

# SECURITIES & EXCHANGE COMMISSION EDGAR FILING

## Nile Therapeutics

**Form: 8-K**

**Date Filed: 2013-03-22**

Corporate Issuer CIK: 1133869

Symbol: NLTX

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549**

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**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): March 15, 2013

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**NILE THERAPEUTICS, INC.**

(Exact name of Registrant as Specified in its Charter)

**Delaware**  
(State or other jurisdiction  
of incorporation)

**001-34058**  
(Commission  
File Number)

**88-0363465**  
(I.R.S. Employer  
Identification No.)

**4 West 4th Ave., Suite 400**  
**San Mateo, California 94402**  
(Address of Principal Executive Offices)

**(650) 458-2670**  
(Registrant's telephone number, including area code)

**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:

- 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 March 15, 2013, Nile Therapeutics, Inc. (the "Company") entered into a Convertible Note Purchase Agreement (the "Purchase Agreement") with certain accredited investors pursuant to which it agreed to sell an aggregate principal amount of up to \$500,000 of its Secured Convertible Promissory Notes (the "Notes") for an aggregate original issue price of \$425,000, representing a 15% original issue discount. The closing of the private placement also occurred on March 15, 2013, and resulted in the sale of Notes in the aggregate principal amount of \$450,000 for an aggregate original issue price of 382,500.

The Notes, which have a maturity date of March 15, 2014, do not bear interest and may be prepaid by the Company without penalty upon 30 days' written notice, on the terms set forth in the Notes. The Notes are secured by a blanket lien on the Company's assets pursuant to a Security Agreement dated March 15, 2013.

Upon a Change of Control (as defined in the Notes) in which either (i) the outstanding shares of the Company's common stock are exchanged for securities of another corporation, or (ii) the Company issues shares of its common stock, with no securities or other consideration paid or payable to holders of the Company's common stock (e.g., a merger transaction in which the Company acquires another corporation in exchange for shares of the Company's common stock), then (A) the entire unpaid principal under the applicable Note shall automatically convert, as of immediately prior to the effective time of the Change of Control, into shares of the Company's common stock at a conversion price per share equal to the Closing Price (as defined in the Notes) on the effective date of the Change of Control, and (B) the Company shall also issue to each Note holder a five-year warrant, in substantially the form attached to the Notes as Exhibit A, entitling the holder to purchase, at an exercise price equal to the Closing Price on the effective date of the Change of Control, that number of shares of the Company's common stock obtained by dividing (a) the sum of the outstanding principal under the applicable Note by (b) the Closing Price on the effective date of the Change of Control.

Upon a Change of Control other than as described in the preceding paragraph, the Company shall pay to each Note holder an amount in cash equal to 175% of the principal amount then outstanding under the applicable Note. Upon payment of such amount to the Note holders, all of the Company's obligations under the Notes shall be deemed paid and satisfied in full.

The forms of Note, Purchase Agreement, and Security Agreement are attached hereto as Exhibits 4.1, 10.1, and 10.2, respectively, and incorporated herein by reference.

**Item 3.02 Unregistered Sales of Equity Securities.**

The disclosures set forth in Item 1.01 of this Current Report on Form 8-K are hereby incorporated by reference into this Item 3.02.

The offer and sale of Notes pursuant to the terms of the Purchase Agreement constituted private placements under Section 4(2) of the Securities Act of 1933, as amended, in accordance with Regulation D promulgated thereunder.

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

***Amendment to Compensation of President and CEO***

On March 21, 2013, the Company entered into a letter agreement with Darlene Horton, M.D., its President and Chief Executive Officer, which letter agreement amends certain compensation terms under her existing letter agreement dated August 3, 2012, as previously amended on November 5, 2012.

Dr. Horton's existing letter agreement provided that if, prior to the date of a "compensation adjustment event," the Company completed a Change of Control Transaction (as defined in the agreement) and Dr. Horton's employment was terminated by the Company (or any successor entity) without cause during the period beginning on the effective date of the Change of Control Transaction and ending on the six-month anniversary of such effective date, then she would have been entitled to receive a cash payment equal to 5% of the applicable Change of Control Proceeds (as defined in the agreement). For purposes of the agreement, the term "compensation adjustment event" means the date on which the Company secures sufficient capital, whether by a financing or strategic transaction (or any combination thereof) or another means, in order to enable the Company to initiate and fund to completion a Phase 2 clinical trial of the Company's cenderitide product candidate.

The March 21, 2013 letter agreement amends the payment terms described in the preceding paragraph and provides that if, prior to December 31, 2013, the Company completes a Change of Control Transaction in which either (i) the outstanding shares of the Company's common stock are exchanged for securities of another corporation, or (ii) the Company issues shares of its common stock, with no securities or other consideration paid or payable to holders of the Company's common stock (e.g., a merger transaction in which the Company acquires another corporation in exchange for shares of the Company's common stock), then Dr. Horton will be entitled to receive, immediately prior to the effective time of the Change of Control Transaction, a number of shares of the Company's common stock equal to 5% of the shares of the Company's common stock then outstanding on a fully-diluted basis.

The agreement further provides that if, prior to December 31, 2013, the Company completes a Change of Control Transaction other than as described in the preceding paragraph, then Dr. Horton will be entitled to receive a cash payment, on the date of such Change of Control Transaction, equal to 5% of the applicable Change of Control Proceeds (as defined in the agreement).

The foregoing summary of the March 21, 2013 letter agreement is qualified in its entirety by reference to the complete letter agreement, a copy of which is attached hereto as Exhibit 10.3 and incorporated herein by reference.

***Amendment to Compensation of Chief Financial Officer***

On March 21, 2013, the Company entered into a letter agreement with Daron Evans, its Chief Financial Officer, pursuant to which Mr. Evans agreed to reduce his monthly salary to \$100 effective February 1, 2013, and defer the balance of his \$22,916.66 monthly base salary until such time as the Company completes an Interim Financing Event. The term "Interim Financing Event" means the consummation on or before December 31, 2013, of one or more transactions pursuant to which the Company shall have received, whether by a financing, strategic transaction or another means (or any combination thereof), an aggregate of at least \$1,000,000 in gross cash proceeds.

In addition, the agreement provides that if, prior to December 31, 2013, the Company completes a Change of Control Transaction (as defined in the agreement) in which either (i) the outstanding shares of the Company's common stock are exchanged for securities of another corporation, or (ii) the Company issues shares of its common stock, with no securities or other consideration paid or payable to holders of the Company's common stock (e.g., a merger transaction in which the Company acquires another corporation in exchange for shares of the Company's common stock), then Mr. Evans will be entitled to receive, immediately prior to the effective time of the Change of Control Transaction, a number of shares of the Company's common stock equal to 4.5% of the shares of the Company's common stock then outstanding on a fully-diluted basis.

The agreement further provides that if, prior to December 31, 2013, the Company completes a Change of Control Transaction other than as described in the preceding paragraph, then Mr. Evans will be entitled to receive a cash payment, on the date of such Change of Control Transaction, equal to 4.5% of the applicable Change of Control Proceeds (as defined in the agreement).

In consideration of the foregoing, the agreement provides that the Company shall have no further obligations pursuant to the Severance Benefits Agreement between the Company and Mr. Evans, dated July 24, 2010, a copy of which was attached as Exhibit 10.2 to the Company's Current Report on Form 8-K filed July 27, 2010.

The foregoing summary of the agreement is qualified in its entirety by reference to the complete agreement, a copy of which is attached hereto as Exhibit 10.4 and incorporated herein by reference.

#### **Item 9.01. Financial Statements and Exhibits.**

*(d) Exhibits.*

<b>Exhibit No.</b>	<b>Description</b>
4.1	Form of Note issued to various accredited investors on March 15, 2013 (includes Form of Warrant as Exhibit A).
10.1	Form of Convertible Note Purchase Agreement entered into among Nile Therapeutics, Inc. and various accredited investors on March 15, 2013.
10.2	Form of Security Agreement entered into among Nile Therapeutics, Inc. and various accredited investors on March 15, 2013.
10.3	Letter Agreement between Nile Therapeutics, Inc. and Darlene Horton, M.D., dated March 21, 2013.
10.4	Letter Agreement between Nile Therapeutics, Inc. and Daron Evans, dated March 21, 2013.

**SIGNATURES**

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

**NILE THERAPEUTICS, INC.**

Date: March 21, 2013

By: /s/ Daron Evans

Daron Evans

Chief Financial Officer

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## EXHIBIT INDEX

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THE SECURITIES REPRESENTED HEREBY AND ISSUABLE HEREUNDER HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR UNDER THE SECURITIES LAWS OF APPLICABLE STATES. THESE SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED UNDER THE ACT AND APPLICABLE STATE SECURITIES LAWS, PURSUANT TO REGISTRATION UNDER SUCH LAWS OR AN EXEMPTION FROM SUCH REGISTRATION REQUIREMENT. INVESTORS SHOULD BE AWARE THAT THEY MAY BE REQUIRED TO BEAR THE FINANCIAL RISKS OF THIS INVESTMENT FOR AN INDEFINITE PERIOD OF TIME. THE ISSUER OF THESE SECURITIES MAY REQUIRE AN OPINION OF COUNSEL IN FORM AND SUBSTANCE SATISFACTORY TO THE ISSUER TO THE EFFECT THAT ANY PROPOSED TRANSFER OR RESALE IS IN COMPLIANCE WITH THE ACT AND ALL APPLICABLE STATE SECURITIES LAWS.

**NILE THERAPEUTICS, INC.  
SECURED CONVERTIBLE PROMISSORY NOTE**

**Principal Amount:**     \$[ \_\_\_\_\_ ]  
**Original Issue Price:**   \$[ \_\_\_\_\_ ]

**Dated: March 15, 2013**

Nile Therapeutics, Inc., a corporation duly organized and existing under the laws of the State of Delaware (the "Company"), for value received, hereby promises to pay to [ \_\_\_\_\_ ] (the "Holder"), the aggregate principal sum of [ \_\_\_\_\_ ] Dollars (\$[ \_\_\_\_\_ ]), without interest, pursuant to the following terms and conditions of this Secured Convertible Promissory Note ("Note"). Except as expressly provided herein, the term "Dollar" and the sign "\$" as used herein shall be deemed to be references to United States dollars. This Note is one in a series of similar promissory notes (collectively, the "Notes") issued by the Company pursuant to a Convertible Note Purchase Agreement dated March 15, 2013 by and among the Company, the Holder and the other purchasers of the Notes named therein (collectively, the "Holders") (as amended, modified or otherwise supplemented from time to time, the Note Purchase Agreement"). Capitalized terms used herein and not otherwise defined shall have the meanings given to such terms in the Note Purchase Agreement.

