UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

FORM 10-Q

(Mark One)

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

For the quarterly period ended June 30, 2021

OR

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

For the transition period from to

Commission File Number: 001-35518

SUPERNUS PHARMACEUTICALS, INC.

(Exact name of registrant as specified in its charter)

Delaware			**20-2590184**
(State or other jurisdiction of incorporation or organization)			(I.R.S. Employer Identification No.)
9715 Key West Avenue	**Rockville**	**MD**	**20850**
(Address of principal executive offices)			(Zip Code)

(301) 838-2500

(Registrant's telephone number, including area code)

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

Indicate by check mark whether the registrant has submitted electronically pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files).

☒ Yes No ☐

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

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

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

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

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

Title of each class	Outstanding at August 2, 2021	Trading Symbol	Name of each exchange on which registered
Common Stock, $0.001 par value per share	53,145,884	SUPN	The Nasdaq Global Market

SUPERNUS PHARMACEUTICALS, INC.
FORM 10-Q — QUARTERLY REPORT
FOR THE QUARTERLY PERIOD ENDED June 30, 2021

PART I — FINANCIAL INFORMATION

Supernus Pharmaceuticals, Inc.
Condensed Consolidated Balance Sheets
(in thousands, except share data)

	June 30, 2021 (unaudited)	December 31, 2020
Assets		
Current assets		
Cash and cash equivalents	$ 223,771	$ 288,640
Marketable securities	186,070	133,893
Accounts receivable, net	137,275	140,877
Inventories, net	58,391	48,325
Prepaid expenses and other current assets	33,737	18,682
Total current assets	639,244	630,417
Long term marketable securities	445,473	350,359
Property and equipment, net	17,065	37,824
Intangible assets, net	352,628	364,342
Goodwill	77,963	77,911
Other assets	40,687	43,249
Total assets	$ 1,573,060	$ 1,504,102
Liabilities and stockholders' equity		
Current liabilities		
Accounts payable and accrued liabilities	$ 79,993	$ 78,934
Accrued product returns and rebates	173,598	126,192
Contingent consideration, current portion	23,540	30,900
Other current liabilities	6,316	9,082
Total current liabilities	283,447	245,108
Convertible notes, net	370,383	361,751
Contingent consideration, long term	45,430	45,800
Operating lease liabilities, long term	36,143	28,579
Deferred income tax liabilities	32,986	35,215
Other liabilities	19,092	42,791
Total liabilities	787,481	759,244
Stockholders' equity		
Common stock, $0.001 par value; 130,000,000 shares authorized; 53,144,759 and 52,868,482 shares issued and outstanding as of June 30, 2021 and December 31, 2020, respectively	53	53
Additional paid-in capital	424,175	409,332
Accumulated other comprehensive earnings, net of tax	5,433	8,975
Retained earnings	355,918	326,498
Total stockholders' equity	785,579	744,858
Total liabilities and stockholders' equity	$ 1,573,060	$ 1,504,102

See accompanying notes.

Supernus Pharmaceuticals, Inc.
Condensed Consolidated Statements of Earnings
(in thousands, except share and per share data)

	Three Months ended June 30,		Six Months ended June 30,	
	2021	2020	2021	2020
	(unaudited)		(unaudited)	
Revenues				
Net product sales	$ 138,628	$ 123,984	$ 267,009	$ 216,474
Royalty revenues	2,701	2,745	5,252	5,231
Total revenues	141,329	126,729	272,261	221,705
Costs and expenses				
Cost of goods sold [a]	25,028	8,386	39,982	12,538
Research and development	15,455	22,247	49,735	41,184
Selling, general and administrative	69,535	48,103	130,992	89,717
Amortization of intangible assets	5,948	2,445	11,955	3,706
Contingent consideration gain	(8,750)	—	(7,730)	—
Total costs and expenses	107,216	81,181	224,934	147,145
Operating earnings	34,113	45,548	47,327	74,560
Other income (expense)				
Interest expense	(5,467)	(5,815)	(11,564)	(11,570)
Interest and other income, net	2,589	7,477	6,401	13,254
Total other income (expense)	(2,878)	1,662	(5,163)	1,684
Earnings before income taxes	31,235	47,210	42,164	76,244
Income tax expense	7,509	12,543	12,744	20,059
Net earnings	$ 23,726	$ 34,667	$ 29,420	$ 56,185
Earnings per share				
Basic	$ 0.45	$ 0.66	$ 0.56	$ 1.07
Diluted	$ 0.43	$ 0.65	$ 0.54	$ 1.05
Weighted-average shares outstanding				
Basic	53,005,344	52,557,035	52,985,472	52,545,910
Diluted	54,724,146	53,645,828	54,601,533	53,611,418

[a] Excludes amortization of acquired intangible assets

See accompanying notes.

Supernus Pharmaceuticals, Inc.
Condensed Consolidated Statements of Comprehensive Earnings
(in thousands)

	Three Months ended June 30,		Six Months ended June 30,	
	2021	2020	2021	2020
	(unaudited)		(unaudited)	
Net earnings	$ 23,726	$ 34,667	$ 29,420	$ 56,185
Other comprehensive earnings				
Unrealized (loss) gain on marketable securities, net of tax	(816)	11,525	(3,542)	3,942
Other comprehensive (loss) income	(816)	11,525	(3,542)	3,942
Comprehensive earnings	$ 22,910	$ 46,192	$ 25,878	$ 60,127

See accompanying notes.

Supernus Pharmaceuticals, Inc.
Condensed Consolidated Statements of Changes in Stockholders' Equity
Six Months ended June 30, 2021 and 2020
(unaudited, in thousands, except share data)

	Common Stock		Additional Paid-in Capital	Accumulated Other Comprehensive Earnings (Loss)	Retained Earnings	Total Stockholders' Equity
	Shares	Amount				
Balance, December 31, 2020	52,868,482	$ 53	$ 409,332	$ 8,975	$ 326,498	$ 744,858
Share-based compensation	—	—	4,371	—	—	4,371
Issuance of common stock in connection with the Company's equity award plans	125,655	—	2,247	—	—	2,247
Net earnings	—	—	—	—	5,694	5,694
Unrealized loss on marketable securities, net of tax	—	—	—	(2,726)	—	(2,726)
Balance, March 31, 2021	52,994,137	$ 53	$ 415,950	$ 6,249	$ 332,192	$ 754,444
Share-based compensation	—	—	5,476	—	—	5,476
Issuance of common stock in connection with the Company's equity award plans	150,622	—	2,749	—	—	2,749
Net earnings	—	—	—	—	23,726	23,726
Unrealized loss on marketable securities, net of tax	—	—	—	(816)	—	(816)
Balance, June 30, 2021	53,144,759	$ 53	$ 424,175	$ 5,433	$ 355,918	$ 785,579

	Common Stock		Additional Paid-in Capital	Accumulated Other Comprehensive Earnings (Loss)	Retained Earnings	Total Stockholders' Equity
	Shares	Amount				
Balance, December 31, 2019	52,533,348	$ 53	$ 388,410	$ 7,417	$ 199,548	$ 595,428
Share-based compensation	—	—	3,988	—	—	3,988
Issuance of common stock in connection with the Company's equity award plans	3,811	—	32	—	—	32
Net earnings	—	—	—	—	21,518	21,518
Unrealized loss on marketable securities, net of tax	—	—	—	(7,583)	—	(7,583)
Balance, March 31, 2020	52,537,159	$ 53	$ 392,430	$ (166)	$ 221,066	$ 613,383
Share-based compensation	—	—	4,962	—	—	4,962
Issuance of common stock in connection with the Company's equity award plans	86,925	—	1,437	—	—	1,437
Net earnings	—	—	—	—	34,667	34,667
Unrealized gain on marketable securities, net of tax	—	—	—	11,525	—	11,525
Balance, June 30, 2020	52,624,084	$ 53	$ 398,829	$ 11,359	$ 255,733	$ 665,974

See accompanying notes.

Supernus Pharmaceuticals, Inc.
Condensed Consolidated Statements of Cash Flows
(in thousands)

	Six Months ended June 30,	
	2021	2020
	(unaudited)	
Cash flows from operating activities		
Net earnings	$ 29,420	$ 56,185
Adjustments to reconcile net earnings to net cash provided by operating activities:		
Depreciation and amortization	13,213	4,778
Navitor investment R&D expense	15,000	—
Amortization of deferred financing costs and debt discount	8,632	8,179
Realized gains from sales of marketable securities	(219)	(3,316)
Amortization of premium/discount on marketable securities	(2,371)	984
Change in fair value of contingent consideration	(7,730)	—
Other noncash adjustments, net	(651)	359
Share-based compensation expense	9,847	8,950
Deferred income tax provision	(2,046)	(3,062)
Changes in operating assets and liabilities:		
Accounts receivable	3,605	(20,431)
Inventories	(7,950)	1,955
Prepaid expenses and other assets	(18,003)	(5,943)
Accrued product returns and rebates	47,406	28,298
Accounts payable and other liabilities	(5,679)	23,931
Net cash provided by operating activities	82,474	100,867
Cash flows from investing activities		
Purchases of marketable securities	(233,272)	(15,382)
Sales and maturities of marketable securities	83,844	257,936
Purchases of property and equipment	(1,508)	(3,072)
Acquisition of USWM, net of cash acquired	(950)	(297,200)
Deferred legal fees	(453)	(24)
Investment in Navitor Pharmaceuticals, Inc.	—	(15,000)
Net cash used in investing activities	(152,339)	(72,742)
Cash flows from financing activities		
Proceeds from issuance of common stock	4,996	1,469
Net cash provided by financing activities	4,996	1,469
Net change in cash and cash equivalents	(64,869)	29,594
Cash and cash equivalents at beginning of year	288,640	181,381
Cash and cash equivalents at end of period	$ 223,771	$ 210,975
Supplemental cash flow information		
Cash paid for interest on convertible notes	$ 1,258	$ 1,258
Cash paid for income taxes	20,696	607
Cash paid for operating leases	4,036	1,991
Noncash investing and financing activities		
Contingent consideration liability accrued in USWM Acquisition	$ —	$ 115,700
Lease assets obtained for new leases	$ 284	$ 24,738
Deferred legal fees and fixed assets included in accounts payable and accrued expenses	$ —	$ 365

See accompanying notes.

Supernus Pharmaceuticals, Inc.
Notes to Condensed Consolidated Financial Statements (unaudited)

1. Business Organization

Supernus Pharmaceuticals, Inc. (the Company) is a biopharmaceutical company focused on developing and commercializing products for the treatment of central nervous system (CNS) diseases. The Company's diverse neuroscience portfolio includes approved treatments for epilepsy, migraine, attention-deficit hyperactivity disorder (ADHD), hypomobility in Parkinson's Disease (PD), cervical dystonia, and chronic sialorrhea. The Company is also developing a broad range of novel CNS product candidates including new potential treatments for ADHD, hypomobility in PD, epilepsy, depression, and rare CNS disorders.

Commercial Products

- Trokendi XR® (topiramate) is the first once-daily extended release topiramate product indicated for the treatment of epilepsy in the United States (U.S.) market. It is also indicated for the prophylaxis of migraine headache.
- Oxtellar XR® (oxcarbazepine) is indicated as therapy for partial onset seizures in adults and children 6 years to 17 years of age and is the first once-daily extended-release oxcarbazepine product indicated for the treatment of epilepsy in the U.S.
- Qelbree™ (viloxazine extended-release capsules) is a novel non-stimulant product indicated for the treatment of ADHD in pediatric patients 6 to 17 years of age.
- APOKYN® (apomorphine hydrochloride injection) is a product indicated for the acute, intermittent treatment of hypomobility or "off" episodes ("end-of-dose wearing off" and unpredictable "on-off" episodes) in patients with advanced PD.
- MYOBLOC® (rimabotulinumtoxinB) is a product indicated for the treatment of cervical dystonia and sialorrhea in adults, and it is the only Type B toxin available on the market.
- XADAGO® (safinamide) is a once-daily product indicated as adjunctive treatment to levodopa/carbidopa in patients with PD experiencing "off" episodes.

Product Candidates

- SPN-812 (viloxazine hydrochloride) is a novel non-stimulant product candidate for the treatment of ADHD in adult patients.
- SPN-830 (Apomorphine Infusion Pump) is a late-stage drug/device combination product candidate for the continuous prevention of "off" episodes in PD.
- SPN-817 is a novel product candidate for the treatment of severe epilepsy.
- SPN-820 is a first-in-class product candidate for treatment resistant depression (TRD). It is an orally active small molecule that directly activates brain mechanistic target of rapamycin complex 1 (mTORC1).

In April 2021, the U.S. Food and Drug Administration (FDA) approved Qelbree (SPN-812) for the treatment of ADHD in pediatric patients 6 to 17 years of age. In May 2021, the Company launched Qelbree in the U.S.

On April 28, 2020, the Company entered into a Sale and Purchase Agreement with US WorldMeds Partners, LLC to acquire the CNS portfolio of USWM Enterprises, LLC (USWM Enterprises) (USWM Acquisition). With the acquisition, completed on June 9, 2020, the Company added three established commercial products, APOKYN, XADAGO, and MYOBLOC, and a product candidate in late-stage development, SPN-830, to its portfolio. Refer to Note 3, *USWM Acquisition*, for further discussion on the USWM Acquisition.

On April 21, 2020, the Company entered into a Development and Option Agreement (Development Agreement) with Navitor Pharmaceuticals, Inc. (Navitor Inc.) and also acquired an ownership position in Navitor Inc. Under the terms of the Development Agreement, the Company and Navitor Inc. will jointly conduct a Phase II clinical program for NV-5138 (SPN-820) in TRD. In March 2021, Navitor Inc. underwent a legal restructuring whereby Navitor Inc. became a wholly owned subsidiary of

a newly formed limited liability company, Navitor Pharmaceuticals, LLC (Navitor LLC). Refer to Note 5, *Investments*, for further discussion on the Navitor Development Agreement and equity investment.

COVID-19 Impact

While the impact of the ongoing COVID-19 pandemic did not have a material adverse effect on the Company's financial position or results of operations for the three and six months ended June 30, 2021, the Company continues to closely monitor the events and circumstances surrounding the COVID-19 pandemic and its impact on all aspects of our business operations. Since the situation surrounding the COVID-19 pandemic remains fluid and the duration uncertain, the long-term nature and extent of the impacts of the pandemic on the Company's business operations and financial position cannot be reasonably estimated at this time.

2. Summary of Significant Accounting Policies

Basis of Presentation

The Company’s unaudited condensed consolidated financial statements have been prepared in accordance with the requirements of the U.S. Securities and Exchange Commission (SEC) for interim financial information. As permitted under Generally Accepted Accounting Principles in the United States (U.S. GAAP), certain notes and other information have been omitted from the interim unaudited condensed consolidated financial statements presented in this Quarterly Report on Form 10-Q. Therefore, these condensed consolidated financial statements should be read in conjunction with the Company’s most recent Annual Report on Form 10-K, for the year ended December 31, 2020, filed with the SEC.

In management’s opinion, the condensed consolidated financial statements include all normal and recurring adjustments necessary for a fair presentation of the Company’s financial position, results of operations, and cash flows. The results of operations for any interim period are not necessarily indicative of the Company’s future quarterly or annual results.

The Company, which is primarily located in the U.S., operates in one operating segment.

Reclassifications

Certain prior year amounts in the condensed consolidated statements of cash flows have been reclassified to conform to the current year condensed financial statement presentation. These reclassifications had no effect on operating cash flows or on our other condensed consolidated financial statements for the three and six months ended June 30, 2021 and 2020.

Consolidation

The Company’s condensed consolidated financial statements include those of the Company's wholly-owned subsidiaries and variable interest entities (VIE) where the Company is the primary beneficiary, if any. All significant intercompany transactions and balances have been eliminated in consolidation.

The Company continuously assesses whether it is the primary beneficiary of a VIE, as changes to existing relationships or future transactions may affect its conclusions.

Use of Estimates

The Company bases its estimates on: historical experience; forecasts; information received from its service providers; information from other sources, including public and proprietary sources; and other assumptions that the Company believes are reasonable under the circumstances. Actual results could differ materially from the Company’s estimates. The Company periodically evaluates the methodologies employed in making its estimates.

The extent to which the COVID-19 pandemic may directly or indirectly impact our business, financial condition and results of operations is highly uncertain and subject to change. As a result, certain of our estimates and assumptions, including the provision for sales deductions, the creditworthiness of customers entering into revenue arrangements, and the fair values of our financial instruments, require increased judgment and carry a higher degree of variability and volatility that could result in material changes to our estimates in future periods.

Advertising Expense

Advertising expense includes the cost of promotional materials and activities, such as printed materials and digital marketing, marketing programs and speaker programs. The cost of the Company's advertising efforts are expensed as incurred.

The Company incurred approximately $21.8 million and $37.1 million in advertising expense for the three and six months ended June 30, 2021, respectively, and approximately $10.9 million and $22.5 million for the three and six months ended June 30, 2020, respectively. These expenses are recorded as a component of *Selling, general and administrative expenses* in the condensed consolidated statements of earnings.

Recently Issued Accounting Pronouncements

Accounting Pronouncements Adopted

ASU 2019-12, *Income Taxes (Topic 740): Simplifying the Accounting for Income Taxes* - The new standard, issued in December 2019, simplifies the accounting for income taxes. The Company adopted the guidance on January 1, 2021, on a prospective basis. The adoption of the new standard did not have a material impact to the financial statements.

ASU 2020-01, *Investments — Equity Securities (Topic 321), Investments — Equity Method and Joint Ventures (Topic 323), and Derivatives and Hedging (Topic 815), Clarifying the Interactions between Topic 321, Topic 323, and Topic 815* - The new standard, issued in January 2020, clarifies the interaction of the equity securities under Topic 321 and investments accounted for under the equity method of accounting in Topic 323 and the accounting for certain contracts and purchased options accounted for under Topic 815. The amendment clarifies that an entity can elect to adopt the measurement alternative, which is if an entity identifies observable price changes in orderly transactions for the identical or a similar investment of the same issuer, it should measure the equity security at fair value as of the date that the observable transaction occurred before applying or upon discontinuing the equity method. The adoption of the new standard as of January 1, 2021 did not have a material impact to the financial statements.

New Accounting Pronouncements Not Yet Adopted

ASU 2020-06, *Debt - Debt with Conversion and Other Options (Subtopic 470-20) and Derivatives and Hedging - Contracts in Entity's Own Equity (Subtopic 815-40): Accounting for Convertible Instruments and Contracts in an Entity's Own Equity* - The new standard, issued in August 2020, simplifies the accounting and disclosures for convertible instruments and contracts. This guidance will be effective on January 1, 2022 on a prospective basis. The Company is currently evaluating the impact of the new guidance on its consolidated financial statements.

3. USWM Acquisition

On June 9, 2020 (the Closing Date), the Company completed its acquisition of all of the outstanding equity of USWM Enterprises, a privately-held biopharmaceutical company, pursuant to a Sale and Purchase Agreement with US WorldMeds Partners, LLC (Seller), dated April 28, 2020 (the Agreement). Under the terms of the Agreement, the Company acquired the right to further develop and commercialize APOKYN, XADAGO, and the Apomorphine Infusion Pump (SPN-830; the In Process Research and Development (IPR&D) asset) in the U.S. and MYOBLOC worldwide (the Products) for an upfront cash payment of $297.2 million, subject to working capital adjustments, and the potential for additional contingent consideration payments of up to $230 million.

The potential $230 million in contingent consideration payments includes up to $130 million for the achievement of certain SPN-830 regulatory and commercial activities (regulatory and developmental contingent consideration payments) and up to $100 million related to future sales performance of the Products (sales-based contingent consideration payments). The regulatory and developmental contingent consideration payments include a $25 million milestone due upon the FDA's acceptance of the SPN-830 New Drug Application (NDA) for review. The remaining $105 million of the $130 million regulatory and developmental contingent consideration includes payments upon the FDA's regulatory approval and subsequent commercial launch by the Company of SPN-830, if approved. One of the regulatory milestones has a time-based mechanism for full or partial achievement. The $100 million sales-based contingent consideration payments include a $35 million milestone due upon achievement of certain U.S. net product sales of APOKYN during 2021. The remaining $65 million of the $100 million sales-based contingent consideration payments relate to the achievement of certain net product sales of the Products in 2022 and 2023. Refer to "*Contingent Consideration*" section below for further discussion.

In the second quarter of 2021 and within one year from the Closing Date, the Company finalized its accounting for the business combination, including the purchase price allocation; the Company recorded measurement period adjustments related to the purchase price consideration, finalization of the accounting for the lease (refer to Note 12, *Leases*), the fair values of inventory and intangible assets, and deferred tax liabilities based on refinements to inputs used in the estimates.

Purchase Price Consideration

The following table summarizes the purchase price consideration (unaudited):

	As Initially Reported	Measurement Period Adjustments [1]	As Adjusted
Cash consideration	$ 304,194	$ 2,291	$ 306,485
Estimated fair value of contingent consideration	115,700	(40,900)	74,800
Estimated total purchase consideration	$ 419,894	$ (38,609)	$ 381,285
Cash consideration to Seller - net of cash acquired	$ 297,200	$ 2,291	$ 299,491

[1] Measurement period adjustments reflect additional payments to Seller following the Closing Date for working capital adjustments on the purchase price consistent with the Agreement and an adjustment to the initial estimate of fair value of the contingent consideration.

The Company paid the Seller $297.2 million in cash at the Closing Date. From the Closing Date through the end of the measurement period, the Company incurred additional cash payments to Seller totaling $2.3 million for working capital adjustments on the purchase price consistent with the Agreement resulting in an increase to the original cash consideration paid to the Seller. Of the $2.3 million additional payments, $1.0 million was incurred in the second quarter of 2021 and the remainder was reported and paid in 2020.

Contingent Consideration

In addition to the cash paid to the Seller, contingent payments of up to $230 million are also due to the Seller upon the achievement of certain milestones related to the development of SPN-830 and sale of the Products. The possible outcomes for the contingent consideration range from $0, if no milestone is achieved, to $230 million on an undiscounted basis if all milestones are achieved.

The Company initially recorded a contingent consideration liability of $115.7 million as of the Closing Date to reflect the estimated fair value of the contingent consideration based on information available at that time. The estimated fair value of the contingent consideration was determined using a Monte Carlo simulation for the sales-based contingent consideration payments and an income approach for the regulatory and developmental contingent consideration payments. The key assumptions considered in estimating the fair value include the estimated probability and timing of milestone achievement, such as the probability and timing of obtaining regulatory approval, discount rate, the estimated revenue volatility and the estimated amount and timing of projected revenues from the Products. Subsequent to the Closing Date, the Company adjusted the contingent consideration fair value based on new information related to the facts and circumstances that existed as of the acquisition date related to the timing of meeting the conditions of the milestone payments that are contingent upon regulatory approval and commercial launch of the acquired IPR&D asset as well as the estimated timing of projected revenues from the Products. As a result, the Company recorded in the fourth quarter of 2020, a measurement period adjustment of $40.9 million, which decreased the estimated fair value of the contingent consideration liability as of Closing Date to $74.8 million. Refer to contingent consideration discussion in Note 6, *Fair Value of Financial Instruments.*

Fair Value of Net Assets Acquired

The following table presents the Company's estimates of the fair value of the assets acquired and liabilities assumed as of the Closing Date, and subsequent measurement period adjustments recorded (unaudited, dollars in thousands):

	As Initially Reported	Measurement Period Adjustments [1]	As Adjusted
Cash and cash equivalents	$ 6,994	$ —	$ 6,994
Accounts receivable, net	18,474	—	18,474
Inventories, net [2]	10,400	1,200	11,600
Prepaid expenses and other current assets	3,564	—	3,564
Property and equipment, net	454	—	454
Finance lease asset [3]	22,747	(22,747)	—
Operating lease asset [3]	—	11,029	11,029
Intangible assets [4]	387,000	(32,000)	355,000
Other assets	340	—	340
Total fair value of assets acquired	449,973	(42,518)	407,455
Accounts payable	(2,573)	—	(2,573)
Accrued expenses and other current liabilities	(23,339)	—	(23,339)
Finance lease liability [3]	(22,747)	22,747	—
Operating lease liability [3]	—	(11,029)	(11,029)
Deferred income tax liabilities, net [5]	(69,515)	2,323	(67,192)
Total fair value of liabilities assumed	(118,174)	14,041	(104,133)
Total identifiable net assets	$ 331,799	$ (28,477)	$ 303,322
Goodwill	88,095	(10,132)	77,963
Total purchase price [6]	$ 419,894	$ (38,609)	$ 381,285

[1] Measurement period adjustments reflect adjustments based on information related to the facts and circumstances that existed as of the acquisition date.
[2] Refer to discussion on *Acquired Inventory* below for measurement period adjustments to inventory.
[3] Refer to Note 12, *Leases*, for further discussion of the acquired lease asset and assumed lease liability.
[4] Refer to discussion on *Acquired Intangible Assets* below for measurement period adjustments to intangible assets.
[5] Includes tax attributes that are subject to tax limitations. Measurement period adjustment is primarily due to the tax impact of the changes in the initial estimate of the fair value of intangible assets and inventories and estimates of tax attributes and positions.
[6] Measurement period adjustments include an adjustment to the fair value of the contingent consideration net of the additional cash payment made to the Seller.

Acquired Inventory

The estimated fair value of the inventory was determined using the comparative sales method, which estimated the expected sales price of the product, reduced by all costs expected to be incurred to complete or to dispose of the inventory, as well as a profit on the sale. The Company recorded a total measurement adjustment of $1.2 million consisting of a $1.9 million adjustment in the second quarter of 2021 due to refinements to inputs and assumptions related to the costs to dispose, offset by a $0.7 million adjustment recorded in the fourth quarter of 2020 due to refinements to the inputs and assumptions pertaining to the estimate of acquired inventories' obsolescence based on review of product dating information.

Acquired Intangible Assets

The acquired intangible assets include the acquired IPR&D asset and the acquired developed technology and product rights. The Company determined the estimated fair value of the acquired intangible assets as of the Closing Date using the income approach. The fair value measurements of the acquired intangible assets were determined based on significant unobservable inputs and therefore, represent a Level 3 fair value measurement. Some of the more significant inputs and assumptions used in the

intangible assets valuation include: the timing and probability of success of clinical and regulatory approvals for the IPR&D asset, the estimated future cash flows from Product sales, the timing and projection of costs and expenses, discount rates and tax rates.

The Company initially recorded a fair value of intangible assets of $387 million, which consisted of $150 million related to the acquired IPR&D and $237 million related to acquired developed technology and Product rights. The initial estimate of the fair value of intangible assets recorded as of the Closing Date is based on information available at that time. In the fourth quarter of 2020, the Company recorded measurement period adjustments of $32 million, which adjusted the initial estimated fair value of the intangible assets to $355 million as of the Closing Date. The revisions were based on updated assumptions and information related to the facts and circumstances that existed as of the acquisition date. The Company updated assumptions with respect to the timing of regulatory approval and the commercialization of the acquired IPR&D asset. In addition, the Company also made refinements of the estimates of projected cash flows based on review of terms of the contractual arrangements associated with the acquired Products.

In the second quarter of 2021, the Company made further refinements to its estimates of projected cash flows based on review of Product costs and expense inputs which resulted in an increase to the fair value of the IPR&D asset of $1 million and an offsetting decrease in the fair value of the acquired developed technology and products rights of $1 million. The total estimated fair value of the intangible assets as of the Closing Date, and as of June 30, 2021, remained at $355 million.

The following table summarizes the purchase price allocation, and the average remaining useful lives for identifiable intangible assets (unaudited, dollars in thousands):

	Estimated Fair Value	Estimated Useful Lives as of Closing Date (in years)
Acquired IPR&D	$ 124,000	n/a
Acquired developed technology and product rights	231,000	10.5 - 12.5
Total intangible assets	$ 355,000	

Acquired intangible assets, excluding the acquired IPR&D asset, are amortized over their estimated useful lives on a straight-line basis. The IPR&D asset is considered indefinite-lived, until the successful completion or abandonment of the associated research and development efforts.

Goodwill

Goodwill was calculated as the excess of the consideration paid consequent to completing the acquisition, compared to the net assets recognized. Goodwill represents the future economic benefits from the other acquired assets, and which could not be individually identified and separately valued. Goodwill is primarily attributable to the additional acquired growth platforms and an expanded revenue base. Goodwill is not deductible for tax purposes.

Pro forma Information

The following table presents the unaudited pro forma combined financial information as if the USWM Acquisition had occurred on January 1, 2019 (dollars in thousands):

	Three Months ended June 30, 2020	Six Months ended June 30, 2020
Pro forma total revenues	$ 151,803	$ 284,965
Pro forma net earnings	39,220	62,700

The unaudited pro forma combined financial information is based on historical financial information as well the Company's allocation of the purchase price. In order to reflect the occurrence of the acquisition as if it occurred on January 1, 2019, the unaudited pro forma combined financial information reflects the adoption of ASC 842, *Leases;* the recognition of additional amortization expense on intangible assets, the removal of historical amortization charges and the elimination of non-recurring acquisition-related transaction costs.

The unaudited pro forma combined financial information should not be considered indicative of the results that would have occurred if the acquisition had been consummated on the assumed completion date, nor are they indicative of future results.

4. Disaggregated Revenues

The following table summarizes the disaggregation of revenues by product or source, (dollars in thousands):

	Three Months ended June 30,		Six Months ended June 30,	
	2021	2020	2021	2020
	(unaudited)		(unaudited)	
Net product sales				
Trokendi XR	$ 78,777	$ 89,674	$ 150,596	$ 158,225
Oxtellar XR	25,022	23,680	52,392	47,619
APOKYN	26,981	8,600	48,711	8,600
MYOBLOC [(1)]	4,641	1,229	8,881	1,229
XADAGO	2,892	801	6,114	801
Qelbree	315	—	315	—
Total net product sales	$ 138,628	$ 123,984	$ 267,009	$ 216,474
Royalty revenues	2,701	2,745	5,252	5,231
Total revenues	$ 141,329	$ 126,729	$ 272,261	$ 221,705

[(1)] In April 2021, the Company notified the European Medicine Agency that it will cease the marketing of rimabotulinumtoxinB in European countries where it has been marketed as NeuroBloc.

Trokendi XR accounted for 57% and 56% of the Company's total net product sales for the three and six months ended, June 30, 2021, respectively, and approximately 73% of the Company's total net product sales for both the three and six months ended, June 30, 2020.

The Company's three major customers, AmerisourceBergen Drug Corporation, Cardinal Health, Inc. and McKesson Corporation, individually accounted for more than 25% of our total net product sales and collectively accounted for more than 85% of our total net product sales in both 2021 and 2020.

The Company recognized noncash royalty revenue of $2.2 million and $4.4 million, for the three and six months ended June 30, 2021, respectively. The Company recognized noncash royalty revenue of $2.3 million and $3.9 million, for the three and six months ended June 30, 2020, respectively. Refer to Note 15, *Commitments and Contingencies*.

5. Investments

Marketable Securities

Unrestricted available-for-sale marketable securities held by the Company are as follows, (dollars in thousands):

	June 30, 2021	December 31, 2020
	(unaudited)	
Amortized cost	$ 624,324	$ 472,306
Gross unrealized gains	7,512	11,987
Gross unrealized losses	(293)	(41)
Total fair value	$ 631,543	$ 484,252

The contractual maturities of the unrestricted available-for-sale marketable securities held by the Company are as follows, (dollars in thousands):

	June 30, 2021 (unaudited)
Less than 1 year	$ 186,070
1 year to 2 years	202,969
2 years to 3 years	211,603
3 years to 4 years	30,901
Greater than 4 years	—
Total	$ 631,543

As of June 30, 2021, there was no impairment due to credit loss on any available-for-sale marketable securities.

Investment in Navitor

Development and Option agreement

In April 2020, the Company entered into the Development Agreement with Navitor Inc. The Company can terminate the Development Agreement upon 30 days' notice. Under the terms of the Development Agreement, the Company and Navitor Inc. will jointly conduct a Phase II clinical program for NV-5138 (SPN-820) for TRD. The Company will bear all of the Phase I and Phase II development costs incurred by either party, up to a maximum of $50 million. In addition, the Company will incur certain other research and development support costs. There are certain additional payment amounts which could be incurred by the Company. These costs are contingent upon Navitor Inc. achieving defined development milestones. The Company has an option to acquire or license NV-5138 (SPN-820), for which additional payments would be required. In the second quarter of 2020, the Company paid Navitor Inc. a one time, nonrefundable, and non-creditable fee of $10 million for this option to acquire or license NV-5138 (SPN-820).

Equity investment

In addition to entering into the Development Agreement in April 2020, the Company acquired Series D Preferred Shares of Navitor Inc. for $15 million, representing an approximately 13% ownership position in Navitor Inc.

In March 2021, Navitor Inc. underwent a legal restructuring. In the restructuring, Navitor Inc. became a wholly owned subsidiary of a newly formed limited liability company, Navitor LLC, and the outstanding shares of stock in Navitor Inc. were exchanged for units of membership interest in Navitor LLC having equivalent rights and preferences (Navitor Restructuring). As part of the Navitor Restructuring, the Series D Preferred Shares previously held by the Company were exchanged for Series D Preferred Units in Navitor LLC. In addition, certain assets that did not relate to NV-5138 (SPN-820) were transferred from Navitor Inc. to a newly formed entity that became a separate, wholly owned subsidiary of Navitor LLC.

The Company had determined that Navitor LLC is a VIE. The Company does not consolidate this VIE because the Company lacks the power to direct the activities that most significantly impact the investee's economic performance.

Prior to the Navitor Restructuring, the investment was accounted for under the practical expedient allowed for equity securities without readily determinable fair value, which is cost minus impairment plus any changes in observable price changes from an orderly transaction of similar investments in Navitor Inc. Following the legal restructuring and exchange of the preferred shares for member equity units of Navitor LLC, the investment was accounted for under the equity method of accounting due to the Company's ability to exert significant influence, but not control the financial and operating decisions. The majority of the assets and liabilities recorded in Navitor LLC's financial statements represent working capital items and cash that are being used for research and development purposes and are significantly lower than the Company's investment in Navitor LLC. This created a significant basis difference for the Company's investment in the underlying net assets, requiring the Company to account for the investee as if it were a consolidated subsidiary in a manner consistent with the provisions of ASC 805, *Business Combinations*, to apply the acquisition method of accounting. The Company has determined that substantially all of the fair value of the investment is attributable to a single IPR&D asset. As a result, the investee is not considered a business as defined in ASC 805. In the first quarter of 2021, the $15 million investment, which was previously recorded in *Other assets* in the condensed consolidated balance sheets, was expensed and recorded in *Research and development expense* in the condensed consolidated statements of earnings.

The maximum exposure to losses related to the investee is a maximum of approximately $50 million in expense for Phase I and Phase II development of NV-5138 (SPN-820), and the cost of other development and formulation activities provided by the Company.

The Company has provided no financing to the investee other than amounts required under the Development Agreement.

6. Fair Value of Financial Instruments and Contingent Consideration

The fair value of an asset or liability represents the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between unrelated market participants.

The Company reports the fair value of assets and liabilities using a three level measurement hierarchy that prioritizes the inputs used to measure fair value. Fair value hierarchy consists of the following three levels:

- Level 1—Valuations based on unadjusted quoted prices in active markets that are accessible at measurement date for identical assets.
- Level 2—Valuations based on quoted prices for similar assets or liabilities in active markets, quoted prices for identical or similar assets or liabilities in markets that are not active and model-based valuations in which all significant inputs are observable in the market, either directly or indirectly (e.g., interest rates; yield curves).
- Level 3—Valuations using significant inputs that are unobservable in the market and inputs that reflect the Company's own assumptions. These are based on the best information available, including the Company's own data.

The fair value of the restricted marketable securities which are classified as level 2 financial assets is recorded in *Other assets* on the condensed consolidated balance sheets. There were no level 3 financial assets as of June 30, 2021 or December 31, 2020. There have been no transfers of assets or liabilities into or out of Level 3 of the fair value hierarchy.

Financial Assets and Liabilities Recorded at Fair Value on a Recurring Basis

The Company's financial assets that are required to be measured at fair value on a recurring basis are as follows (dollars in thousands):

		Fair Value Measurements at June 30, 2021 (unaudited)		
	Total Fair Value at June 30, 2021	Level 1	Level 2	Level 3
Assets:				
Cash and cash equivalents				
Cash	$ 200,493	$ 200,493	$ —	$ —
Money market funds	23,278	23,278	—	—
Marketable securities				
Corporate debt securities	183,944	253	183,691	—
Municipal debt securities	2,126	—	2,126	
Long term marketable securities				
Corporate debt securities	445,473	—	445,473	—
Other noncurrent assets				
Marketable securities - restricted (SERP)	604	5	599	—
Total assets at fair value	$ 855,918	$ 224,029	$ 631,889	$ —
Liabilities:				
Contingent consideration	$ 68,970	$ —	$ —	$ 68,970
Total liabilities at fair value	$ 68,970	$ —	$ —	$ 68,970

	Total Fair Value at December 31, 2020	Fair Value Measurements at December 31, 2020		
		Level 1	Level 2	Level 3
Assets:				
Cash and cash equivalents				
Cash	$ 218,550	$ 218,550	$ —	$ —
Money market funds	70,090	70,090	—	—
Marketable securities				
Corporate debt securities	133,893	—	133,893	—
Long term marketable securities				
Corporate debt securities	350,359	256	350,103	—
Other noncurrent assets				
Marketable securities - restricted (SERP)	547	3	544	—
Total assets at fair value	$ 773,439	$ 288,899	$ 484,540	$ —
Liabilities:				
Contingent consideration	$ 76,700	$ —	$ —	76,700
Total liabilities at fair value	$ 76,700	$ —	$ —	$ 76,700

Other Financial Instruments

The carrying amounts of other financial instruments, including accounts receivable, accounts payable, and accrued expenses, approximate fair value due to their short-term maturities.

