract, including seeking immediate injunctive relief in the case of any breach of such Subcontractor's confidentiality obligations; and (c) cooperate with TherapeuticsMD fully if TherapeuticsMD elects to pursue legal action directly against such Subcontractor. Company will maintain an appropriate system of auditing all of its Subcontractors, and will ensure that all Subcontracts will provide that TherapeuticsMD may accompany the Company during its conduct of any Subcontractor audits. Company will notify TherapeuticsMD, thirty (30) days in advance of any Subcontractor audit, and will allow TherapeuticsMD to be present during such audit.

2.6 Material Modification of Services or Deliverables. TherapeuticsMD may in its sole discretion, cancel or terminate any portion of any SOW upon written notice to Company. In the event TherapeuticsMD otherwise wishes to modify the Services or Deliverables in any manner that would materially change the scope or the fees under an SOW, the Parties will discuss such modification in good faith and, once agreed upon, the Parties will execute a written amendment to such SOW or execute a new SOW. Company will not implement any changes or additional Services until both Parties have signed the amended SOW. If TherapeuticsMD wishes to modify the Services or Deliverables, and the Parties are unable to agree on the specific terms for the amendment to the SOW, then no changes to the existing subject SOW will be made.

3. COMPANY'S REPRESENTATIONS AND WARRANTIES

3.1 Company represents and warrants to TherapeuticsMD that Company Personnel are and will continue to be qualified and to have sufficient technical training, experience, and resources to perform Company's obligations under this Agreement and each executed SOW.

3.2 All Services performed by Company and Company Personnel will be performed in accordance with: (i) all Applicable Laws; (ii) the terms and conditions of this Agreement and each executed SOW including any schedules or attachments; (iii) generally prevailing industry standards; (iv) TherapeuticsMD's written instructions; and (v) training provided by TherapeuticsMD, if any.

3.3 Company has the full power and authority to execute and deliver this Agreement and perform its covenants, duties, and obligations described in this Agreement, and once executed, this Agreement will be a valid, legal, and binding obligation upon Company.

3.4 Company is not now, nor will it be, a party to any agreement which would prevent Company from fulfilling its obligations under this Agreement or any SOW, and that during the Term will not knowingly enter into any agreement with any other party that would in any way prevent Company from performing its obligations under this Agreement or any SOW.

3.5 Company will maintain all records and reports as required under this Agreement, the SOWs, as required to comply with Applicable Laws, and as instructed by TherapeuticsMD, and will not destroy any such record and reports absent thirty (30) days' advance notice to and the prior approval of TherapeuticsMD.

3.6 Debarment and Exclusion Certification. Company hereby certifies to TherapeuticsMD that (i) Company is not nor has ever been, and (ii) Company has not used, and will not use, the services of any person excluded, debarred, suspended, or otherwise ineligible to participate in the Federal health care programs or in Federal procurement or non-procurement programs, and has not used, and will not use, the services of any person listed on the HHS/OIG List of Excluded Individuals/Entities (http://www.oig.hhs.gov), the GSA's List of Parties Excluded from Federal Programs (http://www.epls.gov), or the FDA Debarment List (http://www.fda.gov/ora/compliance_ref/debar/default.htm), as amended or replaced from time to time, in connection with any of the Services performed under this Agreement. Company further certifies that it, and any other person or entity used by Company in performing any of the Services under this Agreement, has not been convicted of a criminal offense that falls within the ambit of 42 U.S.C. §1320a-7(a). Company agrees to notify TherapeuticsMD promptly in the event Company, or any person used by Company in connection with this Agreement, ever becomes excluded, debarred, suspended, or otherwise ineligible to participate in Federal health care programs or in Federal procurement or non-procurement programs. This certification applies to Company and its respective officers, agents, and employees, as well as third parties with whom Company may subcontract.

4. RESERVED.

5. RESERVED.

6. COMPENSATION

6.1 Fees and Invoices. In consideration of the Services performed or Deliverables provided by Company, TherapeuticsMD will pay Company, as full and complete compensation, the fees listed in each SOW or otherwise approved in advance in writing by TherapeuticsMD. Fees for Services performed or Deliverables provided by Company under an SOW will be on either a Fixed Fee or Time and Materials fee basis. Work performed on a Fixed Fee cost basis will be invoiced to TherapeuticsMD in accordance with the payment schedule set out in the applicable

SOW. Work performed on a Time and Materials cost basis will be invoiced by Company monthly or as otherwise provided in the applicable SOW at the rates set forth in the SOW. Fees invoiced will not exceed the cost estimate or budgeted amount for the task or sub-task in the applicable SOW as agreed to by the Parties unless such additional fees are approved by TherapeuticsMD in writing. Company will be required to supply attached to each invoice a detailed description of the Services performed and materials used, and supporting documentation as may be required to substantiate the fees.

