

EMISPHERE TECHNOLOGIES INC

FORM 8-K (Current report filing)

Filed 12/09/16 for the Period Ending 12/08/16

Address	240 CEDAR KNOLLS RD. SUITE 200 CEDAR KNOLLS, NJ 07927
Telephone	973-532-8000
CIK	0000805326
Symbol	EMIS
SIC Code	2834 - Pharmaceutical Preparations
Industry	Biotechnology & Medical Research
Sector	Healthcare
Fiscal Year	12/31

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549**

FORM 8-K

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

Date of Report (Date of earliest event reported): December 8, 2016

EMISPHERE TECHNOLOGIES, INC.
(Exact name of registrant as specified in its charter)

DELAWARE
(State or other jurisdiction
of incorporation)

000-17758
(Commission
File Number)

13-3306985
(I.R.S. Employer
Identification No.)

**4 Becker Farm Road,
Suite 103, Roseland, New Jersey**
(Address of principal executive offices)

07068
(Zip Code)

Registrant's telephone number, including area code: 973-532-8000

Not Applicable
(Former name or former address, if changed since last report.)

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

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
 - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
 - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
 - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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Item 1.01. Entry into a Material Definitive Agreement.

On December 8, 2016, Emisphere Technologies, Inc., a Delaware corporation (the “Company”), entered into the following agreements: (a) an Agreement (the “Agreement”) by and among the Company and (i) MHR Capital Partners Master Account LP, a limited partnership organized in Anguilla, British West Indies (the “Master Account”), (ii) MHR Capital Partners (100) LP, a Delaware limited partnership (the “Capital Partners (100)”), (iii) MHR Institutional Partners II LP, a Delaware limited partnership (the “Institutional Partners II”) and (iv) MHR Institutional Partners IIA LP, a Delaware limited partnership (the “Institutional Partners IIA”), each of Master Account, Capital Partners (100), Institutional Partners II and Institutional Partners IIA shall be referred to herein as the “MHR Funds”), (b) Amendment No. 4 (the “Amendment No. 4”) to the Development and License Agreement dated June 21, 2008 (the “Original Agreement”) by and among the Company and NOVO NORDISK A/S (the “Novo Nordisk”), as amended by the Amendment to the Original Agreement, effective as of November 13, 2008 (the “Amendment No. 1”), Side Letter to the Original Agreement, dated March 9, 2009 (the “Side Letter”), Amendment No. 2 to the Original Agreement, effective as of April 26, 2013 (the “Amendment No. 2”) and Amendment No. 3 to the Original Agreement, effective as of October 13, 2015 (the “Amendment No. 3”) and, collectively with the Original Agreement, Amendment No. 1, the Side Letter and Amendment No. 2, the “GLP-1 Agreement”), by and among the Company, Novo Nordisk and the MHR Funds, and (c) a Waiver (the “Waiver”) by the MHR Funds to the Company. The transactions contemplated by the Agreement, Amendment No. 4 and the Waiver are collectively referred to herein as the “Amendment and Waiver Transaction.”

Pursuant to the terms of Amendment No. 4, the GLP-1 Agreement is amended to provide that, among other things, Novo Nordisk will pay directly to the MHR Funds a portion of any royalties payable to the Company under the terms of the GLP-1 Agreement equal to .5% on net sales for any licensed product subject to the GLP-1 Agreement.

Pursuant to the terms of the Agreement, among other things, (a) upon the first commercial sale of a product licensed under the GLP-1 Agreement in the United States or the European Union (the “First Commercial Sale”), the outstanding principal amount under the Loan Agreement, dated as of August 20, 2014, by and between the Company and the MHR Funds (the “Loan Agreement”), shall be reduced by \$7,000,000, (b) any sale or other disposition of all or any portion of the Company’s business or assets relating to products containing the Company’s proprietary SNAC delivery agent in combination with Vitamin B12 (a “Designated Product”) are acknowledged to constitute an asset sale that would require the consent of the MHR Funds pursuant to both the Loan Agreement and the Second Amended and Restated 13% Senior Secured Convertible Notes, dated as of August 20, 2014, by the Company in favor of each of the MHR Funds (the “Convertible Notes”), and (c) upon termination of the GLP-1 Agreement (x) at any time prior to the First Commercial Sale, (y) at any time within thirty (30) months after the First Commercial Sale (such period, the “Marketing Period”) or (z) at any time after the Marketing Period if, prior to termination, there is, within one year of such termination, (I) a failure to obtain or maintain regulatory approval for a product licensed under the GLP-1 Agreement or (II) any adverse safety or efficacy issues arising in connection with the use of a licensed product that results in the withdrawal of the Licensed Product or any action by a

Regulatory Authority, then the MHR Funds shall have the right to receive a royalty of 0.5% on net sales by Novo Nordisk of any single product incorporating any of the Company's proprietary delivery agents for which royalties on net sales are payable (the "Assigned Royalty") under any existing or future agreement with Novo Nordisk (the "Novo Nordisk License Agreement"). Pursuant to the Agreement, the MHR Funds shall, from time to time and at any time, elect which single product licensed under any Novo Nordisk License Agreement to which the Assigned Royalty should apply (such election, the "Royalty Assignment Election"). Pursuant to the terms of the Agreement, the Company shall pay all fees and expenses of the MHR Funds incurred in connection with the Amendment and Waiver Transaction.

Pursuant to the terms of the Waiver, among other things, (a) the MHR Funds irrevocably waives the requirements under (i) the Loan Agreement, (ii) the Convertible Notes, (iii) the Second Amended and Restated Convertible Reimbursement Promissory Notes, dated as of August 20, 2014, by the Company in favor of the MHR Funds (the "Reimbursement Notes") and (iv) the Second Amended and Restated Senior Secured Convertible Bridge Promissory Notes, dated as of August 20, 2014, by the Company in favor of each of the MHR Funds ("Bridge Notes"), in each case that obligate the Company to mandatorily prepay (the "Prepayment Obligations") amounts outstanding thereunder following receipt of Extraordinary Cash Proceeds or Cash Proceeds (the Extraordinary Cash Proceeds and Cash Proceeds collectively, the "Proceeds") solely with respect to \$14 million received by the Company from Novo Nordisk in connection with entry into Amendment No. 3, (b) subject to (c) and (d) below, the MHR Funds irrevocably waive the Prepayment Obligations for Proceeds received by the Company prior to the earlier of (x) October 31, 2018, and (y) the date immediately following the date that the Company receives Proceeds during any consecutive 12 month period in excess of \$5,000,000 in the aggregate, (c) the MHR Funds do not waive any Prepayment Obligation with respect to Proceeds received by the Company in connection with any sale, license or disposition of all or any portion of the Company's business or assets related to a Designated Product; (d) if Proceeds received by the Company during any consecutive 12 month period exceed \$5,000,000 in the aggregate, the Company shall be required to mandatorily prepay 50% of such Proceeds that exceed \$5,000,000; (e) the MHR Funds irrevocably waive any rights to and payments of the Net Sales Royalty for the year ended December 31, 2015; and (f) the MHR Funds irrevocably waives any event of default under the Loan Agreement and Convertible Notes that, in either case, results from the Company's failure to meet any Eligen B12 Net Sales Milestone specified in the Loan Agreement and Convertible Notes. Capitalized terms used in the foregoing paragraph have the respective meanings ascribed thereto in the Waiver, unless otherwise defined herein.

The foregoing summaries of Amendment No. 4, the Agreement and the Waiver do not purport to be complete and are qualified in their entirety by the full text of Amendment No. 4, the Agreement and the Waiver, respectively, each of which is attached hereto.

A copy of the Company's press release, dated December 9, 2016, announcing the Amendment and Waiver Transaction, is filed as Exhibit 99.1 to this Current Report on Form 8-K and is incorporated herein by reference.

Copies of the Convertible Notes, Reimbursement Notes, Bridge Notes and Loan Agreement were filed by the Company in its Quarterly Report on Form 10-Q for the quarter ended September 30, 2014, and a summary of their material terms was filed in the Company's Current Report on Form 8-K filed with the SEC on August 21, 2014.