1 .     Payment Terms. Subject to the provisions of Sections 2 and 4 hereof, and unless earlier converted or paid pursuant to this Section 1, the entire outstanding principal balance hereof shall be due and payable on March 15, 2014 (the "Maturity Date"). The Company may prepay this Note in whole or in part without penalty upon 30 days' prior written notice to the Holder; *provided, however*, that during such 30-day notice period, the Holder may elect to convert all outstanding principal hereunder into shares of the Company's common stock (the "Optional Conversion Shares") at a conversion price per share equal to the average daily Closing Price (as defined below) over the ten consecutive trading days preceding the date of such prepayment notice. In order to effect such conversion, the Holder shall surrender this Note at the offices of the Company. Thereupon, the Company shall promptly issue and deliver to the Holder a certificate for the number of shares of common stock to which the Holder is entitled hereunder. Any payments made by the Company with regard to any of the Notes will be made simultaneously with regard to all of the Notes in an amount prorated among the Notes in proportion to the outstanding principal balances of each of the Notes. Payment of this Note will be made at the address of Holder as set forth in Section 12 hereof, unless another place of payment shall be specified in writing by Holder. Payment shall be credited first to any fees and expenses incurred by the Holder related to the collection of this Note, and thereafter to principal.

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2. Change of Control

(a) Upon a Change of Control (as defined below) in which either (i) the outstanding shares of the Company's common stock are exchanged for securities of another corporation, or (ii) the Company issues shares of its common stock, with no securities or other consideration paid or payable to holders of the Company's common stock (e.g., a merger transaction in which the Company acquires another corporation in exchange for shares of the Company's common stock), then (A) the entire unpaid principal under the Note shall automatically convert, as of immediately prior to the effective time of the Change of Control, into shares of the Company's common stock (the "Mandatory Conversion Shares," and together with the Optional Conversion Shares, the "Conversion Shares") at a conversion price per share equal to the Closing Price on the effective date of the Change of Control, and (B) the Company shall also issue to the Holder a five-year warrant, in substantially the form of Exhibit A hereto, entitling the Lender to purchase, at an exercise price equal to the Closing Price on the effective date of the Change of Control, that number of shares of the Company's common stock (the "Warrant Shares") obtained by dividing (a) the sum of the outstanding principal hereunder by (b) the Closing Price on the effective date of the Change of Control.

(b) Upon a Change of Control other than as described in the preceding paragraph, the Company shall pay to the Holder an amount in cash equal to 175% of the principal amount then outstanding hereunder. Upon payment of such amount to the Holder, all of the Company's obligations hereunder shall be deemed paid and satisfied in full.

(c) As used herein, the term "Change of Control" shall mean the consummation of any transaction or series of related transactions involving (i) the acquisition by any person or group directly or indirectly (by way of merger, stock purchase or asset transaction) of beneficial ownership of more than 50% of the total voting power of the Company, (ii) any merger, consolidation, amalgamation, plan or arrangement, acquisition, business combination or similar transaction in which the holders of common stock of the Company immediately prior to the transaction, as a group, do not hold securities representing a majority of the outstanding voting power entitled to elect the board of directors of the surviving entity in such merger, consolidation, amalgamation, plan or arrangement, acquisition, business combination or similar transaction, or (iii) the sale, assignment, lease, exclusive license or other disposition of all or substantially all of the Company's assets.

(d) As used herein, the term "Closing Price" shall mean, with respect to the Company's common stock on any date of determination, the closing sale price or, if no closing sale price is reported, the last reported sale price of the shares of the common stock on the relevant securities exchange on such date, or if the common stock is not listed on a securities exchange, the last quoted bid price for the common stock in the over-the-counter market as reported by Pink Sheets LLC or similar organization, or, if that bid price is not available, the market price of the common stock on that date as determined in good faith by the Company's Board of Directors.

3. Security. This Note is secured by the security interests granted pursuant to the Security Agreement.

4. Default.

( a ) Definition. Upon any of the following events of default (each, an Event of Default"), all of the then outstanding principal amount of this Note shall become immediately due and payable:

(i) the Company fails to make the payment of principal of the Note when the same becomes due and payable;

(ii) the commencement by or against the Company of any proceeding in bankruptcy or for dissolution, liquidation, winding-up, composition or other relief under federal or state bankruptcy laws that has not been dismissed within 30 days of formal service on the Company, or the appointment of a receiver or trustee for the Company or a substantial part of its property or assets; or

(iii) any debtor or creditor of the Company obtaining an order authorizing it to take possession of a material portion of the assets of the Company (including, without limitation, any of the Collateral (as defined in the Security Agreement)).

(b) Remedies of Holder During the Continuance of an Event of Default The remedies of the Holder as provided herein shall be cumulative and concurrent with all other remedies provided by law, in equity or under this Note, the Note Purchase Agreement, or the Security Agreement and may be pursued singly, successively or together at the sole direction of the Holder and may be exercised as often as occasion therefor shall arise. No act or omission or commission by the Holder, including specifically, any failure to exercise any right, remedy or recourse, shall be deemed a waiver or release of the same, such waiver or release to be effective only as set forth in a written document executed by the Holder and then only to the extent specifically recited therein. A waiver or release with reference to one event shall not be construed as continuing as a bar to, or as a waiver or release of, any subsequent right, remedy or recourse as to any subsequent event. The Company hereby waives presentment for payment, notice of nonpayment, protest, notice of protest and all other notices, filing of suit and diligence in collecting the amounts due under this Note and agrees that the Holder shall not be required first to initiate any suit or exhaust its remedies against any other person or parties in order to enforce payment of this Note.

5 . Amendment; Waiver. The terms of this Note may only be amended, modified or waived by written consent of the Company and the Requisite Purchasers; provided, however, that neither the prepayment terms pursuant to Section 1 nor this Section 5 may be amended, modified or waived without the written consent of the Holder. Any amendment, modification or waiver effected in accordance with this Section 5 shall be binding upon the Company, the Holder and each transferee of this Note.

6 . Fractional Shares. No fractional shares shall be issued upon conversion of this Note, but in lieu of such fractional shares the Company shall make a cash payment therefor based on the product resulting from multiplying the Closing Price on the date of conversion by such fraction.

7 . No Waiver. The Company agrees that any failure to act or failure to exercise any right or remedy on the part of the registered owner shall not in any way affect or impair the obligations of the Company or be construed as a waiver by the owner of, or otherwise affect, any of its rights under this Note.

8 . Invalidity. In the event any one or more of the provisions of this Note shall for any reason be held to be invalid, illegal or unenforceable, in whole or in part or in any respect, or in the event that any one or more of the provisions of this Note operate or would prospectively operate to invalidate this Note, then and in either of those events, such provision or provisions only shall be deemed null and void and shall not affect any other provision of this Note and the remaining provisions of this Note shall remain operative and in full force and effect and shall in no way be affected, prejudiced and disturbed thereby. Notwithstanding any provision contained herein to the contrary, in no event shall the amount paid or agreed to be paid by the Company (or any other person) as a premium on this Note exceed the highest lawful rate permissible under any law applicable thereto.

9 . Governing Law. This Note shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without giving effect to the principles of conflict of laws.

10 . Waiver of Jury Trial. EACH PARTY HEREBY WAIVES ITS RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS NOTE OR THE SUBJECT MATTER HEREOF. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS TRANSACTION, INCLUDING, WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS (INCLUDING NEGLIGENCE), BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. THIS SECTION HAS BEEN FULLY DISCUSSED BY EACH OF THE PARTIES HERETO AND THESE PROVISIONS WILL NOT BE SUBJECT TO ANY EXCEPTIONS. EACH PARTY HERETO HEREBY FURTHER WARRANTS AND REPRESENTS THAT SUCH PARTY HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL, AND THAT SUCH PARTY KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL.

11 . Entire Agreement. This Note, the Note Purchase Agreement and the Security Agreement constitute the full and entire understanding and agreement between the parties with regard to the subjects hereof and thereof.

12. Notices. Any notice required or permitted hereunder shall be given in writing and shall be conclusively deemed effectively given upon personal delivery or delivery by courier, or on the first (1st) business day after transmission if sent by confirmed facsimile transmission, or three (3) business days after deposit in U.S. mail, by registered or certified mail, postage prepaid, addressed as set forth in Section 5.03 of the Note Purchase Agreement. For purposes of this Section 12, a "business day" means a weekday on which banks are open for general banking business in New York City, New York.

*[Signature page follows]*

IN WITNESS WHEREOF, this Note has been duly executed and delivered by the Company and the Holder as of the date first written above.

**NILE THERAPEUTICS, INC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**HOLDER:**

If the Holder is an individual (not a partnership, corporation, etc.):

\_\_\_\_\_  
Please Print Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Please Print Name of Joint Holder (if any)

\_\_\_\_\_  
Signature

If the Holder is a corporation, partnership or other legal entity:

\_\_\_\_\_  
Please Print Name of Entity

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

*[Signature Page to Secured Convertible Promissory Note]*

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THE SECURITIES REPRESENTED HEREBY AND ISSUABLE HEREUNDER HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR UNDER THE SECURITIES LAWS OF APPLICABLE STATES. THESE SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED UNDER THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS, PURSUANT TO REGISTRATION UNDER SUCH LAWS OR AN EXEMPTION FROM SUCH REGISTRATION REQUIREMENT. INVESTORS SHOULD BE AWARE THAT THEY MAY BE REQUIRED TO BEAR THE FINANCIAL RISKS OF THIS INVESTMENT FOR AN INDEFINITE PERIOD OF TIME. THE ISSUER OF THESE SECURITIES MAY REQUIRE AN OPINION OF COUNSEL IN FORM AND SUBSTANCE SATISFACTORY TO THE ISSUER TO THE EFFECT THAT ANY PROPOSED TRANSFER OR RESALE IS IN COMPLIANCE WITH THE SECURITIES ACT AND ALL APPLICABLE STATE SECURITIES LAWS.