The Company records its convertible debt at carrying value. The fair value of the outstanding convertible debt is based on actual trading information as well as quoted prices, both provided by bond traders. Refer to Note 8, *Convertible Senior Notes Due 2023*.

The Company also had an investment in Navitor LLC, a privately held company, which it classifies as Level 3 as it does not have a readily determinable fair value. In the first quarter of 2021, the $15 million investment in Navitor LLC was expensed. Refer to Note 5, *Investments*.

Contingent Consideration

The contingent consideration liabilities are measured at fair value on a recurring basis. In the fourth quarter of 2020, the Company recorded a measurement period adjustment of $40.9 million. Refer to Note 3, *USWM Acquisition*. In the second quarter of 2021, the Company recorded a change in fair value of $7.7 million, which is primarily due to the write-down of the sales based contingent consideration liabilities offset by an increase in the estimated fair value of regulatory and developmental milestones due to passage of time. The Company assessed that these sales-based milestones will not be achieved based on the revised net sales projections. The probability of achieving these milestones were significantly lower compared to prior estimates. The Company updated its projected net sales of the Products based on recent historical sales trend experience.

The following table provides a reconciliation of the beginning and ending balances related to the contingent consideration for the USWM Acquisition and composition of the contingent consideration liabilities (dollars in thousands):

	Balance
Initial measurement at Closing Date at June 9, 2020	115,700
Measurement period adjustment	(40,900)
Change in fair value recognized in earnings	1,900
Balance at December 31, 2020	$ 76,700
Balance at December 31, 2020	$ 76,700
Change in fair value recognized in earnings (unaudited)	(7,730)
Balance at June 30, 2021 (unaudited)	$ 68,970

	June 30, 2021	December 31, 2020
	(unaudited)	
Regulatory and developmental contingent consideration liabilities	$ 68,970	$ 68,000
Sales-based contingent consideration liabilities	—	8,700
Total	$ 68,970	$ 76,700

7. Goodwill and Intangible Assets, Net

The following table sets forth the gross carrying amounts and related accumulated amortization of intangibles assets and goodwill (dollars in thousands):

	Remaining Weighted-Average Life (Years)	June 30, 2021	December 31, 2020
		(unaudited)	
Goodwill		$ 77,963	$ 77,911
Intangible assets:			
Acquired IPR&D		$ 124,000	$ 123,000
Definite-lived intangible assets			
Acquired developed technology and product rights	9.50 - 11.50	231,000	232,000
Capitalized patent defense costs	1.50 - 5.75	43,820	43,579
		398,820	398,579
Less accumulated amortization		(46,192)	(34,237)
Total intangible assets, net		$ 352,628	$ 364,342

The increase in goodwill represents measurement period adjustments recorded in 2021 related to the finalization of the business combination accounting of the USWM Acquisition. Refer to Note 3, *USWM Acquisition.*

Patent defense costs are deferred legal fees incurred in conjunction with defending patents for Oxtellar XR and Trokendi XR. U.S. patents covering Oxtellar XR and Trokendi XR will expire no earlier than 2027. In regard to Trokendi XR, the Company entered into settlement agreements that allow third parties to enter the market by January 1, 2023, or earlier under certain circumstances.

Amortization expense for intangible assets was approximately $5.9 million and $12.0 million for the three and six months ended June 30, 2021, respectively, and approximately $2.4 million and $3.7 million for the three and six months ended June 30, 2020, respectively. The increase in expense is due to amortization of the acquired developed technology and product rights from the USWM Acquisition.

8. Convertible Senior Notes Due 2023

The 0.625% Convertible Senior Notes Due 2023 (2023 Notes), which were issued in March 2018, bear interest at an annual rate of 0.625%, payable semi-annually in arrears on April 1 and October 1 of each year. The 2023 Notes will mature on April 1, 2023, unless earlier converted or repurchased by the Company. The Company may not redeem the 2023 Notes at its option before maturity. The total principal amount of 2023 Notes is $402.5 million.

The 2023 Notes were issued pursuant to an Indenture between the Company and Wilmington Trust, National Association, as trustee. The Indenture includes customary terms and covenants, including certain events of default upon which the 2023 Notes may be due and payable immediately. The Indenture does not contain any financial or operating covenants, or any restrictions on the payment of dividends, the issuance of other indebtedness, or the issuance or repurchase of securities by the Company.

Noteholders may convert their 2023 Notes at their option only in the following circumstances: (1) during any calendar quarter, if the last reported sale price per share of the Company's common stock for at least 20 trading days (whether or not consecutive) during the 30 consecutive trading days ending on, and including the last trading day of the immediately preceding calendar quarter, exceeds 130% of the conversion price, or a price of approximately $77.13 per share on such trading day; (2) during the five consecutive business days immediately after any 10 consecutive trading day period (such 10 consecutive trading day period, the "measurement period") in which the trading price per $1,000 principal amount of Notes for each trading day of the measurement period was less than 98% of the product of the last reported sale price per share of the Company's common stock on such trading day and the conversion rate on such trading day; (3) upon the occurrence of certain corporate events or distributions on the Company's common stock, as specified in the Indenture; and (4) at any time from and including October 1, 2022, until the close of business on the second scheduled trading day immediately before the maturity date.

At its election, the Company will settle conversions by paying or delivering, as applicable, cash, shares of the Company’s common stock, or a combination of cash and shares of the Company’s common stock, based on the applicable conversion rate. The initial conversion rate is 16.8545 shares per $1,000 principal amount of the 2023 Notes, which represents an initial conversion price of approximately $59.33 per share, and is subject to adjustment as specified in the Indenture. In the event of conversion, if converted in cash, the holders would forgo all future interest payments, any unpaid accrued interest, and the possibility of further stock price appreciation.

If a “make-whole fundamental change,” as defined in the Indenture occurs, then the Company will in certain circumstances increase the conversion rate for a specified period of time. If a “fundamental change,” as defined in the Indenture occurs, then noteholders may require the Company to repurchase their 2023 Notes at a cash repurchase price equal to the principal amount of the 2023 Notes to be repurchased, plus accrued and unpaid interest, if any.

Contemporaneous with the issuance of the 2023 Notes, the Company also entered into separate privately negotiated convertible note hedge transactions (collectively, the Convertible Note Hedge Transactions) with each of the call spread counterparties. The Company issued 402,500 convertible note hedge options. In the event that shares or cash are deliverable to holders of the 2023 Notes upon conversion at limits defined in the Indenture, counterparties to the convertible note hedges will be required to deliver up to approximately 6.8 million shares of the Company’s common stock, or to pay cash to the Company in a similar amount as the value that the Company delivers to the holders of the 2023 Notes, based on a conversion price of $59.33 per share.

Concurrently with entering into the Convertible Note Hedge Transactions, the Company also entered into separate privately negotiated warrant transactions (collectively, the Warrant Transactions) with each of the call spread counterparties. The Company issued a total of 6,783,939 warrants. The warrants entitle the holder to one share per warrant. The strike price of the Warrant Transactions will initially be $80.9063 per share of the Company’s common stock, and is subject to adjustment.

The Convertible Note Hedge Transactions are expected to reduce the potential dilution of the Company’s common stock upon conversion of the 2023 Notes, and/or offset any potential cash payments the Company is required to make in excess of the principal amount of converted 2023 Notes, as the case may be.

The Warrant Transactions were intended to partially offset the cost to the Company of the purchased Convertible Note Hedge Transactions; however, the Warrant Transactions could have a dilutive effect with respect to the Company’s common stock, to the extent that the market price per share of the Company’s common stock, as measured under the terms of the Warrant Transactions, exceeds the strike price of the warrants.

The liability component of the 2023 Notes consists of the following, (dollars in thousands):

	June 30, 2021	December 31, 2020
	(unaudited)	
2023 Notes	$ 402,500	$ 402,500
Unamortized debt discount and deferred financing costs	(32,117)	(40,749)
Total carrying value	$ 370,383	$ 361,751
Fair value (Level 2)	$ 398,727	$ 383,381

No 2023 Notes were converted as of June 30, 2021 or December 31, 2020.

9. Share-Based Payments

Share-based compensation expense is as follows (dollars in thousands):

	Three Months ended June 30,		Six Months ended June 30,	
	2021	2020	2021	2020
	(unaudited)		(unaudited)	
Research and development	$ 706	$ 818	$ 1,294	$ 1,499
Selling, general and administrative	4,770	4,144	8,553	7,451
Total	$ 5,476	$ 4,962	$ 9,847	$ 8,950

Stock Option and Stock Appreciation Rights

The following table summarizes stock option and stock appreciation rights (SAR) activities (unaudited):

	Number of Options	Weighted-Average Exercise Price (per share)	Weighted-Average Remaining Contractual Term (in years)
Outstanding, December 31, 2020	5,451,862	$ 23.26	6.28
Granted	812,825	$ 29.63	
Exercised	(197,463)	$ 19.59	
Forfeited	(190,176)	$ 30.78	
Outstanding, June 30, 2021 (unaudited)	5,877,048	$ 24.02	6.43
As of December 31, 2020:			
Vested and expected to vest	5,451,862	$ 23.26	6.28
Exercisable	3,218,771	$ 19.36	4.77
As of June 30, 2021:			
Vested and expected to vest	5,877,048	$ 24.02	6.43
Exercisable	3,717,675	$ 21.21	5.07

Restricted Stock Units

The following table summarizes restricted stock unit (RSU) activities (unaudited):

	Number of RSUs	Weighted-Average Grant Date Fair Value per Share
Nonvested, December 31, 2020	26,055	$ 23.99
Granted	21,110	$ 29.61
Vested	(26,055)	$ 23.99
Forfeited	—	$ —
Nonvested, June 30, 2021	21,110	$ 29.61

Performance Share Units

The following table summarizes performance share unit (PSU) activities (unaudited):

	Performance-Based Units		Market-Based Units		Total PSUs	
	Number of PSUs	Weighted-Average Grant Date Fair Value per Share	Number of PSUs	Weighted-Average Grant Date Fair Value per Share	Number of PSUs	Weighted-Average Grant Date Fair Value per Share
Nonvested, December 31, 2020	—	$ —	15,625	$ 23.41	15,625	$ 23.41
Granted	95,000	$ 29.74	20,000	$ 28.63	115,000	$ 29.55
Nonvested, June 30, 2021	95,000	$ 29.74	35,625	$ 26.34	130,625	$ 28.81

There were no vested and forfeited PSU awards during the three and six months ended June 30, 2021.

10. Earnings per Share

Basic earnings per share (EPS) is calculated using the weighted-average number of common shares outstanding. Diluted EPS is calculated using the weighted-average number of common shares outstanding, including the dilutive effect of the Company's stock option grants, SARs, RSUs, employee stock purchase plan (ESPP) awards, and the 2023 Notes, as determined per the treasury stock method.

Effect of Convertible Notes and Related Convertible Note Hedges and Warrants

In connection with the issuance of the 2023 Notes, the Company entered into Convertible Note Hedge and Warrant Transactions as described further in Note 8, *Convertible Senior Notes Due 2023*. The expected collective impact of the Convertible Note Hedge and Warrant Transactions is to reduce the potential dilution that would occur if the price of the Company's common stock was between the conversion price of $59.33 per share and the strike price of the warrants of $80.9063 per share.

The 2023 Notes and related Convertible Note Hedge and Warrant Transactions are excluded in the calculation of diluted EPS because inclusion would be anti-dilutive.

In addition to the above described effect of the 2023 Notes and the related Convertible Note Hedge and Warrant Transactions, the Company also excluded the common stock equivalents of the following outstanding stock-based awards in the calculation of diluted EPS, because their inclusion would be anti-dilutive:

	Three Months ended June 30,		Six Months ended June 30,	
	2021	2020	2021	2020
	(unaudited)		(unaudited)	
Stock options, RSUs, PSUs	1,157,397	2,999,885	1,313,316	3,022,165

The following table sets forth the computation of basic and diluted net earnings per share for the three and six months ended June 30, 2021 and 2020 (dollars in thousands, except share and per share amounts):

	Three Months ended June 30,		Six Months ended June 30,	
	2021	2020	2021	2020
	(unaudited)		(unaudited)	
Numerator:				
Net earnings	$ 23,726	$ 34,667	$ 29,420	$ 56,185
Denominator:				
Weighted average shares outstanding, basic	53,005,344	52,557,035	52,985,472	52,545,910
Effect of dilutive securities:				
Stock options, RSUs and SARs	1,718,802	1,088,793	1,616,061	1,065,508
Weighted average shares outstanding, diluted	54,724,146	53,645,828	54,601,533	53,611,418
Earnings per share, basic	$ 0.45	$ 0.66	$ 0.56	$ 1.07
Earnings per share, diluted	$ 0.43	$ 0.65	$ 0.54	$ 1.05

11. Income Tax Expense

The following table provides information regarding the Company’s income tax expense for the three and six months ended June 30, 2021 and 2020 (dollars in thousands):

	Three Months ended June 30,		Six Months ended June 30,	
	2021	2020	2021	2020
	(unaudited)		(unaudited)	
Income tax expense	$ 7,509	$ 12,543	$ 12,744	$ 20,059
Effective tax rate	24.1 %	26.6 %	30.2 %	26.3 %

Income tax expense for the three and six months ended June 30, 2021, as compared to the same periods in the prior year, decreased primarily due to lower income before taxes in 2021. The effective income tax rate decreased for the three months ended June 30, 2021, as compared to the same period in the prior year, primarily due to a non-taxable contingent consideration gain recognized in the second quarter of 2021. The effective income tax rate increased for the six months ended June 30, 2021, as compared to the same period in the prior year, mainly due to changes in the effective state tax rates as a result of the transfer of workforce between legal entities in the first quarter of 2021.

12. Leases

Headquarters and Fleet Vehicles

The Company has operating leases for its headquarters lease and its fleet vehicles. With respect to the fleet vehicle leases, given the volume of individual leases involved in the overall arrangement, the Company applies a portfolio approach to effectively account for the operating lease assets and liabilities. The Company also elected to combine the lease and non-lease components for the fleet vehicle and headquarters leases.

The Company's headquarters lease commenced on February 1, 2019 (the Commencement Date) and will continue until April 30, 2034, unless earlier terminated in accordance with the terms of the lease. The lease includes options to extend the lease for up to 10 years.

Contract Manufacturing Lease

Contemporaneous with the USWM Acquisition, USWM Enterprises adopted ASC 842, *Leases.* USWM Enterprises had an existing contract manufacturing agreement with Merz Pharma GmbH & Co. KGaA (Merz), for the manufacture and supply of rimabotulinumtoxinB finished products (Merz Agreement). Pursuant to the Merz Agreement, Merz agreed to provide a dedicated manufacturing facility that included a stand-alone building, dedicated clean room suites, dedicated manufacturing and purification

equipment, and filling and packaging production lines (collectively, the manufacturing facility) to manufacture finished products. The Merz Agreement will expire in July 2027, unless the Company and Merz mutually agree to extend the terms. The Merz Agreement may not be terminated for convenience.

Under the terms of the agreement, the Company is required to purchase a minimum quantity of finished products on an annual basis. This minimum purchase requirement represents the in-substance fixed contract consideration associated with the dedicated manufacturing facility which the Company accounts for as an embedded lease.

At the Closing Date of the USWM Acquisition, the Company preliminarily classified the embedded lease as a finance lease and preliminarily elected not to separate the lease and non-lease components. In the second quarter of 2021, the Company finalized its accounting of the USWM Acquisition. During the measurement period, the Company determined the fair market value of rent for the lease components and fair market value of the manufacturing facility associated with the Merz embedded lease. As a result, the Company made an accounting policy election, by class of underlying asset, to not combine lease and non-lease components for the manufacturing facility. A portion of the in-substance fixed contract consideration was allocated to the lease component based on the stand-alone selling price. Accordingly, the Company has finalized and updated the classification of the embedded lease from a finance lease to an operating lease. Refer to Note 3, *USWM Acquisition*, for further discussion.

Operating and finance lease assets and lease liabilities as reported on the condensed consolidated balance sheets are as follows (dollars in thousands):

	Balance Sheet Classification	June 30, 2021	December 31, 2020
		(unaudited)	
Assets			
Operating lease assets	Other assets	$ 29,665	$ 20,231
Finance lease asset	Property and equipment, net	—	20,874
Total lease assets		$ 29,665	$ 41,105
Liabilities			
Lease liabilities, current			
Operating lease liabilities, current portion	Accounts payable and accrued liabilities	$ 5,900	$ 3,760
Finance lease liability, current portion	Other current liabilities	—	3,761
Lease liabilities, long term			
Operating lease liabilities, long term	Operating lease liabilities, long term	36,143	28,579
Finance lease liability, long term	Other liabilities	—	20,235
Total lease liabilities		$ 42,043	$ 56,335

13. Composition of Other Balance Sheet Items

The following details the composition of other balance sheet items (dollars in thousands for amounts in tables):

Accounts Receivables

As of June 30, 2021 and December 31, 2020, the Company has reduced accounts receivable by approximately $11.6 million and $11.4 million, respectively. Prompt pay discount and contractual service fees, which were originally recorded as reduction to revenues, represents estimated amounts not expected to be paid by our customers. The Company's customers are primarily pharmaceutical wholesalers and distributors and specialty pharmacies. Receivables from our three major customers account for more than 85% of our total receivables.

Inventories

	June 30, 2021	December 31, 2020
	(unaudited)	
Raw materials	$ 28,159	$ 22,208
Work in process	15,193	8,985
Finished goods	15,039	17,132
Total	$ 58,391	$ 48,325

In May 2021, the Company launched Qelbree for the treatment of ADHD in pediatric patients 6 to 17 years of age in the U.S. Pre-launch inventory costs for Qelbree were $19.1 million as of December 31, 2020. Qelbree inventory was $34.2 million as of June 30, 2021.

Inventories include acquired inventory from the USWM Acquisition. Refer to Note 3, *USWM Acquisition*, for further discussion of the USWM Acquisition.

Property and Equipment

	June 30, 2021	December 31, 2020
	(unaudited)	
Lab equipment and furniture	$ 11,992	$ 12,526
Leasehold improvements	12,453	15,183
Software	2,023	2,295
Finance lease assets [1]	—	22,747
Computer equipment	1,156	2,113
	27,624	54,864
Less accumulated depreciation and amortization	(10,559)	(17,040)
Total	$ 17,065	$ 37,824

[1] Refer to Note 12, *Leases*.

Depreciation and amortization expense on property and equipment was approximately $0.7 million and $1.3 million for the three and six months ended June 30, 2021, respectively, and approximately $0.6 million and $1.1 million for the three and six months ended June 30, 2020, respectively. The Company retired certain fully depreciated property and equipment for the three and six months ended June 30, 2021.

Accounts Payable and Accrued Liabilities

	June 30, 2021	December 31, 2020
	(unaudited)	
Accounts payable	$ 7,229	$ 6,147
Accrued royalties [1]	13,183	13,890
Accrued product costs	13,045	9,587
Accrued compensation	12,926	16,008
Accrued professional fees	11,993	7,730
Accrued clinical trial costs [2]	7,167	12,842
Operating lease liabilities, current portion [3]	5,900	3,760
Other accrued expenses	8,550	8,970
Total	$ 79,993	$ 78,934

[1] Refer to Note 15, *Commitments and Contingencies*.
[2] Includes preclinical and all clinical trial-related costs.
[3] Refer to Note 12, *Leases*.

Accrued Product Returns and Rebates

	June 30, 2021	December 31, 2020
	(unaudited)	
Accrued product rebates	$ 140,718	$ 96,589
Accrued product returns	32,880	29,603
Total	$ 173,598	$ 126,192

Other Liabilities

	June 30, 2021	December 31, 2020
	(unaudited)	
Nonrecourse liability related to sale of future royalties, long term	$ 10,024	$ 13,410
Finance lease liability, long term [1]	—	20,235
Other liabilities	9,068	9,146
Total	$ 19,092	$ 42,791

[1] Refer to Note 12, *Leases*.

14. Interest Expense

The following details the composition of interest expense (dollars in thousands):

	Three Months ended June 30,		Six Months ended June 30,	
	2021	2020	2021	2020
	(unaudited)		(unaudited)	
Interest expense	$ (4,498)	$ (4,792)	$ (9,560)	$ (9,485)
Interest expense on nonrecourse liability related to sale of future royalties	(969)	(1,023)	(2,004)	(2,085)
Total	$ (5,467)	$ (5,815)	$ (11,564)	$ (11,570)

Interest expense includes noncash interest expense related to amortization of deferred financing costs, and amortization of the debt discount on the 2023 Notes of $4.3 million and $8.6 million for the three and six months ended June 30, 2021, respectively, and $4.2 million and $8.2 million for the three and six months ended June 30, 2020, respectively.

15. Commitments and Contingencies

Product Licenses

The Company has obtained exclusive licenses from third parties for proprietary rights to support certain products and product candidates. Under these license agreements, the Company may be required to pay certain amounts upon the achievement of defined milestones. If these products are ultimately commercialized, the Company is also obligated to pay royalties to third parties, computed as a percentage of net product sales, for each respective product under a license agreement.

Through the USWM Acquisition, the Company acquired licensing agreements with other pharmaceutical companies for APOKYN, XADAGO and MYOBLOC. The Company is obligated to pay royalties to third parties, computed as a percentage of net product sales, for each of the products under the respective license agreements. Royalty expense incurred is recognized as *Cost of goods sold* in the condensed consolidated statements of earnings.

Royalty Agreement

In the third quarter of 2014, the Company received $30 million pursuant to a Royalty Interest Acquisition Agreement related to the purchase, by HealthCare Royalty Partners III, L.P. (HC Royalty), of certain of the Company's rights under the Company's agreement with United Therapeutics Corporation. These rights are related to the commercialization of Orenitram (treprostinil) Extended-Release Tablets. Per the terms of the agreement, full ownership of the royalty rights will revert to the Company if and when a certain cumulative payment threshold is reached. Consequent to this agreement, the Company recorded a nonrecourse liability related to this transaction and amortizes this liability as noncash royalty revenue. Refer to Note 4,

Disaggregated Revenues, and Note 13, *Composition of Other Balance Sheet Items*.

USWM Enterprise Commitments Assumed

As part of the USWM Acquisition, the Company assumed the remaining commitments of USWM Enterprises and its subsidiaries, which are discussed below.

In addition to the annual minimum purchase quantity requirements of MYOBLOC, amounting to an estimated €3.0 million annually, under the contract manufacturing agreement with Merz for manufacture and supply, USWM Enterprises had an existing license and distribution agreement for XADAGO. This included an annual minimum promotional spend to support the marketing of XADAGO for the first five years of the agreement. As of June 30, 2021, the remaining contractual commitment for XADAGO is $2.0 million for the period from July 2021 to June 2022. Refer to Note 3, *USWM Acquisition*, for further discussion on the USWM Acquisition and Note 12, *Leases*, for further discussion on the Merz Agreement.

In March 2019, which is prior to the USWM Acquisition Closing Date, MDD US Operations, LLC (formerly US WorldMeds, LLC) and its subsidiary, Solstice Neurosciences, LLC (US) (collectively, the MDD Subsidiaries) entered into a Corporate Integrity Agreement (CIA) with the Office of Inspector General of the U.S. Department of Health and Human Services. Under the CIA, the MDD Subsidiaries agreed to and paid $17.5 million to resolve U.S. Department of Justice allegations that it violated the False Claims Act and committed to the establishment and ongoing maintenance of an effective compliance program. The fine was paid by the MDD Subsidiaries prior to closing of the USWM Acquisition. As part of the USWM Acquisition, the Company assumed the remaining obligations of the CIA and could become liable for payment of certain stipulated monetary penalties in the event of any CIA violations. In addition, the Company will continue to incur significant costs through March 2024 to maintain a broad array of processes, policies and procedures necessary to comply with the CIA.

Claims and Litigation

From time to time, the Company may be involved in various claims, litigation and legal proceedings. These matters may involve patent litigation, product liability and other product-related litigation, commercial and other matters, and government investigations, among others. On a quarterly basis, the Company reviews the status of each significant matter and assesses its potential financial exposure. If the potential loss from any claim, asserted or unasserted, or legal proceeding is considered probable and the amount can be reasonably estimated, the Company will accrue a liability for the estimated loss. Because of uncertainties related to claims, legal proceedings and litigation, accruals will be based on the Company's best estimates based on available information. We do not believe that any of these matters will have a material adverse effect on our financial position. The Company may reassess the potential liability related to these matters and may revise these estimates, which could result in material adverse adjustments to the Company's operating results.

Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

Management's Discussion and Analysis of Financial Condition and Results of Operations is intended to help the reader understand the results of operations and the financial condition of Supernus Pharmaceuticals, Inc. (the Company, we, us, or our). The interim condensed consolidated financial statements included in this report and this Management's Discussion and Analysis of Financial Condition and Results of Operations should be read in conjunction with our audited consolidated financial statements and notes thereto for the year ended December 31, 2020 and the related Management's Discussion and Analysis of Financial Condition and Results of Operations, both of which are contained in our Annual Report on Form 10-K, filed with the Securities and Exchange Commission on March 8, 2021.

In addition to historical information, this Quarterly Report on Form 10-Q contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended, which are intended to be covered by the safe harbors created thereby. These forward-looking statements may include declarations regarding the Company's belief or current expectations of management, such as statements including the words "budgeted," "anticipate," "project," "forecast," "estimate," "expect," "may," "believe," "potential," and similar statements or expressions, which are intended to be among the statements that are forward-looking statements, as such statements reflect the reality of risk and uncertainty that is inherent in our business. Actual results may differ materially from those expressed or implied by such forward-looking statements. Readers are cautioned not to place undue reliance on these forward-looking statements, which are made as of the date this report was filed with the Securities and Exchange Commission. Our actual results and the timing of events could differ materially from those discussed in our forward-looking statements as a result of many factors, including those set forth under the "Risk Factors" section of our Annual Report on Form 10-K and elsewhere in this report as well as in other reports and documents we file with the Securities and Exchange Commission from time to time. Except as required by law, we undertake no obligation to update any forward-looking statements to reflect events or circumstances occurring after the date of this Quarterly Report on Form 10-Q.

Solely for convenience, in this Quarterly Report on Form 10-Q, the trade names are referred to without the TM symbols and the trademark registrations are referred to without the circled R, but such references should not be construed as any indicator that the Company will not assert, to the fullest extent under applicable law, our rights thereto.

Overview

We are a biopharmaceutical company focused on developing and commercializing products for the treatment of central nervous system (CNS) diseases. Our diverse neuroscience portfolio includes approved treatments for epilepsy, migraine, attention-deficit hyperactivity disorder (ADHD), hypomobility in Parkinson's Disease (PD), cervical dystonia, and chronic sialorrhea. We are also developing a broad range of novel CNS product candidates including new potential treatments for ADHD, hypomobility in PD, epilepsy, depression, and rare CNS disorders.

In April 2021, the U.S. Food and Drug Administration (FDA) approved Qelbree (SPN-812) for the treatment of ADHD in pediatric patients 6 to 17 years of age. In May 2021, we launched Qelbree in the U.S.

On April 28, 2020, we entered into a Sale and Purchase Agreement with US WorldMeds Partners, LLC to acquire the CNS portfolio of USWM Enterprises, LLC (USWM Enterprises) (USWM Acquisition). With the acquisition, completed on June 9, 2020, the Company added three established commercial products and a product candidate in late-stage development to its portfolio. These commercial products, APOKYN, XADAGO, and MYOBLOC, are primarily for the treatment of PD.

On April 21, 2020, we entered into a Development and Option Agreement (Development Agreement) with Navitor Pharmaceuticals, Inc. (Navitor Inc.) and also acquired an ownership position in Navitor Inc. Under the terms of the Development Agreement, the Company and Navitor Inc. will jointly conduct a Phase II clinical program for NV-5138 (SPN-820) in treatment resistant depression (TRD). In March 2021, Navitor Inc. underwent a legal restructuring whereby Navitor Inc. became a wholly owned subsidiary of a newly formed limited liability company, Navitor Pharmaceuticals, LLC (Navitor LLC) (Navitor Restructuring).

We have a portfolio of commercial products and product candidates.

Commercial Products

- Trokendi XR® (topiramate) is the first once-daily extended release topiramate product indicated for the treatment of epilepsy in the United States (U.S.) market. It is also indicated for the prophylaxis of migraine headache.
- Oxtellar XR® (oxcarbazepine) is indicated as therapy for partial onset seizures in adults and children 6 years to 17 years of age and is the first once-daily extended-release oxcarbazepine product indicated for the treatment of epilepsy in the U.S.
- Qelbree™ (viloxazine extended-release capsules) is a novel non-stimulant product indicated for the treatment of ADHD in pediatric patients 6 to 17 years of age.
- APOKYN® (apomorphine hydrochloride injection) is a product indicated for the acute, intermittent treatment of hypomobility or "off" episodes ("end-of-dose wearing off" and unpredictable "on-off" episodes) in patients with advanced PD.
- MYOBLOC® (rimabotulinumtoxinB) is a product indicated for the treatment of cervical dystonia and sialorrhea in adults, and it is the only Type B toxin available on the market.
- XADAGO® (safinamide) is a once-daily product indicated as adjunctive treatment to levodopa/carbidopa in patients with PD experiencing "off" episodes.

Product Candidates

- SPN-812 (viloxazine hydrochloride) is a novel non-stimulant product candidate for the treatment of ADHD in adult patients.
- SPN-830 (Apomorphine Infusion Pump) is a late-stage drug/device combination product candidate for the continuous prevention of "off" episodes in PD.
- SPN-817 is a novel product candidate for the treatment of severe epilepsy.

- SPN-820 is a first-in-class product candidate for TRD. It is an orally active small molecule that directly activates brain mechanistic target of rapamycin complex 1 (mTORC1).

COVID-19 Impact

While the impact of the ongoing COVID-19 pandemic did not have a material adverse effect on our financial position or results of operations for the three and six months ended June 30, 2021, we continue to closely monitor the events and circumstances surrounding the COVID-19 pandemic and its impact on all aspects of our business operations. Since the situation surrounding the COVID-19 pandemic remains fluid and the duration uncertain, the long-term nature and extent of the impacts of the pandemic on our business operations and financial position cannot be reasonably estimated at this time. See "*Risk Factors*" in Part I, Item 1A of our Annual Report on Form 10-K for additional information on risk factors that could impact our business and our results.

Operational Highlights

Qelbree Launch Update

- At the end of May 2021, we launched Qelbree for the treatment of attention-deficit hyperactivity disorder (ADHD) in pediatric patients 6 to 17 years of age. Net product sales for the second quarter of 2021 were $0.3 million.
- The early performance of Qelbree is on track with our expectations. Current trends in prescriptions reflect the heavy sampling programs with patients. Over 25,000 starter kits have been distributed to physicians since the launch and in preparation for the back-to-school season.
- Early clinical feedback about the performance of Qelbree in patients is positive and in line with the Phase III clinical results.

Product Pipeline Update

SPN-812 - Novel non-stimulant for the treatment of ADHD in adults

- We recently submitted a supplemental New Drug Application (sNDA) to the U.S. Food and Drug Administration (FDA) for SPN-812 for adult patients with ADHD.

SPN-830 - Continuous treatment of motor fluctuations ("on-off" episodes) in PD

- We continue to plan to resubmit the SPN-830 NDA in the second half of 2021.

SPN-820 - Novel first-in-class activator of mTORC1

- A randomized Phase II clinical study of SPN-820 in treatment-resistant depression is expected to start by the end of 2021.

Critical Accounting Policies and the Use of Estimates

Our condensed consolidated financial statements are prepared in accordance with U.S. generally accepted accounting principles (U.S. GAAP), requiring us to make estimates, judgments, and assumptions that affect the reported amounts of assets, liabilities, revenues, and expenses, and other related disclosures. Some judgments can be subjective and complex, and therefore, actual results could differ materially from those estimates under different assumptions or conditions. We believe the judgments, estimates, and assumptions associated with the following critical accounting policies have the greatest potential impact on our condensed consolidated financial statements:

- Revenue recognition;
- Business combination accounting and valuation of acquired assets, including goodwill and intangible assets; and
- Income taxes.

There were no changes to the disclosures with respect to the above listed critical accounting policies in our Annual Report on Form 10-K for the year ended December 31, 2020. A summary of our significant accounting policies appears in the notes to our audited consolidated financial statements included in the Annual Report on Form 10-K for the year ended December 31, 2020.

Results of Operations

Comparison of the Three and Six Months ended June 30, 2021 and 2020

Revenues

Revenues consist primarily of net product sales of our commercial products in the U.S., supplemented by royalty revenues from our collaborative licensing arrangements. The following table provides information regarding our revenues during the three and six months ended June 30, 2021 and 2020 (dollars in thousands):

	Three Months ended June 30,		Change		Six Months ended June 30,		Change
	2021	2020	Amount	Percent	2021	2020	Amount
Net product sales							
Trokendi XR	$ 78,777	$ 89,674	$ (10,897)	(12)%	$ 150,596	$ 158,225	$ (7,629)
Oxtellar XR	25,022	23,680	1,342	6%	52,392	47,619	4,773
APOKYN	26,981	8,600	18,381	**	48,711	8,600	40,111
MYOBLOC [(1)]	4,641	1,229	3,412	**	8,881	1,229	7,652
XADAGO	2,892	801	2,091	**	6,114	801	5,313
Qelbree	315	—	315	**	315	—	315
Total net product sales	$ 138,628	$ 123,984	$ 14,644	12%	$ 267,009	$ 216,474	$ 50,535
Royalty revenues	2,701	2,745	(44)	(2)%	5,252	5,231	21
Total revenues	$ 141,329	$ 126,729	$ 14,600	12%	$ 272,261	$ 221,705	$ 50,556

[(1)] In April 2021, we notified the European Medicine Agency that it will cease the marketing of rimabotulinumtoxinB in European countries where it has been marketed as NeuroBloc.

The $14.6 million and 12% increase in net product sales for the three months ended June 30, 2021, as compared to the same period in 2020, was primarily due to a $23.9 million increase in net product sales of APOKYN, MYOBLOC and XADAGO (acquired commercial products from the USWM Acquisition) and $1.3 million increase in net product sales of Oxtellar XR. Offsetting this increase was a $10.9 million decrease in net product sales of Trokendi XR for the three months ended June 30, 2021, as compared to the same period in 2020.

The $50.5 million and 23% increase in net product sales for the six months ended June 30, 2021, as compared to the same period in 2020, was primarily due to a $53.1 million increase in net product sales of the acquired commercial products and $4.8 million increase in net product sales of Oxtellar XR. Partially offsetting this increase was $7.6 million decrease in net product sales of Trokendi XR for the six months ended June 30, 2021, as compared to the same period in 2020.

Trokendi XR net product sales decreased by 12% to $78.8 million for the three months ended June 30, 2021 as compared to the same period in 2020. Trokendi XR net product sales decreased by 5% to $150.6 million for the six months ended June 30, 2021 as compared to the same period in 2020. This decrease was attributable to a decline in unit demand partially offset by the favorable impact of the price increase taken in January 2021 and favorable improvements in sales deductions.

Oxtellar XR net product sales increased by 6% to $25.0 million for the three months ended June 30, 2021 as compared to the same period in 2020. Oxtellar XR net product sales increased by 10% to $52.4 million for the six months ended June 30, 2021 as compared to the same period in 2020. This increase was primarily attributable to the favorable impact of both unit demand and a price increase in January 2021.

Net product sales of the acquired commercial products increased to $34.5 million from $10.6 million for the three months ended June 30, 2021 and to $63.7 million from $10.6 million for the six months ended June 30, 2021. The increases in both periods was due primarily to the timing of the USWM Acquisition, which was completed on June 9, 2020.

Sales Deductions and Related Accruals

We record accrued product rebates and accrued product returns as current liabilities in *Accrued product returns and rebates*, on our condensed consolidated balance sheets. We record sales discounts as a reduction against *Accounts receivable* on the condensed consolidated balance sheets. Both amounts are generally affected by changes in gross product sales, changes in the provision for net product sales deductions, and the timing of payments/credits.

The following table provides a summary of activity with respect to sales deductions and related accruals during the periods indicated (dollars in thousands):

	Accrued Product Returns and Rebates			
	Product Rebates	Product Returns	Reduction to Accounts Receivable for Sales Discounts	Total
Balance at December 31, 2020	$ 96,589	$ 29,603	$ 11,404	$ 137,596
Provision				
Provision for current year sales	189,223	6,478	34,017	229,718
Adjustments relating to prior year sales	1,267	(443)	19	843
Total provision	$ 190,490	$ 6,035	$ 34,036	$ 230,561
Less: Actual payments/credits	(146,361)	(2,758)	(33,859)	(182,978)
Balance at June 30, 2021	$ 140,718	$ 32,880	$ 11,581	$ 185,179
Balance at December 31, 2019	$ 88,811	$ 18,818	$ 11,013	$ 118,642
USWM Acquisition liabilities assumed	5,112	3,072	293	8,477
Provision				
Provision for current year sales	168,506	5,463	32,449	206,418
Adjustments relating to prior year sales	3,633	7,468	147	11,248
Total provision	$ 172,139	$ 12,931	$ 32,596	$ 217,666
Less: Actual payments/credits	(147,727)	(9,051)	(31,535)	(188,313)
Balance at June 30, 2020	$ 118,335	$ 25,770	$ 12,367	$ 156,472

The accrued product rebates balance increased from $118.3 million as of June 30, 2020 to $140.7 million as of June 30, 2021 due to higher provision for product rebate and due to timing of payments. The provision for product rebates increased from $190.5 million for the six months ended June 30, 2021 compared to $172.1 million for the same period in prior year. This increase was primarily attributable to greater utilization of our patient co-payment programs, as well as higher per patient payments under both Medicaid and commercial managed care programs.