Copies of the Original Agreement, Amendment No. 1, Amendment No. 2 and Amendment No. 3, and a summary of their material terms, were filed in the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2008, Current Report on Form 8-K filed with the SEC on April 30, 2013, and Quarterly Report on Form 10-Q for the quarter ended September 30, 2015, respectively.

Item 9.01 Financial Statements and Exhibits.

Exhibit No.	Description
4.1	Waiver, dated December 8, 2016, by the MHR Funds
10.1	Agreement, dated December 8, 2016, by and among the Company and the MHR Funds
10.2	Amendment No. 4 to the Development and License Agreement, dated December 8, 2016, by and among the Company, the MHR Funds and Novo Nordisk
99.1	Press Release of Emisphere Technologies, Inc., issued December 9, 2016

SIGNATURES

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

December 9, 2016

Emisphere Technologies, Inc.

By: */s/ Alan L. Rubino*

Name: Alan L. Rubino

Title: President & Chief Executive Officer

MHR Fund Management LLC

1345 Avenue of the Americas, 42nd Floor

New York, NY 10105

Telephone: (212) 262-0005

Facsimile: (212) 262-9356

December 8, 2016

Emisphere Technologies, Inc.
4 Becker Farm Road, Suite 103
Roseland, NJ 07068, USA
Attention: President and Chief Executive Officer

Re: Waiver Letter

Ladies and Gentlemen:

Reference is made to (a) the Senior Secured Loan Agreement (as amended, restated or otherwise modified from time to time, the "Loan Agreement"), dated as of August 20, 2014, by and among Emisphere Technologies, Inc. (the "Company") and (i) MHR Capital Partners Master Account LP, (ii) MHR Capital Partners (100) LP, (iii) MHR Institutional Partners II LP and (iv) MHR Institutional Partners IIA LP (each, an "MHR Fund" and, collectively, the "MHR Funds"); (b) the Second Amended and Restated 13% Senior Secured Convertible Notes, dated as of August 20, 2014, by the Company in favor of each of the MHR Funds (the "Convertible Notes"); (c) the Second Amended and Restated Convertible Reimbursement Promissory Notes, dated as of August 20, 2014, by the Company in favor of each of the MHR Funds (the "Reimbursement Notes"); (d) the Second Amended and Restated Senior Secured Convertible Bridge Promissory Note, dated as of August 20, 2014, by the Company in favor of each of the MHR Funds (the "Bridge Notes"); (e) the Royalty Agreement, dated as of August 20, 2014 by and between the Company and the MHR Funds (the "Royalty Agreement"); and (f) the Development and License Agreement, dated as of June 21, 2008, by and among the Company and Novo Nordisk A/S, a Danish corporation ("Novo Nordisk"), as amended by the Amendment to the Development and License Agreement, effective as of November 13, 2008, Side Letter to the Development and License Agreement, dated March 9, 2009, Amendment No. 2 to the Development and License Agreement, effective as of April 26, 2013, Amendment No. 3 to the Development and License Agreement, effective as of October 13, 2015 and Amendment No. 4 to the Development and License Agreement, effective December [], 2016 (as amended, the "GLP-1 License Agreement"). All terms used but not defined herein shall have the meaning assigned to such term in the Loan Agreement.

WHEREAS, under Section 4(b) of the Loan Agreement and Section 4(b)(ii) of the Convertible Notes, respectively, the Company is required to mandatorily prepay amounts outstanding thereunder following receipt of "Extraordinary Cash Proceeds" (as defined in the Loan Agreement and the Convertible Notes, respectively);

WHEREAS, under Section 4(a) of the Bridge Notes and Reimbursement Notes, respectively, the Company is required to mandatorily prepay amounts outstanding thereunder following receipt of "Cash Proceeds" (as defined in the Bridge Notes and Reimbursement Notes, respectively);

WHEREAS, on October 26, 2015, the Company received \$14 million from Novo Nordisk in connection with entry into that certain Amendment No. 3 to the Development and License Agreement, effective as of October 13, 2015, by and between the Company and Novo Nordisk (the “2015 Novo Nordisk Proceeds”);

WHEREAS, the 2015 Novo Nordisk Proceeds constitute “Cash Proceeds” for purposes of the Reimbursement Notes and the Bridge Notes and “Extraordinary Cash Proceeds” for purposes of the Loan Agreement and the Convertible Notes, and as such, 50% of the 2015 Novo Nordisk Proceeds are required to be used to prepay the Reimbursement Notes in full, and partially prepay amounts outstanding under the Loan Agreement;

WHEREAS, under Section 2 of the Royalty Agreement, the Company is obligated to pay to the MHR Funds certain amounts as a royalty in respect of Net Sales of Designated Products (as defined in the Royalty Agreement) during any applicable Fiscal Year (as defined in the Royalty Agreement) (the “Net Sales Royalty”);

WHEREAS, under Section 8(a)(xiii) of the Loan Agreement, the failure of the Company to achieve the milestones with respect to Net Sales (as defined in the Loan Agreement) of Eligen-B12 during the Fiscal Years (as defined in the Loan Agreement) ending December 31, 2016, December 31, 2017, December 31, 2018 and December 31, 2019, as set forth on part II of Exhibit D of the Loan Agreement, on or prior to the applicable milestone deadlines set forth thereon (collectively, the “Eligen-B12 Net Sales Milestones”) would result in the occurrence of an Event of Default (as such term is defined in the Loan Agreement) under the Loan Agreement;

WHEREAS, under Section 8(a)(xiii) of the Convertible Notes, the failure of the Company to achieve the Eligen-B12 Net Sales Milestones, as set forth on part A of Exhibit E of the Convertible Notes, on or prior to the applicable milestone deadlines set forth thereon would result in the occurrence of an Event of Default (as such term is defined in the Convertible Notes) under the Convertible Notes; and

WHEREAS, under Section 9(vii) of the Bridge Notes and Section 9(viii) of the Reimbursement Notes, respectively, an Event of Default (as defined therein) under the Loan Agreement or the Convertible Notes would result in an Event of Default under the Bridge Notes and Reimbursement Notes, respectively.

NOW, THEREFORE, the MHR Funds agree as follows:

1. Waiver of 2015 Novo Nordisk Proceeds Payment. The requirements under (i) Section 4(b) of the Loan Agreement, (ii) Section 4(b)(ii) of the Convertible Notes, (iii) Section 4(a) of the Reimbursement Notes and (iv) Section 4(a) of the Bridge Notes, in each case that obligate the Company to mandatorily prepay amounts outstanding thereunder following receipt of “Extraordinary Cash Proceeds,” in the case of the Loan Agreement and the Convertible Notes, and “Cash Proceeds” in the case of the Reimbursement Notes and the Bridge Notes, in each case, are hereby irrevocably waived solely with respect to the 2015 Novo Nordisk

Proceeds (the “Waived Payment”). For the avoidance of doubt, the Waived Payment shall not reduce or otherwise affect the outstanding principal of or balance accrued under any of the Loan Agreement, the Convertible Notes, the Reimbursement Notes or the Bridge Notes and the Waived Payment does not constitute any waiver (except to the extent expressly set forth in this Section 1) or amendment of the Loan Agreement, the Convertible Notes, the Reimbursement Notes or the Bridge Notes in any respect.