**NILE THERAPEUTICS, INC.**

**[FORM OF] WARRANT TO PURCHASE COMMON STOCK**

Warrant No. [2013-XX]

Original Issue Date: [DATE]<sup>1</sup>

**Nile Therapeutics, Inc.**, a Delaware corporation (the "Company"), hereby certifies that, for value received, [ ] or its permitted registered assigns (the "Holder"), is entitled to purchase from the Company up to a total of [ ] ([ ]) shares of common stock, \$0.001 par value (the "Common Stock"), of the Company (each such share, a "Warrant Share" and all such shares, the "Warrant Shares") at an exercise price per share equal to \$[ ]<sup>2</sup> (as adjusted from time to time as provided in Section 9 herein, the "Exercise Price"), at any time and from time to time from on or after the date hereof (the "Trigger Date") and through and including 5:30 P.M., New York City time, on [DATE]<sup>3</sup> (the "Expiration Date"), and subject to the following terms and conditions:

This Warrant (this "Warrant") is one of a series of similar warrants issued pursuant to that certain Convertible Note Purchase Agreement dated March 15, 2013, by and among the Company and the Purchasers identified therein (the "Purchase Agreement"). All such warrants are referred to herein, collectively, as the "Warrants."

1. Definitions. In addition to the terms defined elsewhere in this Warrant, capitalized terms that are not otherwise defined herein have the meanings given to such terms in the Purchase Agreement.

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<sup>1</sup> To be issued upon a Change of Control as described in Section 2(a) of the accompanying Note.

<sup>2</sup> Exercise Price shall be the Closing Price (as defined in the accompanying Note) on the effective date of the Change of Control.

<sup>3</sup> Expiration Date shall be the five-year anniversary of the Original Issue Date.

2. Registration of Warrants. The Company shall register this Warrant, upon records to be maintained by the Company for that purpose (the “Warrant Register”), in the name of the record Holder (which shall include the initial Holder or, as the case may be, any registered assignee to which this Warrant is permissibly assigned hereunder) from time to time. The Company may deem and treat the registered Holder of this Warrant as the absolute owner hereof for the purpose of any exercise hereof or any distribution to the Holder, and for all other purposes, absent actual notice to the contrary.

3. Registration of Transfers. Subject to the restrictions on transfer set forth in Article 4 of the Purchase Agreement and compliance with all applicable securities laws, the Company shall register the transfer of all or any portion of this Warrant in the Warrant Register, upon (i) surrender of this Warrant, with the Form of Assignment attached as Schedule 2 hereto duly completed and signed, to the Company’s transfer agent or to the Company at its address specified herein and (ii) if the Registration Statement is not effective, (x) delivery, at the request of the Company, of an opinion of counsel reasonably satisfactory to the Company to the effect that the transfer of such portion of this Warrant may be made pursuant to an available exemption from the registration requirements of the Securities Act and all applicable state securities or blue sky laws and (y) delivery by the transferee of a written statement to the Company making the representations and certifications set forth in Article 4 of the Purchase Agreement, to the Company at its address specified in the Purchase Agreement. Upon any such registration or transfer, a new warrant to purchase Common Stock in substantially the form of this Warrant (any such new warrant, a “New Warrant”) evidencing the portion of this Warrant so transferred shall be issued to the transferee, and a New Warrant evidencing the remaining portion of this Warrant not so transferred, if any, shall be issued to the transferring Holder. The acceptance of the New Warrant by the transferee thereof shall be deemed the acceptance by such transferee of all of the rights and obligations of a Holder of a Warrant.

4. Exercise and Duration of Warrants.

(a) All or any part of this Warrant shall be exercisable by the registered Holder at any time and from time to time on or after the Trigger Date and through and including 5:30 P.M. New York City time on the Expiration Date. At 5:30 P.M., New York City time, on the Expiration Date, the portion of this Warrant not exercised prior thereto shall be and become void and of no value and this Warrant shall be terminated and no longer outstanding;

(b) The Holder may exercise this Warrant by delivering to the Company (i) an exercise notice, in the form attached as Schedule 1 hereto (the “Exercise Notice”), appropriately completed and duly signed and (ii) payment of the Exercise Price in immediately available funds for the number of Warrant Shares as to which this Warrant is being exercised, and the date such items are delivered to the Company (as determined in accordance with the notice provisions hereof) is an “Exercise Date.” The delivery by (or on behalf of) the Holder of the Exercise Notice and the applicable Exercise Price as provided above shall constitute the Holder’s certification to the Company that its representations contained in Article 4 of the Purchase Agreement are true and correct as of the Exercise Date as if remade in their entirety (or, in the case of any transferee Holder that is not a party to the Purchase Agreement, such transferee Holder’s certification to the Company that such representations are true and correct as to such assignee Holder as of the Exercise Date). The Holder shall not be required to deliver the original Warrant in order to effect an exercise hereunder. Execution and delivery of the Exercise Notice shall have the same effect as cancellation of the original Warrant and issuance of a New Warrant evidencing the right to purchase the remaining number of Warrant Shares.

5. Delivery of Warrant Shares. Upon exercise of this Warrant, the Company shall promptly (but in no event later than three trading days after the Exercise Date) issue or cause to be issued and cause to be delivered to or upon the written order of the Holder and in such name or names as the Holder may designate (provided that, if the Registration Statement is not effective and the Holder directs the Company to deliver a certificate for the Warrant Shares in a name other than that of the Holder, it shall deliver to the Company on the Exercise Date an opinion of counsel reasonably satisfactory to the Company to the effect that the issuance of such Warrant Shares in such other name may be made pursuant to an available exemption from the registration requirements of the Securities Act and all applicable state securities or blue sky laws), a certificate for the Warrant Shares issuable upon such exercise, free of restrictive legends, unless a registration statement covering the resale of the Warrant Shares and naming the Holder as a selling stockholder thereunder is not then effective or the Warrant Shares are not freely transferable pursuant to Rule 144 under the Securities Act pursuant to transactions in which paragraph (c)(1) of such rule do not apply. The Holder, or any person permissibly so designated by the Holder to receive Warrant Shares, shall be deemed to have become the holder of record of such Warrant Shares as of the Exercise Date. If the Warrant Shares are to be issued free of all restrictive legends, the Company shall, upon the written request of the Holder, use its best efforts to deliver, or cause to be delivered, Warrant Shares hereunder electronically through The Depository Trust Company or another established clearing corporation performing similar functions, if available; provided, that, the Company may, but will not be required to, change its transfer agent if its current transfer agent cannot deliver Warrant Shares electronically through such a clearing corporation.

6. Charges, Taxes and Expenses. Issuance and delivery of certificates for shares of Common Stock upon exercise of this Warrant shall be made without charge to the Holder for any issue or transfer tax, transfer agent fee or other incidental tax or expense in respect of the issuance of such certificates, all of which taxes and expenses shall be paid by the Company; *provided, however,* that the Company shall not be required to pay any tax which may be payable in respect of any transfer involved in the registration of any certificates for Warrant Shares or Warrants in a name other than that of the Holder. The Holder shall be responsible for all other tax liability that may arise as a result of holding or transferring this Warrant or receiving Warrant Shares upon exercise hereof.

7. Replacement of Warrant. If this Warrant is mutilated, lost, stolen or destroyed, the Company shall issue or cause to be issued in exchange and substitution for and upon cancellation hereof, or in lieu of and substitution for this Warrant, a New Warrant, but only upon receipt of evidence reasonably satisfactory to the Company of such loss, theft or destruction (in such case) and, in each case, a customary and reasonable indemnity (which shall not include a surety bond), if requested. Applicants for a New Warrant under such circumstances shall also comply with such other reasonable regulations and procedures and pay such other reasonable third-party costs as the Company may prescribe. If a New Warrant is requested as a result of a mutilation of this Warrant, then the Holder shall deliver such mutilated Warrant to the Company as a condition precedent to the Company's obligation to issue the New Warrant.

8. Reservation of Warrant Shares. The Company covenants that it will at all times reserve and keep available out of the aggregate of its authorized but unissued and otherwise unreserved Common Stock, solely for the purpose of enabling it to issue Warrant Shares upon exercise of this Warrant as herein provided, the number of Warrant Shares which are then issuable and deliverable upon the exercise of this entire Warrant, free from preemptive rights or any other contingent purchase rights of persons other than the Holder (taking into account the adjustments and restrictions of Section 9). The Company covenants that all Warrant Shares so issuable and deliverable shall, upon issuance and the payment of the applicable Exercise Price in accordance with the terms hereof, be duly and validly authorized, issued and fully paid and nonassessable. The Company will take all such action as may be necessary to assure that such shares of Common Stock may be issued as provided herein without violation of any applicable law or regulation, or of any requirements of any securities exchange or automated quotation system upon which the Common Shares may be listed.

9. Certain Adjustments. The Exercise Price and number of Warrant Shares issuable upon exercise of this Warrant are subject to adjustment from time to time as set forth in this Section 9.

(a) Stock Dividends and Splits. If the Company, at any time while this Warrant is outstanding, (i) pays a stock dividend on its Common Stock or otherwise makes a distribution on any class of capital stock that is payable in shares of Common Stock, (ii) subdivides its outstanding shares of Common Stock into a larger number of shares, or (iii) combines its outstanding shares of Common Stock into a smaller number of shares, then in each such case the Exercise Price shall be multiplied by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately before such event and the denominator of which shall be the number of shares of Common Stock outstanding immediately after such event. Any adjustment made pursuant to clause (i) of this paragraph shall become effective immediately after the record date for the determination of stockholders entitled to receive such dividend or distribution, and any adjustment pursuant to clause (ii) or (iii) of this paragraph shall become effective immediately after the effective date of such subdivision or combination.

(b) Fundamental Transactions. If, at any time while this Warrant is outstanding (i) the Company effects any merger or consolidation of the Company with or into another person, in which the shareholders of the Company as of immediately prior to the transaction own less than a majority of the outstanding stock of the surviving entity, (ii) the Company effects any sale of all or substantially all of its assets or a majority of its Common Stock is acquired by a third party, in each case, in one or a series of related transactions, (iii) any tender offer or exchange offer (whether by the Company or another person) is completed pursuant to which all or substantially all of the holders of Common Stock are permitted to tender or exchange their shares for other securities, cash or property and would result in the shareholders of the Company immediately prior to such tender offer or exchange offer owning less than a majority of the outstanding stock after such tender offer or exchange offer, or (iv) the Company effects any reclassification of the Common Stock or any compulsory share exchange pursuant to which the Common Stock is effectively converted into or exchanged for other securities, cash or property (other than as a result of a subdivision or combination of shares of Common Stock covered by Section 9(a) above) (in any such case, a "Fundamental Transaction"), then the Holder shall have the right thereafter to receive, upon exercise of this Warrant, the same amount and kind of securities, cash or property as it would have been entitled to receive upon the occurrence of such Fundamental Transaction if it had been, immediately prior to such Fundamental Transaction, the holder of the number of Warrant Shares then issuable upon exercise in full of this Warrant (the "Alternate Consideration"). The Company shall not effect any such Fundamental Transaction unless prior to or simultaneously with the consummation thereof, any successor to the Company, surviving entity or the corporation purchasing or otherwise acquiring such assets or other appropriate corporation or entity shall assume the obligation to deliver to the Holder, such Alternate Consideration as, in accordance with the foregoing provisions, the Holder may be entitled to purchase and/or receive (as the case may be), and the other obligations under this Warrant. The provisions of this paragraph (c) shall similarly apply to subsequent transactions analogous to a Fundamental Transaction.