The accrued product returns balance increased from $25.8 million as of June 30, 2020 to $32.9 million as of June 30, 2021 due to timing of related return activity offset by a decrease in the provision for product returns. The provision for product returns of $6.0 million for the six months ended June 30, 2021 was lower compared to $12.9 million for the six months ended June 30, 2020. This decrease was primarily due to the unfavorable actual returns experienced in the first quarter of 2020 for discontinued Trokendi XR commercial blister pack configurations, for which all production and distribution ceased in 2017.

Royalty Revenues

Royalty revenues were $2.7 million for each of the three months ended June 30, 2021 and 2020. Royalty revenues were $5.3 million and $5.2 million for the six months ended June 30, 2021 and 2020, respectively.

Royalty revenues include a royalty from net product sales of Mydayis, a product of Takeda Pharmaceuticals Company Ltd., and noncash royalty revenue pursuant to our agreement with Healthcare Royalty Partners III, L.P. (HC Royalty). HC Royalty receives royalty payments from United Therapeutics Corporation (United Therapeutics) based on net product sales of United Therapeutics' product Orenitram.

Cost of Goods Sold

Cost of goods sold was $25.0 million and $8.4 million for the three months ended June 30, 2021 and 2020, respectively. Cost of goods sold was $40.0 million and $12.5 million for the six months ended June 30, 2021 and 2020, respectively. Royalty

payments associated with the acquired commercial products, APOKYN and XADAGO, made up the majority of the cost of goods sold.

The increase in both periods was primarily due to higher cost recorded in 2021 for the acquired commercial products due to the timing of the USWM Acquisition, which was completed on June 9, 2020, In addition, the Company recorded in the second quarter of 2021, additional costs of $5.7 million for rejected MYOBLOC inventory lots in connection with the minimum purchase commitments, and $1.4 million consequent to the step-up of fair value of the inventory acquired in the USWM Acquisition. Refer to Part I, Item 1, Unaudited Condensed Financial Statements, Note 15, *Commitments and Contingencies* in the Notes to the Condensed Consolidated Financial Statements for discussion regarding annual minimum purchase quantity requirements of MYOBLOC.

Also included in cost of goods sold for the three and six months ended June 30, 2021 are de minimis costs for Qelbree inventory sold. We manufacture Qelbree inventory for commercial sale and for use in our samples program. Manufacturing costs related to Qelbree inventory build-up incurred before FDA approval and prior to first quarter of 2020, when the Company began capitalizing pre-launch inventory, were expensed to research and development expense. The manufactured Qelbree inventory prior to FDA approval consisted of $8.6 million raw materials inventory, which was expensed as research and development expense in 2019. Therefore, cost of goods sold for Qelbree for the three and six months ended June 30, 2021 does not include raw material cost that was previously expensed. We expect our cost of goods sold to increase in the future as this inventory is sold, which will have a negative impact on our gross margin.

The time period over which reduced-cost Qelbree inventory is consumed will depend on a number of factors, including the amount of future Qelbree sales, the ultimate use of this inventory in either commercial sales, clinical development or other research activities, and the ability to utilize inventory prior to its expiration date. At this time, we expect to sell or consume the reduced-cost inventory as samples by year end.

Research and Development Expenses

The following table provides information regarding our research and development (R&D) expenses during the periods indicated (dollars in thousands):

	Three Months ended June 30,		Change		Six Months ended June 30,		Change	
	2021	2020	Amount	Percent	2021	2020	Amount	Percent
Direct Project Costs [1]								
SPN-812	$ 1,595	$ 2,643	$ (1,048)	(40)%	$ 5,563	$ 11,705	$ (6,142)	(52)%
SPN-830	35	288	(253)	(88)%	239	288	(49)	(17)%
SPN-820	2,509	865	1,644	**	5,114	865	4,249	**
SPN-810	234	790	(556)	(70)%	941	2,156	(1,215)	(56)%
Others	3,632	1,687	1,945	**	6,468	$ 4,212	2,256	54%
	8,005	6,273	1,732	28%	18,325	19,226	(901)	(5)%
Other R&D expense	—	10,000	(10,000)	(100)%	15,000	10,000	5,000	50%
Indirect Project Costs [1]								
Share-based compensation	706	818	(112)	(14)%	1,294	1,499	(205)	(14)%
Other indirect overhead	6,744	5,156	1,588	31%	15,116	10,459	4,657	45%
	7,450	5,974	1,476	25%	16,410	11,958	4,452	37%
Research and development expense	$ 15,455	$ 22,247	$ (6,792)	(31)%	$ 49,735	$ 41,184	$ 8,551	21%

[1] Direct costs, which include personnel costs and related benefits, are recorded on a project-by-project basis. Many of our R&D costs are not attributable to any individual project because we share resources across several development projects. Indirect costs that support a number of our R&D activities are recorded in the aggregate, including stock-based compensation.

R&D expenses were $15.5 million and $22.2 million for the three months ended June 30, 2021 and 2020, respectively. The $6.8 million decrease was primarily due to costs associated with developmental activities related to SPN-820, which has advanced to a Phase II clinical program, and regulatory activities related to the acquired products offset by a decrease in the cost of SPN-812 development activities and the one time, nonrefundable, and non-creditable fee of $10 million paid to Navitor in 2020 for the option to acquire or license NV-5138 (SPN-820).

R&D expenses were $49.7 million and $41.2 million for the six months ended June 30, 2021 and 2020, respectively. The $8.6 million increase was primarily due to the $15 million write-down of the investment in Navitor LLC, costs associated with developmental activities related to SPN-820 and regulatory activities related to the acquired products, partially offset by a decrease in the cost of SPN-812 development activities and the $10 million option fee paid in 2020. Refer to Part I, Item 1, Unaudited Condensed Consolidated Financial Statements, Note 5, *Investments*, in the Notes to the Condensed Consolidated Financial Statements, for further discussion of the write-down of the investment in Navitor LLC in 2021 and the option fee payment in 2020.

Selling, General and Administrative Expenses

The following table provides information regarding our selling, general and administrative (SG&A) expenses during the periods indicated (dollars in thousands):

	Three Months ended June 30,		Change		Six Months ended June 30,		Change	
	2021	2020	Amount	Percent	2021	2020	Amount	Percent
Selling and marketing	$ 48,380	$ 28,605	$ 19,775	69%	$ 86,827	$ 56,878	$ 29,949	53%
General and administrative	21,155	19,498	1,657	8%	44,165	32,839	11,326	34%
Total	$ 69,535	$ 48,103	$ 21,432	45%	$ 130,992	$ 89,717	$ 41,275	46%

Selling, general and administrative expenses were $69.5 million and $48.1 million for the three months ended June 30, 2021 and 2020, respectively. Selling, general and administrative expenses were $131.0 million and $89.7 million for the six months ended June 30, 2021 and 2020, respectively. The increases in both periods were primarily attributable to increased marketing expenses and professional consulting spend for the launch of Qelbree and the acquired commercial products from the USWM Acquisition. In addition, employee-related expenses also increased due to higher headcount to support the launch of Qelbree and the addition of the acquired employees from the USWM Acquisition.

In addition, the reduced-cost Qelbree samples were included in selling and marketing expenses for the three and six months ended June 30, 2021. At full cost, these Qelbree samples would have resulted in $3.2 million higher SG&A in the period. At this time, we expect to sell or consume as samples the reduced-cost Qelbree inventory by year end.

Amortization of Intangible Assets

Amortization of intangible assets was $5.9 million and $2.4 million for the three months ended June 30, 2021 and 2020, respectively. Amortization of intangible assets was $12.0 million and $3.7 million for the six months ended June 30, 2021 and 2020, respectively. The increases in both periods were primarily due to amortization of the definite-lived intangible assets acquired in the USWM Acquisition.

Contingent Consideration Gain

The change in the fair value of the contingent consideration liabilities associated with the USWM Acquisition was $8.8 million for the three months ended June 30, 2021 and $7.7 million for the six months ended June 30, 2021. The change in fair value is primarily due to the write-down of the sales based contingent consideration liabilities offset by increase in the estimated fair value of regulatory and developmental milestones due to passage of time. The Company assessed that these sales-based milestones will not be achieved based on the revised net sales projections.

Other Income (Expense)

Other income (expense) was an expense of $2.9 million and income of $1.7 million for the three months ended June 30, 2021 and 2020, respectively. Other income (expense) was an expense of $5.2 million and income of $1.7 million for the six months ended June 30, 2021 and 2020, respectively. The decrease in both periods was primarily due to lower interest income on marketable securities holdings.

Income Tax Expense

Income tax expense was $7.5 million and $12.5 million for the three months ended June 30, 2021 and 2020, respectively. Income tax expense was $12.7 million and $20.1 million for the six months ended June 30, 2021 and 2020 respectively. The decreases in both periods were mainly due to lower earnings before taxes in 2021.

The effective income tax rate was 24.1% and 26.6% for the three months ended June 30, 2021 and 2020, respectively. The effective income tax rate decrease was primarily due to a non-taxable contingent consideration gain recognized in the second quarter of 2021. The effective income tax rate was 30.2% and 26.3% for the six months ended June 30, 2021 and 2020, respectively. The effective income tax rate increase was mainly due to changes in the effective state tax rates as a result of the transfer of workforce between legal entities in the first quarter of 2021.

Liquidity and Capital Resources

We have financed our operations primarily with cash generated from product sales, supplemented by cash generated by revenue from royalty and licensing arrangements, as well as proceeds from the sale of equity and debt securities. Continued cash generation is highly dependent on the continued commercial success of our commercial products as well as the commercial success of our product candidates, if approved by the FDA.

While we expect continued profitability in future years, we anticipate there may be significant variability from year to year in the level of our profits particularly due to the commercial launch of Qelbree in May 2021, continued market and payor pressures for our commercial products and the likely unfavorable impact of the upcoming loss of exclusivity for Trokendi XR in January 2023, or sooner under certain conditions.

We believe our existing cash and cash equivalents, marketable securities, and cash received from product sales will be sufficient to finance ongoing operations, develop and launch our new products, and fund label expansions for existing products. To continue to grow our business over the long-term, we plan to commit substantial resources to: product development and clinical trials of product candidates; business development, including acquisition and product in-licensing; and supportive functions such as compliance, finance, management of our intellectual property portfolio, information technology systems, and personnel. In each case, spending would be commensurate with the growth and needs of the business.

We may, from time to time, consider raising additional capital through: new collaborative arrangements; strategic alliances; additional equity and/or debt financings; or financing from other sources, especially in conjunction with opportunistic business development initiatives. We will continue to actively manage our capital structure and to consider all financing opportunities that could strengthen our long-term financial profile. Any such capital raises may or may not be similar to transactions in which we have engaged in the past. There can be no assurance that any such financing opportunities will be available on acceptable terms, if at all.

Financial Condition

Cash and cash equivalents, marketable securities, and long term marketable securities as of the periods presented below, are as follows (dollars in thousands):

	June 30, 2021	December 31, 2020	Change Amount	Change Percent
Cash and cash equivalents	$ 223,771	$ 288,640	$ (64,869)	(22)%
Marketable securities	186,070	133,893	52,177	39%
Long term marketable securities	445,473	350,359	95,114	27%
Total	$ 855,314	$ 772,892	$ 82,422	11%

Total cash and cash equivalents, marketable securities and long term marketable securities increased by $82.4 million in the first six months of 2021, primarily due to cash generated from ongoing operations.

As of June 30, 2021 and December 31, 2020, the outstanding principal on our 0.625% Convertible Senior Notes Due 2023 (2023 Notes) was $402.5 million. No 2023 Notes have been converted as of June 30, 2021. There were no changes to the separate convertible note hedge transactions (collectively, the Convertible Note Hedge Transactions) and separate warrant transactions (the Warrant Transactions). Refer to Part I, Item 1, Unaudited Condensed Financial Statements, Note 8, *Convertible Senior Notes Due 2023*, in the Notes to the Condensed Consolidated Financial Statements, for further discussion of the 2023 Notes and our other indebtedness.

Summary of Cash Flows

The following table summarizes the major sources and uses of cash for the periods set forth below (dollars in thousands):

	Six Months ended June 30, 2021	Six Months ended June 30, 2020	Change Amount
Net cash provided by (used in):			
Operating activities	$ 82,474	$ 100,867	$ (18,393)
Investing activities	(152,339)	(72,742)	(79,597)
Financing activities	4,996	1,469	3,527
Net change in cash and cash equivalents	$ (64,869)	$ 29,594	$ (94,463)

Operating Activities

Net cash provided by operating activities was $82.5 million and $100.9 million for the six months ended June 30, 2021, and 2020, respectively. The decrease in cash flows provided by operating activities is primarily due to changes in working capital, which reflects the timing impacts of: cash collections on receivables; increases in accrued product returns and rebates; and settlement of payables. The increase in accrued product returns and rebates amount is primarily due to timing of Medicaid and commercial managed care rebate payments of over $40 million.

Investing Activities

Net cash used in investing activities was $152.3 million for the six months ended June 30, 2021, as compared to $72.7 million net cash provided by investing activities for the same period in 2020. The change in 2021 was primarily due to an increase in net purchases of marketable securities in 2021 resulting from investment of excess cash in long term marketable securities as compared to the same period in the prior year. The change in 2020 was primarily due to lower purchases of marketable securities from investment of excess cash in long term marketable securities and proceeds from sale of marketable securities of $257.9 million, offset by outlays for the USWM Acquisition of $297.2 million and the investment in Navitor of $15.0 million.

Financing Activities

Net cash provided by financing activities for the six months ended June 30, 2021 increased by $3.5 million, as compared to the same period in 2020, primarily due to higher proceeds from issuance of common stock.

Contractual Obligations and Commitments

Refer to the “Contractual Obligations and Commitments” section in “Part II, Item 7 — Management’s Discussion and Analysis of Liquidity and Capital Resources”, of our Annual Report on Form 10-K for the year ended December 31, 2020, and Note 15, *Commitments and Contingencies*, in the Notes to the Condensed Consolidated Financial Statements in Part I, Item 1, Unaudited Condensed Financial Statements, of this Quarterly Report on Form 10-Q for the discussion of our contractual obligations.

Off-Balance Sheet Arrangements

Other than the unconsolidated variable interest entities discussed in Part I, Item 1, Unaudited Condensed Financial Statements, of this Quarterly Report on Form 10-Q, we do not currently have, nor have we ever had, any relationships with unconsolidated entities or financial partnerships, such entities often referred to as structured finance or special purpose entities. These would have been established for the purpose of facilitating off-balance sheet arrangements or for other contractually narrow or limited purposes.

In addition, we do not engage in trading activities involving non-exchange traded contracts.

Recently Issued Accounting Pronouncements

For a discussion of new accounting pronouncements, see Note 2 in the Notes to the Condensed Consolidated Financial Statements in Part I, Item 1, Unaudited Condensed Financial Statements, of this Quarterly Report on Form 10-Q.

Item 3. Quantitative and Qualitative Disclosures About Market Risk

The primary objective of our investment activities is to preserve our capital to fund operations and to facilitate business development activities. We also seek to maximize income from our investments without assuming significant interest rate risk,

liquidity risk, or risk of default by investing in investment grade securities with maturities of four years or less. Our exposure to market risk is confined to investments in cash, cash equivalents, marketable securities, and long term marketable securities. As of June 30, 2021, we had unrestricted cash, cash equivalents, marketable securities, and long term marketable securities of $855.3 million.

In connection with the 2023 Notes, we have separately entered into Convertible Note Hedge Transactions and Warrant Transactions to reduce the potential dilution of the Company's common stock upon conversion of the 2023 Notes, and to partially offset the cost to purchase the Convertible Note Hedge Transactions, respectively.

Our cash and cash equivalents consist primarily of cash held at banks and investments in highly liquid financial instruments with an original maturity of three months or less. Our marketable securities as of June 30, 2021, which are reported at fair value, consist of investment grade corporate debt securities. We place all investments with governmental, industrial, or financial institutions whose debt is rated as investment grade. We generally hold these securities to maturities of one to four years. Because of the relatively short period that we hold our investments and because we generally hold these securities to maturity, we do not believe that a change in interest rates would have any significant impact on the realizable value of our investments. We do not have any currency or other derivative financial instruments other than outstanding warrants to purchase common stock and the convertible note hedges.

We may contract with clinical research organizations (CROs), investigational sites and contract manufacturing organizations (CMOs) globally. Currently, we have an ongoing trial for SPN-817 outside the U.S. We have CMOs outside of the U.S. who manufacture and supply certain of our clinical and commercial products and raw materials. We do not hedge our foreign currency exchange rate risk. Transactions denominated in currencies other than the U.S. dollar are recorded based on exchange rates at the time such transactions arise. As of June 30, 2021 and December 31, 2020, substantially all of our liabilities were denominated in the U.S. dollar. We do not believe that changes in foreign currency exchange rates over the six months ended June 30, 2021 and 2020 had a significant impact on our consolidated results of operations.

Inflation generally affects us by increasing our cost of labor and the cost of services provided by our vendors. We do not believe that inflation and changing prices over the six months ended June 30, 2021 and 2020 had a significant impact on our consolidated results of operations.

Item 4. Controls and Procedures

Evaluation of Disclosure Controls and Procedures

We maintain disclosure controls and procedures over financial reporting, as defined in Rule 13a-15(e) of the Securities Exchange Act of 1934, as amended, or the Exchange Act. Our disclosure controls and procedures are designed to provide reasonable assurance that the information required to be disclosed in the reports we file or submit under the Exchange Act has been appropriately recorded, processed, summarized and reported within the time periods specified in the Securities and Exchange Commission's rules and forms. Moreover, such information is accumulated and communicated to our management, including our CEO and CFO, to allow timely decisions regarding required disclosure.

We conducted an evaluation of the effectiveness of the design and operation of our disclosure controls and procedures over financial reporting as of June 30, 2021, the end of the period covered by this report. Based on that evaluation, under the supervision and with the participation of our management, including our CEO and CFO, we concluded that our disclosure controls and procedures were effective as of June 30, 2021.

Changes in Internal Control over Financial Reporting

On June 9, 2020, the Company completed the USWM Acquisition. As of June 30, 2021, the integration of the internal controls relating to the business acquired through the USWM Acquisition into ours has been completed**.** The business combination accounting for the USWM Acquisition was completed during the second quarter of 2021, and the acquired business will be included in our evaluation of the effectiveness of our internal control over financial reporting for fiscal year 2021. During the three months ended June 30, 2021, no changes occurred in our internal control over financial reporting that materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

PART II — OTHER INFORMATION

Item 1. Legal Proceedings

From time to time and in the ordinary course of business, we may be subject to various claims, charges and litigation. We may be required to file infringement claims against third parties for the infringement of our patents.

Oxtellar XR®

The Company received a Paragraph IV Notice Letter from generic drug maker RiconPharma, LLC ("Ricon") dated April 20, 2021 directed to nine of its Oxtellar XR® Orange Book patents. Supernus's U.S. Patent Nos. 7,722,898; 7,910,131; 8,617,600; 8,821,930; 9,119,791; 9,351,975; 9,370,525; 9,855,278; and 10,220,042 generally cover once-a-day oxcarbazepine formulations and methods of treating seizures using those formulations. The FDA Orange Book lists all nine of the Company's Oxtellar XR® patents as expiring on April 13, 2027. On June 3, 2021, the Company filed a lawsuit against Ricon alleging infringement of the Company's nine Oxtellar XR® patents. The Complaint—filed in the U.S. District Court for the District of New Jersey—alleges, inter alia, that Ricon infringed the Company's Oxtellar XR® patents by submitting to the FDA an Abbreviated New Drug Application ("ANDA") seeking to market a generic version of Oxtellar XR® prior to the expiration of the Company's patents. Filing its June 3, 2021 Complaint within 45 days of receiving Ricon's Paragraph IV certification notice entitles Supernus to an automatic stay preventing the FDA from approving Ricon's ANDA for 30 months from the date of the Company's receipt of the Paragraph IV Notice Letter. As of the date of this filing, Ricon has not answered Supernus' Complaint.

The Company received a Paragraph IV Notice Letter from generic drug makers Apotex Inc. and Apotex Corp. (collectively "Apotex") dated May 13, 2020 directed to nine of its Oxtellar XR® Orange Book patents. Supernus's U.S. Patent Nos. 7,722,898; 7,910,131; 8,617,600; 8,821,930; 9,119,791; 9,351,975; 9,370,525; 9,855,278; and 10,220,042 generally cover once-a-day oxcarbazepine formulations and methods of treating seizures using those formulations. The FDA Orange Book lists all nine of the Company's Oxtellar XR® patents as expiring on April 13, 2027. On June 26, 2020, the Company filed a lawsuit against Apotex alleging infringement of the Company's nine patents. The Complaint—filed in the U.S. District Court for the District of New Jersey—alleges, inter alia, that Apotex infringed the Company's Oxtellar XR® patents by submitting to the FDA an ANDA seeking to market a generic version of Oxtellar XR® prior to the expiration of the Company's patents. Filing its June 26, 2020 Complaint within 45 days of receiving Apotex's Paragraph IV certification notice entitles Supernus to an automatic stay preventing the FDA from approving Apotex's ANDA for 30 months from the date of the Company's receipt of the Paragraph IV Notice Letter. On September 4, 2020, Apotex answered the Complaint and denied the substantive allegations of the Complaint. Apotex also asserted Counterclaims seeking declaratory judgments of non-infringement for the nine Oxtellar XR® Orange Book patents. On October 30, 2020, the Company filed its Reply, denying the substantive allegations of Apotex's Counterclaims. Following the initial Rule 16 Scheduling Conference, the Court issued a case schedule that provides for a trial in June or July 2022. Pretrial discovery is ongoing as of the date of this filing.

The Company received a second Paragraph IV Notice Letter from generic drug maker TWi Pharmaceuticals, Inc. against Supernus's U.S. Patent Nos. 7,722,898, 7,910,131, 8,617,600, 8,821,930, 9,119,791, 9,351,975, and 9,370,525 on February 16, 2017. These seven Oxtellar XR® patents listed in the FDA Orange Book generally cover once-a-day oxcarbazepine formulations and methods of treating seizures using those formulations. On March 31, 2017, the Company filed a lawsuit against TWi Pharmaceuticals, Inc. and TWi International LLC (collectively "TWi") alleging infringement of U.S. Patent Nos. 7,722,898, 7,910,131, 8,617,600, 8,821,930, 9,119,791, 9,351,975, and 9,370,525. TWi filed a motion to dismiss the Company's March 31, 2017 Complaint on May 10, 2017. On May 11, 2017, the district court administratively terminated TWi's motion to dismiss for failure to comply with the Court's Individual Rules and Procedures. On May 19, 2017, the district court "administratively terminate[d] this matter pending this Court's decision in the First TWi Action [concerning United States Patent Nos. 7,722,898, 7,910,131, 8,617,600, and 8,821,930]." As of the date of this letter, Civil Action No. 17-2164 (RMB)(JS) (D.N.J.) remains administratively terminated.

Trokendi XR®

The Company received a Paragraph IV Notice Letter from generic drug maker Lupin Limited ("Lupin") dated July 29, 2021 directed to ten of its Trokendi XR® Orange Book patents. Supernus's U.S. Patent Nos. 8,298,576; 8,298,580; 8,663,683; 8,877,248; 8,889,191; 8,992,989; 9,549,940; 9,555,004; 9,622,983; and 10,314,790 generally cover once-a-day topiramate formulations and methods of treating or preventing seizures and migraines using those formulations. The FDA Orange Book currently lists U.S. Patent No. 8,298,576 as expiring on April 4, 2028 and U.S. Patent Nos. 8,298,580; 8,663,683; 8,877,248; 8,889,191; 8,992,989; 9,549,940; 9,555,004; 9,622,983; and 10,314,790 as expiring on November 16, 2027. Supernus is reviewing the details of Lupin's Notice Letter and intends to vigorously enforce its intellectual property rights relating to Trokendi XR®.

The Company received a Paragraph IV Notice Letter from generic drug maker Torrent Pharmaceuticals Ltd. ("Torrent") dated June 15, 2021 directed to ten of its Trokendi XR® Orange Book patents. Supernus's U.S. Patent Nos. 8,298,576; 8,298,580; 8,663,683; 8,877,248; 8,889,191; 8,992,989; 9,549,940; 9,555,004; 9,622,983; and 10,314,790 generally cover once-a-day topiramate formulations and methods of treating or preventing seizures and migraines using those formulations. The FDA Orange Book currently lists U.S. Patent No. 8,298,576 as expiring on April 4, 2028 and U.S. Patent Nos. 8,298,580; 8,663,683; 8,877,248; 8,889,191; 8,992,989; 9,549,940; 9,555,004; 9,622,983; and 10,314,790 as expiring on November 16, 2027. On July 28, 2021, the Company filed a lawsuit against Torrent alleging infringement of the Company's ten Trokendi XR® patents. The Complaint—filed in the U.S. District Court for the District of New Jersey—alleges, inter alia, that Torrent infringed the Company's Trokendi XR® patents by submitting to the FDA an ANDA seeking to market a generic version of Trokendi XR® prior to the expiration of the Company's patents. Filing its July 28, 2021 Complaint within 45 days of receiving Torrent's Paragraph IV certification notice entitles Supernus to an automatic stay preventing the FDA from approving Torrent's ANDA for 30 months from the date of the Company's receipt of the Paragraph IV Notice Letter. As of the date of this filing, Torrent has not answered Supernus' Complaint.

The Company received a Paragraph IV Notice Letter from generic drug makers Ajanta Pharma Limited and Ajanta Pharma USA Inc. (collectively "Ajanta") dated February 10, 2021 directed to ten of its Trokendi XR® Orange Book patents. Supernus's U.S. Patent Nos. 8,298,576; 8,298,580; 8,663,683; 8,877,248; 8,889,191; 8,992,989; 9,549,940; 9,555,004; 9,622,983; and 10,314,790 generally cover once-a-day topiramate formulations and methods of treating or preventing seizures and migraines using those formulations. The FDA Orange Book currently lists U.S. Patent No. 8,298,576 as expiring on April 4, 2028 and U.S. Patent Nos. 8,298,580; 8,663,683; 8,877,248; 8,889,191; 8,992,989; 9,549,940; 9,555,004; 9,622,983; and 10,314,790 as expiring on November 16, 2027. On March 26, 2021, the Company filed a lawsuit against Ajanta alleging infringement of the Company's Trokendi XR® Orange Book patents. The Complaint—filed in the U.S. District Court for the District of New Jersey—alleges, inter alia, that Ajanta infringed the Company's Trokendi XR® patents by submitting to the FDA an ANDA seeking to market a generic version of Trokendi XR® prior to the expiration of the Company's patents. Filing its March 26, 2021 Complaint within 45 days of receiving Ajanta's Paragraph IV certification notice entitles Supernus to an automatic stay preventing the FDA from approving Ajanta's ANDA for 30 months from the date of the Company's receipt of the Paragraph IV Notice Letter. On June 7, 2021, Ajanta answered the Complaint and denied the substantive allegations of the Complaint. Ajanta also asserted Counterclaims seeking declaratory judgments of non-infringement and invalidity for the Trokendi XR® Orange Book patents. On June 28, 2021, the Company filed its Reply, denying the substantive allegations of Apotex's Counterclaims. An initial conference is scheduled for August 10, 2021.

XADAGO®

On June 10, 2021, Newron Pharmaceuticals S.p.A. ("Newron"), Zambon S.p.A. ("Zambon") and Supernus Pharmaceuticals, Inc. (the "Company"), through its subsidiary MDD US Operations, LLC (collectively, "Plaintiffs"), initiated litigation against generic drug makers Aurobindo Pharma Limited, Aurobindo Pharma USA Inc., MSN Laboratories Private Limited ("MSN"), Optimus Pharma Pvt Ltd, Prinston Pharmaceutical, Inc., RK Pharma, Inc. and Zenara Pharma Private Limited (collectively, "Defendants") for infringement of three FDA Orange Book patents covering XADAGO®, the Company's once-daily product indicated as adjunctive treatment to levodopa/carbidopa in patients with Parkinson's Disease experiencing "off" episodes. U.S. Patent Nos. 8,076,515, 8,278,485 and 8,283,380 (collectively, the "XADAGO® Patents") cover the pharmaceutical formulation of and methods of treatment with safinamide. The XADAGO® Patents expire between June 2027 and March 2031. The Company has a license agreement with Zambon, Newron's partner, related to the XADAGO® Patents, and as a new chemical entity, XADAGO® is under the 5-year FDA exclusivity period that expires on March 21, 2022.

The Complaint – filed in the U.S. District Court for the District of Delaware – alleges that the Defendants infringed the XADAGO® Patents by submitting to the FDA ANDAs seeking to market a generic version of XADAGO® prior to the expiration of the patents. Filing the Complaint within 45 days of receiving each of the Defendants' Paragraph IV notice letters entitles the Plaintiffs to an automatic stay preventing the FDA from approving the Defendants' ANDAs for 30 months from the date of the Plaintiffs' receipt of the Paragraph IV Notice Letters. Defendant Zenara answered the complaint on July 13, 2021 and defendant RK Pharma did so on August 3, 2021. The remaining defendants must answer the complaint by August 10, 2021. No case schedule or trial date has been set.

Item 1A. Risk Factors

Any investment in our business involves a high degree of risk. Before making an investment decision, you should carefully consider the information we include in this Quarterly Report on Form 10-Q, including our condensed consolidated financial statements and related notes; the additional information in the other reports we file with the Securities and Exchange Commission; and the risks described in our Annual Report on Form 10-K for the year ended December 31, 2020 and quarterly report on Form 10-Q for the period ended March 31, 2021. These risks may result in material harm to our business and our financial condition and results of operations. If a material, adverse event were to occur, the market price of our common stock may decline and you could lose part or all of your investment.

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds

(a) Sales of Unregistered Securities.

During the six months ended June 30, 2021, the Company granted options to employees to purchase an aggregate of 812,825 shares of common stock at a weighted-average exercise price of $29.63 per share. The Company granted 115,000 performance stock units to its employees at a weighted-average grant date fair value of $29.55 per share. These issuances are exempt from registration in reliance on Section 4(a)(2) of the Securities Act as transactions not involving a public offering.

Item 3. Defaults Upon Senior Securities

None

Item 4. Mine Safety Disclosures

None

Item 5. Other Information

None

Item 6. Exhibits

The following exhibits are filed or furnished as part of this Quarterly Report on Form 10-Q:

10.1 †*	Commercial Supply Agreement, dated May 12, 2021, by and between Supernus Pharmaceuticals, Inc. and Catalent Pharma Solutions, LLC.
10.2 †*	API Supply Agreement, dated July 13, 2021, by and between Supernus Pharmaceuticals, Inc. and Bachem Americas, Inc.
10.3	Form of Time-Based Incentive Stock Option Agreement, under the Supernus Pharmaceuticals, Inc. 2021 Equity Incentive Plan.
10.4	Form of Non-Statutory Time-Based Stock Option Agreement, under the Supernus Pharmaceuticals, Inc. 2021 Equity Incentive Plan.
10.5	Form of Restricted Stock Unit Award Agreement, under the Supernus Pharmaceuticals, Inc. 2021 Equity Incentive Plan.
10.6	Form of Performance Share Unit Award Agreement, under the Supernus Pharmaceuticals, Inc. 2021 Equity Incentive Plan.
31.1	Certification of Chief Executive Officer pursuant to Rule 13a-14(a).
31.2	Certification of Chief Financial Officer pursuant to Rule 13a-14(a).
32.1	Certification of Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
32.2	Certification of Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
101	The following financial information from the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2021, formatted in Inline XBRL: (i) Cover Page, (ii) Condensed Consolidated Statements of Earnings, (iii) Condensed Consolidated Statements of Comprehensive Earnings, (iv) Condensed Consolidated Balance Sheets, (v) Condensed Consolidated Statements of Changes in Stockholders' Equity, (vi) Condensed Consolidated Statements of Cash Flows, and (vii) the Notes to Condensed Consolidated Financial Statements, tagged in summary and detail.
104	The cover page of the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2021, formatted in Inline XBRL (included with the Exhibit 101 attachments).

† Certain portions of this exhibit that constitute confidential information have been omitted in accordance with Regulation S-K, Item 601(b)(10)(iv) because it (i) is not material and (ii) would be competitively harmful if publicly disclosed.

* Exhibits and schedules have been omitted pursuant to Regulation S-K Item 601(a)(5) and will be furnished on a supplemental basis to the Securities and Exchange Commission upon request.

SIGNATURES

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

SUPERNUS PHARMACEUTICALS, INC.

DATED: August 6, 2021

By: /s/ Jack A. Khattar
Jack A. Khattar
President and Chief Executive Officer

DATED: August 6, 2021

By: /s/ James P. Kelly
James P. Kelly
Executive Vice President and Chief Financial Officer

Exhibit 10.1

CERTAIN CONFIDENTIAL INFORMATION IDENTIFIED IN THIS DOCUMENT, MARKED BY [**], HAS BEEN EXCLUDED FROM THE EXHIBIT BECAUSE IT IS BOTH (I) NOT MATERIAL AND (II) WOULD BE COMPETITIVELY HARMFUL IF PUBLICLY DISCLOSED.

EXECUTION VERSION

COMMERCIAL SUPPLY AGREEMENT
(Viloxazine)

This Commercial Supply Agreement is made as of this 12th day of May, 2021 (the "**Effective Date**"), by and between Supernus Pharmaceuticals, Inc., a Delaware corporation, with a place of business at 9715 Key West Avenue, Rockville, MD 20850 ("**Supernus**"), and Catalent Pharma Solutions, LLC, a Delaware limited liability company, having a place of business at 14 Schoolhouse Road, Somerset, NJ 08873 ("**Catalent**").

RECITALS

A. Supernus develops, markets and sells pharmaceutical products; Supernus has developed the patented viloxazine extended release capsules (QELBREE) formulation. This has been scaled up to commercial scale at the [**] facilities via technology transfer from Supernus.

B. Catalent is a leading provider of advanced technologies, and development, manufacturing and packaging services, for pharmaceutical, biotechnology and consumer healthcare companies.

C. Supernus desires to have Catalent provide the services set forth in this Agreement (as defined below) in connection with Supernus' Product (as defined below), and Catalent desires to provide such services, all pursuant to the terms and conditions in this Agreement.

THEREFORE, in consideration of the circumstances described above and the mutual covenants, terms and conditions set forth below, the parties agree as follows:

ARTICLE 1
DEFINITIONS

The following terms have the following meanings in this Agreement:

1.1 "**Acknowledgement**" has the meaning set forth in Section 4.3(B).

1.2 "**Affiliate(s)**" means, with respect to Supernus or any third party, any corporation, firm, partnership or other entity that controls, is controlled by or is under common control with such entity; and with respect to Catalent, Catalent Pharrna Solutions, Inc. and any corporation, firm, partnership or other entity controlled by Catalent, Inc. For the purposes of this definition, "**control**" means the ownership of at least 50% of the voting share capital of an entity or any other comparable equity or ownership interest.

1.3 "**Agreement**" has the meaning set forth in the introductory paragraph and includes all Attachments and other appendices (all of which are incorporated herein by reference) and any amendments to any of the foregoing made as provided herein or therein.

[**] = CERTAIN CONFIDENTIAL INFORMATION OMITTED

1.4 "**API**" means the compound Viloxazine HCI, as further described in the Specifications.

1.5 "**Applicable Laws**" means, with respect to Supernus, all laws, ordinances, rules and regulations, currently in effect or enacted or promulgated during the Term, and as amended from time to time, of each jurisdiction in which API or Product is produced, marketed, distributed, used or sold; and with respect to Catalent, all laws, ordinances, rules and regulations, currently in effect or enacted or promulgated during the Term, and as amended from time to time, of the jurisdiction in which Catalent Processes Product, including cGMP.

1.6 "**Batch**" means a defined quantity of Product that has been or is being Processed in accordance with the Specifications.

1.7 "**Catalent**" has the meaning set forth in the introductory paragraph, or any successor or permitted assign.

1.8 "**Catalent Defective Processing**" has the meaning set forth in Section 5.2.

1.9 "**Catalent Indemnitees**" has the meaning set forth in Section 13.2.

1.10 "**Catalent IP**" has the meaning set forth in Article 11.

1.11 "**Catalent Inventions**" has the meaning set forth in Article 11.

1.12 "**cGMP**" means current Good Manufacturing Practices promulgated by the Regulatory Authorities in the jurisdictions included in Applicable Laws (as applicable to Supernus and Catalent respectively). In the United States, this includes 21 C.F.R. Parts 210 and 211, as amended; and in the European Union, this includes 2003/94/EEC Directive (as supplemented by Volume 4 of EudraLex published by the European Commission), as amended, if and as implemented in the relevant constituent country.

1.13 "**Commencement Date**" means the first date upon which a [**].

1.14 "**Confidential Information**" has the meaning set forth in Section 10.1.

1.15 "**Contract Year**" means, (i) for the first Contract Year, the period [**] and (ii) [**].

1.16 "**Defective Product**" has the meaning set forth in Section 5.2.

1.17 "**Discloser**" has the meaning set forth in Section 10.1.

1.18 "**Effective Date**" has the meaning set forth in the introductory paragraph.

1.19 "**Exception Notice**" has the meaning set forth in Section 5.2.

1.20 "**Facility**" means Catalent's facility located in [**], U.S.A. or such other facility as agreed by the parties in writing.

1.21 "**Firm Commitment**" has the meaning set forth in Section 4.1.

[**] = CERTAIN CONFIDENTIAL INFORMATION OMITTED

1.22 "**Intellectual Property**" means all intellectual Property (whether or not patented or patentable), including without limitation, patents, patent applications, know-how, trade secrets, copyrights, trademarks, designs, concepts, technical information, manuals, standard operating procedures, instructions, specifications, processes and data.