6.2 Pass-through Costs. Any Pass–through Costs must be approved by TherapeuticsMD in advance in writing in order for Company to receive reimbursement for such costs. All Pass-through Costs will be itemized on an invoice, and original receipts will be kept by Company and made available to TherapeuticsMD upon request. In the event travel is required by Company Personnel in connection with the performance of Services authorized in an SOW, TherapeuticsMD will, in accordance with TherapeuticsMD's travel and reimbursement policy then in effect (a copy of which will be provided to Company), reimburse Company for necessary and reasonable travel expenses including coach air fare, ground transportation fees, hotel costs excluding incidental or in-room charges, and reasonable meals for Company Personnel. Company will be solely responsible for travel expenses relating to Company's internal operations that are not directly related to the performance of Services for TherapeuticsMD.

6.3 Payment by TherapeuticsMD. TherapeuticsMD will prepay Company monthly within five days of the first day of the month. Each Company invoice will contain sufficient detail and itemization to evidence the nature, time, and scope of the Services performed, Deliverables provided, or materials used, during the upcoming month and any prior Pass-through Costs, together with supporting documentation related thereto. Any provision in this Agreement to the contrary notwithstanding, TherapeuticsMD and Company agree that Company will not be entitled to the payment for, and TherapeuticsMD will not be responsible for the payment of, any fees or expenses under this Agreement that have not been approved in advance in writing by TherapeuticsMD.

6.4 Financial Audit. During the Term, and for a period of five (5) years thereafter, TherapeuticsMD and its authorized representatives will have the right during normal business hours and upon reasonable notice to Company, to review, inspect, audit, and make copies of any of Company's books and records which relate to the Services and Deliverables, and Company will reasonably cooperate with TherapeuticsMD during such audit. Company will maintain complete books and records relating to Services performed during the Term, as may be required by Applicable Law, and for such other time as TherapeuticsMD reasonably indicates.

6.5 Unused Materials. In the event that not all materials paid for under an applicable SOW are used in the provision of Services or Deliverables, Company will, at TherapeuticsMD's election, (i) promptly return or deliver such unused materials to TherapeuticsMD or its designee; (ii) provide TherapeuticsMD with a rebate; (iii) to credit against applicable SOW or any other amount due to Company; or (iv) destroy such unused materials in accordance with Applicable Laws and provide proof of destruction at no additional cost to TherapeuticsMD.

7. TAXES

7.1 Company Taxes. Company is responsible for all taxes and levies payable by Company on compensation received under this Agreement or any SOW.

7.2 Payment by TherapeuticsMD. TherapeuticsMD will pay all taxes and levies that by law (including existing treaties for bilateral taxation) it is required to pay on payments accruing under this Agreement and will withhold from sums payable to Company all such taxes and levies and TherapeuticsMD will forward to Company documentation evidencing such payments whenever possible. To the extent that TherapeuticsMD withholds any taxes or levies on payments to Company, Company agrees that TherapeuticsMD will not be obligated to gross-up any such amounts and Company waives any right to payment from TherapeuticsMD with respect to the withheld amounts. However, if TherapeuticsMD receives a refund of any taxes or levies withheld from amounts payable to Company under this Agreement, TherapeuticsMD will pay to Company an amount equal to such refund, net of all out-of-pocket expenses and without interest (other than any interest paid by the relevant governmental authority with respect to such refund), provided that Company upon request of TherapeuticsMD, agrees to repay the amount paid over to Company (plus any penalties, interest, or other charges imposed by the relevant governmental authority) by TherapeuticsMD, if TherapeuticsMD is required to repay such refund to such governmental authority.

7.3 Form W-9. The Parties will cooperate with respect to tax matters relating to this Agreement including by providing an IRS Form W-9 or IRS Form W-8BEN (or other such form demonstrating an exemption from applicable taxes or levies as may be reasonably requested by the other Party), provided that such Party is legally entitled to do so. If any IRS Form expires or becomes obsolete or inaccurate in any respect, the Party that provided such form will promptly (and in any event within 30 days after such expiration, obsolescence, or inaccuracy) notify the other Party in writing of such expiration, obsolescence, or inaccuracy and update the IRS Form if it is legally eligible to do so.

7.4 Reimbursement for Taxes Paid. In the event that any taxes or levies are assessed against TherapeuticsMD with respect to payments made to Company under this Agreement, such taxes or levies (plus any penalties, interest, or other charges imposed by the relevant governmental authority not related to any delinquency by TherapeuticsMD) will be paid by Company. Should TherapeuticsMD have to pay such taxes or levies Company will promptly reimburse TherapeuticsMD in full for any taxes or levies (plus any penalties, interest, or other charges imposed by the relevant governmental authority not related to any delinquency by TherapeuticsMD) so paid by TherapeuticsMD upon receipt of a copy of the assessment. Alternatively, TherapeuticsMD may reduce the amount of future payments to Company under this Agreement so as to recover in full any such taxes or levies (plus any penalties, interest, or other charges imposed by the relevant governmental authority not related to any delinquency by TherapeuticsMD) so paid by TherapeuticsMD.

