

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

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

Date of Report (Date of earliest event reported): August 11, 2020

OBALON THERAPEUTICS, INC.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of incorporation)

001-37897

(Commission
File Number)

20-1828101

(IRS Employer
Identification No.)

5421 Avenida Encinas, Suite F
Carlsbad, California

(Address of principal executive offices)

92008

(Zip Code)

(844) 362-2566

(Registrant's telephone number, including area code)

(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:

- 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))

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common stock, par value \$0.001 per share	OBLN	The NASDAQ Stock Market LLC (NASDAQ Global Market)

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

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.

Item 1.01 Entry into a Material Definitive Agreement.

On August 11, 2020, Obalon Therapeutics, Inc. (the “Company”) entered into a consulting agreement (the “Consulting Agreement”) with Blue Ox Healthcare Partners, LLC (“Blue Ox”). Pursuant to the Consulting Agreement, Blue Ox will work to (i) secure an agreement between the Company and a major health plan to conduct an outcomes study that will expand the current clinical evidence base to include health economic analysis on the cost of care reductions from use of the Obalon Balloon System, (ii) advise the Company’s management regarding the development of a coverage and reimbursement-based market strategy, and (iii) secure agreements with health plans and other entities that result in reimbursement for and/or utilization of the Obalon Balloon System, among other services.

The Consulting Agreement has a term of one year with automatic one month renewal periods until cancelled by either party. The Company and Blue Ox may terminate the Consulting Agreement for any reason or for no reason upon thirty (30) days prior written notice. In addition either party may terminate the Consulting Agreement following a change of control, sale, merger or acquisition involving a majority of the equity of, or the assets of, the other party.

Pursuant to the Consulting Agreement, the Company will pay Blue Ox a cash fee of \$50,000 per month for a period of six (6) months. The total cash payment of \$300,000 is payable in two equal installments. The first installment was paid following the execution of the Consulting Agreement. The second installment is payable on the first day of fourth monthly period following the execution of the Consulting Agreement. Following this initial six (6) month period, the parties will negotiate appropriate compensation for services for the remainder of the term or the Company shall continue to pay Blue Ox a cash fee of \$50,000 per month for the remainder of the term.

In addition, pursuant to, and in accordance with, the terms and conditions of the Consulting Agreement, the Company issued to Blue Ox a warrant (the “Warrant”) to purchase up to 100,000 shares of the Company’s common stock, par value \$0.001 per share (the “Common Stock”), at an exercise price of \$0.8285, subject to adjustment pursuant to the terms of the Warrant. The Warrant is exercisable immediately and will expire on August 10, 2025. The exercise price represents a 15% premium to the average closing price of the Company’s common stock for the 10 days preceding the effective date of the Consulting Agreement. The Warrant may be exercised, in whole or in part, through a cashless exercise, in which case the holder would receive upon such exercise the net number of shares of Common Stock determined according to the formula set forth in the Warrant. If the Consulting Agreement is terminated within six months of the effective date of the Consulting Agreement, then the number of shares of common stock that may be purchased by Blue Ox under the Warrant shall be reduced on a pro rata basis. The shares of Common Stock underlying the Warrant are referred to herein as the Warrant Shares.

The Warrant provides for certain piggy back registration rights if, during the period beginning six (6) months after the date of the Consulting Agreement and ending six (6) months after the expiration date of the Warrant, the Company proposes to file a registration statement under the Securities Act of 1933, as amended (the “Securities Act”), with respect an offering by the Company of its Common Stock (other than certain registration statements as set forth in the Warrant).

The Company also agreed to grant Blue Ox certain additional warrants upon the completion of certain milestones. Any such warrants would have generally the same terms and conditions and exercise price as the Warrant.

Pursuant to the Consulting Agreement, Blue Ox also has the right to participate in the first securities offering of the Company, if any, following the effective date of the Consulting Agreement, subject to certain limitations.

The issuance of the Warrant was exempt from the registration requirements of the Securities Act pursuant to Section 4(a)(2) of the Securities Act promulgated thereunder because, among other things, the issuance of the Warrant did not involve a public offering. The Warrant and Warrant Shares have not been registered under the Securities Act and may not be sold in the United States absent registration or an exemption from registration. This Current Report on Form 8-K shall not constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of the Warrant or the Warrant Shares in any state or jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such state or jurisdiction.

The foregoing descriptions of the Consulting Agreement and Warrant do not purport to be complete and are qualified in their entirety by reference to the full text of the Consulting Agreement and Form of Warrant filed with this Form 8-K as Exhibit 10.1 and 4.1, respectively.

Item 3.03 Material Modifications to Rights of Security Holders.

The information in Item 1.01 with respect to the Warrant is incorporated by reference into this Item 3.03.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

Exhibit Number	Description
4.1	Form of Warrant.
10.1	Consulting Agreement, dated August 11, 2020, between the Company and Blue Ox Healthcare Partners, LLC

FORM OF WARRANT

THIS WARRANT AND THE SHARES ISSUABLE UPON THE EXERCISE HEREOF HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED. THEY MAY NOT BE SOLD, OFFERED FOR SALE, PLEDGED, HYPOTHECATED, OR OTHERWISE TRANSFERRED EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933, AS AMENDED OR AN OPINION OF COUNSEL SATISFACTORY TO THE COMPANY THAT REGISTRATION IS NOT REQUIRED.

OBALON THERAPEUTICS, INC.

WARRANT TO PURCHASE SHARES

This Warrant is issued to Blue Ox Healthcare Partners, LLC ("Blue Ox") by Obalon Therapeutics, Inc., a Delaware corporation (the "Company"), as of August [], 2020 (the "Effective Date"), in connection with the holder's provision of consulting services to the Company pursuant to the consulting agreement, dated as of August 11, 2020 (the "Consulting Agreement").

1. Purchase of Shares. Subject to the terms and conditions hereinafter set forth, the holder of this Warrant is entitled, upon surrender of this Warrant at the principal office of the Company (or at such other place as the Company shall notify the holder hereof in writing), to purchase from the Company up to [one hundred thousand (100,000)] Applicable to first warrant only. Any future warrants granted pursuant to the Consulting Agreement may provide for more or less shares. shares, as adjusted pursuant to Section 7 below (the "Shares"), of the Company's common stock, par value \$0.001 per share (the "Common Stock"), at the Exercise Price (as defined below).

2. Definitions.

(a) Change of Control. The term "Change of Control" shall mean (i) the acquisition of the Company by another entity by means of any transaction or series of related transactions with the Company (including, without limitation, any stock purchase, reorganization, merger or consolidation but, excluding any merger effected exclusively for the purpose of changing the domicile of the Company); or (ii) a sale of all or substantially all of the assets of the Company, unless the Company's stockholders of record as constituted immediately prior to such acquisition or sale will, immediately after such acquisition or sale (solely by virtue of securities issued as consideration for the Company's acquisition or sale or otherwise) hold at least 50% of the voting power of the surviving or acquiring entity.