1.23 "**Invention**" has the meaning set forth in Article 11.

1.24 "**Losses**" has the meaning set forth in Section 13.1.

1.25 "**Major Regulatory Authority**" means each of the following Regulatory Authorities: FDA (for the USA); Medicines and Healthcare products Regulatory Agency (for the UK); and European Medicines Agency (for the EU).

1.26 "**Process**" or "**Processing**" means the compounding, filling or tableting, encapsulating, producing and bulk packaging (but not secondary or retail packaging) of Supernus-supplied Materials and Raw Materials into Product by Catalent, in accordance with the Specifications and under the terms of this Agreement.

1.27 "**Processing Date**" means the day on which the first step of physical Processing is scheduled to occur, as identified in an Acknowledgement or as otherwise communicated to Supernus.

1.28 "**Product**" means the bulk pharmaceutical product containing the API, as more specifically described in the Specifications. This is QELBREE (Viloxazine HCI) extended-release capsules.

1.29 "**Product Maintenance Services**" has the meaning set forth in Section 2.3.

1.30 "**Purchase Order**" has the meaning set forth in Section 4.3(A).

1.31 "**Quality Agreement**" has the meaning set forth in Section 9.6.

1.32 "**Raw Materials**" means all raw materials, supplies, components and packaging necessary to Process and ship Product in accordance with the Specifications, but excluding Supernus-supplied Materials.

1.33 "**Recall**" has the meaning set forth in Section 9.5.

1.34 "**Recipient**" has the meaning set forth in Section 10.1.

1.35 "**Regulatory Approval**" means each approval, permit, product and/or establishment license, registration or authorization, including each approval pursuant to U.S. Investigational New Drug Applications, New Drug Applications and Abbreviated New Drug Applications (or equivalent non-U.S. filings, such as European marketing authorization applications), as applicable, of a Regulatory Authority that is necessary or advisable in connection with the development, manufacture, testing, use, storage, exportation, importation, transport, promotion, marketing, distribution or sale of API or Product in the Territory.

1.36 "**Regulatory Authority**" means an international, federal, state or local governmental or regulatory body, agency, department, bureau, court or other entity in the Territory that is responsible for (A) the regulation (including pricing) of any aspect of pharmaceutical or medicinal products intended for

human use or (B) health, safety or environmental matters generally. In the United States, this includes the United States Food and Drug Administration; and in the European Union, this includes the European Medicines Agency.

1.37 "**Representatives**" of an entity mean such entity's duly authorized officers, directors, employees, agents, accountants, attorneys or other professional advisors.

1.38 "**Review Period**" has the meaning set forth in Section 5.2.

1.39 "**Rolling Forecast**" has the meaning set forth in Section 4.2.

1.40 "**Specifications**" means the testing procedures, requirements, and standards as set forth in Attachment B, as modified from time to time in accordance with Article 8.

1.41 "**Supernus**" has the meaning set forth in the introductory paragraph, or any successor or permitted assign.

1.42 "**Supernus Indemnitees**" has the meaning set forth in Section 13.1.

1.43 "**Supernus Inventions**" has the meaning set forth in Article 11.

1.44 "**Supernus IP**" has the meaning set forth in Article 11.

1.45 "**Supernus-supplied Materials**" means any materials, including API to be supplied by or on behalf of Supernus to Catalent for use in the Processing as described in the applicable Product Appendix.

1.46 "**Term**" has the meaning set forth in Section 16.1.

1.47 "**Territory**" means worldwide, except shall not include countries that are targeted by the comprehensive sanctions, restrictions or embargoes administered by the United Nations, European Union, United Kingdom, or the United States. Catalent shall not be obliged to Process Products for sale in any of such countries if it is prevented from doing so, or would be required to obtain or apply for special permission to do so, due to any restrictions (such as embargoes) imposed on it by any governmental authorities, including without limitation, those imposed by the U.S. Office of Foreign Asset Control.

1.48 "**Unit**" has the meaning set forth on Attachment C.

1.49 "**Unit Pricing**" has the meaning set forth in Section 7.1(B)

1.50 "**Validation Services**" has the meaning set forth in Section 2.1.

1.51 "**Vendor**" has the meaning set forth in Section 3.2(B).

ARTICLE 2
VALIDATION AND OTHER SERVICES; AFFILIATES: STEERING COMMITTEE

2.1 Validation Services. Catalent shall perform the Product qualification, validation and stability services, if any, described in Attachment A (the **"Validation Services"**).

2.2 Supply of Product. Catalent shall Process Product in accordance with the Specifications, Applicable Laws and the terms and conditions of this Agreement.

2.3 Product Maintenance Services. Catalent shall provide and Supernus will receive the following product maintenance services (the **"Product Maintenance Services"**): one annual audit (as further described in Section 9.4); FDA audits (as further described in Section 9.3); one annual Product review (within the meaning of 21 CFR § 211.180); access to document library over and above the Quality Agreement, including additional copies of Batch paperwork or other Batch documentation; assistance in preparing Regulatory Approvals; Product document and sample storage relating to cGMP requirements; vendor re-qualification; and maintenance, updates and storage of master Batch records and audit reports. For avoidance of doubt, the following services and items are not included in Product Maintenance Services: technology transfer; analytical work; stability; and process rework.

2.4 Other Services. Catalent shall provide other Product-related services, other than Validation Services, Processing or Product Maintenance Services, as or agreed in writing by the parties from time to time. Such writing shall include the scope and fees for any such services and be appended to this Agreement. The terms and conditions of this Agreement shall govern and apply to such services.

2.7 Steering Committee. Supernus and Catalent shall within thirty (30) days of the Effective Date of this Agreement, nominate representatives from their respective employees, consultants or Affiliates to a steering committee (**"Steering Committee"**) established with general oversight responsibility for the management of certain aspects of manufacturing, packaging and quality. In particular the Steering Committee shall:

i. Oversee the timing and implementation of relevant phases of manufacture as it pertains to Supernus' Product;
ii. Monitor arrangements for the procurement of Supernus-supplied Materials;
iii. Review and coordinate the operation of this Agreement and the Quality Agreement and progress and resolve any operational issues. This will include volume forecasts and delivery dates, lead times for Long Lead Time Materials as set forth in Attachment D, supply plans, technical and pricing issues, and agreed upon performance measures including on time in full deliveries, on time in full payments and quality standards; and
iv. Discuss proposed changes to any manufacturing, processing or other component of the Process, including without limitation, the installation of new or upgraded equipment used in the Process, from that utilized on the Effective Date, that will conflict with the Specifications related to this Agreement or with any Applicable Laws.

Supernus and Catalent shall appoint as members of the Steering Committee a reasonable number of suitably qualified and experienced representatives of each of the parties and shall each designate one member appointed by it to be the principal contact in relation to the day to day management of the administration of this Agreement. Each party may appoint no more than four (4) persons to the Steering Committee.

The Steering Committee shall meet at regular intervals on such dates and such locations as may be agreed upon by the parties, by video or teleconference or in person. In particular, the Steering Committee shall strive to meet at least once per quarter but in any event shall meet no less than three (3) times per year.

The Steering Committee may also meet upon ten (10) days of written request therefore by either party should circumstances necessitate such a meeting.

The members of the Steering Committee shall endeavor to decide matters that come before it on a unanimous basis. In the event that a unanimous decision cannot be reached on any material matter, the matter at issue shall be referred to the senior operations executive of each party as designated and who together shall review and determine agreement and communicate their decision to the Steering Committee. The Steering Committee shall not have the right to amend this Agreement.

ARTICLE 3
MATERIALS

3.1 Supernus-supplied Materials.

A. Supernus shall supply to Catalent for Processing, at Supernus' cost, Supernus-supplied Materials in quantities sufficient to meet Supernus' requirements for Product. Supernus shall deliver such items and associated certificates of analysis to the Facility no later than [**] (but not earlier than [**]) before the Processing Date. Supernus and Catalent will collaborate to accommodate mutually agreed upon production scheduling accommodations in the event of API delivery delays or other needs. Supernus shall be responsible at its expense for securing any necessary DEA, export, import or other governmental clearance, permit or certification required in respect of such supply. Catalent shall use Supernus-supplied Materials solely for Processing Supernus' Product. Prior to delivery of any Supernus-supplied Materials, Supernus shall provide to Catalent a copy of all associated material safety data sheets, safe handling instructions and health and environmental information and any governmental certification or authorization that may be required under Applicable Laws relating to the API and Product, and thereafter shall provide promptly any update thereto.

B. Subject to confirmed dock appointment with Catalent [**] prior to delivery of API and meeting provisions of Section 3.1(A), API will be put into inventory within [**] of receipt, and temperature data will be provided to Supernus by the end of the following business day. Catalent shall inspect all Supernus-supplied Materials received to verify their identity. Unless otherwise expressly required by the Specifications, Catalent shall have no obligation to test Supernus-supplied Materials it receives to confirm that they meet the associated specifications, certificate of analysis or otherwise; but in the event that Catalent detects a nonconformity with the Specifications, Catalent shall give Supernus prompt notice of such nonconformity. Catalent shall not be liable for any defect in Supernus-supplied Materials, or in Product as a result of defective Supernus-supplied Materials, unless Catalent did not perform the foregoing obligations in accordance with the Specifications. Catalent shall follow Supernus' reasonable written instructions in respect of return or disposal of defective Supernus-supplied Materials, at Supernus' cost.

C. Supernus shall retain title to Supernus-supplied Materials at all times and shall bear the risk of loss of any such Supernus-supplied Materials. Supernus shall obtain and maintain insurance for such items while at the Facility and in transit to and from any Facility in accordance with Article 15.

3.2 Raw Materials.

A. Catalent shall be responsible for procuring, inspecting and releasing adequate Raw Materials as necessary to meet the Firm Commitment, unless otherwise agreed by the parties in writing. Catalent shall not be liable for any delay in delivery of Product if (i) Catalent is unable to obtain,

[**] = CERTAIN CONFIDENTIAL INFORMATION OMITTED

in a timely manner, a particular Raw Material necessary for Processing and (ii) Catalent placed orders for such Raw Materials promptly following receipt of Supernus' Firm Commitment. In the event that any Raw Material becomes subject to purchase lead time beyond the Firm Commitment time frame, the parties will negotiate in good faith an appropriate amendment to this Agreement, including to Section 4.2.

B. If Supernus requires a specific supplier, manufacturer or vendor ("Vendor") to be used for Raw Material, then (i) such Vendor will be identified in the Specifications and (ii) the Raw Materials from such Vendor shall be deemed Supernus-supplied Materials for purposes of the other Sections of this Agreement. If the cost of the Raw Material from any such Vendor is [**] Catalent's costs for the same raw material of equal quality from other vendors, Catalent shall [**] between Catalent's cost of the Raw Material and the Vendor's cost of the Raw Material to the Unit Pricing. Supernus will be responsible for all costs associated with qualification of any such Vendor that has not been previously qualified by Catalent.

C. In the event of (i) a Specification change for any reason, (ii) obsolescence of any Raw Material or (iii) termination or expiration of this Agreement, Supernus shall bear the cost of any Raw Materials (including packaging) unusable for Processing or Product and unused by Catalent for another customer, so long as Catalent purchased such Raw Materials in quantities consistent with Supernus' most recent Firm Commitment and the vendor's minimum purchase obligations.

3.3 Artwork and Labeling. Supernus shall provide or approve, prior to the procurement of applicable Raw Material, all artwork, advertising and labeling information necessary for Processing, if any. Such artwork, advertising and labeling information is and shall remain the exclusive property of Supernus, and Supernus shall be solely responsible for the content thereof. Such artwork, advertising and labeling information or any reproduction thereof may not be used by Catalent in any manner other than performing its obligations hereunder without Supernus' written consent.

ARTICLE 4
PURCHASE ORDERS & FORECAST

4.1 Reserved.

4.2 Forecast. On or before the [**] of each calendar month, beginning at least [**] prior to the anticipated Commencement Date, Supernus shall furnish to Catalent a written [**] rolling forecast of the quantities of Product that Supernus intends to order from Catalent during such [**] period (the **"Rolling Forecast"**). The first [**] of each Rolling Forecast shall constitute a binding order for the quantities of Product specified in such Rolling Forecast (the **"Firm Commitment"**) and the following [**] of the Rolling Forecast shall be non-binding, good-faith estimates.

4.3 Purchase Orders.

A. From time to time as provided in this Section 4.3(A), Supernus shall submit to Catalent a binding, non-cancelable purchase order for Product specifying the number of Batches to be Processed, the Batch size (to the extent the Specifications permit Batches of different sizes) and the requested delivery date for each Batch (each, a **"Purchase Order"**); *provided*, that no Purchase Order may be for less than [**] Batches. Concurrently with the submission of each Rolling Forecast, Supernus shall submit a Purchase Order for the Firm Commitment.

B. Promptly following receipt of a Purchase Order, Catalent shall issue a written acknowledgement (each, an **"Acknowledgement"**) that it accepts or rejects such Purchase Order. Each

acceptance Acknowledgement shall either confirm the delivery date set forth in the Purchase Order or set forth a reasonable alternative delivery date and shall include the Processing Date. Catalent may reject any Purchase Order in excess of the Firm Commitment or otherwise not given in accordance with this Agreement.

C. Notwithstanding Section 4.3(B), Catalent shall make commercially reasonable efforts to supply Supernus with quantities of Product set forth in a Purchase Order which are up to [**] in excess of the quantities specified in the Firm Commitment, subject to Catalent's other supply commitments and manufacturing, packaging and equipment capacity.

D. In the event of a conflict between the terms of any Purchase Order or Acknowledgement and this Agreement, the terms of this Agreement shall control.

4.4 Catalent's Deferral of Purchase Orders. Notwithstanding anything in Section 4.3 and 4.5 to the contrary, Catalent reserves the right to defer all, or any part of, a Purchase Order upon written notice to Supernus, and Catalent shall have no further obligation or liability with respect to the acknowledged delivery date related to such Purchase Order, if Supernus refuses or fails to supply conforming Supernus-supplied Materials prior to the deadline set forth in Section 3.1. In such instance, the parties will mutually agree on an alternative delivery date not to exceed [**] from the original acknowledgement date for any such deferred Purchase Orders. Any deferral of Purchase Orders in accordance with this Section 4.4 shall not constitute a breach of this Agreement by Catalent nor shall it absolve Supernus of its obligations in respect of the Firm Commitment.

4.5 Supernus' Modification or Cancellation of Purchase Orders.

A. The parties shall make commercially reasonable efforts to modify the delivery date or quantity of Product in a Purchase Order, upon Supernus' request which such request shall be in the form of a written change order submitted to Catalent at least [**] in advance of the earliest Processing Date covered by such change order. Such change order shall be effective and binding against Catalent only upon the written approval of Catalent, and, notwithstanding any such written approval, Supernus shall remain responsible for the Firm Commitment.

B. If Supernus fails to place Purchase Orders sufficient to satisfy the Firm Commitment in Section 4.2, Firm orders will be rescheduled into the next calendar quarter.

4.6 Unplanned Delay of Processing. Catalent shall use commercially reasonable efforts to deliver all requirements of Product as set forth in the Firm Commitment. Catalent shall provide Supernus with as much advance notice as practicable if Catalent determines that any Processing will be delayed for any reason.

ARTICLE 5
TESTING; RELEASE

5.1 Batch Records and Data; Release. Unless otherwise agreed to by the parties during their ordinary course of dealings, after Catalent completes Processing of a Batch, Catalent shall provide Supernus with copies of Batch records executed. After Catalent completes Processing of a Batch, and upon confirmed agreement as provided by Supernus QA, Catalent shall also provide Supernus or its designee with Catalent's issuance of a certificate of conformance for such Batch. Issuance of a certificate of conformance by Catalent constitutes release of the Batch by Catalent to Supernus. Supernus shall be responsible for final release of Product (including testing, at its cost) to the market.

[**] = CERTAIN CONFIDENTIAL INFORMATION OMITTED

5.2 Testing; Rejection. No later than [**] days after Supernus or its designee's receipt of the Batch ("Review Period"), Supernus shall notify Catalent whether the Batch conforms to the Specifications. Upon receipt of notice from Supernus that a Batch meets the Specifications, or upon failure of Supernus to respond by the end of the Review Period, the Batch shall be deemed accepted by the parties and Supernus shall have no right to reject such Batch. If Supernus timely notifies Catalent in writing (an "Exception Notice") that a Batch does not conform to the Specifications or otherwise does not meet the warranty set forth in Section 12.1 ("Defective Product"), then Catalent shall conduct an appropriate investigation to determine the cause of any nonconformity. If Catalent determines that the cause of nonconformity is attributable to Catalent's [**], or [**] ("Catalent Defective Processing"), then Section 5.4 shall apply. Where the cause of nonconformity cannot be determined or assigned, it shall be deemed [**].

5.3 Discrepant Results. If the parties disagree as to whether Product is Defective Product and/or whether the cause of the nonconformity is Catalent Defective Processing, and this is not resolved within [**] of the Exception Notice date, the parties shall cause a mutually acceptable independent third party to review records, test data and to perform comparative tests and/or analyses on samples of the alleged Defective Product and its components, including Supernus-supplied Materials. The independent party's results as to whether or not Product is Defective Product and the cause of any nonconformity shall be final and binding. Unless otherwise agreed by the parties in writing, the costs associated with such testing and review shall be borne by Catalent if Product is Defective Product attributable to Catalent Defective Processing, and by Supernus in all other circumstances.

5.4 Defective Processing. As agreed upon by both parties, Catalent shall either (A) re-Process (or if re-Processing is not permissible under cGMPs, then replace) at Catalent's cost another Batch of Product as a replacement for any Batch of Defective Product attributable to Catalent Defective Processing, and/or [**], using Supernus-supplied Materials provided at Catalent's cost (subject to the cap in Section 14.1), or (B) credit any payment made by Supernus for such rejected Batch. For the avoidance of doubt, Supernus shall be liable to pay for either the [**] or the [**]. THE OBLIGATION OF CATALENT TO RE-PROCESS (OR REPLACE) DEFECTIVE PROCESSING IN ACCORDANCE WITH THE SPECIFICATIONS OR CREDIT PAYMENTS MADE BY SUPERNUS FOR DEFECTIVE PRODUCT ATTRIBUTABLE TO CATALENT DEFECTIVE PROCESSING SHALL BE [**] AND [**] UNDER THIS AGREEMENT FOR DEFECTIVE PRODUCT AND [**].

ARTICLE 6
DELIVERY

6.1 Delivery. Catalent shall deliver [**] the Facility promptly following Catalent's release of Product to Supernus. For clarity, Supernus shall do its own release to market. Catalent shall segregate and store all Product until tender of delivery. To the extent not already held by Supernus, title to Product shall transfer to Supernus upon Catalent's tender of delivery. If Catalent provides storage services, title to such items shall pass to Supernus upon transfer to storage. Supernus shall qualify a minimum of one (1) carrier to ship Product and then designate the priority of such qualified carriers to Catalent. Catalent arranges shipping and performs loading and/or logistics services for Supernus at Supernus' request, and this does not alter the terms and limitations set forth in this Section 6.1. Catalent shall not be responsible for Product in transit, including any cost of insurance or transport fee for Product, or any risk associated with transit or customs delays, storage, and handling.

[**] = CERTAIN CONFIDENTIAL INFORMATION OMITTED

6.2 Storage Fees. In the event Supernus fails to take delivery of any Product on any scheduled delivery date, Catalent shall store such Product and have the right to invoice Supernus monthly following such scheduled delivery for administration and storage costs.

ARTICLE 7
PAYMENTS

7.1 Fees. In consideration for Catalent performing services hereunder:

A. Supernus shall pay to Catalent the fees for Validation Services, if any, set forth on Attachment A. Catalent shall submit an invoice to Supernus for such fees upon the completion of the relevant phase of the Validation Services.

B. Supernus shall pay Catalent the initial unit pricing for Product set forth on Attachment C (together with any subsequent updates to pricing, the **"Unit Pricing"**). Catalent shall submit an invoice to Supernus for such fees upon tender of delivery of Product as provided in Section 6.1.

C. Other Fees. Supernus shall pay Catalent for all other fees and expenses of Catalent owing in accordance with the terms of this Agreement, including pursuant to Sections 2.4, 4.1, 6.2, 9.7 and 16.3. Catalent shall submit an invoice to Supernus for such fees as and when appropriate.

7.2 Unit Pricing Adjustment. The Unit Pricing may be adjusted on an annual basis, effective on January 1st of each Contract Year, upon [**] prior written notice from Catalent to Supernus, to reflect adjustments in, among other things, labor, utilities and overhead and operational efficiencies. Requests for pricing adjustments will be supported by justification and supporting evidence. In no event shall the amount of adjustment exceed an amount equal to the change in the Producer Price Index ("PPI"), "Pharmaceutical Preparation Manufacturing" (Series ID: PCU325412325412), for the previous 12 months, as published by the U.S. Department of Labor, Bureau of Labor Statistics but will be further adjusted to account for any operating efficiencies gained in the preceding Contract Year. In addition, price increases or decreases for Raw Materials (including those Raw Materials referenced in Section 3.2(B)), labor, and utilities shall be passed through to Supernus at the time of such price increase or decrease through an adjustment to the Unit Pricing.

7.3 Payment Terms. Payment of all Catalent invoices shall be due [**] after the date of invoice. Supernus shall make payment in U.S. dollars, and otherwise as directed in the applicable invoice. If any payment is not received by Catalent by its due date, then Catalent may, in addition to other remedies available at equity or in law, charge interest on the outstanding sum from the due date (both before and after any judgment) at [**] until paid in full (or, if less, the maximum amount permitted by Applicable Laws).

7.4 Taxes. All taxes, duties and other amounts (excluding taxes based on net income and franchise taxes) assessed in respect of Supernus-supplied Materials, services or Product prior to or upon provision or sale, as the case may be, whether assessed on Catalent or Supernus, are the responsibility of Supernus, and either Supernus shall reimburse Catalent for all such taxes, duties or other amounts paid by Catalent or such sums will be added to invoices directed at Supernus. If any deduction or withholding in respect of tax or otherwise is required by law to be made from any of the sums payable hereunder, Supernus shall be obliged to pay to Catalent such greater sum as will leave Catalent, after deduction or withholding as is required to be made, with the same amount as it would have been entitled to receive in the absence of any such requirement to make a deduction or withholding.

[**] = CERTAIN CONFIDENTIAL INFORMATION OMITTED

7.5 Supernus and Third-Party Expenses. Except as may be expressly covered by Product Maintenance Service fees, Supernus shall be responsible for [**] of [**] and all third-party expenses associated with [**] of Product, including [**].

7.6 Development Batches. Until validation has been completed, each Batch Processed under this Agreement, including those necessary to support the validation portion of Supernus' submissions for Regulatory Approvals, will be considered to be a "development batch" unless and until Processing has been validated. Supernus shall be responsible for the cost of each such Batch, even if such Batch fails to meet the Specifications, unless Catalent was [**] in the Processing of the out-of-Specification Batch. Catalent and Supernus shall cooperate in good faith to resolve any problem causing the out-of-Specification Batch.

ARTICLE 8
CHANGES TO SPECIFICATIONS

All Specifications, and any change to the Specifications agreed by the parties from time to time, shall be in writing, dated and signed by the parties. No change in the Specifications shall be implemented by Catalent, whether requested by Supernus or requested or required by any Regulatory Authority, until the parties have agreed in writing to such change, the implementation date of such change, and any increase or decrease in costs, expenses or fees associated with such change (including any change to Unit Pricing). Catalent shall respond promptly to any request made by Supernus for a change in the Specifications, and both parties shall use commercially reasonable, good-faith efforts to agree to the terms of such change in a timely manner. As soon as practicable after a request is made for any change in Specifications, Catalent shall notify Supernus of the costs associated with such change and shall provide such supporting documentation as Supernus may reasonably require. Supernus shall pay all costs associated with agreed changes to the Specifications. Catalent reserves the right to postpone effecting changes to the Specifications until such time as the parties agree to and execute the required written amendment.

ARTICLE 9
RECORDS; REGULATORY MATTERS

9.1 Recordkeeping. Catalent shall maintain materially complete and accurate Batch, laboratory data and other technical records relating to Processing in accordance with Catalent standard operating procedures. Such information shall be maintained for a period of at least [**] from the relevant finished Product expiration date or longer if required under Applicable Laws or the Quality Agreement.

9.2 Regulatory Compliance. Catalent shall obtain and maintain all certifications, permits and licenses with respect to general Facility operations required by any Regulatory Authority in the jurisdiction in which Catalent Processes Product. Supernus shall obtain and maintain all other Regulatory Approvals required of Supernus by Applicable Law with respect to Product or the services provided pursuant to this Agreement, including those necessary for Catalent to commence Processing. Supernus shall not identify Catalent in any ANDA/NDA application or other such initial regulatory filing or submission without providing Catalent with prior written notice. Upon written request, Supernus shall provide Catalent with a copy of each Regulatory Approval required to distribute, market or sell Product in the Territory. If Supernus is unable to provide such information, Catalent shall have no obligation to deliver Product to Supernus, notwithstanding anything to the contrary in this Agreement. During the Term, Catalent will assist Supernus with all regulatory matters relating to Processing, at Supernus' request and expense. The parties shall cooperate to allow each party to satisfy their respective obligations under Applicable Laws relating to Processing under this Agreement.

[**] = CERTAIN CONFIDENTIAL INFORMATION OMITTED

9.3 Government/Regulatory Inspections and Requests. Catalent shall promptly advise Supernus if any Regulatory Authority (or agent acting on its behalf) notifies Catalent that the Regulatory Authority intends to or does visit the Facility where at least one purpose relates to Processing. Upon request, Catalent shall provide Supernus with a copy of any report provided to Catalent by such Regulatory Authority following such visit, which report may be redacted as appropriate to protect any confidential information of Catalent or Catalent's other customers. Supernus shall provide Catalent with any material correspondence with such Regulatory Authority, including FDA refusal to file, rejection or warning letters, that relate to the services provided under this Agreement. Supernus acknowledges that it may not direct the manner in which Catalent fulfills its obligations to permit inspection by and to communicate with Regulatory Authorities. Supernus shall reimburse Catalent for all reasonable and documented costs associated with inspections by Regulatory Authorities in connection with Product, other than inspections by the Major Regulatory Authorities.

9.4 Supernus Facility Audits. During the Term, Supernus Representatives shall be granted access upon at least [**] prior notice, at reasonable times during regular business hours, to (A) the portion of the Facility where Catalent performs Processing, (B) relevant personnel involved in Processing and (C) Processing records described in Section 9.2, in each case solely for the purpose of verifying that Catalent is Processing in accordance with cGMPs, the Specifications and the Product master Batch records. Supernus may not conduct an audit under this Section 9.4 more than [**] during any [**]; *except* that additional inspections may be conducted in the event there is a material quality or compliance issue concerning Product or Processing. Audits and inspections shall be designed to minimize disruption of operations at the Facility. The obligations of Supernus and its Representatives in Section 9.5 shall apply to all audits undertaken by Supernus and its Representatives pursuant to this Section 9.4. Supernus Representatives shall be required to sign Catalent's standard visitor confidentiality agreement prior to being allowed access to the Facility. Such Representatives shall comply with the Facility's rules and regulations. Supernus shall indemnify and hold harmless Catalent for any action or activity of such Representatives while on Catalent's premises.

9.5 Observation of Processing. In addition to Supernus' audit right pursuant to Section 9.4, Catalent and Supernus may also agree in writing from time to time to have another Supernus Representative observe Processing, as needed. Such Supernus Representatives shall abide by all Catalent safety rules, quality policies and procedures and other applicable employee policies and procedures, and Supernus shall be responsible for such compliance. Supernus shall indemnify and hold harmless Catalent for any action, omission or other activity of its Representatives while on Catalent's premises. Supernus Representatives may be required to sign Catalent's standard visitor confidentiality agreement prior to being allowed access to the Facility.

9.6 Recall. If a Regulatory Authority orders or requires the recall of Product supplied pursuant to this Agreement or if either Catalent or Supernus believes a recall, field alert, Product withdrawal or field correction (**"Recall"**) may be necessary with respect to Product supplied under this Agreement, the party receiving the notice from the Regulatory Authority or that holds such belief shall promptly notify the other party in writing. With respect to any Recall, Catalent shall provide all necessary cooperation and assistance to Supernus. Supernus shall provide Catalent with an advance copy of any proposed submission to a Regulatory Authority in respect of any Recall, such copy being provided no less than [**] prior to submission to a Regulatory Authority. Supernus shall consider in good faith any comments from Catalent relating to such submission.

9.7 The cost of any Recall shall be borne by [**], and [**] shall reimburse [**] for all expenses incurred directly in connection with any Recall, unless such Recall is caused solely by [**] of its

[**] under this Agreement or [**] or its [**] or [**], in which case [**] shall bear the reasonable, actual and documented administrative costs *(e.g.*, printed materials, postage, cost of shipment of return Product) incurred by [**] for such Recall and, if applicable, the cost of [**] pursuant to such Recall, both to the extent and as provided in Article 5. In the event that the Recall is caused substantially in part by [**] of its [**] under this Agreement or [**] or its [**] or [**] shall bear the reasonable, actual and documented administrative costs of such Recall in proportion to [**] for such Recall.

9.8 Quality Agreement. Within [**] after the Effective Date, and in any event prior to the first Processing of Product under this Agreement, the parties shall negotiate in good faith and enter into a quality agreement (the **"Quality Agreement"**). The Quality Agreement shall in no way determine liability or financial responsibility of the parties for the responsibilities set forth in that agreement. In the event of a conflict between any provision of this Agreement and the Quality Agreement with respect to quality-related activities, including compliance with cGMP, the provisions of the Quality Agreement shall govern. In the event of a conflict between any provision of this Agreement and the Quality Agreement with respect to any commercial matter, including allocation of risk, liability and financial responsibility, the provisions of this Agreement shall govern.

9.9 Regulatory Authority Fees. Catalent reserves the right to assess Supernus for any Regulatory Authority fees, if any, that may be established by any regulatory authority, which fees result directly from Catalent's formulation, development, manufacturing, processing, filling, packaging, storing or testing of Supernus' product or Supernus-supplied Materials. Catalent will invoice Supernus for reimbursement of all other payments or fees at the time they are incurred by Catalent. Supernus shall pay all such invoices within [**] from the date of such invoice.

ARTICLE 10
CONFIDENTIALITY AND NON-USE

10.1 Definition. As used in this Agreement, the term **"Confidential Information"** means all confidential information of the disclosing person of whatever type, including all information furnished by or on behalf of Catalent or Supernus (as the case may be, **"Discloser"**), its Affiliates or any of its or their respective Representatives, to the other party (for purposes of this Article 10, **"Recipient"**), its Affiliates or any of its or their respective Representatives, whether furnished before, on or after the Effective Date and furnished in any form, including written, verbal, visual, electronic or in any other media or manner and information acquired by observation or otherwise during any site visit at the other party's facility. Confidential Information includes all proprietary technologies, know-how, trade secrets, discoveries, inventions and any other Intellectual Property (whether or not patented), analyses, compilations, business or technical information and other materials prepared by either party, their respective Affiliates, or any of its or their respective Representatives, containing or based in whole or in part on any Confidential Information furnished by Discloser, its Affiliates or any of its or their respective Representatives. Confidential Information also includes the existence and terms of this Agreement.

10.2 Exclusions. Notwithstanding anything in Section 10.1 to the contrary, Confidential Information does not include information that (A) is or becomes generally available to the public or within the industry to which such information relates other than as a result of a breach of this Agreement, (B) is already known by Recipient at the time of disclosure as evidenced by Recipient's written records, (C) becomes available to Recipient on a non-confidential basis from a source that is entitled to disclose it on a non-confidential basis or (D) was or is independently developed by or for Recipient without reference to Discloser's Confidential Information as evidenced by Recipient's written records.

10.3 Mutual Obligation. Recipient (A) will keep confidential all Confidential Information, employing such protections as it would use for its own Confidential Information of a similar type but in no case less than reasonable protections under the circumstances, (B) will not use Discloser's Confidential Information except in connection with the performance of its obligations under this Agreement and (C) will not disclose to any third party, without Discloser's prior written consent, Discloser's Confidential Information, except that Recipient may disclose Discloser's Confidential Information to any of its Affiliates and its or their respective Representatives that (A) need to know such Confidential Information for the purpose of performing under this Agreement, (B) are advised of the contents of this Article and (C) are bound to Recipient by obligations of confidentiality at least as restrictive as the terms of this Article. Each party shall be responsible for any breach of this Article by its Affiliates or any of its or their respective Representatives. Each Party will promptly notify the other upon discovery of any unauthorized use or disclosure of the Confidential Information.

10.4 Permitted Disclosure. Recipient may disclose Discloser's Confidential Information to the extent required by law or regulation or is in response to a valid order of a court or other governmental body of the United States or a foreign country or any political subdivision thereof; *provided*, that prior to making any such legally required disclosure Recipient shall have made a reasonable effort to obtain a protective order requiring that the Confidential Information so disclosed be used only for the purposes for which the order was issued. Recipient shall give Discloser as much prior notice of the requirement for and contents of such disclosure as is practicable under the circumstances. Any such disclosure, however, shall not relieve Recipient of their continued obligations under this Agreement.

10.5 No Implied License. Except as expressly set forth in Section 10.1, Recipient will obtain no right of any kind or license under any of Discloser's Confidential Information, including any patent application or patent, by reason of this Agreement. Discloser's Confidential Information will remain Discloser's sole property, subject to Article 11.

10.6 Return of Confidential Information. Upon termination of this Agreement for any reason, each party will use commercially reasonable efforts to return all Confidential Information received by it from the other party in connection with this Agreement or destroy such information if so directed, except that the returning party may keep one copy of all Confidential Information in the custody of its legal department for legal archival purposes. Access to the copy so retained shall be restricted to the party's legal counsel and the Confidential Information so retained shall not be used except in (1) the resolution of any claims or disputes arising out of this Agreement, and (2) ensuring compliance with its obligations under this Agreement. For purposes of this Section 10.6, a party's obligation to use commercially reasonable efforts to return Confidential Information of the other will not require the party to search back-up computer files that are not readily accessible or are kept off-site or to use forensic methods to retrieve data from hard disks or other storage devices.

10.7 Publication. Neither party shall submit for written or oral publication any manuscript, abstract, or other medium that includes Confidential Information of the other party without first obtaining the prior written consent of such other party, which consent shall be at the sole discretion of such other party. The requesting party shall make any such request a reasonably sufficient time in advance of the proposed submission date and shall ensure that any resulting publication notes the contribution of each party whether by acknowledgment, co-authorship, or otherwise.

10.8 Equitable Remedies. The parties acknowledge and agree that monetary damages may not be a sufficient remedy for any breach or threatened breach of this Article 10 and that the parties shall be entitled, without the requirement of posting a bond or other security, to seek specific performance and

injunctive or other equitable relief as a remedy for any such breach or threatened breach. Such remedies shall not be deemed to be the exclusive remedies for a breach or threatened breach of this Section 10.8 but shall be in addition to all other remedies available to the parties at law or in equity.

10.9 Procedure for Public Announcements. Neither party will issue any press release or make any public announcement concerning this Agreement without obtaining the prior consent of the other party. This Section 10.9 does not limit either party's right to make disclosures to the extent required by Applicable Law or by any governmental agency or the rules of any stock exchange on which the securities of the disclosing party are listed. In addition, the parties may disclose the existence and nature of this Agreement (but not its terms other than the length of its duration), under an obligation of confidentiality, to investment bankers, strategic or financial investors and qualified institutional buyers who the party reasonably believes may have a bona-fide interest. Each party covenants that prior to filing this Agreement as an exhibit to any of its filings with the Securities and Exchange Commission (the "SEC"), it will notify the non-filing party and provide, as is practically reasonable, the opportunity to review, redact, and/or request confidential treatment of certain Confidential Information contained therein prior to any filing it with the SEC, it being understood by both parties that the SEC's determination with respect to any redactions or confidential treatment of information will be ultimately determinative.

10.10 Survival. The obligations of this Article will terminate [**] from the expiration or termination of this Agreement, except with respect to trade secrets, for which the obligations of this Article will continue for so long as such information remains a trade secret under law.

ARTICLE 11
INTELLECTUAL PROPERTY

As used in this Agreement, **"Supernus IP"** means all Intellectual Property and related embodiments owned by or licensed to Supernus as of the Effective Date or developed by Supernus other than in connection with this Agreement; **"Catalent IP"** means all Intellectual Property and related embodiments owned by or licensed to Catalent as of the Effective Date or developed by Catalent other than in connection with this Agreement, and **"Invention"** means any Intellectual Property developed by either party or jointly by the parties in connection with this Agreement.

All Inventions, ideas, discoveries, developments, methods, data, information, improvements and biological or chemical materials, (whether or not reduced to practice and whether or not it can be protected under state, federal or foreign patent, copyright, trade secrecy or similar laws) generated or derived by Catalent or Supernus whether alone or together in the course or performing the services which are related directly to Supernus' proprietary Product, Supernus IP or Supernus Confidential Information shall be the exclusive property of Supernus (**"Supernus New IP"**). Supernus hereby grants to Catalent a non-exclusive, non-assignable, paid-up, royalty-free, non-transferable license for the performance of the services under this Agreement.

All Inventions, ideas, discoveries, developments, methods, data, information, improvements and biological or chemical materials, (whether or not reduced to practice and whether or not it can be protected under state, federal or foreign patent, copyright, trade secrecy or similar laws) generated or derived by Catalent or Supernus whether alone or together in the course or performing the services which are not Supernus New IP, that relates directly to Catalent IP or Catalent Confidential Information, or relates to developing, formulating, manufacturing, filling, processing, packaging, analyzing or testing drug products other than the Product shall be the exclusive property of Catalent (**"Catalent New IP"**). Catalent hereby grains to Supernus a non-exclusive, non-assignable, paid-up, royalty-free, non-

[**] = CERTAIN CONFIDENTIAL INFORMATION OMITTED

transferable, license to use the Catalent New IP solely to the extent necessary to use for the Product manufactured during the performance of the services hereunder.