8. TERM AND TERMINATION

8.1 Term. This Agreement will be effective as of the Effective Date and, if not earlier terminated as provided herein, will remain in full force and effect for the Term. The Term of this Agreement will automatically be extended for successive 1-year periods from the third anniversary of the Effective Date or any subsequent anniversary of the Effective Date during the term, unless either Party provides written notice of non-extension to the other Party no less than thirty (30) days in advance of the applicable anniversary date. Notwithstanding any non-extension of this Agreement, should the Term of an SOW extend beyond the date on which this Agreement would otherwise expire, then the Term will continue until the expiration or termination of such SOW.

8.2 Termination by Company. In addition to any other remedies provided herein or available at law or in equity, Company may terminate any or all of the SOW(s) in the event of any material breach of this Agreement by TherapeuticsMD, which breach is not cured within sixty (60) days following TherapeuticsMD's receipt of written notice of breach from Company or upon 90 days notice or as otherwise mutually agreed. Any breach notice will set forth in detail the elements of the claimed breach. The termination date of an SOW will be the day after the expiration of the cure period.

8.3 Termination by TherapeuticsMD. In addition to any other remedies provided herein or available at law or in equity, TherapeuticsMD may terminate this Agreement or any or all of the SOW(s) by giving Company 90 days written notice of termination or as otherwise agreed by the Parties. In the event of termination by TherapeuticsMD, such termination will be without penalty or liability to TherapeuticsMD except for the payment of any monies due and owing to Company pursuant to Section 8.6 below and to the extent the Parties have agreed in the applicable SOW to any cancellation fees as outlined in such SOW.

8.4 Effect of Termination. In the event of termination of any SOW, unless otherwise directed by TherapeuticsMD in writing, Company will (a) deliver to TherapeuticsMD or its designee, at no additional cost to TherapeuticsMD, all Work Product, Deliverables, TherapeuticsMD-provided materials, and TherapeuticsMD Confidential Information in Company's possession or control as expeditiously as possible in accordance with all Applicable Laws; and (b) adhere to all other requirements for termination herein or in any SOW.

8.5 Remedies Not Exclusive. Except as otherwise provided herein, no remedy conferred by any of the specific provisions of this Agreement is intended to be exclusive of any other remedy, including, by way of example and not by way of limitation, those remedies for contract or tortuous actions. The Parties acknowledge that in the event of a breach of this Agreement, the non-breaching Party may suffer irreparable damage that may not be fully remedied

by monetary damages. The Parties therefore agree that such non-breaching Party will be entitled to seek injunctive relief against any such breach in any court of competent jurisdiction and the breaching Party will be responsible for all reasonable costs associated with such injunctive relief, provided that the non-breaching Party prevails in the substantive action. In the event that non-breaching Party is successful, the non-breaching Party's rights under this Section 8.5 will not in any way be construed to limit or restrict its rights to seek other damages or relief available under this Agreement or applicable law.

8.6 Payment upon Termination. In the event of early termination of this Agreement by TherapeuticsMD, other than for termination as a result of a material breach of this Agreement or a failure to comply with an SOW or TherapeuticsMD's written instructions, (a) TherapeuticsMD will (i) pay Company for Services actually performed prior to the effective date of termination, and (ii) reimburse Company for expenses that were approved by TherapeuticsMD and incurred by Company prior to the effective date of termination that are not cancellable by Company, and (b) to the extent that TherapeuticsMD has pre-paid fees to Company for Services subsequently terminated, Company will refund the difference between such pre-payment and actual approved fees and costs actually incurred by Company, which are not cancellable, through the date of termination. Without prejudice to any other remedy for breach of this Agreement, upon termination of this Agreement or any SOW, Company will not be released from the performance of any obligation for which payment has been received.

9. OWNERSHIP OF DATA, PATENTS, INVENTIONS, AND TECHNOLOGY

9.1 TherapeuticsMD Intellectual Property and Work Product. Company acknowledges that TherapeuticsMD Intellectual Property is the exclusive property of TherapeuticsMD or its licensors. Company further acknowledges that the Work Product and any and all improvements to the TherapeuticsMD Intellectual Property and any other intellectual property rights developed, derived from, or otherwise generated by Company in performing Services hereunder, will be owned by and belong exclusively to TherapeuticsMD. Company hereby assigns to TherapeuticsMD the ownership of all rights, titles, and interests in all concepts, know-how, patents, trade secrets, or other intellectual property rights in, relating to, or arising from Work Product, Services, or Inventions. Ownership of copyrights is addressed in Section 9.3. Company further agrees to give TherapeuticsMD and its designees or assignees all assistance reasonably required to perfect such rights, titles, and interests. These obligations will survive and continue beyond the termination of Company's engagement with TherapeuticsMD under this Agreement and will be binding upon Company's assigns, executives, administrators and other legal representatives.