(b) Exercise Price. The exercise price for the Shares shall be \$0.8285 per Share, as adjusted for any stock splits, dividends, combinations and the like as provided in Section 7 below (such price, as adjusted from time to time, is herein referred to as the "Exercise Price").

3. Change of Control. In the event of a Change of Control, the holder of this Warrant will be entitled to receive in regards to any Shares not yet purchased pursuant to the Warrant, an amount, in

cash, equal to the difference between the exercise price for such Shares and the price per share of Common Stock that the holder would have received upon consummation of the Change of Control if this Warrant had been exercised for shares of Common Stock prior to such event.

4. Exercise.

(a) Method of Exercise. While this Warrant remains outstanding and exercisable, the holder may exercise, in whole or in part, the purchase rights evidenced hereby. Such exercise shall be effected by:

- (i) the surrender of the Warrant, together with a notice of exercise to the Secretary of the Company at its principal offices; and
- (ii) the payment to the Company of an amount equal to the aggregate Exercise Price for the number of Shares being purchased.
- (iii) In lieu of exercising this Warrant as specified in this Section 4(a)(ii), the holder may convert this Warrant, in whole or in part, into a number of Shares determined by dividing (a) the aggregate fair market value of the Shares issuable upon exercise of this Warrant (or lesser number of shares in the case of a partial exercise) minus the aggregate Exercise Price of such Shares by (b) the fair market value of one Share. The fair market value of the Shares shall be the closing price of the Shares reported for the business day immediately before the holder delivers its notice of exercise to the Company.

(b) Exercise Period. This Warrant shall be immediately exercisable upon the Effective Date in the amount of [100,000]¹ Shares. [In the event that the Consulting Agreement is terminated for any reason pursuant to Section 3(b)(i) or Section 3(d)(i) of the Consulting Agreement within six (6) months of the Effective Date (any such termination, an “Adjusting Termination”), then the number of Shares that may be purchased pursuant to this Warrant shall be reduced on a pro rata basis calculated based on the number of months that have passed in the initial 6-month term (such number of Shares, the “Adjusted Shares”). For example, if the Consulting Agreement was terminated after 3.5 months, then the number of Shares subject to the Warrant would be [58,334]¹, calculated as $(3.5/6.0 * [100,000])^1$. In the event an Adjusting Termination occurs after this Warrant has been exercised, the Company shall be entitled to repurchase from the holder, at a price per share equal to the Exercise Price paid by the holder, any Shares issued pursuant to this Warrant that exceeded the Adjusted Shares.] Applicable to first warrant only. Any future warrants granted pursuant to the Consulting Agreement will not include this language. This Warrant shall cease to be exercisable upon the expiration of this Warrant pursuant to Section 16 hereof.

5. Certificates for Shares. Upon the exercise of the purchase rights evidenced by this Warrant, one or more certificates for the number of Shares so purchased and, if this Warrant has not been fully exercised or converted and has not expired, a new Warrant representing the Shares not so acquired, shall be issued as soon as practicable thereafter.

6. Issuance of Shares. The Company covenants that the Shares, when issued pursuant to the exercise of this Warrant, will be duly and validly issued, fully paid and nonassessable.

7. Adjustment of Exercise Price and Number of Shares. The number of and kind of securities purchasable upon exercise of this Warrant and the Exercise Price shall be subject to adjustment from time to time as follows:

(a) Subdivisions, Combinations and Other Issuances. If the Company declares or pays a dividend or distribution on the shares of Common Stock payable in common stock or other securities or property (other than cash), then upon exercise of this Warrant, for each Share acquired, holder shall receive, without additional cost to holder, the total number and kind of securities and property which holder would have received had holder owned the Shares of record as of the date the dividend or distribution occurred. If the Company subdivides the outstanding shares of Common Stock by reclassification or otherwise into a greater number of shares, the number of Shares purchasable hereunder shall be proportionately increased and the Warrant Price shall be proportionately decreased. If the outstanding shares of Common Stock are combined or consolidated, by reclassification or otherwise, into a lesser number of shares, the Warrant Price shall be proportionately increased and the number of Shares shall be proportionately decreased. Any adjustment under this Section 7(a) shall become effective at the close of business on the date the subdivision or combination becomes effective, or as of the record date of such dividend, or in the event that no record date is fixed, upon the making of such dividend.

(b) Reclassification, Reorganization and Consolidation. Upon any event whereby all of the outstanding shares of Common Stock are reclassified, exchanged, combined, substituted, or replaced for, into, with or by Company securities of a different class and/or series, then from and after the consummation of such event, this Warrant will be exercisable for the number, class and series of Company securities that holder would have received had the Shares been outstanding on and as of the consummation of such event, and subject to further adjustment thereafter from time to time in accordance with the provisions of this Warrant.

(c) Notice of Adjustment and Certain Events. The Company shall provide the holder with not less than 10 days prior written notice of, including a description of the material facts surrounding, any of the following events: (a) declaration of any dividend or distribution upon its Common Stock, whether in cash, property, stock, or other securities and whether or not a regular cash dividend; (b) offering for subscription pro rata to the holders of any class or series of its stock any additional shares of stock of any class or series or other rights; (c) effecting any reclassification or recapitalization of Common Stock; (d) the merger or consolidation with or into any other corporation, or sale, lease, license, or conveyance of all or substantially all of its assets, or liquidation, dissolution or winding up, or (e) when any other adjustment is required to be made in the number or kind of shares purchasable upon exercise of the Warrant, or in the Exercise Price. When any adjustment is required to be made in the number or kind of shares purchasable upon exercise of the Warrant, or in the Exercise Price, the Company shall promptly compute such adjustment or readjustment in accordance with the provisions hereof and prepare a certificate showing such adjustment or readjustment, and shall mail such certificate to the holder of this Warrant in accordance with the notice provisions of Section 17. The certificate shall set forth such adjustment or readjustment and indicate the number of shares of Common Stock and the Exercise Price in effect after such adjustment or readjustment. The provisions of this Section 7(c) shall similarly apply to successive reclassifications, exchanges, combinations substitutions, replacements or other similar events.

8. No Fractional Shares or Scrip. No fractional shares or scrip representing fractional shares

shall be issued upon the exercise of this Warrant, but in lieu of such fractional shares the Company shall make a cash payment therefor on the basis of the Exercise Price then in effect.