Each party shall promptly and fully disclose, in writing, to the other any and all such New IP. Each party hereby assigns and agrees to assign to the other all applicable right, title and interest in and to any such New IP. Each party agrees to cooperate fully in obtaining patent, copyright or other proprietary protection for such New IP, all in the name of the applicable party and at such party's cost and expense, and shall execute and deliver all requested applications, assignments and other documents, and take such other measures as reasonably requested in order to perfect and enforce rights in such New IP.

ARTICLE 12
REPRESENTATIONS AND WARRANTIES

12.1 Catalent. Catalent represents, warrants and undertakes to Supernus that:

A. At the time of delivery by Catalent as provided in Section 6.1, Product shall have been Processed in accordance with Applicable Laws and in conformity with the Specifications and shall not be adulterated, misbranded or mislabeled within the meaning of Applicable Laws; *provided*, that Catalent shall not be liable for defects attributable to Supernus-supplied Materials (including artwork, advertising and labeling);

B. It will not in the performance of its obligations under this Agreement use the services of any person debarred or suspended under 21 U.S.C. §335(a) or (b);

C. To the best of its knowledge, Catalent has all necessary authority to use the Catalent IP as contemplated by this Agreement;

D. No transaction or dealing under this Agreement shall be conducted with or for an individual or entity that is designated as the target of any sanction, restriction or embargo administered by the United Nations, European Union, United Kingdom, or United States;

E. Catalent is in compliance with all Applicable Laws with respect to general Facility operations at the site to be used for the Processing of API and, to Catalent's knowledge, there are no circumstances or conditions which would reasonably be expected to alter this during the Term of this Agreement;

F. At all times during the Term of this Agreement, it will have, comply with and maintain in force all licenses, consents, permits and authorization which may be required with respect to the Facility and its performance of its obligations hereunder, including without limitation licenses and permits issued or required by a Regulatory Authority and those required in relation to the generation, storage, treatment, transport, possession, handling and disposal of any waste and Catalent will perform its obligations in strict with all such licenses, consents, permits and authorization;

G. Catalent shall not, during the Term, modify, alter or otherwise change any manufacturing, processing or other component of the Process, including without limitation, the installation of new or upgraded equipment used in the Process, from that utilized on the Effective Date without first receiving Supernus' prior written consent to such modification, alteration or change. Supernus shall deliver written notice of such modification, alteration or change to Supernus at least [**] prior to Supernus' intended implementation of such modification, alteration or change. Supernus shall have the right to reject and direct Catalent not to undertake any such proposed modification, alteration or

[**] = CERTAIN CONFIDENTIAL INFORMATION OMITTED

change if, in Supernus' sole and reasonable opinion, such modification, alteration or change will conflict with the Specifications related to this Agreement or with any Applicable Laws; and

12.2 Supernus. Supernus represents, warrants and undertakes to Catalent that:

A. All Supernus-supplied Materials shall have been produced in accordance with Applicable Laws, shall comply with all applicable specifications, including the Specifications, shall not be adulterated, misbranded or mislabeled within the meaning of Applicable Laws, and shall have been provided in accordance with the terms and conditions of this Agreement;

B. The content of all artwork provided by or on behalf of Supernus to Catalent shall comply with all Applicable Laws;

C. All Product delivered to Supernus by Catalent shall be held, used and disposed of by or on behalf of Supernus in accordance with Applicable Laws, and Supernus will otherwise comply with Applicable Laws relating to Supernus' performance under this Agreement;

D. Supernus will not release any Batch of Product if the required certificates of conformance indicate that Product does not comply with the Specifications or if Supernus does not hold all necessary Regulatory Approvals to market and sell the Product;

E. Supernus, to the best of its knowledge, has all necessary authority to use and to permit Catalent to use pursuant to this Agreement all Intellectual Property related to Product, Supernus-supplied Materials (including artwork) or the Processing of either of them, including all applicable copyrights, trademarks, trade secrets, patents, inventions and developments;

F. To the best of its knowledge, there is (i) no patent owned by a third party related to the Supernus IP used to Process Product that would be infringed or misused by performance under this Agreement and (ii) no trade secret or other proprietary right of a third party related to the Supernus IP used to Process Product that would be infringed or misused by performance under this Agreement;

G. To the best of Supernus' knowledge, services to be performed by Catalent under this Agreement will not violate or infringe upon any trademark, tradename, copyright, patent, trade secret, or other Intellectual Property or other right held by any person or entity;

H. Supernus has all authorizations and permits required to deliver (or have delivered) API to the Facility; and

I. No transaction or dealing under this Agreement shall be conducted with or for an individual or entity that is designated as the target of any sanction, restriction or embargo administered by the United Nations, European Union, United Kingdom, or United States.

12.3 Limitations. THE REPRESENTATIONS AND WARRANTIES SET FORTH IN THIS ARTICLE ARE THE SOLE AND EXCLUSIVE REPRESENTATIONS AND WARRANTIES MADE BY EACH PARTY TO THE OTHER PARTY, AND NEITHER PARTY MAKES ANY OTHER REPRESENTATION, WARRANTY OR GUARANTEE OF ANY KIND WHATSOEVER, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE.

ARTICLE 13
INDEMNIFICATION

13.1 Indemnification by Catalent. Except to the extent that any of the following arises out of or results from any [**] or breach of this Agreement by Supernus, its Affiliates, and their respective directors, officers, employees and agents (collectively, **"Supernus Indemnitees"**), Catalent shall indemnify, defend and hold harmless Supernus Indemnitees from and against any and all suits, claims, losses, demands, liabilities, damages, costs and expenses (including reasonable attorneys' fees and expenses and reasonable investigative costs) in connection with any suit, demand or action by any third party (**"Losses"**) arising out of, relating to or resulting from (A) any breach of its representations, warranties or obligations set forth in this Agreement or (B) any [**] misconduct by Catalent.

13.2 Indemnification by Supernus. Except to the extent that any of the following arises out of or results from any [**] or breach of this Agreement by Catalent, its Affiliates, and their respective directors, officers, employees and agents (collectively, **"Catalent Indemnitees"**), Supernus shall indemnify, defend and hold harmless Catalent Indemnitees from and against any and all Losses arising out of, relating to or resulting from (A) any breach of its representations, warranties or obligations set forth in this Agreement, (B) any [**], (C) Supernus' [**], (D) the conduct of any [**], (E) any [**], including [**], (F) any [**] by Supernus, or (G) any [**], including [**].

13.3 Indemnification Procedures. All indemnification obligations in this Agreement are conditioned upon the indemnified party (A) promptly notifying the indemnifying party of any claim or liability of which the indemnified party becomes aware (including a copy of any related complaint, summons, notice or other instrument); *provided*, *however*, that failure to provide such notice within a reasonable period shall not relieve the indemnifying party of its obligations under this Article 13 except to the extent, if any, the indemnifying party is prejudiced by such failure, allowing the indemnifying party to conduct and control the defense of any such claim or liability and any related settlement negotiations (at the indemnifying party's expense), *provided*, that the indemnifying party shall promptly provide and continuously maintain such defense, cooperating with the indemnifying party in the defense of any such claim or liability and any related settlement negotiations (at the indemnifying party's expense) and (D) not compromising or settling any claim or liability without prior written consent of the indemnifying party.

ARTICLE 14
LIMITATIONS OF LIABILITY

14.1 CATALENT'S LIABILITY UNDER THIS AGREEMENT FOR ANY AND ALL CLAIMS FOR LOST, DAMAGED OR DESTROYED SUPERNUS-SUPPLIED MATERIALS (FOR WHICH SUPERNUS SHALL PROVIDE TO CATALENT DOCUMENTATION EVIDENCING THE COST OF SUCH MATERIALS) WHETHER OR NOT SUCH SUPERNUS-SUPPLIED MATERIALS ARE INCORPORATED INTO PRODUCT SHALL NOT EXCEED:

BATCH CAP: FOR ANY CLAIM FOR SUPERNUS-SUPPLIED MATERIALS LOST OR DESTROYED AS A RESULT OF CATALENT DEFECTIVE PROCESSING DURING THE PROCESSING OF ANY GIVEN BATCH OF PRODUCT, [**] FOR SUCH BATCH (OR [**] IF THE RESULT OF CATALENT'S [**]);

ANNUAL CAP: [**] IN ANY CONTRACT YEAR IF DUE TO CATALENT'S [**] (WITH SUCH AMOUNT INCREASING TO [**] IF DESTROYED AS A RESULT OF CATALENT [**]); AND

AGGREGATE CAP: [**] IN THE AGGREGATE IF DUE TO CATALENT'S [**] (WITH SUCH AMOUNT INCREASING TO [**] IF THE RESULT OF CATALENT [**]).

14.2 CATALENT'S TOTAL LIABILITY UNDER THIS AGREEMENT IN A GIVEN CONTRACT YEAR SHALL IN NO EVENT EXCEED [**].

14.3 NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OR LOSS OF REVENUES, PROFITS OR DATA ARISING OUT OF PERFORMANCE UNDER THIS AGREEMENT, WHETHER IN CONTRACT OR IN TORT, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

14.4 [**].

ARTICLE 15
INSURANCE

Each party shall, at its own cost and expense, obtain and maintain in full force and effect during the Term the following: (A) [**] with a per occurrence limit of [**] or equivalent and an annual aggregate limit of [**] or equivalent; (B) [**] with a per occurrence limit of not less than [**] or equivalent covering each party's own operations arising out of or connecting with this Agreement, providing coverage for [**]; (C) Catalent shall procure [**] with a per occurrence limit of not less than [**] or equivalent covering Catalent's own operations arising out of or connecting with this Agreement, providing coverage for [**] ((D) Workers' Compensation as required by any applicable law or regulation and in accordance with the provisions of the laws of the nation, state, territory or province having jurisdiction over Supernus' employees. If any such jurisdiction has a social scheme to provide insurance or benefits to injured workers, Supernus must be in full compliance with the laws of such jurisdiction. [**] insurance will be provided in amounts not less than the local currency equivalent of [**] or equivalent [**] and [**] or equivalent [**], provided that such coverage is available in the nation, state, territory or province having jurisdiction over Supernus' employees. If there is an exposure of injury to Supernus' employees under the U.S. Longshoremen's and Harbor Workers' Compensation Act, the Jones Act or under the laws, regulations or statutes applicable to maritime employees, coverage will be included for such injuries or claims; and (E) [**] insurance in a minimum amount of [**] or equivalent combined single limit for all [**] in connection with the performance of this contract. Supernus shall, at its own cost and expense, obtain and maintain in full force and effect during the Term, All Risk Property Insurance, including transit coverage, an amount equal to the full replacement value of its property while in, or in transit to, or from, a Catalent facility. Each party shall be named as an additional insured within the other party's General Liability and/or Foreign Liability insurance and Products Completed Operations Liability policies; provided, that such additional insured status will apply solely to the extent of the insured party's indemnity obligations under this agreement. If any of the required policies of insurance are written on a claims made basis, such policies shall be maintained throughout the Term and for a period of at least [**] thereafter. Each insurance policy that is required under this Agreement shall be obtained from an insurance carrier with an A.M. Best or equivalent rating of at least A-VII or an S&P rating of A. Each party may self-insure all or any portion of the required insurance as long as, together with its Affiliates, its [**] is greater than [**] or equivalent or its [**] is greater than [**] or equivalent. Waivers of subrogation

and additional insured status obligations will operate the same whether insurance is carried through third parties or self-insured. Upon the other party's written request from time to time, each party shall promptly furnish to the other party a certificate of insurance or other evidence of the required insurance. Supernus certificates of insurance, which will include the Catalent affiliate contracting party of this Agreement as the certificate holder, will be sent to the following contact:

Catalent Pharma Solutions, LLC
Attn: [**]
[**]
[**]

ARTICLE 16
TERM AND TERMINATION

16.1 Term. This Agreement shall commence on the Effective Date and shall continue until the end of the fifth (5^{th}) Contract Year, unless earlier terminated in accordance with Section 16.2 (such term, including any extension in accordance with this Section 16.1, the **"Term"**). The Term shall automatically be extended for successive two (2) year periods unless and until one party gives the other party at least [**] prior written notice of its desire to terminate as of the end of the then-current Term.

16.2 Termination. This Agreement may be terminated immediately without further action:

A. by either party if the other party files a petition in bankruptcy, or enters into an agreement with its creditors, or applies for or consents to the appointment of a receiver, administrative receiver, trustee or administrator, or makes an assignment for the benefit of creditors, or suffers or permits the entry of any order adjudicating it to be bankrupt or insolvent and such order is not discharged within [**], or takes any equivalent or similar action in consequence of debt in any jurisdiction; or

B. by either party if the other party materially breaches this Agreement and such breach is not cured within [**] after the giving of written notice requiring the breach to be remedied; *provided*, that in the case of a failure of Supernus to make payments in accordance with the terms of this Agreement, Catalent may terminate this Agreement if such payment breach is not cured within [**] of receipt of notice of non-payment from Catalent.

16.3 Effect of Termination. Expiration or termination of this Agreement shall be without prejudice to any right or obligation that accrued to the benefit of either party prior to such expiration or termination. In the event of a termination of this Agreement:

A. Catalent shall promptly return to Supernus, at Supernus' expense and direction, any remaining inventory of Product or Supernus-supplied Materials; *provided*, that all outstanding invoices have been paid in full;

B. Supernus shall pay Catalent all invoiced amounts outstanding hereunder, plus, upon receipt of invoice therefor, for any (i) Product that has been shipped pursuant to Purchase Orders but not yet invoiced, (ii) Product Processed pursuant to Purchase Orders that has been completed but not yet shipped, and (iii) in the event that this Agreement is terminated for any reason other than by Supernus pursuant to Section 16.2(A) or (B), all Product being Processed pursuant to Purchase Orders (or, alternatively, Supernus may provide instruction to Catalent to complete such work in process, and the resulting completed Product shall be governed by clause (ii)); and

C. in the event that this Agreement is terminated for any reason other than by Supernus pursuant to Section 16.2(A) or (B), Supernus shall pay Catalent for all documented costs and expenses incurred, and all noncancelable commitments made, in connection with Catalent's performance of this Agreement, so long as such costs, expenses or commitments were made by Catalent consistent with Supernus' most recent Firm Commitment and the vendor's minimum purchase obligations.

16.4 Survival. The rights and obligations of the parties shall continue under [**], in each case to the extent expressly stated therein; and under [**], in each case in accordance with their respective terms if applicable, notwithstanding expiration or termination of this Agreement.

ARTICLE 17
NOTICE

All notices and other communications under this Agreement shall be in writing and shall be deemed given: (A) when delivered personally or by hand; (B) when delivered by electronic mail (e-mail); (C) when received or refused, if sent by registered or certified mail (return receipt requested), postage prepaid; or (D) when delivered, if sent by express courier service; in each case to the parties at the following addresses (or at such other address for a party as shall be specified by like notice; *provided*, that notices of a change of address shall be effective only upon receipt thereof):

To Supernus:

Supernus Pharmaceuticals, Inc.
9715 Key West Ave
Rockville, MD 20850
Attn: Jack Khattar
Title: President and CEO
E-Mail: [**]

To Catalent

Catalent Pharma Solutions, LLC
[**]
Attn: [**]
E-Mail: [**]
Facsimile: [**]

With a copy to:

Catalent Pharma Solutions, LLC
14 Schoolhouse Road
Somerset, NJ 08873
Attn: [**]
E-Mail: [**]
Facsimile: [**]

[**] = CERTAIN CONFIDENTIAL INFORMATION OMITTED

ARTICLE 18
MISCELLANEOUS

18.1 [**].

[**] (whether on its own behalf or with or on behalf of any third party) shall not:

(a) [**];

(b) [**].

18.2 Restriction.

(a) Notwithstanding anything to the contrary in the Agreement, Catalent's obligations under this Article 18 with respect to the General Restriction shall apply worldwide.

18.3 Entire Agreement; Amendments. This Agreement, together with the Quality Agreement, constitutes the entire understanding between the parties, and supersedes any contract, agreement or understanding (oral or written) of the parties, with respect to its subject matter thereof. For the avoidance of doubt, this Agreement does not supersede any existing generally applicable confidentiality agreement between the parties as it relates to periods prior to the Effective Date or to business dealings not covered by this Agreement. No term of this Agreement may be amended except upon written agreement of both parties, unless otherwise expressly provided in this Agreement.

18.4 Captions; Certain Conventions. The captions in this Agreement are for convenience only and are not to be interpreted or construed as a substantive part of this Agreement. Unless otherwise expressly provided in this Agreement or the context of this Agreement otherwise requires, (A) words of any gender include each other gender, (B) words such as "herein", "hereof", and "hereunder" refer to this Agreement as a whole and not merely to the particular provision in which such words appear, (C) words using the singular include the plural, and vice versa, (D) the words "include(s)" and "including" shall be deemed to be followed by the phrase "but not limited to", "without limitation" or words of similar import, (E) the word "or" shall be deemed to include the word "and" *(e.g.*, "and/or"), (F) references to "Article," "Section," "subsection," "clause" or other subdivision, or to an Attachment or other appendix, without reference to a document are to the specified provision or Attachment of this Agreement, and (G) subject to Applicable Laws, all references to liabilities or obligations of Catalent shall be subject to Article 14, regardless of whether the particular provision includes a cross-reference to Article 14. This Agreement shall be construed as if it were drafted jointly by the parties.

18.5 Further Assurances. The parties shall execute, acknowledge and deliver such further instruments and take all such other incidental acts as may be reasonably necessary or appropriate to carry out the purpose and intent of this Agreement.

18.6 No Waiver. Failure by either party to insist upon strict compliance with any term of this Agreement in any one or more instances will not be deemed a waiver of its rights to insist upon such strict compliance with respect to any subsequent failure.

18.7 Severability. If any term of this Agreement is declared invalid or unenforceable by a court or other body of competent jurisdiction, the remaining terms of this Agreement will continue in full force and effect.

[**] = CERTAIN CONFIDENTIAL INFORMATION OMITTED

18.8 Independent Contractors. The relationship of the parties is that of independent contractors, and neither party will incur any debt or make any commitment for the other party except to the extent expressly provided in this Agreement. Nothing in this Agreement is intended to create or will be construed as creating between the parties the relationship of joint venturers, co-partners, employer/employee or principal and agent. Neither party shall have any responsibility for the hiring, termination or compensation of the other party's employees or contractors or for any employee benefits of any such employee or contractor.

18.9 Successors and Assigns. This Agreement will be binding upon and inure to the benefit of the parties, their successors and permitted assigns. Neither party may assign this Agreement, in whole or in part, without the prior written consent of the other party, except that either party may, without the other party's consent (but subject to prior written notice), assign this Agreement in its entirety to an Affiliate or to a successor to substantially all of the business or assets of the assigning party or the assigning party's business unit responsible for performance under this Agreement, and any assignment in violation of this Section 18.9 shall be void *ab initio.*

18.10 No Third Party Beneficiaries. This Agreement shall not confer any right or remedy upon any individual or entity other than the parties and their respective successors and permitted assigns, except that the Supernus Indemnitees and the Catalent Indemnitees may invoke the benefits of the indemnification provisions of this Agreement.

18.11 Governing Law. This Agreement shall be governed by and construed under the laws of the State of Delaware , USA, excluding its conflicts of law provisions. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

18.12 Alternative Dispute Resolution. Any dispute arising between the parties in connection with this Agreement shall first be presented to the respective senior executives of the parties for their consideration and resolution. If such parties' executives cannot resolve such dispute within [**], then such dispute may be submitted by either party to arbitration by the International Institute for Conflict Prevention and Resolution, 30 E. 33rd Street, 6th Floor, New York, NY 10016 **("CPR")** by one arbitrator selected by the parties. If no agreement on an arbitrator can be reached within [**] after the CPR offers names of potential arbitrators, then the CPR will choose one arbitrator having reasonable experience in commercial transactions of the type described in this Agreement. The arbitration shall take place in the English language in New York City, New York, in accordance with the CPR administered arbitration rules then in effect, and judgment upon any award rendered in such arbitration will be binding and may be entered in any court having jurisdiction of the matter. The arbitration shall commence within [**] of the date on which an arbitrator is selected. The arbitrator's decision shall set forth a reasoned basis for any award of damages or finding of liability. The arbitrator shall not have power to award damages in excess of actual compensatory damages and shall not multiply actual damages or award punitive damages. The arbitrator shall award to the prevailing party, if any, its costs and attorneys' fees and expenses reasonably incurred in connection with the arbitration, in accordance with Section 18.12.

18.13 Prevailing Party. In any dispute resolution proceeding between the parties in connection with this Agreement, the prevailing party will be entitled to recover its reasonable attorney's fees and costs in such proceeding, including any subsequent or related enforcement proceeding, from the other party.

18.14 Reserved.

[**] = CERTAIN CONFIDENTIAL INFORMATION OMITTED

18.15 Right to Dispose and Settle. If Catalent requests in writing from Supernus direction with respect to disposal of any inventories of Product, Supernus-supplied Materials, equipment, samples or other items belonging to Supernus and is unable to obtain a response from Supernus within a reasonable period after making reasonable efforts to do so, Catalent shall be entitled in its sole discretion to (A) dispose of all such items and (B) set-off any and all amounts due to Catalent or any of its Affiliates from Supernus against any credits Supernus may hold with Catalent or any of its Affiliates.

18.16 Force Majeure. Except as to payments required under this Agreement, neither party shall be liable in damages for any delay or default in such party's performance hereunder if such default or delay is caused by events beyond such party's reasonable control, including acts of God, law or regulation or other action or failure to act of any government or agency thereof, war or insurrection, civil commotion, any act of terrorism, destruction of production facilities or materials by earthquake, fire, flood or weather, labor disturbances, epidemic, pandemic, or failure of Catalent's, vendors, public utilities or common carriers; *provided*, that the party seeking relief under this Section 18.16 shall promptly notify the other party of such cause(s) beyond such party's reasonable control. The party that may invoke this Section 18.16 shall use commercially reasonable efforts to reinstate its ongoing obligations to the other party as soon as practicable. If the cause(s) shall continue unabated for [**], then both parties shall meet to discuss and negotiate in good faith what modifications to this Agreement should result from such cause(s). If Catalent or Supernus fails to provide adequate assurances that any delay on their part will not exceed [**] or if any such delay lasts more than [**], the non-delaying party may at its option terminate this Agreement.

18.17 Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument. Any photocopy, facsimile or electronic reproduction of the executed Agreement shall constitute an original.

[Signature page follows]

[**] = CERTAIN CONFIDENTIAL INFORMATION OMITTED

IN WITNESS WHEREOF, the parties have caused their respective duly authorized Representatives to execute this Agreement effective as of the Effective Date.

CATALENT PHARMA SOLUTIONS, LLC	**SUPERNUS PHARMACEUTICALS, INC.**
By: /s/ [**]	By: /s/ Jack Khattar
Name: [**]	Name: Jack Khattar
Title: [**]	Title: President & CEO

[**] = CERTAIN CONFIDENTIAL INFORMATION OMITTED

ATTACHMENT A

VALIDATION SERVICES

Section 1 Executive Summary

Pursuant to this Quotation **("Quotation"),** Catalent Pharma Solutions, LLC, with a business address at [**] **("Catalent")** will provide validation manufacturing and in process testing services for Supernus Pharmaceuticals **("Client")** for its drug Viloxazine [**] **("Product")** (the **"Project**").

Catalent must receive this signed Quotation from Client to schedule the Project. The Project will begin once the fully-executed Quotation, Client-supplied Materials (as defined below), Product, and purchase order (if required) is received at Catalent. A signed, effective Quality Technical Agreement **("QTA")** between Client and Catalent is required prior to Initiation of any GMP activities.

Product Overview

API(s):	Viloxazine [**]		
Strength(s):	[**]	**Dosage Form:**	[**]
Phase of Study:	[**]	**Treatment of:**	ADD/ADHD
GMP/ Non-GMP:	GMP	**Commercially Available:**	[**]

Samples, Materials, Equipment and Supplies

Client will provide to Catalent, at Client's cost, all samples, reference materials, API, Product, Comparator Drug, materials and other Project-specific supplies in quantities sufficient to meet the requirements necessary to perform this Project **("Client-supplied Materials").** The Client-supplied Materials should arrive at the Catalent facility with all proper documentation. Client shall retain title to the Client-supplied Materials at all times and shall bear the risk of loss thereof.

If agreed between the parties, Catalent will purchase other materials, including excipients, columns, and/or non-standard or special instrumentation and equipment, required solely for this Project and invoice Client at cost plus Catalent's customary acquisition and handling costs (excluding comparator product, which will be under a separate Quotation). Pricing for the items listed above does not include incoming freight charges, associated shipping materials, insurance charges, taxes, customs, duty or VAT charges into the country of the receiving Catalent facility, and will be invoiced to Client once respective invoices are received by Catalent.

Prices are based on utilizing Catalent-approved suppliers for materials. If materials are required to be supplied by un-approved vendors, the Client may either supply the materials from a Client-approved vendor or Catalent will audit the vendor at the Client's cost.

Any individual testing that does not meet specifications will be charged at the nominal fee for the analysis.

Material Safety Classification

Client will provide all available Project-related safety documentation to be used for this Project. It is the responsibility of Client to inform Catalent of any additional hazard information as soon as it

becomes available. Client will provide Catalent with updated toxicology information regarding the Client-supplied Materials as it becomes available to Client.

Catalent will assess all vendor and Client Safety Data Sheets and all handling data for the samples and Client-supplied Materials associated with this Project per Catalent procedures under the following banding categories:

Band 1	Band 2	Band 3	Band 4
[**]	[**]	[**]	[**]

If at any time a material is classified with an OEL [**] and/or falls under the [**], the samples and Client-supplied Materials will require special handling precautions and will be subject to a hazardous material fee and a surcharge for all handling and testing directly associated with the samples and Client-supplied Materials.

Scope of Project

Catalent will manufacture [**] or [**] that will be used in the making of [**]. These batches will serve as the process validation batches and will be commercially sellable material once all associated validation activities are completed. The raw materials that will be used in this manufacturing campaign will be taken from current inventory that Supernus has procured under approved QAR's associated with QTE-SUP-15-3456.04. Catalent will support the in-process testing dictated by the batch record. Supernus will support any in process testing driven by the validation protocol and all finished product release testing. Catalent will write all validation protocols and their associated reports.

Based on Client's request for proposal, Catalent proposes the following:

Section 2 Project Activities, Support, and Supplies

2.1 Manufacturing

Equipment: Validation

Process	Batch Size	Equipment
[**]	[**]	[**]
[**]	[**]	[**]
[**]	[**]	[**]
[**]	[**]	[**]
[**]	[**]	[**]
[**]	[**]	[**]

[**] = CERTAIN CONFIDENTIAL INFORMATION OMITTED

Manufacturing and Processing Assumptions:

- **Processing Time Assumptions:**
  - [**]
  - [**]
  - [**]
  - [**]

Manufacturing Plan and Estimated Costs

Campaign	Batches/ Campaign	Batch Size	Campaign Description	$ Estimated
I	[**]	[**]	[**]	[**]
II	[**]	[**]	[**]	[**]
III	[**]	[**]	[**]	[**]
IV	[**]	[**]	[**]	[**]

Validation Protocol and Report [**]	[**]
Total Manufacturing	[**]

**Validation finished goods are commercially sellable pending all required approvals for commercial launch.*

2.2 Analytical Support

Catalent will carry out the below analytical activities in support of the project.

Scope of Work

The project will start once the fully executed proposal, materials and purchase order (if required) are received by Catalent.

Standards and Materials

It is assumed that Client will be providing any required standards to Catalent. Should Client request Catalent to source standards, the costs of the standards will be passed through to Client. For any standards that are not readily available, the Catalent/Client team will discuss and determine next

steps. Additional charges may apply depending on the availability and status (i.e., qualified as standard or not) of the materials.

It is assumed Catalent will use routine materials for analytical work to be performed. For any materials that are Client-specific, additional charges may apply depending on the availability and type of materials.

In-Process Testing: [**]		**GMP**	**Total**
Analytical Test	**Price $/Test**	**# Samples**	**$ Estimated**
Appearance	[**]	[**]	[**]
Assay by HPLC	[**]	[**]	[**]
In-Process Release Testing			[**]

In-Process Testing: [**]		**GMP**	**Total**
Analytical Test	**Price $/Test**	**# Samples**	**$ Estimated**
Appearance	[**]	[**]	[**]
Assay by HPLC	[**]	[**]	[**]
Dissolution (n=6)	[**]	[**]	[**]
In-Process Release Testing			[**]

Estimated Analytical Costs

Analytical Totals	**$ Estimated**
In-process Testing	[**]
Total Estimated Analytical	[**]

Based upon the method complexity, Catalent reserves the right to amend estimated costs. All release testing assumes one composite sample per batch. Raw material testing assumes one lot of each excipient. If there are additional lots of excipients, a QAR will be written to cover the cost of the testing. As for Apr and all raw materials, note that ID/release Is only acceptable for cGMP usage if they are delivered and have been fully tested by the Client or other third party and shipped with the manufacture certificate of analysis. If residual solvent testing is required, the raw material cGMP release testing cost will be increased

Section 3 Cost Proposal

3.1 Total Estimated Project Cost

Section Reference	**Project Activity**	**Estimated Cost ($)**
2.1	Manufacturing	[**]
2.2	Analytical Support	[**]
Total Estimated Project Cost		[**]

[**] = CERTAIN CONFIDENTIAL INFORMATION OMITTED

Catalent may revise the prices provided in this Quotation (i) if Client's requirements or any Client-provided information is inaccurate or incomplete; (ii) if Client revises Catalent's responsibilities or the Project specifications, instructions, procedures, assumptions, processes, test protocols, test methods or analytical requirements; (iii) for such other reasons set forth in this Quotation; or (iv) any unforeseen circumstances which affect the Project.

Any revision to this Quotation shall be set forth in a Catalent Quotation Amendment Record (**"QAR"**) signed by both parties. In addition, the prices provided in a Quotation are subject to annual review to address changes in inflation, increased overhead charges, and other commercially reasonable factors.

Regulatory Activities

The following regulatory activities may apply to this Quotation and will be invoiced to Client per activity.

Qualified Person (**"QP"**) Audit	Any accommodation and travel charges associated with a QP audit will be invoiced to Client as pass-through charges,
Government Fees and Expenses	Client shall reimburse Catalent for any payments Catalent is required to make to any regulatory authority resulting directly from Catalent's formulation, development, manufacturing, processing, filling, packaging, storing or testing of Client's Product or Client-supplied Materials including without limitation any payments or fees Catalent is required to make pursuant to the Generic Drug User Fee Amendments of 2012, as reauthorized in 2017.
Regulatory Filings and Inspections	Client agrees to reimburse Catalent for all other costs and expenses associated with supporting Client's regulatory filing including preparation of commercial batch records and preparing for the Pre-Approval Inspection associated with Client's regulatory filing at Catalent's facility(ies).
Additional inspections	Registration and government authorities may request an inspection of the Catalent facility. Additional costs are generated by these audits that are not covered by this Quotation and will be invoiced to Client.

Catalent shall not be obligated to perform any services under this Project which would involve any countries that are targeted by the comprehensive sanctions, restrictions or embargoes administered by the United Nations, European Union, United Kingdom or United States.

Invoicing and Payments

Catalent will issue invoices for completed milestones. If a milestone includes multiple activities or batches, each activity and batch will be invoiced when completed along with any release testing costs that may be required. Stability storage and set costs are invoiced at the initiation of the Project and are non-refundable. Invoices should be emailed to Client at the invoicing address provided in writing by Client.

Payments for all invoices are due within [**] following the date of the invoice and are non-refundable. Notwithstanding any other provision of this Quotation, if at any time any payment is not

received by Catalent by its due date, then Catalent may, in addition to any other remedies available at equity or in law, (i) charge interest on the outstanding sum from the due date (both before and after any judgment) at [**] until paid in full (or, if less, the maximum amount permitted by Applicable Laws); (ii) suspend any further performance of the Project hereunder until such invoice is paid in full, without releasing Client from its obligations under this Quotation; (iii) require payment in advance before any further performance of the Project or making any further shipments hereunder; and/or (iv) terminate this Quotation, all without releasing Client from its obligations under this Quotation; and Client shall reimburse Catalent for all costs and expenses incurred and all non-cancellable commitments made under the Project. Failure to bill for interest due shall not be a waiver of Catalent's right to charge interest.

Any applicable wire transfer fees must be included in the payment issued to Catalent.

Payment Remittance

Payments should be sent to:

Electronic Wire / ACH Instructions:

[**]

Expedited Services

If rush services are agreed between Client and Catalent, additional costs will be invoiced based on agreement with Client and documented on a QAR.

Cancellation and Postponement Fees

Client shall refer to the Master Agreement for Cancellation and Postponement fees.

Notification Prior to Start Date of Project	Fee (% of Total Project Cost)
[**]	[**]
[**]	[**]
[**]	[**]
[**]	[**]

If this Project is cancelled or postponed, in addition to the fees above, Client shall pay Catalent for (i) all Project services performed up to the date of cancellation or postponement, (ii) all costs and expenses incurred and all non-cancellable commitments made in the performance of the Project, (iii) any costs incurred to wind down and cease any ongoing Project services, and (iv) all costs for Client-specific purchases made by Catalent. Postponement of the Quotation may not exceed [**]. After the [**], Catalent may terminate the Quotation and Client shall pay Catalent the fees noted in items (i)-(iv) above.

Project Management

Following execution of this Quotation, Catalent will conduct the Project detailed herein under the leadership of a Project Manager (**"PM"**). The PM will serve as the primary point of contact for communication between Client and Catalent to ensure effective flow of information and rapid resolution of any issues. To achieve this, Catalent will establish and maintain a cohesive and highly effective Project team throughout the Project lifecycle.

PM activities include:

- Leading initial Project discussions with Client to understand Client goals and manage the strategy to meet those goals.
- Serving as the point of contact for internal and external Project communications and will conduct all planned meetings with professional agendas and minutes.
- Monitoring the Project deliverables to ensure milestones are delivered per agreed-upon timelines.

The Project status and any issues that may develop will be communicated to Client by the PM and/or Project team. Additional or non-standard PM services may include: (a) Project-specific travel and meetings (airfare and a daily per diem for travel time, food, hotel and transportation) will be passed through to Client and prices will be agreed upon in a QAR; and (b) additional or special requests (e.g., completion of Client-requested documentation or reports) will be discussed, agreed and invoiced to Client.

Upon Project completion, the PM will discuss with Client any request by Client for on-going storage of Client-supplied Materials, samples and other Project-related items, and any requests for returns or destruction of Client-supplied Materials, samples and other Project-related items, and will issue a QAR for the respective request.

Additional Project Activities and Fees

In addition to the Project services listed above, any additional activities that Client may ask Catalent to perform under this Quotation will be invoiced to Client as agreed between the parties at the following prices. All additional activities and prices will be confirmed with Client in writing (email acceptable) prior to initiation.

Additional Activity	Description	Price per Unit
Investigations and/or Deviations	Outside of Catalent control or the scope of the Project (e.g., product failures). All required investigational services (such as OOS investigations, trouble-shooting chromatographic methods, etc.) may be conducted without prior approval from Client. No charges will be applied for any deviations or investigations that are the result of Catalent's error.	[**]
Documentation Revisions/ Supplemental Data Requests	Client requested changes to standard Catalent documents (i.e., revisions to reports, methods, specifications, C of A, ARFs). Data mining required outside the scope of the Quotation (i.e., to support trending, historical information).	[**]
Administrative Fees	Administrative tasks such as photocopying of raw data.	[**]
Regulatory Consulting Services	Catalent provides global regulatory consulting services to assist with product development, including regulatory assistance for clinical trials involving a Comparator Drug and can provide guidance on the regulatory requirements for Comparator Drugs on a country-by-country basis, in addition to label requirements for each country in a global clinical trial. Catalent can provide a *right- sized* consulting solution, utilizing the most appropriate level of consultant for the services.	[**]
Technical Consulting	Technical consulting services that are requested by Client will be charged on a per-hour basis to Client, pursuant to a QAR.	[**]
Additional Requirements per a Client QTA	If additional services are required that exceed the standard Catalent practices under a Client-specific Quality Technical Agreement additional costs may be incurred.	[**]

Project Notes

- Client shall pay for all Product batches, including batches that do not conform to applicable specifications, unless all methods and processes associated with the manufacture, testing, and storage of that Product have been fully validated in accordance with generally accepted standards of the pharmaceutical industry.

- Client acknowledges that the results of experimental/development services and the outcome of pre-validated manufacturing are not predictable and agrees that Client shall pay for all services conducted and for all Product batches produced in accordance with this Quotation regardless of outcome.

Version History

Version	Date Issued	Revision Reason(s)	Author
SUP-QTE-9150225.00	February 10, 2020	Original Quote	[**]

[**] = CERTAIN CONFIDENTIAL INFORMATION OMITTED

Terms and Conditions

[**], this Quotation will be subject to Catalent's Standard Terms and Conditions which are attached to this Quotation; Catalent does not accept any other terms and conditions that may be provided.