2. Limited Waiver of Extraordinary Cash Proceeds.

- a. Subject to Section 2.b below, the MHR Funds hereby irrevocably waive the requirements under (i) Section 4(b) of the Loan Agreement, (ii) Section 4(b)(ii) of the Convertible Notes, (iii) Section 4(a) of the Reimbursement Notes and (iv) Section 4(a) of the Bridge Notes, in each case that obligate the Company to mandatorily prepay amounts outstanding thereunder following the receipt by the Company of “Extraordinary Cash Proceeds,” in the case of the Loan Agreement and the Convertible Notes, and “Cash Proceeds” in the case of the Reimbursement Notes and the Bridge Notes, but if, and only if, such proceeds are actually received by the Company prior to the Waiver Termination Date (as defined below). The “Waiver Termination Date” shall mean the earlier of (x) October 31, 2018 and (y) the date immediately following the date that the Company or its Subsidiaries actually receives “Extraordinary Cash Proceeds,” in the case of the Loan Agreement and the Convertible Notes, and “Cash Proceeds” in the case of the Reimbursement Notes and the Bridge Notes, during any consecutive twelve (12) month period in excess of \$5,000,000 in the aggregate.
- b. Notwithstanding Section 2.a above:
 - i. the MHR Funds do not waive any obligation of the Company under (i) Section 4(b) of the Loan Agreement, (ii) Section 4(b)(ii) of the Convertible Notes, (iii) Section 4(a) of the Reimbursement Notes or (iv) Section 4(a) of the Bridge Notes, in each case, that obligate the Company to mandatorily prepay amounts outstanding thereunder following the receipt by the Company of “Extraordinary Cash Proceeds,” in the case of the Loan Agreement and the Convertible Notes, and “Cash Proceeds” in the case of the Reimbursement Notes and the Bridge Notes, to the extent such Extraordinary Cash Proceeds and/or any Cash Proceeds are received by the Company or any of its Subsidiaries in connection with any direct or indirect sale, license or disposition of all or any portion of the Company’s business or assets relating to Designated Products (as such term is defined in the Royalty Agreement); and
 - ii. if Extraordinary Cash Proceeds and/or Cash Proceeds received by the Company or its Subsidiaries during any consecutive twelve (12) month period exceed \$5,000,000 in the aggregate, the Company shall be required to mandatorily prepay an amount equal to fifty percent (50%) of the portion of such Extraordinary Cash Proceeds and/or Cash Proceeds received during such twelve (12) month period that exceeds \$5,000,000 in accordance with the prepayment procedures set forth in the Loan Agreement, the Convertible Notes, the Reimbursement Notes and the Bridge Notes, as applicable.

3. Limited Waiver of Net Sales Royalty. The MHR Funds hereby irrevocably waive any and all rights of the MHR Funds to and payments of the Net Sales Royalty for the Fiscal Year ended December 31, 2015 (the “2015 Net Sales Royalty Waiver”). For the avoidance of doubt, the 2015 Net Sales Royalty Waiver applies solely with respect to the Net Sales Royalty for the Fiscal Year ended December 31, 2015. The 2015 Net Sales Royalty Waiver shall not constitute any waiver (except to the extent expressly set forth in this Section 3) or amendment of the Royalty Agreement.
4. Waiver of Eligen B12 Milestones. The MHR Funds hereby irrevocably waive (i) any Event of Default (as defined in the Loan Agreement) under Section 8(a)(xiii) of the Loan Agreement and (ii) any Event of Default (as defined in the Convertible Notes) under Section 8(a)(xiii) of the Convertible Notes that, in either case, may arise directly as a result of the Company’s failure to meet the Eligen B12 Net Sales Milestones, whether such failure arises from any state of facts that have already occurred or from any state of facts that may occur in the future.
5. This waiver shall be governed and construed in accordance with the internal laws of the State of New York, without regard to principles of conflicts of law and each party to shall consent to the exclusive jurisdiction of the courts of New York in any action arising out of the matters set forth in, or related to the validity or enforceability of such agreements.
6. Except as expressly set forth herein, the Loan Agreement, the Convertible Notes, the Bridge Notes, the Reimbursement Notes and the Royalty Agreement are unmodified and remain in full force and effect. Execution of this waiver by the MHR Funds does not and shall not constitute a waiver of or otherwise affect any rights or remedies to which the MHR Funds are or may at any time be entitled pursuant to the Loan Agreement, the Convertible Notes, the Bridge Notes, the Reimbursement Notes or the Royalty Agreement nor, except as expressly set forth herein, shall the same constitute at any time a waiver of any default or event of default with respect to the Loan Agreement, the Convertible Notes, the Bridge Notes, the Reimbursement Notes or the Royalty Agreement. Except as expressly set forth herein, this waiver shall not be used in connection with or affect any other requests by the Company to the MHR Funds under either the Loan Agreement, the Convertible Notes, the Bridge Notes, the Reimbursement Notes or the Royalty Agreement. In furtherance of the foregoing and for the avoidance of doubt, this waiver shall not be deemed to be, or construed as a waiver of, the MHR Funds’ right to consent, under any of the Loan Agreement, Convertible Notes or the Amended and Restated Pledge and Security Agreement, dated as of August 20, 2014, between the Company and MHR Institutional Partners IIA LP, including without limitation, to the direct or indirect sale, license or disposition of all or any portion of the Company’s business or assets relating to Designated Products (as such term is defined in the Royalty Agreement).

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Very truly yours,

MHR Institutional Partners II LP

By: MHR Institutional Advisors II LLC,
its General Partner

By: /s/ Janet Yeung
Name: Janet Yeung
Title: Authorized Signatory

MHR Institutional Partners IIA LP

By: MHR Institutional Advisors II LLC,
its General Partner

By: /s/ Janet Yeung
Name: Janet Yeung
Title: Authorized Signatory

MHR Capital Partners Master Account LP

By: MHR Advisors LLC,
its General Partner

By: /s/ Janet Yeung
Name: Janet Yeung
Title: Authorized Signatory

MHR Capital Partners (100) LP

By: MHR Advisors LLC,
its General Partner

By: /s/ Janet Yeung
Name: Janet Yeung
Title: Authorized Signatory

[MHR/Emisphere Waiver]

AGREEMENT

THIS AGREEMENT (this “Agreement”) is entered into as of December 8, 2016, by and among Emisphere Technologies, Inc., a Delaware corporation (the “Company”), and (i) MHR Capital Partners Master Account LP, a limited partnership organized in Anguilla, British West Indies (“Master Account”), (ii) MHR Capital Partners (100) LP, a Delaware limited partnership (“Capital Partners (100)”), (iii) MHR Institutional Partners II LP, a Delaware limited partnership (“Institutional Partners II”) and (iv) MHR Institutional Partners IIA LP, a Delaware limited partnership (“Institutional Partners IIA”). Each of Master Account, Capital Partners (100), Institutional Partners II and Institutional Partners IIA shall be referred to herein as a “MHR Fund” and collectively as the “MHR Funds”.

Reference is made to (a) the Senior Secured Loan Agreement, dated as of August 20, 2014, by and among the Company and the MHR Funds (as amended, restated or otherwise modified from time to time, the “Loan Agreement”); (b) the Second Amended and Restated 13% Senior Secured Convertible Notes, dated as of August 20, 2014, by the Company in favor of each of the MHR Funds (the “Convertible Notes”); (c) the Second Amended and Restated Senior Secured Convertible Reimbursement Promissory Notes, dated as of August 20, 2014, by the Company in favor of each of the MHR Funds (the “Reimbursement Notes”); (d) the Second Amended and Restated Senior Secured Convertible Bridge Promissory Notes, dated as of August 20, 2014, by the Company in favor of each of the MHR Funds (the “Bridge Notes”); (e) the Royalty Agreement, dated as of August 20, 2014 by and between the Company and the MHR Funds (the “Royalty Agreement”); (f) the Development and License Agreement, dated as of June 21, 2008, by and among the Company and Novo Nordisk A/S, a Danish corporation (“Novo Nordisk”), as amended by the Amendment to the Development and License Agreement, effective as of November 13, 2008, Side Letter to the Development and License Agreement, dated March 9, 2009, Amendment No. 2 to the Development and License Agreement, effective as of April 26, 2013, Amendment No. 3 to the Development and License Agreement, effective as of October 13, 2015 and Amendment No. 4 to the GLP-1 Development and License Agreement, effective as of December [], 2016 (“Amendment No. 4”) (as amended, the “GLP-1 License Agreement”); (g) the Development and License Agreement, dated as of December 20, 2010, by and between the Company and Novo Nordisk (the “Insulin License Agreement”) and (h) the Development and License Agreement, dated as of October 13, 2015, by and between the Company and Novo Nordisk (the “Expansion Agreement”, and collectively with the GLP-1 License Agreement and the Insulin License Agreement, as each may be amended from time to time, the “Novo Nordisk License Agreements”).