9. Reservation of Shares. During the period between the Effective Date and the Expiration Date, the Company shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock or other securities constituting Shares, solely for the purpose of issuance upon the exercise of this Warrant, the maximum number of Shares issuable upon the exercise of this Warrant, and the par value per Share shall at all times be less than or equal to the applicable Exercise Price.

10. Representations of the Company. The Company represents that all corporate actions on the part of the Company, its officers, directors and stockholders necessary for the sale and issuance of this Warrant have been taken. The Company will pay all original issue and transfer taxes, if any, with respect to the issue and delivery of the Shares pursuant hereto and all other fees and expenses necessarily incurred by the Company in connection herewith.

11. Representations and Warranties by the Holder. The holder of this Warrant represents and warrants to the Company as follows:

(a) This Warrant and the Shares issuable upon exercise thereof are being acquired for its own account, for investment and not with a view to, or for resale in connection with, any distribution or public offering thereof within the meaning of the Securities Act of 1933, as amended (the "Act"). Upon exercise of this Warrant, the holder of this Warrant shall, if so requested by the Company, confirm in writing, in a form satisfactory to the Company, that the securities issuable upon exercise of this Warrant are being acquired for investment and not with a view toward distribution or resale.

(b) The holder of this Warrant understands that the Warrant and the Shares have not been registered under the Act by reason of their issuance in a transaction exempt from the registration and prospectus delivery requirements of the Act pursuant to Section 4(a)(2) thereof, and that they must be held by the holder indefinitely, and that the holder must therefore bear the economic risk of such investment indefinitely, unless a subsequent disposition thereof is registered under the Act or is exempted from such registration.

(c) The holder of this Warrant has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of the purchase of this Warrant and the Shares purchasable pursuant to the terms of this Warrant and of protecting its interests in connection therewith.

(d) The holder of this Warrant is aware of the Company's business affairs and financial condition and has received or has had full access to all the information it considers necessary or appropriate to make an informed investment decision with respect to the acquisition of this Warrant and its underlying securities. The holder of this Warrant further has had an opportunity to ask questions and receive answers from the Company regarding the terms and conditions of the offering of this Warrant and its underlying securities and to obtain additional information (to the extent the Company possessed such information or could acquire it without unreasonable effort or expense) necessary to verify any information furnished to the holder of this Warrant or to which such holder has access.

(e) The holder of this Warrant is able to bear the economic risk of the purchase

of the Shares pursuant to the terms of this Warrant.

(f) The holder of this Warrant is an “accredited investor” as such term is defined in Rule 501 of Regulation D promulgated under the Act.

12. Restrictive Legend.

The Shares (unless registered under the Act) shall be stamped or imprinted with a legend in substantially the following form:

THE SHARES REPRESENTED BY THIS CERTIFICATE HAVE BEEN ACQUIRED FOR INVESTMENT AND NOT WITH A VIEW TO, OR IN CONNECTION WITH, THE SALE OR DISTRIBUTION THEREOF, AND HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED. SUCH SHARES MAY NOT BE SOLD OR TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR AN EXEMPTION THEREFROM UNDER THE ACT AND ANY APPLICABLE STATE SECURITIES LAWS. COPIES OF THE AGREEMENT COVERING THE PURCHASE OF THESE SHARES AND RESTRICTING THEIR TRANSFER MAY BE OBTAINED AT NO COST BY WRITTEN REQUEST MADE BY THE HOLDER OF RECORD OF THIS CERTIFICATE TO THE SECRETARY OF THE COMPANY AT THE PRINCIPAL EXECUTIVE OFFICES OF THE COMPANY.

13. Warrants Transferable.

(a) [This Warrant, and any Shares issued hereunder, may not be sold, assigned or otherwise transferred by the holder hereof until six months after the Effective Date, except for an assignment or transfer of this Warrant, in whole or in part, by Blue Ox to an affiliate of Blue Ox. Thereafter,]² [T][t]his Warrant and the Shares may be offered, sold or otherwise transferred or disposed, in whole or in part, by the holder. Any sale, transfer or assignment of this Warrant or the Shares issued hereunder shall be subject to compliance with the terms and conditions of Section 13(b) and applicable federal and state securities laws.

(b) Any transfer of this Warrant shall require surrender of this Warrant properly endorsed or accompanied by written instructions of transfer. With respect to any offer, sale or other disposition of this Warrant or the Shares, the holder hereof agrees to give written notice to the Company prior thereto, describing briefly the manner thereof, together with a written opinion of such holder's counsel, or other evidence, if requested by the Company, to the effect that such offer, sale or other disposition may be effected without registration or qualification (under the Act as then in effect or any federal or state securities law then in effect) of this Warrant or the Shares and indicating whether or not under the Act certificates for this Warrant or the Shares to be sold or otherwise disposed of require any restrictive legend as to applicable restrictions on transferability in order to ensure compliance with such law; provided, however, that (i) the Company shall not require the holder to provide an opinion of counsel if the transfer is to any affiliate of holder, provided that any such transferee is an “accredited investor” as defined in Regulation D promulgated under the Act, and additionally, (ii) the Company shall also not require an opinion of counsel if there is no material question as to the availability of Rule 144 promulgated under the Act.. Upon receiving such written notice and reasonably satisfactory opinion or other evidence, if so requested, the Company, as promptly as practicable, shall notify such holder that such holder may sell or otherwise dispose of this Warrant or the Shares, all in accordance with the terms of the

notice delivered to the Company. If a determination has been made pursuant to this Section 13 that the opinion of counsel for the holder or other evidence is not reasonably satisfactory to the Company, the Company shall so notify the holder promptly with details thereof after such determination has been made. Each certificate representing this Warrant or Shares transferred in accordance with this Section 13 shall bear a legend as to the applicable restrictions on transferability in order to ensure compliance with such laws, unless in the aforesaid opinion of counsel for the holder, such legend is not required in order to ensure compliance with such laws. The Company may issue stop transfer instructions to its transfer agent in connection with such restrictions.