Project Approval and Authorization

By signing below, Client agrees to the Project as set forth in this Quotation and each party has caused their respective duly authorized representatives to execute this Quotation effective as of the date of last signature below:

Supernus Pharmaceuticals	**Catalent Pharma Solutions, LLC**
/s/ [**]	/s/ [**]
Signature	Signature
[**]	[**]
Printed Name	Printed Name
VP [**]	[**]
Title	Title
February 12, 2020	February 14, 2020
Date	Date

_____
PO Number (if required)
PO must be received by Catalent within 28 days of signed Quotation

Mail, email, or fax this completed Project Approval and Authorization page to:

[**]
Catalent Pharma Solutions
[**]

[**] = CERTAIN CONFIDENTIAL INFORMATION OMITTED

Catalent Standard Terms and Conditions

These Catalent Standard Terms and Conditions (**"Terms and Conditions"**) constitute a part of this Quotation to which they are attached (collectively, this **"Quotation"**), *provided*, that these Terms and Conditions supersede any conflicting terms and conditions set forth in this Quotation to which they are attached or any other document, including Client's purchase orders. Catalent shall have the right to cause any of its Affiliates to perform any of its obligations hereunder; *provided* that Catalent shall remain liable for the performance of such Affiliates.

A. Definitions.

"Affiliate(s)" means, with respect to Client or any third party, any corporation, firm, partnership or other entity that controls, is controlled by or is under common control with such entity; and with respect to Catalent, "Affiliate(s)" means Catalent, Inc., and any corporation, firm, partnership or other entity controlled by Catalent, Inc. For the purposes of this definition, **"control"** means the ownership of at least fifty percent (50%) of the voting share capital of an entity or any other comparable equity or ownership interest.

"Applicable Laws" means, with respect to Client, all laws, ordinances, rules and regulations, currently in effect or enacted or promulgated during the term of this Quotation, and as amended from time to time, of each jurisdiction in which Client-supplied Materials and Product are produced, marketed, distributed, used or sold; and with respect to Catalent, all laws, ordinances, rules and regulations, currently in effect or enacted or promulgated during the term of this Quotation, and as amended from time to time, of each jurisdiction in which Catalent performs the Project; *provided* that cGMP shall not constitute Applicable Laws except to the extent expressly stated in the applicable Quotation.

"Client-supplied Materials" means any materials to be supplied by or on behalf of Client to Catalent for use in the Project, including but not limited to, API, any client trial materials, Product, reference materials, and any Comparator Drug supplied by Client or procured by Catalent at the direction of Client.

"Comparator Drug" means any investigational or marketed product or placebo which is used as a reference in a clinical trial.

"Product" means the pharmaceutical product, which is the subject of the Project pursuant to this Quotation.

"Project" means the services performed by Catalent for Client under this Quotation.

B. Changes. Catalent may revise the prices provided in this Quotation (i) if Client's requirements or any Client-provided information is inaccurate or incomplete; (ii) if Client revises Catalent's responsibilities or the Project specifications, instructions, procedures, assumptions, processes, test protocols, test methods or analytical requirements; (iii) for such other reasons set forth in this Quotation; or (iv) any unforeseen circumstances which affect the Project. Any revision to this Quotation shall be set forth in a Quotation Amendment Record (**"QAR"**) signed by both parties in accordance with Article R. In addition, the prices provided in this Quotation are subject to annual review to address changes in inflation, increased overhead charges, and other commercially reasonable factors.

C. Client Obligations. Client grants Catalent full authority to use any Client-supplied Materials and Product for purposes of the Project. Unless otherwise agreed to by the parties in writing, Client is solely responsible at its cost and expense to (i) provide complete and accurate scientific data regarding the Project; (ii) deliver to Catalent all Client-supplied Materials and Product in quantities and quality sufficient to meet the requirements of the Project within timelines consistent with the Project, and provide a Safety Data Sheet as required; (iii) prepare all submissions to regulatory authorities and obtain Catalent's prior written consent (which will not be unreasonably withheld) before identifying Catalent in such regulatory submissions; (iv) if applicable, review and approve all in-process and finished Product test results to ensure conformity of such results with the Product specifications, regardless of which party is responsible for finished Product release; and (v) perform such other obligations of Client set forth in this Quotation. Client shall retain title to Client-supplied Materials at all times and shall bear the risk of loss thereof.

D. Delivery. (i) Catalent shall deliver all Product, Comparator Drug and other materials the subject of the [**]. To the extent not already held by Client, title shall pass to Client upon such tender of delivery. When Catalent provides storage under the Project, title and risk of loss shall pass to Client upon transfer to storage. (ii) In the event Catalent arranges shipping or performs similar loading and/or logistics under the Project for Client at Client's request, such loading and/or logistics are performed by Catalent at Client's expense and on Client's behalf as a convenience to Client only and does not alter subsection (i) herein.

E. Invoices and Payments. Catalent will Invoice Client as set forth in this Quotation. Payments for all invoices are due within [**] following the date of the invoice and are non-refundable. Payment for Comparator Drug is as set forth in the terms of the Quotation. Notwithstanding any other provision of this Quotation, if at any time any payment is not received by Catalent by its due date, then Catalent may, in addition to any other remedies available at equity or in law, (I) charge interest on the outstanding sum from the due date (both before and after any judgment) at [**] until paid in full (or, if less, the maximum amount permitted by Applicable Laws); (ii) suspend any further performance of the Project hereunder until such invoice is paid in full, without releasing Client from its obligations under this Quotation; (iii) require payment in advance before any further performance of the Project or making any further shipments hereunder; and/or (iv) terminate this Quotation, all without releasing Client from its obligations under this Quotation; and Client shall reimburse Catalent for all costs and expenses incurred and all non-cancellable commitments made under the Project. Failure to bill for interest due shall not be a waiver of Catalent's right to charge interest.

F. Taxes. All sales, use, gross receipts, compensating, value-added or other taxes, duties, licenses or fees (excluding Catalent's net income and franchise taxes) assessed by any tax jurisdiction for Client-supplied Materials and Product arising from the Project are the responsibility of Client, whether paid by Catalent or Client.

G. Regulatory Compliance. Catalent shall obtain and maintain all permits and licenses with respect to general facility operations in the jurisdiction in which Catalent performs the Project. Client shall be responsible at its cost to obtain and maintain all other regulatory approvals, authorizations, certifications and permits relating to Product and Client-supplied Materials, including without limitation, those relating to the import, export, use, distribution and sale of Product and Client-supplied Materials. Client shall reimburse Catalent for any payments Catalent is required to make to any regulatory or governmental authority pursuant to Applicable Laws resulting directly from

Catalent's formulation, development, manufacturing, processing, filling, packaging, storing or testing of Client's Product or Client-supplied Materials. Catalent shall not be obligated to perform any services under the Project which would involve any countries that are targeted by the comprehensive sanctions, restrictions or embargoes administered by the United Nations, European Union, United Kingdom or United States.

H. Audits. Client may conduct one quality assurance facility audit [**], at reasonable times during regular business hours. Additional audits will be invoiced separately at the current rate for such audit unless such audit is for a material quality or compliance issue concerning the Project.

I. Regulatory Inspections. Catalent will promptly notify Client of any regulatory inspections directly relating to the Project. Client shall reimburse Catalent for reasonable and documented costs associated with such regulatory inspections.

J. Confidentiality. All information disclosed by a party in connection with this Quotation shall be confidential information, unless such information is (i) already known to the receiving party, on a non-confidential basis, as evidenced by written records; (ii) independently developed or discovered by the receiving party without the use of the disclosing party's confidential information, as evidenced by written records; (iii) in the public domain, other than through the fault of the receiving party; or (iv) disclosed to the receiving party by a third party not in breach of a duty of confidentiality owed to the disclosing party. Neither party shall, without the other party's prior written consent, use the confidential information of the other party or disclose such information except (a) to provide to employees of the receiving party or its Affiliates who require such information to perform such party's obligations under this Quotation, or (b) as required to be disclosed by law or regulation; *provided* that the receiving party first gives prompt written notice thereof to the disclosing party. This undertaking shall survive for [**] following the date of this Quotation.

K. Intellectual Property. For purposes hereof, **"Background IP"** means all intellectual property and embodiments thereof owned by or licensed to Client or Catalent, respectively, as of the date hereof, or developed by Client or Catalent, respectively, other than in connection with the Project; **"Invention"** means any intellectual property developed by either party in connection with the Project; **"Client Inventions"** means any Invention that relates exclusively to the Client Background IP or Client's patented or proprietary API, as applicable; *and* **"Catalent Inventions"** means any Invention, other than a Client Invention, that relates exclusively to the Catalent Background IP or relates to developing, formulating, manufacturing, filling, processing, packaging, analyzing or testing pharmaceutical products. All Client Background IP and Client Inventions shall be owned solely by Client and no right therein is granted to Catalent under this Quotation except as necessary for use in performing the Project. All Catalent Background IP and Catalent Inventions shall be owned solely by Catalent and no right therein is granted to Client under this Quotation. The parties shall cooperate to achieve the allocation of rights to Inventions anticipated herein and each party shall be solely responsible for costs associated with the protection of its intellectual property.

L. Client Warranties. Client is solely responsible at its cost and expense to (I) provide complete and accurate scientific data regarding the Project; and (ii) hold, use and/or dispose of Client-supplied Materials and Product provided by Catalent in accordance with Applicable Laws. Client warrants that no transactions or dealings under this Quotation shall be conducted with or for an individual or entity

that is designated as the target of any sanctions, restrictions or embargoes administered by the United Nations, European Union, United Kingdom or the United States of America.

M. Catalent Warranties. Catalent will perform the Project in accordance with the written specifications and Project instructions expressly set forth or referenced in this Quotation. Catalent warrants that no transactions or dealings under this Quotation shall be conducted with or for an individual or entity that is designated as the target of any sanctions, restrictions or embargoes administered by the United Nations, European Union, United Kingdom or the United States of America. THE WARRANTIES SET FORTH IN THIS ARTICLE ARE THE SOLE AND EXCLUSIVE WARRANTIES MADE BY CATALENT TO CLIENT, AND CATALENT MAKES NO OTHER REPRESENTATIONS, WARRANTIES OR GUARANTEES OF ANY KIND WHATSOEVER, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE.

N. Indemnification. Client will indemnify, defend and hold harmless Catalent, its Affiliates and their respective directors, officers, employees and agents from and against any third-party claim arising directly or indirectly from (i) the manufacture, promotion, marketing, distribution or sale of, or use of or exposure to, the Product and Client-supplied Materials that are the subject of the Project, including Product liability and strict liability, (Ii) the [**] of Client, (iii) the breach of its representations, warranties or obligations set out in this Quotation by Client, or (iv) any actual or alleged infringement of any third-party intellectual property arising out of the use of Client information, Product and Client-supplied Materials; in each case, including but not limited to costs associated with responding to subpoenas and giving testimony relating to disputes between Client and third parties. Catalent will indemnify, defend and hold harmless Client, its Affiliates and their respective directors, officers, employees and agents from and against any third-party claim arising directly or indirectly from the negligence or willful misconduct of Catalent or the breach of Its representations, warranties or obligations set out in this Quotation by Catalent.

O. Limitations of Liability. CATALENT'S TOTAL LIABILITY UNDER THIS QUOTATION OR QAR SHALL IN NO EVENT EXCEED THE [**], RESPECTIVELY (BUT [**].

CATALENT SHALL HAVE NO LIABILITY UNDER THIS QUOTATION OR QAR FOR ANY AND ALL CLAIMS FOR [**].

NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OR LOSS OF REVENUES OR PROFITS (WHETHER DIRECT OR INDIRECT) OR LOSS OF DATA, ARISING OUT OF PERFORMANCE UNDER THIS QUOTATION OR QAR, WHETHER IN CONTRACT OR IN TORT, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

P. Insurance. Each party shall, at its own cost and expense, obtain and maintain in full force and effect during the term of this Quotation the following: (i) [**] with a per-occurrence limit of not less than [**]; (ii) Products and Completed Operations Liability Insurance with a per-occurrence limit of not less than [**]; and (iii) [**] with statutory limits and [**] with limits of not less than [**] per accident. Client shall maintain [**], in an amount equal to the [**]. Each party shall be named as an additional insured within the other party's products liability insurance policies; *provided* that such

additional insured status will apply solely to the extent of the insured party's indemnity obligations under this Quotation and obtain a waiver of subrogation clause from its property insurance carriers in favor of the other party.

Q. Termination. Either party may terminate this Quotation Immediately without further action if (i) the other party files a petition in bankruptcy, or enters into an agreement with its creditors, or applies for or consents to the appointment of a receiver, administrative receiver, trustee or administrator, or makes an assignment for the benefit of creditors, or suffers or permits the entry of any order adjudicating it to be bankrupt or insolvent and such order is not discharged within [**], or takes any equivalent or similar action in consequence of debt in any jurisdiction; or (ii) notwithstanding Article E, the other party materially breaches any of the provisions of this Quotation, and such breach is not cured within [**] after the giving of written notice requiring the breach to be remedied.

R. Amendment and Precedence. This Quotation constitutes the entire understanding between the parties, and supersedes any contracts, agreements or understandings (oral or written) of the parties, with respect to the Project. No term of this Quotation may be amended except upon written agreement signed by both parties.

S. No Waiver. Failure by either party to insist upon strict compliance with any term of this Quotation in any one or more instances will not be deemed to be a waiver of its rights to insist upon such strict compliance with respect to any subsequent failure.

T. Independent Contractor. The relationship of the parties is that of independent contractors and not of joint venturers, co-partners, employer/employee or principal/agent.

U. No Third-Party Beneficiaries. This Quotation shall not confer any rights or remedies upon any person or entity other than the parties named herein and their respective successors and permitted assigns.

V. Governing Law and Dispute Resolution. This Quotation shall be governed by and construed under the laws of the State of New York, USA, excluding its conflict of law provisions. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Quotation. If a dispute arises between the parties in connection with this Quotation, the respective senior executives of Catalent and Client shall first attempt to resolve the dispute. If such executives cannot resolve the dispute, such dispute shall be resolved in the English language, in New York by binding arbitration in accordance with the then existing commercial arbitration rules of The CPR Institute for Conflict and Dispute Resolution, New York, NY.

W. Publicity. Neither party will make any press release or other public disclosure regarding this Quotation or the transactions contemplated hereby without the other party's express prior written consent, except as required by Applicable Laws, by any governmental agency or by the rules of any stock exchange on which the securities of the disclosing party are listed, in which case the party required to make the press release or public disclosure shall use commercially reasonable efforts to obtain the approval of the other party prior to issuing the press release or public disclosure.

X. Right to Dispose and Settle. If Catalent requests in writing from Client direction with respect to disposal of any inventories of Client-supplied Materials, Product, samples or other items belonging

to Client and is unable to obtain a response from Client within a reasonable time period after making reasonable efforts to do so, Catalent may in its sole discretion (i) dispose of all such items and (ii) set-off any and all amounts due to Catalent or any of Its Affiliates from Client against any credits Client may hold with Catalent or any of its Affiliates.

Y. Force Majeure. Except as to payments required under this Quotation, neither party will be liable for any failure to perform or for delay in performance resulting from any cause beyond its reasonable control, including without limitation, acts of God, fires, earthquakes, floods or weather, strikes or lockouts, factory shutdowns, embargoes, wars, armed hostilities, terrorist events, riots, or shortages in transportation. If the cause continues unabated for [**], then both parties shall meet to discuss and negotiate in good faith what modifications to this Quotation should result from such cause.

Z. Survival. Subject to execution, the rights and obligations of Client and Catalent in [**] of these Terms and Conditions shall survive termination or expiration of this Quotation.

[**] = CERTAIN CONFIDENTIAL INFORMATION OMITTED

ATTACHMENT B

SPECIFICATIONS

I. **Supernus-supplied Materials (and associated specifications)**

II. **Product Specifications (including Batch size)**

III. **Raw Materials (and associated specifications)**

ATTACHMENT C

UNIT PRICING AND ADDITIONAL FEES

ATTACHMENT D

LONG LEAD TIME ITEMS

CERTAIN CONFIDENTIAL INFORMATION IDENTIFIED IN THIS DOCUMENT, MARKED BY [**], HAS BEEN EXCLUDED FROM THE EXHIBIT BECAUSE IT IS BOTH (i) NOT MATERIAL AND (ii) WOULD BE COMPETITIVELY HARMFUL IF PUBLICLY DISCLOSED

API SUPPLY AGREEMENT

This API Supply Agreement ("**Agreement**") is made as of July 13, 2021 (the "Effective Date"), by and between Supernus Pharmaceuticals, Inc., a Delaware Corporation, with a place of business at 9715 Key West Avenue, Rockville Maryland, USA ("**Supernus**") and Bachem Americas, Inc., a California Corporation, with a place of business at 3132 Kashiwa Street, Torrance, CA 90505, USA, and its Affiliates ("**Bachem**"). Supernus and Bachem may be referred to individually as a "**Party**" or collectively as the "**Parties**."

Background

Supernus is engaged in the business of developing and commercializing pharmaceutical products;

Bachem is engaged in the manufacture and supply of active pharmaceutical ingredients for research and development purposes and commercial use;

Supernus desires to purchase from Bachem, and Bachem desires to supply to Supernus, the active pharmaceutical ingredient or drug substance known as viloxazine hydrochloride (as further defined below, the "**API**") for use by Supernus in manufacturing finished drug products incorporating such active pharmaceutical ingredient, all in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and premises herein contained, the Parties hereto agree as follows:

ARTICLE 1
DEFINITIONS

1.1 "**Affiliate**" or "**Affiliates**" shall mean, with respect to a Party, any corporation, Limited Liability Company, or other business entity controlling, controlled by or under common control with such Party, for so long as such relationship exists. For the purposes of this definition, control means: (a) to possess, directly or indirectly, the power to direct affirmatively the management and policies of such corporation, limited liability company or other business entity, whether through ownership of voting securities or by contract relating to voting rights or corporate governance; or (b) ownership of more than fifty percent (50%) of the voting stock in such corporation, limited liability company or other business entity (or such lesser percent as may be the maximum that may be owned pursuant to Applicable Laws of the country of incorporation or domicile, as applicable).

1.2 "**Agreement**" means this Agreement incorporating all attachments, specifically including Specifications and QA standards, as each may be amended from time to time by written agreement of the Parties.

1.3 "**API**" shall mean viloxazine hydrochloride, pharma grade material, manufactured under cGMPs and in accordance with approved batch records, meeting defined technical and quality requirements as currently defined, and as subsequently amended from time to time as required by Supernus and as agreed to by Bachem.

1.4 "**Applicable Laws**" shall mean: (a) all relevant federal, state and local laws, statutes, rules, codes of practice, regulations, and ordinances in the United States, Europe and any other countries, as mutually agreed upon in advance by the Parties, as well as industry standards and regulatory guidelines applicable to the manufacture and supply of API, including, the United States Federal Food, Drug, and Cosmetic Act; (b) cGMPs; and (c) all applicable regulations and guidelines of any Regulatory Authority; in each case, together, with any and all amendments thereto. Supernus shall notify and mutually agree with Bachem in advance if the API will be subject to regulations and guidelines of Regulatory Authorities outside of the United States and Europe.

1.5 "**cGMPs**" shall mean current good manufacturing practices, as provided for (and as amended from time to time) in: (a) the Current Good Manufacturing Practice regulations promulgated by the FDA under the United States Food, Drug and Cosmetic Act as applicable to API manufacturing; (b) the European Community Directive 1252/2014/EU and 2003/94/EC, as amended, as well as applicable documents developed by the International Conference on Harmonization (ICH) Q7 Guideline: Good Manufacturing Practice Guide for Active Pharmaceutical ingredients; and (c) similar requirements accepted and implemented by the regulations of other Regulatory Authorities; subject to any arrangements, additions or clarifications, and the respective roles and responsibilities, agreed from time to time between the Parties.

1.6 "**Confidential Information**" shall be broadly construed and shall include, but is not limited to, any and all current and future proprietary product information, technical, financial, employment related, regulatory or legally sensitive information, contractual information, customer names, addresses and related data, contracts, practices, procedures, software, hardware, files and other business information including but not limited to specifications, compounds, ingredients, formulae, recipes, process parameters, reaction schemes, samples, reports, methods, strategies, plans, documents, drawings, machines, tools, models inventions, trade secrets, patent disclosures, Know-How and materials that may be disclosed between the Parties heretofore or hereafter whether received or obtained prior to or after the Effective Date or developed as a result of entering into or performing this Agreement and whether in written, oral, electronic, website-based or other form including information obtained during facility tours".

1.7 "**Cost**" means the actual cost of the material, labor and or other services used in the production or delivery of the API.

1.8 "**Delivery Date**" means the date for the delivery of an API shipment, as stated in the applicable purchase order for such shipment.

1.9 "**Drug Master File**" or "**DMF**" shall mean a drug master file filed with the FDA or the EMA which includes confidential detailed information relating to the facilities, processes, or articles used in manufacturing, processing, packaging, testing, and storing of the API, or any equivalent filing in any jurisdiction outside the United States or Europe.

1.10 "**EMA**" shall mean the European Medicines Agency, or any successor entity thereto performing substantially similar functions.

1.11 "**Facility**" shall mean Bachem's cGMP-compliant manufacturing facilities located at [**] or such other FDA approved facility of Bachem approved by Supernus for the purpose of development, manufacture, and Supply of the API as per the terms and conditions hereunder.

1.12 "**FDA**" shall mean the United States Food and Drug Administration, or any successor entity thereto performing substantially similar functions.

1.13 "**Intellectual Property**" means all rights in and to Confidential Information and KnowHow, patents (including applications therefor and supplementary protection certificates) copyrights, trademarks, trade secrets, service marks or similar rights, including all inventions, ideas, discoveries, developments, methods, reaction schemes, processes, data, information, standard operating procedures, improvements, and biological and chemical materials, (whether or not reduced to practice and whether or not it can be protected under U.S. state, U.S. federal, or foreign patent, copyright, trademark, trade secret or similar laws).

1.14 "**Know-How**" means data, knowledge, techniques, inventions, designs, reaction schemes, drawings, health, and safety information including without limitation material safety data sheets, tests, reports, batch records, procedures, processes, models, manuals, formulae, systems, experiments, samples, specimens, results, statistics, research, trade secrets, tables of operating conditions and the like and all other know-how and information.

1.15 "**Latent Defect**" shall mean, with respect to API, a hidden or latent defect not detected at the date of shipment to Supernus by Bachem and which was not detected by Supernus during the inspection period defined in Section 4.2.1.

1.16 "**Letter of Intent**" or "**LOI**" shall mean the letter agreement between Bachem and Supernus, effective December 2, 2019 (attached as Annex 4) , and related amendments, that sets forth the preliminary duties and obligations of the parties to begin preparation for large scale manufacturing of the API at the Facility. Site construction was initiated at or near the time of the execution of the LOI and is expected to continue for [**], or at such time as construction is completed, as set forth in subsequent amendments. The duties and obligations of the parties, as set forth in the content of the LOI, are incorporated by reference into this Agreement, as of the Effective Date of this Agreement and shall continue through the Term of this Agreement. In the event any conflict shall arise between the terms of the LOI and the Agreement, the terms of this

[**] = CERTAIN CONFIDENTIAL INFORMATION OMITTED

Agreement shall take precedence over the terms of the LOI in all respects except matters related to the site construction activities, in which case the LOI shall take precedence.

1.17 "**Pricing**" has the meaning set forth in the pricing table enclosed in the LOI (see Annex 4).

1.18 "**Product**" shall mean a finished pharmaceutical drug product incorporating the API.

1.19 "**Quality Agreement**" shall mean the agreement between the Parties, which specifies the responsibilities regarding the manufacture, storage, release, quality control and disposition of API in accordance with requirements of Regulatory Authorities, cGMP's, and the Specifications. In the event that any conflict shall arise between the terms of this Agreement and the Quality Agreement, the terms of this Agreement shall take precedence over the terms of the Quality Agreement in all respects except matters of quality and pharmacovigilance, in which case the Quality Agreement shall take precedence.

1.20 "**Raw Materials**" means, in relation to the API, the starting materials, solvents, reagents, intermediates, and other materials used for the preparation and purification of the API in conformance with the Specifications under this Agreement.

1.21 "**Regulatory Authority**" shall mean the FDA, EMA or any other governmental or regulatory authority responsible for the regulation of API used in pharmaceutical products intended for human use.

1.22 "**Renewal Term**" shall have the meaning set forth in Section 7.1.

1.23 "**Supply**" has the meaning set forth in Section 2.1.

1.24 "**Specifications**" shall mean those mutually agreed to testing requirements and acceptance criteria for the API as defined in the Quality Agreement.

1.25 "**Term**" has the meaning set forth in Section 6.1.

1.26 "**Third Party**" means any person, or entity other than the Parties to this Agreement or any of their respective Affiliates, officers, or employees.

1.27 "**Warehouse**" shall mean Bachem's cGMP-compliant warehousing facilities located at [**].

1.28 "**Work Product**" means all results of services and activities, including but not limited to the API and other compounds, data, information, documentation (including, but not limited to, lab notebooks as applicable), reports and any other deliverables resulting from the services and activities pursuant to this Agreement.

[**] = CERTAIN CONFIDENTIAL INFORMATION OMITTED

ARTICLE 2
SUPPLY

2.1 API Supply.

2.1.1 During the Term: Bachem shall conduct for Supernus and its Affiliates such activities necessary to develop and produce the API including, but not limited to, the manufacture, processing, testing, storage, package and delivery of ("Supply") pursuant to purchase orders delivered by Supernus subject to the terms and conditions of this Agreement and by the Delivery Date shown on each purchase order, and the amount of API set forth in such purchase order. Bachem shall manufacture the API in accordance with Bachem approved batch records and shall test the API in accordance with the requirements of the Quality Agreement. Specifications will be mutually agreed upon by both parties as defined in the Quality Agreement. Bachem shall have the responsibility of assisting with the creation of all necessary regulatory documentation as requested and ordered by Supernus, and shall have responsibility for maintaining all necessary establishment registrations and licensure as required by applicable Regulatory Authorities relevant to the manufacture of the API.

2.1.2 Supernus shall share with Bachem all information that would be required for the development and/ or manufacture of the API.

2.1.3 Supernus shall have the responsibility for filing of documents or oversight of the filing of documents with the applicable Regulatory Authority for investigational activity or commercial market applications, and to take any other actions that may be required for the receipt of approval from the Regulatory Authority for the commercial manufacture of the Supernus Product.

2.2 Forecasts.

2.2.1 Supernus shall provide Bachem with a [**] rolling forecast of the gross weight quantities of the API estimated to be required. Months [**] rolling forecast shall be binding and all remaining quarters of such forecasts are non-binding and serve only to facilitate Bachem's production scheduling. Updates to the rolling forecast shall be provided to Bachem by Supernus [**]. Bachem shall inform Supernus within [**] of receiving a rolling forecast, in writing by email, if such forecast cannot be met or is at risk of not being met due to capacity constraints as defined herein. Failure of Bachem to accept or reject a forecast within [**] of receipt shall be deemed an acceptance of the rolling forecast and confirmation of suitable available capacity provided, however, that Supernus has ensured that the assigned business development manager and/or project manager at Bachem has received the forecast information. Supernus shall also provide Bachem with a [**] forecast for planning purposes which shall be updated every [**].

2.2.2 Upon Supernus' request, during the Term , the Parties are to convene [**] for a business review meeting (on Bachem's or Supernus' premises, by telephone, or as otherwise agreed to by the Parties). During such meetings, Bachem agrees to provide an

[**] = CERTAIN CONFIDENTIAL INFORMATION OMITTED

estimate of its total production capacity available for Supernus API in relation to Supernus' long-term forecast requirements, ("**Total Capacity Constraints**").

2.3 Orders.

2.3.1 Orders. Together with each rolling forecast provided under Section 2.2 above, Supernus shall place a firm order for the applicable [**] or multiple smaller orders throughout the applicable [**] with Bachem for the gross weight quantity of API required for delivery. Supernus agrees to receive full batches. Batch quantity to be adjusted upon completion of batch release. For the avoidance of doubt, Supernus may order quantities of API in addition to those specified in the then current rolling forecast for delivery hereunder in accordance with the lead times therefor and subject to Bachem's Purchase Order acceptance and Total Capacity Constraints. Unless otherwise limited by Bachem's Total Capacity Constraints, Bachem agrees to provide not less [**] of any forecast if ordered by Supernus, unless the Parties agree to a higher quantity in writing. Bachem shall use [**] to accept and fulfill all orders for API provided by Supernus under this Agreement and endeavor to hold stock sufficient to meet the next order in accordance with the rolling forecast.

2.3.2 Form of Orders. Supernus's orders shall be made pursuant to a written purchase order in accordance with the forecast requirements specified under 2.3.1 (each, a "**Purchase Order**") that specifies, at a minimum, quantity of API ordered, date of order, date of delivery, addresses for delivery, contact information at delivery sites, and required carriers with account numbers, one of which must be utilized for delivery to the specified destinations. Bachem shall accept all orders Supernus submits to Bachem in accordance with Article 2.3.1. Bachem shall provide to Supernus written notice of Bachem's acceptance (each, an "**Acceptance Notice**" of each Purchase Order within [**] of Bachem's receipt of such Purchase Order and each such Acceptance Notice shall include confirmation of the delivery date of the applicable quantity of API; provided that to the extent no delivery date is included in an Acceptance Notice issued by Bachem or Bachem fails to issue an Acceptance Notice within the applicable time period, the order shall be deemed accepted by Bachem and the applicable delivery date shall be deemed to be the delivery date specified by Supernus in the corresponding Purchase Order. Except as to the quantity of API, delivery date and delivery location specified in a Purchase Order which shall be binding on the Parties, NO TERMS OR CONDITIONS CONTAINED IN ANY PURCHASE ORDER, ORDER ACKNOWLEDGMENT OR SIMILAR STANDARDIZED FORM SHALL BE CONSTRUED TO AMEND OR MODIFY THE TERMS OF THIS AGREEMENT, AND ALL SUCH TERMS AND CONDITIONS ARE HEREBY EXCLUDED.

2.4 Shipping and Warehousing. Bachem shall deliver quantities of API ordered by Supernus in accordance with Section 2.3 above, to the locations specified in the applicable Purchase Order. Shipments will be shipped [**]. Bachem shall deliver the API only against specific firm orders. Bachem shall submit mutually agreed executed batch record documentation to Supernus for its review. The executed batch record documentation shall be scanned and delivered by Bachem within [**] of Bachem Quality review/release (where possible delivered in stages) for Supernus review. Supernus shall have [**] from receipt of the final document to

[**] = CERTAIN CONFIDENTIAL INFORMATION OMITTED

review and raise concerns of non-compliance to GMP. Bachem shall ship the API and invoice upon receipt of Supernus' authorization to ship documentation. Should Supernus be unable to provide authorization to ship documentation, and written notification of concerns are not raised within [**] days of Supernus' receipt of the batch record documentation, Bachem shall transfer the API to the Warehouse and invoice the firm order. While in storage at its Warehouse, Bachem shall ensure API is stored according to cGMP's and the Specifications. Bachem shall ship API, together with all relevant documentation relating to the API, including, but not limited to those documents listed in Annex 3, and in accordance with any agreed-upon shipment requirements or as otherwise reasonably directed by Supernus in writing and in accordance with this Agreement. Supernus shall only be obligated to pay for quantities of API actually delivered in compliance with the applicable Purchase Order and the terms of this Agreement.

2.5 Shortage of Supply. If Bachem is unable, or anticipates that it will not be able to supply Supernus' requirements for the API in accordance with Sections 2.2 and 2.3 above a "**Shortage of Supply**"). Bachem shall notify Supernus in writing of the same within [**] of receipt of applicable Purchase Orders, Rolling Forecast, or determination that a Shortage of Supply will exist, and shall include in such notice its best estimate of the duration of the delay, the reasons for the delay, and whether the reason impacts the validated state of the process. Bachem shall, at its own cost, use commercially reasonable efforts to remedy any Shortage of Supply and resume supplying API meeting the requirements of this Agreement to Supernus as soon as possible. In the event of a continuous Shortage of Supply, [**], and after good faith discussions to remedy such Shortage of Supply then, in addition to any other rights or remedies that Supernus may have under this Agreement, or at law or in equity, Supernus shall be relieved from its obligations to purchase any quantities of API identified in any outstanding Purchase Order, Calendar Year Forecast or Rolling Forecast.

2.6 Exclusivity. During the Term of this Agreement, Bachem shall supply the API to Supernus exclusively and not to any other party. Bachem [**].

ARTICLE 3
PAYMENTS

3.1 Price.

3.1.1 The prices to be paid by Supernus for the API shall be based on [**] volume as set forth in Annex 1 ("Pricing"). Pricing is inclusive of all [**]. Unless otherwise specified, Pricing excludes costs associated with [**] in Section 2.4.

3.1.2 The parties must agree in writing on changes, deletions, or additions to the services ("Changes"). All Changes must be mutually agreed upon in writing, and executed by each Party, prior to taking effect. Changes may be confirmed by electronic mail, facsimile, or other written document, and are to take effect only after mutual agreement.

3.2 Price Adjustments.

3.2.1 As a result of Supernus' [**], pricing will be proportionally adjusted based upon gains realized in [**] and [**] in accordance with the LOI.

3.2.2 The Pricing set forth in Annex 1 shall be fixed for the [**]. Following the [**], the Parties agree to meet on an [**] basis thereafter to discuss in good faith any proposed price adjustments.

3.3 Invoicing.

3.3.1 Bachem shall submit an invoice to Supernus upon shipment of API ordered by Supernus hereunder. All invoices shall be sent to the address specified in the Purchase Order therefor, and each invoice shall state the Price for the gross weight quantity of API in a given shipment, plus any other costs incident to the purchase or shipment initially paid by Bachem but to be borne by Supernus hereunder. All payments shall be made by direct bank transfer to an account designated in Bachem's invoice. Payments shall be due [**] from invoice date. Payment by Supernus shall not constitute acceptance of any shipment of API or impair Supernus' right of inspection and rejection under Article 4 below.

3.3.2 If Supernus believes that an invoice or part of an invoice contains an error then the following invoice dispute resolution process may be initiated at Supernus' option and that invoice or portion of that invoice will then be considered a disputed invoice:

i. Supernus shall make the determination to dispute the invoice within [**] of the delivery of the invoice and communicate that decision promptly to Bachem in writing within the [**] period

ii. Supernus shall pay the undisputed portion of the invoice within [**] of the delivery of the invoice as normally required

iii. Bachem and Supernus will work together diligently and in good faith to resolve the invoice dispute as soon as possible, and in no event longer than [**] of the delivery of the invoice

iv. Supernus will pay that portion of the disputed amount determined to be owing within [**] of the resolution of the dispute

ARTICLE 4
QUALITY

4.1 Quality Assurance. All API supplied by Bachem shall be manufactured in accordance with approved batch records, stored in accordance with all Applicable Laws relevant to the Facility and Warehouse and meet the Specifications established. Bachem agrees that, prior to each shipment of API hereunder, it shall perform quality assurance and quality control procedures reasonably necessary to ensure that the API to be shipped meets the Specifications and is in compliance with cGMP's. Each shipment of API shall be accompanied by a certificate

of analysis, which will include a signed certification of cGMP conformance at a minimum. Procedures for Quality Release and authorization to ship will be included in the Quality Agreement.

4.2 Rejection and Replacement of API.

4.2.1 Inspection by Supernus. Supernus, or its designee, shall have the right to reject all or part of the shipped API on the grounds that it does not meet the requirements of incoming inspection or otherwise fails to conform to the warranties given by Bachem in Section 9.2 [**] upon receipt of the API at Supernus or its designee, which rejection shall be accomplished by giving written notice to Bachem summarizing the manner in which all or part of such shipment fails to meet the foregoing requirements. The foregoing inspection obligation will not prevent Supernus from enforcing any rights under this Agreement if Latent Defects in the API are discovered, so long as Supernus informs Bachem in writing [**]. Supernus, or its designee, shall be responsible for storage and handling of the API in accordance with cGMP upon delivery.

4.2.2 Resolution of Disputes. Bachem shall acknowledge receipt in writing to a rejection notice from Supernus within [**] from the date of receipt of such rejection notice in accordance with Section 4.2.1 above. If Bachem does not agree with Supernus's determination that such API fails to conform to the requirements of incoming inspection or the warranties provided by Bachem in Section 9.2, then Bachem and Supernus shall use [**] to resolve such disagreement as promptly as possible. Without limiting the foregoing, either party may submit the API to a nationally recognized testing laboratory (the "**Laboratory**") which shall be agreed upon by the parties in advance to perform confirmatory testing on the API. If the Laboratory determines that the API does not meet the Specifications or the warranties provided by Bachem in Section 9.2, Bachem will be responsible for all expenses related to the Laboratory testing, otherwise Supernus will be responsible for those expenses.

4.2.3 Replacement of API. API not meeting the applicable Specifications shall be returned by Supernus or its designee to Bachem, or disposed of, as directed by Bachem, at Bachem's expense. Bachem shall replace all such rejected API within the shortest possible time, but in any event, within a reasonable timeframe, as agreed to by both Parties. Without limiting any other provision in this Agreement, if Parties cannot agree on a suitable timeframe to replace such rejected API, Supernus may [**] or shall be entitled to a [**] for such shipment or the portion thereof that has been rejected by Supernus, pursuant to this Section 4.2. The warranties given by Bachem in Section 9.2 below shall survive any failure to reject by Supernus under this Section 4.2.

4.3 Changes.

4.3.1 Bachem shall maintain change control systems that ensure that Supernus is notified in a timely manner regarding all changes as agreed to by the Parties in accordance with the Quality Agreement.

4.3.2 Bachem shall promptly inform Supernus in writing of any proposed change to the raw materials, intermediates, manufacturing process, equipment, packaging, labeling, testing, specifications, storage, or shipping, if such a change may impact Product quality, efficacy, safety, or stability and may impact regulatory submissions. Notwithstanding the foregoing, in no event will Bachem implement any such change prior to all necessary filings with and approvals by applicable Regulatory Authorities have been made or obtained by Bachem or Supernus.

ARTICLE 5
RECORDS, REPORTS, AND INSPECTIONS

5.1 All documents, records, and reports associated with the development, manufacture, holding, storage, packaging, or testing of any API lot, including investigation reports, shall be retained by Bachem in accordance with the Quality Agreement.