(c) Number of Warrant Shares. Simultaneously with any adjustment to the Exercise Price pursuant to Subparagraph 9(a), the number of Warrant Shares that may be purchased upon exercise of this Warrant shall be increased or decreased proportionately, so that after such adjustment the aggregate Exercise Price payable hereunder for the increased or decreased number of Warrant Shares shall be the same as the aggregate Exercise Price in effect immediately prior to such adjustment.

(d) Calculations. All calculations under this Section 9 shall be made to the nearest cent or the nearest 1/100<sup>th</sup> of a share, as applicable. The number of shares of Common Stock outstanding at any given time shall not include shares owned or held by or for the account of the Company, and the sale or issuance of any such shares shall be considered an issue or sale of Common Stock.

(e) Notice of Adjustments. Upon the occurrence of each adjustment pursuant to this Section 9, the Company at its expense will, at the written request of the Holder, compute such adjustment, in good faith, in accordance with the terms of this Warrant and prepare a certificate setting forth such adjustment, including a statement of the adjusted Exercise Price and adjusted number or type of Warrant Shares or other securities issuable upon exercise of this Warrant (as applicable), describing the transactions giving rise to such adjustments and showing in detail the facts upon which such adjustment is based. Upon written request, the Company will deliver a copy of each such certificate to the Holder and to the Company's transfer agent.

10. Payment of Exercise Price. The Holder shall pay the Exercise Price in immediately available funds.

11. No Fractional Shares. No fractional Warrant Shares will be issued in connection with any exercise of this Warrant. In lieu of any fractional shares which would otherwise be issuable, the number of Warrant Shares to be issued shall be rounded to the nearest whole number.

12. Notices. Any and all notices or other communications or deliveries hereunder (including, without limitation, any Exercise Notice) shall be in writing and shall be deemed given and effective on the earliest of (i) the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number specified in the Purchase Agreement prior to 5:30 p.m. (New York City time) on a trading day, (ii) the next trading day after the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number specified in the Purchase Agreement on a day that is not a trading day or later than 5:30 p.m. (New York City time) on any trading day, (iii) the trading day following the date of mailing, if sent by nationally recognized overnight courier service specifying next business day delivery, or (iv) upon actual receipt by the party to whom such notice is required to be given, if by hand delivery. The address and facsimile number of a party for such notices or communications shall be as set forth in the Purchase Agreement unless changed by such party by two trading days' prior notice to the other party in accordance with this Section 12.

13. Warrant Agent. The Company shall serve as warrant agent under this Warrant. Upon thirty (30) days' notice to the Holder, the Company may appoint a new warrant agent. Any corporation into which the Company or any new warrant agent may be merged or any corporation resulting from any consolidation to which the Company or any new warrant agent shall be a party or any corporation to which the Company or any new warrant agent transfers substantially all of its corporate trust or shareholders services business shall be a successor warrant agent under this Warrant without any further act. Any such successor warrant agent shall promptly cause notice of its succession as warrant agent to be mailed (by first class mail, postage prepaid) to the Holder at the Holder's last address as shown on the Warrant Register.

14. Miscellaneous.

(a) The Holder, solely in such person's capacity as a holder of this Warrant, shall not be entitled to vote or receive dividends or be deemed the holder of share capital of the Company for any purpose, nor shall anything contained in this Warrant be construed to confer upon the Holder, solely in such person's capacity as the Holder of this Warrant, any of the rights of a stockholder of the Company or any right to vote, give or withhold consent to any corporate action (whether any reorganization, issue of stock, reclassification of stock, consolidation, merger, amalgamation, conveyance or otherwise), receive notice of meetings, receive dividends or subscription rights, or otherwise, prior to the issuance to the Holder of the Warrant Shares which such person is then entitled to receive upon the due exercise of this Warrant. In addition, nothing contained in this Warrant shall be construed as imposing any liabilities on the Holder to purchase any securities (upon exercise of this Warrant or otherwise) or as a stockholder of the Company, whether such liabilities are asserted by the Company or by creditors of the Company. Notwithstanding this Section 15(a), the Company shall provide the Holder with copies of the same notices and other information given to the shareholders of the Company, contemporaneously with the giving thereof to the shareholders.

(b) Subject to the restrictions on transfer set forth on the first page hereof and in Article 4 of the Purchase Agreement, and compliance with applicable securities laws, this Warrant may be assigned by the Holder. This Warrant may not be assigned by the Company except to a successor in the event of a Fundamental Transaction. This Warrant shall be binding on and inure to the benefit of the parties hereto and their respective successors and assigns. Subject to the preceding sentence, nothing in this Warrant shall be construed to give to any person other than the Company and the Holder any legal or equitable right, remedy or cause of action under this Warrant. This Warrant may be amended only in writing signed by the Company and the Holder, or their successors and assigns.

(c) Governing Law. This Warrant shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without giving effect to the principles of conflict of laws.

(d) Waiver of Jury Trial. EACH PARTY HEREBY WAIVES ITS RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS NOTE OR THE SUBJECT MATTER HEREOF. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS TRANSACTION, INCLUDING, WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS (INCLUDING NEGLIGENCE), BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. THIS SECTION HAS BEEN FULLY DISCUSSED BY EACH OF THE PARTIES HERETO AND THESE PROVISIONS WILL NOT BE SUBJECT TO ANY EXCEPTIONS. EACH PARTY HERETO HEREBY FURTHER WARRANTS AND REPRESENTS THAT SUCH PARTY HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL, AND THAT SUCH PARTY KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL.

(e) The headings herein are for convenience only, do not constitute a part of this Warrant and shall not be deemed to limit or affect any of the provisions hereof.

(f) In case any one or more of the provisions of this Warrant shall be invalid or unenforceable in any respect, the validity and enforceability of the remaining terms and provisions of this Warrant shall not in any way be affected or impaired thereby, and the parties will attempt in good faith to agree upon a valid and enforceable provision which shall be a commercially reasonable substitute therefor, and upon so agreeing, shall incorporate such substitute provision in this Warrant.

(g) Except as otherwise set forth herein, prior to exercise of this Warrant, the Holder hereof shall not, by reason of by being a Holder, be entitled to any rights of a stockholder with respect to the Warrant Shares.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK,  
SIGNATURE PAGE FOLLOWS]

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

**NILE THERAPEUTICS, INC.**

By: \_\_\_\_\_  
Name:  
Title:

SCHEDULE 1

FORM OF EXERCISE NOTICE

(To be executed by the Holder to exercise the right to purchase shares  
of Common Stock under the foregoing Warrant)

To: Nile Therapeutics, Inc.

(1) The undersigned is the Holder of Warrant No. [2013-XX] (the "Warrant") issued by Nile Therapeutics, Inc. a Delaware corporation (the "Company"). Capitalized terms used herein and not otherwise defined herein have the respective meanings set forth in the Warrant.

(2) The undersigned hereby exercises its right to purchase \_\_\_\_\_ Warrant Shares pursuant to the Warrant.

(3) The Holder shall pay the sum of \$\_\_\_\_\_ in immediately available funds to the Company in accordance with the terms of the Warrant.

(4) Pursuant to this Exercise Notice, the Company shall deliver to the Holder \_\_\_\_\_ Warrant Shares in accordance with the terms of the Warrant.

Dated: \_\_\_\_\_, \_\_\_\_\_

Name of Holder: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

SCHEDULE 2

NILE THERAPEUTICS, INC.

FORM OF ASSIGNMENT

[To be completed and signed only upon transfer of Warrant]

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto \_\_\_\_\_ (the "Transferee" the right represented by the within Warrant to purchase \_\_\_\_\_ shares of Common Stock of Nile Therapeutics, Inc. (the "Company") to which the within Warrant relates and appoints \_\_\_\_\_ attorney to transfer said right on the books of the Company with full power of substitution in the premises. In connection therewith, the undersigned represents, warrants, covenants and agrees to and with the Company that:

- (a) the offer and sale of the Warrant contemplated hereby is being made in compliance with Section 4(1) of the United States Securities Act of 1933, as amended (the "Securities Act") or another valid exemption from the registration requirements of Section 5 of the Securities Act and in compliance with all applicable securities laws of the states of the United States;
- (b) the undersigned has not offered to sell the Warrant by any form of general solicitation or general advertising, including, but not limited to, any advertisement, article, notice or other communication published in any newspaper, magazine or similar media or broadcast over television or radio, and any seminar or meeting whose attendees have been invited by any general solicitation or general advertising;
- (c) the undersigned has read the Transferee's investment letter included herewith, and to its actual knowledge, the statements made therein are true and correct; and
- (d) the undersigned understands that the Company may condition the transfer of the Warrant contemplated hereby upon the delivery to the Company by the undersigned or the Transferee, as the case may be, of a written opinion of counsel (which opinion shall be in form, substance and scope customary for opinions of counsel in comparable transactions) to the effect that such transfer may be made without registration under the Securities Act and under applicable securities laws of the states of the United States.

Dated: \_\_\_\_\_  
(Signature must conform in all respects to name of holder as specified on the face of the Warrant)

Address of Transferee:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

In the presence of:  
\_\_\_\_\_

## CONVERTIBLE NOTE PURCHASE AGREEMENT

This **CONVERTIBLE NOTE PURCHASE AGREEMENT** (the "**Agreement**") is made and entered into as of March 15, 2013 by and among Nile Therapeutics, Inc., a Delaware corporation (the "**Company**"), and the individuals and/or entities listed on Exhibit A attached hereto (each, a "**Purchaser**," collectively, the "**Purchasers**").

A. The Company currently requires funds to help finance its operations as it pursues either a strategic transaction or a subsequent financing.

B. The Purchasers are willing to advance funds to the Company in exchange for the issuance to them of certain convertible promissory notes evidencing the Company's obligation to repay the Purchasers' loans of the advanced funds, all as provided in this Agreement.

NOW THEREFORE, the parties hereby agree as follows:

## ARTICLE 1

## PURCHASE, SALE AND TERMS OF NOTES

1.01 The Notes. The Company has authorized the issuance and sale to the Purchasers of the Company's Convertible Promissory Notes in the original aggregate principal amount of up to \$500,000 as set forth on Exhibit A hereto. The Convertible Promissory Notes shall be substantially in the form set forth as Exhibit B hereto and are herein referred to individually as a "**Note**" and collectively as the "**Notes**," which terms shall also include any notes delivered in exchange or replacement therefor.