WHEREAS, concurrently herewith, Novo Nordisk, the Company and the MHR Funds are entering into that certain Amendment No. 4, pursuant to which, *inter alia*, Novo Nordisk agrees to pay to the MHR Funds directly a portion of the royalty payments that would otherwise be paid to the Company pursuant to the GLP-1 License Agreement; and

WHEREAS, concurrently herewith, the Company and the MHR Funds are entering into that certain waiver (the “Waiver”), pursuant to which the MHR Funds agree to, *inter alia*, waive receipt of certain payments, including the 2015 Novo Nordisk Proceeds (as defined in the Waiver), on the terms and subject to the conditions set forth therein.

NOW THEREFORE, in consideration of the mutual covenants and conditions set forth herein, the sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

SECTION 1. LOAN REDUCTION; ACKNOWLEDGEMENT

(a) The Company and the MHR Funds hereby agree that immediately and automatically upon the First Commercial Sale (as such term is defined in the GLP-1 License Agreement) of a Licensed Product (as such term is defined in the GLP-1 License Agreement) in the United States or the European Union (including the United Kingdom even if the United Kingdom subsequently ceases to be part of the European Union) that would result in any payment to the MHR Funds of any royalty pursuant to Section 1.a, 1.b or 1.c of Amendment No. 4:

(i) the outstanding principal amount of the Loans (as defined in the Loan Agreement) pursuant to the Loan Agreement shall be automatically and irrevocably reduced by an amount equal to \$7,000,000 (the "Loan Reduction Amount"), which Loan Reduction Amount may be allocated among the Lenders (as such term is defined in the Loan Agreement) as determined by the MHR Representative (as such term is defined in the Loan Agreement) in its sole discretion, and

(ii) the MHR Funds each agree to irrevocably, absolutely and unconditionally waive any claims against the Company arising in relation to the Loan Reduction Amount and agree to forgive, cancel and discharge the Company from the obligation to repay the Loan Reduction Amount.

(b) Except as specifically provided in Section 1(a) hereof, each of the Company and the MHR Funds irrevocably and unconditionally acknowledge and agree that the Loan Agreement and the underlying financial obligations of the Company under the Loan Agreement remain in full force and effect.

(c) Each of the Company and the MHR Funds acknowledge and agree that any direct or indirect sale, lease, conveyance or other disposition (other than to any Subsidiary of the Company, and assuming a fair market value of at least \$50,000) of all or any portion of the Company's business or assets relating to Designated Products (as such term is defined in the Royalty Agreement), shall constitute an "Asset Sale" as such term is defined in the Loan Agreement and Convertible Notes, for which the consent of the MHR Funds is required pursuant to Section 7(l) of the Loan Agreement and Convertible Notes, respectively.

SECTION 2. RIGHTS OF THE MHR FUNDS UNDER THE NOVO NORDISK LICENSE AGREEMENTS

(a) Royalty Assignment. If the GLP-1 License Agreement is terminated by Novo Nordisk (x) at any time prior to the First Commercial Sale, (y) at any time within thirty (30) months after the First Commercial Sale (such period, the "Marketing Period") or (z) at any time after the Marketing Period, if there shall have been within one (1) year prior to such termination date (I) a failure to obtain or maintain any Regulatory Approval (as such term is defined in the GLP-1 License Agreement) or (II) any adverse safety or efficacy issues arising in connection with the use of a Licensed Product prior to the termination date that results (whether

prior to, on or following the termination date) in either the withdrawal of such Licensed Product from the market or in any action by any Regulatory Authority relating to the License Product, including any action to require any change in the labelling requirements applicable to the Licensed Product, then:

(i) the MHR Funds shall have a right to receive, and the Company shall pay in accordance with this Section 2(a)(i), a royalty of 0.5% on the net sales (but not, for the avoidance of doubt, in respect of any milestone payments) by Novo Nordisk or any of its Affiliates of any single product (including all dosage forms and line extensions thereof) incorporating any of the Company's proprietary delivery agents for which royalties on net sales are payable (the "Assigned Royalty") under any (a) Novo Nordisk License Agreement or (b) development and license agreement or similar agreement relating to the development or license of any products containing or utilizing the Company's proprietary delivery agents for oral administration entered into between the Company and Novo Nordisk or any of their respective Subsidiaries or Affiliates after the date hereof (a "Future License Agreement"), in accordance with the Royalty Assignment Election made by MHR pursuant to Section 2(a)(ii) below;

(ii) The MHR Funds shall, from time to time and at any time, in their sole and absolute discretion, elect which single product under any Novo Nordisk License Agreement or Future License Agreement to which the Assigned Royalty should apply (such election, the "Royalty Assignment Election"). Once the MHR Funds make a Royalty Assignment Election and receive royalties hereunder with respect thereto, such Royalty Assignment Election shall become irrevocable;

(iii) Any royalty due to the MHR Funds pursuant to this Agreement shall only be paid out of funds actually received by the Company or any of its Subsidiaries from Novo Nordisk or any of its Affiliates under the applicable Novo Nordisk License Agreement or Future License Agreement. Within two (2) Business Days following the Company's or any of its Subsidiary's receipt of any royalties under the agreement to which the Royalty Assignment Election applies in respect of net sales by Novo Nordisk or any of its Affiliates, the Company shall pay to the MHR Funds the Assigned Royalty in United States dollars by bank wire transfer in immediately available funds to such bank account as shall be designated in writing by the MHR Funds from time to time; and

(iv) The Company shall keep complete and accurate records in sufficient detail to enable the amounts payable pursuant to the Assigned Royalty to be determined. Upon request of the MHR Funds, the Company shall permit an independent certified accounting firm of nationally recognized standing selected by the MHR Funds and reasonably acceptable to the Company, to have access during normal business hours to such records of the Company as may be reasonably necessary to verify the accuracy of the royalty reports of the Company. The review by such accounting firm shall be conducted in confidence, provided that a summary of the results of such review may be shared with the MHR Funds and the Company, who shall also keep such summary in confidence, except as required by applicable law. If such accounting firm concludes that additional amounts were owed to the MHR Funds pursuant to the Assigned Royalty, the

Company shall pay such additional amounts within two (2) Business Days of the date the MHR Funds deliver to the Company such accounting firm's written report so concluding. The fees charged by such accounting firm shall be paid by the MHR Funds unless such report identifies additional amounts of at least 5% of the total amounts payable hereunder in any calendar year owing under the Assigned Royalty, in which case the Company shall pay all such fees. Promptly upon the entry by the Company into any Future License Agreement, or any amendment to any of the Novo Nordisk License Agreements, the Company shall provide a copy of such agreement or amendment to the MHR Funds.

(b) Audit Rights. Upon the request of the MHR Funds, the Company will promptly (x) exercise any of its rights or options to conduct any audits or similar reviews or examinations granted pursuant to any of the Novo Nordisk License Agreements or any Future License Agreement and (y) share the results of such audit or similar review or examination with the MHR Funds.

SECTION 3. ADDITIONAL COVENANTS

(a) MHR Protective Provisions. At any time when any Novo Nordisk License Agreement or any Future License Agreement is in effect, the Company shall not, and shall cause its Subsidiaries not to, either directly or indirectly, do, or agree to do, any of the following without the prior written consent of the MHR Funds, and any such act or transaction entered into without such prior written consent shall be null and void ab initio, and of no force or effect:

(i) enter into any Future License Agreement;

(ii) terminate any Novo Nordisk License Agreement or any Future License Agreement;

(iii) amend or modify any Novo Nordisk License Agreement or any Future License Agreement in any material respect, provided that any such amendment or modification that in any manner could reasonably be expected to adversely affect any potential benefit to the MHR Funds under any of the rights granted to any of the MHR Funds pursuant to this Agreement shall be deemed to be material for purposes of this Section 3(a)(iii);

(iv) assign or waive any of the Company's rights under any Novo Nordisk License Agreement or any Future License Agreement;

(v) accept payment from Novo Nordisk pursuant to any Novo Nordisk License Agreement or any Future License Agreement in any form other than cash;

(vi) exercise any audit rights set forth in any Novo Nordisk License Agreement or in any Future License Agreement, including pursuant to Section 7.6 of the Novo Nordisk License Agreements, without providing the MHR Funds with at least thirty (30) days prior written notice;

(vii) sell, lease convey, assign, encumber or otherwise dispose, whether pursuant to a merger, consolidation or otherwise, of any intellectual property owned or

controlled by the Company or any of its Subsidiaries that is either licensed to Novo Nordisk or any of its Affiliates pursuant to any Novo Nordisk License Agreement or any Future License Agreement or to which Novo Nordisk or any of its Affiliates has an option to license (whether on an exclusive or non-exclusive basis); or

(viii) by operation of law or otherwise, merge or consolidate with Novo Nordisk or any of its Affiliates, or sell, transfer or lease or otherwise dispose of all or any substantial part of its assets to Novo Nordisk or any of its Affiliates.