5.2 Records will be retained for the time periods established in accordance with the Quality Agreement. After the retention period has been met, Bachem may dispose of or transfer the records to Supernus upon Supernus' written request. Under no circumstances shall Bachem destroy any Records without giving Supernus a [**] prior written notice and offering to transfer such records to Supernus at Supernus' cost. If Bachem does not receive any response from Supernus within [**], Bachem is free to discard the Records.

5.3 Bachem shall allow routine quality audits or for cause audits, as reasonably necessary, at the Facility in the manner described in the Quality Agreement. Supernus shall be solely responsible for its costs in making such review and audit.

5.4 In the event that any of Bachem's facilities used pursuant to this Agreement are inspected by representatives of any Regulatory Authority solely related to the API, Bachem shall notify Supernus in advance and proceed as described in the Quality Agreement.

5.5 Supernus shall have the right to be present during the performance of services and activities, upon reasonable advance written notice to Bachem. No such review shall diminish Bachem's obligations hereunder.

ARTICLE 6
TERM AND TERMINATION

6.1 Term. The term of this Agreement shall commence on the Effective Date and shall continue for an initial term of five years ("**Initial Term**"), Thereafter, this Agreement shall automatically be renewed for successive two (2) year periods (each, a "**Renewal Term**;" and all such Renewal Terms together with the Initial Term, collectively, the "**Term**"'), unless either Party notifies the other Party in writing at least [**] prior to the expiration of the then-current Term that such Party does not wish to renew this Agreement for an additional Renewal Term.

6.2 Termination for Material Breach. If either party is in material breach of any of its obligations under this Agreement or the Quality Agreement and fails to remedy such breach

[**] = CERTAIN CONFIDENTIAL INFORMATION OMITTED

within [**] of receipt of written notice from the other party, the non-breaching party may terminate this Agreement with immediate effect with written notice of termination to the breaching party, without prejudice of any other right.

6.3 Termination due to Insolvency. In the event that either party shall become insolvent or would make an assignment for the benefit of its creditors or proceedings in voluntary or involuntary bankruptcy, files or has filed against it a petition in bankruptcy, or has a receiver appointed for a substantial part of its assets, then the other party shall have the right to terminate this Agreement within [**] by giving notice in writing.

6.4 Termination for Failure to Supply. Without limiting any other provision of this Agreement, including Sections 2.5 and 6.3 above, if (a) [**] or (b) [**] occur [**] during any [**] period, then Supernus shall have the right to terminate this Agreement immediately by written notice to Bachem. For purposes of this Section 6.4, a [**] shall mean any [**] of a Bachem confirmed [**] that is delivered more than [**] past the delivery date specified in the applicable Purchase Order (each a "**Late Shipment**")

6.5 Termination by Supernus. Supernus may terminate this Agreement immediately upon written notice to Bachem if: (a) Supernus, in its sole discretion, determines that Products will not be marketed by Supernus (or its designee); or (b) the FDA or EMA withdraws approval of, or fails to approve, the manufacturing or marketing by Supernus (or its designee) of all Products then in development.

6.6 Effects of Termination. It is understood that termination or expiration of this Agreement shall not relieve a Party from any liability that, at the time of such termination or expiration, has already accrued to the other Party, except as specified in this Section 6.6. Upon expiration or termination of this Agreement for any reason (other than by Supernus pursuant to Section 6.2 or 6.5 above), to the extent Bachem so notifies Supernus, Supernus shall have the obligation to purchase all API ordered under any outstanding Purchase Orders and will pay the applicable price differential for the lower annual volume, if any, for the volume of API ordered and delivered to Supernus year-to-date. To the extent Supernus notifies Bachem of expiration or termination of this Agreement according to provisions provided herein, Supernus shall have the option to purchase additional transactional stock of API from Bachem, in addition to quantities contained in outstanding Purchase Orders, of less than or equal to the binding portion of the most recent rolling forecast at the applicable price and according to a delivery schedule mutually agreeable to both Parties.

6.7 Survival. The provisions of Articles 1, 4, 5 and 7-11 and Sections, 2.4, 3.3, 6.5, 6.6 and 6.7 shall survive the expiration or termination of this Agreement for any reason. In addition, the provisions of the Quality Agreement shall survive expiration or termination of this Agreement until the date of expiration of the last-to-expire batch of API delivered by Bachem to Supernus hereunder. All other rights and obligations of the Parties shall cease upon termination of this Agreement. Except as otherwise expressly provided in this Section 6.7, all other rights and obligations of the Parties shall terminate.

[**] = CERTAIN CONFIDENTIAL INFORMATION OMITTED

ARTICLE 7
CONFIDENTIALITY

7.1 Confidentiality.

7.1.1 Each party hereto shall (a) hold the Confidential Information of the other party (and/or its Affiliates, as applicable) in strict confidence and take reasonable precautions to protect such Confidential Information (including, without limitation, all precautions the receiving party normally employs with respect to its own confidential information), (b) not divulge any such Confidential Information to any third party (other than those parties specifically permitted to receive such Confidential Information pursuant to the terms of this Agreement), (c) not make any use whatsoever at any time of such Confidential Information except to carry out its obligations under this Agreement, (d) not derive any commercial benefit (whether direct or indirect) from such Confidential Information (other than pursuant to services rendered under this Agreement), and (e) not copy (except as may be necessary to accomplish the purposes of this Agreement) or reverse engineer any such Confidential Information.

7.1.2 Without granting any right or license, a party's obligations under this Section 7 shall not apply to Confidential Information that such party can demonstrate by reasonable documentary evidence: (a) was in its possession prior to receipt from the disclosing party (or, in the case of Work Product, prior to its generation under this Agreement); (b) was in the public domain at the time of receipt from the disclosing party (or, in the case of Work Product, prior to its generation under this Agreement); (c) becomes part of the public domain without breach of such party's obligations of confidentiality under this Agreement; or (d) is lawfully received by the receiving party from a third party, where the third party is wholly independent of the receiving party and has no obligation of confidentiality to disclosing party with respect to such information disclosed. Notwithstanding the foregoing, Confidential Information shall not fall within an exception set forth in this Section 7.1.2 merely because such Confidential Information is embraced by more general information in the public domain or in the possession of the receiving party.

7.1.3 In the event a Party is required by law, regulation, rule, act, or order of any governmental authority or agency to disclose Confidential Information received from the other Party, the receiving party shall (a) give the disclosing party such advance notice as may be practicable in the circumstances to permit it to seek a protective order or other similar order with respect to such information, at the disclosing party's sole expense, (b) cooperate reasonably with disclosing party in its efforts to seek such relief, and (c) thereafter only disclose the minimum information required to be disclosed in order to comply, whether or not a protective order or other similar order is obtained by the disclosing warty.

7.1.4 Each party shall limit the disclosure of Confidential Information to its or its Affiliates' directors, employees, advisors or consultants, and agents in each case with a legitimate "need to know" and who are bound in writing or by policy to observe the obligations of nondisclosure and non-use under this Agreement. For the avoidance of doubt, any information of a party not specifically disclosed but of which any director, employee, advisor or

consultant or agent becomes aware via site visits or otherwise shall be the Confidential Information of such party.

7.1.5 Except as otherwise specified in this Agreement, each party shall upon the written request of the other party, turn over to the disclosing party all Confidential Information of the disclosing party in the receiving party's possession or control (including any copies or extracts thereof) or destroy such records and certify the destruction thereof, except for any copy legally required to be retained for archive purposes. Notwithstanding anything in this Agreement to the contrary, the receiving party may retain Confidential Information as and to the extent required by any law, automatic back-up archiving practice, or bona-fide records retention policy, provided that any Confidential Information so retained shall continue to be subject to the terms of this Agreement, including, but not limited to, the confidentiality and non-use provisions hereof.

7.1.6 Each party acknowledges and agrees that due to the unique nature of the disclosing party's Confidential Information, there can be no adequate remedy at law for any breach of its obligations hereunder, that any such breach may allow the receiving party or third parties to unfairly compete with the disclosing party, and therefore, that upon any such breach or any threat thereof, the disclosing party shall be entitled to appropriate equitable relief in addition to whatever remedies it might have at law. The receiving party shall notify the disclosing party in writing immediately upon the occurrence of any such unauthorized release or other breach of which it becomes aware.

7.1.7 The obligations of each party with respect to Confidential Information disclosed in connection with the Supply of the API under this Agreement shall continue in effect until completion or other termination of the Supply of the API and for [**] thereafter.

ARTICLE 8
INTELLECTUAL PROPERTY AND TECHNOLOGY TRANSFER

8.1 For the term of this Agreement, Supernus hereby grants to Bachem, a non-exclusive, paid-up, royalty-free, nontransferable terminable license of Supernus' Intellectual Property which Bachem must use in order to perform services and activities pursuant to this Agreement and to deliver API but shall not be used for any other reason whatsoever. All [**], and [**], (whether or not [**] and whether or not [**] which are specific to or dependent on [**] are and [**]. Bachem [**]. Bachem [**]. Bachem hereby appoints Supernus' attorney to execute and deliver any such documents on its behalf in the event Bachem fails or refuses to do so, provided that Supernus shall give Bachem [**] notice prior to executing any documents pursuant to such appointment.

8.2 Analytical Method Transfer from Bachem to a Third Party. Bachem shall grant Supernus without any further consideration or compensation from Supernus to Bachem, a non-exclusive, irrevocable license right (with the right to grant sub-licenses) to IP relating to analytical methods used for the release of the API. In the event that Supernus opts for such a technology transfer of analytical methods, Bachem undertakes to provide such assistance as is reasonably required by Supernus to enable Supernus or a third party to use the analytical

methods. Supernus shall pay Bachem's reasonable charges for such assistance to cover Bachem's documented costs (manpower and equipment) used to effectuate analytical method transfer. Such charges shall be agreed by the Parties before any work is initiated.

8.3 Technology Transfer. If Bachem terminates this Agreement or Supernus terminates this Agreement under the terms of Sections 6.2 (Material Breach), 6.3 (Insolvency), or either Party terminates this Agreement under the terms of Section 11.6 (Force Majeure), or Bachem is no longer in a position to honor this Agreement, then Bachem will provide commercially reasonable assistance to transmit all necessary information to Supernus and/or an alternative third-party manufacturer required to manufacture the API. The technology transfer of the manufacturing Know How of the manufacturing process shall be transferred at Supernus' request within [**] upon termination or expiration of the Agreement to Supernus without any financial or other compensation from Supernus to Bachem.

8.4 If Bachem terminates this Agreement under the terms of Section 6.2 (Material Breach) or Supernus decides to seek an alternative manufacturer for any reason other than as outlined in Sections 8.3 and 8.4, Supernus must pay a fee that covers the documented reasonable costs of Bachem's resources (manpower and equipment) used for technology transfer. Such charges are to be agreed upon by Bachem and Supernus meeting in good faith before any work is initiated. Bachem will provide reasonable assistance to Supernus for the technology transfer to an alternative third-party manufacturer provided that Supernus agrees to compensate Bachem for its efforts.

ARTICLE 9
REPRESENTATIONS, WARRANTIES, AND COVENANTS

9.1 Mutual Warranties. Each Party represents and warrants to the other Party that: (a) it has the power and authority to enter into this Agreement and to perform its obligations hereunder and to grant to the other Party the rights granted to such other Party under this Agreement; (b) it has obtained all necessary corporate approvals to enter into and execute this Agreement and to perform its obligations hereunder; and (c) the execution, delivery and performance of this Agreement does not conflict with any agreement, instrument or understanding, oral or written, to which it is a party or by which it may be bound, nor will it enter into or assume during the Term, any contract or other obligation with a third party that would in any way limit the performance of its obligations under this Agreement.

9.2 Bachem represents and warrants to Supernus that Bachem is in compliance with all Applicable Laws with respect to the Facility to be used for the Supply of API and, to Bachem's knowledge, there are no circumstances or conditions which would reasonably be expected to prevent compliance from continued compliance during the duration of this Agreement or interfere with Bachem's ability to supply API, in each case, or create any financial liability on Supernus or its Affiliates.

9.3 Bachem represents and warrants to Supernus that at all times during the Term of this Agreement, it will comply with and maintain in force all licenses, consents, permits and authorizations which may be required with respect to the Facility and its performance of its

[**] = CERTAIN CONFIDENTIAL INFORMATION OMITTED

obligations hereunder, including without limitation licenses and permits issued or required in relation to the generation, storage, treatment, transport, possession, handling and disposal of any waste. Bachem will develop, manufacture and supply API in strict compliance with all such licenses, consents, Regulatory Authority registrations, permits and authorizations pursuant to Applicable Laws (as defined above).

9.4 Bachem represents and warrants to Supernus that all corporate action on the part of Bachem and its officers and directors necessary for the authorization, execution and delivery of API or services under this Agreement and the performance of all obligations of Bachem hereunder, has been taken.

9.5 Bachem and Supernus each represent and warrant that it has the legal right to enter into this Agreement and to perform its obligations under this Agreement and that the performance of the obligations will not conflict with any Third-Party rights or obligations of Bachem or Supernus to any Third Party.

9.6 Bachem and Supernus each represent and warrant that it is not infringing or violating any valid patent, trademark, trade name, copyright, trade secret or other proprietary right of any Third Party for this API during the Term.

9.7 Bachem shall not during the Term of this Agreement and for a period of [**] following the termination or expiration of the Term and any Renewal Term: (i) [**]; or (ii) [**] or [**], or [**].

9.8 In accordance with the Quality Agreement, Bachem covenants that Bachem shall not, during the Term, modify, alter or otherwise implement a change to any manufacturing, processing or other component of the Supply, including without limitation, the installation of new or upgraded equipment used in the Supply, from that utilized on the Effective Date if such a modification, alteration or change may impact Product quality, efficacy, safety or stability and may impact regulatory submissions, without first receiving Supernus' prior written consent to such modification, alteration or change, which shall not be unreasonably withheld or delayed. Bachem shall deliver written notice of such proposed modification, alteration or change to Supernus within a reasonable time prior to implementation. Supernus shall have the right to reject and direct Bachem not to undertake any such proposed modification, alteration or change if, in Supernus' sole opinion, such modification, alteration or change will conflict with the Specifications or with any Applicable Laws. Supernus may, in connection with any modification, alteration or change proposed by Bachem, require Bachem to produce validation verification batches and any records, reports or other documentation at Bachem's cost which may be reasonably required by Supernus for submission to any Regulatory Authority.

9.9 Bachem warrants and represents to Supernus that Bachem is currently in compliance with all Applicable Laws and regulations including the U.S. Federal Customs Laws and Regulations.

9.10 DISCLAIMER. EXCEPT AS PROVIDED IN THIS ARTICLE 9, NEITHER PARTY MAKES ANY REPRESENTATIONS OR WARRANTIES (EXPRESS, IMPLIED,

STATUTORY OR OTHERWISE) WITH RESPECT TO THE SUBJECT MATTER HEREOF AND EACH PARTY EXPRESSLY DISCLAIMS ANY SUCH ADDITIONAL REPRESENTATIONS AND WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE OR USE, MERCHANTABILITY OR NON-INFRINGEMENT OF THIRD-PARTY INTELLECTUAL PROPERTY RIGHTS.

ARTICLE 10
INDEMNIFICATION AND LIMITATION OF LIABILITY

10.1 Indemnification of Bachem. Supernus hereby agrees to defend, indemnify and hold harmless Bachem and each of its Affiliates and their respective officers, directors, shareholders and employees from and against any liabilities, claims, costs, expenses (including reasonable legal fees), loss or damage (each a "Liability") based on any claim, action or proceeding brought by a third party arising out of or relating to (i) use of the API, other than as set forth herein, (ii) death, personal injury or property injury to the extent arising from the marketing, distribution, sale or use of the Product, or its disposal or (iii) Supernus' material breach of its representations, warranties or covenants under this Agreement, except, in each case, to the extent that such Liability arises as a result of the [**] of Bachem, its Affiliates or their respective employees, agents or contractors or material breach of this Agreement by Bachem.

10.2 Indemnification of Supernus.

Bachem hereby agrees to defend, indemnify and hold harmless Supernus and each of its Affiliates and their respective officers, directors, shareholders and employees from and against any Liabilities based on any claim, action or proceeding brought by a third party arising out of or relating to (i) Bachem's material breach of its obligations, representations, warranties or covenants under this Agreement, or (ii) the [**] of Bachem, its Affiliates or their respective employees, agents or contractors except, in each case, to the extent that such Liability arises as a result of the [**] of Supernus, or its respective employees, agents or contractors, or material breach of this agreement by Supernus.

10.3 Indemnification Procedure. Any Party seeking indemnification under this Article 10 (the "**Indemnitee**") shall: (a) promptly notify the Indemnifying Party (the "**Indemnitor**") of such claim; (b) provide the Indemnitor sole control over the defense and settlement thereof; and (c) at the Indemnitor's request and expense, provide full information and reasonable assistance to Indemnitor with respect to such claims. Without limiting the foregoing, with respect to claims brought under Section 10.1 or 10.2 above, the Indemnitee, at its own expense, shall have the right to participate with counsel of its own choosing in the defense and settlement of any such claim. The indemnification under this Article 10 shall not apply to amounts paid in settlement of any claim if such settlement is effected without the consent of the Indemnitor.

10.4 Insurance. Bachem and Supernus shall each maintain, throughout the Term of this Agreement, products liability insurance in amounts of not less than [**]. Each Party shall submit certificates of insurance, evidencing such insurance coverage, upon execution and delivery of this Agreement and thereafter when requested by the other Party.

[**] = CERTAIN CONFIDENTIAL INFORMATION OMITTED

10.5 LIMITATION OF LIABILITY. EXCEPT FOR A PARTY'S INDEMNIFICATION OBLIGATIONS, [**], EACH PARTY'S LIABILITY SHALL BE LIMITED AS SET FORTH HEREIN AND IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR (I) ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, CONSEQUENTIAL OR EXEMPLARY OR PUNITIVE DAMAGES; INCLUDING LOST PROFITS, OR OPPORTUNITY OR GOODWILL, HOWEVER CAUSED, UNDER ANY THEORY OF LIABILITY AND EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR (II) FOR EACH EVENT GIVING RISE TO ANY INJURIES, CLAIMS, LOSSES, EXPENSES, OR DAMAGES, THAT EXCEED $[**]. To the extent that this clause conflicts with any other clause of this Agreement, this clause shall take precedence over such conflicting clause. If applicable law prevents enforcement of this Section 10.5, then this Section shall be deemed modified to provide the maximum protection to each Party as is allowable under applicable law.

ARTICLE 11
GENERAL PROVISIONS

11.1 Assignment. (a) Bachem may not assign any of its rights or delegate any of its duties pursuant to this Agreement without the prior written consent of Supernus, which consent shall not be unreasonably delayed or withheld; and/or (b) Supernus or, Bachem subject to 11.1 a, may assign this Agreement to its Affiliates and parent corporations or to any third party provided that any such assignment shall not release either Party from its obligations hereunder, including payment obligations, and any such assignee shall agree to be bound by the terms of this Agreement in a writing signed by assignee.

11.2 Choice of Law and Jurisdiction. This Agreement is governed by and construed in accordance with the laws of the State of New York without giving effect to the principles of conflict of law thereof. Each Party consents to submit to the personal jurisdiction of any U.S. Federal Court located in the State of New York if any dispute arises out of this Agreement.

11.3 Dispute Resolution. In the event of a dispute regarding payment or the performance of services or rejection of API pursuant to this Agreement (each, a "Dispute"), the Parties shall endeavor to negotiate in good faith an agreeable solution. Disputes with respect to nonconformance of API shall be resolved in accordance with Section 4.2 above. If after [**] following receipt of a Party's written notification of a Dispute such Dispute has not been resolved, the Dispute shall be brought to the attention of the CEO of each Party and such CEO or his/her designee will negotiate in good faith to define and implement a final resolution. The intent of this Section is to encourage the Parties to work together to resolve any Dispute without having to rely on arbitration or any other legal proceeding. However, nothing in this Section shall prevent or inhibit either Party to institute any other action to resolve such Dispute(s).

11.4 Arbitration. Except for any disputes with respect to non-conforming API, which shall be resolved in accordance with Section 4.2 above, any dispute or claim arising out of or in connection with this Agreement or the performance, breach or termination thereof which is unable to be resolved pursuant to discussions between the Parties in accordance with Section 11.3 above, shall, upon notice by either Party to the other, be submitted to binding arbitration in

[**] = CERTAIN CONFIDENTIAL INFORMATION OMITTED

New York City, New York under the Rules of the American Arbitration Association (or any successor entity thereto, collectively, "**AAA**") by one arbitrator appointed in accordance with said rules. The arbitrator may engage an independent expert with experience in the subject matter of the dispute to advise the arbitrator. The decision and award rendered by the arbitrator shall be written, final and non-appealable and may be entered in any court of competent jurisdiction. The Parties agree that any provision of applicable law notwithstanding, they will not request, and the arbitrator shall have no authority to award, punitive or exemplary damages against any Party. The costs of any arbitration, including administrative fees and fees of the arbitrator, reasonable attorney fees and expert fees, shall be awarded in accordance with the rules of the AAA. Notwithstanding the foregoing, either Party may apply to any court of competent jurisdiction for injunctive relief without breach of this arbitration provision.

11.5 Notices. All notices, requests and other communications required or permitted to be given hereunder or with respect hereto will be in writing, and may be given by (i) personal delivery, (ii) certified first-class United States mail, postage paid by the sender, return receipt requested, (iii) overnight delivery service, charges paid by the sender, or (iv) via facsimile and, in each case, addressed to the other party at the address for such party as set forth below, and will be effective upon receipt in the case of (i) (iii) or (iv) above, and five days after mailing in the case of (ii) above

If to Supernus:	Supernus Pharmaceuticals, Inc 9715 Key West Avenue Rockville, Maryland 20850 Attn: Jack Khattar, CEO [**]
If to Bachem:	Bachem Americas, Inc. [**] [**] Attn: [**]

11.6 Force Majeure. The parties hereto shall not be liable for non-fulfillment of their respective obligations hereunder, if such non-fulfillment is due to strikes, riots, war, invasion, fire, explosion, floods, delay of carrier, shortage, or failure in the supply of material, acts of government agencies of instrumentality, judicial action, labor disturbance and/or other contingencies beyond the reasonable control of the party affected (hereinafter "Force Majure"). The party affected by Force Majeure will provide the other party with full particulars thereof as soon as it becomes aware of the same (including its best estimate of the likely extent and duration of the interference with its activities) and will use its best endeavors to overcome the difficulties created thereby and to resume performance of its obligations as soon as practicable. In the event that either Party is prevented or delayed in performing any of its obligations under this Agreement due to Force Majeure for an aggregate period in excess of [**] in any [**] period then the Parties shall meet as soon as reasonably practicable to discuss in good faith how best to alleviate the circumstances in question.

[**] = CERTAIN CONFIDENTIAL INFORMATION OMITTED

11.7 Interpretation. The headings to the several Articles and Sections of this Agreement are not a part of this Agreement, but are included for convenience of reference only and shall not affect its meaning or interpretation.

11.8 Waiver. Any waiver of the terms and conditions hereof must be explicitly in writing and executed by a duly authorized officer of the Party waiving compliance. The waiver by either of the Parties of any breach of any provision hereof by the other shall not be construed to be a waiver of any succeeding breach of such provision or e waiver of the provision itself. The delay or failure of any Party at any time to require performance of any provision of this Agreement shall in no manner affect such Party's rights at a later time to enforce the same.

11.9 Severability. Should any section, or portion thereof, of this Agreement be held invalid or unenforceable in any jurisdiction by any court of competent authority or by a legally enforceable directive of any governmental body, such section or portion thereof shall be validly reformed so as to approximate the intent of the Parties as nearly as possible and, if unreformable, shall be deemed divisible and deleted with respect to such jurisdiction, but the Agreement shall not otherwise be affected.

11.10 Independent Contractors. The relationship of Supernus and Bachem established by this Agreement is that of independent contractors. Nothing in this Agreement shall be construed to create a partnership, joint venture, agency, or other fiduciary relationship between Supernus and Bachem. Neither Party shall have any right, power, or authority to assume, create or incur any expense, liability, or obligation, express or implied, on behalf of the other.

11.11 Entire Agreement: Amendment. The terms and provisions contained in the Agreement (including the Annexes hereto and any Purchase Orders issued pursuant hereto) and the Quality Agreement constitute the entire agreement between the Parties and shall supersede all previous communications, representations, agreements, or understandings, either oral or written, between the Parties with respect to the subject matter hereof. No agreement or understanding varying or extending this Agreement shall be binding upon either Party hereto, unless set forth in a writing which specifically refers to the Agreement signed by duly authorized officers or representatives of the respective Parties, and the provisions hereof not specifically amended thereby shall remain in full force and effect.

11.12 Original Documents. This Agreement may be signed in any number of counterparts, each of which shall be deemed an original, with the same effect as if the signatures thereto were upon the same instrument. For purposes of this Agreement, a document (or signature page thereto) signed and transmitted by facsimile machine, tele copier, or electronic mail shall be treated as an original document. The signature of any Party thereon shall be considered as an original signature, and the document transmitted shall be considered to have the same binding effect as an original signature on an original document .

11.13 Compliance. If applicable, Bachem agrees to comply with the provisions of paragraphs 1-7 of 41 C.F.R. § 60-1.4(a); the affirmative action for disabled workers clauses set forth in 41 C.F.R. § 60-741.5(a); and the affirmative action for veteran's clauses set forth in 41 C.F.R. § 60-250.5, which are incorporated by reference herein.

11.14 Waiver of Jury Trial. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

[Remainder of page intentionally left blank; signature page follows]

IN WITNESS WHEREOF, the Parties hereto have caused their duly authorized representatives to execute this API Supply Agreement as of the Effective Date.

SUPERNUS PHARMACEUTICALS, INC.

By: /s/ Jack Khattar
Name: Jack Khattar
Title: CEO

BACHEM AMERICAS, INC.

By: /s/ [**]
Name: [**]
Title: [**]

By: /s/ [**]
Name: [**]
Title: [**]

Acknowledged by:

BACHEM AG

By: /s/ [**]
Name: [**]
Title: [**]

By: /s/ [**]
Name: [**]
Title: [**]

[**] = CERTAIN CONFIDENTIAL INFORMATION OMITTED

Annex 1

PRICING

Annual Price/Volume

VILOXAZINE HYDROCHLORIDE
PRICE CALCULATION PER CONCEPT APPLIED*

PRICE CALCULATION	based on usage of Current equipment	based on when new hydrogenator is in operation		Price calculation based on when full CAPEX is in operation	
CONCEPT APPLIED	C1	C2		C3	
[**]	[**]	[**]		[**]	
Quantity ordered	PRICE (Dollars per kg)	Quantity ordered	PRICE (Dollars per kg)	Quantity ordered	PRICE (Dollars per kg)
[**]	[**]	[**]	[**]	[**]	[**]
[**]	[**]	[**]	[**]	[**]	[**]
		[**]	[**]		

*PER LOI in Annex 4

[**] = CERTAIN CONFIDENTIAL INFORMATION OMITTED

Annex 2

SUPERNUS SPECIFICATIONS

BACHEM CONFIDENTIAL	**Material Specifications**

Material number: [**]

Material name: Viloxazine [**]

Sequence: N/A

Analytcal procedure: [**]

Tests Components	Specifications
[R] **Appearance** [**]	
Identification (IR) [**]	
Identification (HPLC) [**]	[**]
[R] **Water content (Karl Fischer)** [**]	[**]
Residue on ignition	
Residual solvents	[**]
[**]	[**]
[R] **Related impurities** (HPLC) [**]	[**]
Chiral purity (HPLC) [**]	[**]
	[**]

[**] = CERTAIN CONFIDENTIAL INFORMATION OMITTED

Tests	**Specifications**
Components	
[R] **Assay (HPLC)**	
[**]	[**]
Particle size (laser diffraction)	
[**]	[**]

[R] performed for retest

Any changes to the above referenced Specifications will be handled in accordance with the Quality Agreement and will not necessitate an update of the Supply Agreement. This Agreement Shall always reference Annex of the Quality Agreement.

[**] = CERTAIN CONFIDENTIAL INFORMATION OMITTED

Annex 3

RELEVANT SHIPPING DOCUMENTATION

Certificate of Analysis
Certificate of Conformance
TSE/BSE Safety Certificate
End Use Letter
Packing List invoice
Temperature data logger

Annex 4
LETTER OF INTENT

Annex 4 to

API Supply Agreement

between

Supernus Pharmaceuticals, Inc.

and Bachem Americas, Inc.

- Letter of Intent, Re: Supply of Viloxazine, December 2, 2019
- Appendix A, Viloxazine Hydrochloride Capex Plan, August 28, 2019
- First Amendment to Letter of Intent, Re: Supply of Viloxazine, February 5, 2020
- Appendix A (Update) Viloxazine Hydrochloride Capex Plan, January 3, 2020

BACHEM
PIONEERING PARTNER FOR PEPTIDES

December 2, 2019

Supernus Pharmaceuticals, Inc.
1550 East Gude Drive
Rockville, Maryland 20850

RE: Letter of Intent re: Supply of Viloxazine

This Letter of Intent ("LOI") sets forth certain preliminary terms and conditions of a transaction between Bachem Americas, Inc. and Bachem AG (referred to collectively as "Bachem") and Supernus Pharmaceuticals, Inc. ("Supernus") and serves as an inducement for Bachem to enter into an API Supply Agreement for Viloxazine Hydrochloride, currently being negotiated between the parties (the "Supply Agreement"). This LOI is effective as of the date of acknowledgement and agreement set forth below (the "Effective Date").

This inducement will consist of payment of capacity reservation fees to Bachem by Supernus to be used to fund the purchase, installation, installation qualification, and operational qualification of certain manufacturing equipment at Bachem's production facility, located in [**] in order to enhance Bachem's production capabilities to manufacture and supply GMP grade viloxazine hydrochloride API ("Viloxazine") to Supernus (the "Project").

As further described in paragraph 9 hereof, upon mutual agreement by the parties, these terms and conditions will be incorporated into the Supply Agreement.

1. BACHEM RESPONSIBILITIES

Bachem will be responsible for ordering, installing, qualifying, and validating all necessary capital equipment (the "CAPEX Equipment") required to support the design and implementation of the Project. Bachem will be responsible for the operation and maintenance of the CAPEX Equipment such that it meets all regulatory and operational requirements and can be used for the production of Viloxazine.

2. THE CAPEX EQUIPMENT AND PRICING

The CAPEX equipment and pricing expected to be covered under the Supply Agreement includes:

Production Step	Equipment	Estimated Cost*
[**]	[**]	[**]

[**] = CERTAIN CONFIDENTIAL INFORMATION OMITTED

[**]	[**]	[**]
[**]	[**]	[**]
[**]	[**]	[**]
Total		[**]

The Total estimated cost of the CAPEX Equipment is expected to be: [**]. These expenditures are to be borne by Supernus. A full breakdown of the expected equipment components, lead times and construction planning is set forth in **Appendix A.**

Expected costs to be borne by Bachem:

[**]	[**]
[**]	[**]
[**]	[**]
	[**]
[**]	[**]
Total	[**]

*PRICING AND TIMELINES FOR THE PROJECT, AS DESCRIBED IN THIS LOI AND ITS APPENDICES, ARE ESTIMATED BASED ON BACHEM'S CURRENT UNDERSTANDING OF THE EQUIPMENT AND LABOR COSTS, AND MAY DIFFER FROM THOSE EVENTUALLY AGREED TO IN THE SUPPLY AGREEMENT. IF COSTS EXCEED ESTIMATES BY [**], EACH PARTY AGREES TO SHARE EQUALLY IN SUCH OVERRUNS. ALL COST OVERRUNS ABOVE [**] WILL BE DISCUSSED, NEGOTIATED AND AGREED TO IN GOOD FAITH BETWEEN THE PARTIES BEFORE EQUIPMENT ORDERS OR WORK ARE UNDERTAKEN. For clarity purposes, cost overruns pertain to both the capital expenditures undertaken by Supernus, as well as those capital expenditures borne by Bachem.

For clarity purposes, cost underruns shall inure solely to the respective party, either Supernus or Bachem.

3. FORECASTING AND PRODUCTION PRICING

Upon initiation of the Project, Supernus shall provide Bachem with a [**] rolling forecast of the gross weight quantities of Viloxazine to be required. The initial period; i.e., [**] of the rolling forecast shall be binding. Production staffing requirements are predicated on forecasting. Should the forecast fall below [**], Bachem will implement, at its discretion, the appropriate

[**] = CERTAIN CONFIDENTIAL INFORMATION OMITTED

staffing model. Expected Cost per [**] of Viloxazine Hydrochloride, based on Bachem's current understanding of the Project, is specified in the Price Calculation Per Concept Applied set forth **Appendix B**.

4. PURCHASING OF CAPEX EQUIPMENT

For all Supernus borne costs directly related to the purchase and installation of manufacturing process equipment, BVI's project manager, on behalf of Bachem, shall place the purchase order with the vendors.

5. INVOICES

Bachem will provide to Supernus detailed invoices on a [**] basis with respect to the costs incurred in performing the Project. Bachem will issue an invoice corresponding to these respective [**] costs incurred. The invoices shall be due and payable [**] following receipt.

6. OWNERSHIP OF CAPEX EQUIPMENT

Title and ownership to the CAPEX Equipment shall belong to Bachem at all times and shall survive the expiration or termination of this LOI and the Supply Agreement. Bachem [**].

7. USE OF CAPEX EQUIPMENT

CAPEX Equipment shall be used for the production of Viloxazine for Supernus. Bachem [**]. So long as [**], Bachem [**].

8. DURATION AND TERMINATION

The Project shall start on the Effective Date of this LOI and shall continue for [**] or the completion of the project, whichever is earlier. This LOI may be extended for additional periods upon mutual written agreement signed by both Parties. Those extensions shall not take effect until executed, in writing, by both parties.

This LOI can be terminated at any time, even during the initial term, by written notice with immediate effect, in the event that one of the following conditions shall have come into existence, namely:

(i) one of the Parties is adjudicated to be bankrupt;

(ii) if one of the Parties commits a material breach of this LOI and such breach is not remedied within [**] after specific written notice has been provided by the offended Party.

(iii) either Party in the event that a delay or failure resulting from *force majeure* continues for a consecutive period of [**].

[**] = CERTAIN CONFIDENTIAL INFORMATION OMITTED

(iv) In the event of termination by Supernus, due to circumstances beyond Bachem's control, Supernus shall be responsible for all incurred costs for the project, including all Bachem costs.

9. BINDING EFFECT

This LOI serves as a basic framework to begin the Project and is intended by parties to be a legally binding and enforceable agreement between the parties. Additional and or different terms and conditions may be negotiated in good faith between the parties and included in the Supply Agreement

10. CONFIDENTIALITY

The terms and conditions of this LOI are confidential. Each Party hereto further agrees not to use or disclose any non-public information, whether written or oral, it may receive from the other Party, or otherwise acquire as a result of the relationship evidenced by this LOI, unless (i) such information is already known to such Party or to others not bound by a duty of confidentiality or such information becomes publicly available through no fault of such Party, or (ii) such information is independently developed, discovered or arrived at by the receiving Party without use of or reference to the Confidential Information; or (iii) such information is disclosed to regulatory authorities by the receiving Party pursuant to the purpose of this Letter of Intent, or (iv) the furnishing or use of such information is required by law or legal proceedings (and die receiving Party provides notice to the disclosing Party for purposes of procuring a protective order). Neither Supernus nor Bachem may communicate the existence and terms of this LOI to third parties except to the Parties' shareholders, directors, managers, employees and advisors, and to financial institutions for the specific purposes related to transaction financing, those institutions likewise being bound by confidentiality terms consistent with those outlined herein. No other communications in relation to tire transaction contemplated by this LOI shall be made without the prior written consent of the other Party.

11. ASSIGNMENT

Neither party may assign the LOI without the other party's prior written consent, except that either party will have the right to assign the contract to an Affiliate.

12. MODIFICATIONS

No modification or waiver of any terms or conditions hereof shall be of any force or effect unless such modification or waiver is in writing and signed by an authorized officer of each Party, prior to that modification taking effect.

13. COUNTERPARTS

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

14. GOVERNING LAW AND JURISDICTION

This LOI, and all matters arising directly or indirectly hereunder, shall be exclusively governed by and construed in accordance with the governing law as specified in the Supply Agreement.

IN WITNESS WHEREOF, the Parties have caused this LOI to be duly executed by their authorized representatives on the Effective Date.

Torrance, California
Dated: December 5, 2019
Bachem Americas, Inc.

By: /s/ [**]
Name: [**]
Function: [**]

By: /s/ [**]
Name: [**]
Function: [**]

Bubendorf, Switzerland
Dated: 05-12-2019
Bachem AG

By: /s/ [**]
Name: [**]
Function: [**]

By: /s/ [**]
Name: [**]
Function: [**]

ACKNOWLEDGED AND AGREED TO BY:

Supernus Pharmaceuticals, Inc.
Rockville, Maryland
Dated: December 11, 2019

By: /s/ Jack Khattar
Name: Jack Khattar
Function: CEO

By: _____
Name:
Function:

List of Exhibits:

Exhibit A: List of Equipment, Lead Time and Construction Planning
Exhibit B: Price Calculation per Concept Applied

[**] = CERTAIN CONFIDENTIAL INFORMATION OMITTED

BACHEM
PIONEERING PARTNER FOR PEPTIDES

February 5, 2020

Supernus Pharmaceuticals, Inc.
1550 East Gude Drive
Rockville, Maryland 20850

RE: First Amendment to letter of Intent re: Supply of Viloxazine

Reference is made in this letter (the "First Amendment to the LOI") to the Letter of Intent, effective December 2, 2019 (the "LOI") between Bachem Americas, Inc. and their affiliated companies (together "Bachem") and Supernus Pharmaceuticals, Inc. ("Supernus") regarding the manufacture and supply of the active pharmaceutical ingredient Viloxazine, and specifically to Appendix A of the LOI, entitled "Viloxazine Hydrochloride Capex Plan, dated August 28, 2019."