14. Registration Rights.

(a) If, at any time during the period beginning six (6) months after the Effective Date and ending six (6) months after the Expiration Date, the Company proposes to file a registration statement under the Securities Act of 1933, as amended (the "Securities Act") with respect to an offering by the Company of its Common Stock (other than a registration (i) pursuant to a Registration Statement on Form S-8 (or other registration solely relating to an offering or sale to employees or directors of the Company pursuant to any employee stock plan or other employee benefit arrangement), (ii) pursuant to a Registration Statement on Form S-4 (or similar form that relates to a transaction subject to Rule 145 under the Securities Act or any successor rule thereto), or (iii) in connection with any dividend or distribution reinvestment or similar plan), then the Company shall give written notice (each, a "Company Piggy-Back Notice") of such proposed filing to the holder of this Warrant at least fifteen days before the anticipated filing date of such registration statement, and such Company Piggy-Back Notice also shall offer the holder of this Warrant, or the Shares issued hereunder, the opportunity to register such aggregate number of Shares as the holder may request. The holder shall have the right, exercisable for the five days immediately following the giving of a Company Piggy-Back Notice, to request, by written notice (the "Holder Notice") to the Company, the inclusion of all or any portion of the Shares of the holder in such registration statement. The Company shall use reasonable efforts to cause the managing underwriter(s) of a proposed underwritten offering to permit the inclusion of the Warrant Shares which were the subject of the Holder Notice in such underwritten offering on the same terms and conditions as any Common Stock of the Company included therein. Notwithstanding anything to the contrary contained in this paragraph, if the Registration Statement relates to an underwritten offering, and the managing underwriter(s) of such underwritten offering or any proposed underwritten offering delivers a written notice to the holder that, in its reasonable determination, the total number of shares of Common Stock which the holder and the Company intend to include in such offering is such as to materially and adversely affect the success of the Company's offering, then the amount of securities to be offered for the account of the holder shall be eliminated or reduced to the extent necessary to reduce the total amount of securities to be included in such offering to the amount recommended by such managing underwriter(s).

(b) Notwithstanding anything contained to the contrary in this Section 14, the Company shall have the absolute right, whether before or after the giving of a Company Piggy-Back Notice or Holder Notice, to determine not to file a registration statement to which the holder shall have the right to include its Shares therein pursuant to this Section 14, to withdraw such registration statement or to delay or suspend pursuing the effectiveness of such registration statement. In the event of such a determination after the giving of a Company Piggy-Back Notice, the Company shall give notice of such determination to the holder and, thereupon, (A) in the case

of a determination not to register or to withdraw such registration statement, the Company shall be relieved of its obligation under this Section 14 to register any of the Shares in connection with such registration and (B) in the case of a determination to delay the registration, the Company shall be permitted to delay or suspend the registration of Shares pursuant to this Section 14 for the same period as the delay in the registration of such other securities.

15. No Rights as Stockholder. The holder of this Warrant, as a holder of the Warrant, will not have any voting rights or other rights of a stockholder of the Company until exercise of this Warrant.

16. Expiration of Warrant. This Warrant shall be exercisable in whole or in part, at any time and from time to time, until five years from the original issue date of this Warrant (the "Expiration Date"). If this Warrant has not been exercised prior to the Expiration Date, this Warrant shall be deemed to have been automatically exercised on the Expiration Date by "cashless" conversion pursuant to Section 4(a)(iii).

17. Notices.

Any notice, consent, claim, demand, waiver, or other communication under this Warrant have legal effect only if in writing and addressed to a party to the address set forth below (or to such other address or such other person that a party may designate for itself from time to time in accordance with this Section). Notices sent in accordance with this Section will be deemed effectively given: (a) when received, if delivered by hand, with signed confirmation of receipt; (b) when received, if sent by a nationally recognized overnight courier, signature required; (c) when sent, if by email, (in each case, with confirmation of transmission), if sent during the addressee's normal business hours, and on the next business day, if sent after the addressee's normal business hours; and (d) on the third day after the date mailed by certified or registered mail, return receipt requested, postage prepaid.

Blue Ox:

Blue Ox Healthcare Partners, LLC

135 East 57th St., 23rd Floor

New York, NY 10022

Attn: Oded Levy

Email: oded@blueoxhcp.com

with a copy to Blue Ox's counsel:

Dechert LLP

1095 Avenue of the Americas

New York, NY 10036-6797

Attn: Christian Matarese

Email: christian.matarese@dechert.com

Obalon:

Obalon Therapeutics, Inc.

5421 Avenida Encinas, Suite F

Carlsbad, California 92008

Attn: Andrew Rasdal, Chief Executive Officer

Email: arasdal@obalon.com

18. Governing Law. This Warrant and all actions arising out of or in connection with this Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to the conflicts of law provisions of the State of New York or of any other state.

19. Rights and Obligations Survive Exercise of Warrant. Unless otherwise provided herein, the rights and obligations of the Company, of the holder of this Warrant and of the holder of the Shares issued upon exercise of this Warrant, shall survive the exercise of this Warrant.

[Signature page follows]

IN WITNESS WHEREOF, the Company has caused this Warrant to be executed by its officer thereunto duly authorized as of the date first above indicated.

OBALON THERAPEUTICS, INC.

By:

Name: Andy Rasdal

Title: President & CEO

EXHIBIT A

NOTICE OF EXERCISE

TO: OBALON THERAPEUTICS, INC.

Attention: Chief Executive Officer

1. The undersigned hereby elects to purchase _____ Shares pursuant to the terms of the attached Warrant.
2. Method of Exercise (Please initial the applicable blank):

_____ The undersigned elects to exercise the attached Warrant by means of a cash payment, and tenders herewith payment in full for the purchase price of the shares being purchased, together with all applicable transfer taxes, if any.

_____ The undersigned elects to exercise the attached Warrant by means of the net exercise provisions of Section 4(a)(iii) of the Warrant.

3. Please issue a certificate or certificates representing said Shares in the name of the undersigned or in such other name as is specified below:

(Name)

(Address)

4. The undersigned hereby represents and warrants that all representations and warranties of the undersigned set forth in Section 11 of the attached Warrant (including Section 11(f) thereof) are true and correct as of the date hereof.

(Signature)

(Name)

(Title)

(Date)

EXHIBIT B

FORM OF TRANSFER

(To be signed only upon transfer of Warrant)

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto _____ the right represented by the attached Warrant to purchase _____ shares of Common Stock of Obalon Therapeutics, Inc. to which the attached Warrant relates, and appoints _____ Attorney to transfer such right on the books of _____, with full power of substitution in the premises.

Dated: _____

(Signature must conform in all respects to name of Holder as specified on the face of the Warrant)

Address: _____

Signed in the presence of:

Consulting Agreement

This Consulting Agreement (the "Agreement") is made as of August 11, 2020 (the "Effective Date") and confirms the understanding of the parties with respect to the consulting services that Blue Ox Healthcare Partners, LLC ("Blue Ox") has agreed to perform for Obalon Therapeutics, Inc. ("Obalon" or the "Company"), as well as Blue Ox's obligations with respect to Obalon's confidential information and any intellectual property that may arise from this Agreement.