9.2 TherapeuticsMD Trademarks. Company will not use TherapeuticsMD's Marks without prior written authorization from TherapeuticsMD. The Marks are, and will remain, TherapeuticsMD's sole and exclusive property, and Company has not acquired, and will not acquire (by operation of law, this Agreement, or otherwise), any right, title, or interest in any of TherapeuticsMD's Marks other than as explicitly provided in writing by TherapeuticsMD. Company recognizes the value of the goodwill associated with TherapeuticsMD's Marks and acknowledges that all rights therein belong exclusively to TherapeuticsMD. Any and all goodwill and rights that arise under trademark and copyright law, and all other intellectual property rights that arise in favor of TherapeuticsMD's Marks as a result of this Agreement or otherwise, will inure to the sole and exclusive benefit of TherapeuticsMD. Company will not attack, dispute, or challenge TherapeuticsMD's right, title, and interest in and to TherapeuticsMD's Marks or assist others in so doing.

9.3 Copyrights and Publications. Company is not permitted to publish, present, display, otherwise disclose, or submit for publication, presentation, display, or other disclosure, Work Product without prior written permission from TherapeuticsMD. TherapeuticsMD will consider any request for publication in good faith. Except as provided in this Section 9.3, to the extent any Work Product contains copyrightable material that can be "work made for hire" as the term is defined under 17 U.S.C. §101, such material will be deemed "work made for hire" and TherapeuticsMD will be considered the author. If such material is not deemed "work made for hire," Company hereby assigns all copyrights in such material to TherapeuticsMD. If TherapeuticsMD gives permission for the publication of material based on or including Work Product, TherapeuticsMD automatically non-exclusively licenses to such author(s) of the material, rights in the copyright in such material in the form and in the venue approved by TherapeuticsMD for such publication.

9.4 Inventions. Company will promptly disclose to TherapeuticsMD any Inventions or potential Inventions, whether or not protectable as a trade secret, patent, or otherwise, made by Company or any Company Personnel. Company will ensure that all Company Personnel involved in the Services are obligated to assign to Company or TherapeuticsMD all right, title, and interest each may have in any such Invention. Company will ensure that all Company personnel involved in the Services are obligated, if so requested by TherapeuticsMD, to assist in the preparation, filing, perfection, prosecution, defense, and enforcement of any Patent.

9.5 Company Intellectual Property. Company Intellectual Property will not be included in any Work Product unless and until Company identifies in writing to TherapeuticsMD the Company Intellectual Property proposed to be included in the Work Product, and obtains the prior written consent of TherapeuticsMD. Any Work Product that includes Company Intellectual Property in violation of this Section 9.5 is hereby automatically and perpetually licensed to TherapeuticsMD, its Affiliates, or their designees, in connection with such Work Product and any products, services, materials, or information related thereto or arising therefrom, at no charge.

10. INDEMNIFICATION, INSURANCE, AND LIMITATION OF LIABILITY

10.1 Indemnification.

(a) **By Either Party**. Each Party will defend, indemnify, and hold harmless the other Party, its Affiliates, and their respective shareholders, officers, directors, employees, and agents from and against any and all third-party losses, liabilities, claims, costs, damages, and expenses, including without limitation, reasonable attorney's fees, experts' fees, and court costs incurred or which it may incurred directly or indirectly arising out of or resulting from: (a) any act or omission made by the indemnifying Party, its Personnel, or its agents related to Services performed hereunder which is negligent or which constitutes a breach of any of the terms of this Agreement; (b) any untrue or inaccurate representation made by the indemnifying Party, its Personnel, or its agents in this Agreement; (c) a violation of, or non-compliance with any Applicable Law by the indemnifying Party, its Personnel, or its Agents; or (d) the infringement, alleged infringement, misappropriation, or alleged misappropriation of any patent, trade secrets, copyrights, trademarks, trade names, or other proprietary or contractual rights of any third party arising from the Services or reports, data, analyses, processes, Work Product, or other deliverables produced or delivered by the indemnifying Party to the indemnified Party in connection with the Services.

(c) **Claims**. Promptly upon receiving notice of any claim or action for which a Party wishes to seek indemnification hereunder, such Party will promptly notify the other in writing of the assertion of any such claim, suit, action or proceeding. Failure to provide such notice which substantially prejudices the indemnifying Party's ability to defend such claim or action may invalidate any obligation of indemnification. Notwithstanding the foregoing, any Party seeking to be indemnified will nevertheless be entitled to retain separate counsel at its own costs to participate in such matter; however, the indemnifying Party will have sole case management authority; provided, however, neither Party may compromise or settle any matter without the other Party's prior written consent, not to be unreasonably withheld. Any Party seeking indemnification will fully cooperate with the indemnifying Party.