1.02 Security Agreement. The Notes will be secured by a general security interest in the Company's tangible and intangible assets. Such security interest shall be evidenced by a security agreement among the Company and the Purchase in substantially the form attached hereto as Exhibit C (the "**Security Agreement**"), to be executed and delivered at the Closing (as defined below).

1.03 Purchase and Sale of Notes – Closing. The Company agrees to issue and sell to the Purchasers, and, subject to and in reliance upon the representations, warranties, covenants, terms and conditions of this Agreement, the Purchasers agree to purchase the Notes in the principal amounts set forth opposite each Purchaser's name on Exhibit A hereto under the heading "Principal Amount of Notes To Be Purchased at the Closing." Such purchase and sale shall take place at a closing (the "**Closing**") to be held remotely via the exchange of documents and signatures, on the date hereof at 12:00 a.m., California time, or at such other time or place as may be mutually agreed upon by the Company and the Purchasers purchasing at least two thirds of the principal amount of the Notes to be purchased at the Closing (the "**Requisite Purchasers**"). At the Closing, each Purchaser will deliver to the Company as payment in full for the Note to be purchased by such Purchaser at the Closing, the amount set forth opposite such Purchaser's name in the "Purchase Price" column on Exhibit A, by wire transfer or other delivery of immediately available funds to the Company. At the Closing, the Company will issue and deliver to each Purchaser a duly executed Note in the principal amount set forth opposite such Purchaser's name on Exhibit A. The Company shall send such Notes to such Purchaser at the address furnished to the Company for that purpose.

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1.04 Registration Rights. The Company agrees to register the resale of the Conversion Shares and Warrant Shares (each as defined in the Notes), if applicable, under the Securities Act on Form S-1 or any other appropriate form in the sole discretion of the Company (the "**Registration Statement**"). The Company shall use its commercially reasonable efforts to file the Registration Statement with the U.S. Securities and Exchange Commission (the "**Commission**") within 60 days following the issuance of the Conversion Shares.

1.05 No Usury. This Agreement and each Note issued pursuant to the terms of this Agreement are hereby expressly limited so that in no event whatsoever, whether by reason of deferment or advancement of loan proceeds, acceleration of maturity of the loan evidenced hereby, or otherwise, shall the amount paid or agreed to be paid to the Purchasers hereunder for the loan, use, forbearance or detention of money exceed the maximum interest rate permitted by the laws of the State of California. If at any time the performance of any provision hereof or any Note involves a payment exceeding the limit of the price that may be validly charged for the loan, use, forbearance or detention of money under applicable law, then automatically and retroactively, ipso facto, the amount payable under the Notes shall be reduced to such limit. The provisions of this Section 1.05 shall never be superseded or waived and shall control every other provision of this Agreement and any Note.

## ARTICLE 2

### CONDITIONS TO PURCHASERS' OBLIGATIONS

The respective and several obligations of each Purchaser to purchase and pay for the Notes to be purchased by it at the Closing are subject to the fulfillment or waiver, on or before the Closing, of each of the following conditions:

2.01 Representations and Warranties. Each of the representations and warranties of the Company set forth in Article 3 hereof shall be true in all material respects on the date of the Closing.

2.02 Performance by the Company. The Company shall have performed and complied with all agreements, obligations and conditions contained in this Agreement that are required to be performed or complied with by it on or before the Closing and shall have obtained all approvals, consents and qualifications necessary to complete the purchase and sale described herein.

2.03 Delivery of Notes. The Company shall have executed and delivered to each Purchaser a Note, in the form attached hereto as Exhibit B, evidencing the Company's indebtedness to such Purchaser in the amount next to such Purchaser's name on Exhibit A under the heading "Principal Amount of Notes To Be Purchased at the Closing."

2.04 Delivery of Security Agreement. The Company shall have executed and delivered to each Purchaser the Security Agreement, in the form attached hereto as Exhibit C.

## ARTICLE 3

### REPRESENTATIONS AND WARRANTIES OF THE COMPANY

The Company represents and warrants to each of the Purchasers as follows, each of which representation and warranty is true and correct as of the Closing:

3.01 Organization, Qualifications and Corporate Power. The Company is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Delaware and is duly licensed or qualified to transact business as a foreign corporation and is in good standing in each jurisdiction in which the nature of the business transacted by it or the character of the properties owned or leased by it requires such licensing or qualification, except where the failure to be so licensed or qualified would not have a Material Adverse Effect (as defined below) on the business or assets of the Company. “**Material Adverse Effect**” shall mean any event, change, violation, inaccuracy, circumstance or effect that is, individually or in the aggregate, materially adverse to the financial condition, capitalization, properties, employees, assets (including intangible assets), business, operations or results of operations of the Company. The Company has the corporate power and authority to own and hold its properties and to carry on its business as now conducted and as presently proposed to be conducted, to execute, deliver and perform this Agreement and to issue, sell and deliver the Notes.

3.02 Authorization of Agreements, Etc. The execution and delivery by the Company of this Agreement and the performance by the Company of its obligations hereunder and the issuance, sale and delivery of the Notes have been duly authorized by all requisite corporate action and will not violate any provision of law, any order of any court or other agency of government, the Certificate of Incorporation of the Company, or the bylaws of the Company, nor will such actions result in a violation of any provision of any indenture, agreement or other instrument to which the Company, or any of its properties or assets is bound, or conflict with, result in a material breach of or constitute (with due notice or lapse of time or both) a default under any such indenture, agreement or other instrument, or result in the creation or imposition of any lien, charge, restriction, encumbrance, or, to the Company’s knowledge, claim of any nature whatsoever upon any of the properties or assets of the Company, the result of any of which would have a Material Adverse Effect.

3.03 Validity. This Agreement has been duly executed and delivered by the Company and constitutes the valid and binding obligation of the Company, enforceable against the Company in accordance with its terms. The Notes and the Security Agreement, when executed and delivered in accordance with this Agreement, will constitute the valid and binding obligations of the Company, enforceable against the Company in accordance with their respective terms. The Warrants (as defined in the Notes), when executed and delivered in accordance with the terms of the Notes, will constitute the valid and binding obligations of the Company, enforceable against the Company in accordance with their respective terms. The Conversion Shares and Warrant Shares, when issued, sold and delivered in accordance with the terms of the Notes and the Warrants, respectively, for the consideration provided for herein and therein, will be duly and validly issued, fully paid and nonassessable.

## ARTICLE 4

### REPRESENTATIONS AND WARRANTIES OF PURCHASERS

Each Purchaser represents and warrants to the Company that: (a) it has full power and authority to enter into and perform this Agreement in accordance with its terms, and it was not organized for the specific purpose of acquiring the Notes, the Warrants, the Conversion Shares, or the Warrant Shares (collectively, the "**Securities**"); (b) it has sufficient knowledge and experience in investing in companies similar to the Company in terms of the Company's stage of development so as to be able to evaluate the risks and merits of its investment in the Company and it is able financially to bear the risks thereof; (c) it has made an investigation of the Company and its business as it deemed necessary and has had an opportunity to review all reports, schedules, forms, statements and other documents filed by the Company with the Commission, including the exhibits thereto and documents incorporated by reference therein, and to discuss and review the Company's business, management and financial affairs with the Company's management as it deemed necessary; (d) the Securities being purchased by it are being acquired for its own account for the purpose of investment and not with a view to the public resale or distribution thereof within the meaning of the Securities Act of 1933, as amended (the "**Securities Act**"); (e) it understands that (i) the Securities have not been registered under the Securities Act by reason of their issuance in a transaction exempt from the registration requirements of the Securities Act pursuant to Section 4(2) thereof or Rule 504, 505 or 506 promulgated under the Securities Act, (ii) under the Securities Act and applicable regulations thereunder the Securities may be resold without registration under the Securities Act only in certain limited circumstances, (iii) the certificates evidencing the Securities will bear a legend substantially similar to that set forth below:

*THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR UNDER THE SECURITIES LAWS OF APPLICABLE STATES. THESE SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED UNDER THE ACT AND APPLICABLE STATE SECURITIES LAWS, PURSUANT TO REGISTRATION UNDER SUCH LAWS OR AN EXEMPTION FROM SUCH REGISTRATION REQUIREMENT. INVESTORS SHOULD BE AWARE THAT THEY MAY BE REQUIRED TO BEAR THE FINANCIAL RISKS OF THIS INVESTMENT FOR AN INDEFINITE PERIOD OF TIME. THE ISSUER OF THESE SECURITIES MAY REQUIRE AN OPINION OF COUNSEL IN FORM AND SUBSTANCE SATISFACTORY TO THE ISSUER TO THE EFFECT THAT ANY PROPOSED TRANSFER OR RESALE IS IN COMPLIANCE WITH THE ACT AND ALL APPLICABLE STATE SECURITIES LAWS.*

and (iv) the Company will make a notation on its transfer books to such effect; (f) this Agreement has been duly executed and delivered by it and constitutes the legal, valid and binding obligation of it, enforceable in accordance with the terms of the Agreement; and (g) it is an "accredited investor" as that term is defined in Rule 501 promulgated under the Securities Act.

## ARTICLE 5

### MISCELLANEOUS

5.01 No Waiver: Cumulative Remedies. No failure or delay on the part of any party to this Agreement in exercising any right, power or remedy hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy hereunder. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

5.02 Amendments, Waivers and Consents. Any provision in this Agreement to the contrary notwithstanding, changes in or additions to this Agreement or the Notes may be made, and compliance with any covenant or provision herein or therein set forth may be omitted or waived, if the Company shall obtain consent thereto in writing from the Requisite Purchasers. Any amendment or waiver effected in accordance with this Section 5.02 shall be binding upon each holder of Notes then outstanding, each future holder of such securities, and the Company; provided, however, that no amendment shall be effective against a Purchaser which materially and adversely affects such Purchaser's rights under this Agreement or under any Notes in a manner that is adverse to and materially different from the effect on other Purchasers of Notes, without such Purchaser's written consent.

5.03 Addresses for Notices, etc. Any notice required or permitted hereunder shall be given in writing and shall be conclusively deemed effectively given upon personal delivery or delivery by courier, or on the first (1<sup>st</sup>) business day after transmission if sent by confirmed facsimile transmission, or four (4) business days after deposit in U.S. mail, by registered or certified mail, postage prepaid, addressed (i) if to the Company, as set forth below the Company's name on the signature page of this Agreement, and (ii) if to a Purchaser, as set forth below such Purchaser's name on the respective signature page of this Agreement, or at such other address as the Company or such Purchaser may designate by advance written notice to the other parties hereto. For purposes of this Section 5.03, a "**business day**" means a weekday on which banks are open for general banking business in New York City, New York.