(b) Due Performance. The Company and its Subsidiaries shall perform and comply in all respects with all obligations and covenants required by each of the Novo Nordisk License Agreements and any Future License Agreement to be performed or complied with by the Company and its Subsidiaries.

(c) Notices.

(i) The Company shall notify the MHR Funds of the exercise of any rights by Novo Nordisk under any of the Novo Nordisk License Agreements or any Future License Agreements and provide a detailed description of all material terms relating thereto, including, without limitation, (A) the exercise by Novo Nordisk of any option, or the conversion of a Non-Exclusive Option (as defined in the Expansion Agreement) to an Exclusive Option (as defined in the Expansion Agreement) pursuant to Section 2.2 of the Expansion Agreement and (B) the selection by Novo Nordisk of any Carrier (as defined in the Expansion Agreement) as a Non-Exclusive Program Carrier (as defined in the Expansion Agreement) pursuant to the Expansion Agreement, in all cases within two (2) Business Days of such exercise.

(ii) The Company shall promptly, but in any event no more than two (2) Business Days following the date of delivery to, or receipt from, Novo Nordisk, provide to the MHR Funds a copy of all notifications and reports furnished to it from, or provided to, Novo Nordisk pursuant to any of the Novo Nordisk License Agreements or any Future License Agreements.

(iii) The Company shall promptly, but in any event no more than two (2) Business Days after the Company has knowledge thereof, notify the MHR Funds of any material breach of any of its obligations or covenants under any Novo Nordisk License Agreement or any Future License Agreements, and each other event or circumstance that has or could reasonably be expected to result in the Company's inability to perform any of its obligations or agreements under any Novo Nordisk License Agreement or any Future License Agreements, together with a detailed description of such material breach, event or circumstance, and all actions taken or proposed to be taken in response thereto (any such notice, a "Default Notice"). Upon receipt of any Default Notice, the MHR Funds shall be entitled to take any and all actions reasonably intended to cure any material breach that occurred, or prevent any material breach that may occur as a result of any event or circumstance identified in any Default Notice.

(d) Fees and Expenses. The Company shall pay, promptly, but in no event more than two (2) Business Days following any written request from the MHR Funds, all fees and expenses of the MHR Funds incurred from time to time in connection with the preparation, negotiation, execution and performance of this Agreement, Amendment No. 4 and the Waiver, and the transactions contemplated hereby and thereby, and all fees and expenses in connection with any amendment, consent, waiver or restructuring of any such agreements, and the enforcement of the rights of the MHR Funds under any such agreements, including the fees and expenses of the advisors of the MHR Funds.

SECTION 4. DEFINITIONS. For purposes of this Agreement:

(a) “Affiliate” means, as to any Person, any other Person (i) that, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such Person; or (ii) which, directly or indirectly through one or more intermediaries, is the beneficial or record owner (as defined in Rule 13d-3 of the Exchange Act, as is in effect on the date hereof) of 10% or more of any class of the outstanding voting stock, securities or other equity or ownership interests of such Person; provided that notwithstanding anything else herein to the contrary, no member of the MHR Group shall be deemed to be an Affiliate of the Company. For purposes of this definition, the term “control” (and the correlative terms, “controlled by” and “under common control with”) shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies, whether through ownership of securities or other interests, by contract or otherwise.

(b) “Business Day” means each day that is not a Saturday, Sunday or other day on which commercial banks located in the State of New York are authorized or required by law to be closed.

(c) “Exchange Act” means the Securities Exchange Act of 1934, as amended.

(d) “Person” means any corporation, limited liability company, natural person, firm, joint venture, partnership, trust, unincorporated organization or governmental authority, or any political subdivision, department or agency of any governmental authority.

(e) “MHR Group” means each of the MHR Funds and any Affiliate of any MHR Fund.

(f) “Subsidiary” means (i) as to the Company, any Person in which more than 25% of all equity, membership, partnership or other ownership interests is owned directly or indirectly by the Company or one or more of its Subsidiaries; and (ii) as to any other Person, any Person in which more than 25% of all equity, membership, partnership or other ownership interests is owned directly or indirectly by such Person or by one or more of such Person’s Subsidiaries. Unless otherwise specified in this Agreement, references to a Subsidiary refer to a Subsidiary of the Company.

SECTION 5. MISCELLANEOUS

(a) No Modifications, etc.. The Company hereby renews, reaffirms, ratifies and confirms the terms and provisions of the Convertible Notes, the Reimbursement Notes, the

Bridge Notes and the Loan Agreement. The Company further acknowledges and agrees that (i) the Convertible Notes, the Reimbursement Notes and the Bridge Notes remain in full force and effect without impairment and without modification and (ii) the Loan Agreement remains in full force and effect without impairment and without modification, except as specifically provided in Section 1 hereof, and that except as specifically provided herein no rights or remedies of the MHR Funds have been waived or shall be deemed to have been waived by virtue of the execution and delivery of this Agreement by the parties hereto.

(b) Successors and Assigns. This Agreement shall inure to the benefit of, be binding upon and be enforceable by and against the parties hereto and their respective successors and permitted assigns. This Agreement is not assignable by the Company to any Person whatsoever without the prior written consent of the MHR Funds and any attempted assignment without such written consent shall be null and void. Any MHR Fund may assign this Agreement to any Person without the prior written consent of the Company.

(c) Arbitration. All controversies, claims, and disputes arising out of or relating to this Agreement, including without limitation any alleged violation of its terms, shall be resolved exclusively by final and binding arbitration in New York City. Such arbitration shall be conducted in English by three arbitrators appointed as follows: within 30 days after the alleged breaching party has responded to the non-breaching party's notice of breach, each of the Company and the MHR Funds shall notify the other in writing of the name of one (1) arbitrator it selects, and the two appointed arbitrators will endeavor within the following 30 days to agree upon a third arbitrator, who shall be the chairman of the arbitral tribunal. The arbitration shall be governed by the laws of the state of New York (without regard to conflict of law principles) and the rules of the American Arbitration Association ("AAA"); provided however that the following rules shall apply, even if they conflict with New York law or the AAA rules: (1) the party seeking to establish a breach shall have the burden of proof; (2) the arbitrators shall have (i) the power to order discovery, including depositions; and (ii) broad powers to fashion appropriate relief, whether monetary damages (including, without limitation, future lost profits) or equitable remedies (including, without limitation, injunctive relief) or both; (3) the arbitrators shall award monetary damages, determined in accordance with this Section 5(c), in the event that the arbitrators determine that the likelihood of commercialization of any product for which royalties may become payable to the Company under any of the Novo Nordisk License Agreements or any Future License Agreement is greater than zero; (4) in fashioning appropriate relief, including future lost profits, the arbitrators shall consider, among other things, (i) the likelihood of commercialization of any product for which royalties may become payable to the Company under any of the Novo Nordisk License Agreements or any Future License Agreement, (ii) the dollar amount of any potential royalties due to the Company and, as a result, the MHR Funds pursuant to Amendment No. 4 or this Agreement, and (iii) the estimated time at which any such payments would be paid; (5) the losing party in any arbitration shall pay all costs of the arbitration, including the arbitrators' fees and the entirety of the prevailing party's (or parties') attorneys' and expert fees and (6) the arbitrators shall have the power to determine which party is the prevailing party, and which is the losing party, for purposes of payment of costs and fees, and any party who proves a breach of this Agreement may be the prevailing party even without proof of actual damages.