10.2 Insurance. To secure the performance of its obligations under this Agreement, Company will acquire and maintain at its sole cost and expense at all times during the Term of this Agreement insurance at levels that are customary for the Services provided. If requested by TherapeuticsMD, Company will furnish certificates of insurance evidencing such coverages or the original of the insurance policies for review by TherapeuticsMD and will have TherapeuticsMD named as an additional insured. No such policies required hereunder will be cancelable or subject to reduction of coverage or other modification except after thirty (30) days' prior written notice to TherapeuticsMD and Company. Company will, within thirty (30) days prior to the expiration of such policies, furnish TherapeuticsMD with renewals or "binders" thereof.

10.3 Limitation of Liability. NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR EXEMPLARY, PUNITIVE, SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES (INCLUDING LOST PROFITS), WHETHER IN CONTRACT, WARRANTY, NEGLIGENCE, TORT, STRICT LIABILITY, OR OTHERWISE; PROVIDED, HOWEVER, THE FOREGOING LIMITATIONS WILL NOT APPLY TO: (A) THE AMOUNTS EACH PARTY IS OBLIGATED TO PAY TO A THIRD PARTY PURSUANT TO ANY INDEMNIFICATION PROVISIONS OF THIS AGREEMENT; (B) DAMAGES ARISING OUT OF EITHER PARTY'S NEGLIGENCE OR INTENTIONAL MISCONDUCT OR INACTION UNDER THIS

AGREEMENT; (C) DAMAGES DUE TO EITHER PARTY'S BREACH OF CONFIDENTIALITY; OR (D) DAMAGES DUE TO COMPANY'S WRONGFUL ABANDONMENT OF, OR SIGNIFICANT DELAY OR REFUSAL TO PROVIDE SERVICES**.** NOTWITHSTANDING THE FOREGOING, NOTHING CONTAINED IN THIS SECTION WILL LIMIT EITHER PARTY'S LIABILITY TO THE OTHER FOR WILLFUL OR INTENTIONAL MISCONDUCT, INCLUDING FRAUD.

11. CONFIDENTIALITY

11.1 Confidentiality and Nonuse Obligations. The Recipient agrees (a) not to use Confidential Information, except as necessary and in connection with the Services; (b) to maintain the confidentiality of Confidential Information using the same standard of care that Recipient applies to protect its own confidential information (but which in any event will be not less than a reasonable standard of care); (c) not to disclose any Confidential Information to any third party, except to Recipient's and its Affiliates' respective employees, representatives, consultants, or agents who are bound by obligations to maintain the confidentiality of the Confidential Information and who have a need to know such Confidential Information; and (d) to be responsible for enforcing obligations of confidentiality with respect to such employees, representatives, consultants, or agents.

11.2 Protection of Confidential Information. If the Recipient becomes aware of any unauthorized use or disclosure of the disclosing Party's Confidential Information, the Recipient will promptly notify the disclosing Party of all facts known to it concerning such unauthorized use or disclosure.

11.3 Exceptions for Government-Required Disclosures. Notwithstanding the foregoing, if the Recipient is required to disclose the Confidential Information pursuant to a duly authorized subpoena, court order, or other government authority, or Applicable Law, the receiving Party will (a) provide prompt written notice to the disclosing Party prior to such disclosure and will cooperate with the disclosing Party so that the disclosing Party may seek a protective order or other appropriate remedy; and (b) disclose only that portion of the Confidential Information that Recipient is legally required to disclose.

11.4 Defend Trade Secrets Act. Each Party agrees that it is hereby notified in accordance with the Defend Trade Secrets Act of 2016 that such Party will not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that: (a) 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 (b) is made in a complaint or other document that is filed under seal in a lawsuit or other proceeding.

11.5 Whistleblower Provision. Nothing in this Agreement will be construed to prevent disclosure of Confidential Information as may be required by applicable law or regulation, or pursuant to the valid order of a court of competent jurisdiction or an authorized government agency, provided that such disclosure does not exceed the extent of disclosure required by such law, regulation or order. Each Party agrees to provide prompt written notice of any such order to the other Party to the extent permitted by such law, regulation or order. Each Party understands that this Agreement does not prohibit or restrict such Party from communicating with a government agency, as provided for, protected under, or warranted by applicable law, without notice to the other Party, or limit the Party's right to receive an award for information provided to a government agency.

12. MISCELLANEOUS PROVISIONS

12.1 Independent Contractor. Each Party is an independent contractor and is independent of the other Party. Under no circumstances will any employees of one Party be deemed the employees of the other Party. This Agreement does not create a partnership or joint venture between the Parties of any kind or nature. This Agreement does not create any fiduciary or other obligation between the Parties, except for those obligations expressly and specifically set forth herein. Neither Party will have any right, power, or authority under this Agreement to act as a legal representative of the other Party, and neither Party will have any power to obligate or bind the other or to make any representations, express or implied, on behalf of or in the name of the other in any manner or for any purpose whatsoever and no attorney-client relationship is created by this Agreement or the action of either Party pursuant thereto. Each Party acknowledges that it is solely and completely responsible for the compensation of its employees,

agents, and representatives, and is solely and completely responsible for its own employees with regard to federal, state, or local tax withholding and other tax obligations, workers' compensation, social security, compensation, benefits, unemployment insurance, occupational safety and health administration requirements, and other federal, state, and local laws.