5.04 Binding Effect: Assignment. The terms and conditions of this Agreement shall be binding upon and inure to the benefit of the Company and the Purchasers and their respective heirs, successors and assigns.

5.05 Headings: Interpretation. In this Agreement, (i) the meaning of defined terms shall be equally applicable to both the singular and plural forms of the terms defined; (ii) the captions and headings are used only for convenience and are not to be considered in construing or interpreting this Agreement and (iii) the words "including," "includes" and "include" shall be deemed to be followed by the words "without limitation". All references in this Agreement to sections, paragraphs, exhibits and schedules shall, unless otherwise provided, refer to sections and paragraphs hereof and exhibits and schedules attached hereto, all of which exhibits and schedules are incorporated herein by this reference.

5.06 No Finder's Fees. Each party represents that it neither is nor will be obligated for any finder's or broker's fee or commission in connection with the transactions contemplated by this Agreement. Each Purchaser agrees to indemnify and to hold harmless the Company from any liability for any commission or compensation in the nature of a finder's or broker's fee (and any asserted liability) for which the Purchaser or any of its directors, officers, partners, members, employees or representatives is responsible. The Company agrees to indemnify and hold harmless each Purchaser from any liability for any commission or compensation in the nature of a finder's or broker's fee (and any asserted liability) for which the Company or any of its officers, employees or representatives is responsible.

5.07 Survival of Representations and Warranties. All representations and warranties made in this Agreement and the Notes or any other instrument or document delivered in connection herewith or therewith, shall survive the execution and delivery hereof or thereof, and the Closing, and shall in no way be affected by any investigation of the subject matter thereof made by or on behalf of any of the Purchasers or the Company, as the case may be.

5.08 Severability. The invalidity or unenforceability of any provision hereof shall in no way affect the validity or enforceability of any other provision.

5.09 Governing Law. This Agreement shall be governed by, and construed in accordance with, the Delaware General Corporation Law as to matters within the scope thereof, and as to all other matters shall be governed by, and construed in accordance with, the internal laws of the State of Delaware, without reference to principles of conflict of laws or choice of laws.

5.10 Counterpart; Facsimile Signatures. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument, and any of the parties hereto may execute this Agreement by signing any such counterpart. This Agreement may be executed and delivered by facsimile, or by e-mail in portable document format (.pdf) and delivery of the signature page by such method will be deemed to have the same effect as if the original signature had been delivered to the other parties.

5.12 Entire Agreement. This Agreement and the other documents delivered at the Closing constitute the full and entire understanding and agreement between the parties with respect to the subject matter hereof and supersede all prior agreements with respect to the subject matter hereof.

5.13 Further Assurances. From and after the date of this Agreement, upon the request of any Purchaser or the Company, the Company and the Purchasers shall execute and deliver such instruments, documents or other writings as may be reasonably necessary or desirable to confirm and carry out and to effectuate fully the intent and purposes of this Agreement.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

**SIGNATURE PAGE**

Principal Amount of Note = \_\_\_\_\_

Purchase Price of Note = \_\_\_\_\_

Name in which securities should be issued: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature (if purchasing jointly)

\_\_\_\_\_  
Name Typed or Printed

\_\_\_\_\_  
Name Typed or Printed

\_\_\_\_\_  
Entity Name

\_\_\_\_\_  
Entity Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State and Zip Code

\_\_\_\_\_  
City, State and Zip Code

\_\_\_\_\_  
Telephone

\_\_\_\_\_  
Telephone

\_\_\_\_\_  
Facsimile

\_\_\_\_\_  
Facsimile

\_\_\_\_\_  
Tax ID # or Social Security #

\_\_\_\_\_  
Tax ID # or Social Security #

Dated: March \_\_\_\_, 2013

**COMPANY**

This Convertible Note Purchase Agreement is agreed to and accepted as of March \_\_\_\_, 2013.

**NILE THERAPEUTICS, INC.**

By: \_\_\_\_\_  
Name: Darlene Horton, M.D.  
Title: Chief Executive Officer

Signature Page to Convertible Note Purchase Agreement

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**EXHIBIT A**

**Schedule of Purchasers**

<b>Purchaser</b>	<b>Principal Amount of Notes To Be Purchased at Closing</b>	<b>Purchase Price (85% of Principal Amount)</b>
<b>Total</b>	<b>\$ 450,000</b>	<b>\$ 382,500</b>

EXHIBIT B

Form of Convertible Promissory Note

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EXHIBIT C

Form of Security Agreement

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**SECURITY AGREEMENT**

This SECURITY AGREEMENT (this "Agreement") is made as of March 15, 2013, among Nile Therapeutics, Inc., a Delaware corporation (the "Company"), and the creditors identified in Attachment A hereto, as the same may be supplemented or amended from time to time (collectively, the "Creditors," and each individually, a "Creditor"), which includes all purchasers of convertible promissory notes sold by the Company pursuant to that certain Convertible Note Purchase Agreement dated March 15, 2013 (the "Purchase Agreement").

WHEREAS, the Creditors have made loans to the Company in the respective amounts set forth opposite each Creditor's name on Attachment A and have received from the Company promissory notes in such amounts (the "Notes"); and

WHEREAS, the Company has agreed to secure the payment of the Notes by pledging, as security therefore, certain assets owned by the Company.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained in this Agreement, and for other good and valuable consideration the receipt and adequacy of which is hereby acknowledged, the Company and each Creditor agree as follows:

1. Grant of Security Interest.

(a) To secure payment and performance of the Obligations (as defined below), the Company hereby grants to the Creditors a security interest in all property and interests in property of the Company, whether now owned or hereafter acquired or existing, and wherever located (together with all other collateral security for the Obligations at any time granted to or held or acquired by the Creditors, collectively, the "Collateral"), including, without limitation, the following: (i) all Accounts; (ii) all Receivables; (iii) all Equipment; (iv) all General Intangibles; (v) all Inventory; (vi) all Investment Property; and (vii) all proceeds and products of (i), (ii), (iii), (iv), (v) and (vi).

(b) Notwithstanding anything to the contrary contained in Section 1(a) above, the types or items of Collateral described in such Section 1(a) shall not include any right or interest in any contract, permit or application covering real or personal property of the Company, as such, if under the terms of such contract, permit or application or applicable law with respect thereto, the valid grant of a security interest to the Creditors is prohibited as a matter of law or under the terms thereof and such prohibition has not been or is not waived or the consent of the other party to such contract, permit, or application has not been or is not otherwise obtained; provided, that, the foregoing exclusion shall in no way be construed (i) to apply if any such prohibition is unenforceable under the UCC or other applicable law or (ii) so as to limit, impair or otherwise affect the Creditors' unconditional continuing security interest in upon any rights or interests of the Company in or to monies due or to become due under any such contract, permit or application.

(c) Perfection of Security Interests.

(i) As soon as practicable following the execution of this Agreement, the Company shall file UCC financing statements in all appropriate jurisdictions to record the security interests granted to the Creditors hereunder. Without the prior written consent of the Requisite Purchasers (as defined in the Purchase Agreement), the Company shall not at any time file, or permit or cause to be filed, any correction statement or termination statement with respect to any financing statement (or amendment or continuation with respect thereto) naming the Creditors or their designee(s) as secured party and the Company or any affiliate of the Company as debtor.

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(ii) The Company shall take any other actions reasonably requested by the Creditors from time to time to cause the attachment and perfection of, and the ability of the Creditors to enforce, the security interest of the Creditors in the Collateral.

2. Covenants Relating to Collateral. The Company covenants that:

(a) it shall at all times be the sole owner of each and every item of Collateral, except with respect to licensed intellectual property or as otherwise disclosed in reports filed by the Company with the Securities and Exchange Commission prior to the date hereof;

(b) it shall defend the Collateral against the claims and demands of all persons;

(c) it will comply with the requirements of all agreements relating to premises where any Collateral is located;

(d) it will give the Creditors twenty (20) days' prior written notice of any change to its name;

(e) it will give the Creditors twenty (20) days' prior written notice of any change to its chief executive office or its mailing address; and

(f) it will give the Creditors twenty (20) days' prior written notice of any change to its type of organization, jurisdiction of organization or other legal structure.

3. Remedies. Upon the occurrence and after the continuance of an Event of Default (as defined in the Notes), (i) the Creditors shall have the right to exercise any right and remedy provided for herein, under the UCC and at law or equity generally, including, without limitation, the right to foreclose the security interests granted herein and to realize upon any Collateral by any available judicial procedure and/or to take possession of and sell any or all of the Collateral with or without judicial process; and (ii) with or without having the Collateral at the time or place of sale, the Creditors may sell the Collateral, or any part thereof, at public or private sale, at any time or place, in one or more sales, at such price or prices, and upon such terms, either for cash, credit or future delivery, as the Creditors may elect.

4. Pro-Rata Payments and Forbearance. Each Creditor agrees not to accept payments with respect to the Notes other than on a pro-rata basis as set forth in Attachment A. In the event that one or more of the Creditors shall receive preferential payments with respect to the Notes, the recipient Creditor shall undertake to redistribute to the other Creditors any amounts of such payments as shall be necessary to maintain pro-rata payments to all Creditors with respect to the Notes.

5. Priority. All of the Creditors agree that, notwithstanding the date, manner or order of attachment or perfection of any security interest and regardless of any priority otherwise available by law or by agreement, the Creditors' security interest in the Collateral shall be of equal priority, and any recovery by any Creditor of the Collateral shall be shared ratably in proportion to the respective amounts of the Notes then due and owing to the Creditors.

6. Representations and Warranties. The Company hereby represents and warrants to the Creditors that:

(a) The Company is a corporation duly organized and validly existing under the laws of Delaware.

(b) The exact legal name of the Company is as set forth on the signature page of this Agreement.

(c) The chief executive office and mailing address of the Company are located at the address set forth in Section 11 and its only other places of business and the only other locations of Collateral, if any, are at the addresses set forth on Schedule 6(c).

7. Expenses of the Company; Creditors' Right to Perform on the Company's Behalf

(a) The Company's agreements hereunder shall be performed by it at its sole cost and expense.

(b) If the Company shall fail to do any act which it has covenanted to do hereunder, the Creditors may (but shall not be obligated to) do the same or cause it to be done, either in their name or in the name and on behalf of the Company, and the Company hereby irrevocably authorizes the Creditors so to act.