As certain construction timelines have changed, Bachem and Supernus have mutually agreed to delete Appendix A of the LOI in its entirety, and replace it with an updated Appendix A, attached hereto, entitled "Viloxazine Hydrochloride Capex Plan, dated January 30, 2020."

This First Amendment to the LOI may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Except as indicated above, all other terms and conditions set forth in the LOI and related Appendix B remain in full force and effect.

The Parties have caused this First Amendment to the LOI to be duly executed by their authorized representatives as of the date set forth above.

Torrance, California
Dated: February 11, 2020
Bachem Americas, Inc.

By: /s/ [**]	By: /s/ [**]
Name: [**]	Name: [**]
Function: [**]	Function: [**]

[**] = CERTAIN CONFIDENTIAL INFORMATION OMITTED

Bubendorf, Switzerland
Dated: February 13, 2020
Bachem AG

By: /s/ [*]
Name: [**]
Function: [**]

By: /s/ [**]
Name: [**]
Function: [**]

ACKNOWLEDGED AND AGREED TO BY:

Supernus Pharmaceuticals, Inc.
Rockville, Maryland
Dated: February 10, 2020

By: /s/ Jack Khattar
Name: Jack Khattar
Function: CEO

By: /s/ Padmanabh Bhatt
Name: Padmanabh Bhatt
Function: CSO

List of Exhibits:

Appendix A: (Updated) Viloxazine Hydrochloride Capex Plan, dated January 30, 2020

Exhibit 10.3

Type: Time-Based Option

Name:

Number of Shares of Stock Subject to Option:

Price Per Share:

Date of Grant:

SUPERNUS PHARMACEUTICALS, INC.

2021 EQUITY INCENTIVE PLAN

SUPERNUS PHARMACEUTICALS, INC. STRONGLY ENCOURAGES YOU TO SEEK THE ADVICE OF YOUR OWN LEGAL AND FINANCIAL ADVISORS WITH RESPECT TO YOUR AWARD AND ITS TAX CONSEQUENCES.

FORM OF TIME-BASED INCENTIVE STOCK OPTION AGREEMENT

This agreement (the "Agreement") evidences a stock option granted by Supernus Pharmaceuticals. Inc. (the "Company") to the undersigned (the "Optionee"), an employee of the Company or one of its subsidiaries, pursuant to and subject to the terms of the Supernus Pharmaceuticals. Inc. 2021 Equity Incentive Plan (the "Plan"), which is incorporated herein by reference.

1. Grant of Stock Option. The Company grants to the Optionee on the date set forth above (the "Date of Grant") an option (the "Stock Option") to purchase, on the terms provided herein and in the Plan, the number of shares of common stock, $0,001 par value of the Company (the "Stock") set forth above (the "Shares") with an exercise price per Share as set forth above, in each case subject to adjustment pursuant to Section 7 of the Plan in respect of transactions occurring after the date hereof.

The Stock Option evidenced by this Agreement is an "incentive stock option" (that is an option that is intended to be treated as a stock option described in subsection (b) of Section 422 of the Code) and is granted to the Optionee in connection with the Optionee's employment by the Company or a subsidiary corporation (as defined in Section 424(f) of the Code) with respect to the Company.

2. Meaning of Certain Terms. Except as otherwise defined herein, all capitalized terms used herein have the same meaning as in the Plan. The following terms have the following meanings:

    a. "Beneficiary" means, in the event of the Optionee's death, the beneficiary named in the written designation (in form acceptable to the Administrator) most recently filed with the Administrator by the Optionee prior to the Optionee's death and not subsequently revoked, or, if there is no such designated beneficiary, the executor or administrator of the Optionee's estate. An effective beneficiary designation will be treated as having been revoked only upon receipt by the Administrator, prior to the Optionee's death, of an instrument of revocation in form acceptable to the Administrator.

    b. "Option Holder" means the Optionee or, if as of the relevant time the Stock Option has passed to a Beneficiary, the Beneficiary.

3. Vesting: Method of Exercise: Treatment of the Stock Option Upon Cessation of Employment.

    a. Generally. As used herein with respect to the Stock Option or any portion thereof, the term "vest" means to become exercisable and the term "vested" as applied to any outstanding Stock Option means that the Stock Option is then exercisable, subject in each case to the terms of the Plan. Unless earlier terminated, relinquished or expired and except otherwise provided in the Plan, the Stock Option will vest in accordance with the terms of Schedule A attached hereto.

    b. Exercise of the Stock Option. No portion of the Stock Option may be exercised until such portion vests. Each election to exercise any vested portion of the Stock Option will be subject to the terms and conditions of the Plan and shall be in writing and signed by the Option Holder or in such other form as is acceptable to the Administrator. Each such exercise election must be received by the Company at its principal office or by such other party as the Administrator may prescribe and be accompanied by payment in full as provided in the Plan. The exercise price may be paid (i) by cash or check acceptable to the Administrator, (ii) by the Option Holder delivering to the Company a properly executed exercise notice together with irrevocable instructions to a broker to promptly deliver to the Company cash or a check payable and acceptable to the Company for the purchase price; provided that in the event the Option Holder chooses to pay the purchase price as so provided, the Option Holder and the broker shall comply with such procedures and enter into such agreements of indemnity and other agreements as the Administrator shall prescribe as a condition of such payment procedure, (iii) by such other means, if any, as may be acceptable to the Administrator, or (iv) by any combination of the foregoing permissible forms of payment. In the event that the Stock Option is exercised by a person other than the Optionee, the Company will be under no obligation to deliver shares hereunder unless and until it is satisfied as to the authority of the Option Holder to exercise the Stock Option and compliance with applicable securities laws. In no event may the Stock Option or any portion thereof be exercised later than the Final Exercise Date indicated above.

4. Transfer of Stock Option. The Stock Option may not be transferred other than by the laws of descent and distribution, and during the Optionee's lifetime may be exercised only by the Optionee.

5. Withholding. If the Company determines that the exercise of this Stock Option is subject to withholding, no shares will be transferred pursuant to such exercise unless and until the person exercising this Stock Option has remitted to the Company an amount sufficient to satisfy any federal, state, or local withholding tax requirements, or has made other arrangements satisfactory to the Company with respect to such taxes. The Optionee also authorizes the Company and its subsidiaries to withhold such amount from any amounts otherwise owed to the Optionee.

6. Effect on Employment. Neither the grant of the Stock Option, nor the issuance of shares upon exercise of the Stock Option, will give the Optionee any right to Employment with the Company or any of its Affiliates, affect the right of the Company or any of its Affiliates to discharge or discipline such Optionee at any time, or affect any right of such Optionee to terminate Iris or her Employment at any time.

7. Governing Law. This Agreement and all claims or disputes arising out of or based upon this Agreement or relating to the subject matter hereof will be governed by and construed in accordance with the domestic substantive laws of the State of Delaware without giving effect to any choice or conflict of laws provision or rule that would cause the application of the domestic substantive laws of any other jurisdiction.

[The remainder of this page is intentionally left blank]

Executed as of the _____ day of _____

Company:

Supernus Pharmaceuticals, Inc.

By: _____
Name:
Title:

Optionee:

_____
Name:

Address:

[Signature Page to Incentive Time-Based Option Agreement]

Schedule A

Time Vesting Schedule

The Stock Option, unless earlier terminated or forfeited, will vest so long as the Optionee's Employment continues (i) as to 25% of the total number of Shares subject to the Stock Option on the first anniversary of the Date of Grant; and (ii) as to an additional 25% of the total number of Shares subject to the Stock Option on each of the second, third, and fourth anniversary of the Date of Grant, with the last such vesting date falling on the fourth anniversary of the Date of Grant.

Exhibit 10.4

Type: Time-Based Option

Name:

Number of Shares of Stock Subject to Option:

Price Per Share:

Date of Grant:

SUPERNUS PHARMACEUTICALS, INC.

2021 EQUITY INCENTIVE PLAN

SUPERNUS PHARMACEUTICALS, INC. STRONGLY ENCOURAGES YOU TO SEEK THE ADVICE OF YOUR OWN LEGAL AND FINANCIAL ADVISORS WITH RESPECT TO YOUR AWARD AND ITS TAX CONSEQUENCES.

FORM OF NON-STATUTORY TIME-BASED STOCK OPTION AGREEMENT

This agreement (the "Agreement") evidences a stock option granted by Supernus Pharmaceuticals, Inc. (the "Company") to the undersigned (the "Optionee"), pursuant to and subject to the terms of the Supernus Pharmaceuticals, Inc. 2021 Equity Incentive Plan (the "Plan"), which is incorporated herein by reference.

1. Grant of Stock Option. The Company grants to the optionee on the date set forth above (the "Date of Grant") an option (the "Stock Option") to purchase, on the terms provided herein and in the Plan, the number of shares of common stock, $0.001 par value of the Company (the "Stock") set forth above (the "Shares") with an exercise price per Share as set forth above, in each case subject to adjustment pursuant to Section 7 of the Plan in respect of transactions occurring after the date hereof.

The Stock Option evidenced by this Agreement is a non-statutory option (that is an option that is not intended to be treated as a stock option described in subsection (b) of Section 422 of the Code) and is granted to the Optionee in connection with the Optionee's service to the Company and its qualifying subsidiaries. For purposes of the immediately preceding sentence, "qualifying subsidiary" means a subsidiary of the Company as to which the Company has a "controlling interest" as described in Treas. Regs. §1.409A-l(b)(5)(iii)(E)(l).

2. Meaning of Certain Terms. Except as otherwise defined herein, all capitalized terms used herein have the same meaning as in the Plan. The following terms have the following meanings:

   a. "Beneficiary" means, in the event of the Optionee's death, the beneficiary named in the written designation (in form acceptable to the Administrator) most recently filed with the Administrator by the Optionee prior to the Optionee's death and not subsequently revoked, or, if there is no such designated beneficiary, the executor or administrator of the Optionee's estate. An effective beneficiary designation will be treated as having been revoked only upon receipt by the Administrator, prior to the Optionee's death, of an instrument of revocation in form acceptable to the Administrator.

   b. "Option Holder" means the Optionee or, if as of the relevant time the Stock Option has passed to a Beneficiary, the Beneficiary.

3. Vesting: Method of Exercise: Treatment of the Stock Option Upon Cessation of Employment.

    a. Generally. As used herein with respect to the Stock Option or any portion thereof, the term "vest" means to become exercisable and the term "vested" as applied to any outstanding Stock Option means that the Stock Option is then exercisable, subject in each case to the terms of the Plan. Unless earlier terminated, relinquished or expired and except otherwise provided in the Plan, the Stock Option will vest in accordance with the terms of Schedule A attached hereto.

    b. Exercise of the Stock Option. No portion of the Stock Option may be exercised until such portion vests. Each election to exercise any vested portion of the Stock Option will be subject to the terms and conditions of the Plan and shall be in writing and signed by the Option Holder (or in such other form as is acceptable to the Administrator). Each such written exercise election must be received by the Company at its principal office or by such other party as the Administrator may prescribe and be accompanied by payment in full as provided in the Plan. The exercise price may be paid (i) by cash or check acceptable to the Administrator, (ii) by the Option Holder delivering to the Company a properly executed exercise notice together with irrevocable instructions to a broker to promptly deliver to the Company cash or a check payable and acceptable to the Company for the purchase price; provided that in the event the Option Holder chooses to pay the purchase price as so provided, the Option Holder and the broker shall comply with such procedures and enter into such agreements of indemnity and other agreements as the Administrator shall prescribe as a condition of such payment procedure, (iii) by such other means, if any, as may be acceptable to the Administrator, or (iv) by any combination of the foregoing permissible forms of payment. In the event that the Stock Option is exercised by a person other than the Optionee, the Company will be under no obligation to deliver shares hereunder unless and until it is satisfied as to the authority of the Option Holder to exercise the Stock Option and compliance with applicable securities laws. The latest date on which the Stock Option or any portion thereof may be exercised will be the 10th anniversary of the Date of Grant (the "Final Exercise Date") and if not exercised by such date the Stock Option or any remaining portion thereof will thereupon immediately terminate.

4. Transfer of Stock Option. The Stock Option may not be transferred except as expressly permitted under Section 6(a)(3) of the Plan.

5. Withholding. If the Company determines that the exercise of this Stock Option is subject to withholding, no shares will be transferred pursuant to such exercise unless and until the person exercising this Stock Option has remitted to the Company an amount sufficient to satisfy any federal, state, or local withholding tax requirements, or has made other arrangements satisfactory to the Company with respect to such taxes. The Optionee also authorizes the Company and its subsidiaries to withhold such amount from any amounts otherwise owed to the Optionee.

6. Effect on Employment. Neither the grant of the Stock Option, nor the issuance of shares upon exercise of the Stock Option, will give the Optionee any right to Employment with the Company or any of its Affiliates, affect the right of the Company or any of its Affiliates to discharge or discipline such Optionee at any time, or affect any right of such Optionee to terminate Iris or her Employment at any time.

7. Governing Law. This Agreement and all claims or disputes arising out of or based upon this Agreement or relating to the subject matter hereof will be governed by and construed in accordance with the domestic substantive laws of the State of Delaware without giving effect to any choice or conflict of laws provision or rule that would cause the application of the domestic substantive laws of any other jurisdiction.

[The remainder of this page is intentionally left blank]

Executed as of the _____ day of _____

Company:

Supernus Pharmaceuticals, Inc.

By: _____
Name:
Title:

Optionee:

_____
Name:

Address:

[Signature Page to Non-Statutory Time-Based Option Agreement]

Schedule A

Time Vesting Schedule

The Stock Option, unless earlier terminated or forfeited, will vest so long as the Optionee's Employment continues (i) as to 25% of the total number of Shares subject to the Stock Option on the first anniversary of the Date of Grant; and (ii) as to an additional 25% of the total number of Shares subject to the Stock Option on each of the second, third, and fourth anniversary of the Date of Grant, with the last such vesting date falling on the fourth anniversary of the Date of Grant.

Exhibit 10.5

SUPERNUS PHARMACEUTICALS, INC. 2021 EQUITY INCENTIVE PLAN

RESTRICTED STOCK UNIT AWARD AGREEMENT

This Restricted Stock Unit Award Agreement (the "**Agreement**") is made and entered into as of , (the "**Grant Date**"). This Agreement evidences a restricted stock unit award granted by Supernus Pharmaceuticals, Inc. (the "**Company**") to the undersigned ("**Participant**") pursuant to and subject to the terms of the Supernus Pharmaceuticals, Inc. 2021 Equity Incentive Plan (the "**Plan**"), which is incorporated herein by reference. Capitalized terms not explicitly defined in this Agreement shall have the meaning set forth in the Plan.

1. Grant of Restricted Stock Units. Pursuant to the Plan, the Company hereby issues to Participant, on the Grant Date, an Award consisting of, in the aggregate, [NUMBER] Restricted Stock Units (the "**Restricted Stock Units**"). Each Restricted Stock Unit represents the right to receive one share of Stock (a "**Share**"), subject to the terms and conditions set forth in this Agreement and the Plan.

2. Consideration. The grant of the Restricted Stock Units is made in consideration of the Participant's services to be rendered by Participant as a member of the Board.

3. Vesting.

    3.1. Unless earlier terminated, relinquished, or expired and except as otherwise provided in the Plan, provided that Participant continues membership on the Board, the Restricted Stock Units will vest on the first anniversary of the Grant Date. Once vested, the Restricted Stock Units become "**Vested Units**."

    3.2. The foregoing vesting schedule notwithstanding, if Participant ceases to be a member of the Board for any reason at any time before all of Participant's Restricted Stock Units have vested, Participant's unvested Restricted Stock Units shall be automatically forfeited upon the termination of Participant's non-employee director status and neither the Company nor any Affiliate shall have any further obligations to Participant under this Agreement. Notwithstanding the foregoing, if Participant ceases to be a member of the Board by reason of Participant's death or disability, the Administrator may, in its sole discretion, accelerate the vesting of some or all of the unvested Restricted Stock Units held by Participant.

    3.3. If the Company engages in a Covered Transaction, the Administrator may, in its sole discretion, take (or refrain from taking) any of the actions described in Section 7(a) of the Plan with respect to unvested Restricted Stock Units held by Participant. If the Administrator does not cause the unvested Restricted Stock Units to be assumed, substituted, cashed out or accelerated as permitted under Section 7(a) of the Plan in connection with a Covered Transaction, all unvested Restricted Stock Units shall immediately terminate without any payment or consideration by the Company upon the closing of the Covered Transaction.

4. Restrictions. Subject to any exceptions set forth in this Agreement or the Plan, until such time as the Restricted Stock Units have vested and are settled in accordance with Agreement Section 6, neither the Restricted Stock Units nor the rights relating thereto may be assigned, alienated, pledged, attached, sold or otherwise transferred or encumbered by Participant. Any attempt to assign, alienate, pledge, attach, sell or otherwise transfer or encumber the Restricted Stock Units or the rights relating thereto shall be wholly ineffective and, if any such attempt is made, the Restricted Stock Units will be forfeited by Participant and all of Participant's rights to those units shall immediately terminate without any payment or consideration by the Company.

5. Rights as Stockholder; Dividend Equivalents.

5.1. Participant shall not have any rights of a stockholder with respect to any Shares underlying the Restricted Stock Units, including, but not limited to, voting rights and the right to receive or accrue dividends or dividend equivalents.

5.2. Upon any Shares being issued pursuant to Section 6 of this Agreement following any Restricted Stock Units becoming Vested Units, Participant shall be the record owner of the Shares unless and until the Shares are sold or otherwise disposed of, and as record owner shall be entitled to all rights of a stockholder of the Company (including voting and dividend rights).

6. Settlement of Restricted Stock Units.

6.1. Subject to Section 9 of this Agreement, promptly following the vesting date, and in any event no later than March 15 of the calendar year following the calendar year in which the vesting occurs, the Company shall (a) issue and deliver to Participant the number of Shares equal to the number of Vested Units; and (b) enter Participant's name on the books of the Company as the shareholder of record with respect to the Shares delivered to Participant.

6.2. To the extent that Participant does not vest in any Restricted Stock Units, all interest in the unvested Restricted Stock Units shall be forfeited. Participant has no right or interest in any Restricted Stock Units that are forfeited.

7. No Right to Continued Service on the Board. Neither the Plan nor this Agreement shall confer upon the Director any right to be retained as a member of the Board or in any other capacity. Further, nothing in the Plan or this Agreement shall be construed to limit the discretion of the Company to terminate the Participant's membership on the Board at any time.

8. Adjustments. If any change is made to the outstanding Stock or the capital structure of the Company, the Restricted Stock Units may be adjusted or terminated in any manner as contemplated by Plan Section 7(b).

9. Compliance with Securities Laws. The issuance and transfer of Shares in connection with the Restricted Stock Units shall be subject to compliance by the Company and Participant with all applicable requirements of federal and state securities laws and with all applicable requirements of any stock exchange on which the Company's Shares may be listed. No Shares shall be issued or transferred unless and until any then applicable requirements of state and federal laws and regulatory agencies have been fully complied with to the satisfaction of the Company and its counsel. The Company may require, as a condition to issuance of Shares to Participant, that Participant make such representations or agreements as counsel for the Company may consider appropriate to avoid violation of the Securities Act or any applicable state or foreign securities laws. The Company may require that certificates representing Shares bear an appropriate legend reflecting any restriction on transfer applicable to the Shares, and the Company may hold certificates pending lapse of the applicable restrictions.

10. Notices. Any notice required to be delivered to the Company under this Agreement shall be in writing and addressed to the Administrator at the Company's principal corporate offices. Any notice required to be delivered to Participant under this Agreement shall be in writing and addressed to Participant at Participant's address as shown in the records of the Company. Either party may designate another address in writing (or by another method approved by the Company) from time to time.

11. Governing Law. This Agreement will be construed and interpreted in accordance with the laws of the State of Delaware without regard to conflict of law principles.

12. Interpretation. Any dispute regarding the interpretation of this Agreement shall be submitted by Participant or the Company to the Administrator for review. The resolution of such a dispute by the Administrator shall be final and binding on Participant and the Company

13. Restricted Stock Units Subject to Plan. This Agreement is subject to the Plan as approved by the Company's stockholders. The terms and provisions of the Plan as it may be amended from time to time are hereby incorporated herein by reference. In the event of a conflict between any term or provision contained herein and a term or provision of the Plan, the applicable terms and provisions of the Plan will govern and prevail.

14. Successors and Assigns. The Company may assign any of its rights under this Agreement. This Agreement will be binding upon and inure to the benefit of the successors and assigns of the Company. Subject to the restrictions on transfer set forth herein, this Agreement will be binding upon Participant and Participant's beneficiaries, executors, administrators and the person(s) to whom the Restricted Stock Units may be transferred by will or the laws of descent or distribution.

15. Severability. The invalidity or unenforceability of any provision of the Plan or this Agreement shall not affect the validity or enforceability of any other provision of the Plan or this Agreement, and each provision of the Plan or this Agreement shall be severable and enforceable to the extent permitted by law.

16. Discretionary Nature of Plan. The Plan is discretionary and may be amended, cancelled, or terminated by the Company at any time, in its discretion. The grant of the Restricted Stock Units in this Agreement does not create any contractual right or other right to receive any Restricted Stock Units or other Awards in the future. Future Awards, if any, will be at the sole discretion of the Company. Any amendment, modification, or termination of the Plan shall not constitute a change or impairment of the terms and conditions of Participant's membership on the Board.

17. Amendment. The Administrator has the right to amend, alter, suspend, discontinue or cancel the Restricted Stock Units, prospectively or retroactively; *provided*, *that* no such amendment shall adversely affect Participant's material rights under this Agreement without Participant's consent.

18. Section 409A. This Agreement is intended to be exempt from, or to comply with, Code Section 409A and shall be construed and interpreted in a manner that is consistent with the requirements for avoiding additional taxes or penalties under Code Section 409A. Notwithstanding the foregoing, the Company makes no representations that the payments and benefits provided under this Agreement meet an exception from, or comply with, Code Section 409A and in no event shall the Company, the Administrator, or any employee or agent of the Company be liable for all or any portion of any taxes, penalties, interest or other expenses that may be incurred by Participant on account of non-compliance with Code Section 409A.

19. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which together will constitute one and the same instrument. Counterpart signature pages to this Agreement transmitted by facsimile transmission, by electronic mail in portable document format (.pdf) , or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, will have the same effect as physical delivery of the paper document bearing an original signature.

20. Acceptance. **Participant hereby acknowledge receipt of a copy of the Plan and this Agreement. Participant has read and understands the terms and provisions thereof, and accepts the Restricted Stock Units subject to all of the terms and conditions of the Plan and this Agreement.** Participant acknowledges that there may be adverse tax consequences upon the vesting or settlement of the Restricted Stock Units or disposition of the underlying Shares and that Participant has been advised to consult a tax advisor prior to vesting, settlement, or disposition.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

SUPERNUS PHARMACEUTICALS, INC.

By:_____
Name:
Title:

[PARTICIPANT NAME]

By:_____

Exhibit 10.6

SUPERNUS PHARMACEUTICALS, INC.

2021 EQUITY INCENTIVE PLAN

PERFORMANCE SHARE UNIT AWARD AGREEMENT

This Performance Share Unit Award Agreement (the **"Agreement"**) is made and entered into as of , (the **"Grant Date"**). This Agreement evidences a performance share unit award granted by Supernus Pharmaceuticals, Inc. (the **"Company"**) to the undersigned (**"Participant"**) pursuant to and subject to the terms of the Supernus Pharmaceuticals, Inc. 2021 Equity Incentive Plan (the **"Plan"**), which is incorporated herein by reference. Capitalized terms not explicitly defined in this Agreement shall have the meaning set forth in the Plan.

1. Grant of the Performance Share Unit Award. Pursuant to the Plan, the Company hereby issues to Participant on the Grant Date an Award for a target number of [NUMBER] performance share units (**"PSUs"**). The number of PSUs that Participant actually earns for the Performance Period described below will be determined by the level of achievement of the **"Performance Goal[s]"** as defined in, and in accordance with, Schedule A attached hereto, but the number of PSUs actually earned for the Performance Period shall not exceed [NUMBER] PSUs. Each PSU represents the right to receive one share of Stock (a **"Share"**), subject to the terms and conditions set forth in this Agreement and the Plan.

2. Performance Period. For purposes of this Agreement, the term **"Performance Period"** shall be the period commencing on [DATE] and ending on [DATE].

3. Performance Goal[s].

   3.1. The number of PSUs earned by Participant for the Performance Period will be determined at the end of the Performance Period based on the level of achievement of the Performance Goal[s] in accordance with Exhibit A. All determinations of whether the Performance Goal[s] has been achieved, the number of PSUs earned by Participant, and all other matters related to this Section 3.1 shall be made by the Administrator in its sole discretion.

   3.2. Promptly following completion of the Performance Period (and no later than sixty (60) days following the end of the Performance Period), the Administrator will review and certify in writing (a) whether, and to what extent, the Performance Goals for the Performance Period have been achieved, and (b) the number of PSUs that Participant shall earn, if any, subject to compliance with the requirements of Section 4 of this Agreement. The certification shall be final, conclusive, and binding on Participant, and on all other persons, to the maximum extent permitted by law.

4. Vesting of PSUs. Except as otherwise provided herein, the PSUs will vest and become nonforfeitable on the date that the Administrator certifies the achievement of the Performance Goal[s], subject to (a) at least "threshold" level of achievement for the Performance Goal[s], which is necessary for minimum payout set forth in Exhibit A attached hereto, and (b) Participant's continuous Employment from the Grant Date through the date that the Administrator certifies the achievement of the Performance Goal[s]. The number of PSUs that vest and become payable under this Agreement shall be determined by the Administrator based on the level of achievement of the Performance Goal[s] set forth in Exhibit A and shall be rounded to the nearest whole PSU.

5. Termination of Continuous Employment. Except as otherwise expressly provided in this Agreement, if Participant's continuous Employment terminates for any reason at any time before all of Participant's PSUs have vested, Participant's unvested PSUs shall automatically be forfeited upon termination of continuous Employment and neither the Company nor any Affiliate shall have any further obligations to Participant

under this Agreement. Notwithstanding the foregoing, if Participant's continuous Employment terminates by reason of Participant's death or disability, the Administrator may, in its sole discretion, accelerate the vesting of some or all of the unvested PSUs held by Participant.

6. Effect of a Covered Transaction. If the Company engages in a Covered Transaction during the Performance Period, the Administrator may, in its sole discretion, take (or refrain from taking) any of the actions described in Section 7(a) of the Plan with respect to unvested PSUs held by Participant. Unless the Administrator determines otherwise at the time of a Covered Transaction, if a Covered Transaction occurs during the Performance Period (i) all of Participant's outstanding unvested PSUs shall vest according to the proportional progress toward satisfaction of the Performance Goal[s] as determined in the Administrator's sole discretion and (ii) to the extent that PSUs still remain unvested following the accelerated proportional vesting, those unvested PSUs shall automatically be forfeited, and neither the Company nor any Affiliate shall have any further obligations to Participant under this Agreement.

7. Settlement of PSUs. Subject to the terms of this Agreement, promptly following the date the Participant's PSUs become vested (and in any event no later than March 15 of the calendar year following the calendar year in which vesting occurs), the Company shall (a) issue and deliver to Participant the number of Shares equal to the number of vested PSUs, and (b) enter Participant's name on the books of the Company as the stockholder of record with respect to the Shares delivered to Participant. To the extent that less than the maximum number of PSUs covered by this Award become vested, all interest in the unvested PSUs shall be forfeited. Participant has no right or interest in any PSUs that are forfeited.

8. Transferability. Subject to any exceptions set forth in this Agreement or the Plan, neither the PSUs nor the rights relating thereto may be assigned, alienated, pledge, attached, sold or otherwise transferred or encumbered by Participant, except by will or the laws of descent and distribution, and upon any such transfer by will or the laws of descent and distribution, the transferee shall hold the PSUs subject to all of the terms and conditions that were applicable to Participant immediately prior to the transfer.

9. Rights as Stockholder; Dividend Equivalents.

    9.1. Participant shall not have any rights of a stockholder with respect to the Shares underlying the PSUs, including, but not limited to, voting rights and the right to receive or accrue dividends or dividend equivalents.

    9.2. Upon and following the vesting of the PSUs and the issuance of Shares pursuant to Section 7 of this Agreement, Participant shall be the record owner of the Shares underlying the PSUs unless and until the Shares are sold or otherwise disposed of, and as record owner shall be entitled to all rights of a stockholder of the Company (including voting and dividend rights).

10. No Right to Continued Employment. Nothing in this Agreement (including, but not limited to, the vesting of Participant's PSUs or the issuance of the Shares in respect of Participant's PSUs), the Plan or any covenant of good faith and fair dealing that may be found implicit in this Agreement or the Plan shall: (i) confer upon Participant any right to continue in the employ or service of, or affiliation with, the Company or an Affiliate; (ii) constitute any promise or commitment by the Company or any Affiliate regarding the fact or nature of future positions, future work assignments, future compensation or any other terms or condition of employment or affiliation; (iii) confer any right or benefit under this Agreement or the Plan unless the right or benefit has specifically accrued under the terms of this Agreement or Plan; or (iv) deprive the Company of the right to terminate Participant at will and without regard to any future vesting opportunity that Participant may have.

11. Adjustments. If any change is made to the outstanding Stock or the capital structure of the Company, the PSUs may be adjusted or terminated in any manner as contemplated by Plan Section 7(b).

12. Tax Liability and Withholding; Tax Consequences.

12.1. Participant shall be required to pay to the Company, and the Company shall have the right to deduct from any compensation paid to Participant pursuant to the Plan, the amount of any required withholding taxes in respect of the PSUs and to take all other action as the Administrator deems necessary to satisfy all obligations for the payment of the withholding taxes. The Administrator may permit Participant to satisfy any federal, state, or local tax withholding obligation by any of the following means, or by a combination of the means:

i. tendering a cash payment;

ii. authorizing the Company to withhold Shares from the Shares otherwise issuable or deliverable to Participant as a result of the vesting of the PSUs; *provided*, *however*, that no Shares shall be withheld with a value exceeding the maximum amount of tax required to be withheld by law; or

iii. delivering to the Company previously owned and unencumbered shares of Stock.

12.2. Notwithstanding any action the Company takes with respect to any or all income tax, social insurance, payroll tax or other tax-related withholding (**"Tax-Related Items"**), the ultimate liability for all Tax-Related Items is and remains Participant's responsibility and the Company (a) makes no representation or undertakings regarding the treatment of any Tax-Related Items in connection with the grant, vesting, or settlement of the PSUs or the subsequent sale of any Shares; and (b) does not commit to structure the PSUs to reduce or eliminate Participant's liability for Tax-Related Items.

13. Clawback/Recovery. All Awards granted under the Plan and this Agreement (and all Shares issued to Participant and all payments of Tax-Related Items made by the Company on Participant's behalf) will be subject to recoupment in accordance with the Company's clawback policy effective as of April 23, 2018 and any later clawback policy that the Company adopts, including any clawback policy in response to a listing standard of any national securities exchange or association on which the Company's securities are listed or as is otherwise required by the Dodd-Frank Wall Street Reform and Consumer Protection Act or other applicable law.

No recovery of compensation under such a clawback policy will be an event giving rise to a right to resign for "good reason" or "constructive termination" (or similar term) under any agreement with the Company.

14. Compliance with Securities Laws. The issuance and transfer of Shares in connection with the PSUs shall be subject to compliance by the Company and Participant with all applicable requirements of federal and state securities laws and with all applicable requirements of any stock exchange on which the Company's Shares may be listed. No Shares shall be issued or transferred unless and until any then applicable requirements of state and federal laws and regulatory agencies have been fully complied with to the satisfaction of the Company and its counsel. The Company may require, as a condition to issuance of Shares to Participant, that Participant make such representations or agreements as counsel for the Company may consider appropriate to avoid violation of the Securities Act or any applicable state or foreign securities laws. The Company may require that certificates representing Shares bear an appropriate legend reflecting any restriction on transfer applicable to such Shares, and the Company may hold certificates pending lapse of the applicable restrictions.

15. Notices. Any notice required to be delivered to the Company under this Agreement shall be in writing and addressed to the Administrator at the Company's principal corporate offices. Any notice required to be delivered to Participant under this Agreement shall be in writing and addressed to Participant at Participant's address as shown in the records of the Company. Either party may designate another address in writing (or by such other method approved by the Company) from time to time.

16. Governing Law. This Agreement will be construed and interpreted in accordance with the laws of the State of Delaware without regard to conflict of law principles.

17. Interpretation. Any dispute regarding the interpretation of this Agreement shall be submitted by Participant or the Company to the Administrator for review. The resolution of such a dispute by the Administrator shall be final and binding on Participant and the Company.

18. PSUs Subject to Plan. This Agreement is subject to the Plan as approved by the Company's stockholders. The terms and provisions of the Plan as it may be amended from time to time are hereby incorporated herein by reference. In the event of a conflict between any term or provision contained herein and a term or provision of the Plan, the applicable terms and provisions of the Plan will govern and prevail.

19. Successors and Assigns. The Company may assign any of its rights under this Agreement. This Agreement will be binding upon and inure to the benefit of the successors and assigns of the Company. Subject to the restrictions on transfer set forth herein, this Agreement will be binding upon Participant and Participant's beneficiaries, executors, administrators and the person(s) to whom the PSUs may be transferred by will or the laws of descent or distribution.

20. Severability. The invalidity or unenforceability of any provision of the Plan or this Agreement shall not affect the validity or enforceability of any other provision of the Plan or this Agreement, and each provision of the Plan and this Agreement shall be severable and enforceable to the extent permitted by law.

21. Discretionary Nature of Plan. The Plan is discretionary and may be amended, cancelled, or terminated by the Company at any time, in its discretion. The grant of the PSUs in this Agreement does not create any contractual right or other right to receive any PSUs or other Awards in the future. Future Awards, if any, will be at the sole discretion of the Company. Any amendment, modification, or termination of the Plan shall not constitute a change or impairment of the terms and conditions of Participant's employment with the Company.

22. Amendment. The Administrator has the right to amend, alter, suspend, discontinue or cancel the PSUs, prospectively or retroactively; *provided, that*, no such amendment shall adversely affect Participant's material rights under this Agreement without Participant's consent.

23. Section 409A. This Agreement is intended to be exempt from, or to comply with, Code Section 409A and shall be construed and interpreted in a manner that is consistent with the requirements for avoiding additional taxes or penalties under Code Section 409A. Notwithstanding the foregoing, the Company makes no representations that the payments and benefits provided under this Agreement meet an exemption from, or comply with, Code Section 409A and in no event shall the Company, the Administrator, or any employee or agent of the Company be liable for all or any portion of any taxes, penalties, interest or other expenses that may be incurred by Participant on account of non-compliance with Code Section 409A.

24. No Impact on Other Benefits. The value of Participant's PSUs is not part of his or her normal or expected compensation for purposes of calculating any severance, retirement, welfare, insurance or similar employee benefit unless the benefit plan expressly provides it is includible.

25. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which together will constitute one and the same instrument. Counterpart signature pages to this Agreement transmitted by facsimile transmission, by electronic mail in portable document format (.pdf), or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, will have the same effect as physical delivery of the paper document bearing an original signature.

26. Acceptance. Participant **hereby acknowledges receipt of a copy of the Plan and this Agreement. Participant has read and understands the terms and provisions thereof, and accepts the PSUs subject to all of the terms and conditions of the Plan and this Agreement**. Participant acknowledges that there may be adverse tax consequences upon the vesting or settlement of the PSUs or disposition of the underlying Shares and that Participant has been advised to consult a tax advisor prior to such vesting, settlement, or disposition.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

SUPERNUS PHARMACEUTICALS, INC.

By:_____
Name:
Title:

[PARTICIPANT NAME]

By:_____

EXHIBIT A

PERFORMANCE GOALS

EXHIBIT 31.1

CERTIFICATION

I, Jack A. Khattar, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Supernus Pharmaceuticals, Inc.;

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

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

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

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

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

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

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

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

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

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

Date: August 6, 2021

By: /s/ Jack A. Khattar
Jack A. Khattar
President and Chief Executive Officer

EXHIBIT 31.2

CERTIFICATION

I, James P. Kelly, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Supernus Pharmaceuticals, Inc.;

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

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

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

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

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

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

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

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

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

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

Date: August 6, 2021

By: /s/ James P. Kelly
James P. Kelly
Executive Vice President and Chief Financial Officer

EXHIBIT 32.1

SUPERNUS PHARMACEUTICALS, INC.

CERTIFICATION PURSUANT TO

18 U.S.C. sec. 1350,

AS ADOPTED PURSUANT TO

SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report of Supernus Pharmaceuticals, Inc. (the "Company") on Form 10-Q for the period ended June 30, 2021 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Jack A. Khattar, President and Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. sec. 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

(1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

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

ugust 6, 2021

By: /s/ Jack A. Khattar
Jack A. Khattar
President and Chief Executive Officer

EXHIBIT 32.2

SUPERNUS PHARMACEUTICALS, INC.

CERTIFICATION PURSUANT TO

18 U.S.C. sec. 1350,

AS ADOPTED PURSUANT TO

SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report of Supernus Pharmaceuticals, Inc. (the "Company") on Form 10-Q for the period ended June 30, 2021 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, James P. Kelly, Executive Vice President and Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. sec. 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

(1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

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

ugust 6, 2021

By: /s/ James P. Kelly
James P. Kelly
Executive Vice President and Chief Financial Officer