1. **Consulting Services.**

Blue Ox will perform or cause an affiliate thereof, as approved by Obalon in writing, to perform consulting services (the "Services") to the senior management and the Board of Directors of Obalon as an independent contractor through the end of the Term (as defined below in Section 3). These Services shall include the following, which may be more fully set forth or amended in writing by Obalon and Blue Ox:

- (a) Work to secure an agreement between Obalon and a major health plan, agreed upon in writing by Obalon and Blue Ox, to conduct an outcomes study that will expand the current clinical evidence base to include health economic analysis on the cost of care reductions from use of the Obalon Balloon System;
- (b) Work with the senior management of Obalon to develop a new "go-to-market" strategy;
- (c) Work to secure agreements with health plans and other entities that result in reimbursement for and/or utilization of Obalon's Balloon System; and
- (d) other pertinent activities mutually agreed upon by Obalon and Blue Ox.

While working with Obalon, the performance of Blue Ox's Services will be coordinated and directed by Charles D. Kennedy, MD, Managing Partner and CEO of Blue Ox and any change must be approved in writing by Obalon. Blue Ox will provide Obalon with 30 days written notice if Dr. Kennedy has a change in title or responsibilities at Blue Ox, or if Blue Ox is no longer Dr. Kennedy's primary professional pursuit/employer.

2. **Compensation.**

In consideration of the Blue Ox Services, Obalon will provide Blue Ox with the following:

- (a) Consulting Services Fee. Obalon will pay Blue Ox a cash fee of \$50,000 per month for a period of six (6) months (\$300,000 total) (the "Consulting Services Fee"), payable in advance in two installments of \$150,000 each, the first one on the Effective Date and the second one on the first day of the subsequent 3 month period.
- (b) Warrants. Obalon will grant Blue Ox on the Effective Date warrants to purchase 100,000 shares of Obalon common stock (the "Initial Warrants Grant") at an exercise price equal to a 15% premium to the average closing price for the 10 trading days prior to the Effective Date (the "Warrants Exercise Price"). The warrants will have the terms and conditions in the form set forth in Exhibit A to this Agreement.
- (c) Outcomes Study Grant. Obalon will grant Blue Ox warrants to purchase 350,000 shares of Obalon common stock upon Obalon executing an agreement, arising as a result of Blue Ox's efforts, with a major health plan agreed upon in writing by Obalon and Blue Ox, for a clinical outcomes study

designed to support a positive coverage determination based on clinical improvements in conditions such as diabetes (the "Outcomes Study Grant"). Alternatively, if a major health plan, agreed upon in writing by Obalon and Blue Ox, elects to bypass any clinical outcomes study and instead enters into a written agreement with Obalon to utilize and reimburse Obalon for the Obalon Balloon System under its health plan without such study, and Blue Ox was the procuring cause for such written agreement, Obalon will make an Outcomes Study Grant to Blue Ox to purchase 500,000 shares rather than 350,000 shares.

Such warrants will have an exercise price equal to the Warrants Exercise Price and will have the terms and conditions in the form set forth in Exhibit A to this Agreement. Blue Ox shall receive the Grant for any such agreement entered into by Obalon either (x) during the Term or (y) during the 18 month period following the expiration or termination of this Agreement. Blue Ox's efforts shall consist of documented activity by Blue Ox executing the elements of the Services with Obalon and an entity, agreed upon in writing by Obalon and Blue Ox, that may include but not be limited to introductory and ongoing discussions by Blue Ox, presentations by Blue Ox and Obalon, and any form of preliminary contents or scope of an agreement or other proposal material submitted by Blue Ox and Obalon. The issuance of such warrants to Blue Ox shall be made no later than 30 days following Obalon signing any such agreement.

- (d) Investment in Future Obalon Financing. If the Company proposes to offer and sell any equity securities of the Company, or securities of any type that are convertible or exchangeable into, or exercisable for, such equity securities (collectively, "New Securities"), then with respect to the first such offering following the date hereof and subject to compliance with NASDAQ and federal and state securities laws, Blue Ox will have a one-time right to purchase New Securities in such offering in an amount equal to the lesser of \$5 million or 20% of the New Securities being sold in such offering on the same terms and at the same price as the New Securities are being sold to other participants in the offering. The participation right set forth in this Section 2(d) shall be exercisable in writing for ten (10) days following written notice from the Company setting forth its intention to sell such New Securities. Notwithstanding the foregoing, the following shall not be considered New Securities: (i) equity securities issued by reason of a dividend, stock split, split-up or other distribution on shares of common stock; (ii) equity securities issued to employees, directors, consultants or advisors of the Company pursuant to a plan, agreement or arrangement in existence as of the date hereof or subsequently approved by the board of directors of the Company; (iii) equity securities issued upon the exercise, conversion or exchange of any equity securities outstanding as of the date hereof; (iv) equity securities issued to banks, equipment lessors, or other financial institutions, or to real property lessors, pursuant to a debt financing, equipment leasing, or real property leasing transaction approved by the board of directors; (v) equity securities issued in connection with sponsored research, collaboration, technology license, development, OEM, marketing or other similar agreements or strategic partnerships; (vi) equity securities issued as acquisition consideration pursuant to the acquisition of another corporation by the Company by merger, purchases of substantially all of the assets or other reorganization or to a joint venture agreement; and (vii) equity securities sold by the Company pursuant to the Purchase Agreement by and between the Company and Lincoln Park Capital Fund, LLC dated February 5, 2020.
- (e) Negotiation on Consulting Services Fee for Remainder of Term. Prior to the end of the 6 month period from the Effective Date, Obalon and Blue Ox agree to negotiate in good faith for fair and appropriate compensation, including cash and/or equity, for Blue Ox's performance of Services

for the remainder of the Term. If the parties are unable to reach agreement on such compensation, Obalon shall pay Blue Ox a cash fee of \$50,000 per month on the first business day of each month.