12.2 Force Majeure. No liability will result from the delay in performance or nonperformance caused by force majeure or circumstances beyond the reasonable control of the Party affected, including, but not limited to, acts of God, fire, flood, substantial snowstorm, war, terrorism, embargo, failure or delay of any transportation, power, or communications system, or any United States or foreign government regulation, direction, or request made, ratified, passed, approved, or enacted during the term of this Agreement. The Party which is so prevented from performing will give prompt notice (but in no event more than three (3) days) to the other Party of the occurrence of such force majeure event, the expected duration of such condition, and the steps which Party is taking to correct such condition. This Agreement may be terminated by either Party by written notice upon the occurrence of such force majeure event which results in a delay of performance hereunder exceeding thirty (30) days.

12.3 Notices. Except as otherwise provided, all notices required under this Agreement will be sent by express delivery or first class mail, postage prepaid, to the addresses set forth below or to such other addresses as the Parties from time to time may specify in writing. Any notice or other communication required or permitted under this Agreement will be in writing and will be deemed given as of the date it is received by the receiving Party. Notice will be given to the Parties at the addresses listed below:

As to Company:

JZ Advisory Group
1051 Hillsboro Mile, PH2
Hillsboro Beach, Florida 33062
ATTN: Joseph Ziegler

As to TherapeuticsMD:

TherapeuticsMD, Inc.
951 Yamato Road, Suite 220
Boca Raton, Florida 33431
ATTN: Legal Department

12.4 Governing Law, Jurisdiction, and Venue. This Agreement will be governed by and construed in accordance with the laws of the State of Florida excluding its conflict of laws principles; provided that with respect to the intellectual property matters, this Agreement will be governed by and construed in accordance with the federal patent statute and other intellectual property laws of the United States or the laws of the corresponding jurisdiction from which the intellectual property rights arise. The Parties irrevocably consent and submit to the exclusive jurisdiction of the state courts located in Florida and the federal court located in Florida for any matter arising out of or relating to this Agreement, excluding claims pertaining to intellectual property matters herein. The Parties agree that for any claim between the Parties arising in whole or in part under or in connection with this Agreement, excluding matters of intellectual property, such Party will bring claims only in the State of Florida; provided that with respect to intellectual property matters, the Parties may bring claims only within a permitted venue of the corresponding jurisdiction from which the intellectual property rights arise.

12.5 Waiver of Jury Trial. To the extent not prohibited by Applicable Law, each of the Parties hereto hereby irrevocably waives any and all right to trial by jury in any legal proceeding or counterclaim arising out of or related to this Agreement or the transactions contemplated hereby.

12.6 Dispute Resolution. In the event of any Dispute arising between the Parties, including but not limited to those arising out of or relating to any agreement between the Parties or the breach, termination, enforceability, scope or validity thereof, whether such claim existed prior to or arises on or after the Effective Date, the Parties or the breach, termination, enforceability, scope, or validity thereof, whether such claim existed prior to or arises on or after the Effective Date, the Parties will consult and negotiate with each other and, recognizing their mutual interests, attempt to reach a satisfactory solution. If the Parties do not reach settlement or other mutually

acceptable solution within a period of sixty (60) days from the date of the Dispute Notice, then, upon notice by any Party to the other(s), any unresolved controversy or claim will be mediated prior to any Party initiating an action in any court. The mediation will be administered by the American Arbitration Association in accordance with its mediation rules. The place of mediation will be Palm Beach or Broward County Florida. Florida law will apply. Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Within thirty (30) days after the commencement of arbitration, each Party will appoint a person to serve as an arbitrator. The Parties will then jointly appoint the presiding arbitrator within twenty (20) days after selection of the individual Party appointees. If any arbitrators are not selected within these time periods, the American Arbitration Association will, at the written request of any Party, complete the appointments that have not been made.

12.7 Enforceability; Severability. In the event that any provision of this Agreement is deemed by a court of competent jurisdiction to be in violation of any Applicable Law or is otherwise declared invalid or unenforceable by such court, the Parties agree that such provision will be of no force or effect and the remaining provisions will remain valid and in full force and effect as though such superseded provision was not contained in this Agreement.

12.8 Binding Effect; Assignment. This Agreement will be binding upon and inure to the benefit of each Party and their respective affiliates, successors, legal representatives, and permitted assigns. Neither Party will, without the written consent of the other Party, assign, or transfer this Agreement or any rights or obligations hereunder; provided that no consent is required if such assignment is to an entity that purchase all or substantially all of its equity or assets or acquires control of it, whether by merger, consolidation or any other means.

12.9 Continued Performance. The Parties agree to continue performing their obligations under this Agreement during the pendency of any Dispute under this Agreement, unless and until the Dispute is resolved or until this Agreement is terminated or otherwise expires.