8. No Waivers of Rights hereunder; Rights Cumulative

(a) No delay by the Creditors in exercising any right hereunder, or in enforcing any of the Obligations, shall operate as a waiver thereof, nor shall any single or partial exercise of any right preclude other or further exercises thereof or the exercise of any other right. No waiver of any of the Obligations shall be enforceable against any Creditor unless in writing and signed by such Creditor, and unless it expressly refers to the provision affected; any such waiver shall be limited solely to the specific event waived.

(b) All rights granted to the Creditors hereunder shall be cumulative and shall be supplementary of and in addition to those granted or available to the Creditors under any other agreement with respect to the Obligations or under applicable law and nothing herein shall be construed as limiting any such other right.

9. Termination. This Agreement shall continue in full force and effect until all Obligations shall have been paid and satisfied in full.

10. Additional Definitions. As used herein:

(a) All terms used herein which are defined in Article 1 or Article 9 of the UCC shall have the meanings given therein unless otherwise defined in this Agreement. All references to the plural herein shall also mean the singular and to the singular shall also mean the plural unless the context otherwise requires. All references to the Company and the Creditors pursuant to the definitions set forth in the recitals hereto, or to any other person herein, shall include their respective successors and assigns. The words "hereof", "herein", "hereunder", "this Agreement" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not any particular provision of this Agreement and as this Agreement now exists or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced. The word "including" when used in this Agreement shall mean "including, without limitation". The words "it" or "its" as used herein shall be deemed to refer to individuals and to business entities.

(b) **“Obligations”** means:

(i) the full and prompt payment by the Company when due of all obligations and liabilities to the Creditors, whether now existing or hereafter arising, under the Notes and the due performance and compliance by the Company with the terms thereof;

(ii) any and all sums advanced in accordance with applicable law by the Creditors in order to preserve the Collateral or to preserve the Creditors' security interest in the Collateral; and

(iii) in the event of any proceeding for the collection or enforcement of any obligations or liabilities of the Company referred to in the immediately preceding clauses (i) and (ii), the reasonable expenses of re-taking, holding, preparing for sale, selling or otherwise disposing of or realizing on the Collateral, or of any other exercise by the Creditors of their rights hereunder, together with reasonable attorneys' fees and court costs.

(c) **“Person”** or **“person”** shall mean any individual, sole proprietorship, partnership, corporation limited liability company, limited liability partnership, business trust, unincorporated association, joint stock corporation, trust, joint venture or other entity or any government or any agency or instrumentality or political subdivision thereof.

(d) **“UCC”** shall mean the Uniform Commercial Code as in effect in the State of Delaware and any successor statute, as in effect from time to time (except that terms used herein which are defined in the Uniform Commercial Code as in effect in the State of Delaware on the date hereof shall continue to have the same meaning notwithstanding any replacement or amendment of such statute except as the Creditors may otherwise determine).

11. **Notices.** Any communication required or permitted pursuant to this Agreement shall be deemed given (a) when personally delivered to any officer of the party to whom it is addressed, (b) on the earlier of actual receipt thereof or five (5) days following posting thereof by certified or registered mail, postage prepaid, return receipt requested, or (c) upon actual receipt thereof when sent by a recognized overnight delivery service, or (d) upon actual receipt thereof when sent by fax to the number set forth below with telephone communication confirming receipt and subsequently confirmed by registered or certified mail, return receipt requested, or by recognized overnight delivery service to the address set forth below, in each case addressed to the applicable party at its address set forth below or at such other address as has been furnished in writing by such party to the other by like notice:

If to the Company:

Nile Therapeutics, Inc.  
4 West 4th Ave., Suite 400  
San Mateo, CA 94402  
Tel: (650) 458-2670  
Fax: (415) 875-7075  
Attn: Chief Executive Officer

If to a Creditor, to such address as such Creditor shall have provided to the Company in the Purchase Agreement, as may be amended hereafter by written notice by such Creditor to the Company delivered as aforesaid; or, in any case, at such other address or addresses as shall have been furnished in writing by such party to the other party.

Any requirement under applicable law of reasonable notice by the Creditors to the Company of any event shall be met if notice is given to the Company in the manner prescribed above at least five (5) days before (a) the date of such event or (b) the date after which such event will occur.

12. Governing Law. This Agreement shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the laws of the State of Delaware, without regard to the conflicts of laws provisions thereof.

13. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together constitute one and the same instrument.

14. Successors and Assigns. This Agreement shall be binding upon the assigns or successors of the Company and shall inure to the benefit of and be enforceable by the Creditors and their successors, transferees and assigns.

15. Severability. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof in that jurisdiction or affecting the validity or enforceability of such provision in any other jurisdiction.

*Remainder of page intentionally left blank*

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in counterparts.

**NILE THERAPEUTICS, INC.**

By: \_\_\_\_\_  
Name: Darlene Horton, M.D.  
Title: Chief Executive Officer

*Signature Page to Security Agreement*  
*Signature Pages Continue*

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**Creditor:**

If the undersigned is an individual (not a partnership, corporation, etc.):

\_\_\_\_\_  
Please Print Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Please Print Name of Joint Holder (if any)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

If the undersigned is a corporation, partnership or other legal entity:

\_\_\_\_\_  
Please Print Name of Entity

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_  
Date

*Signature Page to Security Agreement  
Signature Pages Continue*

\_\_\_\_\_

**Creditor:**

If the undersigned is an individual (not a partnership, corporation, etc.):

\_\_\_\_\_  
Please Print Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Please Print Name of Joint Holder (if any)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

If the undersigned is a corporation, partnership or other legal entity:

\_\_\_\_\_  
Please Print Name of Entity

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_  
Date

*Signature Page to Security Agreement*

\_\_\_\_\_

**ATTACHMENT A  
TO  
SECURITY AGREEMENT**

<b>Creditor Name</b>	<b>Principal Amount of Promissory Note</b>

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**SCHEDULE 6(c)  
TO  
SECURITY AGREEMENT**

None.

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4 West 4<sup>th</sup> Ave. Suite 400  
San Mateo, CA 94402

(650) 458-2670 Tel.  
(415) 875-7075 Fax

March 21, 2013

Darlene Horton, M.D.  
[ADDRESS]

Dear Dr. Horton:

Reference is made to the letter agreements dated on or about August 3, 2012 and November 2, 2012, (collectively, the "Agreement"), between you and Nile Therapeutics, Inc. ("Nile" or the "Company"). This letter agreement is intended to clarify certain provisions and the intent to comply with Code Section 409A, and therefore such provisions are hereby incorporated into the Agreement as set forth below:

Section 2 shall be amended and restated in its entirety, as follows:

"Beginning with the Commencement Date and until a Compensation Adjustment Event (as defined below) has occurred, your monthly base salary (the "Base Salary") will be \$28,314, payable in accordance with Nile's normal payroll procedures. However, notwithstanding the preceding sentence, commencing November 1, 2012, the Company shall only be obligated to pay to you \$100 of such monthly Base Salary, and you agree that the balance of the Base Salary (the "Deferred Salary") shall be deferred and become payable to you, if ever, upon completion of an Interim Financing Event (as defined below) prior to December 31, 2013 and subject to your continued employment with the Company on the date of such Interim Financing Event.

In addition, you will be entitled to receive a Change of Control Bonus if the Company completes a Change of Control Transaction (as defined below) prior to December 31, 2013, as follows:

- (a) Upon a Change of Control Transaction in which either (i) the outstanding shares of the Company's common stock are exchanged for securities of another corporation, or (ii) the Company issues shares of its common stock, with no securities or other consideration paid or payable to holders of the Company's common stock (e.g., a merger transaction in which the Company acquires another corporation in exchange for shares of the Company's common stock), then you will be entitled to receive, immediately prior to the effective time of the Change of Control Transaction, a number of shares of the Company's common stock equal to 5% of the shares of the Company's common stock then outstanding on a fully-diluted basis.
- (b) Upon a Change of Control Transaction other than as described in the preceding paragraph, then you will be entitled to receive a cash payment, on the date of such Change of Control Transaction, equal to 5% of the applicable Change of Control Proceeds (as defined below).

For the avoidance of doubt, in the event the Company completes more than one Change of Control Transaction prior to December 31, 2013, only one Change of Control Bonus shall be payable pursuant to this Agreement.”

The following sentence shall be added as the last sentence to the first paragraph of Section 3(d):

“Notwithstanding the foregoing, should your participating in the Company-sponsored medical/health insurance plan violate the terms of the plan, applicable law or cause such plan or the Company to be subject to a penalty, the Company shall pay you the cash equivalent to the monthly benefit it would have paid.”

The following text shall be added to the end of Section 6:

“; *provided, however,* that if such release is not signed within 90 days of termination of employment, such amounts otherwise owed will be forfeited, and further that if such 90 day period could span two tax years, such payment will always be made in the subsequent tax year.”

The following text shall be added at the end of the last sentence of Section 7(c):

“; *provided, however,* that in no event shall such payments be paid later than five years from the Change of Control Transaction.”

A new Section 10 is hereby added to the Agreement as follows:

“10. Certain Tax Provisions.

(a) 409A. Any payment otherwise required under this Agreement or any other plan or arrangement of the Company to be made to you after a termination of your employment that the Company reasonably determines is subject to Section 409A(a)(2)(B)(i) of the Internal Revenue Code of 1986, as amended (the “Code”) shall not be paid or payment commenced until the later of (a) six months after the date of your “separation from service” (within the meaning of Section 409A of the Code) and (b) the payment date or commencement date specified in this Agreement for such payment(s). On the earliest date on which such payment(s) can be made or commenced without violating the requirements of Section 409A(a)(2)(B)(i) of the Code, the Company shall pay you, in a single lump sum, an amount equal to the aggregate amount of all payments delayed pursuant to the preceding sentence. Such delay, to the extent required, will not affect the timing of any installments or other payments otherwise payable after the delay period imposed under Section 409A. In addition, other provisions of this Agreement or any other such plan or arrangement notwithstanding, the Company shall have no right to accelerate or delay any such payment or to make any such payment as the result of any specific event except to the extent permitted under Section 409A of the Code.