3. Term of Engagement; Termination.

- (a) Term. The term of this Agreement is one (1) year from the Effective Date (the “Term”) and shall automatically renew for subsequent one (1) month periods until such time as cancelled by Obalon or Blue Ox or otherwise extended by mutual written agreement between the parties.
- (b) Termination. Obalon or Blue Ox may terminate this Agreement for any reason or for no reason upon thirty (30) days prior written notice to the other party; provided, however, that (i) if Blue Ox terminated this Agreement during the first six (6) months of the Term, the shares subject to such Initial Warrants Grant shall be forfeited on a pro rata basis by the number of months remaining during the initial 6-month term after the date the notice of termination is given, and the remainder of such grant shall survive and remain in effect in accordance with the terms of such grant, (ii) the Outcomes Study Grant, if made (or, if required to be made pursuant to the terms of this Agreement, shall be made), shall survive and remain in effect in accordance with the terms of such grant, and (iii) Obalon shall have no obligation to pay the Consulting Services Fee for any subsequent month and Blue Ox shall refund any Consulting Services Fee paid in advance for any month after the month in which the termination takes effect.
- (c) Change of Control of Obalon. Obalon shall provide written notice to Blue Ox of any change of control, sale, merger, or acquisition involving a majority of the equity of, or the assets of, Obalon. Either party may terminate this Agreement upon written notice to the other party upon a change of control, sale, merger, or acquisition involving a majority of the equity of, or the assets of, Obalon; provided, however, that (i) the Initial Warrants Grant shall survive and remain in effect in accordance with the terms of such grant, (ii) the Outcomes Study Grant, if made (or, if required to be made pursuant to the terms of this Agreement, shall be made), shall survive and remain in effect in accordance with the terms of such grant, and (iii) the second payment obligation from Obalon to Blue Ox during the initial six (6) months of the Term will accelerate and become due and payable in full.
- (d) Change of Control of Blue Ox. Blue Ox shall provide written notice to Obalon of any change of control, sale, merger, or acquisition involving a majority of the equity of, or the assets of, Blue Ox. Either party may terminate this Agreement upon written notice to the other party upon a change of control, sale, merger, or acquisition involving a majority of the equity of, or the assets of, Blue Ox; provided, however, that (i) if such termination occurs in the first six (6) months of the Term, the shares subject to such Initial Warrants Grant shall be forfeited on a pro rata basis by the number of months remaining during the initial 6-month term after the date the notice of termination is given, and the remainder of such grant shall survive and remain in effect in accordance with the terms of such grant, (ii) the Outcomes Study Grant, if made (or, if required to be made pursuant to the terms of this Agreement, shall be made), shall survive and remain in effect in accordance with the terms of such grant, and (iii) Obalon shall have no obligation to pay the Consulting Services Fee for any subsequent month and Blue Ox shall refund any Consulting Services Fee paid in advance for any month after the month in which the termination takes effect.
- (e) Effect of Termination. Except as may be set forth otherwise in this Agreement, all rights and obligations of the parties that expressly or by their nature survive the expiration or termination of this Agreement shall continue in full force and effect subsequent to and notwithstanding the expiration or termination of this Agreement until they are satisfied or by their nature expire and shall bind the

parties and their legal representatives, successors, and permitted assigns. Without limiting the foregoing, the Sections titled “Ownership of Ideas, Copyrights and Patents” and “Confidentiality” shall survive any expiration or termination of this Agreement. For the avoidance of doubt, (x) this Agreement may only be terminated by written notice subject to Sections 3(b), 3(c), or 3(d), and (y) any payment obligation of Obalon that arises prior to any termination or expiration of this Agreement, including any amount of the Consulting Services Fee payable through such period, shall continue in full force and effect subsequent to and notwithstanding the expiration or termination of this Agreement until fully performed.

4. Representation and Warranties of Blue Ox.

- (a) General. Blue Ox represents and warrants that it is free to enter into this Agreement and that performance of the Services does not (i) breach any agreement that obligates Blue Ox to keep in confidence any trade secrets or confidential information of Blue Ox or of any third party, or (ii) breach any agreement with a third party that restricts Blue Ox from providing Services to Obalon.
- (b) Applicable Laws. Blue Ox represents, warrants and undertakes that it: (i) will perform this Agreement in compliance with all applicable laws other than non-compliance that would not be material and adverse to Obalon; (ii) shall not offer, pay, request or knowingly accept any illegal bribe, inducement, kickback or facilitation payment, and shall not make or knowingly and intentionally cause another to make any illegal offer or payment to any individual or entity for the purpose of improperly influencing a decision for the benefit of Obalon; and (iii) shall cause its controlled affiliates performing Services to perform such Services in compliance with all applicable laws other than non-compliance that would not be material and adverse to Obalon.
- (c) Conflict of Interest. During the term of the Agreement, Blue Ox shall not be engaged in any other business activity which would be directly competitive with Obalon’s obesity products or services.

5. Representation and Warranties of Obalon.

- (a) General. Obalon represents and warrants that it is free to enter into this Agreement and that payment of fees in exchange for Services hereunder does not (i) breach any agreement that obligates Obalon to keep in confidence any trade secrets or confidential information of Obalon or of any third party, or (ii) breach any agreement with a third party that restricts Obalon from engaging Blue Ox with respect to providing Services to Obalon.

6. Ownership of Ideas, Copyrights and Patents.

- (a) Obalon Materials. All materials, documents, data, software, information and inventions of Obalon supplied or made available to Blue Ox by or on behalf of Obalon or its designee, (collectively, “Obalon Materials”), shall be and remain the sole and exclusive property of Obalon. Blue Ox shall use such items solely to perform the relevant Services, and shall not use such items for any other purpose or for its own benefit or the benefit of any third parties, or disseminate or disclose such items to any third parties except as may be agreed to in writing by Obalon or as otherwise provided for in this Agreement. Blue Ox shall deliver to Obalon or destroy all such items reasonably promptly upon written demand, or reasonably promptly following expiration or termination of this Agreement in accordance with its terms.