(d) Notices. All notices and other communications given to any party hereto pursuant to this Note shall be in writing and shall be delivered by hand, fax or email (and in the case of fax or email, receipt confirmed immediately via telephone), or mailed first class postage prepaid, registered or certified mail, addressed as follows:

If to the Company, to:

Emisphere Technologies, Inc.
4 Becker Farm Road, Suite 103
Roseland, NJ 07068
Attention: Alan Rubino, President and Chief Executive Officer
Phone: (973) 532-8000
Fax: (973) 422-0125
Email: arubino@emisphere.com

with a copy to:

Lowenstein Sandler LLP
65 Livingston Avenue
Roseland, NJ 07068
Attention: Michael J. Lerner, Esq.
Phone: (973) 597 6394
Fax: (973) 597 6395
Email: mlerner@lowenstein.com

If to the MHR Funds, to:

MHR Fund Management LLC
1345 Avenue of the Americas, 42nd Floor
New York, NY 10105
Fax number: (212) 262-9356
Attention: Janet Yeung
Phone: (212) 262-0005
Fax: (212) 262-9356
Email: jyeung@mhrfund.com

with a copy to:

O'Melveny & Myers LLP
7 Times Square
New York, NY 10036
Attn: David Schultz, Esq.
Phone: (212) 326-2000
Fax: (212) 326-2061
Email: dschultz@omm.com

Each such notice or other communication shall for all purposes be treated as being effective or having been given when delivered, if delivered personally, by e-mail or facsimile with confirmation of receipt or if by overnight courier or, if sent by mail, upon actual receipt.

(e) Specific Performance. The MHR Funds and the Company agree that, in the event that either of them were to violate any provision of this Agreement or fail to perform any obligation under this Agreement in accordance with its specific terms, the other party would suffer irreparable injury, for which there may be no adequate remedy at law. Consequently, the MHR Funds and the Company agree that, in the event of a breach or threatened breach of this Agreement by any party hereto, the other party shall be entitled, in addition to any other remedies to which they may be entitled at law, to equitable relief, including an injunction, to prevent any breaches and to enforce specifically this Agreement's terms and provisions. The MHR Funds and the Company also agree that any such equitable relief may be sought without the obligation of posting any bond or surety.

(f) Waivers. No failure or delay on the part of the MHR Funds in exercising any right hereunder shall operate as a waiver of, or impair, any such right. No single or partial exercise of any such right shall preclude any other or further exercise thereof or the exercise of any other right. No waiver of any such right or of any obligation of the Company shall be effective unless given in writing and executed by the MHR Funds. No waiver of any such right shall be deemed a waiver of any other right hereunder.

(g) Amendment. This Agreement may be amended only by an instrument in writing executed by the parties hereto.

(h) Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

(i) Headings. The headings of the sections and paragraphs of this Agreement have been inserted for convenience of reference only and do not constitute a part of this Agreement.

(j) Further Assurances. The Company shall do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other agreements, certificates, instruments and documents, as the MHR Funds may reasonably request in order to carry out the intent and accomplish the purposes of this Agreement and the consummation of the transactions contemplated hereby.

[*Signature Page Follows*]

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the day and year first set forth above.

EMISPHERE TECHNOLOGIES, INC.

By: /s/ Alan Rubino

Name: Alan Rubino

Title: President and Chief Executive Officer

[Side Letter Agreement]

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the day and year first set forth above.

**MHR CAPITAL PARTNERS MASTER
ACCOUNT LP**

By: MHR ADVISORS LLC,
its General Partner

By: /s/ Janet Yeung
Name: Janet Yeung
Title: Authorized Signatory

MHR CAPITAL PARTNERS (100) LP

By: MHR ADVISORS LLC,
its General Partner

By: /s/ Janet Yeung
Name: Janet Yeung
Title: Authorized Signatory

MHR INSTITUTIONAL PARTNERS II LP

By: MHR INSTITUTIONAL ADVISORS II LLC,
its General Partner

By: /s/ Janet Yeung
Name: Janet Yeung
Title: Authorized Signatory

MHR INSTITUTIONAL PARTNERS IIA LP

By: MHR INSTITUTIONAL ADVISORS II LLC,
its General Partner

By: /s/ Janet Yeung
Name: Janet Yeung
Title: Authorized Signatory

[Side Letter Agreement]

AMENDMENT NO. 4 TO THE DEVELOPMENT AND LICENSE AGREEMENT

This Amendment No. 4 (“Amendment No. 4”), effective as of December 8, 2016 (the “Amendment Effective Date”), to the Development and License Agreement, executed on June 21, 2008 (the “Original Agreement”), as amended by the Amendment to the Development and License Agreement, effective as of November 13, 2008 (“Amendment No. 1”), Side Letter to the Development and License Agreement, dated March 9, 2009 (the “Side Letter”), Amendment No. 2 to the Development and License Agreement, effective as of April 26, 2013 (“Amendment No. 2”) and Amendment No. 3 to the Development and License Agreement, effective as of October 13, 2015 (“Amendment No. 3” and, collectively with the Original Agreement, Amendment No. 1, the Side Letter and Amendment No. 2, the “Agreement”), is entered into by and among Emisphere Technologies, Inc., a Delaware corporation (“Emisphere”), NOVO NORDISK A/S (“Novo Nordisk”) and, solely for the express purposes set forth in this Amendment No. 4, MHR Capital Partners Master Account LP, a limited partnership organized in Anguilla, British West Indies, MHR Capital Partners (100) LP, a Delaware limited partnership, MHR Institutional Partners II LP, a Delaware limited partnership and MHR Institutional Partners IIA LP, a Delaware limited partnership (each, an “MHR Fund” and, collectively, the “MHR Funds”).

WITNESSETH:

WHEREAS, pursuant to Section 14.1 (last sentence) of the Agreement, Novo Nordisk and Emisphere may modify or supplement the Agreement in a writing signed by the Parties to the Agreement; and

WHEREAS, Novo Nordisk and Emisphere wish to amend certain provisions of the Agreement to add the MHR Funds as a party to the Agreement solely for the purposes set forth in this Amendment No. 4.

NOW, THEREFORE, in consideration of the mutual covenants, conditions and promises contained herein, the sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

1. Amendments. The Agreement is hereby amended as follows:

a. Section 3.5(a) of the Agreement is hereby amended and restated in its entirety as follows:

“(a) For any Licensed Product Covered by an Issued Patent Claim of Licensed Patents or of Formulation Intellectual Property or Option Agreement Formulation Intellectual Property, Novo Nordisk shall pay directly to (x) Emisphere a royalty of two-and-a-half percent (2.5%) and (y) the MHR Funds a royalty of one-half percent (0.5%), respectively, on all the Net Sales of such Licensed Product(s).”

b. Section 3.5(b) of the Agreement is hereby amended and restated in its entirety as follows:

“(b) For any Licensed Product(s) not Covered by an Issued Patent Claim of Licensed Patents or of Formulation Intellectual Property or Option Agreement

Formulation Intellectual Property in a country, in consideration for Novo Nordisk's use of the Licensed Know-How, Novo Nordisk shall pay directly to (x) Emisphere a Know-How royalty of one-half percent (0.5%) and (y) the MHR Funds a Know-How royalty of one-half percent (0.5%), respectively, on all the Net Sales of such Licensed Product(s) in such country for a period of ten years from the First Commercial Sale in such country of such Licensed Product(s)".

c. Section 3.5(c) of the Agreement is hereby amended and restated in its entirety as follows:

"(c) In the event that the only Issued Patent Claim covering a Licensed Product(s) in a country is an Issued Patent Claim of Licensed Patents or Formulation Intellectual Property or Option Agreement Formulation Intellectual Property which has been solely invented by Novo Nordisk, Novo Nordisk shall pay directly to (x) Emisphere a Know-How royalty of one-half percent (0.5%) and (y) the MHR Funds a Know-How royalty of one-half percent (0.5%), respectively, on all the Net Sales of such Licensed Product(s) in such country."

d. Section 3.5(f) of the Agreement is hereby amended by replacing the first two sentences of Section 3.5(f) with the following:

"Royalty payments shall be calculated and reported to Emisphere and the MHR Funds concurrently for each calendar quarter. All royalty payments due to Emisphere and the MHR Funds under this Agreement shall be paid within thirty (30) calendar days of the end of each calendar quarter."

e. Section 3.5(f) of the Agreement is hereby amended by replacing the penultimate sentence of Section 3.5(f) with the following:

"Each payment to Emisphere and the MHR Funds shall be accompanied by a report, which shall be delivered to each of Emisphere and the MHR Funds, of Net Sales of Licensed Products by Novo Nordisk, its Affiliates and their respective sublicensees in sufficient detail to permit confirmation of the accuracy of the payment made, including, the Net Sales of such Licensed Products in the Territory and country by country, and the royalty payable to Emisphere and the MHR Funds."

f. A new Section 3.5(g) shall be added to the Agreement as follows:

"Any reduction in the royalties payable to Emisphere and the MHR Funds under Sections 3.5(a), 3.5(b) or 3.5(c) of the Agreement (including any reduction pursuant to Sections 3.5(d) or 3.8 of the Agreement) shall first be applied to reduce the amount of royalties payable to Emisphere and, only in the event that such royalties payable to Emisphere have been reduced to zero, shall be applied to reduce the amount of royalties payable to the MHR Funds."

g. Section 3.6 of the Agreement is hereby amended and restated as follows:

“(a) Emisphere shall be responsible for and shall bear any taxes levied upon payments received by Emisphere and Emisphere hereby authorizes Novo Nordisk to withhold such taxes from the payments which are payable to Emisphere in accordance with this Agreement if Novo Nordisk is either required to do so under applicable law or directed to do so by a governmental authority. Upon Emisphere’s written request, Novo Nordisk shall, with respect to the laws of Denmark, reasonably support Emisphere in its legal efforts to minimize any such withholding taxes and provide Emisphere with information about and necessary for any documentation needed to reduce withholding to a legal minimum.

(b) The MHR Funds shall be responsible for and shall bear any taxes levied upon payments received by the MHR Funds and the MHR Funds each hereby authorize Novo Nordisk to withhold such taxes from the payments which are payable to the MHR Funds in accordance with this Agreement if Novo Nordisk is either required to do so under applicable law or directed to do so by a governmental authority. Upon written request of any MHR Fund, Novo Nordisk shall, with respect to the laws of Denmark, reasonably support the MHR Funds in their legal efforts to minimize any such withholding taxes and provide the MHR Funds with information about and necessary for any documentation needed to reduce withholding to a legal minimum.”

h. Section 3.7 of the Agreement is hereby amended and supplemented by inserting the following at the end thereof:

“All payments to be made by Novo Nordisk to the MHR Funds under this Agreement shall be made by wire transfer from Novo Nordisk to the following account(s) of the MHR Funds or to such other account(s) as the MHR Funds shall notify Novo Nordisk in writing from time to time:

JP Morgan Chase
ABA #: 021-000-021
Account Name: JPMCC
Account Number: 066001633
Sub Account Name: MHR Institutional Partners IIA LP
Sub Account Number: 220-36055

i. Section 7.6(i) of the Agreement is hereby amended and restated as follows:

“Where there has been an underpayment, Novo Nordisk shall pay to Emisphere and the MHR Funds, if applicable, the underpayment (together with reasonable and documentable audit costs if applicable) due within thirty (30) days of its receipt of the Auditor’s report. In the case of overpayment by Novo Nordisk, Novo Nordisk may, at its option, offset any future royalty payments payable to Emisphere (and the MHR Funds if such overpayments arose pursuant to Section 3.5 hereof) by the amount of overpayment, or it may request reimbursement from Emisphere (and the MHR Funds if such overpayments arose pursuant to Section 3.5 hereof) within thirty (30) days of its receipt of the Auditor’s report.”

2. No Liability. Notwithstanding anything to the contrary in this Amendment No. 4 or the Agreement, no MHR Fund assumes any direct or indirect, liability, obligation, undertaking, responsibility, deficiency, cost, expense, fine or penalty of any kind, fixed or unfixed, known or unknown, asserted or unasserted, liquidated or unliquidated, contingent or absolute, secured or unsecured, due or undue (“Liability”), of Emisphere under the Agreement or this Amendment No. 4, including, *inter alia*, any Liability of any kind of Emisphere that exists at any time prior to, on or after the Amendment Effective Date. In addition, except as expressly set forth in Section 1(g) of this Amendment No. 4, none of the MHR Funds nor any of their respective Affiliates shall have any Liability to Emisphere or Novo Nordisk under the Agreement or this Amendment No. 4.

3. Indemnification.

(a) Emisphere hereby agrees to indemnify, defend and hold harmless Novo Nordisk (the “Indemnified Party”) from and against any and all Losses incurred or sustained by, or imposed upon, any of them resulting solely from this Amendment No. 4, provided that the Indemnified Party shall not be entitled to indemnification for any Losses resulting from any breach of this Amendment No. 4 by such Indemnified Party.

(b) If the Indemnified Party receives notice of the assertion or commencement of any Action made or brought by any Person who is not a party to this Agreement or an Affiliate of a party to this Agreement (a “Third Party Claim”) against such Indemnified Party with respect to which Emisphere is obligated to provide indemnification under this Amendment No. 4, the Indemnified Party shall give Emisphere reasonably prompt written notice thereof, but in any event not later than thirty (30) calendar days after receipt of such notice of such Third Party Claim. The failure to give such prompt written notice shall not, however, relieve Emisphere of its indemnification obligations, except and only to the extent (i) that Emisphere forfeits rights or defenses by reason of such failure, (ii) as a result of such failure, Emisphere is deprived of its right to recover any payment under its applicable insurance coverage or (iii) Emisphere is otherwise adversely affected or damaged as a result of such failure to give timely notice. Subject to the immediately following sentence, Emisphere shall have the right to assume the defense of any Third Party Claim at Emisphere’s sole expense and by Emisphere’s own counsel by providing written notice of such election to the Indemnified Party within forty-five (45) days of Emisphere’s receipt of written notice of the Third Party Claim, and the Indemnified Party shall cooperate in good faith in such defense. In the event that Emisphere assumes the defense of any Third Party Claim, subject to Section 3(c), it shall have the right to take such action as it deems necessary to avoid, dispute, defend, appeal or make counterclaims pertaining to any such Third Party Claim in the name and on behalf of the Indemnified Party, and the Indemnified Party shall have the right to participate in the defense of any Third Party Claim with counsel selected by it subject to Emisphere’s right to control the defense thereof. The fees and disbursements of such counsel retained by the Indemnified Party shall be at the expense of the Indemnified Party, provided, that if in the reasonable opinion of counsel to the Indemnified Party, (A) there are legal defenses available to an Indemnified Party that are different from or additional to those available to Emisphere or (B) there exists a conflict of interest between Emisphere and the Indemnified Party that cannot be waived, Emisphere shall be liable for the reasonable fees and expenses of counsel to the Indemnified Party in each jurisdiction for which the Indemnified Party determines counsel is required. If Emisphere elects not to defend such

Third Party Claim, the Indemnified Party may defend such Third Party Claim and seek indemnification for any and all Losses based upon, arising from or relating to such Third Party Claim, and Emisphere shall have the right at its expense to participate in the defense of such Third Party Claim, assisted by counsel of its own choosing. Emisphere and the Indemnified Party shall cooperate with each other in all reasonable respects in connection with the defense of any Third Party Claim, including making available records relating to such Third Party Claim.

(c) Settlement of Third Party Claims. Notwithstanding any other provision of this Amendment No. 4, (x) Emisphere shall not enter into settlement of any Third Party Claim without the prior written consent of the Indemnified Party and (y) the Indemnified Party shall not enter into settlement of any Third Party Claim without the prior written consent of Emisphere, in either case which consent will not be unreasonably delayed, conditioned or withheld.

4. Amendments. No amendments or supplements to the provisions of the Agreement amended by this Amendment No. 4 shall be valid and binding unless set forth in a written agreement executed and delivered by Novo Nordisk, Emisphere and the MHR Funds.

5. Governing Law; Jurisdiction. This Amendment No. 4 shall be governed and construed in accordance with the internal laws of the State of New York, USA, without regard to principles of conflicts of law and each party hereto shall consent to the exclusive jurisdiction of the courts of New York in any action arising out of the matters set forth in, or related to the validity or enforceability of this Amendment No. 4.