(b) Section 280G. Notwithstanding anything to the contrary contained in this Agreement, to the extent that any of the payments and benefits provided for under this Agreement or any other agreement or arrangement between you and the Company (collectively, the "Payments") constitute a "parachute payment" within the meaning of Section 280G of the Code and (ii) but for this Section 10(b), would be subject to the excise tax imposed by Section 4999 of the Code, then the Payments shall be payable either (i) in full or (ii) as to such lesser amount which would result in no portion of such Payments being subject to excise tax under Section 4999 of the Code; whichever of the foregoing amounts, taking into account the applicable federal, state and local income taxes and the excise tax imposed by Section 4999, results in your receipt on an after-tax basis, of the greatest amount of economic benefits under this Agreement, notwithstanding that all or some portion of such benefits may be taxable under Section 4999 of the Code. Unless you and the Company otherwise agree in writing, any determination required under this Section 10(b) shall be made in writing by the Company's independent public accountants (the "Accountants"), whose reasonable determination shall be conclusive and binding upon you and the Company for all purposes. For purposes of making the calculations required by this Section 10(b), the Accountants may make reasonable assumptions and approximations concerning applicable taxes and may rely on reasonable, good faith interpretations concerning the application of the Sections 280G and 4999 of the Code. You and the Company shall furnish to the Accountants such information and documents as the Accountants may reasonably request in order to make a determination under this Section 10(b). If this Section 10(b) is applied to reduce an amount payable to the you, and the Internal Revenue Service successfully asserts that, despite the reduction, you have nonetheless received payments which are in excess of the maximum amount that could have been paid to you without being subjected to any excise tax, then, unless it would be unlawful for the Company to make such a loan or similar extension of credit to you, you may repay such excess amount to the Company though such amount constitutes a loan to you made at the date of payment of such excess amount, bearing interest at 120% of the applicable federal rate (as determined under Section 1274(d) of the Code in respect of such loan)."

If you find the foregoing acceptable, please kindly so indicate by executing and dating the attached copy of this letter agreement in the space provided and returning a copy to me at your earliest convenience.

Very truly yours,

NILE THERAPEUTICS, INC.

/s/ Pedro Granadillo

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Pedro Granadillo

Chairman, Compensation Committee of the Board of Directors

Agreed and accepted this  
21<sup>st</sup> day of March, 2013:

/s/ Darlene Horton, M.D.

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Darlene Horton, M.D.



4 West 4<sup>th</sup> Ave. Suite 400  
San Mateo, CA 94402

(650) 458-2670 Tel.  
(415) 875-7075 Fax

March 21, 2013

Daron Evans  
[ADDRESS]

Dear Daron:

This letter agreement (this "Agreement") is intended to confirm our recent discussions concerning amending the terms of your employment with Nile Therapeutics, Inc. ("Nile" or the "Company"), as follows:

1. Deferral of Base Salary. With respect to your current monthly base salary (the "Base Salary") of \$22,916.66, commencing February 1, 2013, the Company shall only be obligated to pay to you \$100 of such monthly Base Salary, and you agree that the balance of the Base Salary shall be deferred and shall be paid to you, if ever, upon completion of an Interim Financing Event (as defined below) prior to December 31, 2013, subject to your continued employment with the Company on the date of such Interim Financing Event.
2. Change of Control Bonus. In consideration of your agreement to the Base Salary deferral described above, you will be entitled to receive a Change of Control Bonus if the Company completes a Change of Control Transaction (as defined below) prior to December 31, 2013, as follows:
  - (a) Upon a Change of Control Transaction in which either (i) the outstanding shares of the Company's common stock are exchanged for securities of another corporation, or (ii) the Company issues shares of its common stock, with no securities or other consideration paid or payable to holders of the Company's common stock (e.g., a merger transaction in which the Company acquires another corporation in exchange for shares of the Company's common stock), then you will be entitled to receive, immediately prior to the effective time of the Change of Control Transaction, a number of shares of the Company's common stock equal to 4.5% of the shares of the Company's common stock then outstanding on a fully-diluted basis.
  - (b) Upon a Change of Control Transaction other than as described in the preceding paragraph, then you will be entitled to receive a cash payment, on the date of such Change of Control Transaction, equal to 4.5% of the applicable Change of Control Proceeds (as defined below).

For the avoidance of doubt, in the event the Company completes more than one Change of Control Transaction prior to December 31, 2013, only one Change of Control Bonus shall be payable pursuant to this Agreement.

3. Termination of Severance Benefits under Prior Agreement In consideration of the foregoing, the Company shall have no further obligations pursuant to that certain Severance Benefits Agreement dated July 24, 2010 (the "Prior Agreement"). For the avoidance of doubt, by executing this Agreement, you will be waiving any rights to future payments pursuant to the Prior Agreement. Notwithstanding the foregoing, Sections 1 and 2 of the Prior Agreement shall remain in full force and effect following your execution of this Agreement.

4. Definitions. For purposes of this Agreement, the following terms have the following meanings:

- (a) “Change of Control Transaction” means the consummation of:
- (i) a merger, consolidation or similar transaction involving (directly or indirectly) the Company and, immediately after the consummation of such merger, consolidation or similar transaction, the stockholders of the Company immediately prior thereto do not beneficially own, directly or indirectly, either (A) outstanding voting securities representing more than fifty percent (50%) of the combined outstanding voting power of the surviving entity in such merger, consolidation or similar transaction or (B) more than fifty percent (50%) of the combined outstanding voting power of the parent of the surviving entity in such merger, consolidation or similar transaction, in each case in substantially the same proportions as their ownership of the outstanding voting securities of the Company immediately prior to such transaction; or
  - (ii) sale, lease, exclusive worldwide license or other disposition of all or substantially all of the total gross value of the consolidated assets of the Company and its subsidiaries, other than a sale, lease, license or other disposition of all or substantially all of total gross value of the consolidated assets of the Company and its subsidiaries to an entity, more than fifty percent (50%) of the combined voting power of the voting securities of which are beneficially owned by stockholders of the Company in substantially the same proportions as their ownership of the outstanding voting securities of the Company immediately prior to such sale, lease, license or other disposition (for purposes of this subparagraph, “gross value” means the value of the assets of the Company or the value of the assets being disposed of, as the case may be, determined without regard to any liabilities associated with such assets).

Notwithstanding the foregoing, a Change of Control Transaction shall not include any transaction or series of related transactions the primary purpose of which is to obtain financing for the Company through the issuance of equity securities.

- (b) “Change of Control Proceeds” means with respect to any Change of Control Transaction and without duplication, all cash and the fair market value on the effective date of such transaction, as determined in good faith by the Board, of all other property actually paid, directly or indirectly, by a third party or the Company to the Company’s stockholders in respect of their shares (or to the Company in the case of a Change of Control Transaction structured as an asset sale or similar transaction), but excluding any expenses incurred by the Company in connection with such transaction. To the extent the payment of the amounts described in the preceding sentence are subject to future contingencies (e.g., earn-outs, milestones, etc.), then such amounts shall not be deemed Change of Control Proceeds until such time as such payments are actually made to the Company or its stockholders; provided, however that in no event shall such payments be paid later than five years from the Change of Control Transaction.

- (c) “Interim Financing Event” means the consummation on or before December 31, 2013, of one or more transactions pursuant to which the Company shall have received, whether by a financing, strategic transaction or another means (or any combination thereof), an aggregate of at least \$1,000,000 in gross cash proceeds. For the avoidance of doubt, a Change of Control Transaction shall constitute an Interim Financing Event if it otherwise satisfies the conditions described in the preceding sentence.

5. Certain Tax Provisions.

- (a) 409A. Payments, if any, pursuant to the Deferral of Base Salary provisions in Section 1 above, are intended to comply with the short-term deferral exception under Section 409A of the Internal Revenue Code of 1986, as amended (the “Code”) and therefore such payments must be paid no later than March 15, 2014.

Payments, if any, pursuant to the Change of Control Bonus provisions in Section 2 above, or any other payment otherwise required under a plan or arrangement of the Company to be made to you after a termination of your employment that the Company reasonably determines is subject to Section 409A(a)(2)(B)(i) of the Code shall not be paid or payment commenced until the later of (a) six months after the date of your “separation from service” (within the meaning of Section 409A of the Code) and (b) the payment date or commencement date specified in this Agreement for such payment(s). On the earliest date on which such payment(s) can be made or commenced without violating the requirements of Section 409A(a)(2)(B)(i) of the Code, the Company shall pay you, in a single lump sum, an amount equal to the aggregate amount of all payments delayed pursuant to the preceding sentence. Such delay, to the extent required, will not affect the timing of any installments or other payments otherwise payable after the delay period imposed under Section 409A of the Code. In addition, other provisions of this Agreement or any other such plan or arrangement notwithstanding, the Company shall have no right to accelerate or delay any such payment or to make any such payment as the result of any specific event except to the extent permitted under Section 409A of the Code.

- (b) Section 280G. Notwithstanding anything to the contrary contained in this Agreement, to the extent that any of the payments and benefits provided for under this Agreement or any other agreement or arrangement between you and the Company (collectively, the “Payments”) constitute a “parachute payment” within the meaning of Section 280G of the Code and (ii) but for this Section 5(b), would be subject to the excise tax imposed by Section 4999 of the Code, then the Payments shall be payable either (i) in full or (ii) as to such lesser amount which would result in no portion of such Payments being subject to excise tax under Section 4999 of the Code; whichever of the foregoing amounts, taking into account the applicable federal, state and local income taxes and the excise tax imposed by Section 4999, results in your receipt on an after-tax basis, of the greatest amount of economic benefits under this Agreement, notwithstanding that all or some portion of such benefits may be taxable under Section 4999 of the Code. Unless you and the Company otherwise agree in writing, any determination required under this Section 5(b) shall be made in writing by the Company’s independent public accountants (the “Accountants”), whose reasonable determination shall be conclusive and binding upon you and the Company for all purposes. For purposes of making the calculations required by this Section 5(b), the Accountants may make reasonable assumptions and approximations concerning applicable taxes and may rely on reasonable, good faith interpretations concerning the application of the Sections 280G and 4999 of the Code. You and the Company shall furnish to the Accountants such information and documents as the Accountants may reasonably request in order to make a determination under this Section 5(b). If this Section 5(b) is applied to reduce an amount payable to the you, and the Internal Revenue Service successfully asserts that, despite the reduction, you have nonetheless received payments which are in excess of the maximum amount that could have been paid to you without being subjected to any excise tax, then, unless it would be unlawful for the Company to make such a loan or similar extension of credit to you, you may repay such excess amount to the Company though such amount constitutes a loan to you made at the date of payment of such excess amount, bearing interest at 120% of the applicable federal rate (as determined under Section 1274(d) of the Code in respect of such loan).

If you find the foregoing acceptable, please kindly so indicate by executing and dating the attached copy of this Agreement in the space provided and returning a copy to me at your earliest convenience.

Very truly yours,

NILE THERAPEUTICS, INC.

/s/ Darlene Horton, M.D.

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Darlene Horton, M.D.  
Chief Executive Officer

Agreed and accepted this  
21<sup>st</sup> day of March, 2013:

/s/ Daron Evans

\_\_\_\_\_  
Daron Evans