- (b) Work Product. Blue Ox shall make full and prompt disclosure to Obalon of all Work Product. “Work Product” means all concepts, ideas, inventions, discoveries, models, designs, know-how, software, methodologies, technology, techniques, reports, results, presentations and other works of authorship discovered, invented, created, developed, written, conceived, made, improved, or reduced to practice by Blue Ox or any of its affiliates or any of their respective employees or contractors (whether solely or jointly with others) specifically in the performance of the Services, or that are specific to Obalon’s obesity products and services, or that are derived from, modify or improve upon any Obalon Materials, and any patent, trade secret, copyright or other intellectual property rights with respect thereto, but excluding (a) Blue Ox Materials (defined below) and (b) any concepts, ideas, inventions, discoveries, models, designs, know-how, software, methodologies, technology, techniques, reports, results, presentations and other works of authorship that have general applicability to individualized or value-based healthcare products, services or uses (“Non-Exclusive Materials”). Blue Ox agrees that all Work Product that is copyrightable subject matter shall be considered “work made for hire” to the extent qualifying as such under U.S. copyright law and that Obalon is and shall be the sole author of the Work Product and the sole owner of all rights therein in perpetuity. With respect to any Work Product that is not “work made for hire,” Blue Ox agrees to assign and hereby irrevocably assigns, without additional consideration, to Obalon, in perpetuity, all of Blue Ox’s and its affiliates’ (and their respective employees’ and contractors’) respective rights, titles and interests worldwide in and to such Work Product. Blue Ox shall cause each of its employees and contractors (and each of its affiliates’ respective employees and contractors) to assign all such rights, titles and interests to Blue Ox or its affiliate, as applicable, or directly to Obalon, as appropriate. At Obalon’s request and expense, Blue Ox shall, and shall cause its affiliates and their respective employees and contractors to, execute all documents and take all actions that are reasonably necessary to perfect Obalon’s ownership of the Work Product.
- (c) Ownership and License of Non-Exclusive Materials. As between the parties, Blue Ox shall retain sole and exclusive ownership of all Non-Exclusive Materials and Blue Ox hereby grants to Obalon, its affiliates and their respective successors and assigns, a worldwide, non-exclusive, perpetual, irrevocable, royalty-free, paid-up, right and license to use the Non-Exclusive Materials solely to the extent necessary for Obalon to publicly display or perform, market, advertise and promote, manufacture, import, sell, offer to sell, have sold, and use its Balloon System and any other Obalon obesity products and services now in existence or under development or as otherwise mutually agreed upon by the parties.
- (d) Warranties. Blue Ox represents, warrants and covenants that Blue Ox has the right to make the assignments and grant the licenses to Obalon set forth in this Section, and that ownership and use of the Work Product by or on behalf of Obalon will not constitute an infringement of any third party patent, trademark, copyright, trade secret or other proprietary right.
- (e) Blue Ox Materials. To the extent any deliverable contemplated hereunder with respect to a Service includes Blue Ox’s, its affiliates’ or any third party’s concepts, ideas, inventions, discoveries, models, designs, know-how, software, methodologies, technology techniques, presentations, writings, concepts, or other information that are discovered, invented, created, conceived, made or reduced to practice by Blue Ox, its affiliates or any third party (a) prior to or after performing Services, or (b) independent of Blue Ox’s performance of the Services and without reference to any Obalon Materials (“Blue Ox Materials”), Blue Ox shall use its reasonable efforts to reasonably identify such Blue Ox Materials and, as between the parties, Blue Ox shall retain sole and exclusive ownership in such Blue Ox Materials. Blue Ox hereby grants to Obalon, its affiliates and their respective successors and assigns, a worldwide, non-exclusive, perpetual, irrevocable, royalty-free, paid-up, right and license

to use the Blue Ox Materials solely to the extent necessary for Obalon to publicly display or perform, market, advertise and promote, manufacture, import, sell, offer to sell, have sold, and use the Balloon System and any other Obalon obesity products and services mutually agreed upon by the parties.

7. Confidentiality.

- (a) Definition of Confidential Information. For purposes of this Agreement, “Confidential Information” means any technical or business information disclosed by one party or any of its affiliates (the “Disclosing Party”) to the other party (the “Receiving Party”) that: (i) if disclosed in writing, is marked “confidential” or “proprietary” at the time of such disclosure; (ii) if disclosed orally, is identified as “confidential” or “proprietary” at the time of such disclosure; or (iii) under the circumstances, a person exercising reasonable business judgment would understand to be confidential or proprietary. Confidential Information will not include information that (w) is now or thereafter becomes generally known or available to the public, through no act or omission on the part of the Receiving Party; (x) was known by the Receiving Party prior to receiving such information from the Disclosing Party and without restriction as to use or disclosure; (y) is rightfully acquired by the Receiving Party from a third party who has the right to disclose it and who provides it without restriction as to use or disclosure; or (z) is independently developed by the Receiving Party without access to any Confidential Information of the Disclosing Party.
- (b) Protection and Non-Disclosure of Confidential Information. During the Term and for a period of two (2) years thereafter (other than Confidential Information identified at the time of its disclosure by a party as a trade secret, which shall be maintained in perpetuity), each Party agrees to maintain the other Party's Confidential Information in strict confidence, not to use any such Confidential Information for any purpose except in connection with the Services or as otherwise provided for in this Agreement, and not to disclose such Confidential Information to any third parties except as otherwise provided for in this Agreement. Each Party may disclose the Confidential Information of the other Party to its members, employees, advisors, consultants and agents (“Representatives”) who have a bona fide need to know such Confidential Information for the performance, management, receipt or use pursuant to the Parties’ rights and obligations under this Agreement, provided that each such Representative first executes a written agreement (or is otherwise already bound by a written agreement) that contains use and nondisclosure restrictions at least as protective of the other Party’s Confidential Information as those set forth in this Agreement. The provisions of this Section 7 will not restrict a Party from disclosing the other Party’s Confidential Information to the extent required by any law or regulation; provided that the Party required to make such a disclosure uses reasonable efforts to give the other Party reasonable advance notice of such required disclosure in order to enable the other Party to prevent or limit such disclosure.
- (c) Return of Confidential Information. Promptly following the expiration or termination of this Agreement in accordance with the terms hereof, or if the Disclosing Party otherwise requests in writing, the Receiving Party will promptly return to the Disclosing Party or destroy all tangible items and embodiments containing or consisting of the Disclosing Party's Confidential Information and all copies thereof (including electronic copies); provided however, the Receiving Party may retain (i) a copy for audit, legal and regulatory purposes; and additionally (ii) all electronic copies of Confidential Information residing in its automatic backup systems, provided that such copies will continue to be held confidential subject to the terms of this Agreement.
- (d) Other Obligations. The terms of this Section 7 are in addition to, and not in lieu of, any statutory or other contractual or legal obligation that the Parties may have relating to the protection of the other

Party's Confidential Information. The Parties agree to not disseminate or in any way disclose this Agreement or the contents hereof to any person, firm, business or governmental agency or department, except as such disclosure is expressly permitted in this Agreement. Furthermore, neither Party may disclose the existence of any negotiations, discussions or consultations in progress between or involving the Parties to any person, firm or business or to any form of public media without the prior written approval of the other Party.

8. Equitable Relief.

The Parties recognize that any threatened breach or breach of the Sections titled "Ownership of Ideas, Copyrights and Patents" or "Confidentiality" may cause irreparable harm that may be inadequately compensable in damages and that, in addition to other remedies that may be available at law or equity, a Party may be entitled to seek injunctive relief for such threatened or actual breach, without the obligation of posting a bond or proving monetary damages.

9. Independent Contractor.

Blue Ox agrees that it is an independent contractor when performing the Services and that the relationship between Blue Ox and Obalon created pursuant to the terms of this Agreement does not constitute a partnership, joint venture or agency. Other than pursuant to a specific written agreement between the parties, neither Blue Ox nor any employee (i) is an agent or legal representative of Obalon or (ii) has any authority to represent Obalon or to enter into any contracts or assume any liabilities on behalf of Obalon. Blue Ox may provide services to other companies during the Term.