6. Assignment. Each of the MHR Funds may, in whole or in part, assign or otherwise transfer any of their respective rights and obligations hereunder without the prior written consent of Novo Nordisk or Emisphere. Upon any such assignment or transfer, all references herein to the MHR Funds shall be deemed to be references to such assignee or transferee.

7. Capitalized Terms. Unless otherwise noted, all capitalized terms used and not defined in this Amendment No. 4 shall have the meaning as set out in the Agreement. Solely for the purposes of this Amendment No. 4, the following terms shall have the following meaning:

(a) “Action” shall mean any claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena or investigation of any nature, civil, criminal, administrative, regulatory or otherwise, whether at law or in equity.

(b) “Affiliate” shall mean, with respect to any Person, a Person that directly or indirectly through one or more intermediaries, Controls the first Person, is Controlled by the first Person or is under Common Control with the first Person.

(c) “Control” shall mean (including the correlative terms “Controlling,” “Controlled” and “under Common Control with,”) the possession, directly or indirectly, of the power to direct or cause the direction of management or policies (whether through ownership of securities or any partnership or other ownership interest, by contract or otherwise) of a Person.

(d) “ Losses ” shall mean (i) all debts, Liabilities and obligations owed to or at the behest of any other Person, (ii) all losses, damages, judgments, awards, fines, fees, expenses, penalties and settlements and (iii) all demands, claims, suits, actions, causes of action, proceedings and assessments.

(e) “ Person ” shall mean any individual, corporation, association, company, partnership, limited liability company, joint-stock company or business trust.

8. Terms of Agreement. Except as modified by this Amendment No. 4, the terms of the Agreement shall continue in full force and effect without modification. All references in and to the Agreement (including any annexes, exhibits or schedules thereto) shall be deemed to be references to the Agreement as amended by this Amendment No. 4.

[*Remainder of Page Intentionally Left Blank*]

IN WITNESS WHEREOF, each of the parties hereto have caused this Amendment No. 4 to be duly executed in the name of and on its behalf, as of the Amendment Effective Date.

NOVO NORDISK A/S

By: /s/ Mads Krogsgaard Thomsen
Name: Mads Krogsgaard Thomsen
Title: Chief Science Officer

EMISPHERE TECHNOLOGIES, INC.

By: /s/ Alan L. Rubino
Name: Alan L. Rubino
Title: President and Chief Executive Officer

[Amendment No. 4 to GLP-1 Development and License Agreement]

IN WITNESS WHEREOF, each of the parties hereto have caused this Amendment No. 4 to be duly executed in the name of and on its behalf, as of the Amendment Effective Date.

MHR CAPITAL PARTNERS MASTER ACCOUNT LP

By: MHR Advisors LLC,
its General Partner

By: /s/ Janet Yeung
Name: Janet Yeung
Title: Authorized Signatory

MHR CAPITAL PARTNERS (100) LP

By: MHR Advisors LLC,
its General Partner

By: /s/ Janet Yeung
Name: Janet Yeung
Title: Authorized Signatory

MHR INSTITUTIONAL PARTNERS II LP

By: MHR Institutional Advisors II LLC,
its General Partner

By: /s/ Janet Yeung
Name: Janet Yeung
Title: Authorized Signatory

MHR INSTITUTIONAL PARTNERS IIA LP

By: MHR Institutional Advisors II LLC,
its General Partner

By: /s/ Janet Yeung
Name: Janet Yeung
Title: Authorized Signatory

[Amendment No. 4 to GLP-1 Development and License Agreement]

Emisphere Restructures Debt Agreements, Providing Greater Stability for Business Growth and Expansion

ROSELAND, N.J., December 9, 2016 (GLOBE NEWSWIRE) — Emisphere Technologies, Inc. (OTCBB:EMIS) announced today that it has reached agreement with MHR Fund Management LLC, and certain of its affiliated funds (“MHR”) to waive certain of the terms of the Company’s existing obligations under the loan facility and various promissory notes previously issued to MHR, and the royalty agreement (“Royalty Agreement”) which provides for payments to MHR based on sales of the Company’s Eligen[®] B12 product, in addition to revising the royalty payment terms of the Company’s existing GLP-1 (Semaglutide) Development and License Agreement (“GLP-1 Agreement”) with Novo Nordisk A/S (NYSE:NVO).

Reduction in Principal Loan Amount. MHR agreed to revise the terms of the loan facility to provide for a permanent reduction of \$7 million to the outstanding principal amount owed to MHR. This reduction will become effective upon the first commercial sale of a product under the GLP-1 Agreement.

Suspension of cash sweep and permanent waiver of existing \$7M obligation to MHR. The cash proceeds sweep provided for in both the loan facility and certain of the promissory notes has been suspended until October 2018, except in certain circumstances where proceeds subject to the sweep exceed \$5 million in any twelve month period. In addition, MHR agreed to irrevocably waive the application of the cash proceeds sweep that would have required payment to MHR of approximately \$7 million resulting from proceeds received by the Company from Novo Nordisk in 2015.

Waiver of royalty payments and Eligen[®] B12 sales milestone obligations . MHR further agreed to waive its right to payments owed to it under the Royalty Agreement in respect of net sales of Eligen[®] B12 during the 2015 fiscal year, and any event of default under the loan facility or certain promissory notes resulting from the Company’s failure to timely satisfy future Eligen[®] B12 sales milestones, as specified therein.

Novo Nordisk Royalty Payment to MHR . The payment terms of the GLP-1 Agreement were revised to provide for payment by Novo Nordisk directly to MHR of a portion of any royalties payable to the Company under the terms of the GLP-1 Agreement equal to .5% of net sales for any licensed product subject to the GLP-1 Agreement.

“We are most enthusiastic to have the continued financial support and latitude extended by the new debt restructuring agreement with MHR. The management team highly values their firm vote of confidence in Emisphere’s prospective business plan, the potential of Oral GLP-1, and the solid runway to realize the promise of additional future growth initiatives” said Alan L. Rubino, Chief Executive Officer and President of Emisphere.

ABOUT ELIGEN ® TECHNOLOGY

Emisphere's broad-based drug delivery technology platform, known as the Eligen ® Technology, uses proprietary, synthetic chemical compounds, known as Emisphere delivery agents, or carriers. Emisphere's Eligen ® Technology makes it possible to deliver a therapeutic molecule without altering its chemical form or biological integrity.

ABOUT EMISPHERE

Emisphere is a pharmaceutical and drug delivery company. The Company launched its first prescription product, oral Eligen B12™, in the U.S. in March 2015 and is currently engaged in strategic discussions to optimize its economic value in the U.S. and global markets. Beyond Eligen B12™, the Company utilizes its proprietary Eligen ® Technology to create new oral formulations of therapeutic agents. Emisphere is currently partnered with global pharmaceutical companies for the development of new orally delivered therapeutics and also pursuing licensing opportunities for its oral Eligen B12 asset. For more information, please visit www.emisphere.com.

EMISPHERE SAFE HARBOR STATEMENT REGARDING FORWARD-LOOKING STATEMENTS

The statements in this release or oral statements made by representatives of Emisphere relating to matters that are not historical facts are forward-looking statements that involve risks and uncertainties, including, but not limited to, the sufficiency of the Company's cash position, the Company's ability to enter into strategic partnerships, the Company's ability to capture market share for oral Eligen B12™ or any potential products, the success of the Company's commercialization initiatives, the Company's ability to enter into and maintain strategic partnerships, the Company's ability and/or that of its partners to develop, manufacture and commercialize products using Emisphere's drug delivery technology, and other risks and uncertainties detailed in Emisphere's filings with the Securities and Exchange Commission, including those factors discussed under the caption "Risk Factors" identified in the documents Emisphere has filed, or will file, with the Securities and Exchange Commission ("SEC"). There can be no assurance that any of the development or sales milestones in the Development and License Agreement will be met or that such milestone payments will be received or that Novo Nordisk will be able to successfully commercialize any of the product candidates. Copies of Emisphere's filings with the SEC may be obtained from the SEC Internet site at <http://www.sec.gov>. Emisphere expressly disclaims any obligation or undertaking to release publicly any updates or revisions to any forward-looking statements contained herein to reflect any change in Emisphere's expectations with regard thereto or any change in events, conditions, or circumstances on which any such statements are based.

COMPANY CONTACTS:

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