12.10 Entire Agreement; Amendment. The Parties acknowledge that this Agreement, together with each SOW issued hereunder, sets forth the entire agreement and understanding of the Parties and supersedes all prior written or oral agreements or understandings with respect to the subject matter hereof. No modification of any of the terms of this Agreement, or any amendments thereto, will be deemed to be valid unless in writing and signed by a duly authorized representative of Company and TherapeuticsMD.

12.11 Waiver. No waiver of any right, term, or condition of this Agreement, whether by conduct or otherwise, in any one or more instances, will be construed as a further or continuing waiver of such term, condition, or right or of any other term, condition, or right of this Agreement. All rights, remedies, undertakings, or obligations contained in this Agreement will be cumulative and none of them will be in limitation of any other right, remedy, undertaking, or obligation of either Party.

12.12 Descriptive Headings. The descriptive headings of the sections of this Agreement are inserted for convenience only and will not control or affect the meaning or construction of any provision hereof.

12.13 Recitals and Exhibits. All recitals herein, and all schedules, exhibits, and SOWs attached hereto and referred to herein, are integral and material parts of this Agreement.

12.14 Counterparts. This Agreement may be executed in several counterparts, and may be executed manually or by electronic signature, each counterpart of which will be deemed an original but all of which will constitute one and the same document.

12.15 Publicity. Company will not originate any publicity, news release, or other public announcement, written, or verbal, whether to the public press or otherwise, relating to this Agreement or any SOW conducted hereunder, or to any amendment(s) thereto without TherapeuticsMD's prior express written consent. Company will not use TherapeuticsMD's name, or the name of any TherapeuticsMD Affiliate, in advertising promotions or other commercial materials without TherapeuticsMD's prior express written permission. Under no circumstances will the name of Company or any of its employees be used by TherapeuticsMD for promotional literature or advertising without the prior written approval of Company.

12.16 Survival of Provisions. All provisions of this Agreement and any SOW which may reasonably be interpreted or construed as surviving termination will survive, including without limitation, provisions 3.5, 6.4 (*Financial Audit*), 6.5 (*Unused Materials*), 8.4 (*Effect of Termination*), 8.5 (*Remedies Not Exclusive*), 8.6 (*Payment upon Termination*), , and, 7 (*Taxes*), 9 (*Ownership of Data, Patents, Inventions, and Technology*), 10 (*Indemnification, Insurance, and Limitation of Liability*), 11 (*Confidentiality*), and 12 (*Miscellaneous Provisions*).

IN WITNESS WHEREOF, each Party has caused this Agreement to be executed by a duly authorized representative as of the Effective Date.

TherapeuticsMD, Inc.

By: /s/ Marlan Walker
Name: Marlan Walker
Title: Chief Executive Officer
Date: August 15, 2023

JZ Advisory Group

By: /s/ Joe Ziegler
Name: Joe Ziegler
Title: CEO
Date: August 15, 2023

EXHIBIT A

FORM OF STATEMENT OF WORK #1
TO MASTER SERVICES AGREEMENT DATED JULY 15, 2023

This **STATEMENT OF WORK #1** ("***SOW***") is effective as of the date of last signature (" ***SOW Effective Date***"), to the Master Services Agreement ("***MSA***"), signed contemporaneously with this SOW, by and between **TherapeuticsMD, Inc.**, a Nevada corporation maintaining its offices at 6800 Broken Sound Parkway NW, Third Floor, Boca Raton, Florida 33487 ("***TherapeuticsMD***") and **JZ Advisory Group**, a Florida limited liability company maintaining offices at 1051 Hillsboro Mile, PH2, Hillsboro Beach, Florida 33062 ("***Company***"). TherapeuticsMD and Company are sometimes referred to herein individually as a "**Party**" and collectively as the "**Parties**."

RECITALS:

WHEREAS, the Parties entered into the MSA, which outlines the rights and obligations of the Parties with respect to the conduct of services to be performed by Company; and

WHEREAS, in accordance with Section 2 of the MSA, the Parties wish to enter into this SOW for the purpose of describing the Services to be performed in connection with a particular Project.

NOW, THEREFORE, in consideration of the foregoing premises, and the mutual promises and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. DEFINITIONS:

Any capitalized terms not otherwise defined herein will have the meaning set forth in the MSA.

2. SERVICES:

Company will provide the Services as mutually agreed by the Parties. The Services will include at least (1) Joseph Ziegler serving as the Principal Financial Officer of TherapeuticsMD upon the resignation of the incumbent Principal Financial Officer, including undertaking all acts related thereto, including participating in the preparation of, reviewing, and signing the Company filings with the SEC as customary of Principal Financial Officers serving in public corporations, and (2) periodically, as needed, meeting with the other consultants providing financial services to TherapeuticsMD to stay abreast of the TherapeuticsMD's financial condition and circumstances, and (3) providing advice to the Board of Directors and Chief Executive Officer of TherapeuticsMD.