10. Indemnification.

- (a) By Blue Ox. Blue Ox will indemnify, defend, and hold harmless Obalon and its officers, directors, shareholders, employees and agents ("Obalon Indemnified Entities") from and against any third party claims, actions and proceedings (each a "Claim") brought against any of the Obalon Indemnified Entities, including payment of all costs, expense, liability or damage, including reasonable out-of-pocket attorneys' fees, incurred by or awarded to such third party pursuant to such Claim, to the extent arising out of or relating to any common law fraud, willful misconduct, grossly negligent acts, or violation of any applicable law by Blue Ox in connection with Blue Ox's performance of Services pursuant to this Agreement, infringement of any third party intellectual property by Blue Ox, or breach of any representation or warranty expressly made by Blue Ox in this Agreement.
- (b) By Obalon. Obalon will indemnify, defend, and hold harmless Blue Ox and its members, officers, directors, shareholders, employees and agents ("Blue Ox Indemnified Entities") from and against any Claim brought against any of the Blue Ox Indemnified Entities, including payment of all costs, expense, liability or damage, including reasonable out-of-pocket attorneys' fees, incurred by or awarded to such third party pursuant to such Claim, to the extent arising out of or relating to the Services rendered by Blue Ox (except as provided for in Section 10(a) or to the extent otherwise caused by the grossly negligent act or omission of Blue Ox), any common law fraud, willful misconduct, grossly negligent acts, or violation of any applicable law by Obalon in connection with this Agreement, infringement of any third party intellectual property by Obalon, or breach of any representation or warranty expressly made by Obalon in this Agreement.
- (c) Process. The party seeking indemnification of a Claim under this Section shall notify the other Party promptly upon becoming aware of the Claim (but failure to promptly notify shall not release the other

party from its obligations under this Section unless such failure materially prejudices its ability to defend such Claim) and shall permit the other party to control the defense and settlement of such Claim so long as it is for money damages only and such other party first verifies that it agrees to be fully responsible for all liabilities and obligations related to such Claim and that it will provide full indemnification with respect thereto. The indemnified party shall reasonably cooperate with the indemnifying party in the defense and settlement of the Claim as reasonably requested by the indemnifying party and at the indemnifying party's expense, and will not consent to any settlement or the entry of any judgment in connection with the Claim without the indemnifying party's prior written consent, which will not be unreasonably withheld, conditioned or delayed. The indemnified party may participate in the defense of the Claim with its own counsel at its own expense.

11. Limitation of Liability.

- (a) EXCEPT FOR ANY BREACH OF SECTION 7 CONFIDENTIALITY OR ANY CLAIMS FOR INDEMNIFICATION, NEITHER PARTY WILL BE LIABLE TO THE OTHER (INCLUDING ITS REPRESENTATIVES AND/OR AFFILIATES) FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES OF ANY KIND INCLUDING, BUT NOT LIMITED TO, LOST PROFITS OR LOSS OF BUSINESS, ARISING OUT OF OR RELATED TO THE SUBJECT MATTER OF THIS AGREEMENT, WHETHER ARISING IN CONTRACT (INCLUDING BREACH OF WARRANTY), TORT OR OTHERWISE, REGARDLESS OF WHETHER SUCH PARTY WAS ADVISED, HAD REASON TO KNOW, OR IN FACT KNEW OF THE POSSIBILITY THEREOF.
- (b) Except for any breach of Section 7 Confidentiality or any claims for indemnification under Section 10 Indemnification, the parties acknowledge and agree that the liability of a party under this Agreement shall not exceed the aggregate amount of cash payments made and/or received hereunder.

12. Governing Law.

This Agreement, including the validity, construction and performance hereof, shall be governed by the laws of the State of Delaware without regard to its conflicts of laws provisions.

13. Notices.

Any notice, consent, claim, demand, waiver, or other communication under this Agreement have legal effect only if in writing and addressed to a party to the address set forth below (or to such other address or such other person that a party may designate for itself from time to time in accordance with this Section). Notices sent in accordance with this Section will be deemed effectively given: (a) when received, if delivered by hand, with signed confirmation of receipt; (b) when received, if sent by a nationally recognized overnight courier, signature required; (c) when sent, if by email, (in each case, with confirmation of transmission), if sent during the addressee's normal business hours, and on the next business day, if sent after the addressee's normal business hours; and (d) on the third day after the date mailed by certified or registered mail, return receipt requested, postage prepaid.

Blue Ox:

Blue Ox Healthcare Partners, LLC
135 East 57th St., 23rd Floor
New York, NY 10022
Attn: Oded Levy, Managing Partner

Email: oded@blueoxhcp.com

with a copy to Blue Ox's counsel:

Dechert LLP
1095 Avenue of the Americas
New York, NY 10036-6797
Attn: Christian Matarese

Obalon:

Obalon Therapeutics, Inc.
5421 Avenida Encinas, Suite F
Carlsbad, California 92008
Attn: Andrew Rasdal, Chief Executive Officer
Email: arasdal@obalon.com

14. Miscellaneous.

This Agreement (together with its Exhibits which are made a part of this Agreement by this reference) constitutes the entire agreement and understanding between the parties with respect to the subject matter hereof and supersedes all prior oral and written agreements, understandings, promises and representations with respect thereto. Notwithstanding the content of any other document or record, whether issued before or after the Effective Date, the provisions of this Agreement shall govern with respect to the subject matter hereof and any conflicting, inconsistent or additional terms regarding the subject matter hereof contained in other documents or records shall be void. No amendment, modification or waiver of any of the terms of this Agreement shall be deemed valid unless made in writing and duly executed by authorized representatives of both parties. Each party may enforce the Agreement in strict accordance with its terms. The failure of either party to enforce its rights strictly in accordance with terms shall not be construed as having in any way modified or waived same. Blue Ox may not assign, delegate or transfer this Agreement or any of its rights or obligations hereunder without the consent of Obalon, which consent may be granted or withheld within Obalon's sole discretion; provided, however, that Blue Ox shall retain the right to assign or transfer any warrants issued to it hereunder by Obalon to the extent permitted by and subject to the terms and condition of such grant. Obalon shall not assign or delegate its payment or indemnification obligations hereunder separate from any assignment of this Agreement in its entirety without the consent of Blue Ox, which consent may be granted or withheld within Blue Ox's sole discretion. Invalidity or unenforceability of any provision in this Agreement shall not affect the validity or enforceability of any other provision. This Agreement may be executed in two or more counterparts, and by electronic facsimile (such as a PDF file), each of which shall be deemed an original and all of which shall together be deemed to constitute one agreement.

[Signature Page to Follow]

Accepted and agreed to as of the date hereof:

/s/ Andrew Rasdal

Andrew Rasdal
President and CEO
Obalon Therapeutics, Inc.

/s/ Oded Levy

Oded Levy
Managing Partner
Blue Ox Healthcare Partners, LLC

[Signature Page for Consulting Agreement effective August 11, 2020]

EXHIBIT A
FORM OF WARRANTS
[SEE ATTACHED]