3. TERM:

The term of this SOW will commence as of August 15, 2023 and will terminate at completion of the Services, unless earlier terminated in accordance with the terms of the MSA.

4. DESIGNATED COMPANY AND THERAPEUTICSMD EMPLOYEES FOR REPORTING PURPOSES:

Joseph Ziegler will be the Coordinator appointed by Company.
Marlan Walker will be the designated TherapeuticsMD employee for reporting purposes.

5. COMPENSATION*:*

(a) ("***Compensation***") TherapeuticsMD will pay Company in accordance $10,000 a month for Joseph Ziegler to serve as the Principal Financial Officer of TherapeuticsMD for the third quarter 2023 upon the resignation of the incumbent Principal Financial Officer, which monthly rate will continue unless the parties negotiate in good faith that another rate is necessary to fairly compensate Company. The parties expressly agree and acknowledge that

the initial rate of $10,000 a month is an initial estimate, and the parties expressly agree to negotiate future retainer amounts as necessary to reflect the value of work performed by Company on behalf of TherapeuticsMD. Mr. Ziegler will receive a grant of 7,500 RSUs within two months of the Effective Date, all of which will vest in a single event at the end of one year from the date of grant or upon a Change of Control as set forth in the 2019 Stock Incentive Plan.

(b) The Compensation represents the total and complete price and costs to be paid to Company by TherapeuticsMD with respect to this Project. Prior to attempting to charge TherapeuticsMD for any additional fees or costs with respect to this Project, Company will: (i) provide TherapeuticsMD with a detailed description and basis for such additional fees and costs; and (ii) obtain TherapeuticsMD's written authorization prior to commencing any work related thereto.

6. MISCELLANEOUS:

(a) In addition to the terms set forth in this SOW, Company will also comply with all of the terms and conditions of the MSA, all of which will govern this SOW, the Project and the Services. The MSA will remain unchanged and in full force and effect in accordance with its original terms.

(b) Each Party hereby represents and warrants that it has fully power and authority to enter into this SOW.

(c) This SOW may be executed in counterparts, each of which will constitute an original, and all of which, when taken together, will constitute one and the same instrument

IN WITNESS WHEREOF, each Party has caused this SOW to be executed by a duly authorized representative as of the SOW Effective Date.

TherapeuticsMD, Inc.

By: /s/ Marlan Walker
Name: Marlan Walker
Title: Chief Executive Officer
Date: August 15, 2023

JZ Advisory Group

By: /s/ Joe Ziegler
Name: Joe Ziegler
Title: CEO
Date: August 15, 2023

Exhibit 31.1

Certification of Chief Executive Officer

I, Marlan D. Walker, certify that:

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

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

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

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

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

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

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

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

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

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

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

Date: November 14, 2023

/s/ Marlan D Walker
Marlan D. Walker
Principal Executive Officer

Exhibit 31.2

Certification of Principal Financial Officer

I, Joseph Ziegler, certify that:

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

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

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

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

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

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

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

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

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

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

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

Date: November 14, 2023

/s/ Joseph Ziegler
Joseph Ziegler
Principal Financial Officer

Exhibit 32.1

Section 1350 Certification of Chief Executive Officer

In connection with the quarterly report of TherapeuticsMD, Inc. (the "Company") on Form 10-Q for the quarterly period ended September 30, 2023 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Marlan D. Walker, Chief Executive Officer of the Company, certify, to my best knowledge and belief, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

(1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a) or 78o(d)); and

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

Date: November 14, 2023

/s/ Marlan D. Walker
Marlan D. Walker
Principal Executive Officer

The foregoing certification is being furnished as an exhibit to the Report pursuant to Item 601(b)(32) of Regulation S-K and Section 906 of the Sarbanes-Oxley Act of 2002 and, accordingly, is not being filed with the Securities and Exchange Commission as part of the Report and is not to be incorporated by reference into any filing of the Company under the Securities Act of 1933 or the Securities Exchange Act of 1934 (whether made before or after the date of the Report, irrespective of any general incorporation language contained in such filing).

Exhibit 32.2

Section 1350 Certification of Principal Financial Officer

In connection with the quarterly report of TherapeuticsMD, Inc. (the "Company") on Form 10-Q for the quarterly period ended September 30, 2023 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Joseph Ziegler, Principal Financial Officer of the Company, certify, to my best knowledge and belief, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

(1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a) or 78o(d)); and

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

Date: November 14, 2023

/s/ Joseph Ziegler
Joseph Ziegler
Principal Financial Officer

The foregoing certification is being furnished as an exhibit to the Report pursuant to Item 601(b)(32) of Regulation S-K and Section 906 of the Sarbanes-Oxley Act of 2002 and, accordingly, is not being filed with the Securities and Exchange Commission as part of the Report and is not to be incorporated by reference into any filing of the Company under the Securities Act of 1933 or the Securities Exchange Act of 1934 (whether made before or after the date of the Report, irrespective of any general incorporation language contained in such filing).